



**PRELIMINARY REPORT  
CARTER CENTER ELECTORAL EXPERT MISSION  
ZAMBIA**

**General Elections, Zambia  
Lusaka, prepared August 23, 2021**

**INTRODUCTION**

The Carter Center deployed an international election expert mission (EEM) to Lusaka on July 23 to assess the electoral process surrounding Zambia's Aug. 12 general elections. The EEM was accredited by the Electoral Commission of Zambia (ECZ) and will continue working to assess the post electoral environment, including electoral dispute resolution, through the end of September.

The EEM, which is composed of four international experts and a local analyst, initiated their work remotely in mid-July. Because of the mission's limited size and scope, the EEM was unable to assess the full electoral process, nor to conduct a robust assessment of the voting, counting, and tabulation processes surrounding election day. Instead, the EEM focused on several key aspects of the Zambian electoral process, including the legal and electoral framework; the effectiveness and transparency of electoral preparations; the campaign environment, including freedom of the media; respect for core participatory rights; the use of social media; and disinformation and misinformation trends.

The EEM commends voters, polling officials, civil society and national observation organizations, and party agents for their democratic commitment during election day and throughout the post-election period. However, the mission also notes that despite recurrent pledges of peaceful conduct by political parties and candidates, civil society organizations, police, and the ECZ, the electoral process was tainted by instances of violence that resulted in the loss of lives.

The EEM met with a wide range of stakeholders, including representatives from the government, the judiciary, the Electoral Commission of Zambia (ECZ), political parties, civil society organizations (CSOs), the Law Society of Zambia, independent analysts, national observer groups, media, and social media experts.

The mission extends its congratulations to President-elect Hakainde Hichilema and welcomes his strong call for peace and reconciliation. The EEM also praises incumbent President Edgar C. Lungu for conceding swiftly, allowing for a peaceful transition of power.

The EEM notes with concern the very low number of elected women, in contravention with the constitutional gender parity requirement and would like to echo the Aug. 17 statement by the Nongovernmental Gender Organisations' Coordinating Council (NGOCC) urging the incoming president to enhance representation in the parliament by appointing women for the up to eight parliamentary appointments envisioned in the constitution.<sup>1</sup> In order to enhance women's representation in the parliament, and recognizing that women constitute over 50% of the population, The Center recommends that women be appointed for all of these positions, including younger women and women with disabilities.

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<sup>1</sup> In accordance with articles 68 and 69 of the constitution, the president may, at any time after a general election to the National Assembly and before the National Assembly is next dissolved, appoint such number of persons as he considers necessary to enhance the representation of the National Assembly as regards special interests or skills, to be nominated members of the National Assembly, so, however, that there are not more than eight such members as any one time.

The Carter Center EEM works in accordance with the Declaration of Principles for International Observation. It is assessing the Zambian electoral process in the light of the national legal framework and the principles and commitments on democratic elections enshrined in the regional and international instruments Zambia has ratified.

This is a preliminary report. The EEM will continue its work until the conclusion of the electoral process, after which The Carter Center will publish a final report with recommendations for future elections.

## **ZAMBIANS TURN OUT IN LARGE NUMBERS AND EXERCISE THEIR RIGHT TO VOTE DESPITE UNLEVEL PLAYING FIELD**

### **EXECUTIVE SUMMARY**

- The campaign environment was marked by increasing polarization and an unlevel playing field that limited the United Party for National Development's (UPND) constitutionally guaranteed freedoms of movement and association while the ruling Patriotic Front (PF) party's activities went largely unrestricted. There was clear pro-government bias in state-owned traditional media (print, television, radio).
- The police enforced the Public Order Act and COVID-19 standard operating procedures (SOPs) unfairly, providing an undue advantage to the ruling party. The ECZ used its regulatory powers to suspend campaign activities in some provinces affected by electoral violence. Most stakeholders interviewed by the EEM claimed that the unequal enforcement of the Electoral Code of Conduct further advantaged the ruling party.
- Despite constitutional provisions for gender equity in the National Assembly and local councils, women's participation as candidates in elections remains below international and regional standards. Political participation was restricted through prohibitive candidacy fees and a minimum education requirement that disproportionately affected women, as well as by the lack of compliance with progressive regulations on the part of the government and political parties and by gaps in the overall regulatory framework to ensure full inclusion and participation by women, youth, and persons with disabilities (PWDs), in line with regional standards.
- The online campaign was marred by significant obstacles to participation, culminating in the imposition of blanket online communications restrictions starting on election day and lasting more than 48 hours. Online freedom of expression was thereby subjected to historically unprecedented limits in Zambia, showing a disregard for Zambians' constitutional rights that exacerbated preexisting hurdles, including the recently approved Cyber Security and Cyber Crimes Law and a hostile online environment for LGBT+ citizens.
- The repeated broadcast of disinformation and political content by the online accounts of state-owned media contributed to the unlevel playing field, advantaging incumbent President Edgar C. Lungu. Some civil society organizations undertook a degree of fact checking, but the reach of disinformation spread by accounts with hundreds of thousands of followers created a verification vacuum within which disinformation thrived. This was compounded by the failure of Facebook to amplify civil society fact checking and the absence of an access-to-information law.
- The new legal framework that allows voting rights for prisoners is welcome. However, concerns remain about legal provisions restricting political space. Previous recommendations made by observer groups on legal changes that could strengthen the electoral processes have not been enacted, including changes to the colonial-era 1955 Public Order Act and to the presidential appointment of the ECZ commissioners, as well as enactment of campaign finance and gender equity regulations.
- The deployment of the army on Aug. 1 lacked constitutional basis because it was not an action dictated by public emergency or national disasters. The president cited increasing incidents of violence allegedly triggered by

UPND supporters and the potential for increasing violence as election day approached. However, the opposition and CSOs viewed the deployment of the army as a potential way to disenfranchise voters.

