

# Zambia General Elections

12 August 2021

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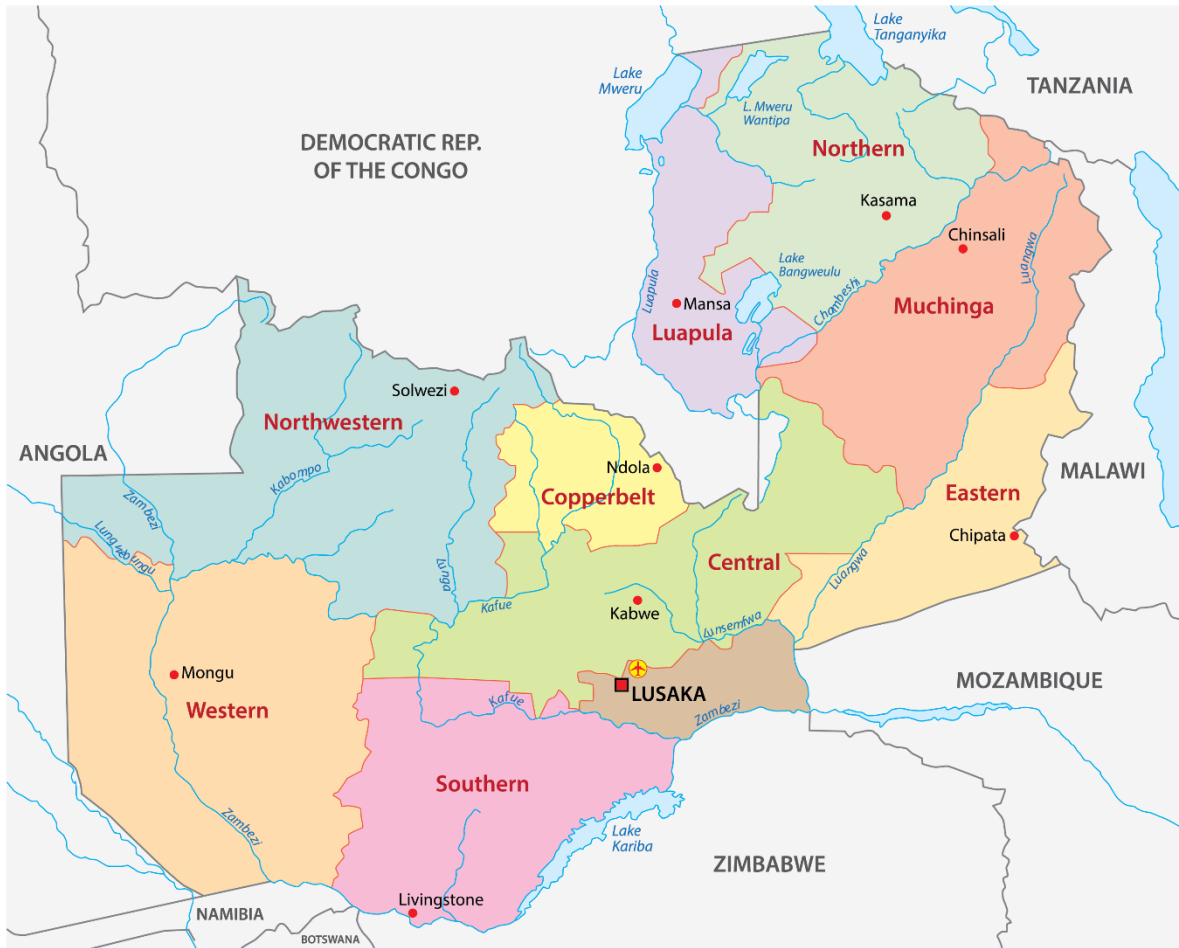
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# Map of Zambia



# Contents

Map of Zambia .....	i
Contents.....	ii
List of abbreviations .....	v
Letter of transmittal .....	
Executive summary.....	
Recommendations .....	i
Chapter 1: Introduction .....	1
Terms of reference .....	1
Activities .....	1
Chapter 2: Political background.....	3
Early history of Zambia .....	3
Colonial history of Zambia .....	3
Post-independence politics.....	3
Summary of previous elections .....	4
Summary of the political environment ahead of the 2021 general elections.....	7
Chapter 3: The electoral framework and electoral administration .....	12
Background.....	12
Legal framework, regional and international commitments.....	13
The Electoral Commission .....	14
Eligibility requirements for voting and voter registration .....	14
Candidate eligibility and nomination .....	15
Complaints, appeals and election petitions .....	15
Key issues .....	17
Recommendations .....	24
Chapter 4: Participation and inclusion.....	26
Civil society organisations .....	26
Recommendations .....	26
Women’s political participation .....	27
Legal framework .....	27
Context .....	27
Barriers to participation .....	27
2021 elections .....	28
Recommendations .....	29
Youth.....	30

2021 elections .....	30
Recommendations .....	31
Persons with disabilities .....	32
2021 elections .....	33
Recommendations .....	34
Inclusion of the aged .....	35
Recommendations .....	36
Participation of inmates .....	36
Background and legal framework .....	36
Recommendations .....	37
Chapter 5: Campaign and media .....	38
Election campaign .....	38
Legislation and regulation of electoral processes .....	38
COVID-19 public health regulations and ECZ standard operating procedures .....	38
Campaign issues.....	39
Recommendations .....	46
The media .....	47
Background.....	47
Media regulation and laws.....	48
Media monitoring .....	49
Key issues .....	50
Recommendations .....	52
Chapter 6: Voting, counting and the results process .....	54
Background.....	54
Eve of the poll.....	54
Assessment of pre-poll preparations.....	54
Key procedures for opening and voting .....	55
Assessment of the opening of the polls and voting.....	56
Key procedures for closing and counting .....	59
Assessment of closing and counting.....	60
Key procedures for results tabulation: constituency totalling centre and national results centre.....	61
Assessment of the results tabulation - constituency totalling centre and national results centre.....	62
Recommendations .....	63
Annex I: Composition and biographies of the Group.....	65
Observers.....	65
Commonwealth Secretariat support staff.....	68

Annex II: Arrival statement .....	70
Annex III: Deployment plan .....	72
Annex IV: Interim statement.....	73

## List of abbreviations

3rd LM	Third Liberation Movement
CCMG	Christian Churches Monitoring Group
COG	Commonwealth Observer Group
CSO	Civil Society Organisation
CPEZ	Coalition for Peaceful Elections in Zambia
DP	Democratic Party
DPO	Disabled People's Organisation
DRW	Disability Rights Watch
ECZ	Electoral Commission of Zambia
EFF	Economic Freedom Fighters
GEARS	Governance, Elections, Advocacy, Research Services
IBA	Independent Broadcasting Authority
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
IFES	International Foundation for Electoral Systems
IPU	Inter-Parliamentary Union
LM	Leadership Movement
MISA	Media Institute of Southern Africa
MMD	Movement for Multi-party Democracy
NAREP	National Restoration Party
NDF	National Dialogue Forum
NGOCC	Non-Governmental Gender Organisations' Coordinating Council
NHP	New Heritage Party
NRC	National Registration Card
PAC	People's Alliance for Change
PEP	Patriots for Economic Progress
PF	Patriotic Front
PNUP	Party of National Unity and Progress
PSAf	Panos Institute Southern Africa
PVT	Parallel Vote Tabulation
PWDs	Persons with Disabilities
SOP	Standard Operating Procedure
SP	Socialist Party
UNIP	United National Independence Party
UPEACE	United Nations University for Peace
UPND	United Party for National Development
UPPZ	United Prosperous and Peaceful Zambia
VVD	Voter Verification Device
ZAFOD	Zambia Federation of Disability Organisations
ZNBC	Zambia National Broadcasting Corporation
ZNWL	Zambia National Women's Lobby
ZPS	Zambia Police Service
ZUSD	Zambians United for Sustainable Development

## Letter of transmittal

Commonwealth Observer Group  
General Elections in the Republic of Zambia  
12 August 2021

Dear Secretary-General,

I am pleased to forward to you the final report of the Commonwealth Observer Group you constituted to observe the general elections in the Republic of Zambia on 12 August 2021.

It was a unique privilege to chair this group of experts from different Commonwealth countries, and to be present for these landmark elections in Zambia's electoral history.

We are deeply appreciative of the warm welcome extended to us by all stakeholders we engaged with throughout our deployment in the country. Ahead of the elections, we were briefed by the Electoral Commission of Zambia (ECZ), the Head of State, leaders of political parties, the Coalition for Peaceful Elections in Zambia, media editors, relevant government ministries and departments, the senior police command, resident ambassadors, and members of the Commonwealth diplomatic community in Lusaka, among others.

Our observers were deployed across nine provinces of the country, where they undertook pre-election day, election day and post-election day engagements with regional stakeholders. Our report is informed by extensive consultations with national stakeholders, engagement with other international observer groups, and our observation of all aspects of the process during the period of our deployment.

We noted that the pre-election environment was very competitive, tense and characterised by some acts of electoral violence, mainly between the Patriotic Front (PF) and the United Party for National Development (UPND). Ahead of the polls, there was also a lack of trust in the Electoral Commission of Zambia (ECZ), but the Commission did a commendable job on election day and in managing the results processes. The deployment of the army ahead of the polls to complement police efforts to address electoral violence received mixed reactions, but their role did not appear to have had a negative impact on the elections.

Despite some challenges, notably the perception of taking undue advantage of incumbency, partiality in the application of COVID-19 restrictions on opposition campaigns (which did not apply to PF campaign events), perceptions of police bias in favour of the governing party, lack of equitable access to the state broadcaster by the opposition, and some incidents of electoral violence, the electoral environment was largely peaceful. Polling on 12 August was peaceful, transparent,

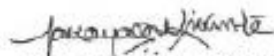


well managed and saw the massive participation of young people and women as voters, polling officials and party monitors.

In line with our encouragement to Zambia to continue being an inspiration for the rising tide of democracy in Africa and the wider Commonwealth, we encourage the ECZ, political parties, civil society, and other electoral stakeholders to engage in inclusive post-election conversations on electoral reforms ahead of future elections. The ECZ's ongoing and consistent engagement with political parties is a critical part of building and maintaining confidence in the institution and the electoral process.

I conclude by expressing the Group's appreciation, once again, for the privilege to have supported efforts towards consolidating electoral democracy and a peaceful transition in Zambia. I wish to also take this opportunity to express the Group's appreciation to the Commonwealth Secretariat staff, who provided invaluable support to the mission.

Our continued best wishes to the people of Zambia.



**HE Dr Jakaya Kikwete**

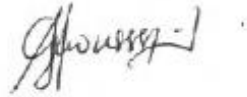
Former President of the United Republic of Tanzania  
Chair of the Commonwealth Observer Group to Zambia



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Marcella Samba-Sesay



Professor Mandla Mchunu



Crystal Orderson



## Executive summary

The Commonwealth Secretary-General deployed a Commonwealth Observer Group (COG) to observe the general elections of 12 August 2021 in Zambia. An advance team of observers arrived in the country on 25 July 2021, while the main Group, including the chairperson, arrived on 6 August 2021. The Group's arrival was preceded by a Commonwealth Secretariat pre-election support team, which was in the country from 8 June 2021 to support a pre-election engagement and to lay the groundwork for the Group's arrival.

In carrying out its terms of reference, the Group met, among others, the Electoral Commission of Zambia (ECZ), political party representatives, relevant government ministries, the Coalition for Peaceful Elections in Zambia (CPEZ), civil society organisations (CSOs), domestic and international election observer groups, the media, the police, Commonwealth High Commissions, and other diplomatic missions represented in Lusaka.

The COVID-19 environment constrained the size and activities of the mission, as restrictions limited the number of observers and the ability to select observers from all regions of the Commonwealth. However, the Secretary-General was able to constitute a COG comprising the chair and 13 observers, supported by a staff team of 11 persons. Observers were deployed to nine out of the country's ten provinces.

The legal framework provides an adequate basis for the conduct of democratic elections, with guarantees of fundamental freedoms, although gaps remain, for example in the regulation of funding for political parties.

COVID-19 restrictions meant that political parties could not conduct mass rallies as they normally would. In June, the ECZ suspended campaign rallies as large gatherings were identified as COVID-19 super-spreader events. After the suspension, there was a number of smaller gatherings, roadshows and online campaign events, and some door-to-door campaigning. Despite fierce competition and some incidents of violence between the two main political parties, the governing Patriotic Front (PF) and the United Party for National Development (UPND), the campaigns were largely peaceful.

Despite the polarisation, Zambia's vibrant civil society was very active before and during the election. The formation of the CPEZ, a group comprising a number of strategic organisations, was a noteworthy initiative that contributed to promoting a peaceful environment before, during and after the polls. Thanks to the Coalition's activities, political leaders reaffirmed their commitment to peaceful elections through the signing of a peace pledge at a Peace Conference on 14 July.

Despite the challenges COVID-19 posed, the ECZ proved well prepared for election day. Despite high voter turnout, the voting process was generally well managed and transparent, and voters were free to exercise their right to vote. Polling officials demonstrated professionalism, patience, confidence and enthusiasm, and issues observed, such as delays or missing materials, were usually resolved efficiently. Although social distancing rules were practically difficult to respect in queues, other COVID-19 protocols, such as masking,

sanitising and handwashing, were largely adhered to, especially in urban areas. Party agents and citizen observers were present and able to perform their duties unhindered.

The vote count at the polling stations visited was conducted in an orderly and transparent manner, with observers and party agents able to follow the process closely. This was also the case during tabulation. Despite some initial confusion and protests by the opposition UPND, the ECZ concluded the results announcement process satisfactorily.

The Group's overall assessment was that the election, as a whole, was credible, transparent and inclusive. However, all electoral processes can be further strengthened. In accordance with its mandate, this report therefore offers a number of recommendations for consideration by electoral stakeholders in Zambia.

The Group wishes to commend the Zambian voters for turning out in significant numbers on election day to exercise their franchise. It would also like to congratulate the ECZ and polling staff, the political parties and their leaders, the CPEZ, the media and the security forces for their respective roles in maintaining Zambia's tradition of holding peaceful elections and ensuring a peaceful transition.

## **Recommendations**

### ***Electoral framework and election administration***

- Much more needs to be done to allay the fears of citizens regarding the impartiality and competence of the Constitutional Court bench. The system must ensure for all participants (political parties, citizens and candidates) that the voter's decision prevails and that the dispute resolution mechanism in charge of sorting out electoral controversies is independent, impartial and technically proficient with regard to implementing constitutional resolutions.
- To promote legal certainty and avoid operational or implementation delays, confusion and potentially conflicting provisions, international good electoral practice advocates that there should be no substantive changes to the legal and electoral framework 6 to 12 months prior to an election.
- To ensure that a robust and complete legal framework underpins the electoral process, timely review and passage of all outstanding subsidiary legislation and regulation are recommended.
- It is recommended to review cyber legislation to ensure it meets internationally recognised human rights standards and principles.
- Measures should be taken to ensure that persons with disabilities (PWDs) participate effectively and fully in political and public life on an equal basis with others as established in the legislative framework.
- It is recommended to expand Section 6.12 of the Election Officer's Handbook, 'Certificate of Authority to Vote,' to include more groups, and to make provisions to accommodate those who are not physically able to be present at the polling station, including prisoners, under the categories that qualify for the special vote in Section 48 of the Electoral Processes Act.
- The Preservation of Public Security Act should be reviewed to ensure it does not have undue impact on citizens' constitutional and democratic rights.

## ***Participation and inclusion***

### *Civil society organisations*

- The ECZ should design clear and transparent guidelines for the accreditation of citizen election observers and monitors.
- The CPEZ should be a permanent feature in the Zambian democratic process to help promote peace and non-violence before during and after elections.

### *Women's political participation*

- The Group calls on the Zambian Government and the National Assembly to strengthen women's participation and ensure gender equality in decision-making processes by implementing the Gender Equity and Equality Act.
- The Zambian Government should review the Constitutional Amendment, Article 70(d), which stipulates that a Grade 12 certification is required to contest elections, as evidence suggests this provision is having a negative impact on the participation and inclusion of women and marginalised groups in the electoral process.
- The Group recalls the recommendation made by the Group in 2016 that consideration be given to the introduction of mandatory quotas to increase the representation of women at both National Assembly and local council levels, as one practical measure to achieve a gender balance in decision-making. In 2021, the Group further reiterates this recommendation and calls on the government to adopt appropriate legislative measures for affirmative action to promote gender-balanced political representation.
- The ECZ should consider revisiting nomination fees to further align with women's economic realities.
- The ECZ should publish disaggregated data on women candidates on its website, as it does for registered voters.
- Political parties should consider introducing voluntary party quotas and ensure the implementation of gender-based policies within party manifestos.

### *Youth political participation*

- In an effort to ensure a systematic and co-ordinated approach towards youth programming on elections and civic participation throughout the electoral cycle, the ECZ, in collaboration with youth organisations, political parties and relevant international support, should develop a youth engagement strategy.
- The ECZ should provide disaggregated figures on youth voter registration and publish these on its website alongside gender-disaggregated data.
- Parliament, political parties and CSOs should prioritise tracking and disaggregating youth data to facilitate data-driven youth programming in elections.
- Political parties must desist from using young people or cadres as merchants of violence during elections. Violent cadres must be disbanded and the perpetrators of violence must be prosecuted.
- Youth can be a conduit for civic engagement, democratic accountability and political party development. Political parties should invest in youth leadership development and create more opportunities for young people to participate in decision-making by

nominating more youth candidates for all levels of elections. Parties should explore measures to further engage youth in meaningful ways, and to increase youth representation. This could include, for example, the introduction of youth quotas.

- The Zambian parliament must facilitate increased youth participation in politics. Age requirements for elective offices should be revisited.
- To promote a culture of political dialogue, non-violent electoral participation and political solidarity, it is recommended that political parties consider establishing inter-party youth forums. These would serve as a bridge among party youth wings and create greater visibility for youth in party affairs and governance.
- Media organisations should provide a greater proportion of their coverage to young male and female candidates to increase the visibility of youth candidates during elections.
- More technical and financial support should be afforded to youth-led and youth-focused organisations to ensure sustainability of initiatives aimed at improving youth political participation. Development partners and other stakeholders should create a mechanism to increase the engagement of and support to youth organisations to improve their project management, institutional governance, communications and community-organising skills.

#### *Persons with disabilities*

- The ECZ should fully implement the decision of the High Court in *Selah Brotherton v ECZ* by formulating an action plan and allocating sufficient resources for its implementation ahead of the next general elections. This action plan and associated budget should be released to stakeholders in timely manner.
- The ECZ should undertake an accessibility audit to ensure PWDs are able to participate in the electoral process effectively and fully throughout the electoral cycle.
- The ECZ should guarantee that, during the voter registration phase, the different types of disability are captured to ensure that these are catered to.
- The ECZ should consider a further reduction in or waiving nomination fees for PWDs wishing to participate in elections as candidates.
- The ECZ should ensure that PWDs are included in the administration and management of elections, including as polling officials.
- The ECZ should build the capacity of its staff to understand disability issues, in particular those that affect electoral participation, so as to be able to effectively assist those participating in the process, including ensuring that such participation happens in a manner that upholds PWDs' right to dignity.
- Political parties are encouraged to include PWDs among their candidates for the various elective offices contested in general elections and to facilitate their effective participation through measures such as enabling their candidature and supporting their campaigns.
- The National Assembly should consider the introduction of affirmative action measures to enhance PWDs' representation.
- Disabled people's organisations should continue to advocate for the formulation of and a budget for implementing a comprehensive plan for the participation of PWDs, and monitor its implementation in the five-year period preceding the next elections.

### *Inclusion of the aged*

- The ECZ, the Zambian Government through the Ministry of Information, the public broadcaster and other stakeholders should ensure there is access to targeted voter education through local language radio and other media.
- The ECZ, in conjunction with local administrations, should consider measures that enable easier access for the elderly, for example mobile polling stations and provisions for early voting.

### *Participation of inmates*

- The ECZ must develop standard operating procedures as appropriate guidelines for the full implementation of the court order that allows inmates to vote in elections, including guidelines on political party and stakeholder access to inmates to disseminate voter education and election materials, in line with the International Covenant on Civil and Political Rights General Comment 25.
- The ECZ must ensure that party agents and observers are able to be present for the voter registration exercise.
- The ECZ should ensure that arrangements are made so that inmates who are on bail, discharged and/or held in correctional facilities outside of the district in which they are registered are able to cast their vote on election day.

### *Campaign and media*

#### *Campaign*

- While there were serious incidents of political violence in some regions of the country, such violence did not escalate to the levels many feared. The Group commends the vast majority of Zambian citizens who campaigned and participated peacefully in the pre-election period. Nonetheless, political parties should be more vocal and consistent in their condemnation of acts of political violence by individuals aligned with them.
- So long as party cadres exist in Zambia, political violence will continue. All political parties, in particular the PF and the UPND, should disband their party cadres.
- To nurture a more vibrant and democratic political culture, political parties should focus on the development and promotion of more substantive, policy-based agendas that offer a positive vision for the country.
- The Government of Zambia should adhere to the highest levels of impartiality and non-partisanship in the enforcement of any COVID-19 public health measures that affect fundamental political rights.
- The government and civil service should try to avoid holding discussions on public sector pay close to an election, so as to avoid any suggestion of a political motivation.
- The Zambia Police Service should adhere to the highest levels of impartiality in the enforcement of the Public Order Act, the Penal Code, the Electoral Code of Conduct, COVID-19 regulations and any other legislation or subsidiary legislation that has a bearing on the ability of political parties to exercise their fundamental political rights. Further, the Group notes the 2016 ruling of the Constitutional Court that, if a mass gathering or assembly cannot be held as a result of insufficient police



resources on the proposed date, the police and political parties should work together to find an alternative date at the earliest possible time.<sup>1</sup> The Group encourages compliance with this ruling by political parties.

- In time, there will be a need to resurrect previous bipartisan efforts to reform and clarify elements of the Public Order Act, including on the regulation of assemblies and public meetings, such that there is a firm understanding of the requirements of political parties in registering events and of the authority of the police in limiting such meetings.
- Section 69 of the Penal Code is contrary to democratic principles and should be repealed.
- The Group repeats the 2016 COG Report recommendation that the ECZ should strengthen mechanisms and procedures to ensure more consistent reporting of violations of the Electoral Code of Conduct to the police, as provided for under Section 11 of the Electoral Processes Act.
- There is a need for greater clarity regarding the decision-making process relating to sanctions for breaches of the Code of Conduct, with particular attention to the proportionality of sanctions *vis-à-vis* the offence committed. The Group therefore calls for an inclusive effort to revisit the Code of Conduct in the Electoral Process Act.
- The Group reiterates the 2016 COG Report recommendation regarding the need to clarify and strengthen legal provisions pertaining to the use of public funds during the campaign period. This relates to, among others, the holding of campaign-style government events, the distribution of taxpayer money through ‘endowment funds’ and the distribution of other in-kind benefits to electoral stakeholders. The Group notes the failure of previous efforts to pass the Political Parties Bill, which would have contained provisions on political party financing. The government should work in consultation with opposition parties, other electoral stakeholders and the international community to resurrect such efforts in order to bring the regulation of Zambia’s political party financing in line with international good practice.

