

The Carter Center's Experts Mission to the Zambian Presidential and Parliamentary Elections 2016

Final Report



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I Foreword

By *Jordan Ryan*
Vice President, Peace Programs
The Carter Center

Historically, Zambia stands out in Africa as enjoying generally competitive, multiparty, and peaceful elections, with some alternation of power between ruling party and opposition party winners. The country has held eight elections since its first multiparty polls in 1991. While considerable shortcomings occurred in prior elections, The Carter Center shares the assessment of many stakeholders who cautioned that the 2016 elections signify a step backward for Zambian democracy. Yet the Zambian people's decades-long commitment to the principles of democracy, the exercise of fundamental freedoms, and the country's democratic institutions, albeit challenged, provides the foundation to strengthen Zambian democracy and resist democratic retreat.

The 2016 observation effort is part of the Center's longstanding commitment to support Zambia's democracy, which began with observation of Zambia's election in 1991 and continued with observation of the 2001 general elections. It is also part of the Center's 25-year commitment to observing elections based on impartial and widely accepted international standards for democratic elections supported by all regions of the globe, including Africa.

In this report, the Center summarizes its assessment of Zambia's 2016 general election and referendum on the Bill of Rights. After receiving an invitation from the Ministry of Foreign Affairs,

the Center fielded a limited observation mission deployed in-country for two months to focus on the pre- and postelection periods. Observation findings include assessment of the campaign period, electoral administration, women's political participation, electoral violence, electoral dispute resolution, and the legal framework for elections. I was honored to co-lead the Carter Center's mission with Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi.

As in past elections, domestic and international observers found that voting on election day was largely peaceful and successful. While the Center's limited observation mission did not assess the balloting and counting processes, it shares this general assessment. The Electoral Commission of Zambia and the electorate should be commended

Election workers set up the polling place.



Sarah Johnson

for this success. The robust participation of civil society organizations in the electoral process was also impressive, with groups observing all aspects of the electoral process, including the overall electoral administration and environment; the engagement of women, youth, and people with disabilities; and the role of the media, among other issues.

However, the constraints and flaws observed in the pre- and postelection periods detailed in this report indicate a trend of anti-democratic practices that serve to significantly erode public and voter

associated with the electoral process that is deeply troubling. The increasing political polarization in the country is also of deep concern.

Two weeks after the conclusion of the Constitutional Court's consideration of opposition challenges to the polls, President Edgar Lungu acknowledged the need to seek national unity; in his inaugural address he recalled Zambia's national motto—"One Zambia, One Nation"—and called for citizens to "seize the opportunity to rise above the differences that divided" them during the elections. While the elections were contentious and created substantial rancor between political opponents, actions can and should be taken to foster national unity and reinvigorate inclusive democracy in Zambia. The Center calls on government officials, the Electoral Commission of Zambia, political parties, and all other electoral stakeholders to give priority to strengthening democratic institutions that oversee and support the electoral process, including the Electoral Commission, the media, the security apparatus, and the judiciary. Likewise, we encourage these stakeholders to allow and embrace an increased role of women and civil society organizations to participate in Zambia's public affairs.

The Carter Center offers recommendations in the spirit of supporting the government of Zambia, the Electoral Commission, the Constitutional Court, and other key electoral stakeholders charged with implementing the electoral process. We hope the assessments shared here will help to support and improve Zambia's future elections, and we look forward to working with key stakeholders to strengthen Zambia's electoral processes.

The Center calls on government officials, the Electoral Commission of Zambia, political parties, and all other electoral stakeholders to give priority to strengthening democratic institutions that oversee and support the electoral process.

confidence in the electoral system and undermine the integrity of Zambia's democratic institutions. Key concerns include the lack of a level playing field for political parties, including serious constraints on freedom of the press and assembly, gaps in the legal framework for elections, and the role of the judiciary in adjudicating electoral disputes. The widely reported, though not always verified, instances of violence, intimidation, and role played by party cadres in these events contributed to a climate of fear and insecurity

I Executive Summary

Overview

The Zambian general elections and referendum were held Aug. 11, 2016. Final presidential election results indicated that President Edgar Lungu received 50.35 percent of valid votes cast, a vote total that awarded him the presidency and narrowly avoided a runoff election under the newly adopted 50 percent plus one electoral system. The parliamentary elections resulted in the Patriotic Front (PF) winning 80 seats, the United Party for National Development (UPND) winning 58 seats, the Movement for Multi-party Democracy winning three seats, the Forum for Democracy and Development winning one seat, and independent candidates winning 14 seats. A referendum on a Bill of Rights and constitutional amendments held in parallel to the general elections did not meet the minimum threshold required by the constitution of 50 percent participation by eligible voters, and so did not pass.

Due to time and funding constraints, The Carter Center fielded a limited observation mission that focused on the pre-election and postelection periods but was not large enough to provide a robust assessment of election day voting and counting processes. The preliminary statement released by the Center on Aug. 13 found the pre-election period was significantly flawed. The environment was characterized by interparty tensions and polarization, exacerbated by the introduction of new electoral and legal frameworks and a decision to hold a referendum

on the Bill of Rights and constitutional amendments at the same time. Widely reported incidents of violence increased tension, especially in the weeks preceding election day. In addition, the Center noted the absence of a level playing field, including harassment of private media, the abuse of public office by government ministers, and the application of the Public Order Act in ways that appeared to disadvantage the main opposition party, the UPND.

While the Center did not observe election day, Zambian citizen observers and other international

The preliminary statement released by the Center on Aug. 13 found the pre-election period was significantly flawed.

election observation missions reported that the voting process was largely successful, with only relatively minor problems. Further, they found that polling day was mostly calm, and long queues of voters waited patiently to cast ballots. Polling officials and police worked to ensure order, despite an extended counting process.

Following the polls, several factors served to weaken the confidence of a significant segment of the population in key institutions charged with administering the polls and addressing electoral disputes. Contrary to international obligations



Kseniya Dashutina

Polling places offered guidance to lines of voters.

pertaining to anti-corruption and electoral best practices, results were not consistently posted at the polling station level.¹ Due to a lengthy counting process, election officials relocated the materials to the totaling centers in some instances, which likely contributed to this failure.

The Electoral Commission of Zambia (ECZ) ineffectively managed the vote tabulation, verification, and declaration of results, as well as public expectations surrounding these processes. Contrary to international standards, election observers were not allowed to observe the results-verification process, undermining its transparency.² The vote-counting process unfortunately proved highly contentious and caused increased delays in the announcement of results. Despite pre-election statements that the results would be announced within 48 hours of the closure of the polls, the ECZ did not announce the presidential results until Aug. 15, four days after election day. Localized outbreaks of violence followed the announcement.

The ECZ clarified the constitutional requirements for passage of a referendum on a Bill of

Rights after polling was concluded and a day before these results were announced. The information contradicted the voter-education material that the ECZ had developed and distributed.

Several legal challenges were lodged, and the newly established Constitutional Court's handling of them raised serious concerns regarding the right of petitioners to receive an effective and timely remedy under the law. In one such case, the UPND lodged a petition with the Constitutional Court on Aug. 19 challenging the outcome of the presidential election, alleging serious irregularities in the counting and tabulation process, among other concerns.

Although Zambia's constitution requires the Constitutional Court to hear electoral petitions within 14 days of their filing, it is silent as to the time frame in which the court is required to issue a ruling. The court exacerbated the problem by not defining clear timelines at the outset that would have allowed sufficient time for procedural matters and the hearing. Much of the court's deliberation was done in chambers, closed to the public. The court did not offer regular public updates on the proceedings.³

On Aug. 30, the court said its calendar would be extended by five days, concluding on Sept. 8, to allow additional time for both the petitioners and the respondents to bring forward evidence and witness testimony. However, it later reversed its position and required both sides to present their cases on Sept. 2. This was the 14th calendar day and final deadline to hear petitions according to a strict reading of the constitution. Opposition lawyers argued that there was insufficient time and withdrew from the case. The full court again stated that four additional days would be provided, two each for the two sides to argue the merits. In a surprise ruling when it reconvened on Sept. 5, the court stated that its jurisdiction had ended at midnight on Sept. 2 and dismissed the UPND petition without hearing the case on its merits, citing the need to abide strictly by the

1 SADC Protocol Against Corruption, Art. 4.1(d). The Electoral Commission's Forum of SADC Countries handbook, "Principles for Election Management, Monitoring and Observation in the SADC Region," p. 27

2 United Nations Human Rights Committee (UNHRC), General Comment 25, para. 20

3 Contrary to international standards in the United Nations International Covenant on Civil and Political Rights, as cited in Article 14, section 1 on courts and tribunals, the judgment, findings, and evidence of judicial proceedings and legal reasoning of the judgment must be made public except in cases involving juveniles and/or matrimonial disputes.

constitutional time limits to hold a hearing. The vote was 3-2.

As a result of this decision, the legal and judicial processes involved in the presidential petition failed to meet Zambia's national and international obligations to ensure due process, a fair hearing, and timely and effective legal remedy.⁴

While it is difficult to quantify the precise impact of the flaws in the pre- and postelection periods, cumulatively, these problems represent a significant step backward for democracy in Zambia. The conduct of the elections has further polarized Zambian society, undermined the integrity of Zambia's electoral process, and weakened public confidence in the country's democratic institutions.

Summary of Key Findings

Electoral Violence

Both the pre- and postelection periods were marred by political tensions and instances of localized electoral violence largely carried out by party cadres, particularly in Central, Copperbelt, Lusaka, and Southern provinces, including rioting, property damage, and physical assault resulting in some deaths.

Legal Framework and Electoral System

The 2016 elections were held under a new, untested legal framework adopted shortly before the polls. Some regulations governing the electoral process—including regulations on disqualification criteria for candidates, rules for holding the referendum, and general electoral procedures—were adopted only two days before the elections. The delay in amending the electoral law and enacting implementing regulations, coupled with gaps and inconsistencies in the legal framework, resulted in a lack of stability in the legal framework and significant legal uncertainty.⁵ This hindered the

ability of electoral stakeholders to understand the legal framework and undermined their ability to follow the laws and regulations.

This uncertainty regarding the legal and electoral framework was exacerbated by unclear constitutional provisions, including contradictory articles regarding the role of the speaker of the parliament in the event that a petition challenging the results of the presidential election is filed and a lack of clarity regarding the deadline for the Constitutional Court to issue a ruling on electoral petitions. Neither issue was clarified quickly, which contributed further to general confusion and uncertainty.

The legal and judicial processes involved in the presidential petition failed to meet Zambia's national and international obligations to ensure due process, a fair hearing, and timely and effective legal remedy.

In one of its first rulings, three days before the election, the Constitutional Court granted a petition filed by the Law Association of Zambia that challenged the constitutionality of the government ministers remaining in office after the dissolution of parliament. The court ruled that the ministers' mandate expired on the day parliament was dissolved. Though government ministers subsequently relinquished their offices, a number of cases were filed following the polls challenging the election results of ministers who were re-elected to their parliamentary seats. The cases were, in part, based on allegations of abuse of state resources, as the successful candidates had benefited from increased exposure during the campaign as a result of their visibility as public officials.⁶

4 The Constitution of Zambia, Art. 18(9); UN, ICCPR, Art. 2 and 14.1; African Charter on Human and Peoples' Rights (AfCHPR), Art. 7

5 UNHCR, General Comment 25, para.19

6 Attorney General Likando Kalaluka later stated that former ministers should not be required to return the funds, arguing that they had worked during this period, and called on the Constitutional Court to reverse its decision in this regard. The Lusaka High Court later issued a ruling

nullifying the election of Munalu Member of Parliament Nkandu Luo in a case brought by an opponent challenging the election results. In addition to concerns regarding the transparency of the polling results, the court cited the Constitutional Court's ruling regarding the end of the mandate of government ministers following the dissolution of parliament. The court found that Luo had abused her office by using public resources after her mandate had concluded. At the time of report drafting, the defendant planned to appeal the nullification to the Constitutional Court.

Level Playing Field

The campaign period was marred by several factors that created an unequal playing field. The key problems included unbalanced media reporting and biased access to public media, harassment of private media outlets by the government, the use of state resources for political purposes, the abuse of office by government ministers, the inequitable application of the Public Order Act against the opposition UPND, and the denial of flight clearances and full freedom of movement for opposition candidates.

Political Polarization

Support for the ruling Patriotic Front and UPND is largely divided on a regional basis. Although support for various parties has shifted during the elections held since 1991, party support increasingly clusters in ethno-geographic patterns. The electoral reform requiring “50 percent plus one” of the vote to win the presidential polls may have inadvertently fostered greater political polarization and ethnic undertones to the process.

Candidate Eligibility and Nomination

Constitutional amendments introduced a minimal academic qualification of a Grade 12 certificate or its “equivalent.” This requirement disproportionately affects female and rural aspirants and contradicts international standards that exclude

Zambia has long suffered from low representation of women in elected political office, and many women who aspired to public office were disqualified by the new educational attainment requirement.

restrictions on the right to stand for election on the basis of literacy or education requirements, among others.⁷ Nonrefundable fees for candidate nomination were raised substantially and were

7 UNHRC, General Comment 25, para. 15, states: “The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by



Voters queue at the polling station in Lusaka.

seen as being excessive and unreasonable barriers to candidacy, especially for women and youth.

Participation of Women

Zambia has long suffered from low representation of women in elected political office, and many women who aspired to public office were disqualified by the new educational attainment requirement. Of the 156 elected members of parliament, only 26 are women (17 percent). While this remains comparatively low by regional standards, the representation of women in the newly elected National Assembly represents an increase over previous levels.⁸ The election of a woman, Inonge Wina, as Zambia’s first directly

unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.”

8 The SADC Protocol on Gender and Development established a target of 50 percent women representation by 2015: http://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf.



Election workers manage tasks inside the polling place while observers watch and report.

elected vice president is noteworthy. Edith Nawakwi, president of the Forum for Democracy and Development, was also a presidential contender.

Election Administration

The president has the prerogative to appoint and dismiss ECZ members. This authority heightens mistrust among opposition political parties and casts doubt on the electoral body's independence from the executive branch. Further, this practice is inconsistent with best practices for recruiting and dismissing election officials.⁹ Regional and international treaties lay out clear standards for selecting members of election management bodies, generally including transparency, equity, merit, aptitude, and efficiency.¹⁰

Freedom of Assembly and Association

Due to concerns about rising political violence, the ECZ suspended campaigns in two districts for 10 days by invoking Section 28(2) of the Electoral Process Act, which allows the commission to "amend the election timetable if it considers it necessary for a free and fair election." While some stakeholders felt the suspension contributed to a reduction in mounting tension, it is unclear whether the ECZ had the legal power to do so and whether it violated the parties' right to freedom of assembly. While the ECZ was empowered by law to enforce the Code of Conduct, it failed to punish violations of the Code of Conduct by political parties or to prevent abuses by the authorities (e.g., uneven administration of the Public Order

9 Commonwealth Secretariat Handbook, *Organising Free and Fair Elections at Cost-Effective Levels*, p. 12: "The senior members of management (e.g., members of the electoral or constituency boundaries commission) should be answerable to parliament and not to the prime minister or president, as the head of government. The members' tenure of office should be secure

and their removal should be governed by clearly stipulated procedures, possibly requiring a resolution by the national assembly, not dissimilar to those applicable to the removal from office of a supreme court judge."

10 UNHRC, General Comment 25, para. 23. AU, *Convention on Corruption*, Art. 7(4); UN, *UNCAC*, Art. 7.1.a

Act that violated freedom of assembly of opposition parties). No effective remedies were available to challenge the ECZ's decisions on the code.¹¹ These issues exacerbated opposition parties' concerns about its impartiality.

Voting

Both Zambian citizen observers and other international observation missions reported that voting processes were relatively well-managed albeit with some technical shortcomings. However, concerns arose during all stages of the results-

On Aug. 19, the opposition UPND filed a petition with the Constitutional Court challenging the outcome of the presidential election.

management process. Contrary to best practices for transparency, observers and party agents reported inconsistent availability of GEN 12 forms used to tabulate results at the polling station level.¹² These forms were needed to complete thorough, independent checks of polling station results. Coupled with slow counting and tabulation procedures at both the polling station and constituency levels, the tabulation process took several days longer than anticipated. The verification of results was highly contentious and resulted in disagreements between political parties and the ECZ on verification procedures. The UPND complained that the final presidential results should not have been announced by the ECZ chairman due to inconsistencies between polling station results and the verified consolidated results.

Vote Counting and Tabulation

Vote tabulation should be a transparent and observable process.¹³ Though party representatives had access to the verification room at the National

Results Center, independent observers did not have access to the transmission and verification exercise at the national level and were unable to observe the ECZ's verification of results transmitted from totaling centers. This lack of access undermined the transparency of what evolved into a highly contentious process. The verification process lacked clear and effective remedy mechanisms for political parties to appeal the ECZ's actions in order to correct tabulation errors made by electoral officers at the polling station level.

While the ECZ chairman had forecast that final presidential results would be declared 48 hours after the last polling station completed counting, the results were not announced until Monday, Aug. 15, four days after election day. The delay was caused by slow counting and totaling of results, as well as disputes over verification procedures between party representatives and the ECZ at the results center. The arrest on Aug. 12 of Samuel Chavula, a suspected hacker who had been accredited by the ECZ and given access to the verification room, raised concerns among political parties about improper accreditation and further delayed the process.

Electoral Dispute Resolution

ECZ conflict management committees, which were meant to serve as an alternative to lengthy court proceedings, did not provide an effective dispute-resolution mechanism during the elections.

On Aug. 19, the opposition UPND filed a petition with the Constitutional Court challenging the outcome of the presidential election and alleging serious irregularities in the counting and tabulation process, among other issues. Much of the court's deliberations were done in chambers, closed to the public. The court failed to hear evidence on the merits of the petition and to rule on the validity of the elections. On Sept. 5, the court dismissed the petition by a majority decision on the technicality that the petitioner failed to present its case within the 14-day timeline, which expired on Sept. 2. Three out of five judges ruled

11 UNHRC, Leonid Sinitsin v. Belarus Communication No. 1047/2002 (2006) para. 7.3

12 UNHRC, General Comment 25, para. 20; SADC PF: Norms and Standards for Elections in the SADC Region, p. 17

13 UNHRC, General Comment 25, para. 20

that the 14-day deadline prescribed by the constitution is unambiguous, and therefore the petition could not be heard outside of the legal timeline. This ruling came after the court twice granted parties extensions, two and a half days in the first instance and two days in the second instance, for each side to present its case. If implemented, these extensions would have pushed the legal process beyond the 14-day limit.

The UPND then filed a petition with the High Court, alleging a violation under the constitution's Bill of Rights of its right to a fair trial and seeking to enjoin the inauguration. The High Court stated it had no jurisdiction to grant interim relief to stop the inauguration and that the decision could be appealed to the Supreme Court. The Supreme Court refused to enjoin the inauguration or to review the Constitutional Court's actions. Effectively, the petitioner's legal remedies had been exhausted.

The legal process to resolve the petition was marred by a lack of clear guidelines on the time frame for the court to resolve the matter and inconsistency in its decision-making. This was contrary to the principles of a fair trial and effective legal remedy and prevented due process under the law. Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints failed to ensure due process and to provide effective and timely legal redress.

Electoral Constituencies

Variances between the number of voters per constituency contravene the Zambian Constitution's equal suffrage principle regarding parliamentary races, as well as internationally accepted standards for boundary apportionment.¹⁴ The total number of eligible voters in the largest constituency was over 16 times greater than that of the smallest.

¹⁴ UNHRC, General Comment 25, para. 21; UNHRC, *Istvan Matyas v Slovakia*, (2002)

¹⁵ Audit Report, Executive Summary, Audit of the 2016 Provisional Register of Voters as of June 6, 2016, p. 4. Some 62,777 deceased voters were removed since 2005, and an additional 10,985 deceased voters were removed from the register following the audit.

Voter Registration

The ECZ selected two experts from the United Nations election roster to conduct an audit of the voter register prior to the election. According to the voter register audit projections, the certified register of voters included data for more than 300,000 deceased voters. Although some efforts have been made to remove the details of the deceased individuals since 2005, according to the audit, the process was not "adequate or effective."¹⁵ The voter registration of some 11,000 deceased individuals were subsequently removed prior to

Variances between the number of voters per constituency contravene the Zambian Constitution's equal suffrage principle regarding parliamentary races.

the polls. Other irregularities identified by the audit, including duplicative records and duplicative national registration card numbers shared by multiple voters, were not addressed.¹⁶

According to the constitution and the Referendum Act, the referendum vote required a threshold of 50 percent participation of all eligible voters to be considered valid. Given this requirement, questions arose as to how this threshold was determined. The ECZ based the final number of eligible voters on a statistical projection from the 2010 census, which resulted in uncertainty regarding its accuracy.¹⁷

Referendum on the Bill of Rights and Constitutional Amendments

Comprehensive voter information and education on the referendum vote and its contents were

¹⁶ Audit Report, Executive Summary, Audit of the 2016 Provisional Register of Voters as of June 6, 2016, Suspected Multiple Registrations, p. 5

¹⁷ United Nations General Assembly, Resolution 45/95, Guidelines Concerning Computerized Personal Data Files

limited in the short time frame before elections, and did not provide a clear explanation of the requirements for the measure to pass. The formulation of the referendum question also lacked clarity, and voters expressed concerns that they did not fully understand its content. The voter-education materials produced by ECZ indicated that a “yes” vote by more than 50 percent of eligible voters was required for a referendum to pass. However, shortly before the announcement of the results, the ECZ provided additional clarification, stating that in order for the referendum to succeed, two thresholds needed to be met: 50 percent of all eligible voters would have to cast a ballot in the referendum, and at least 50 percent of those voters would have to vote in favor of the referendum. Had the referendum passed, the constitutional amendment would have allowed the president to amend the constitution more easily, and the Bill of Rights would have offered greater protection for human rights, including economic and social rights.

During the course of the elections held between 1991 and 2015, election observers have identified several significant concerns that remain today.

The referendum vote did not meet the participation threshold. Of those who voted in the referendum, 1,852,559 voted in favor of it, while 753,549 voted against it. In addition, 739,363 referendum ballots were rejected—almost nine times the number of rejected ballots in the presidential race and almost equal the number of votes cast against it. This result signals either poor voter-education efforts or a significant number of protest votes, e.g., cast by opposition supporters

hoping to keep the PF and President Lungu, who had strongly advocated its passage, from a political win.

Voter Education

Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ made a commendable effort to conduct voter education, civil society organizations and political parties indicated that voter-education efforts were insufficient, particularly outside major urban centers. They noted that materials in local languages did not reach all areas of the country and that the voter-education campaign on the referendum on the Bill of Rights should have started several weeks earlier to inform voters adequately. A number of civil society organizations also conducted voter education across the country, though limited resources made it difficult to conduct adequate education programs.

Civil Society

Civil society organizations played a key role in observing and reporting on the process. Several local organizations deployed citizen observers for polling day, including a coalition of nongovernmental organizations under the umbrella Zambia Election Information Center. Christian Churches Monitoring Group (CCMG), a broad coalition of faith-based organizations in Zambia, deployed long- and short-term observers to assess the voter registration, campaign period, and election day, in addition to conducting a parallel vote tabulation (PVT) on election day.¹⁸ CCMG deployed a total of 108 long-term observers in the lead-up to the polls, and 1,566 stationary observers on election day. PVT observers were deployed according to a statistically representative sampling method; they assessed 1,404 polling streams at 1,001 unique polling stations. CCMG’s PVT broadly affirmed that the official results for the presidential elections were within a statistically credible range.

¹⁸ CCMG was formed in 2015 and is composed of the Council of Churches in Zambia, the Evangelical Fellowship of Zambia, the Jesuit Centre

for Theological Reflections, and the Zambia Episcopal Conference through Caritas Zambia.



Conclusion

Zambia has held five presidential elections within the last 10 years, which has led to fatigue among the electorate, stretched the resources and capacity of the ECZ and other agencies, and heightened political tension. During the course of the elections held between 1991 and 2015, election observers have identified several significant concerns that remain today, including unbalanced media reporting, improper and biased application of the Public Order Act, instances of party cadre violence and intimidation, misuse of state resources, and concerns about the ECZ's lack of full independence.

Many electoral stakeholders reported that these concerns were significantly elevated during the highly polarized 2016 election. These dynamics, coupled with the failure of the newly established Constitutional Court to provide adequate due process under the law, indicate a disturbing trend and significant erosion of public and voter confidence in the electoral system, which has undermined the integrity of democratic institutions in Zambia.

Zambia faces great challenges. It is essential that all Zambians, especially governmental authorities and opposition political leaders, engage one another peacefully and find constructive ways forward. It is incumbent upon the president, his government, and political leaders from all parties to play a constructive role in strengthening the country's democratic institutions, lessening tensions and divisions, and finding ways to mitigate electoral violence in future elections.

The Carter Center and other observer groups hold a joint press conference following the announcement of results.

It is essential that all Zambians, especially governmental authorities and opposition political leaders, engage one another peacefully and find constructive ways forward.

| Carter Center in Zambia

The Carter Center's engagement in Zambia began in 1991 when it, together with the National Democratic Institute (NDI), observed Zambia's first multiparty elections. Through the Zambia Voting Observation Team (Z-Vote), the organizations undertook a comprehensive

election-monitoring effort that sought to promote integrity in the process, bolster voter confidence in the election, and support domestic observation. The project included three pre-election assessments, an on-the-ground presence through the election period, and the fielding of a 40-person

Carter Center observer Bill Hassall observes voters queueing at a polling place in Lusaka.



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short-term delegation led by former U.S. President Jimmy Carter and NDI President Brian Atwood. Center representatives met with a wide range of electoral stakeholders, including the election commission, political parties, and civil society representatives engaged with the election process. Despite concerns surrounding the electoral system and election administration, the election was generally viewed as free and fair.

The Carter Center observed Zambia's 2001 election, again implementing a comprehensive election observation program. After a pre-election assessment in June 2001 and upon the invitation of the government to observe, the Center established a field presence in Lusaka in September and deployed five long-term observers (LTOs) in October. The LTOs visited all nine provinces from October through December 2001. The Center released a pre-election assessment report on Dec. 13. A 33-person short-term observer team was deployed to observe election day, co-led by former Nigerian head of state Abdulsalami Abubakar, former Benin President Nicéphone Soglo, and former Tanzania Prime Minister Judge Joseph Warioba.

The mission found that the electoral authorities and government failed to administer a fair and transparent election and to address irregularities that could have impacted the electoral outcome. Irregularities included the misuse of state resources, unbalanced media reporting that disadvantaged

the opposition, a lack of transparency in vote tabulation, and the failure to implement a verification process open to parties and observers, among other concerns. The Center also noted concerns about the election petition process. The Electoral Act required petitioners to pay high fees to file a case, and the law did not ensure an expeditious time frame for hearing and deciding cases.

The Carter Center declined an invitation to observe Zambia's 2006 elections. In a public statement released on Sept. 18, 2006, the Center stated, "The Center's decision not to observe the 2006 elections is based on disappointment over Zambia's failure to enact meaningful electoral

Following an invitation from the Ministry of Foreign Affairs, Carter Center observers were first accredited by the Electoral Commission of Zambia on July 26 to observe Zambia's Aug. 11, 2016, national elections and referendum.

and constitutional reforms [after the 2001 election] and the demands of current Carter Center commitments on election projects."

For the 2016 election, the Center conducted an assessment mission in March 2016. The assessment found that international observation could support Zambia's electoral process and electoral stakeholders welcomed international observers. Stakeholders raised several concerns, including the potential for increased electoral violence in the pre-election period, recent changes to the legal framework that governed the electoral process, and the lack of a level playing field during the campaign period. The team recommended a limited observation to focus on these aspects of the electoral process.

Following an invitation from the Ministry of Foreign Affairs, Carter Center observers were first accredited by the Electoral Commission of Zambia on July 26 to observe Zambia's Aug. 11, 2016, national elections and referendum. The Center's election observation mission was limited and focused on the pre-election and postelection periods. The mission did not conduct a robust assessment of election day voting and counting. In the pre-election phase, the mission assessed the political and electoral environment of the campaign period, the legal framework, aspects of election management, and participation of women and minorities. In the postelection period, the team assessed the electoral dispute resolution mechanisms.

The Carter Center mission was led by Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi, and Jordan Ryan, vice president of the Center's peace programs. The core team of four experts held regular meetings with key stakeholders on a national level, while two teams of two medium-term observers (MTOs) were deployed to the Copperbelt and Southern

provinces, respectively, to assess election preparations on a regional basis. The core team remained in Zambia through mid-September to observe the postelection period, including observation of the Constitutional Court hearing of the petition challenging the election results.

The mission worked collaboratively with domestic citizen observer groups and international observer missions, issuing a joint statement with other international observer groups in the week leading up to election day calling on all parties to support a peaceful election environment and to file any election-related grievances through established legal procedures. The mission also participated in a joint postelection day press conference with other international observer missions. While the joint press conference increased coordination between international missions and facilitated greater media exposure for them, some media conflated the findings of different groups. This led to some misreporting of the Carter Center assessment of the election, inconsistent with the actual findings contained in its preliminary statement issued after election day.

The Center evaluated the process against Zambia's national legal framework and international obligations for genuine democratic elections. The observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Observers, which was adopted in a ceremony at the United Nations in 2005 and which has been endorsed by 50 organizations.