- A wide range of stakeholders raised concerns about the ECZ’s independence and level of preparedness during the electoral process, and about the ECZ’s insufficient communication and consultation regarding key stages of the process, such as accreditation of local monitors and the results-management process. The creation of the new voter registry within a time frame that was limited to 34 days, in spite of a constitutional provision that allows for continuous registration, also undermined stakeholders’ confidence in the electoral process.

## **PRELIMINARY FINDINGS**

### **Political Background**

On Aug. 12, Zambia held elections for president, national assembly members, mayors and council chairpersons, and local councillors. Despite a large number of registered parties, the principal contest at all levels was between the incumbent Patriotic Front (PF) and the longtime opposition party, the United Party for National Development (UPND). As in 2015 and 2016, at the presidential level, the race was mainly between UPND leader Hakainde Hichilema and incumbent President Edgar C. Lungu of the PF. The 2021 elections took place in the context of a democratic decline prevailing since the contested 2016 elections, which The Carter Center assessed as “a significant step backward for democracy in Zambia,” leading to further political polarization. Conditions in 2021 were exacerbated by a severe economic contraction in 2020 caused by weak copper prices, the impact of COVID-19, a strongly depreciating currency (until recently), high inflation, and a worsening debt crisis.

Between 2016 and 2021, there were notable examples of democratic backsliding and narrowing of political space. These included: a failed national reconciliation initiative; police misuse of the Public Order Act and other provisions; threats and intimidation that dampened freedom of expression; closures of prominent independent media (The Post newspaper and Prime TV channel); more than 15 arrests of UPND leaders; and, more recently, the use of COVID-19 standard operating procedures.

Issues of insecurity grew considerably, notably due to the activities of political party supporters or “cadres,” who were deployed to carry out acts of violence, including beating and destruction of property, which served to intimidate supporters of opponent parties and others, and to prevent and disrupt peaceful assemblies. While PF and UPND cadres were especially active, other parties cadres also contributed to a violent pre-electoral environment. During the electoral campaign, there was an unprecedented deployment of the army in the name of hindering the growth of political violence. However, the move also triggered concerns of potential voter intimidation.

### **Legal Framework**

The constitution establishes principles of electoral systems and processes, such as freedom to exercise political rights, universal adult suffrage based on the equality of the vote, fair representation of various interest groups in society, and gender equity in the National Assembly and councils. The constitution protects the right to vote and be elected in all national and local government elections and referenda and to vote in secret and guarantees anybody above the age of 18 years may vote in elections and anybody above the age 21 to be eligible to become a member of parliament. It also guarantees independence, impartiality, and effectiveness of the judiciary and further establishes independent service commissions and other independent offices.

The entire legal framework that was enacted and used for the 2016 general elections was applied for the 2021 general elections, with minor amendments to the Electoral Commission of Zambia Act, 2016, and the Electoral Process Act.<sup>2</sup> In a positive development, the amended Electoral Process Act allowed for voting rights for prisoners.

Stakeholders raised concerns regarding some provisions within new laws enacted with the effect of restricting political space, including the Electronic Communication and Transaction Act, 2021; the Electronic Government Act, 2021; the Data Protection Act, 2021; and the Cyber Security and Cyber Crimes Act, 2021. Furthermore, recommendations made by observer groups in previous elections on legal changes aimed at strengthening the electoral processes have not been enacted. These included amending the colonial-era 1955 Public Order Act, which grants police discretion to regulate public assemblies and processions, and the presidential appointment of ECZ commissioners as prescribed by the Electoral Commission of Zambia Act.<sup>3</sup>

On May 9, the ECZ published standard operating procedures to implement preventive measures aimed at combating the spread of COVID-19 during the electoral process. The SOPs were developed by the multi-stakeholder technical committee on COVID-19 in the electoral process. The enforcement of SOPs as well as the Public Order Act by the police and ECZ during the campaign period were unfairly applied to the benefit of the ruling party, curtailing the opposition campaign activities (see below).

The EEM notes that President Lungu's decision on Aug. 1 to deploy the army was taken without constitutional basis, as it did not meet the constitutional threshold of being dictated by public emergency or a national disaster. President Lungu cited increasing incidents of violence allegedly triggered by UPND supporters and the potential for increasing violence as election day approached. However, the opposition and CSOs considered the deployment of the army as a potential way to disenfranchise voters.

## **Electoral System**

The constitution prescribes Zambia's majoritarian electoral system for presidential elections.<sup>4</sup> The election of a president requires a winning presidential candidate to receive more than 50% of the valid votes cast during the election; If no candidate reaches 50%, a run-off must be conducted within 37 days of the initial ballot between the top two candidates. The 156 members of the National Assembly are directly elected based on a simple majority vote under the first-past-the-post system.<sup>5</sup> Elections of ward councillors and mayoral/council chairpersons follow the same system.<sup>6</sup>

## **Campaign Finance**

The Carter Center's report of 2016 made specific recommendations for legal reforms on campaign finance that have not been implemented by Zambia.<sup>7</sup> In 2021, the EEM noted the absence of party and campaign finance regulatory requirements in the legal framework.

Article 60 (4) of the constitution establishes the Political Parties Fund and provides for campaign financing restrictions on political parties. It also regulates sources of funding and maximum amounts to be used for campaigns during elections.

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<sup>2</sup> The legal framework comprises Act No. 2 of 2016, the Constitution of Zambia (Amendment), No. 25 of 2016, Electoral Commission of Zambia Act, No. 5 of 2019, Amendment to the Electoral Commission of Zambia Act, Electoral Process Act No. 35 of 2016, Electoral Process (amendment) bill of 2021, and No. 8 of 2016, the Constitutional Court Act. There are also other relevant laws such as the Societies Act Cap 119, Referendum Act 2015, and Public Order Act, Cap 113.

