



# **EISA ELECTION OBSERVER MISSION TO THE 11 AUGUST 2016 GENERAL ELECTIONS AND REFERENDUM IN THE REPUBLIC OF ZAMBIA**

## **Preliminary Statement Lusaka**

**13 August 2016**

***“In its preliminary assessment of the 11 August 2016 general elections and referendum, the EISA Election Observer Mission concludes that so far the elections were conducted in a context of open competition, where Zambians were given the opportunity to express their will freely, in a generally peaceful atmosphere, albeit on an unlevelled playing field. Election day procedures were technically satisfactory and in line with the laws of Zambia and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results is concluded and any petitions determined, before making a final assessment of the process.”***

### **1. Preliminary Findings**

This statement presents EISA’s preliminary findings, recommendations and conclusion on the 2016 electoral process and the referendum in Zambia. It is being issued while the process is still ongoing, and therefore reflects only the Mission’s observations up to the conclusion of the counting process at polling station level on 11 August 2016. A final report covering the entire process will be published after the final conclusion of the process.

#### **1.1 The General Context of the Electoral and Referendum Process**

The 11 August 2016 general elections and referendum took place in a context of fierce and unabated political competition carried over from the 20 January 2015 presidential by-election, dominated by two political parties, namely the governing Patriotic Front (PF) and the United Party for National Development (UPND). This protracted period of polarised political competition has contributed to an unusually high number of incidents of verbal and physical violence, and defacing and destruction of campaign materials.

A new legal framework, which includes an amended Constitution and electoral legislations, was approved few months before Election Day. The revised legal framework largely reflects several important recommendations issued by international election observer missions, including EISA EOMs, in previous elections. The EISA EOM therefore

commends the political stakeholders of Zambia for their commitment to the country's continued democratic improvement. The approval of a new legal framework for elections so close to Election Day, however, also presented a challenge for the management of the process, as there were many new and untested legal provisions and procedures. For instance, the legal provisions for the decentralisation of ECZ have not yet been fully operationalised.

In addition to the political polarisation and the new legal framework, the complexity of the 2016 electoral process was further compounded by the inclusion of two additional ballots for the election of mayors and local council presidents and a referendum on the expansion of the current constitutional Bill of Rights.

## **1.2 Constitutional and Legal Framework**

The EISA EOM assessed the constitutional and legal framework governing the elections and referendum as compliant with the international, continental and sub-regional benchmarks for democratic and credible elections, including the obligations to which the Zambian State is a party.<sup>1</sup>

The EISA Mission notes with satisfaction that many of the constitutional and legal reforms approved in 2016 brought the Zambian constitutional and electoral framework more in line with current international standards and best practices. These reforms include:

- The combined election for President and Vice-President to avoid presidential by-elections in the event the Office of the President becomes vacant.
- The introduction of an absolute majority requirement in the presidential election to give greater legitimacy to the outcome of the presidential contest, and to the Office of the President.
- The new constitutional provision to allow time for determination of presidential election petitions before the swearing-in of the new President.
- The replacement of the Chief Justice with the Chairperson of the ECZ as the presidential election Returning Officer, and the creation of a Constitutional Court with the responsibility to hear and determine presidential elections petitions, to address the issue of conflict of interests.
- The decentralisation of the ECZ structure to provincial and district levels to improve its efficiency and increase its independence
- Establishment of a fixed date for the elections, before the rainy season, to provide greater predictability to the electoral process.

The Mission also considers that the new powers given to the ECZ to make the electoral code of conduct legally enforceable a positive step to strengthen the ECZ in the area of campaign regulation.

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<sup>1</sup> Zambia is a State party to the following instruments: the African Charter on Democracy, Elections and Governance; The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; the Revised SADC Principles and Guidelines Governing Democratic Elections; and the SADC Protocol on Gender and Development.