#### *Media*

- The Group urges the government to decriminalise defamation of the president and repeal penal codes in line with international standards.
- There is a need for the government to enact specific legislation protecting the right to information of public interest, including the speedy enactment of the Access to Information Bills.
- While noting that the shutting-down of social media was purportedly carried out to maintain peace and stability as the electoral results process unfolded, this decision unlawfully restricted freedom of expression and exacerbated extant tensions throughout election day. We therefore urge the Zambia Information and Communication Authority to desist from such acts in the future.
- The ECZ should enforce the Electoral Code of Conduct to ensure broadcast media comply with directives in allocating airtime to all political parties to ensure equitable access - particularly in news bulletins and during primetime, when a greater number of viewers is likely.

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<sup>1</sup> *The Law Association of Zambia v Attorney General (Appeal No. 8/2014) [2016] ZMSC 46 (13 May 2016).*

- The state broadcaster, the Zambia National Broadcasting Corporation, should transform its election programming to reflect the diversity of voices and political opinions in the country.
- The media should establish a credible, independent, self-regulatory authority that sets out standards and appropriate codes of behaviour for the media. This is necessary to safeguard freedom of expression while holding the media to account in cases where the codes of behaviour are breached, and can also combat fake news and misinformation on the elections. Such a self-regulatory authority must have an effective complaints mechanism to allow members of the public to register complaints against the media where there are legitimate grounds for doing so.
- The Group encourages the ECZ to work with institutions like MISA Zambia on specific training programmes for journalists on election coverage.

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

- The ECZ regional offices should plan well ahead to ensure there are enough vehicles to transport sensitive materials to polling stations before election day.
- Given that some polling station compounds were too small to facilitate socially distanced voting, a post-election audit of infrastructure should be undertaken to determine the adequacy of polling locations.
- The ECZ should take steps to ensure full adherence to other COVID-19 protocols at polling stations, such as the wearing of masks.
- Training of polling officials could be strengthened to iron out some of the inconsistencies in the execution of duties, including the packing-away of sensitive materials before the count. In addition, after security materials are packed in the ballot boxes, they should be sealed. The Election Officer's Handbook should be updated to include this recommendation.
- The following procedures could be revisited to speed up the voting process:
  - The recording of the NRC on the counterfoil, since this is cumbersome and could compromise the secrecy of the ballot;
  - One election officer issuing three ballots, as compared with the presidential ballot issued by a separate, dedicated officer;
  - The duplication of verification of voters via the biometric VVD and the manual register.
- The VVDs should be tested to minimise the possibility of glitches, and only classrooms with electrical sockets should be used as polling stations, so VVDs can be charged on election day when necessary without causing disruption to the voting process.
- The ECZ may wish to consider reducing the number of voters per stream to ease congestion and to speed up the processing of voters.

- While the process for prisoner voting was generally good, it should be refined to accommodate specific situations where a prisoner has been released, or transferred, before election day.
- The scope of the ECZ's Certificate of Authority to Vote should be expanded to include others required to be on duty on election day, for example police, citizen observers, party agents and essential service employees. This would require voter education on this aspect of the process.
- In the interests of transparency at the crucial tabulation stage of the electoral process, the ECZ should ensure that screens at the national results centre display verified results.

## Chapter 1: Introduction

At the invitation of the Minister of Foreign Affairs of Zambia, the Commonwealth Secretary-General, The Rt Hon Patricia Scotland QC, constituted a Commonwealth Observer Group (COG) for the 12 August 2021 general elections in Zambia. In line with usual practice, the Secretary-General sent an Assessment Mission to Zambia in April 2021 to assess the pre-election environment in order to identify potential areas of Commonwealth electoral assistance and to provide recommendations on her final decision on whether to constitute a COG.

The COG was led by H.E. Jakaya Kikwete, former President of Tanzania, and comprised 13 eminent persons. The Group was supported by an 11-person staff team from the Commonwealth Secretariat. A full list of members is in Annex I.

### Terms of reference

The terms of reference for the COG are as follows:

‘The Group is established by the Commonwealth Secretary-General at the request of the Government of Zambia. It is to observe relevant aspects of the organisation and conduct of the General Elections which are scheduled to take place on 12 August 2021, in accordance with the laws of Zambia. The Group is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgment whether the elections have been conducted according to the standards for democratic elections to which Zambia has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

‘The Group is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgment accordingly.

‘In its Final Report, the Group is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections. The Group is to submit its final report to the Commonwealth Secretary-General who will forward it to the Government of Zambia, the Electoral Commission, political and civil society organizations and thereafter to all Commonwealth Governments.’

### Activities

The COG was present in Zambia from 25 July to 18 August. An advance team arrived Lusaka on 25 July and the main team and the chair arrived on 6 August.

During its mission, the Advance Observer Team consulted key electoral stakeholders in order to be able to assess the pre-election environment and the state of preparedness of the Electoral Commission of Zambia (ECZ). These stakeholders included representatives of political parties, civil society organisations (CSOs), women and youth groups, and the Coalition for Peaceful Elections in Zambia (CPEZ).

Upon arrival of the main Group on 6 August, the Advance Observer Team provided a comprehensive briefing on its preliminary observations. On 7 August, the COG issued its arrival statement outlining its terms of reference (Annex II). During three days of briefings in Lusaka, the Group also met with the ECZ; political party representatives; the Head of State; CSOs; the CPEZ; media editors; Commonwealth High Commissioners and other members of the diplomatic corps; the Ministries of Home Affairs, Health, Foreign Affairs and Justice; the Zambia Police Service (ZPS); and other observer missions. The Group was subsequently deployed across eight of the ten provinces of Zambia. The COG's deployment plan is in Annex III.

COG members were deployed to the provinces in teams of two on 9 and 10 August. During their deployments, all teams co-ordinated with other observers and met with local stakeholders, building up a comprehensive picture of the political environment and the conduct of the process in their respective area. The teams that were deployed to the provinces returned to Lusaka on 13 and 14 August. On the basis of the Group's initial findings and observations, the chair issued an interim statement on 14 August (Annex IV). The Group's report was completed in Lusaka on 16 August, prior to departure, and transmitted to the Commonwealth Secretary-General thereafter.

## Chapter 2: Political background

### Early history of Zambia

The early inhabitants of modern-day Zambia were the San, who were hunter-gatherers. In the 15th century, the Bantu, or Tonga, migrated from the north. The sixteenth to nineteenth centuries saw the emergence of organised kingdoms, including the Kazembe (north), Bemba (north-east) Chewa (east) and the Lozi (west). There are 73 ethnic groups in present-day Zambia.

### Colonial history of Zambia

Significant and far-reaching political changes began in 1890 when Cecil Rhodes of the British South Africa Company signed a series of treaties with local leaders, leading to the establishment of Northern Rhodesia in 1911, administered by the Company. Barotseland (now Western province) became a separate British Protectorate from Northern Rhodesia on the signing of the Lochner Treaty in 1890.<sup>2</sup> Great Britain formally assumed control in 1923. Copper mining, which began in the early twentieth century, led to an influx of Europeans, although white settlement never reached the levels it did in Southern Rhodesia. In 1953 the two Rhodesias were joined with Nyasaland (now Malawi) in the short-lived Federation of Rhodesia and Nyasaland. This move was vociferously opposed by Black Nationalist leaders who viewed it as a vehicle for white domination.

After the Federation's collapse in 1963, Barotseland amalgamated with the Northern Rhodesia Protectorate, under the Barotseland Agreement of May 1964. The United National Independence Party (UNIP), led by Dr Kenneth Kaunda, won the January 1964 pre-independence elections. Northern Rhodesia gained independence on 24 October 1964 and was renamed the Republic of Zambia. This date also marked the birth of the First Republic.

### Post-independence politics

The Constitution was amended on 25 August 1973 to make Zambia a one-party state, and this marked the birth of the Second Republic. Political and economic pressures, largely the result of a fall in copper prices but also arising from the country's support for independence movements elsewhere in Southern Africa, and food riots led to social unrest and a coup attempt in 1990. In December 1990, President Kaunda accepted the need for multi-party democracy, and the National Council accepted his recommendation that multi-party elections be held. The Constitution was accordingly amended that same month.

On 31 October 1991, the Movement for Multi-party Democracy (MMD), led by the late trade unionist Frederick Chiluba, swept to power in both the parliamentary and the presidential elections. The UNIP became the main opposition party. The 1991 Constitution, amended in

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<sup>2</sup> Its separate sovereignty was recognised in Section 112 of the 1953 Constitution of Northern Rhodesia.

1996, provided for a multi-party system, including a president whose tenure is limited to two terms of 5 years.

Dr Kaunda returned to active politics in 1994. He regained the UNIP leadership at a party convention in June 1995. In the run-up to the presidential and National Assembly elections in November 1996, the Chiluba Government became increasingly intolerant of opposition. In May 1996, the National Assembly passed an act requiring presidential candidates to have Zambian parents and limiting presidential terms to two terms of 5 years in office. Dr Kaunda's parents were alleged to have originally come from what is now Malawi. The UNIP and a small number of opposition parties then boycotted the elections. Dr Chiluba and the MMD won a landslide victory, taking 139 out of 150 seats in the then-National Assembly. In August 1997, Dr Kaunda and an opposition ally were wounded at a UNIP rally when police opened fire. A subsequent enquiry into the incident was inconclusive.

After a promising start by the new MMD government, initially characterised by political liberalisation and improved relations with international financial institutions and donors, both living standards and political freedoms declined from 1997. In October 1997, a small group of middle-ranking army officers took over the media centre at the headquarters of the Zambia National Broadcasting Corporation (ZNBC), claiming to have overthrown the government. The army quickly restored order and detained the ringleaders. President Chiluba declared a state of emergency (later extended by the National Assembly to May 1998). Over 100 people, including Dr Kaunda and the leader of one of the other main opposition parties, were detained. Dr Kaunda was charged with having prior knowledge of the coup. Trials began in June 1998. Dr Kaunda was discharged and immediately released. At the conclusion of the trials in September 1999, 58 soldiers were found guilty of treason and given mandatory death sentences. These were commuted to varying terms of imprisonment by President Levy Mwanawasa in December 2003.

President Chiluba's attempt to amend the Constitution, in order to stand for a third presidential term, provoked a political crisis in 2001. There was widespread opposition, culminating in 67 MPs signing a motion to impeach President Chiluba, who subsequently announced that he would leave office at the end of his term.

## **Summary of previous elections**

### **2001 general elections**

In the 27 December 2001 presidential election, 10 candidates participated. Voter turnout was 67.81 per cent. The MMD candidate, Levy Mwanawasa, was elected with 28.69 per cent of the popular vote, closely followed by Anderson Mazoka of the United Party for National Development (UPND,) with 26.76 per cent. The MMD was the single largest party in parliament but did not have an overall majority. There was international criticism of the handling of the elections. Legal challenges to both the parliamentary and the presidential results were finally resolved only in February 2005 when the Supreme Court rejected an opposition challenge to President Mwanawasa's victory but agreed that the election had flaws. Challenges to the parliamentary results led to a number of by-elections.

In July 2002, the National Assembly voted to remove the immunity of former President Chiluba from prosecution. Consequently, he was arrested in February 2003 and charged with corruption. Adjournments and procedural problems dogged subsequent long-running trials. In September 2004, many charges of corruption were dropped but within hours former President Chiluba was rearrested on six new charges. President Mwanawasa suffered a minor stroke in April 2006. He resumed light duties after some weeks and later declared himself fit to run for re-election at polls, which were due later that year.

### **2006 general elections**

Presidential, National Assembly and local government elections were held on 28 September 2006. President Levy Mwanawasa was re-elected with 42.98 per cent of the vote, while Michael Sata of the Patriotic Front (PF) obtained 29.37 per cent and Hakainde Hichilema of the UPND 25.32 per cent. Voter turnout was 70.77 per cent. The MMD won 72 of the 150 National Assembly seats, with the PF taking 44 and the United Democratic Alliance (comprising the UPND, the UNIP and the Forum for Democracy and Development) taking 27. The United Democratic Alliance later collapsed.

A COG led by Hon Paul Berenger, former Prime Minister of Mauritius, was present for the 2006 presidential, National Assembly and local government elections. It concluded that in most parts of Zambia a largely successful effort was made to enable the will of the people to be expressed. It also noted some issues to address, particularly with respect to transparency and credibility of the collation, tabulation and transmission of the results process.

### **2008 presidential by-election**

President Mwanawasa passed away on 19 August 2008 in a Paris hospital, where he was being treated for the effects of a stroke he suffered in June 2008 while attending the African Union Summit at Sharm el-Sheikh, Egypt. A presidential by-election was held on 30 October 2008 for a replacement to serve out the remainder of his term. Four candidates contested the election. Acting President Rupiah Banda, MMD, was elected with 40.09 per cent of the vote. Michael Sata, PF, received 38.13 per cent, Hakainde Hichilema, UPND, 19.70 per cent and Godfrey Miyanda of the Heritage Party 0.76 per cent. Voter turnout was 45.43 per cent. President Banda's margin of victory was a narrow 35,209 votes, and Mr Sata alleged fraud. He petitioned the Supreme Court for a recount but this was not granted.

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



## **Other developments**

In August 2009, former President Frederick Chiluba was cleared of corruption after a 6-year trial. The head of the Anti-Corruption Task Force was dismissed after initiating an appeal against Mr Chiluba's acquittal. He was a founding member of the MMD and remained a strong supporter. Mr Chiluba passed away on 18 June 2011. He had continued to command considerable support among the Bemba-speaking people in the Northern, Luapula and Copperbelt provinces, and had endorsed Mr Banda in February 2010. Analysts suggested that his passing potentially weakened the MMD campaign. The two leading opposition parties, the PF and the UPND, formed an electoral pact in June 2010. This alliance soon became embroiled in acrimony over several issues, including the question of who would be joint presidential candidate, how other candidates would be chosen and a joint manifesto. Mr Hichilema announced the UPND's withdrawal from the pact on 7 March 2011.

## **2011 general elections**

General elections were held in Zambia on 20 September 2011, electing a president and members of the National Assembly. Michael Sata of the PF won the presidential election, defeating incumbent Rupiah Banda of the MMD, and was sworn into office on 23 September. The PF emerged as the largest party in the National Assembly, winning 60 seats. Mr Sata was announced winner of the election with 1,150,045 votes, or 43 per cent, with 95.3 per cent of votes counted. Banda received 961,796 votes, or 36.1 per cent, and other minor parties trailed in the poll. Mr Hakainde Hichilema received 18.7 per cent of the vote.

## **2015 presidential by-election**

President Sata died on 28 October 2014, 3 years into his term of office. A presidential by-election was to be held within 90 days of the office becoming vacant, as per Article 38(1) of the Constitution of the Republic of Zambia. Presidential elections were held on 20 January 2015 to elect a president to serve the remainder of the term. The governing PF candidate Edgar Lungu won by a narrow majority of just 27,757 votes (1.66 per cent) against Hakainde Hichilema of the UPND. Mr Hichilema denounced the elections as a sham but urged his supporters to remain calm. Owing to resource and time constraints, the Commonwealth Secretariat deployed a two-person staff team to observe these elections. The team concluded that the election was generally a reflection of the will of the people despite certain observed shortcomings. The team pointed to the need to encourage and support a dialogue platform for political parties to help address issues pertaining to intolerance and politically motivated violence.

## **2016 general elections**

Zambia held general elections on 11 August 2016 to elect the president and the National Assembly. A constitutional referendum was held alongside the elections, with proposals to amend the Bill of Rights and Article 79 (the amendment clause). President Edgar Lungu, previously elected in January 2015 to complete the term of President Michael Sata, who had died in office, was re-elected for a full five-year term with a majority of the votes cast in the first round, defeating opposition leader Hakainde Hichilema. President Lungu's PF also

won a majority of seats in the National Assembly for the first time, taking 80 of the 156 elected seats.

President Lungu was sworn in on 13 September 2016 despite the opposition challenging the results. Results announced by the ECZ on 15 August showed President Lungu winning the presidential election with slightly more than 50 per cent of the vote, ahead of his only major competitor, Hakainde Hichilema, who received almost 48 per cent. President Lungu therefore obtained a few thousand votes over the threshold for an outright first-round victory.

## **Summary of the political environment ahead of the 2021 general elections**

Although Zambia has had a history of successfully conducting peaceful elections, the country's peaceful transitions have recently been under threat as a result of some institutional, political, legal, administrative and economic challenges.

### **Institutional challenges**

Institutional challenges are linked to the weakness of, and pervasive lack of trust in, some of the key institutions that should normally assist in ensuring credible elections. In the lead-up to the elections, the majority of the opposition parties, as well as CSOs, expressed a lack of trust in the ECZ, the Constitutional Court, ZNBC and the ZPS. The ECZ was criticised for not being consultative and allegedly being inclined more towards meeting the desires of the governing PF party than towards addressing concerns raised by the broader spectrum of electoral stakeholders. Stakeholders indicated that they would want the Commission to be more consultative and less defensive in its approach.

Administratively, opposition parties and some CSOs also raised a number of concerns regarding the voter registration exercise, including suggestions that the deployment of faulty machines and fewer resources to opposition strongholds had the effect of suppressing voter registration in these areas.

In meetings with the ECZ, the chairperson of the latter and his team assured the Group that preparations were on course and that the Commission was committed to delivering transparent, credible and peaceful elections.

Some stakeholders perceived the judiciary, in particular the Constitutional Court, to be biased in favour of the governing PF. They pointed to a number of cases that they perceived to be politically motivated. The Constitutional Court's dismissal of the petition filed by the UPND following the 2016 elections on technical grounds - without considering the merits of the case - reinforced perceptions of the partisanship of the institution.

The opposition and most CSOs considered ZNBC, the state broadcaster, to be favourable towards the governing PF and accused it of effectively being a government propaganda machine. While ZNBC gave President Lungu and other PF activities full news coverage, opposition events were either not covered or received negative press. While this is not a

new phenomenon in Zambian politics, it highlights continued concerns over the lack of a level electoral playing field, especially viewed against a backdrop of allegations regarding a contraction of the private media space. In July 2021, in line with provisions of Paragraph 8 (2) of the Electoral Code of Conduct, the ECZ prescribed that all political parties and candidates be accorded 30 seconds of airtime on the national broadcaster, ZNBC, for campaign advertisements per day.

The ZPS was also accused of bias in favour of the governing party. While opposition party events were said to be systematically disrupted with heavy-handedness and members arrested, governing PF party members, especially the so-called ‘cadres,’ were accused of perpetrating acts of violence with impunity in the run-up to the elections. For instance, ZPS spokesperson Esther Katongo stated in an interview on 28 July 2021 that the republican president was not subject to the Public Order Act, thus reinforcing perceptions of bias. The police also attempted to prevent UPND leader Hakainde Hichilema from visiting the Eastern province in the last days of the campaign, and he was reportedly detained until dark, thus preventing him from campaigning.<sup>3</sup>

In addition to the aforementioned institutional challenges, intra-party democracy was also a key concern for several stakeholders. Party dynamics are often personality-based and less guided by issues. These challenges affect most political parties, including the main ones, and are most evident during intra-party elections. The lack of intra-party democracy could have a negative impact on inter-party relations and the practice of democracy at the national level.

### **Political challenges**

Concerns were raised around abuse of the advantages of incumbency, the recent deployment of the armed forces, increasing cadre violence, restrictions on the movement of opposition leaders (especially the main opposition leader), the tribalisation/regionalisation of politics and lack of an effective national platform for constructive political dialogue.

Opposition and civil society stakeholders accused President Lungu and the PF of abusing their incumbency by using clientelism and state resources to mobilise electoral support. The distribution of ‘empowerment funds’ and various targeted donations to groups or segments of the population (such as special funds to youth groups and women, bicycles to village heads, cattle and goats to prisons) were considered as using state resources for partisan purposes ahead of the August polls.

Stakeholders the Group met with were anxious about the rise in violent activities carried out by party cadres. The existence of party cadres in Zambian politics dates back to the country’s second republic. While cadres were tasked with undertaking innocuous and worthwhile tasks such as membership recruitment, UNIP figureheads and members of its youth league saw silencing ‘dissenting voices’ as part of their mandate. The use of cadres

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<sup>3</sup> Lusaka Times (2021) ‘Police in Chipata Try to Block UPND Campaigns-HH Detained for over 2 Hours at the Airport’. 30 July. <https://www.lusakatimes.com/2021/07/30/330253/>

has been passed down to the UNIP's successor parties, including the MMD and its eventual offshoots the PF and UPND, and is now a common feature of Zambia's political landscape.<sup>4</sup>

Violence in party strongholds continued during the campaign period, sometimes leading to deaths, maiming of supporters, and the destruction of property. In addition, while political competition was not defined by ethnicity, parties accused each other of stoking latent ethnic tensions to mobilise support. Against the backdrop of this politically charged and polarised pre-election environment, the absence of a credible framework for political dialogue was a major concern for stakeholders. The political polarisation seems to have permeated the key institutions and mechanisms that should normally help prevent conflicts. There was polarisation among institutions such as the church and CSOs, thereby reducing the availability of inclusive platforms for addressing key political issues.

The Commonwealth initiative to promote political cohesion and peaceful elections through the establishment of the CPEZ was facilitated to fill this gap. The CPEZ is a non-partisan national platform bringing together strategic organisations whose main goal was to promote peace and political dialogue in order to prevent electoral violence before, during and after the 12 August elections. It is co-convened by the Church Mother Bodies and the Zambia Centre for Inter-Party Dialogue, supported by the Commonwealth Secretariat and the United Nations. Other members include the Law Association of Zambia, the Non-Governmental Gender Organisations' Coordinating Council (NGOCC), the Human Rights Commission, the Media Institute of Southern Africa (MISA), the Zambia Federation of Disability Organisations (ZAFOD), Transparency International, the National Youth Development Council and the ZPS. The Coalition was launched on 1 July 2021 by the Secretary-General of the Commonwealth and held a series of events, including a Peace Conference of presidential candidates on 14 July 2021 and an Ecumenical Service for peace on 1 August 2021.