I Historical and Political Background

Zambia gained its independence from the United Kingdom on Oct. 24, 1964. Kenneth Kaunda served as its first president under the United National Independence Party (UNIP). Zambia became a one-party state under UNIP in 1972 and continued as such until multiparty elections were held in 1991. Over the past 25 years, Zambia has held six multiparty general elections at five-year intervals, plus two presidential by-elections following the deaths of Presidents Levy Mwanawasa and Michael Sata in 2008 and 2015, respectively.

The results of these eight presidential elections are shown in the following table¹⁹:

Zambia Presidential Election Results, 1991 to 2016

Year	UNIP	MMD	UPND	PF
1991	24.2%	75.8%	-	-
1996 ²⁰	-	69%	-	-
2001	9.9%	28.7%	26.8%	3.4%
2006	-	43%	25.3%	29.4%
2008 ²¹	-	40.1%	19.7%	38.1%
2011	-	35.6%	18.3%	42.2%
2015 ²²	-	-	47.2%	48.8%
2016 ²³	-	-	47.6%	50.4%

Holding five elections within the last 10 years has led to fatigue among the electorate, stretched the resources and capacity of the Electoral

Commission of Zambia and government ministries, and resulted in heightened political contentions in what have been near-continual election environments.

Although some of these elections, particularly those in 1996 and 2001, had significant irregularities, Zambia stands out in Africa as having held elections that have been largely peaceful and extremely competitive—especially since 2001—twice resulting in the defeat of long-standing incumbent parties and political turnover in 1991 and 2011.

During the course of the seven elections held between 1991 and 2015, election observers (including those of The Carter Center) have identified several significant concerns that persist today, including unbalanced media reporting, improper and biased application of the Public Order Act, instances of party cadre violence and intimidation, misuse of state resources, and concerns about the ECZ’s lack of full independence. Regrettably, many electoral stakeholders reported that concerns raised in prior elections

19 The table provides results as a percentage of the overall votes cast for Zambia’s four largest political parties only.

20 UNIP boycotted the 1996 election when Kaunda was disqualified from contesting by a constitutional amendment; the remaining opposition parties did not garner a significant percentage of the vote.

21 By-elections

22 By-elections

23 First election under amended electoral framework requiring presidential contenders to win by a majority of votes (“50 percent plus one”) rather than a plurality as under the previous “first past the post” framework.

not only manifested themselves again but were significantly elevated during the highly polarized 2016 election.

General Background, 2016 General Elections

On Aug. 11, Zambia held its sixth general election since multiparty democracy was reintroduced in 1991. Zambians voted for president at the national level, members of parliament at constituency level, councilors at ward level, and, for the first time, for mayor/council chairperson at the district level.

Although the ECZ certified nine presidential tickets for the 2016 election, it was essentially a two-party competition between the ruling PF candidate, Edgar Lungu, and the opposition UPND candidate, Hakainde Hichilema. Both PF and UPND were formed in 2001, and each party has participated in every presidential election since. PF won the presidency in 2011 and narrowly retained office in the 2015 by-election held after President Michael Sata's death.

UPND leader Hichilema contested every election from 2006 to 2016. The combination of his deferring to the elder Sata in the aborted alliance between PF and UPND in 2011 and the narrow

margin of the 2015 by-election created an expectation within UPND that Hichilema and the party would win the 2016 election. Party leaders further contended that the institutions responsible for implementing the electoral dispute process—the ECZ, Constitutional Court, and judiciary—were compromised in favor of the PF and that there was no viable avenue of recourse for concerns and challenges arising during the electoral process.

Based on the 2015 presidential by-election, in which Hichilema and Lungu were separated by less than 2 percent, or 28,000 votes, most stakeholders believed the 2016 presidential election would be tightly contested and that a runoff was probable. It was widely perceived that the inclusion of Kasama-based Geoffrey Bwalya Mwamba (GBM) as the vice presidential candidate on the UPND ticket was intended to enable UPND to siphon support from PF strongholds in Northern, Muchinga, and Copperbelt provinces. Some stakeholders—noting the comparatively lower turnout in PF strongholds in the 2015 by-election—anticipated that the PF candidate, incumbent President Edgar Lungu, could reach the 50 percent plus one threshold in the first round if the voter turnout in party strongholds was comparable to that of the 2011 general election (54 percent). With PF having relative

strongholds in the north and east of Zambia and UPND having strongholds in the south, west, and northwest, it was widely understood that the outcome of the presidential election would likely hinge on the vote in Lusaka and Copperbelt.

The 2016 electoral results were again close. Lungu won in a tight race with 50.35 percent of the vote, narrowly avoiding a runoff.

Voters stand in line despite the early morning chill.



Andreu Sola Martin

I Electoral System

Any electoral system should be to translate the will of the people into a representative government and to ensure that fundamental rights are protected. No specific electoral system is prescribed by international law.²⁴ The 2016 constitutional amendments introduced a new electoral system for the presidential election that requires an absolute majority of votes to be cast in favor of one candidate. If no candidate garners the majority of valid votes, a second round is to be held between the two leading candidates within 37 days of the initial election day. A vice president is directly elected and would assume the presidency for the remainder of the mandate in the eventuality of a president dying or leaving office early.

Members of the National Assembly are directly elected under the first-past-the-post system in each of the 156 constituencies. Mayors and council chairpersons were directly elected for the first time under the first-past-the-post system, competing in 105 districts. Candidates for local councils ran in each of the 1,624 wards and collectively form the local council at the district level.

The changes to the electoral system, particularly those related to the succession of the office of the presidency, were viewed as a positive development from across the political spectrum as the amendment eliminates the need to hold by-elections in the event the president vacates office during his or her tenure. The holding of

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by-elections in 2008 and 2015 due to the deaths of Presidents Mwanawasa and Sata, respectively, placed a great administrative burden on the ECZ and financial burden on the country as a whole. Electoral stakeholders raised concerns that many voters were not aware of the new 50 percent plus one electoral system, including the possibility of the runoff.

An observer with The Carter Center watches a polling station's ballot box review.



Sarah Johnson

24 UN, ICCPR, Art. 25(b); UNHRC, General Comment 25, para. 21; International IDEA Electoral Standards: Guidelines for Reviewing the Legal

Framework of Elections, p. 28

I Legal Framework

A comprehensive legal framework, without ambiguities or omissions, is essential to the administration of democratic elections and to ensuring that a country upholds its international obligations.²⁵ Much of the legal framework governing Zambia's 2016 elections was new and untested, including the 2016 amended constitution, the 2016 Electoral Process Act, and the 2016 Electoral Commission Act.²⁶ Other key acts governing the process included the 1991 Local Government Election Act and the 1955 Public Order Act.

Zambia has signed or committed itself to the main international and regional commitments

Much of the legal framework governing Zambia's 2016 elections was new and untested, including the 2016 amended constitution, the 2016 Electoral Process Act, and the 2016 Electoral Commission Act.

and instruments relating to human rights and the conduct of elections.²⁷ Fundamental rights and freedoms necessary for the conduct of democratic elections, including freedom of expression,

assembly, association, and political participation, are enshrined in the Constitution of Zambia. The constitution serves as a basis for the country's multiparty democracy, proclaims Zambia as a "Sovereign Democratic State," and establishes the standard of genuine and periodic elections. It protects the right to be elected to public office by secret ballot and the right to vote according to the principles of equality and universal suffrage. The constitution also guarantees independence of the judiciary, equal rights and freedoms, and prohibits discrimination on the grounds of race or religion.

The 2016 amended constitution entered into force in January 2016. Subsequent enacting legislation was passed June 7, 2016—two months before election day. While most electoral stakeholders—including members of civil society and the Human Rights Commission—were given an opportunity to provide comments on the legislative amendments, the consultation was rushed and left stakeholders with less than a day to provide comments on a substantial volume of amendments, insufficient for meaningful review and input.

The legislative amendments introduced several changes to the legal framework, including the introduction of a fixed election date, new

25 UNHCR, General Comment 25, para. 19

26 A referendum on the Bill of Rights was held concurrently with the general elections. A separate section is included at the end of the report on the referendum process.

27 Zambia has committed itself to the Universal Declaration of Human Rights (UDHR), the ICCPR, the Convention on the Elimination of All

Forms of Discrimination Against Women (CEDAW), the United Nations Convention Against Corruption (UNCAC), the African Charter on Human and Peoples' Rights (AfCHPR), the African Charter on Democracy, Elections and Governance (AfCDEG), and the SADC Principles and Guidelines Governing Democratic Elections.

candidate nomination requirements, and a new electoral system for the presidential election. The law also established deadlines for holding a hearing and for swearing in the president in the event presidential election results are challenged, addressed issues of power in case of the latter, and mandated the Constitutional Court to interpret questions regarding the constitution and to hear petitions arising from a presidential election. The amended law did not include provisions related to a possible second-round election.

Over the course of the electoral process, it became clear that key election-related constitutional provisions were ambiguous and, in some cases, contradictory. A number of cases were filed with the Constitutional Court seeking interpretation and clarity on the provisions. Cases were filed on the requirements for candidate eligibility, the legality of cabinet ministers remaining in office beyond the dissolution of parliament, the role of the speaker of the parliament if presidential election results are challenged, and the 14-day deadline for the Constitutional Court to hear a petition challenging the presidential results once filed. As the legal framework does not provide for clear and expeditious timelines for the court to render decisions on the interpretation of the constitution, few cases lodged before the election were resolved before election day.

A number of essential ECZ regulations clarifying various aspects of the electoral process were pending before the Ministry of Justice throughout the pre-election period and were finally adopted on Aug. 9, just two days before election day, and published in the official Gazette on Aug. 12, the day after election day. Important procedural issues, including regulations on disqualification criteria for candidates, rules for holding a referendum, and general electoral procedures, were not addressed in a timely manner and led to significant legal uncertainty among key electoral stakeholders.

A large majority of interlocutors felt the late changes, combined with the complexity and lack

of clarity in the law, negatively affected citizens' understanding of the impact of new provisions and their ability to engage fully and in an informed manner. Government consultation with key stakeholders and awareness-raising efforts about the election-related changes were also lacking.

Introduction of fundamental changes to the electoral legal framework shortly before an election, and without effective public consultation, is at odds with international good practice.²⁸ It leaves limited time to educate the public sufficiently on the changes and their relevance, affecting voters' ability to make informed choices. The broad dissemination of electoral regulations and procedures in a timely fashion prior to each stage of the electoral process is essential for all electoral stakeholders, including the voter, to have a clear understanding of their rights and duties throughout all phases of the electoral process.

Over the course of the electoral process, it became clear that key election-related constitutional provisions were ambiguous and, in some cases, contradictory.

While protections for fundamental freedoms related to elections and political processes are enshrined in Zambia's constitution and actualized in the 2016 election law, Zambia's legal and regulatory framework lacks overall clarity and contains a number of gaps and inconsistencies. The most significant of these concerns relate to candidate nomination and withdrawals, voting rights, referendum procedures, authorities of the election administration, campaign and campaign finance rules, and electoral dispute resolution. Moreover, while the constitution requires a "50 plus one"

28 Council of Europe, Venice Commission, Code of Good Practice, Sec. II.2.b states that "the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendments less than

one year before an election." Likewise, the Economic Community of West African States (ECOWAS) has identified a six-month time frame as good practice (ECOWAS Protocol on Democracy and Good Governance, A/SP1/12/01, Art. 2(1)).

majority vote for a presidential candidate to win the election, the 2016 Electoral Process Act does not contain any provisions related to a possible second round of the elections. These weaknesses

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contravene international standards, which require that elections be regulated by a clear, understandable, and transparent legal framework.

The delay in amending the electoral law and enacting implementing regulations, coupled with gaps and inconsistencies in the legal framework, resulted in significant legal uncertainty. This hindered the ability of electoral stakeholders to understand the legal framework and undermined their ability to follow the laws and regulations appropriately. Many of these concerns compromised the degree to which Zambia's legal framework enabled credible electoral conduct and remain outstanding at the conclusion of the 2016 election.

I Electoral Constituencies

Equal suffrage requires that constituency boundaries be drawn so that voters are represented in the legislature on a roughly equal basis.²⁹ Moreover, international best practices recommend consistency in population size in defining boundary delimitations and seat allocation. According to international best practice, variance should remain within 15 percent between constituencies.³⁰ Zambia's constitution reinforces the principle of equality of suffrage.

Since the PF gained power in 2011, 31 new administrative districts were established, increasing the total number of districts to 103. The ECZ proposed—and the cabinet approved—electoral boundaries for the 31 new districts. This created six new constituencies, bringing the total number of constituencies to 156. In contravention of the principle of equal suffrage enshrined in the amended Zambian constitution, as well as internationally accepted criteria for boundary apportionment, there were large variances in the numbers of voters allocated to each constituency. In some cases, these variances exceeded 100 percent.³¹ For instance, the total number of eligible voters in the largest constituency in the country, Mandevu in Lusaka Central district, equals 148,889 voters and is more than 16

Kseniya DASHUTINA



times that of the smallest constituency, Lufubu in Ngabwe district, which has 9,080 voters. Furthermore, the average number of voters per constituency in Lusaka province is more than double the average number of voters per constituency in the newly created Muchinga province. Lusaka, the most populated province with an estimated number of 2,777,439 inhabitants, has

Schools, community centers, and churches provided venues for voting.

29 UNHRC, General Comment 25, para. 21; UNHRC, *Istvan Matyas v Slovakia*, (2002)

30 Council of Europe, Venice Commission, Code of Good Practice, Sec. II.2.15

31 Constitution of Zambia (Amendment), No. 2 of 2016, Art. 59(e): "The Electoral Commission shall, in delimiting the boundaries of constituencies

and wards, 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." UN, ICCPR, General Comment 25 states: The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters.

only two more constituencies (14) than North Western (12), which is the lowest populated province (est. 833,818), although Lusaka has triple the population.³² While the most recent delineation of electoral boundaries occurred prior to the establishment of the Carter Center's mission, and the

criteria used and consideration given to determine the boundaries are not known, the Center regrets the failure of the ECZ to respect the principle of equal suffrage enshrined in the constitution.

³² According to the 2016 projections from the Central Statistical Office. See Central Statistical Office, 2010 Census of Population and Housing,

Population and Demographic Projections 2011–2035.

Candidates, the Campaign Period, and Parties

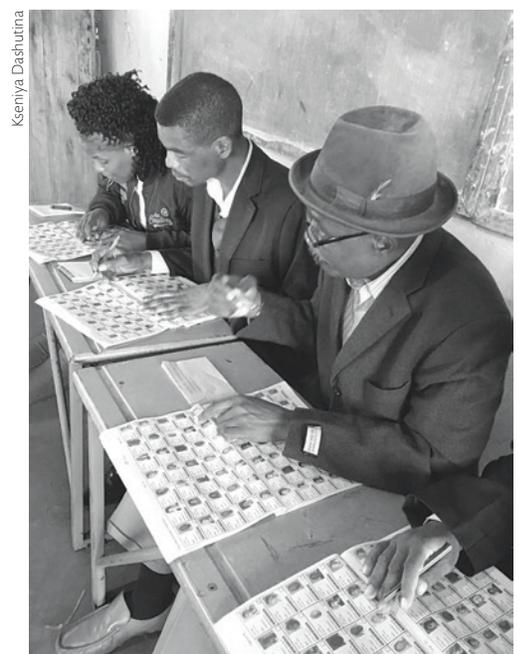
Candidate Eligibility and Nomination

According to Zambia's international treaty obligations, every citizen has the right to be elected without unreasonable restrictions.³³ Several candidate nomination requirements hinder the right of citizens to stand for election on an equal basis and are contrary to Zambia's commitments. Nomination requirements particularly restrict the rights of rural and female aspirants who may not have equal educational opportunities and/or the financial means to meet the requirements.

A candidate for president must be a Zambian citizen by birth or descent, ordinarily reside in the country, be at least 35 years old and a registered voter, have a minimum academic qualification of 12 years or its equivalent, pay a required registration fee, and be supported by 100 registered voters from each province.³⁴ Contrary to international standards, candidates must be a member of or receive sponsorship from a political party.³⁵ The constitution disqualifies candidates for president if they hold dual citizenship, have mental or physical disabilities that would make the person "incapable of performing the executive functions," are currently serving a prison sentence, or have served a prison sentence in three of the past

five years preceding the election.³⁶ The disqualification of candidates due to physical disabilities is in contravention to international standards.³⁷ The civil society organization Disability Rights Watch noted obstacles to political participation for persons with disabilities at all levels, including cultural resistance to their nomination within political parties as candidates.

A National Assembly candidate must be a Zambian citizen, at least 21 years old, a registered voter, have a minimum academic qualification of 12 years or its equivalent, pay a required registration fee, and be supported by nine registered voters from the constituency. The constitution explicitly allows independent



Kseniya Dashutina

Party agents verify a voter list at the polling station.

33 UN, ICCPR, General Comment 25, para. 15. See also AU, AfCHPR, Art. 2

34 Zambia Constitution, Art. 34, Election of President

35 UN, ICCPR, General Comment 25, para. 17

36 Constitution of Zambia (Amendment), No. 2 of 2016, Art. 100(2)(h,i)

37 UN, CRPD, Art. 29, "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected..."

candidates to stand for National Assembly elections.³⁸ Local council candidates must be at least 19 years old, reside in the district, have a minimum academic qualification of 12 years or its equivalent, and pay a required registration fee. Independent candidacy is allowed.³⁹

Candidate nomination requirements for education hinder the right to stand on an equal basis and are contrary to Zambia's commitments and international obligations and standards.⁴⁰ Constitutional amendments introduced a new requirement of minimal academic qualification

The education requirement disproportionately disadvantaged and restricted the rights of female and rural candidates, who may not have had equal access to educational opportunities.

of a Grade 12 (G12) certificate or its “equivalent” as to be reviewed and determined by the Examinations Council of Zambia in order to stand for all elected positions, including local councils.⁴¹ The law does not define the “equivalent” of the certificate. The High Court issued a decision in May 2016 clarifying that “a person who can prove having higher education does not need to produce the actual G12 certificate.”⁴² Moreover, the law does not provide clear mechanisms of verifying G12 certificates in a sufficient and timely manner.⁴³

Notably, the education requirement disproportionately disadvantaged and restricted the

rights of female and rural candidates, who may not have had equal access to educational opportunities. Indeed, the Zambia National Women's Lobby, which had engaged with aspiring women, reported that the passage of the G12 requirement disqualified 95 percent of the women with whom it had worked for more than a year as prospective candidates for office. The NGO Coordinating Council, which coordinates women CSOs and community-based organizations across the country, also reported that many of the women with whom they work were unable to run for office due to the G12 requirement.

Most interlocutors remarked that monetary fees for candidate nomination, which vary depending on the office involved, are excessive and thereby present an additional unreasonable barrier to candidacy, particularly for women, youth, and people in rural areas. The fees are nonrefundable, regardless of whether a candidate takes office. The initial fees published were reduced, but remain beyond the reach of many.⁴⁴ According to international standards, nomination fees or deposits should be reasonable and nondiscriminatory.⁴⁵ In addition, some candidates were disqualified at the district level after district electoral authorities refused to allow political parties to pay nomination fees in Lusaka on behalf of candidates contesting in provinces.

Women's Political Participation

International and regional obligations protect women's right to run for office and to participate in the electoral process. Zambia is signatory to several regional and international conventions and protocols that protect gender equality and protect

38 Zambia Constitution (Amendment), No. 2 of 2016, Art. 70

39 Local Government Act of 1991, Revised 1995, Part IV

40 UNHRC, General Comment 25, para. 15. AfCHPR, Part 1, Chapter 1, Art. 13.1 and 13.2

41 Zambia Constitution (Amendment), No. 2 of 2016, Sec. 153(4), “A person qualifies to be elected as a councillor...if that person has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent.”

42 The High Court decision 2016/HB/24 of May 10, 2016, on the Sibongile Zulu v. ECZ case

43 The Examination Council of Zambia declared a number of G12 certificates forged after the nomination period was closed. The ECZ stated

they are not in the position to address the matter as it is of criminal nature and proceedings need to be initiated. These candidates were allowed to run.

44 In late May, presidential nomination fees were reduced from K75,000 to K60,000 (an estimated \$7,500 to \$6,000 USD); National Assembly fees from K10,000 to K7,500 (an estimated \$1,000 to \$750 USD); mayors from K7,500 to K5,000 (an estimated \$750-\$500 USD); council chairs from K3,500 to K2,000 (an estimated \$350 to \$200); city and municipal councilors from K1,500 to K750 (an estimated \$150 to \$75 USD); and district councilors from K750 to K400 (an estimated \$75 to \$40 USD). Those who had already paid the higher fees were refunded the difference by ECZ. <https://www.lusakatimes.com/2016/05/29/ecz-revises-nomination-fees-downward/>

45 UNHRC, General Comment 25, para. 16



Election workers review ballots late into the night.

women's engagement.⁴⁶ Equal rights of men and women, including in public and political life, are guaranteed by the constitution.⁴⁷ Despite this fact, representation by women in elected office in Zambia is among the lowest levels in the SADC region.⁴⁸ The constitution does not establish a mechanism for promotion or compliance with the gender equality rule, thus failing to meet Zambia's international obligation to give effect to women's rights and gender equality.

Zambia's Human Rights Commission (HRC) encourages parties to adhere to the SADC target of 50 percent representation by women, but the level of women's participation has remained stagnant in recent elections at 14 percent.⁴⁹ The HRC indicated that a gender equality bill that would have affirmed the 50 percent representation target failed in parliament. Moreover, as noted in the "Candidate Eligibility and Nomination" section

above, many women were disqualified from candidacy because of the G12 requirement and negatively impacted by the monetary fees required for candidate nomination.

According to the 2016 Constitution of Zambia, the National Assembly is comprised of 156 elected MPs, no more than eight nominated MPs, the vice president, the speaker, and the first and second deputy speakers, for a total of 167 MPs.⁵⁰ As of May 2, 2017, women held 30 seats in parliament, or 18 percent of the total body.

While this remains unacceptably low vis-à-vis regional and international targets, the number of women in the newly elected National Assembly represents an increase over previous levels.

The election of a woman, Inonge Wina, as Zambia's first directly elected vice president is noteworthy.

The election of a woman, Inonge Wina, as Zambia's first directly elected vice president is noteworthy. Edith Nawakwi, president of the Forum for Democracy and Development, was also a presidential contender.

Candidate Withdrawal

Of note according to the constitution, candidates

46 Zambia has committed itself to the Protocol to the African Charter on Human and Peoples' Rights concerning the Rights of Women in Africa (May 2006) and the Convention on the Elimination of All Forms of Discrimination Against Women (June 1985).

47 Zambia Constitution, Aug. 24 1991, Art. 23. "Protection from Discrimination (1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect. (2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. (3) In this Article the expression "discriminatory" means affording different

treatment to different persons attributable, wholly or mainly, to their respective descriptions by race, tribe, sex."

48 <http://www.ipu.org/wmn-e/classif.htm>. South Africa has 42 percent female representation in the lower house of parliament and 35 percent in the upper house of parliament. Mozambique has 40 percent female representation in parliament.

49 http://www.sadc.int/files/1214/0558/8114/SADC_GENDER_MONITOR_2013_-_ENGLISH.pdf

50 Zambia Constitution (Amendment), No. 2 of 2016, Art. 68

can withdraw after the close of nominations and at any point before election day, which would require the ECZ to cancel the election and begin a new nomination period.⁵¹ This provision of the constitution can undermine preparation for the elections and could end in a cycle of failed elections. The law does not provide guidance on the form, procedures, or deadlines for withdrawal of one's candidacy.⁵²

Equitable treatment of candidates and parties and the maintenance of an open and transparent campaign environment, with a vibrant free press, are important to ensuring the integrity of democratic elections.

Conclusion

Many candidate eligibility and nomination requirements fall short of international standards and further disenfranchise already vulnerable communities. Education requirements and candidate registration fees are difficult for women, youth, and community members in rural areas to meet. Further, people with physical disabilities are unable to run for president. The lack of effective mechanisms to support female participation in government has led to a wholly inadequate representation of elected female officials. The constitutional provision that calls on the ECZ to cancel an election should a candidate withdraw prior to election day creates the potential for serious disruption in the electoral process. These

constitutional provisions and fee structures restrict both the right of citizens to present themselves as candidates and the right to participate in the civil affairs of one's country. The restrictions contravene Zambia's international obligations to protect all citizens' rights to run for public office and should be reviewed.

Establishment of a Level Playing Field

Political pluralism and genuine voter choice are critical aspects of democracy. Equitable treatment of candidates and parties and the maintenance of an open and transparent campaign environment, with a vibrant free press, are important to ensuring the integrity of democratic elections.⁵³

Opposition parties and civil society organizations raised significant concerns regarding the lack of a level playing field for opposition parties, with the most serious issues being media bias, campaign use of official resources, interference with opposition rallies and travel, and inequitable application of the Public Order Act.

Freedom of the Media

Under Zambia's international commitments, access to public media should be equitable.⁵⁴ Media play an important role in elections, providing essential election-related information to voters and providing space for political aspirants to make their case to the electorate. Furthermore, the media can provide independent analysis and space for alternate views on the conduct of elections over the course of the electoral process. International and regional standards establish the rights to freedom of opinion and expression, protecting the independence of the media.⁵⁵

51 Article 52(6) of the constitution states, "Where a candidate dies, resigns or becomes disqualified ... after the close of nominations and before the election date, the Electoral Commission shall cancel the election and require the filing of fresh nominations by eligible candidates and elections shall be held within thirty days of the filing of the fresh nominations."

52 According to the Electoral Process Act, No. 35, 2016. Art. 103: (1) A petitioner shall not withdraw an election petition without the leave of the High Court or a tribunal. (2) An application for leave to withdraw an election petition shall not be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe. The Constitutional Court in its decision of Aug. 9, 2016, stated

that even though the law is silent on the form of withdrawal, an official written document should be submitted for the ECZ's consideration.

53 AfCDEG, Chapter 3, Art. 3: State parties shall...promote a system of government that is representative; Art. 11: Strengthen political pluralism and recognize the role, rights and responsibilities of legally constituted political parties, including opposition parties.

54 UNHCR, Concluding Observations on Togo, para. 17; AfCDEG, Art. 17(3)

55 UN, ICCPR, Art. 19 and AU, Declaration of Principles on Freedom of Expression in Africa, AfCHPR, 32nd session, 2002

Freedom House has rated the press in Zambia as “not free” for 12 of the 14 years it has issued a report for Zambia.⁵⁶ A representative assessment from the 2014 Freedom House report noted:

[T]he constitution guarantees freedom of expression, but the relevant language can be broadly interpreted. Journalists and media outlets face restrictions under criminal and civil defamation laws, sedition and obscenity laws, and provisions of the penal code such as the State Security Act. ... [G]overnment continued to demonstrate intolerance of critical media, exacting retribution through the courts as well as extrajudicial harassment.

While these infringements continually burden Zambian press freedoms, they have a particularly deleterious effect on the electoral process.

The 2016 election saw a substantially one-sided media environment characterized by an overwhelming public media bias in favor of the ruling PF and corresponding interference with private media houses.

One of the most significant challenges to opposition parties during the pre-election period was the lack of equitable coverage by and access to public media. The Media Institute of Southern Africa (MISA) and the Media Liaison Committee, supported by BBC Media Action, implemented a comprehensive pre-election media monitoring project; their data indicated public media outlets strongly favored PF and/or the government in their coverage, to the disadvantage of UPND.⁵⁷ Separate efforts by MISA and by UPND to seek timely judicial redress for the alleged violations of the rights assured under the constitution and the Electoral Act proved ineffective. Fair media access implies not only equality of time and space, but also attention to the hour of broadcasting (i.e., prime time vs. late night broadcasting).⁵⁸ For example, two days before the election, the High

Court directed ZNBC to air a UPND documentary. ZNBC aired the documentary once late at night when, presumably, relatively few viewers were watching.⁵⁹ MISA’s legal action was not resolved before election day.

Another area of concern for media independence was the disruption of private media houses, both before and after election day. The Post, the private daily newspaper most favorable to UPND, faced legal action, ostensibly to satisfy accrued tax liabilities—though other public media houses had similar tax liabilities and no action was taken against them. The Post was subjected to seizure of its offices and equipment by the Zambia Revenue Authority (ZRA) and forced to continue its operations without an office, with limited print editions and online reporting.

One of the most significant challenges to opposition parties during the pre-election period was the lack of equitable coverage by and access to public media.

In the days following the announcement of the election results, the Independent Broadcasting Authority (IBA) suspended the broadcasting licenses of Muvi-TV, Komboni Radio, and Itzhi-Tezhi Radio on the grounds that these media houses had conducted themselves in an unprofessional manner in reporting on the election. Whatever the merits of the underlying allegation, the IBA failed to follow required procedures, which afford media houses an opportunity to correct improper practices before suspensions are meted out and to continue operating while appealing a suspension properly issued. The High Court dismissed the initial appeal by Muvi-TV and Komboni Radio challenging the suspension

56 <https://freedomhouse.org/report/freedom-press/2015/zambia> (note: 2012 and 2013 rated “partly free”)

57 See MISA quarterly reports: <http://misazambia.org/wp-content/uploads/2014/10/Q1-2016-SOM.pdf>, <http://misazambia.org/wp-content/uploads/2014/10/SOM-Q2-2016-Final-Report.pdf>, <http://misazambia.org>

http://www.unhcr.org/wp-content/uploads/2014/10/Final-Report_MISA-SOM-ready-to-print-26.10.16.pdf

58 United Nations Center for Human Rights, Human Rights and Elections, para. 120

59 <http://power997.com/court-rules-for-upnd-documentary/>

by the IBA. However, on Sept. 12 the High Court later lifted the suspensions, apparently after the media houses made some acknowledgment of the circumstances that triggered the IBA suspension.