<sup>3</sup> Amendment to section 5 of the Public Order Act was also recommended by an Amnesty International report titled "Ruling by Fear and Repression: The Restriction of Freedom of Expression, Association and Assembly in Zambia" (2021).

<sup>4</sup> Article 47 of the Constitution and Article 101.

<sup>5</sup> Article 68 of the Constitution. With 156 Constituencies in Zambia.

<sup>6</sup> Article 153.

<sup>7</sup> Partial constitutional amendment was introduced under the Constitution of Zambia (Amendment) Bill, 2019, commonly referred to as Bill 10. However, no specific amendments were introduced touching on campaign financing restrictions on political parties as provided for under Article 60 (4) of the constitution.

In 2017, the government drafted the Political Parties Bill, which included provisions to establish a statutory instrument prescribing the maximum amount of money to be used by political parties for campaigns during elections as well as financial audit mechanisms for parties. However, the bill has not been passed by the National Assembly. Since there are no provisions for transparency in campaign finance, nor for public funding of political parties or candidates to level the financial playing field, the electoral process is vulnerable to the undue influence of money.

The EEM interlocutors expressed concerns regarding the use of state resources with impunity by the ruling party. They alleged public goods were used for party campaigns despite provisions in the Electoral Code of Conduct prohibiting the use of government or parastatal means of transportation or facilities for campaign purposes.<sup>8</sup>

There also are no legal provision or guidelines to regulate online advertising despite most political parties, candidates and party supporters enhancing their online campaigns due to COVID-19 restrictions on physical rallies. The ruling party used state media Facebook pages to amplify its campaign ads and messages.

### **Legal Framework for Participation of Women**

Articles 45 and 47 of the constitution provide for gender equity in the National Assembly and councils. On Dec. 23, 2015, the National Assembly passed the Gender Equality and Equity Act No. 22, 2015, to provide legal mechanisms to eliminate women's discrimination in public and political life.<sup>9</sup> However, no regulations have been enacted to effect the spirit of the law.

Women constitute more than 50.5% of the Zambian population<sup>10</sup> and were 53.4% of the electorate in the 2021 general elections. Despite being a demographic majority, active participation of women in decision-making and electoral processes as candidates is very low. At the presidential level, only one of the sixteen candidates was a woman. At the parliamentary level, out of the 857 candidates contesting National Assembly seats, 181 were women. Of 437 candidates for mayoral and council chairpersons and 5,693 for councilor elections, 96 and 565 were women, respectively.<sup>11</sup>

It is notable that both the incumbent PF and opposition party UPND nominated female vice presidential candidates, who were very visible in the campaign period. The PF also had nominated a female vice presidential candidate in 2016—Inonge Mutukwa Wina—who was elected and served as vice president.

The EEM notes that women's participation as candidates in elections remains below international and regional standards.<sup>12</sup> Most EEM interlocutors highlighted legal barriers that limit women's participation in elections as candidates, including constraints on eligibility caused by educational requirements, the lack of a legal framework that regulates gender mainstreaming, and prohibitive financial and nomination fee requirements.<sup>13</sup>

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<sup>8</sup> According to Section 15(k) of the Code of Conduct, exception is granted to the president and vice president in connection with their respective offices.

<sup>9</sup> See Section 29 of the Gender Equity and Equality Act No. 22 of 2015.

<sup>10</sup> According to reports from the Ministry of Gender and World Bank collection of development indicators.

<sup>11</sup> Numbers announced by ECZ in a press briefing to international observers held at Mulungshi International Conference Center on Aug. 11, 2021.

<sup>12</sup> Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly in 1979 stipulates that State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country. Article 1 (e) of the 2003 UN General Assembly resolution on women's political participation (A/RES/58/142) calls states to promote the goal of gender balance in all public positions. The African Charter on Human and Peoples Rights (ACHPR) on the Rights of Women in Africa (Maputo Protocol) adopted in 2003 calls on state parties to take affirmative action to promote equal participation of women in the political life. Furthermore, article 12 of the Amended SADC Protocol on Gender and Development that entered into force in 2018 establishes that State Parties shall endeavor to ensure equal and effective representation of women decision-making positions in the political, public and private sectors.

<sup>13</sup> See also political section on further hurdles to women's participation in politics.

## Campaign Environment

The election campaign, held between May 14 and Aug. 11, was highly contentious. The prospects of electoral success were limited in practice to the two main political parties (PF and UPND) and their two presidential candidates. This was the third consecutive election in which the two candidates had competed against each other. The personal history of tension and ill will between the two candidates, Lungu and Hichilema, from the previous elections manifested itself again in negative personal accusations, particularly those directed against the UPND challenger, culminating in threats of arrest by the incumbent against the latter.

The overall political atmosphere was tense, and the parties used violence, hate speech, and misinformation, which contributed to the negative overall atmosphere. This highly politically polarized environment was characterized by the opposition's lack of trust in governmental institutions. While both parties were able to conduct a campaign, there was a stark discrepancy between the PF and the UPND regarding their ability to exercise constitutionally guaranteed freedoms of movement and association. The UPND's campaign faced significant restrictions by the police, which hindered their campaign events and limited the movement of the party's candidate, Hichilema, around the country.

COVID-19 SOPs restricted the freedom to campaign, in principle limiting parties to door-to-door campaigning and small meetings. In practice, the PF held large-scale gatherings under the rubric of government inspections of facilities or distribution of COVID-19 masks. The UPND eventually followed suit. However, the police also applied the COVID-19 SOPs in an unequal way, in particular preventing or restricting the physical campaigning of the UPND, whereas PF campaign events were largely unrestricted. Further, the misapplication of the Public Order Act also restricted campaign space for opposition political parties.