## **Legal challenges**

Key legal challenges preceding the elections related to the eligibility of incumbent President Edgar Lungu to stand for re-election, the late introduction of cyber crime legislation, the perceived selective application of the Public Order Act and the controversial attempt to pass the Constitution of Zambia (Amendment) Bill of 2019, otherwise known as Bill 10.

Having served the remainder of President Michael Sata's term from 2015 to 2016 (following his victory in the by-election), and his full term from 2016 to 2021, some stakeholders claimed that President Lungu was not eligible to stand in the 2021 presidential election, given the constitutional provision limiting presidential terms to a maximum of two. The Constitutional Court was petitioned on the matter but the petition was dismissed.

In April 2021, the controversial Cyber Crime and Cyber Security Act 2021 came into force, despite vehement opposition from civil society and the UPND. While the government argued that the Act was enacted to combat cybercrime, co-ordinate cyber security matters, develop relevant skills and help promote the responsible use of social media platforms, various stakeholders expressed fear that it could be used to muzzle freedom of expression,

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<sup>4</sup> Mukunto, K. (2019) 'Electoral Violence and Young Party Cadres in Zambia'. *Journal of African Elections* 11(1): 129-147.

the freedom of the press and the right to privacy, especially as the nation headed for the elections.

Additionally, there were accusations that the ZPS was continuing to selectively apply the Public Order Act to stifle the activities of opposition political parties. Additionally, differing interpretations of the Public Order Act gave rise to accusations that the ZPS was selectively applying the provisions of the Act in order to stifle the ability of the main opposition party to campaign freely. This is covered in more detail in Chapter 5.

Opposition parties also accused the police of using existing COVID-19 restrictions to justify crackdowns on opposition campaign events, while giving the governing PF a free pass to go about conducting campaigns without observing similar restrictions (see Chapter 5).

Following the withdrawal of the Commonwealth in 2018 from the post-2016 political dialogue on fundamental electoral reforms, facilitated by the Secretary-General's Special Envoy, Professor Ibrahim Gambari, the Ministry of Justice took over the process and in 2019 enacted the National Dialogue Act No. 1, which established a National Dialogue Forum (NDF). The NDF proceeded to draft proposed amendments to the Constitution, the Public Order Act and the Electoral Process Act.

Following these proposals, the government introduced the Constitution (Amendment) Bill No. 10 of 2019. In December 2020, the Bill, which became known as Bill 10, failed to obtain the required two-thirds support in the National Assembly. The opposition and some CSOs criticised the government for introducing provisions in the Bill that attempted to weaken democratic institutions and undermine oversight by the legislative and judicial arms of the state. The Law Association of Zambia petitioned the Constitutional Court over the constitutionality of the bill, arguing that the whole process was undemocratic and unconstitutional.

Failure to pass Bill 10 meant that revised and new draft legislations, such as the Public Order (Amendment) Bill and the Political Parties Bill, which were predicated on the revised Constitution, could also not be passed. This meant that the legal framework guiding the 2021 general elections remained largely the same as during the 2016 elections, with the same challenges that had been identified as areas needing reform.

## **Economic challenges**

Ahead of the elections, Zambia experienced an unprecedented weakening of all sectors of the economy, with gross domestic product contracting by an estimated 4.9 per cent in 2020, after growing by 4.0 per cent in 2018 and 1.9 per cent in 2019. The spread of COVID-19 has further exacerbated this situation.<sup>5</sup>

Before the pandemic, the economy was already 'suffering severe macroeconomic challenges, such as high inflation, widening fiscal deficits, unsustainable debt levels, low

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<sup>5</sup> African Development Bank (2021) 'Zambia Economic Outlook'. <https://www.afdb.org/en/countries-southern-africa-zambia/zambia-economic-outlook>

international reserves, and tight liquidity conditions.<sup>6</sup> Despite efforts by the government to stem the economic challenges, inflation rates have remained high, mainly driven by the effects of the depreciation of the kwacha and higher food, commodity and transport prices. Zambians have also suffered job losses, with the nation's debt crisis making the situation worse. In November 2020, Zambia defaulted on a Eurobond loan,<sup>7</sup> and it has total debts in the region of US\$12 billion.<sup>8</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Smith, E. (2020) 'Zambia Becomes Africa's First Coronavirus Era Default: What Happens Now?' CNBC, 23 November. <https://www.cnbc.com/2020/11/23/zambia-becomes-africas-first-coronavirus-era-default-what-happens-now.html>

<sup>8</sup> BBC News (2020) 'Zambia on Brink of Defaulting on Foreign Debt'. 13 November. <https://www.bbc.co.uk/news/world-africa-54928836>

## Chapter 3: The electoral framework and electoral administration

### Background

The Constitution of the Republic of Zambia provides for the conduct of elections every 5 years after the last general election, on the second Thursday of August. On 12 August 2021, Zambians voted in the seventh general elections since the introduction of multi-party democracy in 1991, for the president, members of the National Assembly, local government councils and mayors/council chairs. These elections were conducted in 1,858 wards, 12,152 polling stations and 116 districts.

The president is directly elected for a 5-year term and can serve a maximum of two terms in office. Elections to the office of president are conducted directly, under a majoritarian electoral system, where the winning candidate must receive more than 50 per cent (50 per cent +1) of the valid votes cast. Each voter expresses a single preference on the ballot and the president is elected in a single national constituency.

If at the initial ballot a presidential candidate does not receive more than 50 per cent of the valid votes cast, the law provides in Article 101 of the Constitution that a second ballot is held within 37 days of the initial ballot, where the only candidates shall be the presidential candidates who obtained the highest and second highest number of valid votes cast in the initial ballot; or, in the case of presidential candidates having attained an equal number of the valid votes cast in the initial ballot, the highest votes among the presidential candidates that stood for election to the office of president.

The parliament of Zambia consists of the president and the National Assembly, which consists of 156 elected members and up to eight non-constituency members of parliament nominated by the president, as well as the vice-president, the speaker and two deputy speakers. The two deputy speakers should not represent the same political party and must not be of the same gender.

The 156 members of the National Assembly are elected for a 5-year term from single-member constituencies based on the first-past-the-post system and a simple majority vote.

The president may nominate not more than eight members, where the president considers it necessary to enhance the representation of special interests, skills or gender in the National Assembly. Notably, nominees to the aforementioned positions must meet the minimum qualifications to be a member of parliament.

Elections to councils are conducted under a first-past-the-post electoral system.

## Legal framework, regional and international commitments

The Constitution of Zambia guarantees fundamental rights and freedoms, including freedom of expression, assembly, association and participation in elections.

Considering the COVID-19 pandemic, which had at the time of the elections infected 202,000 people and resulted in 3,512 deaths in Zambia, more electoral activities, such as campaigning, were conducted online. This meant that cyber legislation and COVID-19-specific public health regulations were applicable to the 2021 general elections in Zambia.

The following national laws provide the primary legal and regulatory framework for the conduct of these elections:

- Constitution of Zambia Act 1991 (as amended)
- Electoral Process Act No. 35 2016
- Electoral Commission Act No. 25 2016
- Electoral Regulations 2016
- Constitutional Court Act 2016
- Electoral (Code of Conduct) Regulations 2016
- Electoral (General) Regulations (under review) and Electoral (Registration of Voters) Regulations
- Electoral Commission of Zambia Standard Operating Procedures against COVID-19
- Relevant case law based on Zambia's common law system

Other legislation relevant to the conduct of the 2021 elections in Zambia is as follows:

- Data Protection Act 2021
- Electronic Communications and Transactions Act 2021
- Gender Equity and Equality Act 2015
- Information and Communication Technologies Act 2021
- Registration of Electronic Communication Apparatus 2011, Statutory Instrument
- Public Health Act Cap 295
- Penal Code Act 1972 (as amended)
- Public Order Act No. 10 of 1959 (now No. 30 of 1996, as amended)
- Societies Act Cap 119
- Preservation of Public Security Act Cap 112
- Service Commissions Act 2016

In addition, Zambia has committed to some significant regional and international instruments, as well as standards and values relevant to the conduct of elections. These include:

- The African Charter on Human and Peoples Rights
- The African Charter on Democracy, Elections and Governance - the first binding document adopted by members of the African Union
- The African Youth Charter



- The African Union Declaration on the Principles Governing Democratic Elections in Africa
- The Southern African Development Community Principles and Guidelines Governing Democratic Elections
- The International Covenant on Civil and Political Rights
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention)
- The Convention on the Rights of Persons with Disabilities
- The Commonwealth Charter

## **The Electoral Commission**

The ECZ is the autonomous electoral management body for the Republic of Zambia, established by the Constitution under Article 229. According to the Constitution, the Commission shall ‘implement the electoral process; conduct elections and referenda; register voters; settle minor electoral disputes, as prescribed; regulate the conduct of voters and candidates; accredit observers and election agents, as prescribed; and delimit electoral boundaries.’ The chairperson of the Commission is the returning officer for the presidential election.

The Electoral Commission Act No. 25 of 2016 operationalises the ECZ. The ECZ consists of the chairperson, the vice-chairperson and three other members appointed by the president, subject to ratification by the National Assembly. The Electoral Commission Act provides for the membership, functions, operations and financial management of the ECZ and for matters connected with, or incidental to, the conduct of elections.

## **Eligibility requirements for voting and voter registration**

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

The Electoral Process Act No. 35 of 2016 prescribes continuous voter registration. Voter registration in Zambia is based on a digital capturing of a voter’s biometric and biographical data, photo and thumbprint. For the 2021 general elections, the ECZ compiled a new voter register.

Based on the final register of voters compiled by the ECZ, the number of registered voters for the 2021 general election was 7,023,499, an increase of 325,127 (4.9 per cent) compared to 2016.

Disaggregated by gender, 3,751,040 (53.4 per cent) were female and 3,272,459 (46.6 per cent) were male. Voters aged between 18 and 35 on the 2021 register represented 54 per cent of all registered voters.

## **Candidate eligibility and nomination**

### **Presidency**

To qualify as a presidential candidate, one must be a citizen by birth or descent; be ordinarily resident in Zambia; be at least 35 years old; have obtained, as a minimum academic qualification, a Grade 12 certificate or its equivalent; declare assets and liabilities, as prescribed; pay the prescribed election fee; be fluent in the official language - that is, English; and be supported by at least 100 registered voters from each province. Under Article 36 of the Constitution, a person born outside Zambia is a citizen by descent if, at the date of that person's birth, at least one parent of that person is or was a citizen by birth or descent.

For the 2021 elections, there were 16 presidential candidates, one of whom was a woman.

Each presidential candidate was required to name a person as their vice-presidential running mate.

### **Parliament and local councils**

The same nationality, registration and education criteria as for presidential candidates apply to parliamentary candidates. However, such candidates must also be supported by at least 15 registered voters in the constituency in which they are standing for election. Candidates can be sponsored by political parties or stand as independents. For these elections, there were 857 parliamentary candidates, of whom 21 per cent were women.

At the local council level, similar nationality and education criteria as specified for parliamentary candidates apply. However, under Article 153(4) of the Constitution, candidates should also be at least 19 years of age, a citizen or holder of a resident permit, or resident in the district in which they are contesting and present a certificate of clearance showing payment of council taxes. For these elections, at the mayoral and council chairperson level, there were 6,130 candidates running for 1,858 seats, of which around 10 per cent of candidates were women.

### **Complaints, appeals and election petitions**

The legal and electoral framework in Zambia provides for electoral dispute resolution mechanisms. Parties and candidates have access to a system of appeals through which every electoral action or procedure can be legally challenged. Legal appeals related to electoral issues can be submitted before judicial or political agencies.

The ECZ is mandated through Section 113 of the Electoral Process Act No. 35 of 2016 to manage electoral conflicts and resolve disputes. In pursuance of its mandate, the ECZ established administrative mechanisms - Conflict Management Committees - at national and district levels. The Committees comprise a chairperson appointed by the Commission; a vice chairperson; one representative from each registered political party; representatives of CSOs; and representatives of such government ministries and institutions as determined by the Commission, such as the ZPS, the Anti-Corruption Commission and the Drug Enforcement Commission. The National and District Conflict Management Committees have powers to mediate electoral conflicts; advise the conflicting party in an election conflict; and recommend the revocation of accreditation of any monitor or observer to the Commission. The Committees also determine allegations of alleged bias against electoral officers appointed by the Commission.

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

In addition, the Electoral Process Act of 2016 incorporates a Code of Conduct, which binds political parties, candidates and their supporters regarding conduct throughout the electoral process. The Act also outlines election offences liable for prosecution. These offences include corrupt and illegal practices and other election offences - namely, bribery; impersonation; undue influence; illegal practice of publishing false statements in respect of candidates; illegal practice in respect of nomination of candidates; illegal practice in respect of public meetings; illegal practice relating to the poll; breach of secrecy; offences by election officers; offences by printers and publishers; obstruction of officer; and attempts to commit offences.

These offences are punishable by a fine of up to 500,000 penalty points<sup>9</sup> and/or imprisonment not exceeding 7 years. The Electoral Code of Conduct directs that Conflict Management Committees shall resolve or encourage amicable settlement of disputes within 24 hours from date of receipt of the complaint.

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

National Assembly election petitions are presented in the first instance to the High Court. An aggrieved candidate, a registered voter or the attorney-general may present a National Assembly petition. Parliamentary petitions must be submitted within 14 days of the official

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<sup>9</sup> The kwacha value of the units is set pursuant to the Fees and Fines Act Cap 45 of the Laws of Zambia, and varies by statutory instrument. Statutory Instrument No. 41, enacted on 19 June 2015, increased the value of a fee unit or penalty unit from 0.20 kwacha to 0.30 kwacha, an increase of 50 per cent.

declaration of results. The court of first instance has 90 days to hear a petition. Decisions of the High Court may be appealed to the Constitutional Court. All petitions are heard in open court.

For local government elections, petitions are presented to *ad hoc* tribunals established by the chief justice. These tribunals are presided over by a magistrate and two legal practitioners appointed by the chief justice. An election petition shall be heard within 30 days of filing. The decision of a local government elections tribunal may be appealed to the Constitutional Court. The decision of the Constitutional Court is binding in all instances.

## **Key issues**

### **Electoral reform and the legal framework**

Following the enactment of the Constitution of Zambia Amendment Act No. 2 of 2016, after a 12-year constitutional review process, enabling and subsidiary legislation was required to operationalise some of the constitutional provisions. In 2016, the Electoral Processes Act No. 35 of 2016 and the Electoral Commission Act No. 25 of 2016 were enacted. However, there are several legal provisions in the Constitution (as amended) that were not enacted in advance of the elections. Constitutional Amendment Bill No. 10 of 2019 sought to amend the Constitution of Zambia so as to revise the electoral system for elections to the National Assembly; the period for dissolution of the National Assembly to the date of the general election to allow members of parliament to complete their full 5-year term; the period of hearing and determination of a presidential election petition from 14 to 30 days; and the manner of election of mayors and council chairpersons, among others. The proposed amendments were introduced before the parliament but a number of stakeholders criticised the objective and the Bill failed.

For instance, Section 48 of the Electoral Processes Act provides that a person can apply for a special vote if he or she cannot vote at a polling station in the polling district in which he or she is registered as a voter as a result of:

- That person's physical infirmity or disability;
- Pregnancy;
- Absence from that polling district while serving as an election officer in the election concerned; or
- Being on duty as a member of the security services in connection with the election.

The ECZ is duty bound to prescribe the procedure and conditions under which a voter who is unable to vote in the polling district in which that voter is registered may apply for a special vote.

The Group observed that polling staff and members of security services exercised this right with a consequence that they could vote only for presidential, and in some instances mayoral, candidates, but written procedures were not available or elaborated in the Election Officer's Handbook.

The Group also noted with concern that certain groups may have been disenfranchised because of lack of mobility or as a result of being deployed for essential services or election work. These groups include individuals in hospital, pregnant women and the infirm, individuals who have moved since registration and cannot return to the polling station where they have registered, security personnel, essential services workers and those deployed for work in the elections but not employed by the ECZ, such as the police, political agents and citizen observers.

### **Electoral Commission of Zambia**

In the run-up to the 2021 general elections, there was a general apprehension of the capacity of the ECZ to deliver credible, transparent and inclusive elections. These apprehensions were centred on fears of its lack of impartiality, featured in the public media and among some of the stakeholders. The Group witnessed preparations by the ECZ ahead of the poll, including the distribution of sensitive materials and the establishment of polling stations. The Group was impressed by the confidence and professionalism of polling officials on election day, a significant number of whom were women.

### **Legal provision concerning nomination**

Article 52(6) of the Constitution provides that:

Where a candidate dies, resigns or becomes disqualified in accordance with Article 70, 100 or 153 or a court disqualifies a candidate for corruption or malpractice, 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.

The Group took note of the implications of this provision, which renders the electoral process vulnerable to many risk factors in the case that a candidate (of the 16 in a presidential election) is affected by any of the issues raised in Article 52(6).

### **Constitutional challenges concerning the eligibility of incumbent President Edgar Lungu to stand for president in the 2021 elections**

The issue of the eligibility of the incumbent President Lungu to run in the presidential election was raised because he had been president since 25 January 2015 after winning a presidential by-election to replace Michael Sata, following the untimely demise of the latter on 28 October 2014 and a subsequent constitutionally defined period of 90 days during which Zambia's then Vice-President Guy Scott was interim president. President Lungu served an 18-month term until the constitutionally defined date of the next general election, on 11 August 2016. He was re-elected in 2016 for a 5-year term.

In December 2018, the Constitutional Court cleared incumbent President Edgar Lungu to run for a third term in 2021 despite the constitutional two-term limit, based on the determination that Lungu's first term did not count because it had lasted just 18 months

after the death of the previous president, Michael Sata. The current legislation puts the vice-president on the same electoral ticket as the president (as running mate) (Article 110); in the event of a vacancy of an elected president, the vice-president is the immediate successor to the president and remains president until the next general election (Article 106).

Notably, previous provisions in the Constitution were not clear as to the implications for presidential term limits in circumstances such as those that prevailed when President Sata died. Constitutional provisions introduced by Constitution of Zambia (Amendment) Act No. 2 of 2016 also clarify that, if the vice-president assumes the office of president, in accordance with Clause (5)(a), or a person is elected to the office of president as a result of an election held in accordance with Clause 5(b), the vice-president or the president-elect shall serve for the unexpired term of office and be deemed to have served a full term as president if, at the date on which the president assumed office, at least 3 years remain before the date of the next general election; or not to have served a term of office as president if, at the date on which the president assumed office, less than 3 years remains before the date of the next general election.

The Group observed that this matter cast doubt on the eligibility of the incumbent to run for president.

### **Dispute resolution mechanism for the presidential election**

Several stakeholders who spoke to the Group, including members of opposition parties, CSOs, professional associations and the diplomatic corps spoke of their lack of confidence in some key state and electoral institutions. There were sentiments of mistrust, particularly in the independence of the Constitutional Court, stemming from the handling of the 2016 presidential election petition, which had been dismissed on technical grounds. Concerns were also raised about the selection and appointment of the Constitutional Court judges, and their ability to be independent. It was concerning that Zambia was going into the 2021 general elections with such strongly and widely held perceptions. According to Article 140 of the Constitution, the president shall, on the recommendation of the Judicial Service Commission and subject to ratification by the National Assembly, appoint the chief justice, deputy chief justice, president of the Constitutional Court, deputy president of the Constitutional Court and other judges.

The Constitutional Court was established under Article 127 of the Constitution of Zambia (Amendment) Act No. 2 of 2016. Prior to this Act coming into force, all constitutional matters were dealt with primarily by the High Court of Zambia, with the possibility of such matters being taken to the Supreme Court on appeal. The Constitutional Court, as established, is at the same level as the Supreme Court. This means that all decisions of the Constitutional Court are final and binding. A person dissatisfied with the decision of the Constitutional Court cannot appeal to any other court (Article 121).

Following the establishment of the Constitutional Court, the Constitutional Court Act No. 8 of 2016 was enacted. This provides for the process and procedure of the court. Eight judges were appointed in March 2016 and the Constitutional Court became operational for the

purpose of hearing and determining cases in May 2016. The Constitutional Court shall be constituted by one judge when hearing an interlocutory matter. The full bench of the Court shall be constituted by an uneven number of not less than five judges when determining matters that require a full bench.

The Constitutional Court exercises original and final jurisdiction in the following matters: interpretation of the Constitution; violation or contravention of the Constitution; a petition to challenge the nomination of a candidate for election as republican president; a matter relating to the republican president, vice-president or the election of a republican president; appeals relating to election of members of parliament and councillors; an application to review a decision of the ECZ in the delimitation of constituencies and wards; any matter referred to the court by the republican president pursuant to the Constitution; and whether or not a matter falls within the jurisdiction of the court (Section 8, Constitutional Court Act).

It is notable that the dismissal of the 2016 presidential election petition on a procedural technicality without hearing evidence affected confidence in Zambia's Constitutional Court. The petition challenged the declaration of the incumbent, Edgar Lungu, as president and was filed by the UPND presidential candidate Hakainde Hichilema. When the matter came up for full hearing on 5 September 2016, 17 days after the filing thereof, the courts stated that too much time had elapsed and that lawyers for the petitioners had failed to use the available time to argue their case. The Constitutional Court concluded that courts in Zambia lacked the jurisdiction to extend the timeframe to hear a presidential petition on merit.

It should be noted that Article 118(2)(e) of the Constitution provides that, in exercising judicial authority, justice shall be administered without undue regard to procedural technicalities.

### **Human rights: freedom of expression, right to privacy in communication and the role of information and communication technology**

The enactment of cyber crime legislation in 2021 led to uncertainty as a result of the perception that the authorities could penalise journalists and media houses for carrying out their professional duties.

The enactment of cyber legislation late in the electoral cycle gave rise to apprehension among some stakeholders that this could have an adverse impact on the electoral process, as it relates to privacy, data protection and certain freedoms of communication and the right to information, which underpin the conduct of credible elections. The Cyber Security and Cyber Crime Act provides for the 'responsible use of social media platforms.' It establishes a Central Monitoring and Coordination Centre controlled by the department responsible for government communications. It introduces licensing of cyber service providers and imposes capability of interception as a requirement for gadgets. All electronic communications providers, including internet messaging platforms, will have to provide services that are 'capable of rendering real-time and full-time monitoring facilities for the interception of communications.'

Chapter One Foundation, Bloggers of Zambia, the Governance, Elections, Advocacy, Research Services (GEARS) Initiative, People’s Action for Accountability and Good Governance in Zambia and the Alliance for Community Action presented a petition before the High Court on the grounds that the new law contained provisions that threatened the right to protection of the law and the right to freedom of expression, among other constitutionally guaranteed rights. They asked the court to strike down Sections 11, 12, 29, 38, 40, 54, 59, 65, 69, 72 and 74 of the Cyber Security and Cyber Crime Act for failure to meet basic human right standards. At the time of the elections, this matter had not been determined.