However, the Mission identified the following issues with the legal framework:

- There is lack of clarity in the law regarding the deadlines provided for the Constitutional Court to determine presidential election petitions. It is not clear whether the 14-day deadline applies only to hearing the petition, or it applies to the determination of petitions. The 14-day deadline for hearing and determine presidential election petitions has been described by Zambian legal experts as a near-impossibility if due process is to be followed, including the hearing of witnesses and experts.
- There is also lack of clarity on whether the 37-day period for the second round of the presidential election starts immediately after the declaration of results of the first round by the ECZ, or only after the determination of any presidential election petitions by the Constitutional Court.
- There is still no legal provision for independent candidates in presidential elections, which impinges on the principle of equal opportunity to vote and to be voted for, despite earlier recommendations in that regard.
- The principle of 'equal opportunity to vote and to be voted for', is violated by the fact that foreigners who are permanent residents in Zambia can run for the office of councillor, but cannot vote in that same election.
- The Constitutional provision that requires aspirants to the position of President to have been domiciled in the country for 20 years remains in place, and restricts Zambians in the diaspora from legitimately and fully participating in their country's political life.
- The legal framework still makes no provisions for diaspora voting.
- Some of the new legal provisions may constitute an obstacle to fair participation in the electoral process. These include: the requirement that all candidates be in possession of a Grade 12 certificate or its equivalent, and the steep increase in election registration fees for candidates at all levels. These requirements can be detrimental to the participation of popular female, young and independent candidates and candidates from smaller political parties who do not have access to resources to pursue an education or pay the stipulated fees.

### **1.3. Election Management**

Regarding the mode of appointment of the ECZ, the EISA Mission is of the opinion that it reflects a consensus of the main political forces, as its appointment is ratified by a qualified majority of Parliament. The EISA Mission notes the proactive measures and mechanisms put in place by the ECZ to ensure transparency in its decision-making, open communication with stakeholders, and alternative resolution of electoral disputes at all levels. Particularly noteworthy were the efforts to ensure the transparency of process of production, packaging and transportation into the country of ballot papers.

Despite delays in the disbursement of budgetary resources, the ECZ was able to meet the key deadlines of the electoral cycle, procure and distribute all the necessary election materials, and recruit and train the required electoral personnel.

Most stakeholders contacted by the EISA EOM regard the ECZ as a capable, impartial and professional body. However, some stakeholders contacted by the Mission are of the opinion that the ECZ should have acted in a more forceful manner against violations of the electoral code of conduct.

The lack of trust in the ECZ by some opposition parties and their supporters led to unacceptable acts of violence against ECZ operations, such as the illegal impounding of ECZ vehicles, which could have impacted negatively on the Commission's ability to manage the final stages of the process efficiently and expeditiously.

#### **1.4 Voter Registration and the Integrity of the Voters' Roll**

Zambian citizens had the opportunity to register to vote for the 2016 elections, or replace misplaced voter's cards through two mobile registration exercises, and to verify the accuracy of the provisional voters' roll through a process of public display and inspection. At the request of some stakeholders, the ECZ undertook an external audit of the voters' roll to verify the integrity of the register, including the claim that foreign citizens had been registered. The audit process did not identify any significant number of registered foreigners.

ECZ has acknowledged that, despite visible efforts to remove thousands of deceased voters from the register, an undetermined number of such names may still be on the voters' roll given the absence of accurate civil registry records, on which such process is based. The Mission also noted that two provinces, namely North Western and Western provinces, have more registered voters than the projected number of eligible voters as announced by the Central Statistical Office.

Some stakeholders, including political parties and citizen monitoring groups, have complained that the ECZ did not make the voters' roll available in a timely manner, and in electronic format, which prevented them from conducting an independent audit of the register.

#### **1.5 Campaign Finance**

The legal framework in Zambia has no provisions for state funding of candidates for any elections. This presents the challenge for candidates who are not adequately funded from private sources. Additionally, the lack of legislation regulating the use of private funding for electoral campaigns, either by placing limits on campaign spending, and/or requiring parties and candidates to disclose their sources of funding, also creates opportunities for undue influence of private money on campaigns, as well as on the elected officials who benefitted from it.

#### **1.6 Electoral Campaign**

The Mission assessed the electoral campaign as largely peaceful, though there were isolated incidents of physical violence between supporters of different political parties, especially in the districts of Lusaka and Namwala, which prompted the ECZ to suspend campaigning in affected areas for 10 days in mid-July. The Mission finds that this measure contributed significantly to lowering the levels of physical violence. However, the use of inflammatory and divisive language at public campaign events throughout the campaign period was recurrent, and amplified by the media. Civic groups deplored what they described as instrumentalisation of youths by some political parties to promote violence against their political adversaries.