Rights to freedom of opinion and expression

An independent media is fundamental to democracy and vital to the conduct of a credible electoral process. In this regard the 2016 election fell far short of international standards.

were curtailed for the 2016 election, with the independence of the media severely impaired. Coverage by public media was biased in favor of the ruling party. Opposition parties lacked equitable access to public media, and private media activity was stymied through questionable legal actions and suspensions. An independent media is fundamental to democracy and vital to the conduct of a credible electoral process. In this regard the 2016 election fell far short of international standards.

Use of State Resources

International standards establish that public resources should not be used to create an advantage for one candidate or party.⁶⁰ Despite a history of political alternance, successive Zambian governments have abused their position through the inappropriate use of state resources. The 2016 election did not deviate from this pattern.

Fourteen government ministers ran for parliamentary seats while remaining in government office. The Law Association of Zambia filed a petition with the Constitutional Court challenging the ministers' continued stay in office after the dissolution of parliament. Three days prior to the election, the Constitutional Court issued a decision finding that it was an abuse of public office

and unconstitutional for government ministers to remain in office after the dissolution of parliament. Nine ministers won re-election to parliament, and all are subject to petitions seeking to declare their elections null and void. One minister lost the election and filed a petition seeking to declare the election null and void.

As of late November 2016, two of the nine ministers' election challenges had been found to have merit and the elections nullified. A UPND candidate in Munali, a district of Lusaka, brought a case before the Lusaka High Court to challenge the election results of Member of Parliament Nkandu Luo, who had served as minister of gender in the previous PF government and serves as minister of higher education in the current government.⁶¹ The court issued a ruling nullifying her election. In addition to concerns regarding the transparency of the tabulation due to the absence of GEN 12 forms in the polling stations, the court cited the Constitutional Court's ruling regarding the end of the mandate of government ministers following the dissolution of parliament. The court found that Luo had abused her office by using public resources after her mandate had concluded. The election of Member of Parliament Margaret Mwanakatwe, former (and current) minister of commerce, trade and industry, also was nullified, with the judge citing politically motivated racial remarks against UPND candidate Charlotte Scott (the plaintiff) and inappropriate use of official resources during the campaign period.⁶² Both ministers have appealed the nullification to the Constitutional Court.

The full impact of the Constitutional Court's ruling regarding the ministers remains to be seen. The outcomes of outstanding petitions could impact the PF's majority in parliament (PF holds 80 of 156 elected seats). Parliamentary business must be approved by a majority, or 79 votes (assuming a full quorum of MPs). An additional eight MPs are appointed by the president. If all nine ministers were disqualified as MPs, every

60 SADC Parliamentary Forum, Norms and Standards for Elections in the SADC Region, C Part 2(3). Council of Europe, Venice Commission, Good Practice in the Field of Political Parties

61 See <https://www.lusakatimes.com/2016/11/22/prof-nkandu-luo-appeals-nullification-munali-seat/> for more detail.

62 See <https://www.lusakatimes.com/2016/11/24/margaret-mwanakatwe-loses-seat/> for additional details.

remaining elected and appointed PF parliamentarian would need to be present to constitute a PF majority within the National Assembly.

The court's decision regarding the government ministers, albeit late in the election process, was a positive development as the use of public resources to benefit disproportionately incumbent government party candidates contravenes international election standards.

Campaign Finance

Recognizing the challenge posed by the potential abuse of state resources, international good practice is that campaign contributions should be disclosed fully and on a regular basis to ensure transparency and access to information for party supporters and voters.⁶³ Further, Zambia is obligated to take measures to prevent corruption, particularly in the context of campaign financing.⁶⁴ Campaign finance regulations should enforce a transparent process in which all political parties and candidates are treated equally.

The 2016 constitutional amendments oblige the government to set limits on the amount of money to be used for election campaigns and require political parties to submit audited accounts and list their sources of funds.⁶⁵ Implementing legislation regulating campaign expenditures and reporting should have been adopted. However, no such law was enacted prior to election day. This gap left an important aspect of the electoral process unregulated, undermining transparency and accountability, and leaving the process vulnerable to the undue influence of money.⁶⁶

The incumbent party enjoys significant exposure and resources as a result of its public office. This dynamic, which is amplified by the ruling party's use of state resources in the campaign, necessitates further the need for clear, enforceable regulations.

Freedom of Assembly and Movement

The ability to share and promote one's political platform is essential for aspiring political candidates. International standards protect individuals' ability to assemble peacefully throughout the campaign period, without interference and with the ability to seek independent review in the event this right is denied.⁶⁷ International treaties grant everyone the right to freedom of movement within the borders of each state, including candidates, voters, and other electoral actors who need to move about the territory.⁶⁸

The playing field was affected by the government's successful effort to curtail the campaign movements of opposition parties, particularly the

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UPND. Two of the principal methods utilized were the Zambian Air Force's denial of flight clearances for opposition party aircraft and, even more egregiously, the overbroad interpretation and inequitable application of the Public Order Act (POA) by police to deny permission for the UPND to hold rallies.

The POA requires that groups notify the police prior to planning gatherings. Permits are not required. The police did not invoke the POA equally to all political parties. Police routinely denied or canceled UPND rallies, while the PF

63 SADC PF: Norms and Standards for Elections in the SADC Region, p. 15

64 UN, Convention Against Corruption, Art. 7, 18, 37; AU, Convention on Corruption, Art. 7

65 Zambia Constitution, Art. 60(4)

66 According to estimates in a ZEIC report, PF spent approximately \$6 million USD and UPND \$5 million USD on their campaigns. The report further stated that due to the closed nature of the campaign framework,

Zambia has not been able to track expenditures by political parties adequately during elections.

67 AU, AfCHPR, Art. 11; UN, ICCPR, Art. 21; IPU: Declaration on Criteria for Free and Fair Elections, Art.4(3)

68 <https://www.lusakatimes.com/2016/05/25/upnd-want-ecz-meet-zaf-flight-permissions-campaigns/>. AfCHPR, Art. 12(1); UN, ICCPR, Art 12



William Hassall

Electoral Commission of Zambia urges peace and calm throughout the elections process.

held frequent rallies without police interference.⁶⁹ Authorities explained that when President Lungu was traveling to the same *province*—not the same town or city—his security might be compromised by the presence of an opposition rally. This rationale appears specious on its face, given the geographic expanse of Zambia’s provinces. Moreover, although the Human Rights Commission (HRC) trained police on the application of the POA, police officers reported that they had been directed to implement the POA against the UPND in ways that the officers believed to be improper, but they could not refuse to follow orders.

The pre-election period witnessed severe constraints on the ability of opposition parties, particularly the UPND, to campaign and organize. These constraints violated Zambia’s international commitments to freedom of assembly and movement. During the campaign period, the POA was used to deny disproportionately the convening of opposition rallies. Cumulatively, these actions constrained opposition politicians’ and parties’ ability to exercise their right to freedom of assembly and the right to effective redress to

remedy the unequal application of the law and regulations.

Election-Related Violence

Political parties, their supporters, and prospective voters have the right to freely associate, assemble, and express their opinion without threat of violence or intimidation.⁷⁰ Zambia’s 2016 election witnessed pre- and postelection periods with a heightened climate of violence, the threat of violence and intimidation toward perceived party supporters, and widespread reports of conflict among party cadres that threatened these fundamental rights. While many reports of violent incidents could not be confirmed, there were a significant number of verified episodes. These reports, many shared through social media, contributed to a climate of insecurity, heightened tension, and fear in the pre- and postelection periods.

Pre-election Campaign-Related Violence

The pre-election period was marred by widespread reports of political tensions and electoral violence. Candidates from PF and UPND both made statements that further inflamed political tensions.

The ECZ suspended the campaign in two key districts for 10 days in response to rising political violence. On June 17, alleged UPND cadres attacked Forum for Democracy and Development parliamentary candidate Charity Kabongomana in Namwala, breaking her arm and leg. The aggressors then damaged her car and set it ablaze. On July 8, after alleged PF followers protested the holding of a UPND rally scheduled in Chawama (Lusaka), police canceled the rally under the POA. The police failed to propose an alternative date for the rally at the earliest possible convenience, as prescribed by a Supreme Court ruling on the constitutionality of the law. After the cancellation, police chased a group of UPND supporters marching through Lusaka’s Kanyama and Chawama townships. Police shot dead a

69 Police canceled UPND rallies in Lusaka in May and July. The July cancellation provoked violence and led to the death of a UPND supporter and 10-day campaign suspension.

70 AfCHPR, Art. 11; SADC PF: Norms and Standards for Elections in the SADC Region, Chapter 3, p. 6

UPND supporter while four others were severely injured. Police used tear gas, rubber bullets, and live ammunition to disperse the crowd and arrested 22 people, including a journalist. The ECZ suspended the campaign in these districts July 9–18.

According to the ECZ, the commission exercised its powers under Section 28(2) of the Electoral Process Act to suspend the campaign. However, opposition political parties contested the decision and criticized its legal standing. Section 28(2) states that the commission may amend the election timetable if deemed necessary for a free and fair election. Section 28(1) specifies that the commission shall compile an election timetable for each election that will provide for the opening and closing dates of the campaign among other key stages of the electoral process but does not explicitly prescribe that the ECZ has the authority to suspend the campaign period. While some stakeholders said that the suspension helped to reduce mounting tension, it is unclear whether the ECZ has the power to suspend the campaign under the law. The suspension affected parties' freedom to assemble and campaign in the final weeks of the campaign in key locations.⁷¹

Following the conclusion of the 10-day ban on campaigning in Lusaka and Namwala, the ECZ initiated an effort to curb electoral violence by inviting all political parties to sign a peace pledge on July 15, 2016.⁷² Of the nine political parties fielding presidential candidates, five, including PF and the Forum for Democracy and Development (FDD), signed the peace pledge, while four parties, including the UPND, declined to sign the document at the July 15 meeting. In a public statement, UPND explained that it was not refusing to sign but had asked for an addendum to establish mechanisms to enforce the terms of the pledge.⁷³ UPND explained that it had requested such an enforcement mechanism because it had readily signed an earlier peace pledge sponsored by

“church mother bodies” and was dismayed that PF had breached that agreement.⁷⁴ Notwithstanding an apparent agreement by ECZ to draft the requested addendum, no further revisions to the peace pledge were promulgated, and UPND was not a signatory.

Another major outbreak of pre-electoral violence occurred in Mtendere, Lusaka, on Aug. 8, 2016, between PF and UPND supporters. PF supporters attacked the UPND supporters and vehicles with stones. Video of the instance was widely circulated online and on social media. The ECZ released a statement the following day condemning the violence and demanding the parties neither instigate violence nor retaliate against such attacks, but otherwise made no use of its conflict management mechanisms to address the incident.⁷⁵ Another attack was reported on election day in which several PF supporters in Southern province were injured, including one person who required hospitalization to treat severe head injuries.

Postelection Violence⁷⁶

Tensions did not immediately dissipate after the polls. Following the announcement of the presi-

The pre-election period was marred by widespread reports of political tensions and electoral violence.

dential results on Aug. 15, violent protests broke out in several locations of Southern province. In Mazabuka, Choma, and Monze, rioters burned trees and tires, blocking the highway. Some shops were looted. Some reports suggest this was opportunistic criminal activity carried out under the guise of electoral violence. Anti-riot police dispersed rioters with tear gas, and arrests were made in connection with the attacks.

71 UN, ICCPR, Art. 21: Protects the right to freedom of assembly

72 <http://ecz-news.com/news/peace-pledge-for-presidential-candidates-for-the-11-august-2016-general-elections-and-referendum/>

73 <https://www.lusakatimes.com/2016/07/18/upnd-not-refuse-sign-peace-treaty-d/>

74 Ibid.

75 <http://ecz-news.com/news/electoral-commission-of-zambia-%E2%80%8Bchairpersons-pre-election-statement/>

76 The Carter Center deployed observer teams to Mazabuka, Namwala, Choma, and Monze during the postelection period.

In Namwala district, a group of UPND cadres targeted PF supporters in Mala and other fishing camps who celebrated when the ECZ announced Lungu as winner. The attacks displaced a total of 241 people (81 households) who were sheltered in Namwala's Secondary School, which is run by the Zambian Red Cross. The PF party donated humanitarian assistance to assist the internally displaced, many of whom had lost their houses in the violence. Most of them came from the fishing camps in the Mala area, including many Bemba-speaking fishermen. Over 100 people were affected and fled the area after the clashes with the UPND supporters.⁷⁷ Some of the displaced people were indigenous to Namwala but were PF party officials or candidates who were attacked by family and neighbors and had to seek refuge at the school. Additionally, the local chief, who supported PF, had to go into hiding for a few days as he was also threatened with harm. Arrests and prosecutions have been made in connection with the Namwala attacks.

Role of Political Cadres

Many stakeholders within communities affected by electoral violence speculated that a significant

The electoral environment overall was characterized by interparty tensions, polarization, and outbreaks of violence that restricted the fundamental rights of Zambian stakeholders to freely assemble and express themselves.

portion of the violence was not spontaneous but rather instigated and/or organized by political party officials. None offered concrete evidence of such organization. In public statements and private

consultations, PF and UPND representatives both alleged that either the other party was responsible for electoral violence or that the violence was perpetrated by people impersonating their respective party cadres.⁷⁸ A troubling trend of cadres wearing military fatigues was also noted. While it is difficult to ascertain whether such cadre-related violence was spontaneous or instigated and coordinated by party representatives, many stakeholders expressed concern that the violence was more intense than in previous elections.

Conclusion

The electoral environment overall was characterized by interparty tensions, polarization, and outbreaks of violence that restricted the fundamental rights of Zambian stakeholders to freely assemble and express themselves. Widely reported incidents of violence increased tension between political parties and between their supporters, especially in the weeks preceding election day and immediately following the announcements of results. The tension perpetuated a climate of fear. The role of the party cadres appeared more formalized and is a worrisome trend. Violence, intimidation, and a climate of fear hinder the ability of citizens to participate fully in a secure environment in the democratic process, including as interested stakeholders, political party supporters, political candidates, and prospective voters. While the ECZ supported the signing of a peace pledge between political adversaries and took action to suspend campaign activities in two locations following serious outbreaks of violence between party supporters, further actions could have been taken to support a more peaceful campaign environment through greater enforcement of the electoral code of conduct and sanctioning of electoral violations.

⁷⁷ Reports surfaced of people destroying their own homes and property so as to receive support as a displaced person along with those who were

victims of electoral violence, possibly a result of the lack of development and poverty in the region.

⁷⁸ <https://www.daily-mail.co.zm/?p=75767>

I Election Management

International election standards provide for an independent and impartial election management body to promote transparency and facilitate citizen participation in a genuine democratic process.⁷⁹ The election management body should also ensure an accountable, efficient, and effective public administration as it relates to elections.⁸⁰ It has a responsibility to ensure that the electoral process is in compliance with Zambia's regional and international obligations for democratic elections and human rights.⁸¹

The ECZ was tasked with administering five elections on one day: president, national assembly, ward councilors, mayors/council chairs, and a referendum. Despite the challenges the ECZ faced in organizing multiple elections simultaneously, most Zambian and international observation groups reported that election day was relatively well-managed, with some technical shortcomings. The ECZ's effort was commendable considering that the constitutional provisions were passed in January 2016, and the time frame to hold the general election was six weeks tighter than originally expected by the election management body.⁸² Adding to the ECZ's challenges, the 2016 electoral cycle was preceded by several by-elections at constituency and national levels in 2014 and 2015, respectively. The constant electoral environment resulted in increased animosity between

the ruling party and leading opposition UPND and a deepening polarization between party supporters.

ECZ Composition and Functions

The Electoral Commission of Zambia is an independent and autonomous election management body governed and regulated by the 2016 amended Constitution of Zambia, 2016 Electoral Commission Act, 2016 Electoral Act, 2015

A polling station awaits voters on election day.



Kseniya Dashutina

79 UNHRC, General Comment 25, para. 20

80 AU, AfCDEG, Art. 17.1

81 AU, Declaration on the Principles Governing Democratic Elections in Africa, Art. II.4. Also Venice Commission, sec. II.3.1.c

82 Constitution of Zambia (Amendment), No. 2 of 2016, Art. 56(1) prescribes that the general election will be held every five years after the last general election, on the second Thursday of August.

Referendum Act, and statutory instruments. The functions of the commission are to organize and ensure a fair, transparent, and credible election process.

The ECZ is composed of a chairperson, vice-chairperson, and three other members appointed by the president and is subject to ratification by an ad hoc select committee of the National Assembly, which is mandated to operate on a nonpartisan basis. Both the chairperson and vice-chairperson must have held or be qualified to hold the office of judge of a superior court. All five

The ECZ's appointment system is inconsistent with best practices for recruiting election officials based on transparency, efficiency, and equity.

members are appointed for a term of seven years that can be renewed for an additional seven-year term.⁸³ The president holds the power to remove full-time members.⁸⁴

The ECZ's appointment system is inconsistent with best practices for recruiting election officials based on transparency, efficiency, and equity.⁸⁵ Opposition parties expressed concerns regarding the independence of the ECZ and its members, in light of the president's role in appointing and removing ECZ members. As noted previously in the Carter Center's final report on the 2001 general election in Zambia, the president's prerogative to appoint and dismiss full-time ECZ members heightens mistrust among opposition political parties vis-à-vis the electoral body's independence.⁸⁶ International standards suggest that in order to deter corruption, bodies appointing

members of electoral commissions should be unable to dismiss them at will.⁸⁷

Though the leadership of the ECZ changed hands, there was some continuity in its membership and professional staff from previous electoral cycles in which the body was recognized for its independence and credible election administration. In April 2015, Justice Esau Chulu became ECZ chairperson. Chulu had served as a commissioner since December 2009. He replaced Justice Irene Mambalima, who was held in high regard by stakeholders during her term of office. President Lungu appointed Chulu chair at the same time as two new commissioners: David Matongo, former UPND Pemba parliamentarian who resigned from the party in 2011, and Dr. Emily Sikazwe, former executive director of Women for Change, a gender-focused nongovernmental organization. They joined Justice Christopher Sichimwa Mushabati and Dr. Fredrick Ng'andu, who were appointed commissioners in November 2012 by PF President Sata. The director of elections, Priscilla M. Isaac, is the chief executive officer in charge of day-to-day management and operations of the elections. She was appointed in April 2011 and managed the 2011 election and 2015 by-election. The director is assisted by staff appointed by the commission by statutory instrument.

While the 2016 Election Commission Act prescribes that the ECZ shall have offices in provinces and districts, the ECZ does not have a permanent structure and relies on existing administrative state bodies to fill its managerial positions at the provincial and district levels.⁸⁸ Provincial local government officers are appointed as provincial electoral officers (PEOs) while the town clerks or council secretary for a district serve as district electoral officers (DEOs) with responsibility for administering the polls at the provincial and district level, respectively. DEOs are charged with appointing a returning officer (RO), assistant

83 Election Commission Act, No. 25 of 2016, Sec. 5

84 Election Commission Act, No. 25 of 2016, Sec. 5, Art 5 (F)

85 AU, Convention On Corruption, Art. 7(4); UN, UNCAC, Art.7(1)(a)

86 The Carter Center, *Observing the 2001 Elections*, p. 24: "The Center's LTOs also noted that the procedures for the selection, appointment, and removal of ECZ commissioners served to undermine the ECZ's

independence. The Electoral Act gives power to the president to appoint members without obliging him to consult or seek nominations from political parties and other stakeholders. Consequently, the president is in position to influence the ECZ's administration of election activities."

87 UNHRC, General Comment 25, para. 24

88 The Electoral Process Act, No. 35 of 2016, Sec. 229 (1)

returning officers (AROs), and an IT officer in each constituency. Citizen observer organizations expressed concern that administrative officials could be biased or give the appearance of bias in their work because they are appointed and transferred at will by the Local Government Service Commission, which is appointed by the president.⁸⁹

According to a constitutional amendment passed in January 2016, the chairperson of the ECZ serves as the returning officer for the presidential election.⁹⁰ In previous elections, the chief justice of the Supreme Court filled this role.⁹¹ Provincial and district level returning officers declared National Assembly and local government results, respectively.

The specific functions of the ECZ are to organize and ensure that the elections are free and fair, delimit electoral boundaries, register voters, adjudicate administrative disputes, regulate the conduct of voters and candidates, accredit observers and election agents, conduct voter education, formulate and review electoral regulations, maintain liaison and cooperation with political parties, and resolve electoral disputes through established conflict management committees.⁹² Since 2006, the commission is also mandated to enforce the electoral code of conduct and may impose fines and/or imprison any person who commits a general offense as defined by the code of conduct.⁹³

In 2016 Zambia adopted an electoral code of conduct that is binding for all stakeholders engaged in the electoral process. The electoral code of conduct prescribes broad responsibilities and powers to the ECZ. Per the code, the ECZ should: meet political party representatives regularly to discuss their concerns; ensure that political parties do not use state resources to campaign for their benefit; avail political parties of the election

timetable and further notices; censure acts done by election stakeholders that contravene the code; expeditiously declare election results; ensure that legally organized campaign rallies are not disrupted or arbitrarily prohibited; ensure that election officers or other officers or people on election duty are not victimized; ensure that police officers act with impartiality and professionalism; ensure that traditional leaders do not exert undue influence on their subjects; ensure that equal opportunity is given to all parties to conduct their political activities in accordance with the law; and condemn acts of media victimization, punishment, or intimidation.

In 2016 Zambia adopted an electoral code of conduct that is binding for all stakeholders engaged in the electoral process.

According to the 2016 Electoral Act, the ECZ has powers to reprimand parties for violations of the code of conduct, report breaches to law enforcement agencies, revoke the accreditation of election agents and monitors who breach the code, and impose administrative measures on candidates and parties that persistently breach the code. The 2016 Electoral Act also empowers the commission to enforce the code by disqualifying a political party or candidate in violation of the code.⁹⁴ The ECZ considered this a very serious action. Ultimately, the ECZ did not act on its enforcement ability to disqualify parties or candidates during the electoral period.⁹⁵

During the campaign period, the ECZ shied away from exerting fully its enforcement powers

89 See the Service Commissions Bill, No. 3 of 2016, Sec. 15 and 16 on The Local Government Service Commission and The Functions of the Local Government Service Commission as provided in the Constitution.

90 See Constitution of Zambia (Amendment), No 2 of 2016, Sec. 99.

91 In prior elections, international observers raised the role of the Supreme Court justice serving as returning officer for the presidential election as a "potential conflict of interest." See NDI Pre-Election Delegation to Zambia's September 2011 Elections Lusaka, Aug. 18, 2011, p. 5

92 Functions described in The Electoral Commission of Zambia Act 2016, Part II.

93 See Statutory Instrument No. 41 of 2015, the Fees and Fines (Fees and Penalty Unit Value) Regulations, 2015 and Sec. 15 on General Offence and Sec. 16 on General Penalty of the Electoral Code of Conduct 2016.

94 The Electoral Process Act, No. 35 of 2016, Sec. 110

95 The Electoral Process Act, No. 35 of 2016, Sec. 110(1) and (2)

of potential breaches to the code of conduct. For instance, the commission did not curtail the arbitrary use of the POA by security forces or the abuse of public media for campaign purposes by the ruling party.⁹⁶ Notably, the code also calls on the Zambia police service to ensure that police officers do not use their office to oppress a party, candidate, or supporter or disrupt a legally held campaign event. Likewise, the commission did not address issues related to abuse of state resources.

While public international law, including the International Covenant on Civil and Political Rights (ICCPR) and multiple African treaty sources, guarantees a right to effective remedy, none was available to those who challenged the ECZ's rulings on breaches of the code of conduct.⁹⁷

Conclusion

While the ECZ's technical capacity to organize elections is commendable, concerns remain regarding the body's capacity to deliver credible results. Many stakeholders including the main opposition party, UPND, and its supporters did not perceive the ECZ as an independent and impartial election management body. The legal framework and procedures governing the elections, including the broad scope of authority granted to the ECZ to enforce the code of conduct and the procedures for appointing and dismissing election commissioners, raised several concerns. Modifications to these

elements would strengthen the ECZ and mitigate stakeholders' concerns.

The ECZ should be recognized for its efforts to engage political parties in consultation and dialogue and to welcome an independent, international technical adviser for political dialogue to assist in these efforts. However, the ECZ's management of the elections ultimately suffered over the course of the process due to ineffective communication and a lack of transparency in decision making.⁹⁸ The ECZ failed to uphold its national and international commitments to conduct key stages of the process, such as the procurement of ballot papers and the transmission and verification of results, in a transparent manner. The ECZ also declined to use its powers under the Electoral Process Act to regulate the campaign environment and address breaches of the electoral code of conduct in order to level the playing field.⁹⁹ Finally, the commission failed to address imbalances in media reporting and lack of opportunity for campaigning to the disfavor of the opposition parties. Cumulatively, these gaps severely impacted the electoral environment and undermined conditions for a credible election, contravening Zambia's international commitments.

Ballot Papers Procurement

International standards maintain that electoral management bodies (EMBs) should both promote transparency in procurement of key election materials and allow for public scrutiny of the procurement process.¹⁰⁰

The ECZ director announced on April 17, 2016, that among the 13 firms shortlisted for the tender to print the ballot papers in consonance with the Zambia Public Procurement Act, only two bidders met the technical requirements as specified in the bidding documents, Al Ghurair Printing & Publishing and Ren-Form CC. Both were subjected to a financial evaluation and the commission concluded that the Dubai-based

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96 See Sec. 3(1) Code of Conduct 2016 in the 2016 Electoral Process Act for full description of commission duties with respect to ensuring compliance with the code.

97 AU, AfCDEG, Art. 17(2); AU, AfCHPR, Art. 7; UNHRC, Leonid Sinitsin v. Belarus Communication No. 1047/2002 (2006) para. 7.3.3

98 In July, the Commonwealth appointed Nigerian professor Ibrahim Gambari as special adviser on political dialogue to support the ECZ.

99 As noted in the recommendations, the scope of the ECZ role in regulating the campaign environment warrants review.

100 UN, UNCAC, Art. 13(1); AU, Convention on Corruption, Art. 12 (2)

Al Ghurair was the most competitive bidder. The decision was criticized by opposition political parties because Al Ghurair had been involved in the supply of ballot papers for the 2016 local government elections in neighboring Uganda, which were disputed. Further, its bid was twice as expensive as that of Ren-Form, the South African company that printed the ballot papers for the 2015 presidential by-election.

Ren-Form appealed the ECZ's decision to the Zambia Public Procurement Authority (ZPPA), which subsequently advised the ECZ to hold a hearing for all 13 bidders. Accordingly, ECZ conducted a re-evaluation of the process and ratified the decision to award the printing of the ballot papers to Al Ghurair, finding that the ballot paper sample submitted by Ren-Form failed to meet the security requirements specified in the tender. Opposition parties reiterated their disapproval with the outcome of the tender process. The ECZ failed to address their concerns and missed an opportunity to disclose further information about the re-evaluation procedures requested by ZPPA.

In response to political party concerns, the ECZ sponsored party agents to travel to Dubai to observe the printing of the ballots and provide party agents with an opportunity to review and verify the ballots. While the ECZ's initial shortcomings in providing for a transparent procurement process failed to meet Zambia's international treaty obligations and served to delay the process of ballot procurement, this step, which was intended to increase transparency of the process, was appreciated by the opposition parties. The ECZ unfortunately reignited political party concerns when some ballots were dispatched to polling stations prior to election day earlier than its reported schedule and at odd hours of the night.

Voting

The Center did not field a short-term observation mission for election day and did not make an independent assessment of the voting process.¹⁰¹ However, its limited observations in Lusaka, Copperbelt, and Southern provinces on polling day were consistent with the findings of international and domestic citizen observer missions, which reported a high voter turnout and a largely peaceful, calm environment.¹⁰² These assessments were similar to those of the voting process in recent elections. ECZ official figures confirmed the

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During election day, the ECZ provided timely announcements on incidents related to opening and polling procedures. The chief electoral officer announced that the ink used to stamp the back of the ballot papers with the official mark was not up to standard and, as a result, official marks were fading or invisible on ballots in some polling stations. At 11 a.m., the commission announced that polling officials had been instructed to write "official" on the back of each ballot paper issued.

It is notable that the presidential election registered the highest number of rejected ballot papers since multiparty elections were reintroduced in 1991, surpassing the 2 percent threshold for the first time since the 1996 election and doubling the percentage registered in the presidential

101 In its preliminary statement, the Center commended the ECZ staff, party polling agents, and citizen observers for their dedicated efforts in conducting the polling and counting processes.

102 The commission also announced that opening was delayed due to late distribution of election materials and polls closed as late as eight hours later than the official closing time in three wards of Nalolo district and two wards of Sioma district.

by-election held in 2015.¹⁰³ Although the director of the ECZ made a public announcement to clarify that all ballot papers with fading or invisible official marks would be considered valid in the count, the possibility cannot be ruled out that some polling staff did not receive timely instruction and rejected ballot papers without a visible official mark.¹⁰⁴ It is difficult to quantify the possible impact of this development.