The campaign also was marked by frequent accusations that both PF and UPND made use of party cadres (sometimes armed) to intimidate opponents and restrict campaign activities. According to local observers, violent acts during the campaign were perpetrated by both the PF and UPND at a ratio of approximately 2-to-1.<sup>14</sup> The UPND was disproportionately the victim of campaign violence. The PF attributed the threat of violence to the UPND throughout the campaign, despite themselves being accused of perpetrating cadre violence. The combination of this negative campaigning and public uncertainty regarding actual and potential violence appeared to result in "quiet intimidation" of some citizens in some regions, diminishing fundamental political freedoms.

On Aug. 1, President Lungu deployed the army, citing increasing incidents of violence and the potential for future violence around election day and the announcement of results. Representatives of the ruling party assigned responsibility for the incidents of violence entirely to the UPND. Interlocutors from the opposition considered the presence of the military a direct means of intimidation, both to the parties and to the general public.

The clearly discernible material, financial, organizational, and logistical capacities of the governing party's campaign were often inseparable from those of the state. EEM interlocutors reported that the PF enjoyed a significant advantage in terms of campaign financial resources,<sup>15</sup> which was further enhanced by the absence of any effective legislation governing political party campaign financing and expenditure.

The traditional media environment was highly polarized. State-owned media showed an overwhelmingly pro-government bias.<sup>16</sup> The Zambia National Broadcasting Corporation (ZNBC), the state-owned television broadcaster, gave massive positive coverage to the PF and Lungu, manifestly failing to provide equitable coverage to opposition parties. Radio was utilized often by opposition and smaller parties, especially in rural areas. However, accessing the media proved expensive for all parties, which advantaged the incumbent party, and opposition parties complained that accessing both private and public radio was often difficult given a clear pro-PF bias by its owners and program directors.

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<sup>14</sup> CCMG Preliminary Statement on the 2021 General Elections, Aug. 13, 2021.

<sup>15</sup> See for example *Transparency International Zambia, The June 2021 Billboard Costing Report*.

<sup>16</sup> European Union Election Observation Mission Preliminary Statement, Aug. 14, 2021.

Interlocutors in the traditional media raised the issue of self-censorship, noting the risk of political interference and pressure on journalists, with the potential adverse effect on the freedom of expression.

### **Political Participation of Youth, Women, and LGBT+**

Out of the 155 elected members of parliament (MP) elected on Aug. 12, only 20 are women.<sup>17</sup> Participation generally was restricted by the imposition of significant candidacy fees, a minimum education requirement that disproportionately affected women, and the lack of a regulatory framework to ensure inclusion and participation by women, youth, and persons with disabilities in line with regional standards.<sup>18</sup>

Establishing candidacy and conducting a campaign is prohibitively expensive in practice for all but the wealthiest within Zambian society. Voter expectations that politicians will provide “gifts” (cash, food, transport, items of clothing, etc.) and politicians’ willingness to engage competitively to meet these expectations results in significant informal campaign costs. Both women and youth particularly struggled to overcome this barrier.

The online campaign was a particularly hostile arena for LGBT+ citizens. LGBT+ citizens suffer widespread discrimination in Zambia, including in law.<sup>19</sup> LGBT+ rights were used as a political tool by pro-government pages, including state-owned media. Drawing on widespread anti-LGBT+ sentiment, such pages spread disinformation seeking to associate opposition figures with the cause of LGBT+ rights. Notably, the UPND leader was accused of intending to implement a policy, if elected, of legalizing same-sex marriages. In addition, Facebook published multiple ads, accumulating tens of thousands of views, that promoted anti-LGBT+ positions, raising questions about the effectiveness of Facebook’s application of its community standards policy in its ad approval process.<sup>20</sup>

EEM interlocutors stressed that female candidates, and women wishing to become candidates, face a number of challenges that are unique to them as a group. In particular, the role of patriarchy in Zambian society often manifests itself in cultural obstacles to participation. Traditional roles are expected of women in political events, usually in a supportive fashion. Despite women having the inherent skills, competencies, and community networks necessary to compete as candidates, it is something that many, especially rural women, only consider once given the opportunity and support associated with training and mentoring. Having put themselves forward as candidates, they face particular challenges of bullying, lack of access to funding required to run a competitive race, and in some cases sexual harassment.

### **Online Campaign**

The EEM includes a social media expert and a social media local analyst who are analyzing the use of social media during the electoral process, as well as disinformation and misinformation trends.

A lively online campaign was tempered by significant obstacles to participation and inequities that favored the incumbent. The imposition of blanket restrictions on access to social media showed disregard for Zambians’ constitutional rights to freedom of expression and runs contrary to international standards.<sup>21</sup> Throughout the

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<sup>17</sup> The total seats of parliament are 156. However, the election for the MP for the Luapula constituency was postponed due to the death of one of the candidates. Therefore, on Aug 12 only 155 MPs were elected.

<sup>18</sup> See EU EOM Preliminary Statement: Fees vary from ZMK 95,000 (approximately US\$5,000) for male presidential candidates to as low as ZMK 500 for lower-level races. Overall fees range from 10% to 30% less for youth, women, and people with disabilities. Nonetheless, in the Zambian context, and with the large informal campaigning costs associated with first achieving a party candidacy, then contesting the election campaign against competitors, the overall impact is to discourage candidacy among marginalized groups.

<sup>19</sup> Article 155 of the Zambian Penal Code stipulates imprisonment for sex between men.