On 24 March 2021, the Zambian legislature enacted the Electronic Communications and Transactions Act No. 4 of 2021, which came into effect on 1 April 2021. A court may order a service provider to terminate or prevent unlawful activities (Sections 77(2) and 80). Section 82 provides for a ‘notice and takedown’ procedure. Service providers are required to enable interception and store call-related information. Section 77 requires service providers to install both hardware and software that enable communications to be intercepted in ‘real time’ and ‘full time’ upon request by law enforcement agencies or under a court order; and service providers are required to transmit all intercepted communications to a Central Monitoring and Coordination Centre under the control of the department responsible for government communications in liaison with the Zambia Information and Communication Technologies Authority.

Zambia also imposes a system of mandatory SIM card registration in accordance with the Information and Communication Technologies Act of 2009 (recently repealed and replaced by the Information and Communication Technologies Act of 2021, which entered into force on 1 April 2021) and Statutory Instrument 65 of 2011 on the Registration of Electronic Communication Apparatus. Registration of SIMs makes it easier to keep track of subscribers’ activities.

Additionally, the introduction of new legislation on data protection late in the electoral cycle created obligations for stakeholders in the political landscape that could prove disadvantageous. The newly enacted Data Protection Act places obligations on whoever processes personal data involving biometrics, revealing racial, ethnic, regional origin and other traits, and sensitive personal data such as a data subject’s political opinions. These data controllers require authorisation from the national protection authority, which may apply to political parties, and other entities such as those that manage party membership registers. It was not clear that such managers and holders of data were aware of these additional legal and operational obligations.

The Group noted and welcomed the ECZ’s partnership with Facebook in removing fake pages, thereby reducing fake news and misinformation. The Group also noted and welcomed a partnership between Panos Institute Southern Africa (PSAf) and Bloggers of Zambia through iVerify Zambia to set up a fact-checking initiative to mitigate disinformation.



## **Inclusion of persons with disabilities**

The Group heard from stakeholders led by ZAFOD that PWDs continue to face challenges in participating in politics. In 2011, the High Court, in *Selah Brotherton and Others v the Electoral Commission of Zambia*,<sup>10</sup> made far-reaching pronouncements that acknowledged that PWDs had been discriminated against based on their disability: the fact that the electoral process did not meet the benchmarks of inclusivity and accessibility meant that they were prevented from participating in political and public life. The High Court noted that the ECZ ‘had unlawfully discriminated against persons with disabilities, contrary to Article 23 of the Constitution as read with Section 19 of The Persons with Disabilities Act’ and that, for future elections (after 2011), it should ‘formulate and issue a detailed plan and budget aimed at providing services and amenities aimed at ensuring equal participation by persons with disabilities in the electoral process.’ The Court also ordered ECZ to ‘put in place measures to ensure that [persons with disabilities], are not disadvantaged in their pursuit of the exercise of their franchise,’ including:

- Erecting temporary ramps for use by PWDs in all stations;
- Ensuring that all polling booths are located on the ground floor of the premises used as a station and in places accessible by PWDs;
- Provision of a tactile ballot guide for voters who are blind or are partially sighted but do not wish to be assisted in casting their secret vote in respect of all elections and not just the presidential elections.

As a consequence, Zambia has seen appreciable changes in terms of strengthening the political participation of PWDS, leading to an increase in the number of political parties embracing PWDs not only as party members but also as potential candidates. In the 2021 elections, the ECZ provided voter information in accessible formats such as braille and tactile ballot papers. It took some commendable steps to include PWDs, such as engaging some PWDs during the registration exercise as voter registration officers. The efficacy of these changes in protecting the rights of PWDs remains a question, as elaborated by ZAFOD in its meeting with the Group.

## **Inclusion of inmates**

The Group notes the evolution of the law to allow participation of inmates in the 2021 General Elections. In *Godfrey Malembeka (Prisons Care and Counselling Association) v Attorney General and Electoral Commission of Zambia*,<sup>11</sup> the Constitutional Court was called to rule on the inconsistency between Section 9(1)e and Section 47 of the Electoral Process Act and Article 46 of the Constitution (as amended). Although the Constitution states simply that ‘any 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,’ the Electoral Process Act denies franchise to anyone who is ‘in lawful custody or the person’s freedom of movement is restricted under any written law.’ In upholding the Constitution as the supreme law of the land, the Court

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<sup>10</sup> 2011/HP/0818) [2011] ZMHC 32 (18 September 2011).

<sup>11</sup> *Malembeka (Prisons Care and Counselling Association) v Attorney General and Another* (13 of 2016) [2017] ZMCC 1 (14 August 2017).

ruled that the relevant sections of the Act were null and void and should be expunged. As a result of the ruling, 20,000 inmates were included on the voter register.

One of the remaining challenges, however, is that the person's right to vote does not carry over if the person is transferred from one correctional facility to another, outside of the area where he/she registered as a voter. Additionally, inmates do not have access to information, campaign materials and candidates to inform their views.

### **Implication of COVID-19 restrictions**

Zambia conducted its seventh multi-party general elections against the backdrop of the COVID-19 pandemic, which has had devastating effects across the globe. We noted that public health legislation and guidelines such as standard operating procedures (SOPs) were introduced to mitigate the spread of COVID-19 during the elections.

However, there were allegations of inconsistent application of COVID-19 restrictions during the campaign. The COVID-19 restrictions and measures to cope were imposed under the Public Health Act - namely, the Public Health (Infected Areas) (Coronavirus Disease 2019) (Amendment) Regulations 2020 SI 62/2020 and others. The constraints on movement and participation, including election observation, included halting political roadshows and limiting groups conducting door-to-door campaigns to three people, as well as restricting the number of international observers accredited to observe the 12 August polls. These were considered to add additional limitations to stakeholders' engagement and participation in the electoral process. It is noteworthy that the stated expectation was that the parties would engage in increased use of social media-based campaigns to reach their constituents. However, internet penetration in Zambia stands at 29.4 per cent, with 5.48 million internet users in January 2021.

### **Enforcement of the Preservation of Public Security Act Cap 112**

The Preservation of Public Security Act gives sweeping powers to the police to search, arrest and detain suspects for longer than the constitutional requirement of 48 hours for a detained suspect to be brought before court. Application of these powers is likely to hinder participation of those arrested before or during polls. This Act should be reviewed to ensure that it does not unduly affect citizens' constitutional and democratic rights.

### **Regulation of political parties**

Zambia has not enacted a specific legal framework to regulate, monitor and supervise the conduct and administration of political parties. All political parties are required to register under the Societies Act Cap 119 of the Laws of Zambia; other provisions concerning political parties are set out in Article 60 of the Constitution. Article 60(4) of the Constitution provides that the following shall be prescribed with regard to political parties: the establishment and management of a Political Parties' Fund to provide financial support to political parties with seats in the National Assembly; the accounts of political parties that are funded under the Political Parties' Fund and the submission of audited accounts by political parties; the

sources of funds for political parties; the maximum amount of money to be used for campaigns during elections; and matters incidental to matters specified in this clause.

The Group noted that, against the background of increased fees for candidature or participation in the election, the legal framework does not provide for regulation of political party financing.

## **Electoral management**

Although prescribed by the Constitution (as amended), at present the ECZ does not have the requisite decentralised permanent structures. As with previous elections, for the 2021 elections, local government officers were temporarily appointed as provincial electoral officers. Town clerks or district council secretaries were temporarily appointed as district electoral officers with responsibility for co-ordinating electoral preparations in district and local government structures for the purpose of administering the polls.

## **Recommendations**

### *Electoral reform and legal framework*

- Much more needs to be done to allay the fears of citizens regarding the impartiality and competence of the Constitutional Court bench. The system must ensure for all participants (political parties, citizens and candidates) that the voter's decision prevails and that the dispute resolution mechanism in charge of sorting out electoral controversies is independent, impartial and technically proficient with regard to implementing constitutional resolutions.
- To promote legal certainty and avoid operational or implementation delays, confusion and potentially conflicting provisions, international good electoral practice advocates that there should be no substantive changes to the legal and electoral framework six to twelve months prior to an election.
- To ensure that a robust and complete legal framework underpins the electoral process, timely review and passage of all outstanding subsidiary legislation and regulation are recommended.
- It is recommended to review cyber legislation to ensure it meets internationally recognised human rights standards and principles.
- Measures should be taken to ensure that PWDs participate effectively and fully in political and public life on an equal basis with others as established in the legislative framework.
- It is recommended to expand Section 6.12 of the Election Officer's Handbook, 'Certificate of Authority to Vote,' to include more groups, and to make provisions to accommodate those who are not physically able to be present at the polling station,

including prisoners, under the categories that qualify for the special vote in Section 48 of the Electoral Processes Act.

- The Preservation of Public Security Act should be reviewed to ensure it does not have undue impact on citizens' constitutional and democratic rights.

## Chapter 4: Participation and inclusion

### Civil society organisations

In the lead-up to the 2021 elections, civil society mobilised under challenging circumstances, including shrinking democratic space, with avenues for freedom of expression affected by the Public Order Act, the Cyber Crimes and Cyber Security Act and COVID-19 restrictions. Despite these realities, there were a number of initiatives to promote participation and representation of citizens throughout the electoral cycle. These included messages of peace, voter education, and citizen monitoring and observation, and mobilised traditionally under-represented groups such as women, PWDs and youth for effective participation. These were delivered by coalitions, in partnership with and with support from international partners and agencies.

Although there was increased participation of a wide range of civil society groups, many reported low engagement with the ECZ in terms of consultation and information-sharing.<sup>12</sup> Additionally, accreditation procedures for election observers were reportedly inconsistent and complex. A variety of groups, including smaller, community-based, organisations, observed the elections.<sup>13</sup>

Notably, 18 CSOs collaborated under the umbrella of the CPEZ. This initiative was supported by the Commonwealth Secretariat and the United Nations, as Chapter 2 outlined. Partnerships were established with traditional leaders to broadcast peace messages, bulk SMSs were sent to citizens and video documentaries were created to inform citizens as to how to approach electoral disputes.

The Christian Churches Monitoring Group (CCMG) deployed long-term observers who reported on the pre-election environment and incidents of violence across the country. A total of 1,500 supervisors and stationary monitors were deployed on ELECTION DAY. They undertook a parallel vote tabulation (PVT) exercise, which provided real-time information on the verification and accuracy of the results, using a statistically representative sample from across Zambia.

### Recommendations

- The ECZ should design clear and transparent guidelines for the accreditation of citizen election observers and monitors.
- The CPEZ should be a permanent feature in the Zambian democratic process to help promote peace and non-violence before during and after elections.

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<sup>12</sup> CCMG (Christian Churches Monitoring Group) (2021) 'Preliminary Statement on the 2021 General Elections'. 13 August. [https://ccmgzambia.org/wp-content/uploads/2021/08/CCMG-Preliminary-Statement-on-the-2021-General-Elections\\_13Aug2021.pdf](https://ccmgzambia.org/wp-content/uploads/2021/08/CCMG-Preliminary-Statement-on-the-2021-General-Elections_13Aug2021.pdf)

<sup>13</sup> Ibid.

## Women's political participation

### Legal framework

Article 45 of the Constitution of Zambia, as amended, guarantees that the electoral system and process will promote gender equality in the National Assembly or council. Further to this, Article 69 allows the president to nominate not more than eight persons to the National Assembly to enhance gender representation. The Gender Equity and Equality Act of 2015 was enacted to domesticate Zambia's international and regional gender equality commitments.<sup>14</sup> Section 24 of the Act promotes equal representation and participation of women in decision-making processes and Section 29 states that women have the same right to participate in public decision-making and formulate and implement government policies and programmes.

The Act also proposes the establishment of a Gender Equity and Equality Commission, which is borne out of the provisions in the Constitution. However, such a commission is yet to be established. The Group was informed that there was a lack of political will to allocate the required resources for this, despite increased engagement from the women's movement with regard to the government setting up this independent authority to superintend gender priorities.

### Context

Women in Zambia have equal protection under the law and enjoy equal civil and political rights, including voting rights and the right to participate in the democratic process. However, actual participation in political life remains one of the lowest in Southern Africa. While women constitute just over 53 per cent of registered voters in the country,<sup>15</sup> in the 2016 elections only 17 per cent - 28 persons out of 167 - of elected parliamentarians were women.<sup>16</sup> Similarly, in local elections, only 8.1 per cent - that is, 132 of 1,624 - of elected councillors were women, a slight increase on the 6.2 per cent in the 2011 elections. In the mayoral elections, women represented 8.3 per cent of those elected.<sup>17</sup>

### Barriers to participation

A significant and persistent barrier to women's political participation in the electoral process in Zambia remains the contentious issue of nomination fees for candidates. In 2016, the nomination cost for each candidate was 100,000 kwacha (approximately US\$1,000), paid

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<sup>14</sup> These include the Convention on the Elimination of All Forms of Discrimination against Women, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Southern African Development Community Protocol on Gender and Development.

<sup>15</sup> ECZ (Electoral Commission of Zambia) (2021) 'Registered Voters by Gender'. Lusaka: ECZ.

<https://www.elections.org.zm/wp-content/uploads/2021/05/2021-REGISTERED-VOTERS-BY-GENDER.pdf>

<sup>16</sup> IPU (Inter-Parliamentary Union) data on women. [https://data.ipu.org/node/192/data-on-women?chamber\\_id=13559](https://data.ipu.org/node/192/data-on-women?chamber_id=13559); International Institute for Democracy and Electoral Assistance (2021) *Women Political Participation Africa Barometer 2021*. <https://www.idea.int/sites/default/files/publications/womens-political-participation-africa-barometer-2021.pdf>

<sup>17</sup> Commonwealth Local Government Forum (2018) 'The Local Government System in Zambia'. [https://www.clgf.org.uk/default/assets/File/Country\\_profiles/Zambia.pdf](https://www.clgf.org.uk/default/assets/File/Country_profiles/Zambia.pdf)

for by the candidate or political party. Stakeholders noted that this had an adverse effect on the number of female candidates contesting the election. In response, for the 2021 elections, the ECZ introduced discounts for women, youth and candidates with disabilities, ranging from 60 to 90 per cent of the cost of male nomination fees. Some stakeholders regarded these discounts for women, youth and PWD candidates as insufficient, as women's access to resources is limited and they tend not to have the lucrative careers and patronage networks many of their male peers enjoy. COVID-19 has further exacerbated many of the financial challenges faced by women aspirants through loss of income and livelihood.

General Comment 25 of the International Covenant on Civil and Political Rights (ICCPR) notes that 'No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.' Aspiring female candidates have been negatively affected by the introduction of a constitutional amendment in 2016 (Article 70(d)) that stipulates that candidates must have a Grade 12 certificate, verified by the Examination Council, in order to contest parliamentary elections. In 2017, only 29.8 per cent of women in Zambia had acquired the Grade 12 certificate, which put them at a disadvantage in comparison with their male counterparts.<sup>18</sup> Concerns from stakeholders about the negative impacts of this amendment have persisted from the 2016 election to the present, with a number calling for the review of this provision.

For the most part, women are not perpetrators of political violence; rather, they are at the receiving end. The Group noted that women members of parliament and aspiring candidates also faced issues related to safety, gender-based violence, demands for sexual favours, cyber bullying and name calling. These were serious issues women encountered during the electoral process. The two top female running mates for the PF and the UPND suffered unevenly from name calling after their nominations. The absence of a quota system in the Constitution and all legislative frameworks makes it difficult for women to navigate political party systems, as parties are not compelled by any legal framework to nominate women as candidates.

There are broad statements on women's participation in party manifestos but these are not legally binding. Within the political party structures, women are not provided with an environment in which they can advance. In most cases, women are not considered viable candidates, and in areas where political parties are strong and the aim is to retain the seat parties often choose not to adopt a female candidate. Some political party meetings are held at night and in venues in which women do not always feel comfortable.

## **2021 elections**

Women constituted 53.3 per cent of the 7,023,499 voters on the new 2020 voters roll. For the 2021 presidential elections, only one out of the sixteen presidential candidates was a woman. According to the NGOCC, there were five female vice-presidential candidates, with two main political parties, the PF and the UDNP, selecting women as their vice-presidential running mates. In the parliamentary elections, 180 of the 857 candidates were women. In the local elections, women represented around 10 per cent of all candidates.

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<sup>18</sup> Government of Zambia (2017) 'Educational Statistical Bulletin 2017'. <https://cse-learning-platform-unesco.org/system/files/digital-library-files/2017%20Educational%20Statistical%20Bulletin%20.pdf>

The 2021 elections were highly competitive, and the focus of the parties was on winning, with gender issues a secondary consideration. The projections of electoral violence and the militarisation of political cadres in this election also deterred potential women candidates from participating. Training, mobilisation and other capacity-building initiatives came late in the day and did not result in an increase in the number of women candidates. These systemic and physical challenges, as well as the treatment of women candidates, represent a deterrent for women with regard to engaging in the democratic process.

On election day, the Group observed that women were present in high numbers at all polling stations and made up a significant number of polling staff, party agents and citizen observers. According to the CCMG, 50 per cent of all polling staff and 39 per cent of security officers at polling stations were women.<sup>19</sup> The CCMG also noted that 43 per cent of PF and 37 per cent of UPND party agents were women.<sup>20</sup> The Group noted that, in some instances, queues were segregated into men and women. Priority access was generally given to pregnant women and women with babies to vote in about 97 per cent of all polling stations.<sup>21</sup>

There is an engaged women's movement in Zambia and a number of activities were undertaken to engage political parties, build capacity and boost the profiles of aspiring candidates at both local and parliamentary levels, and to establish gender monitoring. However, women's groups are operating with reduced capacity as donors have shifted funding from governance to health projects as a result of COVID-19.

## Recommendations

- The Group calls on the Zambia Government and the National Assembly to strengthen women's participation and ensure gender equality in decision-making processes by implementing the Gender Equity and Equality Act.
- The Zambia Government should review the Constitutional Amendment, Article 70(d), which stipulates that a Grade 12 certification is required to contest elections, as evidence suggests this provision is having a negative impact on the participation and inclusion of women and marginalised groups in the electoral process.
- The Group recalls the recommendation made by the COG in 2016 that consideration be given to the introduction of mandatory quotas to increase the representation of women at both National Assembly and local council levels, as one practical measure to achieve a gender balance in decision-making. In 2021, the Group further reiterates this recommendation and calls on the government to adopt appropriate legislative measures for affirmative action to promote gender-balanced political representation.
- The ECZ should consider revisiting nomination fees to further align with women's economic realities.

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<sup>19</sup> CCMG (2021) 'Preliminary Statement on the 2021 General Elections'.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.



- The ECZ should publish disaggregated data on women candidates on its website, as it does for registered voters.
- Political parties should consider introducing voluntary party quotas and ensure the implementation of gender-based policies within party manifestos.

## Youth

Demographically, Zambia has a burgeoning youth population, with a median age of 18,<sup>22</sup> and a 22.63 per cent youth unemployment rate in 2019.<sup>23</sup> The National Youth Policy of Zambia, in line with the African Youth Charter,<sup>24</sup> defines a youth as someone aged between 15 and 35.

Zambian law states that candidates must be of a certain age to stand for office: president/vice-president (above the age of 35); National Assembly and mayor/council chairpersons (21 years and above); and councillors (19 years and above). The ability to fundraise, coupled with nomination fees, also presented a barrier for youth candidates. The Group noted that the ECZ had introduced discounted fees for marginalised groups, including youth. However, the layered impact of high unemployment and COVID-19 prevented a higher uptake of youth candidates. Consequently, youth candidacy in the election was low, with only 150 youth nominated, because political parties did not nominate more youth candidates. Despite the low number of nominations, the Group was informed that some youth candidates were successful.

### 2021 elections

Zambia witnessed an unprecedented level of youth participation in the 2021 election. In the pre-election phase, young people mobilised to register to vote during the 45-day voter registration exercise. Several youth organisations recruited volunteers to undertake get-out-the-vote campaigns on offline and online platforms. For instance, the National Youth Development Council and the Zambia United States Exchange Alumni Association conducted campaigns to reach young people. A large proportion of voter registration officials engaged by the ECZ were young people.

The Group observed that political campaigns were driven by young people, especially on social media platforms. In addition, some self-identified party cadres, many of whom were young people, engaged in political violence, intimidation and political propaganda against supposed political opponents (see Chapter 5).

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<sup>22</sup> <https://www.worldometers.info/world-population/zambia-population/>

<sup>23</sup> <https://www.statista.com/statistics/813179/youth-unemployment-rate-in-zambia/>

<sup>24</sup> The Commonwealth Youth Programme defines a youth as a male or female person aged between 15 and 29 years, while the United Nations defines a youth as a male or female aged between 15 and 24 years.

The Group observed many young polling officials administering the elections with professionalism, competence and resilience. In addition to serving as poll officials, young people acted as observers/monitors and party agents. Observer groups such as the CCMG and the Human Rights Commission deployed young people as observers. The Group also met with CPEZ in Zambia and noted its efforts to ensure youth inclusion by integrating the National Youth Development Council in its leadership. The Group considers this a good practice that should be scaled up and adopted by other stakeholders.

Although, 56.9 per cent of Zambia's population resides in rural areas,<sup>25</sup> the Group noted the widespread use of social media for voter outreach and campaigns. This contributed in no small measure to youth engagement and participation in the election. Electoral stakeholders employed the use of Facebook, Twitter and WhatsApp to reach young voters. Similarly, young people utilised these platforms to engage political candidates on their manifestos. Groups like PSAf engaged young bloggers to counter fake news and disinformation via the iVerify Zambia platform. The upsurge in the use of social media and technology in elections presents opportunity for sustained youth engagement throughout the electoral cycle.

While youth is considered a unique social category, consisting of multiple sub-categories with varying interests, priorities and needs, the Group observed that messaging targeting youth was generic and did not take sufficient cognisance of the diversity within the youth population. References to youth were often limited to young males, to the notable exclusion of young women and young persons with disabilities. Therefore, effective youth engagement should be structured to address these different sub-categories.