Polling Stations

International and regional best practices suggest that there should be an adequate number of polling stations to accommodate all registered voters.¹⁰⁵

Zambian law reinforces the importance of the secrecy of the ballot.

The ECZ is responsible for establishing polling districts and determining the boundaries for each district by taking into account any factor that could affect “the free, fair and orderly conduct of elections,” including the availability of a suitable venue for a polling station, the number and distribution of eligible voters per polling station, accessibility of a polling station to voters, district and provincial boundaries, and cultural diversity.¹⁰⁶ The number of polling districts/stations increased from the last general election by 19 percent: from 6,456 stations with 9,022 streams in 2011 to 7,700 with 10,818 streams in 2016. The

ECZ increased the number of polling stations to shorten the distance for voters to travel to their respective polling station within five kilometers in 80 percent of venues. The maximum number of voters per polling stream equaled 950. The ratio of voters per stream across the country was highly uneven, ranging from 478 to 830.¹⁰⁷ In addition, a number of polling stations in urban areas shared the same venue.¹⁰⁸ Observers reported that contiguous queues of voters in multiple streams in overcrowded facilities contributed to slow processing of voters by polling officials and cumbersome counting procedures.

Election Procedures Concerning Secrecy of the Ballot

International and regional treaties underline that “voting must be by secret ballot so that ballots cannot be linked with voters who cast them, and voters can cast their ballot without fear of intimidation.”¹⁰⁹ Interpretive sources stress “the importance of secrecy of the ballot through the entire voting process.”¹¹⁰ Zambian law reinforces the importance of the secrecy of the ballot.¹¹¹

ECZ procedures during the 2016 polls contradicted this principle. The polling day procedures outlined in the ECZ handbook instructed polling assistants to record the voter’s card number on the presidential ballot paper counterfoil before issuing the ballot to the voter.¹¹² As the serial number of the ballot was printed on both the ballot paper and its counterfoil, recording the voter’s card number on the counterfoil could have allowed one to connect a voter with the ballot he or she cast. This practice compromised the voters’ right to

103 Rejected ballot papers: presidential election 2016, 2.2 percent (56 percent turnout); presidential election 2015, 1 percent (32 percent turnout); presidential election 2011, 1.43 percent (53 percent turnout); presidential by-election 2008, 1.3 percent (45 percent turnout); presidential election 2006, 1.75 percent (70 percent turnout); presidential election 2001, 1.61 percent (67.81 percent turnout)

104 See press briefing by the chief electoral officer, Priscilla Isaac, 17:00 hours at Mulungushi International Conference Centre on Aug. 11, 2016.

105 EISA and ECF of SADC Countries, Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 24, states that “there should be as many polling stations as population density and settlement patterns demand.”

106 The Electoral Process Act, No. 35 of 2016, Sec. 21-24

107 For example, Lusaka district has 340 polling stations including 1,011 streams and the ratio of voters per stream is 830. In Ngabwe district there

are 17 polling stations, including 19 streams, and the ratio of voters per stream is 478. Lusaka district has 41 polling stations with five or more streams. The polling station located at John Laing Basic School in Kanyama constituency has 13, the highest number of polling streams.

108 For example, the Temporary Shelter (Katwishi Grounds) in Chawama constituency hosts nine polling stations and 25 streams. In some polling stations, the high number of voters coupled with multiple polling stations and streams hampered efficient management of election procedures.

109 UN, ICCPR, Art. 25(b)

110 UNHRC, General Comment 25, para. 20

111 Constitution of Zambia (Amendment), No. 2 of 2016, Sec. 46 as well as The Electoral Process Act, No. 35 of 2016, Sec. 46(2)

112 Electoral Commission of Zambia, Election Officers Handbook, p. 48



Temporary voting booths provide confidentiality as voters complete their ballots.

secrecy of the ballot and is inconsistent with the voting procedure outlined in Section 60(5) of the 2016 Electoral Process Act.¹¹³

Participation of Persons with Disabilities

International public law protects the rights of persons with disabilities to effectively and fully participate in political and public life on an equal basis with others. This includes the right and opportunity for persons with disabilities to vote and have equal access to polling stations.¹¹⁴ The civil society organization Disability Rights Watch indicated that while the ECZ has taken steps to better ensure greater access to polling stations for persons with disabilities and to include persons with disabilities in their voter education training workshops, significant obstacles to political participation remain for persons with disabilities. Of note, persons with disabilities are still confronted with challenges to cast secret ballots without assistance. Disability Rights Watch suggested that ECZ

should enlist advocacy groups to engage with persons with disabilities in the conduct of voter education and outreach campaigns as the groups are membership based and have strong relationships with the disability community.

Prisoner Voting

Under international law, conviction for an offense may be grounds to restrict a person's voting rights, so long as the period of suspension is proportionate to the offense and the sentence. However, people who are deprived of liberty but who have not been convicted should be allowed to vote.¹¹⁵

Zambia's amended constitution and electoral laws conflict on this issue. Article 46 of

Zambia's 2016 amended constitution provides that "a citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote in an election by secret ballot." This new

International public law protects the rights of persons with disabilities to effectively and fully participate in political and public life on an equal basis with others.

constitutional provision conflicts with Section 19 of the Electoral Act (2006) and Section 47 of the Electoral Process Act (2016), which states, "a person shall not be entitled to vote at an election if, at the date of the election, that person is in lawful custody or the person's freedom of

¹¹³ Section 60(5): If the presiding officer or election officer is satisfied in respect of all the matters referred to in subsection (3), the presiding officer shall – (a) record that the voter is treated as having voted in the election; (b) mark the hand of the voter in the prescribed manner; (c) mark the back of a ballot paper for that election; and (d) hand the ballot paper to the voter.

¹¹⁴ UN, Convention on the Rights of Persons with Disabilities (CRPD), Art. 29 (a) (i-iii)

¹¹⁵ UNHRC, General Comment 25, Art. 25, para. 14

movement is restricted under any written law.”

Prisoners were not allowed to vote in the 2016 general election. The Law Association of Zambia (LAZ) issued a statement in June affirming that Section 19 was still in force, disqualifying prisoners from voting. However, LAZ also noted that there is a conflict between the law as enumerated in Section 19 and the amended constitution, which protects universal suffrage.¹¹⁶ The Zambian parliament should consider amending the legal electoral framework in advance of future polls to ensure its alignment with the amended constitution and the principle of universal suffrage.

Counting

According to international standards for anti-corruption and transparency, and best practices in election management, counting procedures should be transparent and verifiable. Results should be released in a timely manner, publicly announced and posted at the polling station level.¹¹⁷ All party agents and citizen observers should be given copies of the results forms to prevent corruption.¹¹⁸ As noted, the Center made only a limited

in polling stations with hundreds of voters per stream.

CCMG observers reported final results were distributed to party agents at 99 percent of polling stations observed, though in some instances, the counting process was completed and the results were posted at the constituency tallying centers.¹¹⁹ However, Zambia Election Information Center (ZEIC) observers noted that the tabulation forms used at the polling station level, or GEN 12 forms, were not always available for endorsement by party agents and citizen observers in Lusaka area.¹²⁰ ECZ staff in meetings with Center observers acknowledged that some presiding officers failed to distribute copies of the GEN 12 form to the party agents upon completion of counting, though the number appeared limited. In some instances, party agents were not present to receive the forms and in others, party agents refused to take them. CCMG reported that 2 percent of party agents refused to sign official results in its PVT sample.¹²¹ The lengthy counting process and relocation of counting to the totaling centers likely contributed to a failure of some polling officials to post election results at the polling station level. While ECZ cannot guarantee that all party agents will accept copies of the GEN 12 forms, the posting of election results at the polling station level in hard copy offers an important transparent check that allows any interested party to verify election results at the polling station level.

The transparency of the process was challenged by ECZ's inability to provide GEN 12 copies to all party agents at the polling stations, and the failure to post results at the polling station level in a timely fashion, fueling questions about the integrity of the tabulation process for some stakeholders.

According to international standards for anti-corruption and transparency, and best practices in election management, counting procedures should be transparent and verifiable.

observation of the polling day process and did not conduct a robust assessment of the closing and counting processes. However, the Center notes that counting ballots for five concurrent elections is daunting and takes an extraordinary amount of time, especially after a long day of voting and

116 Law Association of Zambia, LAZ Statement Dated June 8, 2016 on the Question of Whether Prisoners Should Be Allowed to Vote

117 AU, Convention on Preventing and Combating Corruption, Art. 9. According to SADC Principles and Guidelines Governing Democratic Elections, para 7.8, SADC member states are instructed to “ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers/monitors.”

118 AU, Convention on Preventing and Combating Corruption, Art. 9

119 Christian Churches Monitoring Group, CCMG Verification Statement on the Accuracy of the Results of the 2016 Presidential Election August 15, 2016

120 Zambia Elections Information Center, 2016 Zambia Election Draft Final Report, August 2016

121 Christian Churches Monitoring Group, CCMG Verification Statement on the Accuracy of the Results of the 2016 Presidential Election August 15, 2016

Tabulation and Verification of Results

International standards suggest that vote tabulation should be a transparent and observable process.¹²² According to the Electoral Process Act Section 78(1), accredited observers and monitors may observe the proceedings concerning voting, the counting of votes, and the announcement and declaration of the election results. Section 78(1) does not specifically grant observers access to the verification procedures, at which time corrections to results can be made.

Though party representatives had access to the verification room at the National Results Center, neither international nor citizen observers were allowed access to observe the ECZ's verification of results transmitted from totaling centers. This undermined the transparency of this highly contentious process.

The Carter Center made only a limited observation of the polling day process and did not conduct a robust assessment of the tallying processes at the totaling centers, nor of the verification exercise. Nonetheless, while recognizing the limited scope of its observations, the Center's findings were consistent with those of domestic citizen observers who reported that the process of collecting and collating results from polling stations was slow due to the slow counting process.

The ECZ implemented a new 32-step results management process that, for the first time, involved typing in and scanning results into a results management system (RMS) kit, a laptop computer with a results submission program, as well as faxing results to the ECZ's national tabulation center. Polling station results forms, the GEN 12 forms, were scanned into the RMS kit as well as consolidated constituency results (forms GEN 13 and ECZ 19) before captured and

scanned results were transmitted to the National Results Center via GSM or satellite.¹²³ After consolidated constituency results were posted outside the constituency totaling center, GEN 13 and ECZ 19 forms were also faxed to the National Results Center. The process proved extremely

The transparency of the process was challenged by ECZ's inability to provide GEN 12 copies to all party agents at the polling stations and the failure to post results at the polling station level in a timely fashion.

slow and challenging to manage. Concerns were raised during all stages of the results-management process. Contrary to best practices for transparency and anti-corruption, observers and party agents reported an inconsistent availability of polling station GEN 12 forms, which were needed to complete thorough independent checks.¹²⁴ The ECZ did, however, post polling station level results for the presidential election on the ECZ website by Aug. 16, before the opposition party UPND challenged the election results on Aug. 19.

The 2016 Electoral Process Act added a provision that gave powers to the commission to correct any mistakes made by an electoral officer in tabulating results within seven days of the declaration of results.¹²⁵ In addition, according to the procedures laid out by the ECZ, after the results were verified by the commission, party agents could also verify results in the presence of the commission.¹²⁶ In practice, discrepancies between party agents and the commission over verification procedures and their outcome further delayed the

122 AU, Convention on Preventing and Combating Corruption, Art. 9; UN, ICCPR, General Comment 25, para 20

123 GEN 12 forms were used to transmit consolidated polling station results. GEN 13 and ECZ 19 forms were used to transmit consolidated constituency results.

124 States are required to put information of public interest proactively into the public domain. UN, ICCPR, General Comment 34; AU, Convention on Corruption, Art. 9; UN, UNCAC, Art. 10. According to SADC Principles and Guidelines Governing Democratic Elections, para. 7.5, member states shall "take all necessary measures and precautions to prevent the perpetration

of fraud, rigging or any other illegal practices throughout the electoral process..."

125 Art. 76 prescribes that "the Commission may correct a mistake committed by an electoral officer in the tabulation of results within seven days after the declaration of the results." Previously, under the Electoral Act of 2006 that was also used in 2011, the commission was to "determine and declare the result of an election by adding together the results received from all polling stations."

126 See Electoral Commission of Zambia, 2016 General Elections, Step 28, p. 5

Voters check in at a polling place in Lusaka.



announcement of provisional results. The process lacked clear and effective remedy mechanisms by which political parties could appeal corrections made by the commission regarding tabulation errors made by electoral officers.

While the ECZ chairman had forecast that final presidential results would be declared 48 hours after the last polling station completed counting, final presidential results were announced only on Monday, Aug. 15, four days after election day. The delay was caused by slow counting and totaling of results, as well as disputes over verification procedures between party representatives and the ECZ at the National Results Center. The arrest on Aug. 12 of Samuel Chavula, a suspected hacker who

had been accredited by the ECZ and given access to the verification room, raised concerns among political parties about improper accreditation and further delayed the process. It was not clear how Chavula received accreditation.

Conclusion

An efficient and transparent results management process is essential for credible elections, with the tabulation and verification of results a critical step. As noted, the Center made only a limited observation of polling day processes and did not conduct a robust assessment of the closing and counting processes. However, the Center notes that counting ballots for five concurrent elections is daunting and time-consuming. Overall, the tabulation and verification process suffered from delays, inconsistencies in implementation and available vote tally documents, and stakeholder concerns about the lack of clear and transparent dispute resolution mechanisms when results were challenged. The shortcomings in the process, including inadequate transparency and communication, undermined stakeholders' confidence in the electoral process and contributed to questions regarding the outcome of the vote.

Overall, the tabulation and verification process suffered from delays, inconsistencies in implementation and available vote tally documents, and stakeholder concerns about the lack of clear and transparent dispute resolution mechanisms when results were challenged.

I Electoral Dispute Resolution

Voters and other electoral stakeholders must be given, and must perceive that they possess, an opportunity to engage freely and equally in the electoral process, including the right of fair trial and public hearing if these rights are infringed, in order to maintain credibility of the process.¹²⁷ International best practices indicate that the effective implementation of electoral law requires that any alleged infringement be heard before a judicial body.¹²⁸ Clear, fair, and effective procedures for electoral dispute resolution are essential to ensuring that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.¹²⁹

In Zambia, electoral dispute resolution is primarily governed by the 2016 constitution, the 2016 Electoral Process Act, the 2016 Electoral Code of Conduct, and conflict management committee guidelines. Courts, the Election Commission of Zambia, specialized ad hoc tribunals, and conflict management committees have jurisdiction to consider electoral disputes, depending on the nature of the complaint.

The 2016 constitution created a Constitutional Court that has original and final jurisdiction to hear matters relating to the interpretation of the constitution; matters relating to violations of the constitution; matters relating to the president, vice president, or an election of a president; appeals

Although the main aim of the CMCs was to serve as an alternative to lengthy court proceedings, CMC activities were opaque and at odds with international standards for transparency and anti-corruption.

relating to election of members of parliament and councilors; and whether a matter falls within its jurisdiction.¹³⁰

Conflict Management Committees

In accordance with the Electoral Act, the ECZ established conflict management committees (CMCs) at the national and district levels to fast-track the resolution of electoral disputes. CMCs were mandated to mediate electoral conflicts, advise the conflicting parties, and in instances of suspected criminal activity, report matters to police for further actions. CMCs were composed of a chairperson appointed by the ECZ, a vice chairperson elected by the CMC members from among themselves, representatives of registered political parties, a civil society representative, and representatives from various governmental

127 UNHRC, General Comment 32, para. 25: "The notion of fair trial includes the guarantee of a fair and public hearing."

128 Council of Europe, Venice Commission, Code of Good Practice

129 AFCDEG, Art. 17(2)

130 2016 Zambian Constitution (Amended), Art. 128

institutions, nominated by the respective organizations.¹³¹ District CMCs were based in local council offices and managed by the town clerks or council secretaries on behalf of the ECZ.

Although the main aim of the CMCs was to serve as an alternative to lengthy court proceedings, CMC activities were opaque and at odds with international standards for transparency and anti-corruption.¹³² They did not appear to provide a timely, transparent, and effective mechanism of dispute resolution during the elections. CMC decisions were not legally binding, their proceedings were not public, and their decisions were not published. At times, district CMCs refrained from issuing decisions while seeking guidance from the national CMC, which reportedly did not respond in a timely manner. Complainants could choose to refer the matter directly to the court, bypassing the CMC structure. However, in one case the High Court refused to consider a case as it had not been brought first to a CMC.¹³³

High Court of Zambia

According to the constitution, the High Court hears complaints and petitions on National Assembly elections and the referendum, including those regarding candidate nominations. Any person may file an election petition with the High Court to challenge the election of a member of

parliament. While the law provides for a 90-day deadline to hold a hearing on petitions against National Assembly results, there are no deadlines for issuing the final decision.¹³⁴ High Court decisions relating to the election of members of parliament or councilors may be appealed to the Constitutional Court.

Petitions regarding referendum results can be presented within 21 days from the declaration of referendum results by any person who had the right to vote in the referendum on the grounds that corrupt practice prevailed, or error or misconduct by the ECZ. The High Court received 11 petitions prior to election day, mostly related to candidate nomination. Most of these cases were rejected as they were filed after the prescribed legal deadline.

Special ad hoc local election tribunals were established by the chief justice of the High Court at the district level to deal with issues pertaining to local elections, including challenges to the results. The tribunals and their rules of procedures were established shortly before election day, affecting the right to legal redress as important prior stages of local council elections could not be challenged.

Proper procedures detailing appointment, term limits, security, and remuneration of court members are essential for a functioning democracy.¹³⁵ States should take steps to protect the independence and impartiality of the judiciary to ensure the proper functioning of dispute resolution processes.¹³⁶

Constitutional Court of Zambia

The Constitutional Court, established in January 2016, is mandated to hear complaints regarding presidential elections and appeals to High Court

The Constitutional Court, established in January 2016, is mandated to hear complaints regarding presidential elections and appeals to High Court decisions regarding challenges to parliamentary elections.

131 Party members include those who have participated in the previous general elections or are present in at least three Provinces. Government representatives include members of the Zambia Police, Anti-Corruption Commission, Drug Enforcement Commission, Human Rights Commission, and Ministry of Justice.

132 UN, ICCPR, Art. 19(2); AU, Convention on Corruption, Art. 9; ACHPR, Art. 13(1); ACHPR: Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, para. D(a-d)

133 A case was filed by the UPND against ZNBC and dismissed by the High Court on July 22, 2016.

134 Under the 2016 Zambia Constitution (Amended), Art. 73, a member of parliament should hold a seat pending the determination of any petitions. As of May 2, 2017, the High Court had issued decisions regarding relevant parliamentary cases. A number of these decisions were appealed to the Constitutional Court, where some were still pending consideration.

135 UNHRC, General Comment 32, Art. 14, para. 19

136 2016 Zambia Constitution (Amended), Art. 122, the judiciary enjoys functional independence; AU, AfCDEG, Art. 32.3; UNHRC, General Comment 32, Art. 14

decisions regarding challenges to parliamentary elections. Its decisions are final without possibility of further appeal. The court began accepting complaints in January 2016 but only became operational after its rules, which provide for the process and procedures of the court, were adopted in May 2016. The court held its first hearing on June 29, 2016.

As of August 2016, only six of the 13 judges required under the constitution had been appointed by the president; their appointments were ratified by parliament in March 2016. During the election, the court operated at this limited capacity. It faced several logistical and operational challenges and lacked institutional experience. These factors proved problematic during the electoral dispute-resolution process. Several interlocutors expressed concerns about the appointment process for the judges by the president and their impartiality.

Thirty cases were filed with the Constitutional Court before election day, mostly related to matters of interpretation of the constitution as well as appeals from the High Court.¹³⁷ The Constitutional Court granted a petition filed by the Law Association of Zambia that challenged the constitutionality of the continued stay of the ministers in office after the dissolution of parliament. The court ruled that the ministers' mandate had expired on the day the parliament dissolved and requested return of the salaries and allowances paid after that period. However, the ruling was issued only a few days before the election, after ministers had campaigned for almost the full duration of the campaign period.¹³⁸

Following the elections, on Aug. 19, 2016, the main opposition candidate, UPND party leader Hakainde Hichilema and his running mate Geoffrey Bwalya Mwamba, filed a petition

with the Constitutional Court challenging the presidential results. This petition was the first exercise of the Constitutional Court's jurisdiction in considering contested presidential results. The petition stated that the Aug. 11 elections violated the constitution, the Electoral Code of Conduct, and the POA on the following grounds: denial of access to public media, abuse of state resources, and inequitable application of the POA. Moreover, numerous election day violations were alleged including the failure of the ECZ to provide critical election materials to party agents, failure

However, while the constitution requires that a petition be heard within 14 days, it does not provide a deadline for passing a decision.

to apply consistently procedures to reject ballot papers, and permitting unauthorized people to be present in the polling stations and National Results Center. The UPND requested fresh presidential elections through invalidation of the Aug. 11 poll, disqualification of the president-elect from being a candidate in the event of a runoff, declaration that the voter register and the election were flawed, and a recount of any rejected ballots.

In previous elections, no deadlines existed for consideration of petitions challenging presidential election results. This resulted in some cases pending for several years, and, contrary to international standards, did not provide for a timely and effective remedy. For example, the Supreme Court did not issue a decision on a petition challenging the 2001 election results until 2005.¹³⁹

137 These cases included, inter alia, request for interpretation of G12 certificate, FDD nomination of Mr. Mulonga, prisoners' voting rights, political parties sponsoring candidates for nomination of election councilors, and continued stay of Cabinet and provincial ministers.

138 The High Court later invalidated the re-election of two of the nine ministers to parliamentary seats, citing illegal use of state resources, among other issues. The Lusaka High Court issued a ruling nullifying the election of Munali Member of Parliament Nkandu Luo in a case brought by an opponent challenging the election results. The court cited the

Constitutional Court's ruling and found that Luo had abused her office by using public resources after her mandate had concluded. At the time of report drafting, the defendant planned to appeal the nullification to the Constitutional Court.

139 The court agreed that certain anomalies and malpractices were proved but declined to annul the elections or offer any other remedy. See the cases of Lewanika and Others vs. Chiluba S.C.Z Judgment No. 14 of 1998; and Anderson Kambela Mazoka and Others vs. Levy Patrick Mwanawasa and Others Z.R 138 (s.c) L SCZ/EP/01/02/03/2002.

According to the 2016 amended constitution, the Constitutional Court should hear any election petitions relating to the presidential elections within 14 days of filing the petition. However, while the constitution requires that a petition be heard within 14 days, it does not provide a deadline for passing a decision.¹⁴⁰ This ambiguity and the short time frame for the Constitutional Court to hear cases require the judiciary to provide clear direction and to work efficiently.

Contrary to international standards, no clear guidelines on the time frame of the resolution of cases were provided by the court. The lack of clarity on the deadline for final determination of any petitions was widely acknowledged and raised as an issue by many stakeholders in advance of the polls. In meetings held prior to the election, Constitutional Court judges told the Carter Center representatives that they were aware of the issue and would try to handle the matter within a reasonable time frame, while considering the need for discovery and consideration of the merits of any petitions.

On Sept. 5, the court dismissed the petition by a majority decision for failure of the petitioners to present their case within the 14-day deadline prescribed by the constitution.

The Constitutional Court Rules Act 2016 establishes a timeline for actions that must be taken before the hearing of a presidential petition. After a petition is filed, respondents have five days to respond by filing a number of documents including opposing affidavit, witness statements, and skeleton arguments. The petitioner then has two days to reply to the respondent's answer, after which a scheduling conference should take place. A scheduling conference is a meeting between the

judges and the lawyers involved in the election petition to exchange documents and determine the fixed date for the hearing.

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process.¹⁴¹ The UPND lodged its complaint on Aug. 19. Petitioners brought a number of preliminary motions, including on preservation and custody of the electoral materials, and a request for filing 53 additional witnesses, all of which were dismissed by the court. On Aug. 30, a single judge, who was aware of the 14-day constitutional deadline, held a scheduling conference and directed the parties to file their documents and record of proceedings by Sept. 1, and set the hearing to commence Sept. 2 and conclude Sept. 8.

However, this timeline was changed on the following day (Aug. 31) by the same judge, who stated that the hearing had to be concluded by Sept. 2 and that any proceedings outside of the 14-day window would violate the deadline set by the constitution. Several applications were filed seeking provisional decisions on pertinent issues, including on the time limit for the hearing to conclude. The parties were left with two hours each to present their cases after the provisional decisions were issued. The petitioners' lawyers subsequently asked the court to be excused from the proceedings. Shortly before expiration of the deadline of midnight on Sept. 2, the court announced a decision to adjourn the hearing to Sept. 5 to provide each party an additional two days to be heard.

All proceedings took place in chambers and were closed to the public, including domestic and international observers. Contrary to international standards that require states to release information of public interest proactively, the court did not provide periodic official updates about its proceedings. As such, the general public lacked access to information during the dispute resolution process.¹⁴² This fueled hearsay and misinformation

¹⁴⁰ Order XV of the Constitutional Court Rules Act 2016 states that weekends and public holidays are included in the computation of time if proceedings are to be taken within the time exceeding six days. Notwithstanding this provision no proceedings took place on the weekends as the Constitutional Court was closed.

¹⁴¹ UN, ICCPR, Art. 2(3)

¹⁴² UN, ICCPR, Art. 19(2); AU, Convention on Corruption, Art. 9; UN, UNCAC, Art. 10

and heightened tension among the public and political party supporters.

The substantial matters of the case were not heard as the case was dismissed on procedural matters. On Sept. 5, the court dismissed the petition by a majority decision for failure of the petitioners to present their case within the 14-day deadline prescribed by the constitution. Three out of five judges ruled that the 14-day deadline prescribed by the constitution is unambiguous, and therefore the petition could not be heard outside of the legal deadline.¹⁴³ Respondents to the petition, including the ECZ, were absent as they stated that any proceedings taking place after Sept. 2 were null and void. In a dissenting opinion, two of the court judges stated that the timeline prescribed by the constitution is not adequate and should be reviewed in the future. The dissenting opinion also stated that the court faced challenges in handling the matter as there was lack of trust from both parties.

The legal process to resolve the petition was marred by a lack of clarity regarding the timeline for the Constitutional Court to issue a decision and inconsistent decision making by the court. In the end, the court failed to hear and consider evidence on the merits of the petition. As a result, the legal and judicial processes surrounding the presidential petition failed to meet Zambia's national and international obligations to ensure equal access to a fair hearing, and timely and effective legal remedy.¹⁴⁴

The Constitutional Court decision was not accepted by the opposition. The court has suffered considerable criticism from a wide range of stakeholders for how it conducted its work. Many interlocutors were dismayed at the lack of clarity, inconsistencies, contradictions, and lack of transparency exhibited.¹⁴⁵ Decisions of the Constitutional Court are final and cannot

be appealed to the Supreme Court. The UPND filed a petition with the High Court, which has jurisdiction over civil and criminal matters, that claimed the Constitutional Court had violated the Bill of Rights, namely that they had not received their right to a fair hearing within a reasonable

The legal and judicial processes surrounding the presidential petition failed to meet Zambia's national and international obligations to ensure equal access to a fair hearing, and timely and effective legal remedy.

time frame before an independent and impartial court. They also requested that the High Court suspend the presidential inauguration until after the determination of the petition. The High Court ruled that the inauguration would go forward as scheduled on Sept. 13, 2016. The Supreme Court upheld this decision on appeal, refusing to enjoin the inauguration or to review the Constitutional Court's actions. Effectively, the petitioners' legal remedies were exhausted.

In addition to the challenges against the presidential results, the High Court received an unprecedented 84 petitions challenging the parliamentary results, with 46 petitions filed by UPND, 29 by PF, six by independent candidates, two by MMD, and one by UDF. The most petitions were filed in the Western, Eastern, Luapula, and Copperbelt provinces, and the fewest were filed in Southern province. The law provides for a lengthy 90-day deadline of holding a hearing on petitions against National Assembly results, which prolongs the period of uncertainty over election

143 Judge Sitali, Judge Mungeni, and Judge Mulonda ruled that the petition should not be heard, while Justice Munalula and Justice Chibomba had a dissenting opinion on the matter.

144 The Constitution of Zambia, Art. 18(9), states, "Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other

adjudicating authority, the case shall be given a fair hearing within a reasonable time." UN, ICCPR, Art. 2 and Art. 14.1; AfCHPR, Art. 7

145 The Judicial Complaints Commission received a complaint from two Zambian citizens to investigate the judges of the Constitutional Court who presided over the petition to remove the Constitutional Court bench for their incompetence and violation of the constitution. This petition was backed up by Young African Leaders Initiative (YALI).

results. In addition, this creates a burden on the judiciary, which is simultaneously dealing with other matters. Challenges that are upheld will lead to by-elections, which would also tax the ECZ.

Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints did not provide stakeholders with effective or timely redress on a consistent basis.

Conclusion

According to international standards and best practices, the rules for electoral dispute resolution should be clear, effective, and established well in advance of the process. The law should clearly state when an election petition should be heard and decided. Zambia's current process for the functioning of the Constitutional Court does not meet this obligation.¹⁴⁶

Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints did not provide stakeholders with effective or timely redress on a consistent basis, which is contrary to international standards.¹⁴⁷

¹⁴⁶ AfCDEG, Art. 17. (2)

¹⁴⁷ UN, ICCPR, Art. 2 and Art.14 (1)

I Voter Education

Voter education is an essential part of the electoral cycle and is recognized under international law as an important means of ensuring that an informed electorate is able to exercise effectively the right to vote without obstacles to ensure universal and equal suffrage.¹⁴⁸ The Center mission met with a range of civil society organizations that shared the following observations on voter education efforts.