<sup>20</sup> As of Aug. 7, Facebook was continuing to run anti-UPND advertising from Zambia Special, a page which was concurrently broadcasting a discriminatory anti-LGBT+ video that had accumulated 17,000 views. As of Aug. 17, the video had still not been taken down.

<sup>21</sup> A court order was issued on Aug. 13 requiring the restoration of access to social media. It was not until 3:30 p.m. on Aug. 14 that large numbers of internet users were reporting full restoration of access, more than 48 hours after the imposition of restrictions.

election, videos of in-person campaign events constituted a high proportion of most-viewed content. Consequently, the campaigning opportunities offered by social media failed to compensate for the partisan application of COVID-19 restrictions. Instead, it amplified the unlevel playing field between incumbent and opposition.

A recently expanded legal framework generated significant advantages in favor of the incumbent party. The Cyber Security and Cyber Crimes Act was passed less than two months prior to the campaign's onset in a rushed process without adequate consultation with civil society. The act imposes stiff penalties, including imprisonment, based on vague and overly broad definitions of false information, harassment, and hate speech, contrary to Article 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>22</sup>. Consequently, numerous politicians, academics, and civil society leaders exercised a degree of self-censorship. While many nonetheless participated in a lively online campaign, they often perceived they were taking a risk by doing so.

The Data Protection Act, also passed in the leadup to the election, suffers from a similarly vague definition of national security that opens the door to the infringement of the right to privacy. This legislation came in the aftermath of multiple investigations alleging that the Zambian authorities possessed controversial communications interception capabilities, including phone-hacking software that has been used elsewhere against opposition figures and civil society groups, allegations that compounded self-censorship.<sup>23</sup>

While the constitution guarantees equal participatory rights to both women and men,<sup>24</sup> women faced particular hurdles, as demonstrated by a lower rate of social media usage, lower participation in online discussion, lower viewership of political ads, and lower visibility as candidates compared to men.<sup>25</sup> On a sample of the most widely commented-upon posts in the campaign, for each comment left by a woman, men left four. Furthermore, the cost of smartphones and data posed economic barriers disproportionately impacting women in rural and peri-urban areas, while sexist cyberbullying further discouraged their participation.

Social media was a key arena for mobilizing younger voters.<sup>26</sup> The age groups most targeted by Facebook ads were 25-34s followed by under-24s. While roughly a fifth of Zambians live in the capital, over three-fifths of ads analyzed by the EEM were viewed more times in Lusaka than in any other province. This reflects how economic hurdles to internet connectivity suppressed the participation of rural young people in the online campaign. Political parties failed to accord even minimal visibility to persons with disabilities in the online campaign.

The two largest parties both ran professional social media operations. Policy proposals were frequently less visible than a focus on the character of party leaders, attacks on the character of political opponents, and posts emphasizing candidates' religiosity. Many religious figures used social media to spread messages of peace in the leadup to and aftermath of the vote.<sup>27</sup>

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<sup>22</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976.

<sup>23</sup> On Aug. 15, 2019, a Wall Street Journal investigation claimed that Zambian authorities had collaborated with Huawei to gain capabilities that have been used elsewhere to track opposition figures. December 2020 and September 2018 investigations by Citizen Lab, a group based at the University of Toronto, have linked the Zambian authorities to two software packages, Pegasus and Circles, that can help operators listen to phone calls and access private messages.

<sup>24</sup> Preamble of the constitution: "We the people of Zambia...confirm the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order."

<sup>25</sup> Approximately 44% of Zambian Facebook users are women, yet an EEM analysis of 118 ads found that for the 78 for which gender-disaggregated data was visible, a majority of viewers were women on only five occasions. Ad analysis is ongoing and will be further elaborated in the final report. Weekly analysis of a sample of the most-shared comments on political posts found that women Facebook users were more likely to leave a reaction rather than to participate in discussion by leaving a comment. Women left 28% of reactions and 21% of comments on these posts..

<sup>26</sup> 75.8% of Facebook users in Zambia are age 34 or under.

<sup>27</sup> Youth leaders also played a role in disseminating messages of peace. For example, on Aug. 10, New Hope MMD Youth League posted a paid Facebook ad with the message, "Maintain your friendship with your neighbour no matter what party they are supporting in the 2021 elections."

The legal framework is ill-adapted for online advertising. The relevant provisions of the Electoral Process Act (2016) are directed at newspapers, creating ambiguities as to the act's application online. Facebook campaign ads received more than 6.5 million views, but Zambians were provided with insufficient transparency. Facebook's release of an "ad library report" consolidating data on political ads was a positive step.<sup>28</sup> Regrettably, it did not include all Facebook campaign ads disseminated during the campaign and often omitted key details such as the identity of the financier and the amount that had been paid. Overall, Facebook took down more than 150 ads whose advertisers had failed to display a notice indicating that the content was political in nature.

The online environment included a limited quantity of political content financed by foreign state media. Chinese state media ran 32 Facebook ads about political or social issues visible in Zambia during the campaign. While most of these ads promoted the Chinese state's worldview and general priorities, they included content such as a video promoting "Chinese-style democracy." Chinese state media published content shortly before the election day highlighting some of the major points of President Lungu's campaign.<sup>29</sup>

### **Online Disinformation**

A diverse array of disinformation was spread during the campaign, including patterns of low-integrity polls, professional-quality attack videos, doctored images, manipulated social media posts and superimposed headlines. At least one foreign public relations organization was involved.<sup>30</sup> While disinformation targeted a range of political actors, the abuse of state resources contributed to the heightened visibility of disinformation favoring the Patriotic Front.<sup>31</sup>