## Recommendations

- In an effort to ensure a systematic and co-ordinated approach towards youth programming on elections and civic participation throughout the electoral cycle, the ECZ, in collaboration with youth organisations, political parties and relevant international support, should develop a youth engagement strategy.
- The ECZ should provide disaggregated figures on youth voter registration and publish these on its website alongside gender-disaggregated data.
- Parliament, political parties and CSOs should prioritise tracking and disaggregating youth data to facilitate data-driven youth programming in elections.
- Political parties must desist from using young people or cadres as merchants of violence during elections. Violent cadres must be disbanded and the perpetrators of violence must be prosecuted.
- Youth can be a conduit for civic engagement, democratic accountability and political party development. Political parties should invest in youth leadership development and create more opportunities for young people to participate in decision-making by

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<sup>25</sup> Government of Zambia, Zambia Labour Force Survey 2019. Accessed at <https://www.zamstats.gov.zm/phocadownload/Labour/2019%20Labour%20Fource%20Survey.pdf>

nominating more youth candidates for all levels of elections. Parties should explore measures to further engage youth in meaningful ways, and to increase youth representation. This could include, for example, the introduction of youth quotas.

- The Zambian parliament must facilitate increased youth participation in politics. Age requirements for elective offices should be revisited.
- To promote a culture of political dialogue, non-violent electoral participation and political solidarity, it is recommended that political parties consider establishing inter-party youth forums. These would serve as a bridge among party youth wings and create greater visibility for youth in party affairs and governance.
- Media organisations should provide a greater proportion of their coverage to young male and female candidates to increase the visibility of youth candidates during elections.
- More technical and financial support should be afforded to youth-led and youth-focused organisations to ensure sustainability of initiatives aimed at improving youth political participation. Development partners and other stakeholders should create a mechanism to increase the engagement of and support to youth organisations to improve their project management, institutional governance, communications and community-organising skills.

## **Persons with disabilities**

### **Legal and policy framework**

The legal and policy framework governing elections in Zambia supports the participation of PWDs in governance, including effective and meaningful participation in the electoral process. In addition to the Constitution and electoral legislation, Zambia has ratified the UN Convention on the Rights of Persons with Disabilities, which outlines how the state should guarantee the effective and full participation of PWDs in political and public life, equal to others (Article 29). Such rights were domesticated by the passing of the Persons with Disability Act in 2012 and the adoption of the National Disability Policy in 2015.

### **Barriers to participation**

Despite these enabling legal and policy provisions, civil society in Zambia has noted that implementation is lagging. Disabled people's organisations (DPOs), such as the Zambia Federation of Disability Organisations (ZAFOD) and Disability Rights Watch (DRW), have been advocating for implementation of the relevant legal provisions relating to the electoral process. This included engaging the ECZ to promote the participation of PWDs in the lead-up to the 2021 general elections, including calling for the ECZ to undertake an analysis of accessibility of venues that would be used as polling stations to ensure locations selected

were fully accessible by PWDs.<sup>26</sup> The High Court, in *Selah Brotherton v ECZ*,<sup>27</sup> instructed the ECZ to take specific measures to strengthen the participation of PWDs in the electoral process.

Civil society groups including ZAFOD, Zambia National Women's Lobby (ZNWL) and DRW also embarked on a campaign to enhance the participation of PWDs in the electoral process at different levels.<sup>28</sup> This included conducting voter education for PWDs, engaging political parties and monitoring pre-election and election day activities. ZAFOD also ensured that PWDs participated as local monitors for the elections. In this regard, 20 long-term monitors were deployed to observe the pre-election phase. On election day, 74 monitors were deployed to 60 electoral districts across Zambia's 10 provinces. Additionally, PWDs participated in the CPEZ, represented through ZAFOD.

## 2021 elections

In the 2021 general elections, a total of 12 PWDs participated as candidates - four at the parliamentary level and eight at the local government level.<sup>29</sup> While DPOs appreciated the 'adoption' of PWDs as candidates, a concern was expressed that political parties could have done more in this regard.

The ECZ also lowered nomination fees for PWDs wishing to contest elections, although disability stakeholders expressed the view that, despite the discount, nomination fees were still prohibitive of disabled candidates' participation, since PWDs generally do not have access to resources, let alone resources to dedicate to their participation as candidates. Some stakeholders also expressed concern that the Grade 12 certificate educational requirement needed for candidates to contest elections had the potential to preclude otherwise suitable PWDs candidates, compounding barriers to effective participation.

In relation to voter education programming, the media - both broadcasting and print - made efforts to disseminate information on the electoral process, notably with public television providing simultaneous sign language interpretation for broadcasts. Some community media, such as Solwezi Caritas Community Radio Station, aired interactive call-in shows where PWDs were able to receive information and ask questions. Civil society also used social media to disseminate election information. While organisations such as ZAFOD commended

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<sup>26</sup> ZAFOD (Zambia Federation of Disability Organisations) (2021) 'ZAFOD Calls on the ECZ to Allow Correction of Disability Type during the Voters' Register Inspection Period'. 9 February.

<https://www.zafod.net/uncategorized/zafod-calls-on-the-ecz-to-allow-correction-of-disability-type-during-the-voters-register-inspection-period-and-to-take-stronger-action-to-ensure-accessibility-of-inspection-centres-and-poll/>; IFES (International Foundation for Electoral Systems) (2021) 'Elections in Zambia, 2021 General Elections, Frequently Asked Questions'.

[www.ifes.org/sites/default/files/ifes\\_faqs\\_elections\\_in\\_zambia\\_2021\\_general\\_elections\\_august\\_2021.pdf](http://www.ifes.org/sites/default/files/ifes_faqs_elections_in_zambia_2021_general_elections_august_2021.pdf)

<sup>27</sup> *Brotherton N.O. v Electoral Commission of Zambia (HP 818 of 2011) [2011] ZMHC 32 (18 September 2011)*.

<sup>28</sup> ZNWL (Zambia National Women's Lobby) (2021) 'Voices of Women and of Persons with Disabilities Are Not Heard in Politics'. <https://znwl.womenslobby.org.zm/2021/08/04/voices-of-women-and-of-persons-with-disabilities-are-not-heard-in-politics/>

<sup>29</sup> ZAFOD (2021) 'ZAFOD Launches Its Thematic Observation Report on Accessibility of the 12 August 2021 General Election for Persons with Disabilities'. 28 September. <https://www.zafod.net/zafod-launches-its-thematic-observation-on-accessibility-of-the-august-2021-election-report/>

the efforts to CSOs to reach PWDs, their long-term observers noted gaps in voter education targeting PWDs, especially with the use of braille.<sup>30</sup>

DPOs expressed concern about the violence that had preceded the elections and emphasised that the impact of this violence had additionally aggravated the exclusion of PWDs in the electoral process. Some CSOs noted that some party officials used negative campaign messaging to dissuade PWDs from standing as candidates.<sup>31</sup>

On election day, the Group noted that a number of PWDs participated in the election and that, where necessary, there was provision of braille jackets. The CCMG noted that braille jackets were provided in 44 per cent of all polling stations.<sup>32</sup> PWDs were assisted by polling staff to vote and given priority access to vote in 96 per cent of all polling stations.<sup>33</sup> However, observers noted that the identification of disabled voters in the line by ECZ staff to bring them to the front was inconsistent. This is possibly because ushers were also responsible for ensuring compliance with COVID-19 regulations before voters entered the polling station. In some instances, lines of voters were long and hence many PWDs had to wait a long time without being identified for assistance.

The Group also noted that no public transport was provided for PWDs to and from polling stations. Many polling stations were located in places that made accessibility difficult for physically disabled persons - there were very few hard ramps, such that in some cases disabled voters had to be carried in and out of polling stations for them to exercise their rights, which violated their rights to dignity. While some election information was available on election day, no sign language interpretation was provided for the hearing impaired to enable them to follow proceedings and instructions issued by polling officials. In many polling stations, lighting was poor, and it became poorer as the day progressed; the lanterns provided were not effective.

## Recommendations

- The ECZ should fully implement the decision of the High Court in *Selah Brotherton v ECZ* by formulating an action plan and allocating sufficient resources for its implementation ahead of the next general elections. This action plan and associated budget should be released to stakeholders in timely manner.
- The ECZ should undertake an accessibility audit to ensure PWDs are able to participate in the electoral process effectively and fully throughout the electoral cycle.
- The ECZ should guarantee that, during the voter registration phase, the different types of disability are captured to ensure that these are catered to.

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> CCMG (2021) 'Preliminary Statement on the 2021 General Elections'.

<sup>33</sup> Ibid.

- The ECZ should consider a further reduction in or waiving nomination fees for PWDs wishing to participate in elections as candidates.
- The ECZ should ensure that PWDs are included in the administration and management of elections, including as polling officials.
- The ECZ should build the capacity of its staff to understand disability issues, in particular those that affect electoral participation, so as to be able to effectively assist those participating in the process, including ensuring that such participation happens in a manner that upholds PWDs' right to dignity.
- Political parties are encouraged to include PWDs among their candidates for the various elective offices contested in general elections and to facilitate their effective participation through measures such as enabling their candidature and supporting their campaigns.
- The National Assembly should consider the introduction of affirmative action measures to enhance PWDs' representation.
- Disabled people's organisations should continue to advocate for the formulation of and a budget for implementing a comprehensive plan for the participation of PWDs, and monitor its implementation in the five-year period preceding the next elections.

### **Inclusion of the aged**

The population of the aged, defined as anyone 65 years old or above, equates to around 3 per cent of the total population.

During the campaign period, much of the campaigning was conducted through the means of door-to-door canvassing and traditional and social media. The Group was not briefed on any initiative that supported voter education and inclusion of the elderly in the electoral process.

Access to polling stations to exercise the right to vote was a significant challenge for this group. Many did not understand the procedures for marking and casting their ballots. While in some cases those needing help came with family and/or other carers who assisted them, the Group observed that presiding officers provided support in cases where elderly voters did not have anyone to support them. The Group noted that in some polling stations the presiding officers endeavoured to be very loud and clear in a bid to ensure that the briefing to elderly persons was heard by all. In some, though not all, cases, there was a note in the presiding officer's diary and on the electoral roll of all the persons who had received support, noting the nature of the support. The Group commends the ECZ and polling staff for their assistance to elderly persons at polling stations, including assisting with access to the polling station and either allowing them to vote early or providing seating arrangements.

## Recommendations

- The ECZ, the Zambia Government through the Ministry of Information, the public broadcaster and other stakeholders should ensure there is access to targeted voter education through local language radio and other media.
- The ECZ, in conjunction with local administrations, should consider measures that enable easier access for the elderly, for example mobile polling stations and provisions for early voting.

## Participation of inmates

### Background and legal framework

In 2021, history was made in Zambia when the Commission facilitated inmate voting for the first time, as a result of a 2017 Constitutional Court ruling (see Chapter 3). Of an inmate population of around 20,000, a total of 11,359 were registered to vote.

Some stakeholders expressed a number of concerns about the practical implementation of this ruling. Opposition parties raised concerns to the Group regarding the ECZ and the government's failure to provide clear and transparent information regarding how the campaigns and monitoring of the elections in correctional facilities would be conducted to ensure that both the governing and the opposition parties had equal access to information. The Group was told that the registration process was not open and transparent, as political party agents and observers were not allowed to monitor the process. Stakeholders, particularly those from opposition parties, also voiced concerns as to how election and campaign material would reach inmates.<sup>34</sup> The lack of clarity on these matters gave rise to suspicions that the process would not be conducted in a transparent manner.

Stakeholders also expressed concern that inmates who had been released on bail, discharged or transferred from correctional facilities away from the district they were registered to vote in could potentially be disenfranchised.

On election day, for the most part voting was peaceful and orderly. The Group observed inmates following COVID-19 protocols by wearing masks and washing hands or using hand sanitisers before entering the polling station. However, social distancing was generally not observed.

In cases where there were no separate polls for male and female inmates, women inmates were allowed to vote separately and ahead of the male inmates.

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<sup>34</sup> ICCPR General Comment 25, Para. 11, states that 'Voter education... campaigns are necessary to ensure the effective exercise of article 25 rights...' Para. 20 states that 'Electors should be fully informed.'

It was commendable to witness inmates voting for the first time in Zambia's history. While there was apprehension about how this was going to be implemented, the process was well managed, and observers and party agents were permitted.

### **Recommendations**

- The ECZ must develop standard operating procedures for the full implementation of the court order that allows inmates to vote in elections, including guidelines on political party and stakeholder access to inmates to disseminate voter education and election materials, in line with ICCPR General Comment 25.
- The ECZ must ensure that party agents and observers are able to be present for the voter registration exercise.
- The ECZ should ensure that arrangements are made so that inmates who are on bail, discharged and/or held in correctional facilities outside of the district in which they are registered are able to cast their vote on election day.



## Chapter 5: Campaign and media

### Election campaign

The official campaign period for the 2021 general elections commenced on 14 May 2021 and concluded at 18:00 on 11 August, the eve of the election. There are a total of 32 registered political parties in Zambia. Of these, 16 nominated a candidate to contest the presidential election. These were as follows:

<b>Candidate name</b>	<b>Political party</b>
BANDA Andyford M	People's Alliance for Change (PAC)
CHANDA Charles	United Prosperous and Peaceful Zambia (UPPZ)
CHISELA Lazarus	Zambians United for Sustainable Development (ZUSD)
HAMUDUDU Highvie H	Party of National Unity and Progress (PNUP)
HICHILEMA Hakainde S	United Party for National Development (UPND)
KALABA Harry	Democratic Party (DP)
KATEKA Chishala B	New Heritage Party (NHP)
LUNGU Edgar C	Patriotic Front (PF)
M'MEMBE Fred	Socialist Party (SP)
MUMBA Nevers S	Movement for Multiparty Democracy (MMD)
MWAMBA Musonda TS	United National Independence Party (UNIP)
MWENDA Kasonde C	Economic Freedom Fighters (EFF)
NYIRENDA Stephen	National Restoration Party (NAREP)
SILUMBE Richard	Leadership Movement (LM)
TEMBO Sean E	Patriots for Economic Progress (PEP)
TONGA Enock R	Third Liberation Movement (3rd LM)

Elections also took place for the 156 constituency seats that comprise the National Assembly, with 21 political parties fielding 857 candidates in the parliamentary elections. In addition, 436 candidates contested 116 district-level mayoral seats,<sup>35</sup> with a total of 28 parties and 6,130 candidates contesting 1,858 seats in the local elections.

### Legislation and regulation of electoral processes

Chapter 3 sets out the constitutional and legislative framework that underpins the conduct of elections. The Electoral Processes Act 2016 contains the Electoral Code of Conduct, to which parties and candidates must adhere. Elections in Zambia are also subject to subsidiary legislation, including various regulations and orders.

### COVID-19 public health regulations and ECZ standard operating procedures

The 2021 general election took place during the global COVID-19 pandemic. Given the need to curtail the spread of the virus, the government, at the early stages of the pandemic, introduced a combination of new and existing public health regulations under the provisions

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<sup>35</sup> <https://www.elections.org.zm/downloads/>

of the Public Health Act. These regulations, which were in place during the electoral period, imposed restrictions on movement, mass gatherings and public health-related protocols. The Public Order Act was also used to limit certain gatherings and activities to curb the spread of the virus. These restrictions affected the ability of political parties to campaign as they ordinarily would have.

Traditionally, electoral campaigns in Zambia are characterised by large-scale indoor and outdoor political rallies. In addition, campaigns erect banners, posters and billboards across the country, using party colours and symbols, in order to boost their visibility. Political parties also hold debates and buy advertisements on television, in newspapers and on local and national radio shows, in order to convey their manifestos and policies and to increase the familiarity of candidates to voters. The media aspect of political party campaigning is explored in greater detail in the ‘Media’ section below.

The ECZ convened a technical committee to address how the election and electoral campaigns would need to adapt in light of the pandemic. This comprised the ECZ, the Ministry of Health, the Zambia Public Health Institute, the Ministry of Information, the Zambia Centre for Interparty Dialogue, the ZPS, the Disaster Management and Mitigation Unit and WaterAid. It produced SOPs that put in place various preventative measures pertaining to the preparations for and administration of the elections, including the campaign, election and post-election periods. The SOPs applied to ECZ officials and staff, political parties and other electoral stakeholders.

## **Campaign issues**

### *Economy*

The 2021 general election took place against a backdrop of economic decline in Zambia. The COVID-19 pandemic exacerbated extant mid- to long-term economic weaknesses, including high inflation, high unemployment, widening fiscal deficits and high levels of debt.<sup>36</sup> In November 2020, Zambia defaulted on its Eurobond loan.<sup>37</sup> Other issues that arose during the campaign included energy shortages, poor infrastructure, flagging education and health sectors, and the shrinking of civic space.

President Lungu’s campaign manifesto included a pledge to create a ‘stabilisation fund’ that he argued would cushion Zambian citizens against some of the worst effects of the economic crisis. The PF also pledged a series of economic and fiscal measures aimed at shoring up the ailing economy. President Lungu’s campaign also sought to remind voters of a number of infrastructural developments the government had overseen since 2016.

Hakainde Hichilema, the incumbent’s main challenger, focused on highlighting the government’s apparent economic shortcoming and its failure to respond adequately to the economic impact of the pandemic. The UPND candidate pledged to provide greater

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<sup>36</sup> African Development Bank (2021) ‘Zambia Economic Outlook’.

<sup>37</sup> *Aljazeera* (2020) ‘Zambia Will Not Pay Overdue Eurobond Coupon, Finance Minister Says’. 13 November. <https://www.aljazeera.com/economy/2020/11/13/zambia-will-not-pay-overdue-eurobond-coupon-finance-minister-says>

economic stability, more jobs and lower fuel prices. The UPND also promised to invest in medical services and improve educational facilities.

### *Youth and political violence*

Whereas the above issues formed the backdrop of this election campaign period, the campaigns of the two main presidential candidates tended to focus less on policy and more on personalities and extant political tribalism. The highly competitive campaign was characterised by a polarised and divisive political atmosphere in which sporadic political violence, largely perpetrated by cadres of the two main parties, threatened to spill over into sustained violent upheaval, either before or after the election.

In recent years, the weak economy, exacerbated by COVID-19, has resulted in high unemployment and a lack of employment opportunities. Such conditions have further contributed to the number of young men (in particular) being drawn to party cadres - predominantly of the UPND and the PF. Members can receive promises of jobs, as well as clothing and other in-kind benefits, in return for undertaking certain tasks and duties for political parties and associated cadres.<sup>38</sup>

Aside from undertaking these day-to-day tasks, party cadres are also associated with the intimidation of political opponents and electoral violence. For example, stakeholders reported instances of party cadres targeting local radio stations for providing a platform for civil society and opposition leaders, harassing civil servants for their political affiliation and disrupting by-elections. The CCMG, which deployed 330 long-term observers across the country for the election, recorded over 70 incidents of election-related violence during the campaign period, with the PF and UPND responsible for these acts at a ratio of 2:1.<sup>39</sup> The CCMG corroborated reports from political parties, particularly the opposition, that the police had often failed to arrest the perpetrators.

In a statement issued on 19 March, in advance of the election, the Church Mother Bodies expressed disappointment that, despite the availability of video evidence of some offences, the police had taken no action. This sentiment was echoed in the CCMG post-election preliminary statement, which stated that 'the police have largely allowed the violent acts to continue with impunity [and that] they themselves have used excessive force on several occasions against UPND party members and supporters.'<sup>40</sup> The statement further called on political parties to do more 'to prevail over their members and ensure that they engage in peaceful campaigns.'<sup>41</sup> Some stakeholders noted the youth involved are often denounced for their actions yet are denied opportunities to play a more constructive role in politics or their communities.

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<sup>38</sup> Mukunto, K. (2019) 'Electoral Violence and Young Party Cadres in Zambia'. *Journal of African Elections* 11(1): p. 141

<sup>39</sup> CCMG (2021) 'Preliminary Statement on the 2021 General Elections'

<sup>40</sup> Ibid.

<sup>41</sup> Church Mother Bodies (2021) 'Statement by the Three Church Mother Bodies on the Electoral Process in Zambia'. 19 March 2021, in, 'Church Mother bodies Appeal to President Lungu Not to Sign the Cyber Security and Cyber Crimes Bill into Law', *Lusaka Times*, 21 March 2021. Accessed at <https://www.lusakatimes.com/2021/03/21/church-mother-bodies-appeal-to-president-lungu-not-to-sign-the-cyber-security-and-crimes-bill-into-law/>

The ECZ took a number of actions in response to instances or outbreaks of electoral violence, including the following:

- On 11 June, the ECZ responded to reports of violence by issuing a statement calling for adherence to the Code of Conduct.
- On 15 June, the ECZ suspended all activities of the PF and the UPND for 2 weeks in four districts in response to a series of clashes between the two parties.
- On 30 June, the ECZ suspended a PF candidate for one week owing to the candidate's use of hate speech.
- On 10 July, the ECZ formally suspended campaigning for 10 days in Lusaka and Namwala following an uptick in political violence.
- On 30 July, two PF members were killed by UPND party cadre members in Kanyama, Lusaka province, leading the ECZ to sanction the UPND in Kanyama for 1 week.

While the ECZ is to be commended for taking decisive action in response to instances of electoral violence and hate speech, there remains a lack of clarity as to how the ECZ determines that the severity of sanctions to be brought against a party or candidate who is found to have breached the Code of Conduct is proportionate to the offence committed. There is a need for greater transparency regarding this decision-making process.

#### *Political dialogue, peace pledge and peace prayer service*

In the context of this increase in violence and the lack of credible avenues for political dialogue, the Commonwealth Secretariat initiated efforts to bring together political parties, the ECZ and CSOs, as discussed in Chapter 2.

#### *COVID-19 SOPs, the Public Order Act and political party campaigning*

On 26 May, less than 2 weeks after the beginning of the campaign period, President Lungu directed the Ministry of Health and the police to halt all political campaigns in order to curb the spread of COVID-19. The Group appreciates the difficult task the ECZ and the Ministry of Health confronted as they sought to balance the preservation of democratic principles against the need to implement public health measures. These two positions are inherently in conflict with one another, and the Group recognises that compromises had to be made.

Yet, in discussions with members of the Group, a number of opposition parties and civil CSOs alleged that the Government and the police selectively enforced the Public Order Act and Public Health Statutory Instruments 21, 22 and 62 in order to prevent opposition parties from campaigning, while allowing PF campaign activities to proceed unimpeded. The CCMG Preliminary Statement reported 28 instances of campaign events being curtailed with recourse to these laws and statutory instruments but noted that 'almost all of these limit[ed] campaign space for UPND.'<sup>42</sup>

The unequal enforcement of these COVID-19 measures, to the detriment of the main opposition party's ability to campaign, represents a violation of fundamental political rights

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<sup>42</sup> CCMG (2021) 'Preliminary Statement on the 2021 General Elections'.

as set out in the Constitution as well as a number of regional and international commitments.<sup>43</sup>

*The Zambia Police Service, political party campaigning and freedom of expression*

The ZPS is the country's main law enforcement body; it sits within the portfolio of the Ministry of Home Affairs. The legal basis for the establishment of the ZPS is the Constitution (as amended) and the Police Act No. 43 of 1965 (Cap 107).