The Zambia Police Services informed the Mission that some of the perpetrators of electoral violence from different parties were arrested. The Mission also observed many cases of defaced and destroyed campaign materials of different parties and candidates.

The Mission notes with satisfaction the efforts made by the ECZ to defuse tensions by using the Conflict Management Committees, and the signing of the Peace Pledge, to resolve political party violence, although some presidential candidates refused to sign it.

In the 2016 elections, unlike the presidential by-election of 20 January 2015, the application of the colonial-era Public Order Act was not suspended in order to give all parties unfettered opportunity to campaign. Most political and civic stakeholders, who spoke to the Mission, complained that the provisions of the Public Order Act this time was selectively and excessively applied to disadvantage the opposition by effectively preventing many of their campaign events. These allegations were denied by the Zambia Police Services.

The Mission noted that there is no legal requirement for parties and candidates to be provided with free and equitable airtime or space in the public broadcaster for to air their campaign propaganda adverts as stipulated in article 17(3) of the African Charter on Democracy, Elections and Governance.<sup>2</sup> Furthermore, the Mission notes that in the 2015 presidential by-election, the ZNBC had voluntarily allocated 30 weekly minutes on both TV and Radio to each presidential candidate for the broadcast of their campaign messages, but that this public service was not provided in the 2016 elections.

The requirement that parties and candidates pay for the broadcast or publication of their propaganda, especially in the public media, disadvantages the smaller parties and their candidates. The Mission noted that one opposition party sued the public TV for refusing to air a paid-for documentary.

## **1.7 The Media**

Objective and impartial media are a cornerstone of fair elections. This is particularly true and crucial with regard to the public media. While the media landscape in Zambia is pluralistic and vibrant, the Mission noted that there is clear political polarisation of the media, with biased and partisan coverage and reporting of electoral campaigns. The Mission finds that the public media in Zambia, both broadcast and print, in their coverage and reporting of the campaigns, were openly biased in favour of ruling party candidates, and negligent or negative regarding opposition candidates.

The Mission noted with satisfaction the efforts undertaken by the ECZ to impress upon the media houses the need for impartial and objective coverage of the elections in line with the media code of conduct, although such efforts seem not to have had a strong impact, as the code of conduct is not binding, and is only of a persuasive nature. The Mission agrees that media self-regulation is preferred to externally enforceable regulations. The EISA EOM therefore wishes to highlight that the privilege of self-

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<sup>2</sup> Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.

regulation must be accompanied by the responsibility of and commitment to rigorous fair reporting.

The Mission finds that the decision of the Zambian Revenue Authority to close the Post newspaper, on the eve of the electoral campaign, due to outstanding tax debts, albeit seemingly legal, was ill timed and gave the appearance of abuse of State power to silence a newspaper perceived as supporting the opposition.

The Mission took note, with concern, reports of physical and verbal violence against journalists covering the electoral process.

### **1.8 Participation of Women**

Women represent slightly more than half of the registered voters for the 2016 elections and that they very actively participated during the election campaigns. However, only one of the nine presidential candidates is a woman, there are only two female candidates out of nine vice presidential candidates, and women represent only 16% of National Assembly candidates, 12% of mayoral candidates and 9% of councillor candidates.

Women groups expressed their concerns to the Mission about the negative impact of the requirement for a 12 Grade certificate, increased nomination fees, non-transparent intra-party nomination processes, and electoral violence on women participating in the election process.

### **1.9 The Role of Civil Society**

The Mission noted with satisfaction the strong participation of civil society organisations in the electoral process in Zambia, carrying out advocacy, voter information and education, and monitoring of voter registration and Election Day. This citizen involvement contributes to improving the transparency of the electoral process. The Mission further notes the deployment of thousands of election monitors on Election Day, and the conduct of a parallel vote tabulation to provide an independent mechanism to verify the credibility to the results management process.

### **1.10 The Constitutional Referendum Process**

The Mission finds that the holding of the Constitutional referendum in conjunction with general elections led to its politicisation, and it became secondary to the electoral campaign.

The Mission noted that many Zambians who interacted our observers expressed lack of adequate knowledge about the content and significance of the referendum for them to make an informed choice.

The Mission also noted that symbols for “yes” (an eye) and “no” (an ear) on the referendum ballot paper had no relation to the choices being presented to voters.