Public broadcaster ZNBC exhibited bias to such a degree that it became an object of ridicule on social media. In violation of its legal obligation to be "unbiased and independent," it used its influence to repeatedly spread online disinformation targeting the political opposition. This did not prevent ZNBC from gaining more than 82,000 new Facebook followers during the election campaign, an increase of over 35%. Research conducted by the EEM also indicated significant bias on the Facebook page of the state-owned *Zambian Daily Mail*. These state-owned outlets were essential in generating the unlevel campaign playing field.<sup>32</sup>

Alongside important fact-checking efforts from iVerify, a civil society initiative, Zambian social media users themselves frequently rebutted false claims. The effectiveness of fact-checking was impeded by the PF's continued dissemination of already-refuted claims to its followers, insufficient amplification of fact-checkers' work by social networks,<sup>33</sup> inadequate counter-disinformation expertise within political parties, and the absence of an access-to-information law that could have facilitated rebuttal. In addition, pro-government media outlets created a fluid dissemination of disinformation offline, where the audience would not benefit at all from online fact-checking. These factors resulted in verification vacuums in which disinformation thrived, incentivizing its dissemination.

### **Mandate and Composition of the Electoral Commission of Zambia (ECZ)**

The Electoral Commission of Zambia is mandated "to direct, supervise and control elections in a fair and impartial manner" and, inter alia, apply the Electoral Process Act, conduct and maintain a register of voters,

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<sup>28</sup> Of the 663 ads displayed during the campaign visible in the Facebook Ad Library Report as of Aug. 17, the EEM identified 169 as campaign ads supporting a candidate or party.

<sup>29</sup> [http://www.xinhuanet.com/english/africa/2021-08/11/c\\_1310121437.htm](http://www.xinhuanet.com/english/africa/2021-08/11/c_1310121437.htm)

<sup>30</sup> Faraline Public Relations, a UK-based company specializing in reputation management rather than polling. In a video shared on pro-government accounts, the founder introduced low-integrity poll results projecting a victory for Lungu.

<sup>31</sup> In contravention to ICCPR General Comment 25 to Article 25, paragraph 19: "Voters should be able to form opinions independently, free of ... manipulative interference of any kind."

<sup>32</sup> An EEM analysis of ZNBC's Facebook content concluded that of the 201 publications related to politics July 26-Aug. 1, none were positive about the opposition UPND, while 122 were positive about the ruling PF. The same study concluded that of 49 publications related to politics published by the *Zambian Daily Mail* on Facebook July 26-Aug. 1, 15 were positive about the PF and one was positive about the UPND.

<sup>33</sup> Facebook's Zambia fact-checking partnership with AFP elicited only two fact checks across the entirety of 2021.

determine the boundaries of constituencies and wards, resolve disputes of an administrative nature, and conduct voter education.<sup>34</sup>

The commission is composed of five members that serve seven-year terms, renewable once.<sup>35</sup> They are appointed by the president and confirmed by the National Assembly.<sup>36</sup> Since 2019, the chairperson or vice chairperson no longer needs to be qualified as a judge of the superior court or have held the position of judge of a superior court to be appointed.<sup>37</sup>

Justice Esau Elliot Chulu, the chairperson of the commission, was appointed in 2015 after serving as a commissioner since 2009. After the tight outcome of the 2016 presidential election, political parties, specially the UPND, expressed concerns about the impartiality of some commissioners and staff. The concerns resurfaced during the current electoral process.

The president's power to suspend and remove a member of the commission undermines the independence of the institution, notwithstanding a procedure introduced in 2019 whereby the president shall refer the matter to the chief justice, who is to appoint a tribunal that determines the question of removal within 30 days.<sup>38</sup> The commission's funds remain subject to the approval of the president, albeit the manner in which the commission uses such funds is no longer subject to the president's approval.<sup>39</sup> Furthermore, the commission has been given a legal mandate to appoint an external auditor to increase financial transparency.<sup>40</sup>

A wide range of stakeholders shared with the EEM concerns over the ECZ's independence at different levels of its structure. The appointment system does not ensure the independence of the election officials, and therefore is inconsistent with international obligations and standards.<sup>41</sup> While the Constitution of Zambia stipulates that the ECZ shall have offices in provinces and progressively in districts, the ECZ continues to rely on town clerks and council secretaries to serve as district electoral officers (DEOs) with responsibility for administering the polls at the district level.<sup>42</sup>

## **Voter Registration**

The Constitution of Zambia prescribes that a citizen who is 18 years of age is entitled to be registered as a voter.<sup>43</sup> While the Electoral Process Act provides that "the Commission shall conduct a continuous registration of voters," it also enables the commission to prescribe cutoff dates.<sup>44</sup> Despite the legal provision concerning continuous registration, all eligible citizens were required to register in the 2020 voter registration exercise from Nov. 9 to Dec. 20, 2020<sup>45</sup>. The commission shall not register a Zambian national as a voter unless they are in possession of a national registration card (NRC).<sup>46</sup>

Stakeholders including domestic observer groups, CSOs, and political parties expressed concern regarding disparities in issuance rates of national registration cards by the Ministry of Home Affairs, which differed considerably by province.<sup>47</sup> Despite local monitors' concerns on this matter, the ministry did not provide any clarification. A wide range of interlocutors deemed the four-day extension (Dec. 17-20) granted by the ECZ as insufficient to complete voter registration.<sup>48</sup> Likewise, the ECZ decision not to audit the new registry of voters

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<sup>34</sup> See Act No. 5 of 2019, Amendment of section 4 of the Electoral Commission of Zambia Act No. 25 of 2016.

<sup>35</sup> Ibid.

<sup>36</sup> See Section 5 (1), Electoral Commission of Zambia Act No. 25 of 2016.

<sup>37</sup> See Act No. 5 of 2019, Amendment of Section 5, Electoral Commission of Zambia Act, 2016.

<sup>38</sup> Ibid.

<sup>39</sup> See Act No. 5 of 2019, Amendment of section 14, Electoral Commission of Zambia, Act, 2016.