Given the significant changes to the electoral framework, the need for voter education was critical. According to the ECZ, voter education commenced on May 29, 2016, and covered issues including the electoral code of conduct, electoral corruption, voting procedures, and the referendum. The ECZ arranged radio and television informational programs through both public and private media. In addition, the commission used mobile network service providers and social media outlets to disseminate text messages in multiple languages regarding the general election and the referendum. The ECZ also recruited persons with disabilities to conduct voter-education workshops and cooperated with the network of performance arts organizations (UNAMA) in the use of street theater for voter education.

In addition, several civil society organizations, including faith-based organizations, the Zambia National Women's Lobby (ZNWL), youth groups, and other human rights CSOs, conducted voter

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Many voters made use of sample ballots before casting their ballots.

148 AU, Declaration on the Principles Governing Democratic Elections in Africa, Art. 1; AU, AfCDEG, Art. 12.4; UN, ICCPR, Art. 25(b); UNHRC,

General Comment 25, para. 11

education across the country.¹⁴⁹ Radio reaches the largest audience in Zambia and therefore is key to the success of any voter-education campaign. BBC Media Action produced and shared voter-education materials with 17 radio station partners. Social media, notably Facebook and WhatsApp, also played an increasingly significant role in reaching the electorate.

Conclusion

Despite substantial efforts, civil society representatives, political parties, and candidates reported that the level of voter-education efforts was insufficient, particularly outside major urban centers. Civil society groups also indicated that the

distribution of voter-education materials in local languages did not reach all areas. Those materials' impact was limited in terms of enhancing voters' understanding of critical aspects of the electoral process, such as the holding of a runoff presidential election if no candidate obtained more than 50 percent of votes cast and the role of mayors/council chairpersons. While the ECZ made a commendable effort to conduct voter education in the run-up to election, civil society and domestic observer groups expressed their view that ECZ's countrywide campaign of sensitization on the referendum should have commenced several weeks earlier to have the maximum impact.

149 The ZNWL in collaboration with the Anti-Voter Apathy Project (AVAP), Operation Young Vote (OYV), and Young Women in Action (YWA) has implemented the so-called Triple V Campaign (My Vote, My Voice, My

Victory), aimed at addressing voter apathy in Zambia, particularly among youth and women.

I Voter Registration

Voter registration is recognized as an important means to ensure the right to vote and should be made available to the broadest pool of citizens possible without obstacles to ensure universal and equal suffrage.¹⁵⁰ According to the constitution, all Zambians who have attained the age of 18, possess a national registration card, and are registered may vote in the general election.¹⁵¹ In preparation for the 2016 election, the ECZ held a registration drive from Sept. 14, 2015, to Feb. 29, 2016, to update the 2011 register of voters. Mobile voter registration teams traveled to registration centers (polling centers) across the country from mid-September through mid-November. Voters could additionally register at civic centers (council offices) through March 2016.

The Carter Center did not observe the voter registration process. However, the civil society organization Christian Churches Monitoring Group (CCMG) observed the exercise and concluded that the process met the standards of transparency, inclusiveness, and nondiscrimination.¹⁵² The verification exercise for the 2016 provisional register of voters, which took place May 15-25, 2016, was extended from seven days to 11, after parties criticized the initial time frame.



Registered voters in Zambia numbered 5,166,084 prior to the registration drive and climbed to 6,698,372 for the 2016 general elections. Although registration fell short of the ECZ's stated goal of registering 1.7 million new voters prior to the polls, the Center commends the ECZ for its efforts to conduct an inclusive process and to meet the requests of political parties to extend the voter registration exercise.¹⁵³

Some polling stations saw long lines of voters on election day.

150 UN, ICCPR, Art. 25(b); AU, Declaration on the Principles Governing Democratic Elections in Africa, Art. 1; UNHRC, General Comment 25

151 Sec. 19 of the Electoral Process Act (2016) disqualifies prisoners and those detained from voting, which is inconsistent with Article 46 of the 2016 constitution, which gives the right to vote to all citizens who have attained the age of 18 years and are registered as voters. Prior to the election, the Zambia Prisons Care and Counselling Association (PRISCCA)

sought an order to compel ECZ to ensure that prisoners on pretrial detention could exercise their right to vote.

152 CCMG, Report on Mobile Voter Registration Monitoring, Conclusion, p. 17

153 <https://www.lusakatimes.com/2015/07/04/ecz-targets-1-7-million-new-voters/>. https://www.elections.org.zm/general_election_2016.php

The ECZ received multiple requests from political parties and civil society organizations to conduct a voter registry audit. CCMG indicated its interest in conducting an audit of the voter registry, which the ECZ declined. In response to these requests, however, the ECZ facilitated the

The ECZ's efforts to conduct a voter registration drive and post the registry for public inspection were positive and helped to ensure the right of Zambian citizens to vote.

conduct of an independent audit of the voter registry by two technical experts from the United Nations. Some political parties complained that they were not given a chance to conduct their own audit of the voter registry.

The U.N. experts found significant flaws in the registry during its audit, which the ECZ released publicly. Among the findings: 132,837 voters shared the same national registration card (NRC) numbers; 2,555 voter registration records shared NRC numbers, names, and dates of birth; and 492 records shared all registration details, including the individual's place of birth and chiefdom. An NRC card is required to register and to vote. The ECZ informed the public on July 18 that all voters sharing NRC numbers would be allowed to vote as it is the responsibility of the National Registration, Passport, and Citizenship Department, the department that issues NRC numbers, to address such duplications. In addition, ECZ announced that the 2,555 cases involving shared NRC numbers were resolved by ECZ field agents, and double entries were purged accordingly.

The U.N. audit highlighted that the number of registered voters among youth between ages 18 and 24 was well below the projected eligible population. The widest gap occurred in the 20-24 age bracket, which had a registered population 39.04 percent lower than projected eligible voters. The reasons for this apparent underrepresentation of youth voters are unclear, and the audit recommended ECZ conduct a study to determine contributing factors.¹⁵⁴

CCMG observed that “the non-harmonization of the ECZ registration team with the national registration card issuance led to a lot of people failing to register.”¹⁵⁵ CCMG found that ECZ's targeted number of 1.7 million new registrations was not reached partly because the Department of National Registration, Passport and Citizenship (DNRPC) issued NRC cards in some rural constituencies only after the mobile voter registration exercise. This could have been a contributing factor to the failure of eligible young voters to register because they did not have an NRC card prior to the voter registration drive. CCMG recommended ECZ engage in robust civic education targeting youth who would be eligible to vote in the 2016 election. In addition, some individuals such as elderly citizens, persons with disabilities, or students were unable to register because they could not reach the ECZ's registration centers located in polling station venues or the civic centers during the voter registration drive.

According to projections conducted by the audit team using data from the Central Statistical Office, “the 2016 provisional register of voters possibly includes the particulars of more than 300,000 deceased voters since 2011, excluding 62,777 deceased voters removed since 2005.”¹⁵⁶ This problem remained unaddressed during the electoral period, as the ECZ was only able to remove 10,985 deceased voters from the register following the voter registration exercise.

154 Dismas Ongondi and Ben Chege Ngumi, Audit Report—Executive Summary Audit of the 2016 Provisional Register of Voters as of June 6, 2016.

155 Christian Churches Monitoring Group, Report on Mobile Voter Registration Monitoring and Long Term Observation Christian Churches Monitoring Group (CCMG) November 2015, p. 24

156 See Election Commission of Zambia, Audit Report—Executive Summary Audit of the 2016 Provisional Register of Voters as of June 6, 2016, p. 4

The register of voters was certified on July 31, 11 days before the election. In total, 19,960 entries were eliminated from the provisional voter registry during the verification exercise. The number of registered voters was 6,698,372, which represented a 29 percent increase over the number of registered voters in 2011. Lusaka has the highest number of voters (1,119,318), followed by Copperbelt (1,034,548) and Southern provinces (810,000).

The opposition alleged that significant numbers of foreign nationals were included in the provisional registry of voters. The audit concluded that no evidence was found to support these allegations. Registration records were associated with NRC numbers, and the audit experts found that the number of registered voters during the 2015-2016 registration drive was generally within the projected numbers of eligible voting population.

Conclusion

The ECZ's efforts to conduct a voter registration drive and post the registry for public inspection were positive and helped to ensure the right of Zambian citizens to vote. The registration was successful in substantially increasing the number of registered voters. A lack of coordination between national authorities, however, may have hindered citizens residing in certain areas from registering during the mobile registration drive in 2015, due to regulations requiring an NRC number to register. The ECZ's decision to facilitate an independent audit of the registry, make the findings public, and address some of the findings served to mitigate some of the concerns expressed by stakeholders and produce a more accurate voter registry. Allowing domestic observers to conduct an audit would have provided an additional, fully independent, and transparent check on the voter list, a step that could have proved useful given the concerns raised regarding the registry. While the ECZ was able to address some of the issues unearthed in the audit, work remains to remove deceased voters from the registry and to eliminate potential duplications.

I Civil Society

International standards for election observation maintain that civil society organizations (CSOs) should have the right and opportunity to participate in public affairs.¹⁵⁷ Domestic citizen observer organizations can play a key role in assessing the credibility of all phases of an electoral process. Several Zambian citizen groups carried out election observation missions for the 2016 election. The ECZ should be commended for accrediting domestic observer groups and supporting their efforts to play this role.

Several Zambian citizen groups carried out election observation missions for the 2016 election. The ECZ should be commended for accrediting domestic observer groups and supporting their efforts to play this role.

The Zambian Election Information Center (ZEIC), a coalition of eight CSOs, deployed observers to monitor various aspects of the electoral process. Observers deployed by the constituent CSOs included the following:

- Southern African Center for the Constructive Resolution of Disputes (SACCORD) and Foundation for Democratic Process (FODEP)

trained and deployed an estimated 9,000 pre-election monitors, and 5,500 of those observers were deployed on polling day to monitor the voting process.

- Media Institute of Southern Africa (MISA) trained approximately 150 media monitors to compile data throughout the electoral process tracking electoral coverage in public and private media. MISA released a series of reports on their findings, which demonstrated, among other things, the bias of public media in favor of PF.
- Transparency International-Zambia (TIZ) retained 50 observers to monitor the accountability and transparency of the electoral process.
- Non-Governmental Organizations Coordinating Council (NGOCC) deployed 246 Zambia National Women's Lobby observers to assess women's participation in the electoral process.¹⁵⁸

ZEIC focused primarily on the election day processes rather than results tabulation, and it coordinated with the ECZ and police to report and resolve incidents or issues that arose on election day. ZEIC also published data and reports addressing issues related to voter registration and political parties during the campaign period.¹⁵⁹ In its final report, ZEIC noted:

“The electoral process... was characterized by an atmosphere of tension, intimidation and political intolerance. The electoral code of

¹⁵⁷ AfCHPR, Chapter I, Art. 13(1)

¹⁵⁸ 2016 Zambia Election Final Report, p. 3

¹⁵⁹ <http://zambivote2016.org/>

conduct was by and large not respected. Some of the major concerns were the consistent incidences of violence, unequal media coverage, biased police conduct and participation of civil servants as well as abuse of public resources in the campaigns. . . [It] is imperative that the next government implements practical and genuine measures to unite the country after the election petition and the clear voting divide that manifested in the aftermath of the elections.”¹⁶⁰

The Christian Churches Monitoring Group (CCMG), working with the technical assistance of the National Democratic Institute (NDI), carried out a “parallel vote tabulation” (PVT) exercise that used a statistical sample of polling stations across Zambia. CCMG received presidential election results from 99 percent of its PVT monitors, who gathered the data from 1,395 polling streams in 997 polling stations. CCMG projected 50.2 percent for incumbent candidate Lungu (actual result 50.4 percent). CCMG projected 47.8 percent for opposition candidate Hichilema (actual result 47.6 percent). The margin of error for the sample was plus or minus 2.5 percent. The results broadly affirmed that the official results for the presidential elections were within a statistically credible range. The first PVT in Zambia was carried out in 1991, and regular exercises have been implemented in subsequent elections. CCMG also deployed long-term observers to monitor the pre-election and campaign environment and issued a series of statements and reports assessing various aspects of the electoral process.¹⁶¹

Based on data derived from its observers, CCMG issued statements assessing the polling station openings, voting and counting (Aug. 12),¹⁶² and results verification (Aug. 15).¹⁶³ In its Aug. 15 results verification statement, “CCMG affirm[ed] that its PVT estimates for the presidential election are consistent with the ECZ’s official results. All stakeholders, particularly political

parties, that participated in the election should have confidence in the ECZ’s presidential results.”

Notwithstanding this assessment of the ECZ results, CCMG reiterated strong concern about the pre-election environment, which it initially expressed in its Aug. 12 statement. CCMG stated that it was “extremely concerned about the pre-election environment in advance of the 2016 general elections. While the pre-election issues did not call into question the credibility of the overall electoral process, the 2016 general elections represent a step backward for the country.”

Civil society groups play an important role in observing all aspects of Zambia’s electoral process and supporting informed citizen participation in Zambia’s elections.

Conclusion

The participation of observers enhances all aspects of the electoral process.¹⁶⁴ Civil society groups play an important role in observing all aspects of Zambia’s electoral process and supporting informed citizen participation in Zambia’s elections. Through direct observation of stakeholder engagement, periodic reporting on the various stages of the process, and voter education, civil society organizations provide an independent interlocutor scrutinizing and strengthening democratic institutions. Domestic observer groups should be provided full access to all aspects of the election and be vigilant in their role as independent observers.

¹⁶⁰ ZEIC Final Report, pp. 36-37

¹⁶¹ <http://ccmgzambia.org/category/elections/>

¹⁶² <http://ccmgzambia.org/2016/08/12/ccmg-postelection-preliminary-statement/>

¹⁶³ <http://ccmgzambia.org/2016/08/15/ccmg-verification-statement-15th-august-2016/>

¹⁶⁴ UNHCR, General Comment 25, para. 20

Vote Percent Differential: 2015 to 2016

	PF Pct Change	UPND Pct Change	Other Parties Pct Change
Central	1.0%	1.8%	-2.8%
Copperbelt	-9.0%	10.9%	-2.0%
Eastern	13.1%	-8.8%	-4.3%
Luapula	-1.7%	3.5%	-1.9%
Lusaka	-1.4%	2.9%	-1.5%
Muchinga	2.2%	2.9%	-5.2%
Northern	-2.6%	4.3%	-1.7%
North-Western	0.9%	1.0%	-1.8%
Southern	0.5%	0.9%	-1.4%
Western	0.9%	1.0%	-1.9%

The tightly contested election and results also suggest the potential for ethnic polarization. Zambia comprises 72 ethnic groups. Every Zambian is intimately familiar with the motto One Zambia, One Nation, which dates to the Kaunda administration and which seeks to foster a national identity over an ethnic identity. In significant measure, the implementation of the one-party state in 1972 was intended to counteract encroaching ethnic divisions. The constitution and the Electoral Act enshrine the ideal of a national identity by prohibiting political appeals

on the bases of ethnicity, geography, or religion. Based on the results of the 2016 election, the political homogeneity envisioned by the motto may remain more aspirational than actual.

The results of the 2016 presidential and parliamentary elections (see table below) indicate that support for PF and UPND is largely regional, with only Central province being marginally competitive. Even that result, however, is deceptive—Central province essentially runs east and west, with half of the province lying within each party's geographic stronghold.

2016 Election Results – By Province

	Presidential		Parliamentary				
	PF	UPND	PF	UPND	IND	MMD	FDD
Central	43.1%	55.4%	6	6	1	2	0
Copperbelt	63.6%	34.9%	17	2	3	0	0
Eastern	78.9%	16.4%	14	0	3	1	0
Luapula	81.9%	14.3%	13	0	1	0	1
Lusaka	60.2%	38.8%	8	4	2	0	0
Muchinga	83.3%	13.5%	10	0	0	0	0
Northern	74.9%	21.8%	12	0	1	0	0
North-Western	12.0%	86.8%	0	12	0	0	0
Southern	7.5%	91.8%	0	18	0	0	0
Western	16.6%	81.6%	0	16	3	0	0
National	50.4%	47.6%	80	58	14	3	1

These regional voting blocs are not a new development within Zambian politics. Rather, although support for various parties has shifted across the elections held since 1991, party support has increasingly been clustered in ethno-geographic patterns.

The “50 percent plus one” electoral reform—which was intended to give greater legitimacy to the president-elect by requiring a majority of voters rather than a plurality—may have inadvertently exacerbated the country’s polarization as political parties sought to achieve or prevent a first-ballot victory, and voters seemingly were less willing to vote for candidates of the smaller parties given the political stakes at hand in the first ballot. The resulting movement toward a binary political alignment may have fostered an increased ethno-geographic political identity and competition than had been the case under the “first past the post” system. As a result, substantial segments of the UPND electorate felt that their candidate had been wrongly deprived of his rightful mandate. Certainly, in 2016, the two primary parties gained

support at the expense of the other parties rather than drawing away supporters from each other. Consequently, Zambia has had two consecutive elections with essentially the same electoral alignments, which has seemingly fostered greater, direct, head-to-head political conflict, which has regrettably taken on ethnic overtones to a degree that most have not previously experienced.

It is incumbent upon Zambia’s political leaders to support unity in the country and counter ethnic divisions. This can be accomplished through activities such as reaching out to build diverse, broad-based party membership and growing their support based on party platforms that are inclusive and that lay out clear government policies and prescriptions for strengthening Zambia’s democratic institutions. Continued polarization, inflammatory rhetoric, and fanning of ethnic-based divisiveness will only increase the likelihood for intense political conflict in subsequent elections.

I Referendum on the Bill of Rights

The constitutional referendum on the Bill of Rights was held alongside the elections, reportedly to avoid costs of holding a separate referendum. There was significant confusion around the referendum, including the conflating of two separate substantive issues onto one yes/no ballot and questions regarding the threshold of participation necessary for the referendum to pass. The referendum ballot became highly politicized, with the ruling PF campaigning for a “yes” vote and the opposition UPND campaigning for a “no” vote.

International good practice suggests that voters should not be asked to vote simultaneously on several issues without any intrinsic link, given that they may be in favor of one issue and against another.¹⁶⁵ The referendum attempted to cover two essentially different issues in one question with a simple yes/no vote, contravening international guidelines.

The referendum question—“*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?*”—asked voters to vote on (1) amendments to the Bill of Rights aimed at enhancing human rights provisions, particularly economic and social rights, and (2) repeal of Article 79, which regulates the process for future constitutional amendments, and replacing it with proposed Article 303, which would allow only

The referendum question was unclear, and voters expressed concerns that they did not understand its content.

registered voters the right to vote in a constitutional referendum and specified which articles do not require amendment through a referendum.

The referendum question was unclear, and voters expressed concerns that they did not understand its content. Comprehensive voter education on the referendum was limited in the short time frame before the elections, also falling short of international standards since electors were unable to make an informed vote with a full understanding of the impact of their vote.

The referendum vote required a threshold of 50 percent participation of all *eligible* voters for it to be considered a valid electoral event. In their voter education materials, ECZ stated that in order for the referendum to pass more than 50 percent of eligible voters also had to vote yes on the question posed in the referendum. However, shortly before the announcement of the results, ECZ provided additional clarification that only a majority of the 50 percent eligible voters *who participated in the referendum* had to vote in favor of it for it to

¹⁶⁵ Code of Good Practice on Referendums adopted by the Council for Democratic Elections at its 19th meeting (Venice, December 16, 2006) and

the Venice Commission at its 70th plenary session (Venice, March 16-17, 2007) (CDL-AD (2007)008e)

pass. Given the highly partisan and politicized campaigning around the referendum, this change so late in the process served to exacerbate confusion and cast further doubt on the competency and impartiality of the ECZ.

Ultimately the referendum vote did not meet the 50 percent participation threshold requirement of eligible voters.

Eligible voters for the referendum consisted of all Zambians who attained the age of 18 and possessed a national registration card; they did not need to be registered voters. In order to define the total number of eligible voters for the referendum, ECZ relied on data provided by the Central Statistical Office. This office provided estimates of the number of eligible voters to the ECZ by applying the cohort component method with population projections based on the 2010 Census

of Population and Housing, considering data on births, deaths, and migration. From the projected total population of 15,933,883, the Central Statistical Office estimated that 7,528,091 adult Zambians qualified to vote in the referendum.¹⁶⁶ Basing the number of eligible voters on a statistical projection from the 2010 census introduced a level of uncertainty regarding its accuracy.

Ultimately the referendum vote did not meet the 50 percent participation threshold requirement of eligible voters. Of those who voted in the referendum, 1,852,559 voted in favor of it, while 753,549 voted against it. An additional 739,363 referendum ballots were rejected—almost nine times as many as the presidential race ballots rejected and almost equal to the number of votes cast against it—signaling either poor voter education efforts or a significant number of protest votes cast by opposition supporters to prevent the ruling party from a political win. The PF and President Lungu had strongly advocated its passage.

¹⁶⁶ The projected total population for 2016 (15,933,883) already appeared as the medium variant projection in a report released by the Central

Statistical Office in July 2013.

Conclusion

Zambia's highly contentious 2016 elections suffered significant flaws in the pre- and postelection periods. These problems exacerbated political polarization, weakened public confidence in the country's democratic institutions, and ultimately undermined the integrity of the overall electoral process.

During the pre-election period, opposition parties did not enjoy a level playing field. Their ability to campaign around the country, including in Lusaka, was constrained by travel bans and the overly broad and biased application of the Public Order Act. Their access to, and coverage by, public media was severely limited. Private media houses were subjected to repression, also limiting the ability for opposition parties to get their messages out to potential voters. Political party cadres intimidated supporters of opposing parties, and in some instances interparty conflicts escalated to acts of violence that resulted in destruction of property, injury, and in some cases loss of life. Leaders from the two main political parties used inflammatory rhetoric, fanning polarization and tensions. The ECZ did not exert its authority established through the Electoral Code of Conduct to address many of these pre-election concerns.

Opposition parties questioned the independence of the ECZ, given the president's role in appointing its members. The commission worked to mitigate party concerns through ongoing communications with party representatives and took steps at key moments of the process to

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engender greater trust and increase transparency of key stages of the process. Examples include sponsoring party representatives' travel to observe the printing of the ballots following disagreements over the procurement selection process; conducting an independent audit of the voter registry; and allowing party representatives to observe the vote verification process during tabulation. The ECZ accredited domestic citizen and international observers and agreed to the conduct of a parallel vote tabulation (PVT), adding additional transparency to the process. Despite a truncated election calendar and an election that included five separate ballots, ECZ administered a generally smooth election day.

Large numbers of voters wait outside a polling place.

Unfortunately, the tabulation and verification process was fraught with problems. The results management process experienced delays and breakdowns at some steps. Final presidential results were announced four days after polling day in the wee hours of the morning, with the ruling PF narrowly attaining the 50 percent plus one threshold to avoid a runoff. The results are consistent with the findings of the PVT conducted by CCMG and fall within the latter's 2.5 percent margin of error. The environment of distrust, political posturing, and tension caused some to further question the ECZ's role as a neutral, impartial actor.

Priority should be placed on reforms that strengthen the legal framework, ensure a level playing field for all political parties, support transparent and effective election management, and provide effective legal remedy for election-related disputes.

The opposition party UPND challenged the presidential results. The Constitutional Court failed to provide clear timelines for the court to resolve the matter. Ultimately, the court dismissed the case on procedural grounds, failing to hear the merits of the case and rule on the validity of the elections. The electoral dispute process failed

to provide a fair hearing and effective and timely legal redress.

While it is difficult to quantify precisely the impact of the flaws in the pre- and postelection period, they undermined stakeholder confidence in the electoral process and more broadly Zambia's democratic institutions. The climate of violence and fear exhibited during the election further served to heighten polarization and insecurity in some communities.

It is essential that all Zambians, especially governmental authorities including the Electoral Commission of Zambia and the Constitutional Court and opposition political leaders, engage one another peacefully and work to find constructive ways forward. Significant reforms should be enacted well in advance of the 2021 election to ensure public trust in the electoral process and credible elections. Priority should be placed on reforms that strengthen the legal framework, ensure a level playing field for all political parties, support transparent and effective election management, and provide effective legal remedy for election-related disputes.

It is incumbent upon political leaders from all parties to play a constructive role in strengthening the country's democratic institutions. Political leaders should also work to lessen tensions, address divisions, and mitigate the prospects for electoral violence in future elections.

I Recommendations

Recommendations to the Electoral Commission of Zambia

The ECZ should put into place and implement clear procedures and protocols to ensure compliance with the Electoral Code of Conduct by all relevant electoral stakeholders.

The ECZ should consider reforming Zambia's constituency boundaries to ensure that there is a more equal distribution of voters per constituency. International standards regarding equal suffrage, and provisions in the constitution, ensure an adequate representation for urban and rural populations. An increase in the number of constituencies in densely populated urban areas such as Lusaka should be closely considered.

For future elections, the maximum number of polling streams per station should be limited, and the ratio of voters per stream should be reduced substantially. In turn, the ECZ should consider increasing the number of polling stations country-wide, preferably in a greater number of venues to ensure that polling stations and streams are able to accommodate the number of registered voters.

The ECZ in collaboration with the DNPRC should ensure that all irregularities identified in the 2016 audit are addressed prior to the next registration drive ahead of the 2021 general election. An independent audit should be conducted in a timely manner and well ahead of the 2021 general election to verify the accuracy of the voter registry.

Domestic observer groups should be provided accreditation to observe all phases of the electoral process to ensure transparency and independent

Sarah Johnson



Polling station officers seal the ballot boxes and sensitive materials after finishing the ballot count.

assessments of election administration and management.

Prior to the 2021 polls, the ECZ and civil society groups should conduct voter education campaigns to raise awareness of the new electoral system and election-related constitutional amendments, including the changes related to the roles of the vice president, mayors, and council chairpersons, as well as the possibility and implications of a presidential runoff.

For future referenda, questions should be clearly articulated. Effective voter education campaigns should be implemented in a timely manner, and eligible voters entitled to vote should be those entitled to vote in the general election.

Procedures regarding the candidate nomination fee structure should be put into place to ensure that eligible citizens in all parts of the country can exercise their right to run for office and are not hindered by cost or inability to submit payments.

Regulations should include provisions regarding the time and conditions for the withdrawal of registered candidates. Candidate withdrawal should not trigger new elections. The election timeline should be adequate to finalize candidate nomination prior to the start of the official campaign period to ensure all candidates an equal opportunity to campaign.

Effective cooperation between district CMCs and the national level CMC should be established to efficiently and effectively address issues arising in the course of their actions. Disputes should be addressed in a timely manner with reasoned decisions made in writing and published. The mandate and procedures of the CMCs should be clear and should ensure that its role does not overlap with those of police and courts.

The ECZ should impose appropriate sanctions against candidates and parties who incite violence and inflame ethnic conflict in contravention of the Zambian Constitution, Electoral Act, and Electoral Code of Conduct.

The ECZ should establish publicly verifiable and transparent procedures for procurement of essential election materials such as ballot papers to prevent corruption and any perception thereof. ECZ procurement tenders should be audited by an independent body.

The ECZ and the judiciary should efficiently, effectively, and equitably enforce constitutional and electoral provisions regarding the use of official resources for campaign purposes.

For future elections, the ECZ should ensure that its procedures are amended to protect the secrecy of the ballot according to Zambian law and international treaties.

The ECZ should review and amend the Service Commissions Act's section on appointing and transferring officials who administer the polls at the province and district levels. These procedures should be transparent and free from political interference.

The ECZ should further refine processes for engagement with electoral stakeholders to increase transparency, accountability, and public

confidence in the institution. This should include regular updates to the public on election planning and administrative developments.

As recommended by the Carter Center mission in 2001, ECZ should provide an official document well in advance to specify the guidelines, procedures, and timelines for the results verification process, including conditions for postponement and appeals, and effectively supervise the process.

The Electoral Process Act and ECZ verification procedures should be amended to ensure that observers are granted full access to the verification process. The ECZ should provide adequate facilities for a reasonable number of party agents and observers to follow the process effectively.

ECZ should work with civil society advocates and political parties to bolster their efforts for the 2021 election, including specific efforts to increase the number of persons with disabilities who engage as election staff, voter education trainers, and party candidates.

Recommendations to the Executive Branch

A mechanism should be implemented to enforce the gender equality requirement enshrined in the constitution regarding women's ability to run for public office.

ECZ commissioners should be appointed based upon nominations from civil society and political parties represented in parliament and subject to removal only following due process of law.¹⁶⁷

The Public Order Act should be reformed to ensure that all citizens' rights, regardless of political affiliation, are protected while maintaining law and order. The Zambia Police Force should provide protection against intimidation and violence for all Zambians and exercise neutrality in its application of the law.

The roles of the Electoral Commission of Zambia and the Zambia Police Force in enforcement of the Electoral Act/Code of Conduct should be reviewed and clarified. Both institutions should administer their roles impartially and without undue influence.

¹⁶⁷ As the Carter Center mission also recommended in 2001. See The Carter Center, *Observing the 2001 Zambia Elections*, pp. 57-58.

The independence of both public and private media should be ensured and protected. Media houses should not be subject to arbitrary suspensions of licenses or undue influence.