### **1.11 Polling Day Observations**

EISA observer teams observed Election Day procedures, including opening, voting, closing and counting in the four provinces where they were deployed. This is a summary of their observations and relates only to those polling stations observed by the EISA Mission:

The atmosphere in and around all observed polling stations was peaceful and orderly, despite the long queues early in the day. Security personnel were present at all stations, and their behavior was professional and discreet. Party agents, citizen monitors and international observers were able to monitor all phases of the process on Election Day without hindrance. PF and UPND agents were seen at all visited polling stations, and citizen monitors were present at 90% of polling stations.

All observed polling stations had all the necessary materials for the operations to proceed normally. The Mission is however cognisant of the fact that, according to ECZ, a number of polling stations opened late due to the late arrival of materials caused by terrain challenges. The Mission commends the ECZ's decision to extend voting hours for those polling stations in order allow voters to exercise their democratic right.

Up to a third of the observed polling stations did not open at the exact scheduled time, mainly due to slow opening preparations, or late arrival of materials. All observed polling stations closed on time, at or around 18H00, as there were no more voters outside waiting to vote.

At some polling stations, due to limited space, polling streams were merged, making it difficult for voters to locate their streams. This may have contributed to the number of voters who were turned away at their initial polling stream and had to call the ECZ poll free number to find out where they were supposed to vote.

In all observed polling stations, the ballot boxes were properly sealed and remained so throughout the day until the start of the counting process.

In all visited polling stations there were no recorded incidents at the time of visit.

### ***Opening Procedures***

In all observed polling stations opening procedures were properly followed, and all ballot boxes were properly sealed before voting began. EISA observers assessed the opening process to be good, but at times slow, which led to short delays in the start of voting.

### ***Voting Process***

The layout of most of the visited polling stations was adequate for an easy flow of voters and to ensure secrecy of the ballot, but 12% were not accessible to voters with disabilities due to the uneven ground around them.

In several polling stations, party agents complained about the fading ECZ stamps, which ECZ later explained as a manufacturing defect. To remediate the situation, ECZ instructed

presiding officers to mark the ballot papers “official” with pens. Party agents accepted this remedial action.

EISA observers noted that in 17% of the visited polling stations there were instances of voters who chose not to vote in the referendum by not collecting the referendum ballot. In one particular polling station, at the time of the team’s visit, the number of voters who refused to vote in the referendum was as high as 31. At another polling stream, up to one third of voters who came into the stream refused to vote for the referendum. The Mission also noted the very high numbers of rejected ballots in the referendum vote. For instance, in one polling stream there were 70 rejected referendum ballots, which were invalidated or left blank by the voters.

EISA observers noted that voter’s card numbers were recorded on the stubs of the election ballot papers, and NRC numbers were recorded on the stubs of the referendum ballot papers. This procedure may contribute to preventing the misuse of unused ballot papers. However it not only slowed down significantly the voting process, which on average took 8 minutes per voter, but more importantly, could also compromise the secrecy of the vote, as it is possible to directly link voters’ identity to ballot papers.

EISA observers noted that women comprised about 60% of polling officials and slightly more than half of citizen monitors, but less than half of party agents.

Although the average time for a voter to complete the full voting process was eight minutes, due to the five ballots and the recording of voters’ card numbers, the voting process as observed by EISA was conducted smoothly and efficiently.

It was observed that the legal provisions for special voting for individuals on election duty was not operationalised in most of the stations visited as most of the concerned individuals did not have the required certificate of authority to vote.

There were observed cases where some voters found their names recorded under the special list of deceased persons.

EISA observers assessed the voting process and the competence of polling station staff as good.

### ***Closing and counting process***

The closing and counting process was expectedly slow due to the high number of ballot papers to reconcile and count. Few instances of discrepancies in the ballot reconciliation were resolved by a recount. Party agents were generally satisfied with the overall process. The Mission however noted the passive attitude of party agents during the reconciliation process, which was often conducted by the polling officials without the active observation by party agents, monitors and observers.

EISA observers assessed the closing and counting process and the competence of polling station staff to be good, but noted that some polling officials could have been more efficient and inclusive in conducting the lengthy reconciliation process.