<sup>40</sup> See Act No. 5 of 2019, Amendment of section 16, Electoral Commission of Zambia, Act, 2016.

<sup>41</sup> See TCC EOM Report Zambia 2016.

<sup>42</sup> See Constitution of Zambia, Article 229 (1).

<sup>43</sup> See Constitution of Zambia, Article 46.

<sup>44</sup> See Section 7, Electoral Process Act.

<sup>45</sup> The Constitutional Court is yet to hold hearings concerning a petition filed in 2020 by the Chapter One Foundation challenging ECZ's decision to re-register all eligible voters within 30 days.

<sup>46</sup> See the Electoral Process (amendment) bill of 2021, Amendment of Section 9, The Electoral Process Act, 2016.

<sup>47</sup> See for instance the CCGM statement on analysis of the voter register issued on April 14, 2021.

<sup>48</sup> See also CCMG 2020 voter registration report Phases 1-4.

despite stakeholders' demands to do so eroded public confidence in the integrity of the registration process and the registry.<sup>49</sup>

The number of Zambians included in the final voter registry was 7,023,499. This represents a 4.6% increase in relation to the number of registered voters for the 2016 elections. Based on the Zambia Statistics Agency (ZamStats), that is 16.5% less than the projected 2021 voting population.<sup>50</sup> However, it is also worth noting that ZamStats has not conducted a national census since 2010, which renders it difficult to make an accurate quantitative assessment of registration rates.<sup>51</sup> Out of the registered voters, 3,751,040 were female (53.4%) and 3,272,459 male (46.6%).

### **Accreditation of Observers**

Local monitors expressed frustration at the lack of consultation by ECZ at different stages of the electoral process. The Guidelines for Accreditation of Domestic Observers were unclear and were not published until 12 days after the accreditation process official start date on July 1. Local observer groups asked the ECZ to publish amended guidelines to clarify the number of observers that could be accredited in each constituency and simplify the bureaucratic procedures.<sup>52</sup> While in the end the ECZ Secretariat agreed to reduce the administrative requirements that hampered the issuance of accreditations, it did not release written amended guidelines. In addition, at the district level there was an inconsistent implementation of the guidelines for accreditation, resulting in some local monitors' not receiving accreditation cards at district level.

### **Role of the ECZ in Enforcing the Code of Conduct vis-à-vis Electoral Violence**

The constitution stipulates that candidates and political parties shall comply with the Electoral Code of Conduct.<sup>53</sup> The ECZ is mandated to enforce the Code of Conduct and may disqualify a political party or candidate in breach of the code.<sup>54</sup> The ECZ used its regulatory powers to suspend campaign activities in some provinces affected by electoral violence. However, EEM interlocutors expressed concerns about the ECZ's unequal enforcement of the Code of Conduct, advantaging the ruling party. The ECZ should have played a more active role to ensure that police provided equal treatment of all breaches of the Code of Conduct or COVID-19 SOPs.

On June 15, the commission suspended with immediate effect all forms of political campaigns for the PF and UPND in Lusaka, Mpulungu, Namwala and Nakonde districts due to escalating violence.<sup>55</sup> The ECZ lifted those suspensions in Mpulungu, Namwala and Nakonde after two weeks and in Lusaka on July 20. On June 30, the ECZ suspended indefinitely Chishimba Kambwili, former PF Minister of Information and Broadcasting, from participating in campaign activities for holding campaign rallies not complying with COVID-19 SOPs and using hate speech. ECZ's ban came shortly after the Law Association of Zambia issued a press release condemning "the tribal remarks against Tonga speaking people"<sup>56</sup> by the politician. However, Kambwili's suspension was lifted eight days later after he rendered an apology to the commission. Notably, Kambwili continued to use hate speech after his suspension was lifted.<sup>57</sup> On July 28, the ECZ suspended indefinitely campaigning by UPND in Ikelenge district and also suspended Albert Amukena Mundia as an independent candidate in Sioma district due to escalating levels of violence.<sup>58</sup>

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<sup>49</sup> <https://www.elections.org.zm/2021/01/25/responses-to-various-stakeholders-views/>

<sup>50</sup> The Zambia Statistics Agency projected that voting population in 2020 was 8,414,839.

<sup>51</sup> Last census conducted in 2010.

<sup>52</sup> Each monitor was initially required to submit a certified copy of national registration card and three copies of the declaration of compliance.

<sup>53</sup> According to Articles 54 and 60 (2c) of the Zambian Constitution No. 2 of 2016 Constitution of Zambia (Amendment).

<sup>54</sup> Section 110 of the Electoral Process Act.

<sup>55</sup> Pursuant Article 229, sub-article 2 (e) of the Republican Constitution and subparagraphs 4 (1) (c) (d) (i) and 11 (d) of the Electoral Code of Conduct.

<sup>56</sup> Press release by the Law Association of Zambia (condemning tribal remarks by politicians), June 30, 2021.

<sup>57</sup> See <https://www.facebook.com/DrKambwili>

<sup>58</sup> See ECZ Press Release:

<https://www.facebook.com/electoralcommissionofzambia/photos/pcb.4206802546054606/4206802449387949>

On July 31, the ECZ issued a press release announcing an investigation to take action against those responsible for the death of two PF supporters in Kanyama, Lusaka.<sup>59</sup> Following that incident, on Aug. 2, the commission suspended indefinitely all UPND campaign activities in the Kanyama constituency, linking alleged perpetrators to the opposition party.<sup>60</sup> Stakeholders raised concerns about the ECZ's decision while its investigation on the incident was ongoing.<sup>61</sup>

### **Polling and Tabulation Procedures**

Because of the mission's limited size and scope, the EEM deployed two roaming teams in Lusaka on election day, and hence was not able to conduct a robust assessment of the voting, counting, and tabulation processes. In light of this limitation, the EEM's analysis of election day processes in this section relies largely on the findings of the local monitors and international observer missions.