The remaining number of judges for the Constitutional Court should be appointed to ensure the operational capacity of the court. Procedures of appointment should be detailed and protect the independence and competency of the judiciary to ensure the proper functioning of dispute resolution processes. Suggestions by the political parties represented in the parliament and civil society groups of potential judges should be considered.

Recommendations to Parliament

A comprehensive review of election-related laws and regulations should be undertaken and implemented to address gaps, inconsistencies, and ambiguities existing in the current legal framework. This should be a consultative process inclusive of all electoral stakeholders and completed well in advance of the 2021 election. All electoral laws and regulations should be promulgated with transparency and well in advance of the start of the electoral process.

The Electoral Process Act should be amended to ensure that observers are granted full access to the verification process.

Campaign finance should be reformed before the next election. The law should include limits on campaign spending and a mechanism for transparent publication of all financing of campaign activities. An enforcement mechanism should also be put in place to sanction those who violate campaign finance regulations.

Rules and procedures for candidate nomination, including verification of G12 certificates, should be clear and regulated sufficiently in advance of elections to ensure consistency and legal certainty, and support fairly and equitably the exercise of one's right to seek office.

The electoral acts in Zambia should be brought into conformity with Article 46 of the amended constitution to allow prisoners and detainees in Zambia to exercise their right to vote in forthcoming elections.

Recommendations to the Constitutional Court

The Constitutional Court should provide clear guidance to all parties on all election-related matters well in advance of an electoral event. Further, the court should refrain from making inconsistent and contrary decisions in order to follow due legal process and guarantee effective legal redress.

In order to enhance transparency and accountability, the court should take a proactive approach in providing information to the general public on the course of the proceedings.

Recommendations to Security Forces

The Zambia Police Force should protect media houses, especially community radio, against intimidation, harassment, and vandalism of equipment to ensure all voices can be heard.

The Zambia Air Force and Zambia Police Force must grant reasonable and equitable approval for travel and rally plans and introduce clear and reasonable guidelines regarding time and space to avoid conflict without inhibiting freedoms of movement and assembly.

Recommendations to Political Parties

Political parties should expand their bases beyond regional strongholds and work with other parties and stakeholders to address the issue of political and ethnic polarization to deter conflict.

Political parties should take concrete steps to ensure gender balance on their party lists.

Political party leaders should refrain from inflammatory language and should support efforts to lessen the distribution of misleading and incorrect information. Party leaders should take an active role in preventing political cadres from engaging in intimidating, violent, or inflammatory actions.

Appendix A

Acknowledgments

The Carter Center would like to express its appreciation to several individuals and organizations for their efforts in support of the 2016 Zambia election observation mission.

The Center thanks the government of Zambia for its invitation to observe and evaluate the 2016 general elections and the Electoral Commission of Zambia and the Constitutional Court for these institutions' collaboration during the electoral process. The Center also thanks political party and civil society representatives who generously met with the observer mission to provide information, insights, and observations over the course of the election observation program.

The Center appreciates the funding provided by the U.S. Agency for International Development, which enabled the Center's limited observation of the electoral process for the pre- and postelection periods, both critical parts of the overall electoral process.

The Center extends its thanks to mission co-leaders Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi, and Jordan Ryan, vice president of the Center's peace program, and to Ms. Christine Mbonyingingo, member of the leadership team, for their hard work and dedication. Their guidance, experience and insights strengthened greatly the Center's observation efforts.

The Center benefited from the expertise and dedication of the field team, consisting of team

leader and electoral analyst Rachel Fowler, electoral analyst and observer coordinator Andreu Sola Martin, legal analyst Kseniya Dashutina, and political analyst Reed Slack. The core team was joined by four medium-term observers: Monica Luongo from Italy, Lydia Macheli from Lesotho, Djilio Kalombo from South Africa, and Steve Wagenseil from the United States. The Center recognizes their tireless efforts and invaluable contributions to the observation effort. The Center benefited greatly from political analysis and insights provided by senior political consultant Scott Taylor.

The Center expresses its gratitude to the local field staff: political officer Hilary Fyfe, accountant George Mwamlima, and logistics officer Muki Muyovwe. Thanks are also extended to the drivers who assisted the field team and MTOs over the course of the mission. Their work helped the field team to mobilize quickly.

The mission was supported by several Carter Center Atlanta staff who worked diligently to ensure a successful mission, including: Sarah Johnson, Soyia Ellison, William Hassall, Ben Spears, David Carroll, Tynesha Green, Ramiro Martinez, and Lindy Ann Wright. Interns Isaiah Sciford and Clay Strickland provided invaluable research, administrative, and logistical support for the mission.

Appendix B

Carter Center Delegation and Staff

Mission Leadership

Sylvie Kinigi, Former Prime Minister of Burundi
Jordan Ryan, Vice President, Carter Center
Peace Programs

Atlanta Staff

David Carroll, Director, Democracy Program
Matthew Cirillo, Accounting Manager, Grants
and Contracts
Soyia Ellison, Associate Director,
Communications
Tynesha Green, Program Assistant,
Democracy Program
William Hassall, Program Associate,
Democracy Program
Dottie Hunt, Senior Program Associate,
Democracy Program
Sarah Johnson, Associate Director,
Democracy Program
Erika Lee, Program Assistant, Democracy Program
Ramiro Martinez, Associate Director, Finance
Jennifer Phillips, Program Assistant,
Democracy Program
Isaiah Thomas Sciford, Intern,
Democracy Program
Tara Shariff, Senior Associate Director,
Development

Ben Spears, Program Associate, Democracy
Program
Clay Strickland, Intern, Democracy Program
Scott Taylor, Senior Political Adviser
Lindy Ann Wright, Financial Analyst

Zambia International Staff

Rachel Fowler, Field Office Director,
Electoral Analyst
Kseniya A. Dashutina, Legal Analyst
Reed Slack, Political Analyst
Andreu Sola Martin, Observer Coordinator/
Electoral Analyst

Zambia National Staff

George Mwamlima
Hilary Mulenga Fyfe
Muki Muyovwe

Medium-Term Observers

Steven Wagenseil, United States
Monica Luongo, Italy
Djilio Kalombo, South Africa
Lydia Macheli, Lesotho

Appendix C

Terms and Abbreviations

ARO	Assistant returning officer	NDI	National Democratic Institute
BBC	British Broadcasting Company	NGO	Nongovernmental organizations
CCMG	Christian Churches Monitoring Group	NRC	National Results Center
CMC	Conflict Management Committee	PEMMO	Principles for Election Management, Monitoring and Observation
CSO	Civil society organization	PEO	Provincial electoral officer
DEO	District electoral officer	PF	Patriotic Front
DNPRC	Department of National Registration, Passport and Citizenship	POA	Public Order Act
ECZ	Electoral Commission of Zambia	PVT	Parallel vote tabulation
EDR	Electoral dispute resolution	RMS	Results management system
EMB	Electoral management body	RO	Returning officer
FDD	Forum for Democracy & Development	SACCORD	Southern African Centre for the Constructive Resolution of Disputes
FODEP	Foundation for Democratic Process	SADC	Southern African Development Community
GBM	Geoffrey Bwalya Mwamba	TIZ	Transparency International Zambia
GDP	Gross domestic product	UDF	United Democratic Front
GSM	Global Systems for Mobiles	UPND	United Party for Nationalist Development
HH	Hakainde Hichilema	VEF	Voter education facilitator
HRC	Human Rights Commission	ZEIC	Zambia Election Information Center
IBA	Independent Broadcasting Authority	ZNWL	Zambia National Women's Lobby
LAZ	Law Association of Zambia	ZPF	Zambia Police Force
LTO	Long-term observer	ZPPA	Zambia Public Procurement Act
MISA	Media Institute of Southern Africa	ZRA	Zambia Revenue Authority
MMD	Movement for Multi-Party Democracy		
MP	Member of Parliament		

Appendix D

Electoral Results

Official Results of Zambia's 2016 Presidential Election

Registered voters	6,698,372
Number who voted	3,781,505
Valid votes	3,695,710
Invalid ballots	85,795
Turnout	56.45%

Candidates	Political Party	Votes
Lungu, Edgar C	PF	1,860,877
Hichilema, Hakainde	UPND	1,760,347
Nawakwi, Edith Z	FDD	24,149
Banda, Andyford M	PAC	15,971
Kabimba, Wynter M	RAINBOW	9,504
Chishimba, Saviour	UPP	9,221
Kaunda, Tilyenji C	UNIP	8,928
Sinkamba, Peter C	GREENS	4,515
Mwamba, Maxwell	DA	2,378

Political Party Abbreviations

Patriotic Front (PF)

United Party for National Development (UPND)

United National Independence Party (UNIP)

Forum for Democracy and Development (FDD)

Rainbow Party

United Progressive Party (UPP)

Green Party of Zambia (GREENS)

People's Alliance for Change (PAC)

Party Democratic Assembly (DA)

Letter of Invitation to Observe



EMBASSY OF THE REPUBLIC OF ZAMBIA

2200 R Street, NW
Washington, DC 20008

TEL : (202) 265-0757/(202) 265-0213
: (202) 265-9717
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EMAIL : embzambia@aol.com
WEBSITE: www.zambiaembassy.org

ZEW/101/1/13

21st June, 2016

Sarah Johnson
Associate Director
The Carter Center
ATLANTA, GEORGIA 30307

RE: **INVITATION TO OBSERVE ZAMBIA'S FORTHCOMING TRIPARTITE ELECTION
TO BE HELD ON 11TH AUGUST, 2016**

The Mission in Washington DC is in receipt of a self-explanatory letter from the Acting Minister of Foreign Affairs, being response to your letter dated June 14, 2016 on the above subject.

This response from the Acting Minister of Foreign Affairs is forwarded to you for your attention and action.

A handwritten signature in black ink, appearing to read 'James Chisenga'.

James Chisenga
For/**CHARGE D' AFFAIRES a.i.**

Telephone: 211 252718
211 252708
211 252675
Telegrams: FOREIGN, LUSAKA



REPUBLIC OF ZAMBIA

MINISTRY OF FOREIGN AFFAIRS

P.O. BOX 50069, LUSAKA

MFA/104/21/43

20th June, 2016

Sarah Johnson
Associate Director
The Carter Center
ATLANTA, GEORGIA

**RE: INVITATION TO OBSERVE ZAMBIA'S FORTHCOMING TRIPARTITE
ELECTION TO BE HELD ON 11TH AUGUST, 2016**

I wish to acknowledge receipt of your letter dated 14th June, 2016 in which you request to observe the General Elections scheduled to be held on 11th August, 2016.

In view of the above, I wish to extend an invitation to you to send an international Electoral Experts Mission to observe the elections. You may, therefore, wish to urgently obtain accreditation and further information from the Electoral Commission of Zambia.

I am hopeful that your objective judgment will attach significant legitimacy to the outcome of the electoral process and its alignment with principles of electoral democracy.

Please accept the assurances of my highest consideration and esteem.



Hon. Given Lubinda

ACTING MINISTER OF FOREIGN AFFAIRS

Mission Statements



FOR IMMEDIATE RELEASE

July 29, 2016

Contact: In Lusaka, Rachel Fowler, rachel.fowler@cartercenter.org

Carter Center Launches Limited Election Mission to Zambia

LUSAKA, ZAMBIA — At the invitation of the Ministry of Foreign Affairs, The Carter Center has launched a limited international election observation mission for Zambia's Aug. 11 elections and national referendum on the Bill of Rights.

The mission is accredited by the Electoral Commission of Zambia to observe the presidential, legislative, and local elections, as well as the referendum, and is staffed by a four-person core team in Lusaka. An additional four medium-term observers have been deployed to assess electoral preparations and developments on the provincial level. They will be joined by additional observers on election day.

Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi, will lead the Carter Center's mission. As Burundi's first female prime minister (and the first woman to be acting president of an African nation), she directed the country's first negotiations during the political crisis in 1994 and has been engaged in good governance and conflict resolution in her country and the region since that time.

"I am coming to Zambia to show that the world is watching the polls, and to give testimony of Africa's hope for an additional victory of democracy in which all Zambians, men and women, can participate to the benefit of all," Kinigi said.

Members of the mission will hold regular meetings with key stakeholders, including political party candidates, civil society organizations, citizen election observers, members of the international community, and representatives of the electoral commission. The Center's electoral mission is limited in nature and will not offer a comprehensive assessment of the electoral process and election day proceedings. It will focus on the legal framework, election administration, general political environment, electoral violence, and resolution of any electoral disputes.

The Center will release public statements on key findings and recommendations, which will be available at www.cartercenter.org.

The election mission is conducted in accordance with the Declaration of Principles for International Election Observation, which provides guidelines for professional and impartial international election observation. The declaration was adopted at the United Nations in 2005 and endorsed by more than 40 election observation groups. The Center assesses the electoral process based on Zambia's national legal framework and its obligations for democratic elections contained in regional and international agreements.

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**JOINT STATEMENT BY AFRICAN AND INTERNATIONAL ELECTION OBSERVATION
MISSIONS TO THE 11TH 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 also 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 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

NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

ELECTION OBSERVATION MISSION ZAMBIA, GENERAL ELECTIONS AND REFERENDUM, AUGUST 2016

PRELIMINARY STATEMENT

Carter Center Expresses Concerns Regarding Pre-Election Environment and Urges Patience While Results Come In

August 13, 2016 Lusaka

Contact: Rachel Fowler, Lusaka, +260 (0) 96 817 8434

This statement is preliminary; a final report will be published four months after the end of the electoral process.

Executive Summary

The Zambian general elections and referendum were held Aug. 11, 2016. The pre-election and campaign period was characterized by significant interparty tensions and polarization, exacerbated by the introduction of a new electoral framework, a referendum on the Bill of Rights and constitutional amendments held in parallel, and an untested legal framework. Widely reported incidents of violence increased tension between political parties and their supporters, especially in the weeks preceding election day. Media bias and the absence of a level playing field were among the most significant challenges of the electoral period. Civil society organizations played a key role in observing and reporting on the process.

Voting was reported as largely peaceful, with initial reports suggesting a high voter turnout. The prevailing calm on election day, despite the large crowds, reflects the extraordinary efforts of polling agents, police and voters to ensure an orderly and inclusive process.

At the time of writing, delays in the announcement of results have led some stakeholders to raise anew concerns about transparency of the process. Although these complaints may prove premature, we note with concern a renewed environment of tension and mistrust. We urge the Electoral Commission of Zambia to release results in the most expeditious and transparent manner possible and to communicate regularly as the results are received and verified.

Though the Aug. 11 election has concluded, the weeks ahead will pose a critical test to Zambia's democratic institutions. The country still faces significant challenges as its nascent dispute-resolution processes will surely be tested for the first time. Politicians and their supporters must seek to utilize legal means of redress, such as the new Constitutional Court, to address their concerns about the process.

Legal Framework and Electoral System. The electoral legal framework was significantly amended in January and June 2016. These amendments changed the presidential electoral system, established a fixed election date, modified candidate nomination requirements; altered the timeline for post-election petitions and presidential inauguration, and established the Constitutional Court. Regulations governing the new electoral process were adopted only two days before the elections. The timing and manner of the adoption of these amendments and regulations introduced gaps and inconsistencies in the legal framework, hindered understanding of the legal framework, and undermined the ability of electoral stakeholders to fulfill their respective functions. Enacting such substantial amendments so close to an election is at odds with international good practice.

Election Administration. An independent and impartial election management body promotes transparency and facilitates citizen participation in a genuine democratic process. The ECZ is composed of a chairperson, vice-chairperson, and three other members appointed by the president and subject to parliamentary ratification; however, the president holds the power to remove fulltime members. As The Carter Center first noted in its 2001 election observation report,¹ the president's prerogative to appoint and dismiss ECZ members contributes to mistrust that the electoral body is free from political interference. Thus, the system for appointing ECZ members is inconsistent with best practices for recruiting election officials.

Electoral Constituencies. International best practices recommend that constituency boundary delimitations and seat allocations should ensure that voters are represented in the legislature in roughly equal population ratios. Following the 2011 elections, 31 new districts were created. The ECZ subsequently proposed, and the cabinet approved, new constituency delimitations to accommodate the new districts. Contrary to the principle of equal suffrage, Lusaka province has constituencies with a more than a tenfold population variance— for example, Feira with 13,327 voters and Mandevu with 148,889. Lusaka province has an average constituency population more than double that of the newly created Muchinga province.

Voter Education. Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ made a commendable effort to conduct voter education, CSOs and political parties indicated that voter education efforts were insufficient, particularly outside major urban centers. They also indicated that materials in local languages did not reach all areas and that the campaign on the referendum should have started several weeks earlier to better inform voters. A number of CSOs also conducted voter education across the country, though limited resources made it difficult to conduct adequate education programs.

Voter Registration. In preparation for the 2016 general election, the ECZ held a registration drive from Sept. 14, 2015, to Feb. 29, 2016, to update the 2011 register of voters. Mobile teams conducted the voter registration drive, travelling to polling centers across the country. The Carter Center did not observe the voter registration process; however, CCMG, a local CSO, did observe and concluded that the registration process was adequate. The verification exercise took place May 15-25, 2016, and was extended from seven to 11 days after political parties criticized the ECZ for not providing voters with sufficient time to verify their details.

¹ The Carter Center deployed election observation missions in 1991 and 2001, and released the following reports in addition to preliminary statements regarding the process: “The October 31, 1991, National Elections in Zambia,” and “Observing the 2001 Zambia Elections, 2001.”

In response to concerns raised by political parties and CSOs, the ECZ carried out an independent audit of the voter registry. Although the audit found certain issues related to shared and duplicated information and deceased voters, the ECZ concluded that the register was adequate for conducting the election. These issues should be addressed by the ECZ and relevant ministries following the conclusion of the election.

Referendum. The 2016 election included a public referendum that proposed to amend the Bill of Rights and certain provisions regarding the election and appointment of government officials, including the president, vice president, ministers, and provincial ministers. Zambians who had attained the age of 18 and possessed a national registration card were eligible to vote on the referendum, whether or not they were included on the register of voters. While the Center recognizes that the desire to minimize costs was the rationale for including the referendum with the general election, substantial confusion arose among both electoral stakeholders and the electorate over both the substantive provisions of the referendum and the procedural requirements for a valid exercise.

Candidate Eligibility and Nomination. Several candidate nomination requirements hinder the right to stand on an equal basis. Constitutional amendments introduced a new requirement of minimal academic qualification of a Grade 12 (G12) certificate or its “equivalent,” which disproportionately affected female and rural aspirants who may not have had enjoyed equal educational opportunities as male and urban aspirants. In addition to the G12 requirement, monetary fees for candidate nomination were raised substantially and were viewed by interlocutors and stakeholders as being excessive and unreasonable barriers to candidacy, especially for women and youth who may face greater challenges in raising the required, non-refundable fees.

Candidates, Parties, and the Campaign Environment. Political pluralism and genuine voter choice are critical aspects of democracy. Equitable treatment of candidates and parties and the maintenance of an open and transparent campaign environment are important to ensuring the integrity of democratic elections. Electoral stakeholders expressed concerns regarding a lack of a level playing field for opposition parties, with the most serious issues being the inequitable application of the Public Order Act, media bias, campaign use of official resources, the interference with opposition rallies and travel.

The competitiveness of the campaign, the new “50 percent +1” format, and the decamping of former PF officials to UPND further heightened political tensions and increased the potential for electoral violence. Candidates from PF and UPND both made statements that further inflamed political tensions, and there were widespread reports of conflict and violence among party cadres. A concerning trend of cadre wearing military fatigues was also noted. While many reports of electoral violence could not be confirmed, there were a significant number of verified episodes, including the death of a UPND supporter shot by police in Lusaka, the hospitalization of a UPND bus driver injured when PF cadres attacked a UPND campaign bus with stones, and an attack on election day that led to the hospitalization of a PF supporter in Southern province. Both PF and UPND alleged that the other party was responsible for the electoral violence or that the violence attributed to them was perpetrated by people impersonating their party cadres.

Media Environment. The media play a critical role during democratic processes by enabling political parties to communicate with voters. As noted above, media bias was one of the most significant challenges during the campaign period. The Media Institute of Southern Africa

(MISA) implemented a comprehensive media monitoring project, and its data objectively showed that public print and TV media outlets strongly favored PF. Both CSOs and political parties filed legal actions challenging bias in public media coverage of the election; however, only UPND's petition was resolved prior to the election, and that coming only 2 days prior to the election. Another area of concern for media independence was the closing of The Post, the private daily newspaper most favorable to UPND, which was party to legal action resulting in the seizure of its offices and equipment by the Zambia Revenue Authority (ZRA), ostensibly to satisfy accrued tax liabilities. MISA also reported that "citizen journalists" at community radio stations, have been subjected to harassment and intimidation, mostly by PF cadres, for their coverage of the electoral process.

Participation of Women and Persons with Disabilities. Despite Zambia being signatory to several regional and international conventions and protocols regarding gender equality, representation by women in elected office remains low. The Human Rights Commission (HRC) indicated that the level of women participation is actually worsening. As noted above, the G12 requirement and the elevated nomination fees were significant barriers to female aspirants. The Disability Rights Watch indicated that notwithstanding commendable efforts by ECZ, persons with disabilities (PWD) continue to face significant logistical and cultural barriers to political participation.

Civil Society and Domestic Observation. Several domestic CSOs carried out election observation missions. The Christian Churches Monitoring Group (CCMG) carried out a "parallel vote tabulation" (PVT) exercise that used a statistically-valid sample of polling stations to validate the official results of the ECZ, and the Zambian Election Information Center (ZEIC), a coalition of CSOs, deployed monitors polling stations to observe the electoral process and to coordinate with the ECZ and police to report and quickly resolve incidents or issues.

Electoral Dispute Resolution. Electoral dispute resolution procedures are essential to ensure that effective remedies are available for the redress of violations of the electoral process. As provided in the amended Electoral Act, the ECZ established Conflict Management Committees (CMCs) to mediate electoral conflicts, advise the conflicting parties, and report appropriate matters to police for further actions. Although the primary aim of CMCs is to serve as an alternative to lengthy court proceedings, it was not a mechanism of effective dispute resolution during these elections. While the High Court can hear petitions related to parliamentary elections and the referendum, the newly established Constitutional Court is charged with resolving petitions on the presidential election, as well as parliamentary and referendum appeals. Its decisions are final. The Constitutional Court has faced a number of logistical and operational challenges. The Court held its first hearing on June 29, and has resolved 20 of the 27 cases brought before it. Overall, the legal framework for electoral dispute resolution and the manner in which Conflict Management Committees and the courts dealt with electoral complaints did not provide effective or timely redress in a consistent manner.

Voting and Counting. The Center did not field a short-term observation mission for election day and cannot make an independent assessment of the voting process; however, its limited observations in Lusaka, Copperbelt, and Southern provinces on polling day are consistent with the findings of most other international observer election mission and domestic observers. Recognizing its limited scope, the Center commends the ECZ staff, party polling agents, and domestic observers for their dedicated efforts in conducting the polling process.

Background. Following an invitation from Ministry of Foreign Affairs, The Carter Center was accredited by the ECZ to observe Zambia’s national elections and referendum. The Center deployed a limited election observation mission, focusing on the political and electoral environment of the campaign period; the legal framework; and electoral dispute resolution mechanisms. The Carter Center Mission was led by Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi, and Jordan Ryan, vice president of the Center’s peace programs. A core team of four persons arrived in Zambia, and were based in Lusaka. The team held regular meetings with key stakeholders, including political party candidates, civil society organizations, citizen election observers, members of the international community, and representatives of the electoral commission. Four medium-term observers were deployed to the Copperbelt and Southern provinces in advance of election day to assess election preparations. Due to the limited nature of its mission, the Carter Center observers did not assess election day procedures. The Center will continue to assess the tabulation of results, and will remain in Zambia to observe the post-election environment. The mission’s findings are evaluated against Zambia’s national and international obligations for genuine democratic elections, and all assessments were made in accordance with international standards for elections, and the observation mission was conducted in accordance with the Declaration of Principles for International Election Observation.

The Carter Center has a long history of working in partnership with the people of Zambia. The Center worked extensively on agricultural development in Zambia in the late 1980’s and President Carter was personally involved in the 1991 elections that saw Zambia peacefully transition from a single party state to a multi-party democracy. The Center also deployed an election observation mission to Zambia in 2001. The current mission launched in July 2016 with the arrival of four core-team members and four medium-term observers.

The Center’s limited election observation mission is conducted in accordance with the declaration of principles for International Election Observation and Code of Conduct that was adopted by the United Nations in 2005 and is currently endorsed by 49 organizations.

The Center will release public statements on key findings and recommendations, which will be available at www.cartercenter.org.

Statement of Preliminary Findings and Conclusions

BACKGROUND

Zambia underwent a transition to multiparty politics in 1991, and has held multiparty elections at regular, five-year intervals over the past 25 years. Although some of these elections, particularly those in 1996 and 2001, had significant irregularities, Zambia stands out in Africa, not only for its track record of uninterrupted electoral politics, but for an electoral environment that has been substantially peaceful and extremely competitive—especially since 2001—and elections that twice resulted in the defeat of longstanding incumbent parties and political turnover (in 1991 and 2011). Zambia’s founding democratic elections in 1991 were observed by The Carter Center, which also deployed an international election observation mission for the 2001 elections.

Zambia was ruled by a single party, the United National Independence Party (UNIP), and a single president, Dr. Kenneth Kaunda, for 27 years. When multiparty elections were finally permitted in 1991, the newly established Movement for Multiparty Democracy (MMD)

soundly defeated UNIP by over 80 percent of the vote. MMD remained in power for the next 20 years, although beginning in 2001, Zambian elections, then on a simple plurality system, became increasingly competitive at the presidential level. The parliament also became more competitive and representative. In 2011, Zambia experienced its second political turnover and an important marker in its democratic development when the Patriotic Front (PF), led by Michael Sata, defeated the incumbent MMD and President Rupiah Banda by a comfortable margin, 42 percent to 35 percent.

The death of President Sata triggered a by-election in 2014, only three years into his term. The constitution required that the by-elections be held within 90 days. In the ensuing election on January 20, 2015, former Defense and Legal Affairs Minister Edgar Chagwa Lungu became Zambia's sixth president, but by the narrowest of margins, defeating United Party for National Development (UPND) candidate Hakainde Hichilema by barely 27,000 votes. Because he was fulfilling the term of President Sata, President Lungu's mandate was due to expire in 2016. Among a series of constitutional and electoral law changes was the decision to permanently hold Zambia's elections every five years on the second Thursday in August.

The Zambian election on Aug. 11, 2016, included presidential, parliamentary, and local government elections, as well as, for the first time, mayoral elections. At the presidential level, the election was nearly a rerun of the January 2015 contest; although nine parties fielded presidential candidates, the leading contenders were again Hichilema and Lungu.

Zambia has now held five presidential elections in the last decade, including the two presidential by-elections following the deaths of two incumbents. Effectively biennial elections would present a challenge for any country. In Zambia, in addition to placing a financial burden on the budget and contributing to voter apathy, the cycle has tested the capacity of the Electoral Commission of Zambia. These problems were compounded in 2016 by the promulgation of new electoral rules, amendments to the constitution that included the creation of a Constitutional Court, and a record five simultaneous elections, including national constitutional referendum. (Previous national elections were tripartite—president, parliament, and local government only.)

An environment characterized by rapidly shifting institutional terrain, some ambiguity about dispute-resolution mechanisms, two major candidates whose rivalry was escalated by the closeness of the contest, and restive followers—or cadres—backing each man, produced heightened political tensions. Allegations of violence by party cadres from both leading parties were reported almost daily. Although not all could be independently verified, the reports themselves had the effect of exacerbating tensions and a widespread sense of insecurity, often further inflamed by both public and private media.

Throughout the campaign period, PF benefited from its near-monopoly of state-owned media, as well as its control over enforcement of laws and regulations, such as the Public Order Act, which limited the ability of opposition political parties to campaign and disseminate their message. Such advantages fueled perceptions among key political stakeholders that the playing field was not level and raised legitimate concerns about Zambia's commitment to upholding critical freedoms of assembly, expression, movement, and the press.

LEGAL FRAMEWORK AND ELECTORAL SYSTEM

A comprehensive legal framework, without ambiguities or omissions, is essential to the administration of democratic elections and to ensuring that a country upholds its international obligations.² Zambia has signed or committed itself to the main international and regional commitments and instruments relating to human rights and the conduct of elections, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the United Nations Convention against Corruption, the African Charter on Human and Peoples' Rights, and the SADC Principles and Guidelines Governing Democratic Elections.

Fundamental rights and freedoms, including freedom of expression, assembly, association, and participation in elections are enshrined in the constitution of Zambia. It serves as a basis for the multiparty democracy, proclaims Zambia as a «Sovereign Democratic State» and protects the rights to genuine and periodic elections, including the right to be elected to public office by secret ballot and the right to vote according to the principles of equality and universal suffrage. The Constitutional also guarantees independence of the judiciary, equal rights and freedoms, and prohibits discrimination on the grounds of race or religion.