At the commencement of the campaign, the Inspector General of Police, Mr Kakoma Kanganja, called on parties to submit schedules of their political activities to the police in order that the latter could ensure the preservation of law and order at these events. A key issue regarding the police's interactions with electoral stakeholders is the interpretation of Section 5 of the Public Order Act No. 38 of 1955 (now No. 30 of 1996 as amended), which provides for the regulation of assemblies, public meetings and processions. Section 5(4) of the Act states that, 'Every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days [sic] notice of that person's intention to assemble or convene such a meeting, procession or demonstration.' The Act then defines various conditions that may be imposed in relation to the holding of such meetings, including the date and time, size and who can address the audience. Section 5(8) states that, 'Any police officer, magistrate or any District Messenger may stop any procession for which no permit has been issued under this section or which, if such a permit has been issued, contravenes or fails to comply with any conditions specified therein...'

Differing interpretations of these provisions have given rise to tensions between the police and opposition parties. The former asserts that political parties and candidates must seek and receive permission from the police in order to hold a campaign event. Opposition parties and some civil society groups, however, interpret Section 5(4) to mean political parties need only provide the police with advance notice of a planned campaign activity. Opposition parties, in particular the UPND, further claimed that, in addition to the police's supposed misinterpretation of the law, the police routinely enforced this law selectively in order to prevent the UPND from holding campaign events. There is a need for parliament to review this provision of the Public Order Act to provide clarity to the process for holding public meetings.

The provisions of other acts have also attracted controversy in terms of the powers they confer on the police. Section 69 of the Penal Code provides for the arresting of individuals for insulting or defaming the President:

[A]ny person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.

A thorough determination, at first instance, of the constituent elements of such matters would be hard to establish and could, in a volatile campaign environment, be weaponised

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<sup>43</sup> Regional and international commitments include, but are not limited to, the African Charter on Human and Peoples' Rights and the ICCPR.

against opposition parties' campaigners. While the Group was not aware of any arrests under this law during the campaign period, stakeholders noted that there had been a number of such arrests in recent years, including the arrest and subsequent charging of a 15-year-old boy in Kapiri Mposhi in March 2020 on three counts of criminal libel after allegedly criticising the president on Facebook.<sup>44</sup> In November 2020, youth activist Lawrence Kasonde was arrested under Section 69 of the Penal Code.<sup>45</sup> This law stifles legitimate and democratic dissent and infringes on fundamental democratic rights, including freedom of speech and expression. An election cannot be fully democratic if citizens are prevented from criticising the incumbent. Section 69 of the Penal Code should be repealed.

While there were relatively few examples of police violence during the campaign period, the Group was made aware of instances of unnecessary and disproportionate police violence in the year leading up to the general elections, which could have had a chilling effect on the campaign activities of opposition parties. On 22 December 2020, police used live ammunition and tear gas to disperse a crowd that had rallied to support Hakainde Hichilema, who had arrived at police headquarters in Lusaka to answer police questions. Two UPND members were killed in the incident.

Zambia's Human Rights Commission found that 'orders given by the Police Command were directly linked to the indiscriminate use of live ammunition.' The Commission also stated it 'strongly believe[d]' that statements made by the minister of home affairs and the Lusaka provincial minister in the days before the incident, in which they demanded that Hichilema arrive at police headquarters alone and that the police use all means to enforce this, 'contributed to the arbitrary action by the police which resulted in the death of the duo.'<sup>46</sup> The Commission noted that such actions were violations of the constitutional right to freedom of assembly. No criminal charges were filed against the police. Other instances of unnecessary use of violence by the police were documented by Amnesty International.<sup>47</sup>

It should be noted that on election day itself the Group observed that the police were on the whole a positive and helpful presence and contributed to the largely peaceful atmosphere across the country. The police are to be commended for this.

### *Deployment of the military*

The key pieces of legislation governing Zambia's military are the Constitution of Zambia (Cap 1) and the Zambia Defence Act (Cap 106). The Zambian Defence Force comprises the

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<sup>44</sup> Amnesty International (2021) 'Zambia: Killings and Brutal Crackdown against Dissent Set the Tone for August Election'. 28 June. <https://www.amnesty.org/en/latest/news/2021/06/zambia-killings-and-brutal-crackdown-against-dissent-set-the-tone-for-august-election/>

<sup>45</sup> The prosecution dropped these charges in January 2022. See Southern Africa Litigation Centre (2022) 'News Release: Prosecution Finally Withdraws Charges against Zambian Youth Activist for Defaming the President'. 19 January 2022. <https://www.southernafricalitigationcentre.org/2022/01/19/news-release-prosecution-finally-withdraws-charges-against-zambian-youth-activist-for-defaming-president/>

<sup>46</sup> Human Rights Commission Secretariat (2021) 'Summary Findings and Recommendations of the Human Rights Commission's Investigations into the Killing of Mr. Nsama Nsama Chipiyoka and Mr. Joseph Kaunda Delivered to the Media by the Human Rights Commission Chairperson, Mr. Mudford. Z. Mwandenga'. 6 March. <http://www.hrc.org.zm/index.php/multi-media/news/376-summary-findings-and-recommendations-of-the-human-rights-commission-s-investigations-into-the-killing-of-mr-nsama-nsama-chipyoka-and-mr-joseph-kaunda-delivered-to-the-media-by-the-human-rights-commission-chairperson-mr-mudford-z-mwandenga-at-the-commission-s-head-office-in-lusaka-on-4th-march-2021>

<sup>47</sup> Amnesty International (2021) 'Ruling by "Fear and Repression": The Restriction of Freedom of Expression, Association and Assembly in Zambia'. 28 June. [www.amnesty.org/en/documents/afr63/4057/2021/en/](http://www.amnesty.org/en/documents/afr63/4057/2021/en/)

Zambian Army, the Zambian Air Force and the Zambian National Service. The president of Zambia is commander-in-Chief of the Zambian Defence Force.

On 30 July, two members of the PF were killed in the Mbasela area of Lusaka's Kanyama township, apparently by members of the UPND. These killings followed outbreaks of political violence in Lusaka, Northern, Southern and Muchinga provinces. The following day, the police carried out a series of raids, apprehending what Lusaka Province Police Commissioner Luckson Sakala said were 43 party cadre members, with some media reports suggesting these were UPND cadre members.<sup>48</sup> In response to the killings, President Lungu deployed military forces to a number of locations across the country. In announcing the move, President Lungu said, 'In order to curb the political violence we have witnessed in the past two days, I have allowed the Zambia army, Zambia air force and Zambia national service to help the Zambia police in dealing with the security situation.' He added that this measure was also being taken to ensure the work of the ECZ was not impeded.<sup>49</sup>

The reaction to the military deployment was mixed. While many opposition parties and CSOs expressed concern that the military was being deployed to intimidate opposition members and voters ahead of the election, others regarded the deployment as a necessary and proportionate response to the uptick in violence. The Group was not made aware of any instances of human rights abuses by the military following their deployment. Indeed, it is the opinion of the Group that the military conducted themselves with professionalism and in adherence with their constitutional duty.

#### *Campaign finance and abuse of incumbency and state resources*

There are currently no legal requirements to declare donations or campaign spending; nor is there any public funding for political parties. Article 60 of the Constitution of Zambia Amendment Act No. 2 of 2016 calls for the establishment of a Political Parties Fund, and for the development of governance structures for the management of this fund. In effect, satisfying the provisions of the Act would require the passing of a separate parliamentary act that would govern the registration and regulation of political parties,<sup>50</sup> including political party financing. In 2017, the government produced a draft Political Parties Bill, which political parties then debated. While some supported the Bill as a genuine attempt to reform political party regulation, others were concerned that the regulation of parties could have an unnecessary stifling effect on political parties. Ultimately, the Bill did not pass and the finances of political parties in Zambia remain largely unregulated. It is notable that this Bill proposed offering parties financial incentives to promote women's political participation, and several stakeholders expressed a desire to see it revived.

Although the campaign period did not officially begin until 14 May, stakeholders indicated that political parties had effectively been in campaign mode for at least a year. In particular, the government established a number of 'presidential initiatives' and

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<sup>48</sup> Lusaka Times (2021) 'Police Night Raid Nets 43 Party Cadres and Recover Machetes, Knives, as well as Some Various Illicit Drugs'. 31 July. <https://www.lusakatimes.com/2021/07/31/330429/>; Zambia Daily Mail (2021) '47 people arrested over murder of PF members'. 1 August. <http://www.daily-mail.co.zm/47-people-arrested-over-murder-of-pf-members/>

<sup>49</sup> Aljazeera (2021) 'Zambia Deploys Army to Curb Violence ahead of Elections'. 1 August. <https://www.aljazeera.com/news/2021/8/1/zambia-deploys-army-to-curb-violence-ahead-of-elections>

<sup>50</sup> Registration of political parties is currently provided for under the Societies Act (Cap 119).

‘empowerment funds,’ which were used to make large donations to target groups, including youth, tribal leaders and churches. The substantial injection of money comes despite the fact that the economy is in deep recession, leading stakeholders to speculate about the source of the funds.

This use of funds further exacerbated the uneven playing field, as opposition parties, and particularly candidates from marginalised groups, struggled to compete against a governing party with such significant resources at its disposal. Furthermore, the donations were seen to further polarise and politicise groups and institutions that were expected to play more neutral roles. The Group heard that they had exacerbated divisions between different branches of the church, with the Catholic Church rejecting the money while others had accepted. Such divisions undermine the traditional role of the church as a mediator during political and electoral crises.

The Group was also apprised of an initiative devised by a number of permanent secretaries that is referred to informally as the ‘debt swap.’ At present, civil servants can be issued with loans that are then deducted from their salaries, with the balance paid directly into their bank accounts. Meanwhile, the Group was informed, many of these same civil servants are owed various benefits, allowances and back pay by the civil service. The debt swap initiative sees the respective debts of civil servants and the civil service consolidated. In some cases, this could mean the civil service owes a net debt to civil servants.

Given suggestions that civil servants have historically been the first to experience salary cuts in previous budgets, critics argued that this new initiative was tantamount to vote-buying, since it could encourage civil servants to vote PF. This in turn, critics argued, could have compromised the impartiality of both the permanent secretaries and their staff. They also suggested that the fact that no equivalent debt swap scheme had been offered to mining companies that are owed value added tax rebates was further evidence of a political motive behind the scheme. However, supporters of the proposal insisted it was a genuine attempt to settle legitimate debts. The Group recommends that any such discussion on public sector pay not take place so close to an election, so as to avoid any suggestion of a political motivation.

During the campaign period, the Group was made aware of a number of government campaign-style events that were used to publicise the completion of certain infrastructural projects. These included the opening of a new, Chinese-built, terminal at Kenneth Kaunda International Airport in Lusaka on 9 August, and the opening of a new remand correctional facility in Mwembeshi, west of Lusaka, on 11 August. Both events were attended by President Lungu, who gave speeches unveiling the new facilities. Both events also received extensive live coverage by the state broadcaster, with the commentator for the latter event making repeated, overt references to President Lungu’s various other achievements throughout his term in office. It is the view of the Group that both of these events, which highlighted taxpayer-funded projects, represented an abuse of incumbency; both the stage-managed nature of the events and their coverage by the state broadcaster amounted to pro-government propaganda.



## Recommendations

- While there were serious incidents of political violence in some regions of the country, such violence did not escalate to the levels many feared. The Group commends the vast majority of Zambian citizens who campaigned and participated peacefully in the pre-election period. Nonetheless, political parties should be more vocal and consistent in their condemnation of acts of political violence by individuals aligned with them.
- So long as party cadres exist in Zambia, political violence will continue. All political parties, in particular the PF and the UPND, should disband their party cadres.
- To nurture a more vibrant and democratic political culture, political parties should focus on the development and promotion of more substantive, policy-based agendas that offer a positive vision for the country.
- The Government of Zambia should adhere to the highest levels of impartiality and non-partisanship in the enforcement of any COVID-19 public health measures that affect fundamental political rights.
- The government and civil service should try to avoid holding discussions on public sector pay close to an election, so as to avoid any suggestion of a political motivation.
- The ZPS should adhere to the highest levels of impartiality in the enforcement of the Public Order Act, the Penal Code, the Electoral Code of Conduct, COVID-19 regulations and any other legislation or subsidiary legislation that has a bearing on the ability of political parties to exercise their fundamental political rights. Further, the Group notes the 2016 ruling of the Constitutional Court that, if a mass gathering or assembly cannot be held as a result of insufficient police resources on the proposed date, the police and political parties should work together to find an alternative date at the earliest possible time.<sup>51</sup> The COG encourages compliance with this ruling by political parties.
- In time, there will be a need to resurrect previous bipartisan efforts to reform and clarify elements of the Public Order Act, including on the regulation of assemblies and public meetings, such that there is a firm understanding of the requirements of political parties in registering events and of the authority of the police in limiting such meetings.
- Section 69 of the Penal Code is contrary to democratic principles and should be repealed.
- The Group repeats the 2016 COG Report recommendation that the ECZ should strengthen mechanisms and procedures to ensure more consistent reporting of

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<sup>51</sup> *The Law Association of Zambia v Attorney General (Appeal No. 8/2014) [2016] ZMSC 46 (13 May 2016).*

violations of the Electoral Code of Conduct to the police, as provided for under Section 11 of the Electoral Processes Act.

- There is a need for greater clarity regarding the decision-making process relating to sanctions for breaches of the Code of Conduct, with particular attention to the proportionality of sanctions *vis-à-vis* the offence committed. The Group therefore calls for an inclusive effort to revisit the Code of Conduct in the Electoral Process Act.
- The Group reiterates the 2016 COG Report recommendation regarding the need to clarify and strengthen legal provisions pertaining to the use of public funds during the campaign period. This relates to, among others, the holding of campaign-style government events, the distribution of taxpayer money through ‘endowment funds’ and the distribution of other in-kind benefits to electoral stakeholders. The Group notes the failure of previous efforts to pass the Political Parties Bill, which would have contained provisions on political party financing. The government should work in consultation with opposition parties, other electoral stakeholders and the international community to resurrect such efforts in order to bring the regulation of Zambia’s political party financing in line with international good practice.

## The media

### Background

The media landscape in Zambia, which has continued to grow since the introduction of multi-party democracy in the 1990s, consists of television, radio, newspapers, magazines and online media outlets. Article 20 of the Zambian Constitution guarantees freedom of expression and of the press but there have been reports of violations, especially use of the Penal Code and the Defamation Act to stifle dissent. For example, the government continues to use the law of defamation, which makes impugning the reputation of the president of Zambia a criminal offence.

The Ministry of Information, Broadcasting Services and Tourism oversees the Zambian News and Information Services, which works throughout the country and in co-operation with private newspapers, radio stations and television channels. The country has over 100 radio stations and more than 40 television channels in the public, commercial and community sector. It country has six privately owned newspapers. Multichannel pay-tv is also available.

### *TV stations*

There are three main TV stations in Zambia. The state media includes the broadcaster ZNBC, which owns two stations. Muvi TV, which is privately owned, is a combination of news and entertainment. Diamond TV is the biggest privately owned television station providing news and infotainment.

### *Radio stations*

Radio remains a main source of information and reaches many rural communities and areas where literacy levels are low. Many local radio stations are owned by local communities and broadcast in local languages. Independent radio stations tend to be owned by private individuals and provide a wider range of varied views and opinions because of this.

### *Internet penetration and social media usage*

There has been rapid growth in the internet market and, according to the annual data report, there were nearly 5.48 million internet users by January 2021. The number of internet users in the country increased by over a million between 2020 and 2021. As of January 2021, internet penetration in the country stood at 29.4 per cent.<sup>52</sup>

Social media users have also grown steadily, to 2.6 million by January 2021- equivalent to 13.9 per cent of the population.<sup>53</sup> This has meant a steady growth in web-based media, which is reflected in the growth of internet bloggers and online news agencies. There has also been an increase in online news and information sites, which include Zambia Reports, News Diggers and Zambian Watchdog.

Overall, social media platforms such as Facebook and messaging media services like WhatsApp have become increasingly important sources of news and have accelerated access to more diverse media sources. Mainstream media have also stepped up their own content offering for internet users and stories are often shared via social media, examples include The Zambian Eye, Lusaka Voice and Zambian Voice.

### *News agencies*

There are also a number of online news agencies that are widely seen as an alternative to traditional print media. Zambia News Agency is the main provider of domestic news, while the Pan African News Agency collects and redistributes news from other African countries.

### **Media regulation and laws**

The media's reporting of the election is regulated through the Electoral Process Act of 2016 as well as the ZNBC Act of 1987 (Chapter 154). Certain sections of the ZNBC Act were amended in 2010 to ensure that the public broadcaster ensures equitable access to all political parties, as the public media is publicly funded.

The Independent Broadcasting Authority (IBA) Act of 2002 introduced a formal regulatory mechanism over broadcast media.

There is, however, no functional and effective mechanism through which the media achieves self-regulation. The Group notes, however, the attempts being made to establish a self-regulatory framework under the Zambia Media Council.

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

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<sup>52</sup> Kemp, S. (2021) 'Digital 2021: Zambia'. Datareportal, 12 February.

<https://datareportal.com/reports/digital-2021-zambia?rq=zambia>

<sup>53</sup> Ibid.

- Article 21 of the Constitution of Zambia of 2016 (as amended)
- Section 69 (Defamation of the President) of the Penal Code Act (amended by Act No. 18 of 1996)
- Section 4 (Communication of Certain Information) of the State Security Act, Cap III, of 1969
- Section 12 ((penalty for making statements or committing acts intended to promote hostilities between sections of the community) of Cap 113 of the Public Order Act of 1955 (as amended)
- Section 110 (Code of Conduct) Electoral Process Act No. 35 of 2016
- Printed Publications Act of 1947
- Defamation Act of 1953
- Zambian National Broadcasting Act of 1987
- Independent Broadcasting Act of 2002
- Cyber Security and Cyber Crimes Act of 2021
- Electronic Communications and Transactions Act of 2021
- Data Protection Act of 2021
- Various regional and international laws and commitments, including the African Charter on Democracy, Elections and Governance (2007) and the ICCPR (1966)

The Electoral Process Act mandates that the media provide fair and balanced coverage to all political parties and their candidates. From the Group’s observations, the Code of Conduct has had no effect in terms of ensuring fair and equitable access to all political role-players in the country.

We noted that, in June 2021, the main opposition party, the UPND, was granted leave to apply for judicial review by the Ndola High Court to ensure that the ECZ allocate time to opposition parties as set out in the Electoral Code of Conduct. The Court ruled that it was necessary for all players to receive ‘equal campaign opportunities.’<sup>54</sup> The ECZ therefore made provision for all parties and candidates to be entitled to airtime on national TV for 30 seconds per day. However, the Group noted concerns by some parties that the allocation of airtime and coverage by state print and broadcast media was skewed in favour of the governing party.

### **Media monitoring**

There are three main media monitoring bodies operating in Zambia:

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

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<sup>54</sup> Lusaka Times (2021) ‘UPND Suffers Setback as Ndola High Court Declares ECZ Ban of Political Rallies as Legal’. 11 June. <https://www.lusakatimes.com/2021/06/11/upnd-suffers-setback-as-ndola-high-court-declares-ecz-ban-of-political-rallies-as-legal/>

During its briefings, the Group met with the MISA Zambia Chapter. The Voters' Voice, MISA Zambia's media monitoring of electoral content report, stated that the election campaign dominated media coverage for the period of May to June 2021. It found that, while public and community media stations showed a clear bias towards the governing party, commercial radio stations gave more coverage to the main opposition party. The report also noted that election-related news represented 52 per cent of all news items in print media; personal attacks on candidates represented a further 28 per cent of their output. For radio, election-related news represented 51 per cent of their broadcasts; for television this percentage was 40 per cent. The report noted that the coverage by public broadcasting of the governing PF was more than half of the combined coverage of all the opposition parties.<sup>55</sup>

In 2021, MISA Zambia noted an increase in violent attacks on media houses, including disruptions to programming. In February 2021, Liberty Community Radio was attacked with iron bars and catapults while DP president Harry Kalaba was on air.<sup>56</sup> No arrests were made. Luswepo Radio Station faced an arson attack the same month, again while Harry Kalaba was on air. In March 2021, Radio Chete was teargassed during a broadcast featuring members of the UPND. The attack was condemned by the Council of Churches in Zambia.<sup>57</sup> In June 2021, Kalungwishi Radio Station suffered an arson attack that damaged equipment and took it off air for two days.<sup>58</sup> In all four incidents, PF cadres were alleged to have carried out the attacks. The attacks received widespread media coverage.

These violent attacks created a climate of fear and impacted the media's ability to fulfil their function as watchdogs of society. The Group, however, notes that the interventions of the Zambian police, in some instances, improved the safety of the media. In the Group's briefing from the police, the police denounced the violence against the media.

The Group notes the ECZ's partnership with Facebook in removing fake pages, thereby reducing fake news and misinformation. We also noted and welcomed the initiative of PSAf, with support from the United Nations Development Programme along with Bloggers of Zambia's fact-checking efforts, to mitigate disinformation through the platform, iVerify Zambia. The site is a technology-based, multi-stakeholder initiative to identify and mitigate misinformation, disinformation and hate speech in the electoral process in the country.

## Key issues

1. The Group notes that, while the Constitution provides for the right to freedom of expression, other legislation, such as the Penal Code, refers to criminal defamation, sedition and obscenity, which the government has used in certain instances to restrict journalists' and citizens' freedom of expression. For instance, the arrests of Zambian citizens for libelling the president are detailed earlier in this chapter.

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<sup>55</sup> MISA (Media Institute of Southern Africa) Zambia (2021) 'The Voter's Voice Project: Media Monitoring of Electoral Content'. 1 July 2021.