In general, election day was characterized by long queues of voters who waited from early morning to exercise their right to vote, as well as by a large presence of national observers and party agents in the polling stations. COVID-19 social distancing was generally not implemented.

The ECZ's preparations to ensure that all voters were able to cast their vote within the legal timeframe of 12 hours appeared insufficient, given the long queues of voters throughout the day and long waiting times. A number of polling stations closed late, delaying the process of counting and tallying of results at all levels. There were reports of election officials' fatigue leading to human errors at totaling centers and misunderstandings and tension between election officials and party agents. The ECZ's distribution and receipt of sensitive materials to and from polling stations was reported as being marred by limited resources, particularly vehicles. As repeatedly recommended by previous observation missions, the registered number of voters per polling station in urban areas should be reduced and polling staff increased to ensure that procedures can be conducted within the 12-hour window established by the law for polling.<sup>62</sup>

Prior to election day, stakeholders shared concerns with the EEM about the lack of transparency of the results management procedures, specifically regarding the ECZ process to collate and verify presidential results at the national level. The lack of clear procedures led to confusion at the National Results Centre and heightened tension between party agents and members of the commission, particularly on how results transmitted from the constituency tallying centers would be verified at the national level and by whom, i.e., ECZ officials or party agents. The EEM did not have access to the verification room at the National Results Centre.

The process to announce provisional results by the ECZ commissioners was communicated poorly and conducted erratically, causing dismay and complaints by party agents. Nonetheless, the ECZ was able to announce the official results in the early hours of Monday, Aug. 16, within 72 hours of the closing of the last polling station, as planned.

### **Electoral Dispute Resolution**

During the 2016 presidential election petition hearing, the Constitutional Court suspended the hearing of the presidential petition due to technicalities associated with the limited 14-day timeline provided for by the constitution. On April 12, 2021, to address that legal challenge, the late Chief Justice I.C. Mambilima amended

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<sup>59</sup> See ECZ Press Release:

<https://www.facebook.com/electoralcommissionofzambia/photos/a.1023000194434873/4216003355134525>

<sup>60</sup> See ECZ Press Release:

<https://www.facebook.com/electoralcommissionofzambia/photos/a.1023000194434873/4221919291209598/>

<sup>61</sup> The ECZ lifted the campaign suspensions in Ikelenge, Sioma and Kanyama from Aug. 10. See <https://www.facebook.com/electoralcommissionofzambia/photos/a.1023000194434873/4243160422418818/>

<sup>62</sup> In previous elections, the ECZ used polling streams as a subdivision of a polling station with more than 950 registered voters. In 2021, the ECZ turned all polling streams into polling stations to simplify the results management process. The total number of polling stations (12,152) increased by 12.3% with respect to the number of polling stations including streams established by ECZ in 2016. As already stressed in the Carter Center's 2016 report, the ratio of voters per polling station across the country is still highly uneven, and several polling stations in urban areas continue to have more than 900 registered voters, delaying voting procedures.

the Constitutional Court Act, 2016 through the gazettelement of the Constitutional Court Rules, 2021. Under the new rules, the need to call witnesses by a petitioner has been lifted, adopting instead affidavit-based evidence for time efficiency.<sup>63</sup> The court’s timeframe for giving reasons for its decision has been provided for by the amendment, and the court must now deliver its decision within 60 days from the last day of the hearing.

Most stakeholders that interacted with the EEM raised concerns about the impartiality and independence of the Constitutional Court, citing its failure to hear the 2016 presidential petition on its merits.<sup>64</sup> Stakeholders questioned the manner of appointment of judges under Article 140 of the constitution, perceived to be abused by the president to appoint friendly judges — a practice that continues to compromise the independence of the judiciary.<sup>65</sup>

## **Conclusions**

On Aug. 12, 2021, Zambians turned out in large numbers and stood in line for long periods to exercise their constitutional democratic rights in an election perceived to be highly contentious.

The EEM noted an unlevel playing field that advantaged the ruling party, and a legal framework containing provisions that were applied selectively to narrow political space. Electoral activities by opposition parties were restricted by the enforcement of the ECZ’s standard operating procedures to limit COVID-19 spread and the Public Order Act. In the meantime, the ruling party’s campaign activities remained mostly unrestricted.

The online media benefited the PF through onerous legislation, a blanket social media shutdown on election day, and the role of state media in spreading pro-government disinformation.

Despite constitutional provisions for gender equity in the National Assembly and local councils, women’s participation as candidates in elections remains below international and regional standards.

The ECZ carried out key aspects of the electoral process, including voter registration, accreditation of monitors and the results management process, without proper consultation with stakeholders.

Despite these challenges, polling staff, election officials, voters, Zambian national citizen monitors, and party agents ensured that voting and counting processes were carried out according to the law and in a generally peaceful environment.

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<sup>63</sup> Potential preliminary questions of law will be determined and disposed through written submissions prior to hearing of the petition with the intention of hearing and determining presidential petitions within the 14-day constitutional timeline. Rules and procedures of the Constitutional Court in deciding preliminary matters that may likely arise during presidential petitions — as happened in 2016 — have been clarified, and the court shall hear them prior to hearing the main petition.

<sup>64</sup> The impartiality and independence of the judiciary is guaranteed under Articles 118 and 122 of the constitution.

<sup>65</sup> The president has powers on recommendation of the Judicial Service Commission and subject to ratification by the National Assembly in the appointment of chief justice, deputy chief justice, president of the Constitutional Court, deputy president of the Constitutional Court, and other judges.