The legal framework governing the 2016 elections primarily consists of the 2016 Constitution, 2016 Electoral Process Act, 2016 Electoral Commission Act, 1991 Local Government Election Act, and the 1955 Public Order Act. The substantive constitutional changes entered into force in January 2016, and required subsidiary legislation was enacted shortly before the dissolution of the parliament and entered into force on June 7, 2016. Most of the electoral stakeholders—including members of the CSOs, and the Human Rights Commission—were given the opportunity to provide comments on the legislative amendments; however, this was carried out in an expedited manner, leaving them with less than a day to provide comments on a substantial volume of amendments. Introduction of the fundamental legislative changes, without effective public consultation in the electoral legal framework shortly before election amendments is at odds with international good practice.³

The essence of any electoral system should be to translate the will of the people into a representative government, although no specific electoral system is prescribed.⁴ Recent amendments introduced a new electoral system for the presidential election that requires an absolute majority of votes to be cast in favor of one candidate. According to the constitution, if no candidate garners the majority of valid votes, a second round is to be held between the two leading candidates within 37 days of the initial election day. A vice president is directly elected and would assume the presidency for the remainder of the mandate in the eventuality of a president dying or leaving office early. Electoral stakeholders raised concerns that many voters were not aware of the new 50 percent +1 electoral system, including the possibility of the runoff.

² The UNHCR Comments, 19, indicate that, "... elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights."

³ The Code of Good Practice in Electoral Matters of the Venice Commission states that "the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendments less than one year before an election", sec. II.2.b.

⁴ U.N., International Covenant on Civil and Political Rights, Art. 25(b); United Nations Human Rights Council, General Comment 25, para. 21; International IDEA Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, p. 28.

Members of the National Assembly are directly elected under the first-past-the-post system in each of the 156 constituencies. Mayors and council chairpersons were directly elected for the first time under the first-past-the-post system, competing in 105 districts. Candidates for local councils ran in each of the 1,624 wards, and collectively form the local council at the district level.

The constitutional referendum on the Bill of Rights was held alongside the elections, reportedly to avoid costs of holding a separate referendum. The referendum vote required a threshold of 50 percent of all *eligible* voters to be considered valid. The question focused on proposed amendments to the Bill of Rights contained in Part III of the constitution, aimed at enhancing the human rights provisions as well as the repeal of Article 79 of the constitution, which regulates the process of future constitutional amendments.⁵ The proposed Article 303, replacing Article 79, foresees that only registered voters will have the right to vote in the constitutional referendum, and specifies which articles do not require to be amended through the referendum.

Thus, the referendum attempted to cover two essentially different issues in one question. The formulation of the referendum question lacked clarity, and voters expressed concerns that they did not understand its content. Comprehensive voter information and education was limited in the short timeframe before elections.

The recent amendments introduced, *inter alia*, a new electoral system for the presidential election, provided a fixed election date, introduced new candidate nomination requirements, enhanced deadlines for the president to be sworn into office with the account of possible post-election petitions, and established the Constitutional Court.

The number of essential ECZ regulations, clarifying various aspects of the process, were pending before the Ministry of Justice throughout the pre-election process and were adopted on August 9, two days before the election and referendum. Therefore, a number of procedural issues—including regulations on disqualification criteria for candidates, rules for holding the referendum, and general electoral procedures—were not addressed in a timely manner, which led to legal uncertainty among key electoral stakeholders.

Much of the legal framework governing these elections and referendum is new and untested. It lacks clarity and contains a number of gaps and inconsistencies, contrary to international standards, which require organization of elections be regulated by a clear, understandable, and transparent legal framework.⁶ These include candidate nomination and withdrawals, voting rights, referendum procedures, authorities of the election administration, campaign and campaign finance rules, and electoral dispute-resolution, among others.⁷ The vast majority of interlocutors expressed the opinion that the late changes, combined with the complexity and lack of clarity in the law, negatively affected electoral stakeholders' understanding of the impact of new provisions and their ability to fulfil their functions.

⁵ The referendum question on the ballot is phrased as follows: “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?”

⁶ See U.N. International Covenant on Civil and Political Rights, Article. 25; United Nations Human Rights Council, General Comment 25.

⁷ Moreover, the law does not contain any provisions related to the possible second round of the elections.

ELECTION ADMINISTRATION

An independent and impartial election management body promotes transparency and facilitates citizen participation in a genuine democratic process. A transparent and professional body is regarded as an effective means of ensuring that international obligations related to the democratic process can be met.⁸ The election management body should also ensure an accountable, efficient, and effective public administration as it relates to elections. It also has a responsibility to ensure that the electoral process is in compliance with Zambia's regional and international obligations for democratic elections and human rights.⁹

The Electoral Commission of Zambia is an independent and autonomous election management body governed and regulated by the 2016 Constitution of Zambia, 2016 Electoral Commission Act, 2016 Electoral Act, 2015 Referendum Act, and statutory instruments. The ECZ is composed of a chairperson, vice-chairperson, and three other members appointed by the president and is subject to ratification by an *ad hoc* select committee of the National Assembly. Both the chairperson and vice-chairperson must have held or be qualified to hold the office of judge of a superior court. All five members are appointed for a term of seven years that can be renewed for an additional seven-year term.¹⁰ The president holds the power to remove full-time members.¹¹

The ECZ's appointment system is inconsistent with best practices for recruiting election officials based on transparency, efficiency, and equity.¹² As outlined in The Carter Center's final report on the 2001 general election in Zambia, the president's prerogative to appoint and dismiss ECZ fulltime members heightens mistrust among opposition political parties vis-à-vis the electoral body's independence.¹³ Interpretive sources of public international law suggest that in order to deter corruption, bodies appointing members of electoral commissions should be unable to dismiss them at will.¹⁴

While the new Election Commission Act prescribes that the ECZ shall have offices in provinces and districts,¹⁵ the ECZ does not have a permanent structure and relies on existing administrative state bodies to fill its managerial positions at the provincial and district levels. Citizen observer organizations expressed concern that administrative officials, appointed by the Local Government Service Commission, which itself is appointed by the president, could be biased or give the appearance of bias in their work. According to a constitutional amendment passed in January 2016, the chairperson of the ECZ will also serve as the returning officer for the presidential election.¹⁶ In previous elections, the chief justice of the

⁸ UNHRC, General Comment 25, para. 20

⁹ Venice Commission, sec. II.3.1.c

¹⁰ No. 25 of 2016, *Election Commission Act*, Section 5.

¹¹ No. 25 of 2016, *Election Commission Act* Section 5. Art 5 (F).

¹² U.N., UNCAC, art. 7(1)(a); OAS, Convention Against Corruption, art. III (4); AU, Convention On Corruption, art. 7(4) in *The Carter Center, Election Obligations and Standards*, p. 70.

¹³ The Carter Center, *Observing the 2001 Elections*, p. 24: "The Center's LTOs also noted that the procedures for the selection, appointment, and removal of ECZ commissioners served to undermine the ECZ's independence. The Electoral Act gives power to the president to appoint members without obliging him to consult or seek nominations from political parties and other stakeholders. Consequently, the president is in position to influence the ECZ's administration of election activities."

¹⁴ U.N. (ICCPR), General Comment 25, para. 24.

¹⁵ Electoral Commission of Zambia Section 229. (1).

¹⁶ See No 2. Of 2016, *Constitution of Zambia* (Amendment), Section 99.

Supreme Court filled this role.¹⁷ Provincial and district level returning officers declare National Assembly and local government results, respectively.

ELECTORAL CONSTITUENCIES

Equal suffrage requires that constituency boundaries are drawn so that voters are represented in the legislature in a roughly equal basis.¹⁸ Moreover, international best practices recommend consistency in population size in defining boundary delimitations and seat allocation. Variance should remain within 15 percent between constituencies.

Since the Patriotic Front gained power in 2011, 31 new administrative districts were established, increasing the total number of districts to 103. The ECZ proposed—and the cabinet approved—electoral boundaries for the 31 new districts. This created six new constituencies, bringing the total number of constituencies to 156. In contravention of the equality principle enshrined in the amended Zambian constitution,¹⁹ as well as internationally accepted criteria for boundary apportionment,²⁰ variances between the number of voters in constituencies well exceed 100 percent. For instance, the smallest constituency in Lusaka province (Feira) has 13,327 voters, while the largest has 148,889 (Mandevu). The average number of voters per constituency in Lusaka province is more than double the average number of voters per constituency in the newly created Muchinga province.

VOTER EDUCATION

Voter education is an essential part of the electoral cycle and is recognized under international law as an important means of ensuring that an informed electorate is able to effectively exercise their right to vote without obstacles to ensure universal and equal suffrage.²¹ The ECZ began voter education on May 29, 2016, including information on the code of conduct, electoral corruption, voting procedures, and the referendum. The ECZ deployed at least two voter-education facilitators (VEFs) per ward. In every district, the ECZ established a District Voter Education Committee composed of 12 members—including the district election officers and civil society representatives—whose responsibility is to monitor all activities conducted by VEFs. The ECZ provided radio and television programs on the national broadcasters and private media. In addition, the commission used mobile network service providers and social media outlets to disseminate text messages in different languages regarding the general election and the referendum. The ECZ has also recruited persons with disabilities to conduct voter-education workshops and cooperated with the network of performance arts organizations (UNAMA) in the use of street theater for voter education.

¹⁷ This was questioned by international observers as a “potential conflict of interest.” See NDI Pre-Election Delegation to Zambia’s September 2011 Elections Lusaka, August 18, 2011, page 5.

¹⁸ UN, ICCPR, *General Comment* 25, para. 21; U.N., ICCPR, *Istvan Matyas v Slovakia*, (2002), 2.2 in The Carter Center, *Election Obligations and Standards*, p. 59.

¹⁹ No. 2 of 2016 Constitution of Zambia (Amendment), Section 59 (e): “The Electoral Commission shall, in delimiting the boundaries of constituencies and wards seek to achieve an approximate equality of constituency and ward population, subject to the need to ensure adequate representation for urban and sparsely populated”.

²⁰ Per UNHCR, *General Comment* 25, the principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters.

²¹ U.N., ICCPR, Article 25(b); AU, Declaration on the Principles Governing Democratic Elections in Africa, art. 1; United Nations Human Rights Council, *General Comment* No. 25 on “the Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,” para. 11.

In addition, a number of civil society organizations, including faith-based organizations, the Zambia National Women’s Lobby (ZNWL), youth groups, and other human rights CSOs, conducted voter education across the country.²² Radio reaches the largest audience in Zambia, and therefore is key to the success of any voter-education campaign. BBC Media Action produced and shared voter-education materials with 17 radio station partners. Social media, notably Facebook and WhatsApp, also played an increasingly significant role in reaching the electorate.

Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ has made a commendable effort to conduct voter education in the run-up to election, CSOs and domestic observer groups expressed their view that ECZ’s countrywide campaign of sensitization on the referendum should have commenced several weeks earlier, because many citizens did not understand what they were voting for. Civil society groups also indicated that the distribution of voter-education materials in local languages did not reach all areas, and those materials’ impact has been limited in terms of enhancing voter’s understanding of critical aspects of the electoral process, such as the holding of a run-off presidential election if no candidate obtains more than 50 percent of votes cast on Aug. 11. Like CSO representatives, political parties and candidates reported that the level of voter-education efforts was insufficient, particularly outside major urban centers.

VOTER REGISTRATION

Voter registration is recognized as an important means to ensure the right to vote and should be made available to the broadest pool of citizens possible without obstacles to ensure universal and equal suffrage, fundamental rights critical for democratic elections.²³

According to the constitution, all Zambians who have attained the age of 18, possess a national registration card, and are registered, may vote in the election.²⁴ In preparation for the 2016 election, the ECZ held a registration drive from Sept. 14, 2015, to Feb. 29, 2016, to update the 2011 register of voters; mobile voter registration teams traveled to civic centers across the country from Nov. 23 – Dec. 13, 2015. The Carter Center did not observe the voter registration process, however, the CSO Christian Churches Monitoring Group (CCMG) observed the exercise and concluded that the process met the standards of transparency, inclusiveness, and non-discrimination.²⁵ The Center recognizes the ECZ for its efforts to conduct an inclusive process, and to meet the requests of political parties to extend the voter registration exercise. The verification exercise for the 2016 provisional register of voters, which took place May 15-25, 2016, was extended from seven days to 11, after parties criticized the initial timeframe.

²² The ZNWL in collaboration with the Anti-Voter Apathy Project (AVAP), Operation Young Vote (OYV), and Young Women in Action (YWA) have implemented the so-called Triple V Campaign (My Vote, My Voice, My Victory), aimed at addressing voter apathy in Zambia, particularly among youth and women.

²³ U.N., International Covenant on Civil and Political Rights, art. 25(b); AU Declaration on the Principles Governing Democratic Elections in Africa, art. 1; United Nations Human Rights Council, General Comment 25.

²⁴ Section 19 of the Electoral Process Acts disqualifies prisoners and those detained from voting, which is inconsistent with Article 46 of the constitution, which gives the right to vote to all citizens who have attained the age of 18 years and are registered as voters. A case requiring interpretation of this provision is currently pending in the Constitutional Court.

²⁵ Christian Churches Monitoring Group (CCMG), *Report on Mobile Voter Registration Monitoring*, Conclusion, p. 17.

In response to political parties and CSOs, the ECZ carried out an independent audit of the voter registry. Some stakeholders, most prominently the UPND and certain development partners, decried the ECZ's selection of experts from the UN roster. The team's audit was unflinching in reporting extensive flaws in the register, which the ECZ revealed publicly. Among the findings: 132,837 voters shared national registration card (NRC) numbers; 2,555 voter registration records shared NRC numbers, names, and dates of birth; and 492 records shared all registration details, including the individual's place of birth and chiefdom. The ECZ informed the public on July 18 that all voters sharing NRC numbers would be allowed to vote as this duplication falls under the responsibility of the National Registration, Passport, and Citizenship Department. They also announced that 2,215 cases of duplications had been removed from the register of voters.

The audit also concluded that no evidence was found to support the alleged inclusion of significant numbers of foreign nationals in the provisional register of voters because all registration records were associated with NRC numbers, and the number of registered voters during the 2015-2016 registration drive was generally within the projected numbers of eligible voting population. According to projections conducted by the audit team using data from the Central Statistical Office, 'the 2016 provisional register of voters possibly includes the particulars of more than 300,000 deceased voters since 2011, excluding 62,777 deceased voters removed since 2005.'²⁶ This problem remains unaddressed, as upon completion of the verification exercise the ECZ was only able to remove 10,985 deceased voters from the register.

The register of voters was certified on July 31. In total, 19,960 entries were eliminated from the provisional voter register. The number of registered voters was 6,698,372, which represented a 29 percent increase over the number of registered voters in 2011. Lusaka has the highest number of voters (1,119,318), followed by Copperbelt (1,034,548), and Southern provinces (810,000).

REFERENDUM

Eligible voters for the referendum consisted of all Zambians who attained the age of 18 and possess a national registration card; these individuals did not need to be included on the register of voters. The Central Statistical Office provided estimates of the number of eligible voters to the ECZ by applying the cohort component method. Population projections were based on the 2010 Census of Population and Housing, taking into account data on births, deaths, and migration. From the projected total population of 15,933,883, the Central Statistical Office estimated that 7,528,091 Zambians qualified to vote in the referendum.

CANDIDATE ELIGIBILITY AND NOMINATION

A candidate for president must be a Zambian citizen by birth or descent, ordinarily reside in the country, be at least 35 years old and a registered voter, have a minimum academic qualification of 12 years or its equivalent, pay a required registration fee, and be supported by 100 registered voters from each province. The constitution disqualifies candidates for president if they hold dual citizenship, have mental or physical disabilities, are currently serving a prison sentence, or have served a prison sentence in three of the past five years

²⁶ See Election Commission of Zambia, *Audit Report – Executive Summary Audit of the 2016 Provisional Register of Voters as at 6 June 2016*, p. 4.

preceding the election. According to international best practice, the exercise of one's right to stand as a candidate may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. Physical disabilities do not reach this threshold.²⁷ The constitution does not allow for the independent candidates to run for presidency, which is equally contrary to international obligations.²⁸

National Assembly candidates must be a Zambian citizen, at least 21 years old, a registered voter, have a minimum academic qualification of 12 years or its equivalent, pay a required registration fee, and be supported by 15 registered voters from the constituency. The constitution explicitly allows independent candidates to stand for National Assembly elections.

Local council candidates must be at least 19 years old, reside in the district, have a minimum academic qualification of 12 years or its equivalent, and pay a required registration fee. Independent candidacy is allowed.

Several candidate nomination requirements hinder the right to stand on an equal basis and are contrary to Zambia's commitments and international obligations and standards.²⁹

Constitutional amendments introduced a new requirement of minimal academic qualification of a Grade 12 (G12) certificate or its "equivalent" as certified by the Examinations Council of Zambia in order to stand for all elected positions, including local councils. The law does not define the "equivalent" of the certificate. The High Court issued a decision clarifying that "a person who can prove having higher education does not need to produce the actual G12 certificate."³⁰ Moreover, the law does not provide clear mechanisms of verifying G12 certificates in a sufficient and timely manner.³¹ Notably, this requirement disproportionately disadvantaged and restricted the rights of female and rural candidates, who may not have had equal access to educational opportunities. Indeed, the Zambia National Womens Lobby, which had engaged with aspiring women, reported that the passage of the G12 requirement disqualified 95 percent of the women with whom it had worked for more than a year as prospective candidates for office.

According to the constitution, candidates can withdraw after the close of nominations and at any point before elections, which will require the ECZ to cancel elections and begin a new

²⁷ U.N., CRPD, Art.29, "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected..."

²⁸ U.N., ICCPR General comment 25 (17), The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.

²⁹ Para. 15 of the 1996 UNHRC General Comment 25 to the ICCPR states that any restrictions on the right to stand must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as residence. See also AU, AfCHPR, Article 2; Para. I.1.1.1.d.iii. of the Council of Europe Venice Commission's Code of Good Practice in Electoral Matters states that the proportionality principle must be observed when depriving an individual of the right to be elected.

³⁰ The High Court decision 2016/HB/24 of May 10, 2016, on the *Sibongile Zulu v. ECZ* case.

³¹ The Examination Council of Zambia declared a number of G12 certificates forged after the nomination period was closed. The ECZ stated they are not in the position to address the matter as it is of criminal nature and proceedings need to be initiated.

nomination period.³² Yet, the law does not provide further details on the form or procedures of withdrawal.³³ Regulations should include provisions regarding the time and conditions for the withdrawal of registered candidates. A number of complaints related to candidate nominations and withdrawals were not finalized prior to the start of the official campaign period, undermining the equal opportunity to campaign for some candidates.

Most interlocutors remarked that monetary fees for candidate nomination are excessive and thereby present an additional unreasonable barrier to candidacy. The fees are non-refundable, regardless of whether a candidate takes office. The initial fees published were reduced, but still remain beyond the reach of many.³⁴ Another problem was the refusal of the district electoral authorities to allow political parties to pay nomination fees in Lusaka on behalf of candidates contesting in provinces—leading to the disqualifications at the district level of some candidates.

Following the constitutional amendments, a new legislation regulating campaign expenditures and reporting should have been adopted; however, no legislation was enacted prior to election day. This leaves an important aspect of the electoral process unregulated, circumventing transparency and accountability, and leaving the process open to the undue influence of money. Zambia is obligated to take measures to prevent corruption, particularly in the context of campaign financing.³⁵ Campaign-finance regulations should enforce a transparent process in which all political parties and candidates are treated equally. Even where these ideal conditions are met, it will not erase the major advantage of resources available to the incumbent party, which is amplified by the party's use of state resources in the campaign.

CANDIDATES, PARTIES AND THE CAMPAIGN ENVIRONMENT

Political pluralism and genuine voter choice are critical aspects of democracy. Equitable treatment of candidates and parties and the maintenance of an open and transparent campaign environment are important to ensuring the integrity of democratic elections. Zambia supports several important international obligations in relation to candidates, parties, and the campaign environment, including ensuring that every citizen has the right to be elected³⁶ and the right of freedom of assembly.³⁷

Several factors combined to produce a highly tense atmosphere, even well before the official start of campaigning in May. One element was the closeness of the 2015 presidential by-election, in which PF and UPND were separated by less than 28,000 votes.³⁸ The expectation

³² Article 52(6) of the constitution states, “Where a candidate dies, resigns or becomes disqualified... after the close of nominations and before the election date, the Electoral Commission shall cancel the election and require the filing of fresh nominations by eligible candidates and elections shall be held within thirty days of the filing of the fresh nominations.”

³³ The Constitutional Court in its decision of August 9, 2016, stated that even though the law is silent on the form of withdrawal, an official written document should be submitted for the ECZ's consideration.

³⁴ In late May, presidential nomination fees were reduced from K75,000 to K60,000; National Assembly fees from K10,000 to K7,500; Mayors from K7500 to K5,000; council chairs from K3500 to K2,000; city and municipal councilors from K1,500 to K750; and district councilors from K750 to K400. Those who had already paid the higher fees were refunded the difference by ECZ. <https://www.lusakatimes.com/2016/05/29/ecz-revises-nomination-fees-downward/>

³⁵ U.N., Convention Against Corruption, art. 7, 18, 37; AU, Convention on Corruption, art. 7.

³⁶ UDHR, Article 21(1); UN, ICCPR, Article 25(b); AU, ACHPR, art 13(1).

³⁷ U.N., ICCPR, art. 21; AU, ACHPR, Article 11.

³⁸ https://www.elections.org.zm/results/2015_presidential_election

by each party and its supporters that they had a realistic chance to win the presidency in 2016 contributed to an environment in which political tensions and the potential for electoral violence was widely perceived to be at an all-time high for Zambia. This tension was elevated further by the uncertainties resulting from the electoral reforms that introduced the “50 percent +1” format.

Political tensions were also heightened by the decamping of former PF officials to join the UPND, most notably UPND vice presidential candidate Geoffrey Bwalya Mwamba, who had previously served as PF Minister of Defense. In adopting Mwamba, who is from Northern Province, as the vice presidential candidate, UPND was widely perceived to have sought to expand its reach beyond its stronghold in Southern Province into PF strongholds in Northern, Muchinga, and Copperbelt provinces.

Further, both PF and UPND made pre-election statements that raised concerns about whether the parties were prepared to accept the electoral results announced by ECZ and to respect the democratic institutions of government. President Lungu regularly alleged that UPND supporters were engaged in electoral violence,³⁹ warned that he was “prepared to sacrifice democracy for peace,”⁴⁰ and said that he would “crush” Hichilema if he refused to accept a PF electoral victory.⁴¹ UPND officials also stated publicly and privately that UPND was convinced that it would win the presidential election if the electoral process was credible and free of irregularities. Whereas such expressions of confidence are both routine and hardly incendiary on their own, Hichilema was also quoted prior to election day as saying that he had already won and would not accept the results if he were not declared the winner.⁴² UPND also expressed a complete lack of confidence in all institutions through which it could challenge the electoral results—including the ECZ, Constitutional Court, and judiciary.

The pre-election period was marred by widespread reports of political tensions and electoral violence. Following the death⁴³ of a UPND supporter in Lusaka on July 8, 2016, which occurred when police denied permission to hold a scheduled rally, the ECZ suspended campaigning for 10 days.⁴⁴ The campaign suspension did seem to defuse tension and conflict in Lusaka for a time, but it also prevented opposition parties from campaigning in a critically important location. Regrettably, another major outbreak of electoral violence occurred in Mtendere, Lusaka, on Aug. 8, 2016, when PF and UPND supporters encountered each other: PF supporters attacked the UPND supporters and vehicles with stones—video of which was widely circulated online and on social media. The ECZ released a statement the following day condemning the violence and demanding the parties neither instigate violence nor retaliate against such attacks, but otherwise made no use of its conflict management mechanisms;⁴⁵ however, there was another attack on election day that led to the hospitalization of a PF supporter in Southern province. In public statements⁴⁶ and private consultations, PF and UPND both alleged that the other party was responsible for electoral

³⁹ <https://www.lusakatimes.com/2016/06/30/president-lungu-condems-upnd/>;

⁴⁰ <http://zambia.news24.com/National-News/zambian-leader-warns-of-draconian-measures-over-poll-violence-20160802?>

⁴¹ <https://www.daily-mail.co.zm/?p=60617>

⁴² <https://www.daily-mail.co.zm/?p=75765>

⁴³ <https://www.lusakatimes.com/2016/07/09/police-shoot-dead-female-upnd-supporter-lusaka/>

⁴⁴ <http://ecz-news.com/news/press-release-9th-july-2016-ecz-suspends-campaigns-in-lusaka-and-namwala-districts/>

⁴⁵ <http://ecz-news.com/news/electoral-commission-of-zambia-%E2%80%8BChairpersons-pre-election-statement/>

⁴⁶ <https://www.daily-mail.co.zm/?p=75767>

violence or that the violence was perpetrated by people impersonating their respective party cadres. A concerning trend of cadre wearing military fatigues was also noted.

A significant concern raised by opposition parties and CSOs was the apparent lack of a level playing field for opposition parties. Several factors contributed to this climate, including a substantially one-sided media environment characterized by an overwhelming public media bias toward the ruling PF and corresponding interference with private media houses. Another dimension was the use of state resources for political purposes, including by ministers whose continuation in office after the dissolution of parliament was deemed unconstitutional.

Following the constitutional amendments some ambiguity existed about the legality of cabinet ministers remaining in office beyond the dissolution of parliament. Taking advantage of this apparent loophole, the ministers continued in office, and continued to utilize state resources, in the course of the political campaign. The Law Association of Zambia (LAZ) challenged this practice in the Constitutional Court. Finding in favor of the petitioners, the Court ruled that the ministers' mandate, in fact, had expired on the day of dissolution of the Parliament; it requested return of the salaries and allowances paid after that period. While this case represents an important demonstration of judicial independence, its announcement three days prior to the election did little to offset the electoral advantage enjoyed by the ruling party during the campaign period.

The playing field was affected by the government's successful effort to curtail the campaign movements of opposition parties, particularly the UPND. Two of the principal methods utilized were the denial of flight clearances for opposition party aircraft by the Zambian Air Force,⁴⁷ and even more severely, the over-broad interpretation and inequitable application of the Public Order Act (POA) by police to deny permission for UPND to hold rallies.

The POA requires only that groups notify the police prior to planning gatherings; permits are not required. However, stakeholders noted that police did not invoke the POA proportionally to all political parties, and that PF rallies were not prohibited. UPND rallies, on the other hand, were routinely denied or cancelled. A typical explanation was that President Lungu was traveling in the same *province*—not the same town or city—and that his security might be compromised by the presence of a rally. This rationale appears specious on its face, given the geographic expanse of Zambia's provinces; moreover, although the Human Rights Commission (HRC) trained police on the application of the POA, police officers reported to the HRC that they had been directed to implement the POA against UPND in ways that the officers believed to be improper; however, they were unable to refuse following such orders.

MEDIA ENVIRONMENT

The media play a critical role during democratic processes by educating voters and political parties about major issues, thus giving them access to information so they can make informed decisions.⁴⁸

As noted in the above campaign environment section, one of the most significant challenges to opposition parties during the pre-election period was the lack of equitable coverage by and access to public media. The Media Institute of Southern Africa (MISA) and the Media

⁴⁷ <https://www.lusakatimes.com/2016/05/25/upnd-want-ecz-meet-zaf-flight-permissions-campaigns/>

⁴⁸ OSCE, Election Observation Handbook (Fifth Edition), p. 48.

Liaison Committee, supported by BBC Media Action, implemented a comprehensive pre-election media monitoring project, and their data objectively showed that public media outlets strongly favored PF and/or the government in its coverage. UPND also alleged that it faced significant barriers to accessing public media for various programs and advertisements. On Aug. 9, 2016, ZNBC was ordered by the High Court to air a documentary on Hichilema before the close of the campaign period; this was too late in the campaign to affect his candidacy in any measurable way.⁴⁹ MISA also filed legal action against ZNBC regarding its bias in political coverage. That matter was not resolved before election day.

Another area of concern for media independence was the interference with the ability of *The Post*, the private daily newspaper most favorable to UPND, to publish freely in the pre-election period. *The Post* was party to legal action and subject to seizure of its offices and equipment by the Zambia Revenue Authority (ZRA), ostensibly to satisfy accrued tax liabilities. The Post was forced to continue its operations literally in the street, with limited print editions and online reporting. The Post acknowledged tax arrearages, but it claims to have been in discussions with the ZRA to resolve the matter at the time of the property seizures. Other media stakeholders noted that even state-owned ZNBC has outstanding tax obligations, but that the minister of information stated that ZNBC is “family,” and “you don’t punish family.” This suggests that the action by the ZRA may have been motivated by an attempt to silence critical voices as well as to collect taxes owed.

Other journalists, notably “citizen journalists” at community radio stations, have been subjected to harassment and intimidation, mostly by PF cadres, for their coverage of the electoral process. Larger media outlets in urban areas were less vulnerable to such intimidations. These instances of media harassment were reportedly carried out in view of police, who made little effort to protect journalists and sometimes even participated in the efforts to power down community radio stations.

PARTICIPATION OF WOMEN

International and regional obligations protect women’s rights and ensure their democratic right to participation.⁵⁰ Zambia is signatory of several regional and international conventions and protocols regarding gender equality, including the Protocol to the African Charter on Human and Peoples’ Rights concerning the Rights of Women in Africa (May 2006) and the Convention on the Elimination of all Forms of Discrimination against Women (June 1985). Despite this fact, representation by women in elected office in Zambia is among the lowest levels in the SADC region.⁵¹ The Human Rights Commission (HRC) encourages parties to adhere to SADC target of 50 percent representation by women, but the level of women participation is actually worsening. The HRC indicated that a gender equality bill that would have affirmed the 50 percent representation target failed in parliament. Moreover (as noted earlier), many women were disqualified from candidacy because of the G-12 requirement.