<sup>56</sup> MISA Zambia (2021) 'Attacks on Radio Stations Should Not Be New Normal'. 12 February. <https://zambia.misa.org/2021/02/12/attacks-on-radio-stations-should-not-be-new-normal/>

<sup>57</sup> Nkomesha, U. (2021) 'Continued PF Cadres' Attacks on Radio Stations a Time Bomb, Warns CCZ'. Diggers! News, 16 March. <https://diggers.news/local/2021/03/16/continued-pf-cadres-attacks-on-radio-stations-a-time-bomb-warns-ccz/>

<sup>58</sup> Committee to Protect Journalists (2021) 'Zambia Radio Station Transmitter Damaged in Arson Attack'. 2 August. <https://cpj.org/2021/08/zambian-radio-station-transmitter-damaged-in-arson-attack/>

2. Access to information for journalists continues to be difficult. The Access to Information Bill has been awaiting passage by parliament. Media editors briefed us on the difficulties involved in accessing public information from the government, which affects the overall quality of information, which has to be sourced using other avenues.
3. The opposition parties argued that the ZNBC, which is not regulated by the IBA, did not afford equitable broadcasting time to them as compared with the governing party, and that it did not always provide balance in its news output. This allegation was echoed by civil society and representatives of media organisations that briefed the Group. Indeed, the broadcaster's rolling coverage of the opening of a new prison and airport terminal days before the election (as discussed in the 'Campaign' section above), including discussion of President Lungu's various achievements in glowing terms, represents two examples of the broadcaster's significant deviation from its lawful duty to provide balanced and equitable coverage.
4. Opposition parties and CSOs also voiced concerns about the recently passed Cyber Security and Cyber Crimes Act, including the speed and timing of its adoption so close to the election. A number of concerns were raised by different civil society groups, including Bloggers of Zambia and MISA Zambia, which argued that, although the Act addressed legitimate cyber crime issues and offered some protections of freedom of expression and the right to privacy, it had numerous shortfalls - such as chilling effects with regard to freedom of expression, state censorship and self-censorship.

For instance, Section 29 of the Act gives law enforcement officers the power to orally request search and seizure of personal electronic devices, and to orally request that service providers intercept communication without a warrant, leading to concerns about potential surveillance of journalists and politicians. Section 54 prohibits the publication of 'false, deceptive, misleading, inaccurate' information. While this provision is purportedly aimed at curbing mis- and disinformation, the law's provisions and terminology are ambiguous, and some stakeholders expressed concern that this could lead to censorship and/or self-censorship and create a culture of fear among media practitioners.

5. The Journalist Council of Zambia Bill is currently awaiting debate in parliament. The Bill is an attempt to achieve progress in the area of journalistic self-regulation, following the failures of the Media Council of Zambia and the Zambia Media Council. The Select Committee interviewed at least two dozen media houses and stakeholders prior to publishing its report on this proposed Bill. While this consultative approach is encouraging, there were concerns that the Bill, if passed into law, could be used to target certain journalists, unfairly remove journalists' licences and erode freedom of expression. These were raised as concerns as journalists have no option and, according to the proposed Bill, all media houses and journalists will, upon the signing of the Bill into law, be expected to accredit themselves with the Zambia Media Council.

6. As a result of the COVID-19 restrictions, election messaging moved online, with social media playing a critical role in this election. The shutting-down of social media applications such as WhatsApp and Twitter on election day by the authorities was noted with concern. While there is limited scope under international law to take such actions, these were not justified in this context. The Zambian Human Rights Commission stated that the shutdown was a ‘breach of a constitutional right to freedom of expression and information’ as there was no legitimate circumstance that warranted ‘the curtailing and or limitation of the right to access to information.’<sup>59</sup>

Such actions are also in contravention of Article 25(3) of the African Union Convention on Cybersecurity, which states that ‘*each State Party should ensure that the measures... will not infringe other basic rights, such as freedom of expression.*’ Moreover, the decision also caused concern and alarm among citizens and the media, while simultaneously limiting their ability to communicate during this period of heightened tension. The Group, however, commends the government for swiftly complying with the High Court’s order to reinstate access.

## Recommendations

- The Group urges the government to decriminalise defamation of the president and repeal penal codes in line with international standards.
- There is a need for the government to enact specific legislation protecting the right to information of public interest, including the speedy enactment of the Access to Information Bills.
- While noting that the shutting-down of social media was purportedly carried out to maintain peace and stability as the electoral results process unfolded, this decision unlawfully restricted freedom of expression and exacerbated extant tensions throughout election day. We therefore urge the Zambia Information and Communication Authority to desist from such acts in the future.
- The ECZ should enforce the Electoral Code of Conduct to ensure broadcast media comply with directives in allocating airtime to all political parties to ensure equitable access - particularly in news bulletins and during primetime, when a greater number of viewers is likely.
- The state broadcaster, the ZNBC, should transform its election programming to reflect the diversity of voices and political opinions in the country.

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<sup>59</sup> Human Rights Commission (2021) ‘Press Release: HRC calls for Human Rights Commission Calls for Immediate Restoration of Internet Services to Promote the Right to Information and Communication’. 13 August. <http://www.hrc.org.zm/index.php/multi-media/press-statements/file/345-hrc-calls-for-restoration-of-internet-services-to-promote-the-right-to-information-and-communication>

- The media should establish a credible, independent, self-regulatory authority that sets out standards and appropriate codes of behaviour for the media. This is necessary to safeguard freedom of expression while holding the media to account in cases where the codes of behaviour are breached, and can also combat fake news and misinformation on the elections. Such a self-regulatory authority must have an effective complaints mechanism to allow members of the public to register complaints against the media where there are legitimate grounds for doing so.
- The Group encourages the ECZ to work with institutions like MISA Zambia on specific training programmes for journalists on election coverage.



## **Chapter 6: Voting, counting and the results process**

### **Background**

On 12 August 2021, polling was scheduled to occur from 06:00 to 18:00hrs and was organised in 12,152 polling stations. These polling stations were located in 116 districts across 10 provinces. The Electoral Process Act provides for an extension of polling in case of delays with the opening of polling stations. Polling stations were primarily located within or outside public facilities such as schools, churches and community centres.

Polling stations were staffed by a presiding officer, supported by an assistant presiding officer and up to four polling assistants. In addition, an unarmed police officer was assigned to maintain law and order in each polling station. Polling agents and accredited citizen and international observers were also authorised to be present at polling stations.

Each polling station contained four colour-coded ballot boxes, matching the correspondingly coloured ballot for the president, National Assembly members, the mayoral/council chairperson and councillors.

The law required that political campaigning end at 18:00hrs the night before election day. Provisions were made to mitigate the spread of COVID-19, including various methods of sanitisation, and voters were required to wear masks.

### **Eve of the poll**

A day before election day, the presiding/assistant presiding officer should ensure that all polling staff have reported at the polling station by the time prescribed by the returning officer and spend the night at their respective polling stations.

The presiding/assistant presiding officer shall complete the attendance form for all poll and uniformed staff. The presiding/assistant presiding officer will set the layout of the polling station, take stock of the furniture and equipment, and assign tasks to all poll staff. The presiding officer for a polling district, for the purpose of the taking of the poll in the polling district, gives local notice and such other notice indicating the location of a polling station in the polling district.

### **Assessment of pre-poll preparations**

The Group witnessed preparations by the ECZ ahead of election day, including the distribution of sensitive materials and the setting-up of polling stations. Preparations on the eve of election day were generally well managed. However, in some instances, transport arrangements were inadequate, leading to the late delivery of materials to polling stations. The Group observed that voter verification devices (VVDs) were delivered late in a number of areas.

## **Key procedures for opening and voting**

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

### **Opening of the polls**

- Voting is officially scheduled to start at 06:00hrs.
- Prior to the opening of the polls, the four ballot boxes are shown to all present to confirm they are empty; the boxes are then sealed with numbered seals.
- Accredited party polling agents and domestic and international observers are allowed to be present for the opening.

### **Voting**

- Voters approach the first polling official one by one. The voter must present both their NRC and their voter's card, which are then verified against the register. Where provided, biometric VVDs were used.
- The register is marked and the voter's name and NRC number, as well as the voter's card number, are called out to enable party agents who each have a copy of the register for that polling station to mark the voter off on their register.
- The voter moves to another official, who inspects the voter's right thumb to ensure they have not already voted. The thumb is then marked with indelible ink.
- The voter then proceeds to the next official, who records the voter's registration number on the counterfoil of the ballot, stamps the back of the ballot with the official mark of the Commission and then issues the presidential ballot.
- The voter proceeds to the next official, who again records the registration number on the counterfoil of the ballot, stamps the back of the ballot with the official mark of the Commission and issues the National Assembly, mayoral/council chairperson and councillors ballots.
- The voter proceeds to a voting screen and marks their choice.
- The voter then deposits the ballot papers in the corresponding colour-coded ballot boxes and exits the polling station.

The Electoral Process Act No. 35 of 2016 outlines provisions for assisted voting, enabling a voter requiring physical assistance to vote by having a person of their choice assist them on election day. In addition, tactile ballots were provided for persons with visual impairment so they could cast their ballot.

Certificates of Authority to Vote are issued by returning officers for persons who are unable to cast their vote at the polling stations to which they are assigned (polling officials, police, army personnel, etc.).

### **Assessment of the opening of the polls and voting**

On election day, the Group reported a largely peaceful process that was well managed and transparent, with voters free to exercise their franchise. Party agents and national, regional and international observers were largely present at the polling stations observed. Voter turnout was high.

Some of the key observations of the teams were as follows:

#### **Procedures, materials and layout**

- Observers noted that pre-polling procedures were generally followed and that stations opened on time, with long queues of voters turning out well before the official opening of polls at 06:00. Some stations experienced minor delays in opening.
- For the most part, polling stations were equipped with prescribed polling staff and materials. In some constituencies, there was an appreciable balance of women and men polling officials at the level of presiding officers.
- The prescribed layout within polling stations was adhered to, and was conducive to orderly voting.
- However, in densely populated areas, the compounds surrounding some of the schools, and even polling tents, were too small to accommodate the large queues in an orderly manner and with social distancing, in accordance with COVID-19 mitigation measures.
- The Group recommends that a post-election audit of infrastructure be undertaken to determine the adequacy of polling locations.

#### **Conduct of voting**

- The Group was impressed by the confidence and professionalism of polling officials, a significant number of whom were women. Polling officials were competent and diligent in carrying out their duties. While there were some minor inconsistencies noted in the application of polling procedures by polling officials, these did not appear to be deliberate. It was encouraging to see the large number of young people and women among them.
- The Group commends the use of colour-coded ballot papers with corresponding ballot boxes to simplify the complicated voting process for the four elections that took place. Furthermore, it was noted that the polling assistants responsible for

guiding voters to place their ballots in the correct boxes played a critical role in facilitating this process. This also reduced the potential for ballots being placed in the incorrect ballot boxes.

- Generally, voters were verified in accordance with prescribed procedures. The voters' register, with few exceptions, accurately reflected the voters who had registered.
- Polling officials generally followed polling procedures transparently and efficiently. However, some procedures were cumbersome. The voting process could be streamlined by revisiting the following procedures:
  - The recording of the NRC on the counterfoil;
  - One election officer issuing three ballots, as compared with the presidential ballot issued by a separate, dedicated officer;
  - The duplication of verification of voters via the biometric VVD and the manual register.
- In addition to the manual verification of voters, the biometric VVD was deployed to selected areas, with some technical glitches on election day. In some instances, from media reports and some of the Group's observations, it appeared that the dispatch of the VVDs was delayed; in some cases, they did not arrive at polling stations in time for the opening of polls.

#### **Queue management and voter processing**

- It was noted that the ECZ had transformed polling streams into polling stations to enhance the processing of voters. However, it was evident from the Group's observations that polling stations had significantly large numbers of voters assigned to them. This resulted in lengthy queues at most polling stations. The ECZ may wish to consider reducing the numbers in streams to ease congestion and to speed up the processing of voters.
- Further to the Group's observation on the slow voting process above, this also led to long queues. It was noted, however, that voters remained patient and peaceful throughout election day, for which they deserve to be commended.
- It was noteworthy that, in some polling stations, voters were separated into male and female queues.
- In some cases, police personnel assisted the presiding officers in queue management.

#### **Secrecy of the ballot**

- Observers were concerned with the secrecy of the ballot. The process required the recording of the NRC number on the counterfoil, which contained a serial number

also repeated on the ballot paper. There is a risk that this practice may be misused against certain voters. Polling staff were overly burdened by this procedure, as it had to be repeated four times per voter, which slowed down the voting process. It is recommended that the ECZ revisit the merit of this procedure.

### **COVID-19 mitigation measures**

- Delays in the voting process and the small size of polling stations also made the observance of social distancing a challenge for voters, party agents and observers.
- In some instances, other COVID-19 mitigation measures were not adequately adhered to. For example, the Group observed the improper use of face masks and the shared use of pens when casting ballots without sanitisation.

### **Presence of security, party agents and observers**

- Party agents, predominantly from the two main political parties, were present in all polling stations observed.
- The Group also noted the presence of both citizen and other international observers in polling stations.
- While there was initial trepidation prior to election day, the police presence at polling stations was generally non-threatening, and police carried out their duties with professionalism.

### **Prisoner voting**

- Members of the Group were also able to observe prisoners voting at correctional facilities at various locations. Voting in prisons was generally well managed.
- Though this is a commendable step in fostering greater inclusion in the electoral process, the conduct of prisoner voting will need to be refined to accommodate specific situations where a prisoner has been released, or transferred, before election day.

### **Turnout and inclusion**

- The Group noted the impressive turnout of young people, women, PWDs and the aged.
- At most polling stations observed, priority was given to PWDs, the elderly, the infirm, pregnant women and women with babies.

### **Special voting**

- The Group commends the ECZ's provision of a Certificate of Authority to Vote for those employed by the Commission to conduct elections at another polling station to the one they are registered at (see Section 6.12 of the Election Officer's Handbook). However, the scope of the Certificate should be expanded to include others required to be on duty on election day, for example police, citizen observers, party agents and essential service employees. This would require voter education on this aspect of the process.
- Notwithstanding the limitations on the eligibility for the provision of a Certificate of Authority to Vote, in practice it was observed that many of the other groups required to be on duty on election day did in fact receive a Certificate of Authority to vote.

### **Key procedures for closing and counting**

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

- The polls are officially scheduled to close at 18:00hrs. However, voters waiting in line at the close of poll are allowed to vote, and voting continues until the last person in line has voted. If the polling station opened late, the closing time should be extended by the same period it was delayed in opening.
- Following the last voter, the presiding officer closes the polling station and starts preparing for the count. Party agents and citizen and international observers are permitted to witness this process.
- The aperture of each ballot box is sealed and the serial numbers on each of the seals are reconfirmed.
- The presiding officer completes the ballot paper account form, which accounts for all of the counterfoils and unused ballots, as well as spoiled ballots to date. The presiding officer must announce the total number of ballot papers used, excluding spoiled ballot papers.
- Before commencing the count, the presiding officer must place ballot materials in the appropriate tamper-proof envelopes.
- The polling station is rearranged to enable a clear view of the counting process, with trays organised for the votes of each candidate and for the rejected ballots.
- The presidential ballot box is opened first and emptied.
- Ballots are counted to determine the total number of used ballots.
- Each ballot paper is displayed to party agents and observers, to confirm the official stamp mark of the Commission.

- Each ballot paper is displayed to party agents and observers to confirm the vote, simultaneously sorted by candidates and placed in the corresponding tray.
- Ballots for each candidate are counted and tallied for total votes.
- The presiding officer completes the Record of the Proceedings at the Count Form, listing the candidate with the highest number of votes. This is witnessed and the Form is signed by party agents, and monitors if present.
- Upon completion of the count process, the Announcement of Results Form (GEN 20a), is completed. This is witnessed and the Form is signed by polling agents, and monitors if present.
- The presiding officer announces the polling stations results, gives signed copies of the Announcement of Results Form to party agents and posts the Announcement of Results Form outside the polling station.
- Security materials are packed into the ballot boxes.
- Results are delivered to the returning officer at the constituency centre.

### **Assessment of closing and counting**

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

Some of the key observations of the Group were as follows:

- Polling generally closed at 18:00hrs. However, in some cases, polling was extended either to accommodate persons who were already in queues or to compensate for situations where the opening of polls had been delayed in the morning. In some cases, this was extended well into the evening (and early morning hours), on account of the lengthy queues.
- The vote counting process at the polling stations was generally peaceful, procedural, orderly and free from interference.
- Where the Group was present, the closing and counting processes were transparent and inclusive, with candidates; party agents; and national, regional and international observer groups welcomed to observe the process.
- The Group also noted that there was close collaboration between polling officials and party agents, in particular during the count. Party agents were vigilant in their observation of this process.

- The conditions for the count were not always conducive. For instance, in some areas, it was quite dark by the time the count was completed. Although officials were provided with battery-operated lamps, these did not provide adequate lighting in all cases.
- The police were visible to ensure the security of the process, and their presence was unobtrusive.
- In some instances, security materials were not packed away before the count began.
- The Group noted that some boxes containing security material were not sealed. After security materials are packed in the ballot boxes, they should be sealed. The Election Officer's Handbook should be updated to include this recommendation.

### **Key procedures for results tabulation: constituency totalling centre and national results centre**

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

- The GEN 18, 19, 20a and ECZ 18 Forms, the diary and the polling station equipment are provided to the returning officer, who will then provide the presiding officer with a signed Polling Station Equipment Issue Form.
- The returning officer verifies the completeness and consistency of the results as recorded on the GEN 20a and ECZ 18 Forms.
- The returning officer announces the polling station results within the totalling centre by reading out the GEN 20a; these are captured on a wall by the assistant returning officer.
- Utilising the GEN 20a, the assistant returning officer enters the votes obtained by each candidate in the digital Results Management System. The Results Management System runs on laptop-based kits, utilising satellite modems for transmission of results to the head office (the national results centre).
- After capturing at least five polling stations results, the assistant returning officer prints and hands-out Provisional Records of the Proceedings to all polling agents, monitors and observers present.
- The assistant returning officer scans the GEN 20a onto the Results Management System.
- Upon receipt of all results from all polling stations within the constituency, a complete GEN 21 is handed out to all polling agents, monitors and observers present.



- Once the GEN 21 is verified, the assistant returning officer sets the polling station results in the Results Management System as ‘closed for capture.’
- The assistant returning officer prints the consolidated constituency results, the Announcement of Results at the Totalling (GEN 20b).
- The returning officer signs the GEN 21 and invites party agents, monitors and observers present to also sign the forms. The returning officer should give a copy of the signed GEN 21 to each of the party agents, monitors and observers present.
- The returning officer announces the results by reading out the GEN 21.
- The assistant returning officer scans the signed GEN 21.
- The assistant returning officer transmits all the results captured and scanned to head office, using the Results Management System via satellite.
- The returning officer pastes the results outside the totalling centre.
- The returning officer then faxes the GEN 21 to head office.
- At the national results centre, upon receipt of the figures through the Results Management System, the assistant returning officer verifies them against the scanned GEN 21. This process is witnessed by one polling agent of each of the candidates.
- The ECZ then receives and verifies the results, which party agents also verify.
- The ECZ authorises the announcement and release of the results.
- Upon receipt and verification of the results from all constituencies, the returning officer (the ECZ chairperson) declares the results.
- Results are displayed on the screens, website and social media. Printed copies are also provided to the media, monitors and observers.

### **Assessment of the results tabulation - constituency totalling centre and national results centre**

The Group notes that the results process is customarily one of the most sensitive aspects of any election. As such, the process for the accounting and delivery of the results must be clear and transparent. Though members of the Group on deployment returned to Lusaka the day after election day, some members were able to visit totalling centres. In general, procedures were largely adhered to and were transparent.

In Lusaka, members of the Group who observed at the national results centre noted that the numerous screens in the centre were not displaying any verified results. In the interests of transparency at this final crucial stage of the electoral process, this would be encouraged in future elections.

The announcement of the presidential election result was made within the stipulated hour period after the close of the final polling station on election day. The Group commends the ECZ for upholding its commitment to do so, and for also finalising all other result announcements within this timeframe.

## Recommendations

- The ECZ regional offices should plan well ahead to ensure there are enough vehicles to transport sensitive materials to polling stations before election day.
- Given that some polling station compounds were too small to facilitate socially distanced voting, a post-election audit of infrastructure should be undertaken to determine the adequacy of polling locations.
- The ECZ should take steps to ensure full adherence to other COVID-19 protocols at polling stations, such as the wearing of masks.
- Training of polling officials could be strengthened to iron out some of the inconsistencies in the execution of duties, including the packing-away of sensitive materials before the count. In addition, after security materials are packed in the ballot boxes, they should be sealed. The Election Officer's Handbook should be updated to include this recommendation.
- The following procedures could be revisited to speed up the voting process:
  - The recording of the NRC on the counterfoil, since this is cumbersome and could compromise the secrecy of the ballot;
  - One election officer issuing three ballots, as compared with the presidential ballot issued by a separate, dedicated officer;
  - The duplication of verification of voters via the biometric VVD and the manual register.
- The VVDs should be tested to minimise the possibility of glitches, and only classrooms with electrical sockets should be used as polling stations, so VVDs can be charged on election day when necessary without causing disruption to the voting process.
- The ECZ may wish to consider reducing the number of voters per stream to ease congestion and to speed up the processing of voters.
- While the process for prisoner voting was generally good, it should be refined to accommodate specific situations where a prisoner has been released, or transferred, before election day.

- The scope of the ECZ's Certificate of Authority to Vote should be expanded to include others required to be on duty on election day, for example police, citizen observers, party agents and essential service employees. This would require voter education on this aspect of the process.
- In the interests of transparency at the crucial tabulation stage of the electoral process, the ECZ should ensure that screens at the national results centre display verified results.

## **Annex I: Composition and biographies of the Group**

### **Observers**

#### **HE Jakaya Mrisho Kikwete, Former President of Tanzania (Chair)**

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

#### **Kenneth Abotsi (Ghana)**

Kenneth Abotsi is an electoral affairs and conflict resolution expert with extensive experience in governance, peace and security in Africa. He has made significant contributions to capacity-building initiatives on elections, conflict management and peace support operations in Africa and has served on election observer missions for the Economic Community of West African States, the African Union, the Commonwealth and the West Africa Civil Society Forum. In preparation towards Zambia's tripartite elections in 2016, Kenneth conducted a Pre-Election Conflict Assessment for the Commonwealth Secretariat that highlighted the need to establish a national peace and security architecture.

#### **Lomcebo Dlamini (Lesotho)**

Lomcebo Dlamini's work's focuses on human rights, women's rights, good governance and democracy. She has served in different capacities in several national and regional organisations that promote human rights and democratic principles, including the Women and Law in Southern Africa Research Trust, the Swaziland Coalition of Concerned Civic Organisations, the Constituent Assembly of Civil Society in Swaziland and the Media Institute of Southern Africa. She is a founder member of Eswatini Women's Rights Land Alliance and the Justice and Law Initiative. She has been involved in various democratic transformation, peace-building and conflict resolution processes, including election observation, both in eSwatini and in other Commonwealth member countries.

#### **Donald Malomba Esembe (Cameroon)**

Donald Malomba Esembe is one of the youngest members of the National Assembly of Cameroon for the current legislature (2020-2025). He is a member of parliament for Buea Urban constituency; vice-chair of the House's Committee on Constitutional Laws, Human Rights and Freedoms, Justice, Legislation, Standing Orders and House Administration; and president of the Joint Parliamentary Network on Road Safety. Before joining politics, he was a prosecutor for eight years, and prior to that he was a legal adviser in Cameroon's Ministry of Small and Medium-Sized Enterprises. He is a trained magistrate, on secondment to parliament. He holds a postgraduate diploma in law and is pursuing a master's degree.