## **2. Conclusion**

In its preliminary assessment of the 11 August 2016 general elections and referendum, the EISA Election Observer Mission concludes that so far the elections were conducted in a context of open competition, where Zambians were given the opportunity to express their will freely, in a generally peaceful atmosphere, albeit on an unlevelled playing field. Election day procedures were technically satisfactory and in line with the laws of Zambia and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results is concluded and any petitions determined, before making a final assessment of the process.

## **3. Recommendations**

Based on the findings presented above, the EISA Election Observer Mission presents the following recommendations:

1. The National Assembly within the framework of legal reforms should consider:
  - a. Making provisions for independent candidates at Presidential elections
  - b. Establishing clear and realistic deadlines for the Constitutional Court to hear and determine presidential election petitions before a second round, and the swearing-in of the President-Elect.
  - c. Providing clarity on whether the 37-day period for the second round of the presidential election starts immediately polling day, after the declaration of results of the first round by the ECZ, or after the determination of any presidential election petitions by the Constitutional Court.
  - d. Extending voting rights in local elections to all those who qualify to run for elected office in those elections.
  - e. Revisiting the provision that requires aspirants to the position of President to have been domiciled in the country for 20 years.
  - f. Introducing voting rights to Zambians in the diaspora.
  - g. Revisiting the requirement of a Grade 12 certificate or its equivalent to run for public office.
  - h. Introducing legislation to provide for equitable public funding of electoral campaigns and to regulate private donations to electoral campaigns
  - i. Enshrining in the electoral law the allocation of equitable free airtime in the public broadcaster for political party and candidate campaign propaganda
  - j. Revising the Public Order Act to ensure that its application during the electoral campaign period does not infringe the principle of free and equal campaigning
2. The Electoral Commission of Zambia should consider:
  - a. Making the voters' roll available in a timely manner, and in an open accessible electronic format, to all relevant stakeholders

- b. Developing a strategy for continuous voter registration and update to further improve the credibility of the voter register.
  - c. Ensuring that the location and distribution of polling stations and streams is done in a timely manner to allow voters to be informed in advance of their exact location
  - d. Ensuring to the extent possible, that polling stations are accessible to voters with disabilities
  - e. Investigating other mechanisms to prevent the misuse of unused ballot papers, including cancelling them, in order to avoid having to record voter's card numbers on the ballot paper stubs.
3. Political parties should consider:
- a. Increasing opportunities for women to ascend to leadership positions within political parties and through quotas or other mechanisms, and to participate in the electoral process in higher numbers as candidates
4. The Media should:
- a. Ensure strict compliance with the media code of conduct and the principles of fair, balanced, equitable, impartial and objective treatment of all campaigns

**4. About the EISA Mission** The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Electoral Observer Mission (EOM) to the 11 August 2016 general elections and referendum in the Republic of Zambia. The Mission is comprised of ten observers drawn from ten African countries, and is led by His Excellency Cassam Uteem, former President of the Republic of Mauritius, with Denis Kadima, EISA's Executive Director, as the Deputy Mission Leader. Prior to the deployment of its EOM, EISA also deployed a pre-election assessment mission from 28 March to 1 April 2016.

The EISA EOM arrived in the country on 2 August, and will remain on the ground until 15 August 2016. EISA observers were briefed by election stakeholders prior to deployment to four provinces, namely Lusaka, Copperbelt, Western, and Southern, on 8 August. The Mission met with the Head of State, His Excellency President Edgar C. Lungu, and the leadership of parties contesting in the election, as well as the Electoral Commission of Zambia (ECZ), the Chief Justice, the Constitutional Court, the Zambia Police Services (ZPS), and civil society organisations. In their areas of deployment, EISA teams observed election campaign activities and final preparations by ECZ, including the delivery and receipt of polling station materials. The EISA observers also met with electoral stakeholders in their areas of deployment. The EISA teams were equipped with smart tablets to register and transmit data in real time.

EISA's assessment of the 2016 electoral process in Zambia was based on the Zambian legal framework governing electoral processes and referenda as well as the principles and standards set out in the African Charter on Democracy, Elections and Governance, the African Union Declaration of the Principles Governing Democratic Elections in Africa,

the Declaration of Principles for International Observation of Elections, and its accompanying Code of Conduct, the Principles for Election Management, Monitoring and Observation (PEMMO).

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