Among the various political parties, the Forum for Democracy and Development (FDD) presidential candidate is Edith Nawakwi, and the the PF vice presidential candidate is Inonge Wina. The PF party structure allows its central committee to direct the adoption of women candidates, and it adopted women candidates for four of the seven Lusaka constituencies.

⁴⁹ <http://power997.com/court-rules-for-upnd-documentary/>

⁵⁰ U.N., ICCPR.

⁵¹ <http://www.ipu.org/wmn-e/classif.htm>

Other parties also adopted women candidates, but collectively the number of women adopted by the parties remains extremely low.

PARTICIPATION OF MINORITIES

Persons with disabilities also face significant barriers to political participation. The Disability Rights Watch indicated that while the ECZ has taken positive steps to better assure access to all polling stations, and to conduct training of trainers of persons with disabilities, there remain significant obstacles to political participation. Of note, disabled persons are still confronted with challenges to cast secret ballots without assistance and face cultural resistance to being adopted by the parties as candidates.⁵²

CIVIL SOCIETY AND DOMESTIC OBSERVATION

Several domestic CSOs carried out election observation missions. The Zambian Election Information Center (ZEIC), a coalition of CSOs, deployed up to 9,000 monitors to all polling stations. ZEIC monitors focused on the electoral process rather than results tabulation, and they coordinated with the ECZ and police to report and resolve incidents or issues that arose on election day. ZEIC also published data and reports addressing issues related to voter registration, political parties, and weekly reports addressing issues of concern during the campaign period.⁵³

The Christian Churches Monitoring Group (CCMG), working with the technical assistance of the National Democratic Institute (NDI), carried out a “parallel vote tabulation” (PVT) exercise that used a statistically valid sampling of polling stations across Zambia to validate the official results of the ECZ. The first PVT in Zambia was carried out in 1991 and has been implemented in subsequent elections. Based on its data derived from its PVT monitors, CCMD issued a preliminary post-election statement on Aug. 12 that assessed the early voting process but did not address the closing and counting processes.⁵⁴ CCMG also deployed long-term observers to monitor the pre-election and campaign environment and issued a series of statements and reports assessing various aspects of the electoral process.⁵⁵

ELECTORAL DISPUTE RESOLUTION

Clear, fair, and effective procedures for electoral dispute-resolution are essential to ensuring that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.⁵⁶ Voters and other electoral stakeholders must be given, and must perceive that they possess, a voice in the quality of the electoral process if these processes are to retain credible. Electoral dispute resolution is primarily governed by the 2016 Constitution, the 2016 Electoral Process Act, the 2016 Code of Conduct, and conflict management committee guidelines. The electoral dispute-resolution framework lacks clarity and does not guarantee complainants an effective and timely remedy for violations of their rights. Courts, election commissions, specialized *ad hoc* tribunals, and conflict management committees have jurisdiction to consider electoral disputes, depending on the nature of the complaint.

⁵² U.N., CRPD, Art.29.

⁵³ <http://zambivote2016.org/>

⁵⁴ <http://ccmgzambia.org/2016/08/12/ccmg-post-election-preliminary-statement/>

⁵⁵ <http://ccmgzambia.org/category/elections/>

⁵⁶ UN, Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 47.

In accordance with the Electoral Act, the ECZ established conflict management committees (CMCs) at the national and district levels to fast-track the resolution of electoral disputes. CMCs are mandated to mediate electoral conflicts, advise the conflicting parties, and report matters to police for further actions. These committees are composed of a chairperson appointed by the ECZ, a vice chairperson, representatives of registered political parties, a representative from CSOs, and from various governmental institutions. District CMCs are based in council offices and are managed by the town clerks or council secretaries on behalf of the ECZ. Their decisions are not legally binding and are not published. CMC proceedings are not public, which contravenes the transparency of the process and is at odds with international standards.⁵⁷ Complainants can choose to refer the matter directly to the court, surpassing the CMCs. However, in one case the High Court refused to consider a case as it had not been brought to a CMC.⁵⁸ Although the main aim of CMCs is to serve as an alternative to lengthy court proceedings, the CMCs did not appear to provide a transparent mechanism of effective dispute-resolution during the elections.

According to the Constitution, the High Court hears complaints and petitions on National Assembly elections and the referendum. A person may file an election petition with the High Court to challenge the election of a member of parliament. The law provides for a 90-day deadline of holding a hearing on petitions against National Assembly results, however, there are no deadlines for passing the final decision, and a member of parliament should only hold a seat when challenges are resolved according to Article 73 of the constitution. Petitions regarding election results can be presented by any person who voted or had the right to vote in the referendum within 21 days from the declaration of the referendum results, on the grounds that corrupt practice prevailed, or on the grounds of error or misconduct by the ECZ. The High Court received 11 petitions prior to election day, mostly related to candidate nomination. Most of these cases were rejected as they were filed after the prescribed deadline.

The newly established Constitutional Court is entitled to hear complaints regarding presidential and parliamentary elections, and its decisions are final without further possibility of appeal. The Constitutional Court was established in January 2016 pursuant to the constitutional amendments. The president appointed six of the 13 judges required under the Constitution; their appointments were ratified by the parliament in March 2016. The Constitutional Court rules, providing for the process and procedure of the court, were adopted in May 2016. The Constitutional Court has been accepting complaints since January 2016; however, it only became operational when the procedures were established in May, and it held its first hearing on June 29. It currently operates with a limited capacity of six judges, faces a number of logistical and operational challenges, and lacks institutional experience, which might prove to be problematic during electoral dispute-resolution processes.

According to the constitution, the Constitutional Court should hear an election petition relating to the presidential elections within 14 days of filing the petition; however, it does not provide a deadline for passing a decision. The absence of a legal deadline to consider petitions leads to legal uncertainty and might unreasonably prolong the process and fail to guarantee effective and timely dispute resolution. There have been 27 cases filed to the Constitutional Court to date, mostly related to matters of interpretation of the constitution as well as candidate nomination and appeals from the High Court. Seven cases are still pending.

⁵⁷ UN, ICCPR, art. 19(2); AU, Convention on Corruption, art. 9; ACHPR, art. 13(1).

⁵⁸ Case was filed by UPND against ZNBC and dismissed by the High Court on 22 July, 2016.

The Constitutional Court granted a petition filed by the Law Association of Zambia that challenged the constitutionality of the continued stay of the ministers in office after the dissolution of parliament. The court ruled that ministers' mandate expired on the day of dissolution of the parliament, and requested return of the salaries and allowances paid after that period. While the decision was issued only a few days before the polls, it is still to be determined what the implications of the decision will be on other potential challenges to the process.

Special *ad hoc* local election tribunals are established by the chief justice at the district level to deal with issues pertaining to local elections, including the results. The tribunals and their rules of procedures were established shortly before election day, affecting the right to legal redress.

Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints did not provide stakeholders with effective or timely redress on a consistent basis, which is contrary to international standards.⁵⁹

VOTING

The Center did not field a short-term observation mission for election day and cannot make an independent assessment of the voting process; however, its limited observations in Lusaka, Copperbelt, and Southern provinces on polling day are consistent with the findings of other international observer election mission and domestic observers which found that most, but not all, polling stations opened timely, high voter turnout, and a largely peaceful, calm environment. These preliminary assessments by domestic and international observers are similar to assessments of the voting process in recent prior elections conducted by ECZ.

COUNTING

As noted, the Center made only a limited observation of the polling day process and cannot make an independent assessment of the closing and counting processes. Recognizing the limited scope of its observations, Center observers noted within the polling stations visited that there were some instances of uncertain closing procedures and more generally long vote counting processes. The Center commends the ECZ staff, party polling agents, and domestic observers for their dedicated efforts in conducting the polling process.

⁵⁹The Universal Declaration of Human Rights states, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Article 8), and "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (Article 10). The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

The Carter Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 65 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. Visit: www.cartercenter.org to learn more about The Carter Center.

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Carter Center Expresses Deep Concern about Zambia's 2016 Electoral Process and Democratic Institutions

LUSAKA, ZAMBIA — The Carter Center is deeply concerned about key aspects of the 2016 Zambian electoral process in both the pre- and post-electoral period, especially the failure of Zambia's institutions to provide a level playing field prior to election day and adequate due process to ensure a fair hearing and effective remedy for electoral petitions filed following the polls. Unfortunately, this represents a significant step backward for Zambia.

The Center's limited election mission released [a statement](#) today highlighting some of its concerns. While it is difficult to quantify the precise impact of the flaws in the pre- and post-election periods, cumulatively these problems seriously undermine the integrity of Zambia's electoral process and weaken public confidence in the country's democratic institutions.

Overall, the 2016 elections represent a troubling departure from Zambia's recent history of democratic governance. In this highly polarized and divisive environment, it is incumbent upon Zambia's authorities and political leaders from all parties to play a constructive role to strengthen the country's democratic institutions, lessen tensions, address divisions, and prevent post-electoral violence.

Pre-election Period and Election Day

The Center's preliminary statement following the Aug. 11 elections noted that the pre-election campaign period was marred by the lack of a level playing field, including harassment of private media, the abuse of office by government ministers, and the application of the Public Order Act in ways that appeared to disadvantage the main opposition party, the United Party for National Development. The political and electoral environment was also characterized by heightened tensions between the ruling Patriotic Front and the opposition, and some instances of localized violence.

While the pre-election environment was significantly flawed, both Zambian citizen observers and multiple international observation missions reported that voting and counting processes were largely successful, with only relatively minor problems. Following an extended tabulation process, the Electoral Commission of Zambia announced the final results of the polls, which indicated that the ruling PF party candidate, President Edgar Lungu, had been elected with 50.35 percent of valid votes cast. His main competitor, Hakainde Hichilema, received 47.63 percent of the votes. Lungu's

vote total narrowly avoided a runoff election, which would have been required had no candidate received more than 50 percent of the valid votes. President Lungu was inaugurated on Sept. 13.

While the election commission inadequately managed public expectations regarding the vote tabulation, verification, and declaration processes, a parallel vote tabulation conducted by domestic observer Christian Churches Monitoring Group broadly affirmed that the official results were within a statistically credible range.

Post-election Petitions and Constitutional Court Decisions

Following the polls, the UPND lodged a petition with the newly formed Constitutional Court challenging the outcome of the presidential election. Although Zambia's constitution requires the court to hear electoral petitions within 14 days of its filing, it is silent as to the timeframe in which the court is required to issue a ruling. The court failed to hear evidence on the merits of the petition and to rule on the validity of the election.

Much of the court's deliberations were conducted in chambers, closed to the public. On Aug. 30, the court said that its calendar would be extended by five days, concluding on Sept. 8. However, it later reversed its position and required both sides to present their cases on Sept. 2, or calendar day 14. Opposition lawyers argued that there was insufficient time and withdrew from the case. The full court then stated that four additional days would be provided, two each for the sides to argue the merits. In a surprise ruling when it reconvened on Sept. 5, the court stated that its jurisdiction had ended at midnight on calendar day 14, and dismissed the UPND petition without hearing the case on its merits. The vote was three-two.

The end result of this decision is that the legal and judicial processes surrounding the presidential petitions failed to meet Zambia's national and international obligations under the Zambian constitution, the African Charter for Human and People's Rights, and the International Covenant on Civil and Political Rights to ensure due process, a fair hearing, and effective legal remedy.

Background

On July 19, the Center deployed a limited election observation mission, focusing on the political and electoral environment of the campaign period; the legal framework; and electoral dispute-resolution mechanisms. The mission assessed the process based on Zambia's national legal framework and international obligations for genuine democratic elections. The Center released its [preliminary statement](#) on Aug. 13. A final report will be released three months following the elections.

The Carter Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.

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**Limited Election Observation Mission to Zambia
September 2016 Statement**

Overview

The Zambian general elections and referendum were held Aug. 11, 2016. Final presidential election results indicated that President Edgar Lungu received 50.35 percent of valid votes cast, a vote total that also avoided a runoff election under the newly adopted 50 percent +1 electoral system. The parliamentary elections resulted in the Patriotic Front (PF) winning 80 seats, the United Party for National Development (UPND) winning 58 seats, the Movement for Multi-party Democracy winning three seats, the Forum for Democracy and Development winning one seat, and independent candidates winning 14 seats. The High Court received an unprecedented 84 petitions challenging parliamentary results. This put a significant burden on the judiciary to hear the cases. The referendum vote on a Bill of Rights and constitutional amendments did not meet the minimum threshold of 50 percent participation by eligible voters, and so did not pass.

The Carter Center fielded a limited observation mission focusing on the pre-election and post-election periods. The preliminary statement released by the Center on Aug. 13 found the pre-election period was significantly flawed. The environment was characterized by interparty tensions and polarization, and exacerbated by the introduction of new electoral and legal frameworks and a decision to hold a referendum on the Bill of Rights and constitutional amendments at the same time. Widely reported incidents of violence increased tension between political parties and their supporters, especially in the weeks preceding election day. In addition, the Center noted the absence of a level playing field, including harassment of private media, the abuse of public office by government ministers, and the application of the Public Order Act in ways that appeared to disadvantage the main opposition party, the UPND.

While the Center did not observe election day, Zambian citizen observers and other international election observation missions reported that the voting process was largely successful, with only relatively minor problems. Polling day was mostly calm, and long queues of voters waited patiently to cast ballots. Polling officials and police worked to ensure order, despite an extended counting process.

Following the polls, several factors served to weaken the confidence of a significant segment of the population in key institutions charged with administering the polls and addressing electoral disputes. Polling-station results were not posted at the polling stations in some instances.¹ The Electoral Commission of Zambia (ECZ) ineffectively managed the vote tabulation, verification, and declaration of results, as well as public expectations surrounding these processes. Contrary to

¹ According to international best practices, results should be posted at the counting station. See, for instance, OSCE (ODHIR), Existing Commitments, p. 73 in The Carter Center, *Election Obligations and Standards*, p. 169.

international standards, election observers were not allowed to observe the results-verification process, undermining its transparency.² The process unfortunately proved highly contentious and caused increased delays in the announcement of results. Despite pre-election statements that the results would be announced within 48 hours of the closure of the polls, the ECZ did not announce the presidential results until Aug. 15, four days after election day. There were outbreaks of localized violence following the announcement.

The ECZ clarified the requirement for passage of the referendum on the Bill of Rights following the polls and a day before these results were announced. The information contradicted the voter-education material that the ECZ had developed and distributed.

Several legal challenges were lodged, and the newly established Constitutional Court's handling of them raised serious concerns regarding the right of petitioners to receive adequate due process under the law. The UPND lodged a petition with the Constitutional Court on Aug. 19 challenging the outcome of the presidential election, alleging serious irregularities in the counting and tabulation process, among other concerns.

Although Zambia's constitution requires the Constitutional Court to hear electoral petitions within 14 days of their filing, it is silent as to the timeframe in which the court is required to issue a ruling. Despite these legal uncertainties, the court did not define clear timelines at the outset that would have allowed sufficient time for procedural matters and the hearing. Much of the court's deliberation was done in chambers, closed to the public. The court did not offer regular official public updates on the proceedings.

On Aug. 30, the court said that its calendar would be extended by five days, concluding on Sept. 8, to allow additional time for both the petitioners and the respondents to bring forward evidence and witness testimony. However, it later reversed its position and required both sides to present their cases on Sept. 2, or calendar day 14. Opposition lawyers argued that there was insufficient time and withdrew from the case. The full court again stated that four additional days would be provided, two each for the sides to argue the merits. In a surprise ruling when it reconvened on Sept. 5, it stated that its jurisdiction had ended at midnight on Sept. 2 and dismissed the UPND petition without hearing the case on its merits, citing the need to abide strictly by the constitutional time limits to hold a hearing. The vote was three-two.

The end result of this decision is that, contrary to international standards, the legal and judicial processes surrounding the presidential petition failed to meet Zambia's national and international obligations to ensure due process, a fair hearing, and timely and effective legal remedy.³

While it is difficult to quantify the precise impact of the flaws in the pre- and post-election periods,

² U.N. (CCPR), General Comment 25.

³ The Constitution of Zambia, Article 18(9), states, "Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time." The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." AfCHPR, Article 7 states, "Every individual shall have the right to have his cause heard. This comprises: (1) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force."

cumulatively, these problems represent a significant step backward for Zambia. These issues polarize Zambian society, undermine the integrity of Zambia’s electoral process, and weaken public confidence in the country’s democratic institutions.

Summary of Key Findings

Electoral Violence. Both the pre- and post-election periods were marred by political tensions and instances of localized electoral violence largely carried out by party cadres, particularly in Central, Copperbelt, Lusaka, and Southern provinces, including rioting, property damage, and physical assault resulting in some deaths.

Legal Framework and Electoral System. The 2016 elections were held under a new, untested legal framework adopted shortly before the polls. Some regulations governing the electoral process were enacted only after election day. The timing and manner of the adoption of these amendments and regulations, existing gaps, and inconsistencies in the legal framework resulted in significant legal uncertainty.⁴ This hindered understanding of the legal framework, and undermined the ability of electoral stakeholders to understand their implementation and to act in accordance with the laws and regulations. This situation was exacerbated by unclear constitutional provisions, including contradictory articles regarding the role of the speaker of the parliament should a petition challenging the results of the presidential election be filed, and a lack of clarity regarding the deadline for the Constitutional Court to issue a ruling on electoral petitions. Neither issue was clarified in due time, which contributed further to general confusion and uncertainty.

In one of its first rulings, three days before the election, the Constitutional Court granted a petition filed by the Law Association of Zambia that challenged the constitutionality of the continued stay of the ministers in office after the dissolution of parliament. The court ruled that ministers’ mandate expired on the day of dissolution of the parliament and requested return of the salaries and allowances paid after that period.

Level Playing Field. Biased public media, harassment of private media outlets, the use of state resources for political purposes, the abuse of office by government ministers, the inequitable application of the Public Order Act against the opposition UPND, and the denial of flight clearances for opposition candidates marred the campaign period and contributed to a lack of a level playing field.

Political Polarization. Support for the ruling PF and UPND is largely regional. Although support for various parties has shifted across the elections held since 1991, party support clusters in ethno-geographic patterns. The electoral reform requiring “50 percent +1” to win the presidential polls may have inadvertently fostered greater political polarization and ethnic overtones to a degree that most stakeholders had not previously experienced.

Participation of Women. Zambia has long suffered from low representation of women in elected political office, and many women who aspired to public office were disqualified by a new educational attainment requirement. Of the 156 elected members of parliament, only 26 are women (17 percent). While this remains comparatively low by regional standards, the representation of

⁴ UNHCR Comment 19 indicates that, “... elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.”

women in the newly elected National Assembly represents an increase over previous levels.⁵ The election of a woman, Inonge Wina, as Zambia’s first directly elected vice president, is noteworthy. Edith Nawakwi, president of the Forum for Democracy and Development, was also a presidential contender.

Candidate Eligibility and Nomination. Constitutional amendments introduced a minimal academic qualification of a Grade 12 certificate or its “equivalent.” This disproportionately affected female and rural aspirants. Non-refundable fees for candidate nomination were raised substantially, and were seen as being excessive and unreasonable barriers to candidacy, especially for women and youth.

Election Administration. The ECZ’s appointment system is inconsistent with best practices for recruiting election officials based on transparency, efficiency, and equity.⁶ The president’s prerogative to appoint and dismiss ECZ members heightens mistrust among opposition political parties of the electoral body’s independence from the executive branch.⁷

The ECZ suspended campaigns in two districts for 10 days in view of rising political violence by invoking Section 28 (2) of the Electoral Process Act. While some stakeholders felt the suspension contributed to a reduction in mounting tension, it is unclear whether the ECZ had the legal power to do so and whether it violated the parties’ right to freedom of assembly. The ECZ did not exert its powers to curtail abuses of the Code of Conduct (e.g. unfair administration of the Public Order Act that violated freedom of assembly of opposition parties), and no effective remedies were available to challenge the ECZ’s decisions on the code.⁸ These issues furthered opposition parties’ concerns about the impartiality of ECZ.

Both Zambian citizen observers and other international observation missions reported that voting processes were relatively well-managed, with some technical shortcomings. However, concerns were raised during all stages of the results-management process. Contrary to best practices for transparency,⁹ observers and party agents reported inconsistent availability of polling station results forms (called GEN 12 forms), which are needed to complete thorough independent checks, coupled with slow counting and tabulation procedures at both the polling station and constituency levels. The verification of results was highly contentious and resulted in disagreements between political parties and the ECZ on verification procedures, including UPND’s complaint that the final presidential results should not have been announced by the ECZ chairman because of inconsistencies between polling-station results and the verified consolidated results.

Vote tabulation should be a transparent and observable process.¹⁰ Though party representatives had access to the verification room at the National Results Centre, observers did not have access to the

⁵The SADC Protocol on Gender and Development established a target of 50 percent women representation by 2015: http://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf.

⁶ U.N., UNCAC, Article 7(1)(a); OAS, Convention Against Corruption, Article III (4); AU, Convention On Corruption, Article 7(4) in *The Carter Center, Election Obligations and Standards*, p. 70.

⁷ U.N. (ICCPR), General Comment 25, para. 24.

⁸ U.N. (CCPR), Leonid Sinitsin v. Belarus Communication No. 1047/2002 (2006) para. 7.3 in *The Carter Center, Election Obligations and Standards*, p. 76.

⁹ Norwegian Helsinki Committee, Human Rights Monitoring, p. 14 in *The Carter Center, Election Obligations and Standards*, p. 170.

¹⁰ U.N. (CCPR), General Comment 25, para. 20 in *The Carter Center, Election Obligations and Standards*, Section 9 on Vote Counting and Tabulation, p. 170.

transmission and verification exercise at the national level and were unable to observe the ECZ's verification of results transmitted from totaling centers. This lack of access undermined the transparency of what evolved into a highly contentious process. The verification process lacked clear and effective remedy mechanisms by which political parties could appeal the ECZ's actions to correct tabulation errors made by electoral officers on the polling station level.

While the ECZ chairman had forecast that final presidential results would be declared 48 hours after the last polling station completed counting, final presidential results were announced only on Monday, Aug. 15, four days following election day. The delay was caused by slow counting and totaling of results, as well as disputes over verification procedures between party representatives and the ECZ at the results center. The arrest on Aug. 12 of Samuel Chavula, a suspected hacker who had been accredited by the ECZ and given access to the verification room, raised concerns among political parties about improper accreditation and further delayed the process.

Electoral Dispute Resolution. ECZ conflict management committees, which were meant to serve as an alternative to lengthy court proceedings, did not provide an effective dispute-resolution mechanism during the elections. The newly established Constitutional Court faced a number of logistical and operational challenges.

On Aug. 19, the opposition UPND filed a petition with the Constitutional Court challenging the outcome of the presidential election and alleging serious irregularities in the counting and tabulation process, among other issues.

Much of the court's deliberations were done in chambers, closed to the public. The court failed to hear evidence on the merits of the petition and to rule on the validity of the elections. On Sept. 5, the court dismissed the petition by a majority decision on the technicality that the petitioner failed to present its case within the 14-day timeline, which expired on Sept. 2. Three out of five judges ruled that the 14-day deadline prescribed by the constitution is unambiguous, and therefore the petition could not be heard outside of the legal deadline. This ruling came after the court twice provided additional days, 2.5 days in the first instance and two days in the second instance, to each side to present their case.

The UPND then filed a petition with the High Court, alleging a violation under the Bill of Rights of the constitution of its right to a fair trial and seeking to enjoin the inauguration. The High Court stated it had no jurisdiction to grant interim relief to stop the inauguration and that the decision could be appealed to the Supreme Court. The Supreme Court refused to enjoin inauguration or to review the Constitutional Court's actions. Effectively, the petitioner's legal remedies have been exhausted.

The legal process to resolve the presidential petition was marred by a lack of clear guidelines on the timeframe for the court to resolve the matter and inconsistency in their decision-making. This led to confusion and circumvented the principles of a fair trial and effective legal remedy, preventing due process under the law. Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints failed to ensure due process, and to provide effective and timely legal redress.

Electoral Constituencies. Variances between the number of voters per constituency contravene the equality-of-suffrage principle for parliamentary races enshrined in the Zambian constitution, as well

as internationally accepted standards for boundary apportionment.¹¹ The total number of eligible voters in the largest constituency was over 16 times larger than that of the smallest.

Voter Education. Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ made a commendable effort to conduct voter education, civil society organizations and political parties indicated that voter-education efforts were insufficient, particularly outside major urban centers. They also indicated that materials in local languages did not reach all areas and that the voter-education campaign on the referendum on the Bill of Rights should have started several weeks earlier to inform voters adequately. A number of civil society organizations also conducted voter education across the country, though limited resources made it difficult to conduct adequate education programs.

Voter Registration. ECZ selected two experts from the United Nations election roster to conduct an audit of the voter register. According to the voter register audit projections, the certified register of voters included data for more than 300,000 deceased voters. Other irregularities were identified by the audit and not addressed in a timely fashion (e.g. voter identification cards with the same national registration card number). There are also questions about how the ECZ determined the number of voters eligible to vote on the referendum. The final number was based on a statistical projection from the 2010 census, which resulted in uncertainty regarding its accuracy.¹²

Referendum on the Bill of Rights and Constitutional Amendments. According to the constitution and the Referendum Act, the referendum vote required a threshold of 50 percent of all *eligible* voters to be considered valid. Had it passed, the constitutional amendment would have allowed the president to amend the constitution more easily, and the Bill of Rights would have offered greater protection for human rights, including economic and social rights.

The voter-education materials produced by ECZ indicated that a “yes” vote by more than 50 percent of eligible voters was required for a referendum to pass. However, shortly before the announcement of the results, the ECZ provided additional clarification, stating that in order for the referendum to succeed, it needed to pass two thresholds: 50 percent of all eligible voters would have to cast a ballot in the referendum, and at least 50 percent of those voters would have to cast ballots in favor of the referendum. Unfortunately, the formulation of the referendum question also lacked clarity, and voters expressed concerns that they did not understand its content. Comprehensive voter information and education was limited in the short timeframe before elections.

The referendum vote did not meet the participation threshold. Of those who voted in the referendum, 1,852,559 voted in favor of it, while 753,549 voted against it. In addition, 739,363 referendum ballots were rejected — almost nine times as many as the presidential-race ballots rejected and almost equal the number of votes cast against it, signaling either poor voter-education efforts or a significant number of protest votes cast by opposition supporters hoping to keep the PF and President Lungu, who had strongly advocated its passage, from a political win.

Civil Society. Civil society organizations played a key role in observing and reporting on the process. Several local organizations deployed citizen observers for polling day, including a coalition

¹¹ UN, ICCPR, General Comment 25, para. 21; U.N., ICCPR, *Istvan Matyas v Slovakia*, (2002) in *The Carter Center, Election Obligations and Standards*, p. 59.

¹² UNGA, *Guidelines Concerning Personal Data Files*, art. 2 in *The Carter Center Election Obligations and Standards* Section 4 on Voter Registration, p.86.

of nongovernmental organizations under the umbrella Zambia Election Information Center. Christian Churches Monitoring Group (CCMG) observed the voter-registration process and conducted a parallel vote tabulation. The CCMG broadly affirmed that the official results for the presidential elections were within a statistically credible range.

Conclusion

Zambia has held five presidential elections within the last 10 years, which has led to fatigue among the electorate, stretched the resources and capacity of the ECZ and other agencies, and heightened political tension. During the course of the elections held between 1991 and 2015, election observers have identified several significant concerns that remain today, including unbalanced media reporting, improper and biased application of the Public Order Act, instances of party cadre violence and intimidation, misuse of state resources, and concerns about the ECZ's lack of full independence.

Many electoral stakeholders reported that these concerns were significantly elevated during the highly polarized 2016 election. These dynamics, coupled with the failure of the newly established Constitutional Court to provide adequate due process under the law, suggest a disturbing trend and serve to significantly erode public and voter confidence in the electoral system and seriously undermine the integrity of democratic institutions in Zambia.

Zambia faces great challenges. It is essential that all Zambians, especially governmental authorities and opposition political leaders, engage one another peacefully and work to find constructive ways forward. It is incumbent upon political leaders from all parties to play a constructive role in strengthening the country's democratic institutions, lessening the tensions, addressing divisions, and ending electoral violence.

Background

Following an invitation from the Ministry of Foreign Affairs, The Carter Center was accredited by the Electoral Commission of Zambia to observe Zambia's national elections and referendum. The Center deployed a limited election observation mission, focusing on the political and electoral environment of the campaign period; the legal framework; and electoral dispute resolution mechanisms. The Carter Center mission was led by Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi; and Jordan Ryan, vice president of the Center's peace programs.

A core team of four people arrived in mid-July and were based in Lusaka. The team held regular meetings with key stakeholders, including political party candidates, civil society organizations, citizen election observers, members of the international community, and representatives of the electoral commission. Four medium-term observers were deployed to the Copperbelt and Southern provinces in advance of election day to assess election preparations. The core team remained in Zambia through mid-September to observe the post-election period, which included observation of the Constitutional Court hearing of the petition challenging the election results. Because of the limited nature of its mission, the Carter Center observers did not assess election-day procedures. The mission's findings are evaluated against Zambia's national legal framework and international obligations for genuine democratic elections. All assessments were made in accordance with international standards for elections, and the observation mission was conducted in accordance with the Declaration of Principles for International Election Observation.

■ The Carter Center at a Glance

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in

more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit www.cartercenter.org to learn more about The Carter Center.



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