**Professor Samuel Kale Ewusi (Cameroon)**

Samuel Kale Ewusi is Professor of Peace Studies and International Relations and regional director for Africa at the United Nations University for Peace (UPEACE). Before taking the position at UPEACE Africa, he served as head of the Great Lakes Program, which established 10 Master's degree programmes in peace and conflict studies at 10 countries in the Great Lakes region of Africa, and later research director with the responsibility for strengthening research and publication capacity in governance and security. As research director, he managed a project that saw the award of scholarships to and training of 56 doctoral students from 26 countries in Africa and the publication of five books and seven issues of the *Africa Peace and Conflict Journal*.

He has served as visiting professor at several universities in the world, such as the Catholic University of Eastern Africa, Kenya; the University of Rwanda; the International Relations Institute of Cameroon; North-West University in South Africa; and King Alfonso University in Madrid, Spain, as well as the UPEACE main campus in Costa Rica. He has consulted on issues of election and transitional justice for the Africa Union, the Commonwealth, the American Friends Service Committee and United Nations agencies such as the United Nations Development Programme and the United Nations Educational, Scientific and Cultural Organization.

He is author of 10 books and holds a Bachelor's in Law, a Master's in Science in International Relations and a Doctorate in Peace Studies and International Relations.

**Douglas Gichuki (Kenya)**

Douglas Gichuki is an advocate of the High Court of Kenya, and a member of the Kenyan chapter of the International Commission of Jurists. Gichuki holds a master's in Information Law and Intellectual Property from Norwich Law School, University of East Anglia, and a Bachelor's degree from the Catholic University of Eastern Africa in Nairobi. He is a doctoral law candidate at the University of Cape Town. Gichuki practices law at the Nairobi city law firm of Muma & Kanjama, where he leads the Information Technology Law Department. Gichuki is a founding trustee of Lexserve Foundation, which is committed to enshrining rule of law practices in governance. Gichuki also heads the Information Law Programme at the Centre for Intellectual Property and Information Technology Law, where his research interests include privacy law and national registration systems.

**Samson Itodo (Nigeria)**

Samson Itodo is an experienced community organiser and development practitioner with over 14 years of experience in constitution-building, governance reform, elections, civic engagement and political organising. He serves as the executive director of Yiaga Africa and convener of the Not Too Young to Run movement. He is a member of the Board of Advisers of the International Institute for Democracy and Electoral Assistanes, an inter-governmental organisation that supports and promotes democracy around the world. Itodo leads one of Nigeria's largest citizens' movement on electoral integrity, #WatchingTheVote, which promotes electoral integrity using technology and data. He has led international election observation missions to Ghana, Liberia, Sierra Leone, the United States of America and South Africa. He holds an undergraduate and postgraduate degree in law. He is currently

a Standard Bank and Derek Scooper Scholar, pursuing a Master's in Public Policy at the Blavatnik School of Government, University of Oxford.

**Hon. Shandana Gulzar Khan (Pakistan)**

Hon. Shandana Gulzar Khan is a member of the National Assembly of Pakistan and chair of the Commonwealth Women Parliamentarians network. She has served as parliamentary secretary for the Ministry of Commerce & Industry in Pakistan. She currently heads committees on agriculture, Sustainable Development Goal 5, women-sensitive budgets and free trade agreements, and heads political and peace taskforces for Afghanistan. Her areas of specialisation include impacts of global trade rules on women and the environment, intellectual property, e-commerce and investment.

**Mandla Mchunu (South Africa)**

Mandla Mchunu is a former law teacher and chief electoral officer of the South African Independent Electoral Commission. After holding several other senior government positions, he established a consulting outfit, AfriCore Advisory, which specialises in national identification cards, voters' rolls and related electoral democracy systems. He has undertaken consulting assignments to strengthen electoral democracy in several African countries, including Malawi, Nigeria and Sierra Leone.

As a person who contributed significantly to setting up the infrastructure and machinery for electoral democracy in South Africa, he is widely respected. He remains active and keen on matters related to constitutional democracy.

**Renée Ngamau (Kenya)**

Renée Ngamau is a legal practitioner specialising in human rights advocacy and is chairperson of Amnesty International Kenya. She is an advocate of the High Court of Kenya and holds a Bachelor of Law degree from the University of Nairobi, a Diploma of Law from the Kenya School of Law and a Master of Law specialising in Banking and Finance Law.

Ngamau also runs RenéeSense Ltd, a coaching and training company that works with female entrepreneurs looking to start, grow or pivot their businesses. She is also co-founder and co-convenor of Candid Conversations for Women in Business, a movement that supports entrepreneurs to step into leadership roles in existing businesses and also to grow their businesses. She was awarded the Graca Machel Trust Award for Women Advancing Africa 2018.

**Crystal Orderson (South Africa)**

Based in Dakar, Senegal, Crystal Orderson spent a decade reporting across the continent before moving back to South Africa to work in different media newsrooms and also spend time training and teaching journalists in Southern Africa. She has worked for the South African Broadcasting Corporation, The Africa Report, Al Jazeera English, Turkish Radio and Television, Economist TV and *The Guardian*. She is currently a duty editor at South Africa's leading 24-hour news channel based in Johannesburg.

**Alicia Peters (Canada)**

Alicia Peters is a senior leader with experience in strategy, public policy, government, regulatory bodies and stakeholder management. She was awarded the Queen Elizabeth II Diamond Jubilee Medal in recognition of her work on youth advocacy in the Commonwealth and is an associate fellow of the Royal Commonwealth Society. She has worked for the Canada Government and is currently a director at a financial institution.

**Marcella Samba-Sesay (Sierra Leone)**

Marcella Samba-Sesay is executive director of the Campaign for Good Governance, Sierra Leone's lead governance advocacy institution, and chairperson for National Election Watch, a coalition of over 400 international and local organisations across the country with responsibility for promoting accountability and transparency in elections. Samba-Sesay is nationally and internationally recognised as Sierra Leone's lead civil society advocate for transparency in elections and has observed a number of elections around the world. She is dedicated to ensuring democratic change in Sierra Leone politics and that governance is pro-poor and values citizens' rights and welfare.

Samba-Sesay is a member of the Board of Directors of the Millennium Challenge Corporation and Board member and chair of a number of civil society organisations. She holds a Bachelor of Arts with honours in Political Science from the Fourah Bay College University of Sierra Leone and a Master of Arts with distinction in Democracy, Politics and Governance from the Royal Holloway University of London.

**Commonwealth Secretariat support staff**

Professor Luis G. Franceschi

Senior Director, Governance and Peace Directorate - Team Leader

Dr Roger Koranteng

Adviser and Head, Public Sector Governance Unit (Ag. Head, Electoral Support Section)

Linford Andrews

Political Adviser, Africa

Elizabeth Bakibinga-Gaswaga

Adviser, Rule of Law Section

Koffi Sawyer

Political Officer, Africa

Andy Baines

Programme Officer, Electoral Support Section

Temitope Kalejaiye

Media Officer, Communications Division

Zippy Ojago

Executive Officer, Electoral Support Section

Lindsey Adjei  
Local Support/Programme Assistant, Electoral Support Section

Norah Agiru  
Finance Assistant, Finance Section

Lehlohonolo Makoti  
ICT Systems Specialist, ICT Section



## Annex II: Arrival statement



### The Commonwealth

**Arrival Statement by HE Dr Jakaya Mrisho Kikwete**

**Chair of The Commonwealth Observer Group**

**2021 Zambia General Elections**

*8 August 2021*

*Lusaka, Zambia*

I am greatly honoured to have been asked by the Commonwealth Secretary-General, The Rt. Hon. Patricia Scotland QC, to lead the Commonwealth Observer Group for Zambia's General Elections, scheduled for 12 August 2021. The Group was constituted following an invitation from the Electoral Commission of Zambia and includes 12 other eminent persons drawn from the Commonwealth. This follows a visit of a pre-election assessment team to Zambia in April 2021.

The Group brings together a wealth of experience from across the social and political spectrum including civil society, women's and youth groups, human rights organisations, and the media. We are here to observe the electoral process and will act impartially and independently as we assess its organisation and conduct.

We recognise the significance of these elections to the people of Zambia, the region and the global community - and appreciate the challenges they present, especially at a time when the world is battling the Coronavirus pandemic.

Our mandate is to observe and evaluate the pre-election environment, polling day activities and the post-election period against the backdrop of Zambia's national legislation and regulations, as well as regional and international commitments. We will then report on whether the elections have been conducted in accordance with the standards to which Zambia has committed itself, including its own laws. In this context, we look forward to the Presidential candidates acting in accordance with the peace pledge, which was signed by political leaders on 14 July, where they reaffirmed their commitment to peaceful elections. This is a welcome development, facilitated by the Coalition for Peaceful Elections in Zambia (CPEZ), which is consistent with Commonwealth values.

Our planned briefings, which began today, are wide-ranging, encompassing the Electoral Commission of Zambia, political parties, the media, citizen observers, women's groups, and youth. We have also been briefed by our Advance Observers, who have been on the ground since 25 July.

From Monday 9 August, our observers will be deployed to locations across the country. They will be in small teams and will arrive to observe preparations ahead of polling day and meet

with political parties, the police, election officials and other stakeholders in their respective locations.

On Election Day, they will observe the opening, voting, closing, counting and the results management processes. We will issue an interim statement on our preliminary findings on 14 August 2021. A final report will then be prepared and submitted to the Commonwealth Secretary-General, and subsequently shared with relevant stakeholders and the public.

Our presence here affirms the support of the Commonwealth to Zambia and its democratic processes, and we hope that our Group's presence will confirm Commonwealth's solidarity with the people of Zambia. The Group will depart Zambia by 17 August 2021. On behalf of the Group, I wish the people of Zambia well, as the nation exercises its right to vote on 12 August.

**ENDS**

### Annex III: Deployment plan

Region	City/town	Observers
Lusaka	Lusaka city	Team 1: Chair, Luis Franceschi, Temi Kalejaiye
	Lusaka province	Team 2: Mandla Mchunu, Koffi Sawyer
Lusaka/Southern	Lusaka province/Mazabuka	Team 3: Linford Andrews, Zippy Ojago, Lindsey Adjei
Copperbelt	Ndola	Team 4: Kenneth Abotsi, Shandana Gulzar Khan
	Kitwe	Team 5: Samuel Kale Ewusi, Elizabeth Bakibinga
Central	Kabwe	Team 6: Crystal Orderson, Roger Koranteng, Norah Agiru
North-Western	Solwezi	Team 7: Lomcebo Dlamini, Douglas Gichuki
Eastern	Chipata	Team 8: Donald Malomba Esembe, Alicia Peters
Luapulu	Mansa	Team 9: Renée Ngamau, Andy Baines
Northern	Kasama	Team 10: Marcella Samba-Sesay, Samson Itodo

## Annex IV: Interim statement



The Commonwealth

**Interim Statement by HE Dr Jakaya Mrisho Kikwete**

**Chair of The Commonwealth Observer Group**

**2021 Zambia General Elections**

*14 August 2021*

*Lusaka, Zambia*

You will recall that on 8th August 2021 we issued a statement announcing the arrival of the Commonwealth Observer Group to the 2021 Zambia General Election. In the arrival statement, among others it was reported that Preliminary Statement of our Group will be issued on the 14th August, 2021. It is my singular honour and pleasure to issue that statement on behalf of the Commonwealth Observer Group.

The Secretary-General of the Commonwealth the Rt. Hon Patricia Scotland convened the 2021 Commonwealth Observer Group at the invitation of the Government of Zambia to observe the 2021 General Election. We are a group of 13 observers from across the Commonwealth, with backgrounds ranging from the political, electoral, gender, civil society and legal fields.

We are being supported by 11 Commonwealth Secretariat staff members. An advance team of observers arrived in Zambia on 25 July and travelled through Lusaka, Southern and Copper Belt Provinces. The remainder of team arrived on 6 August.

Members of our Group observed the elections in Lusaka, Ndola, Kitwe, Chipata, Kasama, Mansa, Kabwe, Solwezi and parts of Southern Province.

Since our arrival, we have received briefings from a wide range of relevant stakeholders including the Electoral Commission of Zambia, political parties, candidates, government officials from the Ministries of Health, Justice, Home Affairs and Foreign Affairs as well as the Zambia Police Service, the Coalition for Peaceful Elections in Zambia, media editors, civil society groups, and members of the international community. We paid a courtesy call on HE President Edgar Chagwa Lungu, President of the Republic of Zambia, who was generous enough to receive us despite his busy schedule.

It is important to highlight that this statement does not cover aspects related to the results transmission and tallying, which will be covered in our final report.

In consultations with the various stakeholders, we learnt a lot about the pre election environment as well as expectations, fears and concerns.

## **1. Security and Peace**

A number of stakeholders we met expressed concerns about incidents of politically motivated violence being perpetuated by cadres affiliated to the two major political parties, the PF and UPND. The incidents were isolated but they expressed the fear that they could become a generalised problem in the future. Some stakeholders questioned police impartiality, alleging bias in favour of governing party cadres.

It was against the background that, for the first time in Zambia's electoral history, the military was deployed in some areas to complement the effort of the police in combatting election-related violence. The deployment of army personnel was received with mixed feelings. Some stakeholders welcomed it but some were apprehensive that it was meant to intimidate voters in favour of the governing party. We received no reports from our observers of intimidation by military personnel on election day. Regrettably, we received reports of incidents of violence in a few places. Before the elections, there were politically motivated confrontations which resulted in regrettable deaths. We extend our deepest condolences to the families of all the deceased. We commend all leaders who called for peace and calm. It is the view of the Commonwealth Observer Group that the parties concerned should disband these violent cadres. If need be, they should be prosecuted by law.

Additionally, they commended the initiative of the Commonwealth Secretariat, supported by the United Nations, in bringing together the Coalition for Peaceful Elections in Zambia, which facilitated the signing of the peace pledge on 14 July.

## **2. Legal and Judicial Challenges**

Several stakeholders we met spoke of their lack of confidence in some key state and electoral institutions. There were allegations particularly of lack of trust in the independence of the Constitutional Court, stemming from the handling of the 2016 presidential election petition. Concerns were also raised about the selection and appointment of the Constitutional Court judges. It was quite concerning that Zambia was going into the 2021 General Elections with these kinds of perceptions. It is the view of the Commonwealth Observer Group that much more needs to be done to allay the fears of citizens.

Additionally, the enactment of cyber legislation late in the electoral cycle gave rise to apprehension among some stakeholders, that it could have an adverse impact on the electoral process as it relates to privacy, data protection and certain freedoms in cyber space, which underpin the conduct of credible elections. It was a recommendation of the 2016 Commonwealth Observer Group that "there should not

be substantive changes to the legal and electoral framework six to twelve months prior to an election.” The 2021 Commonwealth Observer Group is recommending the same.

Some actors also complained that the Public Order Act was being applied in such a manner that gave way to abuse of power and prevented some parties from campaigning. 5 There were allegations of lack of impartiality against the police in the application of the Public Order Act, making it difficult for the opposition parties to campaign. They expressed fear that the police would do the same on election day. It is the view of the Commonwealth Observer Group that the Police conducted themselves professionally at polling stations and elsewhere. They played a commendable facilitative role on election day.

### **3. Participation and Inclusion**

It was commendable to witness the prisoners voting for the first time in Zambia’s history. While there was apprehension about how this was going to be implemented, the process was well managed.

There was an impressive turn out of women on election day. However, the political parties did not nominate many women as candidates at all levels of the elections. While only one woman featured out of the sixteen Presidential candidates, the PF and the UPND presented women Vice Presidential candidates. The Commonwealth Observer Group believes that there is room for improvement in the participation of women as candidates in the electoral process. Zambia can do better.

### **4. Electoral Preparations**

The Electoral Commission informed our Group that it was sufficiently prepared and ready to deliver credible 6 elections. We were briefed on registration of voters, recruitment and training of election officials, delimitation of polling stations, procurement and distribution of election materials as well as the casting of ballots, and the tallying of results.

However, several stakeholders including opposition political parties expressed concerns on the ability of the ECZ to conduct credible elections in an inclusive and transparent manner. Specifically, concerns were expressed about the registration process which was allegedly skewed in favour of the governing party.

### **5. COVID-19**

Zambia conducted its seventh multi-party general elections against the backdrop of the COVID-19 pandemic which has had devastating effects across the globe. We noted that Public Health legislation and guidelines such as standard operation procedures were introduced to mitigate the spread of COVID-19 during the elections.

However, there were allegations of inconsistent application of COVID restrictions during the campaigns.

On election day while we observed the wearing of face masks at all polling stations and the provision of hand sanitizers in many of these polling stations we noted that social distancing was not observed.

## **6. Media Environment**

In relation to the campaign, the Group noted that the allocation of airtime and coverage by the state media was skewed in favour of the governing party. Whereas the directive by the ECZ was to allocate 30 seconds to each party, we observed the governing party was allocated more airtime than the other contesting parties.

In future elections, ECZ should make sure that the public media complies with directives in allocating airtime to all political parties to ensure equitable and fair access. We also encourage stakeholders to consider putting in place key parameters and guidelines for the use of social media during and after campaign/election time. It will help curb fake news and distortions.

Additionally, the Cyber Crimes legislation led to uncertainty due to the perception that journalists and media houses could be intercepted and penalised by authorities for carrying out their professional duties.

We welcome the Electoral Commission's partnership with Facebook in removing fake pages, thereby reducing fake news and misinformation. We also noted and welcome the initiative with PANOS partnership with Zambia bloggers' fact-checking efforts, to mitigate disinformation with iVerify Zambia.

## **ELECTION DAY OBSERVATIONS**

### **Eve of Polls**

During their deployment, we witnessed preparations by ECZ ahead of the poll including the distribution of sensitive materials and setting up of polling stations. We visited a number of polling stations and met with a wide range of stakeholders.

### **Opening of Polls**

Our observers noted that pre-polling procedures were generally followed and that they opened on time, with long queues of voters already present at 06:00 hours. Some stations experienced minor delays in opening. For the most part, they were equipped with requisite polling staff and materials. We were impressed to see so many young people, particularly women to be among the polling staff.

### **Turnout**

Election Day was generally peaceful and orderly in most of the areas observed, except for the aforementioned very few and isolated incidents. They were more pronounced in

Solwezi, where there were reports of intimidation, violent clashes and the destruction of property. In the other observed areas, such situations were not recorded.

### **Observations of polling**

We observed the voting process to be slow due to delays in voter verification. In turn, it led to long queues but voters remained patient and peaceful for which they deserve to be commended. It was noteworthy that in some polling stations voters were segregated into separate male and female lines outside. In most polling stations priority was given to the elderly, persons with disabilities, pregnant women and women with babies.

Delays in the process made social distancing an almost unsurmountable challenge. Moreover, some COVID measures were not adhered to; for example, lack of face masks in some poorer areas, lack of hand sanitisers, shared use of pens when casting ballots without sanitisation, and use of small rooms as polling stations.

Observers noted that the ECZ adhered to the recommendation proposed in 2016 regarding the upgrading of streams to independent polling stations. However, 950 voters as the maximum number of voters per polling station, is still quite high. The ECZ may consider reducing this number to ease congestion.

We were impressed by the confidence and professionalism of polling officials, a significant number of whom were women. Polling procedures were generally followed transparently and efficiently by polling officials, although in isolated instances they were cumbersome and inconsistent. One example is the slowing down of the voting process due to one election officer issuing three ballots, as compared to the presidential ballot which was issued by a separate, dedicated officer.

The Voter Verification System was deployed to selected areas, some experiencing delays and technical glitches on arrival from 10 Lusaka. However, on election day, we observed manual verification of voters.

Members of the Group were also able to observe prisoners voting at correctional facilities at various locations. Voting in prisons was generally well managed.

### **Secrecy of the ballot**

Observers were deeply concerned with the secrecy of the ballot. The process required the recording of the ID number on the counterfoil which contained a serial number also repeated on the ballot paper. There is a danger that this practice may be misused against certain voters. The ECZ could revisit the merit of doing this.

### **Presence of security, party agents and observers**

Police presence at polling stations was generally nonthreatening, and they carried out their duties with professionalism. We noted the deployment of police at all polling stations. Party agents, mainly from the two largest political parties, as well as other observers, were visible. The absence of party agents from most political parties was noticeable across provinces.



### **Closing and Counting**

Polling generally closed at 18:00. However, in some cases, polling was extended to either accommodate persons who were already in queues or to equally compensate for situations where opening of polls had been delayed in the morning.

The vote counting process at the polling stations was generally peaceful, procedural, orderly and free from interference. The voters were afforded the opportunity to choose their leaders freely and fairly.

### **Parallel vote tabulation initiatives (PVT)**

We commend the efforts to undertake parallel vote tabulation (PVT) exercises. This is an important initiative that contributes to transparency in the electoral process, and we would encourage that civil society and citizen observer missions continue to be provided the support to continue to do so in the future.

### **Social media restrictions**

The shutting down of social media applications on election day was noted with concern. It restricts freedom of speech and contradicts Zambia's commitment to the values enshrined in the Commonwealth Charter.

On 13 August, the High Court ordered the Zambia Information Communication Technology Authority (ZICTA) to stay such decision pending final determination. At the time of issuing this statement, ZICTA has not complied with the court order.

## **CONCLUSION OF RESULTS COLLATION PROCESSES AND POST-ELECTION ENVIRONMENT**

We urge all Zambians, regardless of party affiliation, to exercise patience, tolerance and restraint while the Electoral Commission 12 of Zambia concludes the results processes. We also call upon the Electoral Commission of Zambia to expedite the announcement of all verified election results. It is our prayer that all political and electoral actors continue to act with diligence, transparency, inclusivity, and fairness as they handle the results processes and that the will of the Zambian people is preserved. Leaders should be magnanimous in victory and gracious in defeat.

We call upon the Coalition for Peaceful Elections in Zambia, the Electoral Commission of Zambia, civil society, the media, and all valued stakeholders to play their role in fulfilling the expectations of the people for credible and peaceful elections.

As we continue to await the results, it is our hope that peace will prevail throughout the process and that, where expectations are not met at any level of the process, peaceful and legal channels will be sought, and fairness guaranteed by relevant institutions.

Our full assessment of the entire process, including any recommendations for improvement, will be contained in our final report, which will be made available to the public. We will continue to observe the results collation process.

Finally, we wish to congratulate the citizens of this beautiful country for turning out in significant numbers to exercise their democratic right to choose their leaders. I thank you.

**ENDS**



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