Preliminary Statement on the 11th August, 2016 General Election and Referendum on the Bill of Rights

By

Southern African Centre for the Constructive Resolution of Disputes (SACCORD)- 19 August, 2016

INTRODUCTION

The Southern African Centre for the Constructive Resolution of Disputes (SACCORD) with support from the Zambia Accountability Project (ZAP) with technical support from the Electoral Institute for Sustainable Democracy in Africa (EISA) monitored elections of the just-ended August 11th, 2016 general elections deploying an estimated 4000 monitors in 62 constituencies in all the 10 Provinces across Zambia. SACCORD monitored all the three key stages of the electoral process which included the pre-election, the polling day and the post-election periods. SACCORD deployed 1041 civic and voter education facilitators and 198 monitors in 62 constituencies to monitor political campaigns.

Monitoring Approach

The monitoring of the general elections was aimed at contributing to the attainment of a free, transparent and credible election for acceptance by electoral stakeholders and the general Zambian citizenry. The monitors whose role was to observe, record and report the proceedings during elections.

SACCORD closely monitored candidate adoption and campaign period in monitoring the pre-election period. Our monitoring of campaigns focused on unfolding events in the campaigns by political parties, taking note of campaign activities, media coverage, administration of the public order act and the general political environment obtaining. Preparatory activities by the Electoral Commission of Zambia (ECZ), including the candidate nomination process, inspection of the register of voters and the conduct of Voter Education by the ECZ.

SACCORD observed the electoral process as follows:

PRE-ELECTION PERIOD

The August 11th, 2016 general elections were held under what we would refer to as a new legal and electoral system. The constitutional amendment number 2 of 2016 prescribes a majoritarian presidential electoral system in which a presidential candidate winning an election should have more than 50% of the votes cast. This means that should there be no candidate getting more than 50% of the votes cast, the top two (2) contenders would go for a re-run to be held within 37 of the initial ballot.

The holding of democratic and credible elections is largely guaranteed by the existence of a legal and institutional framework that is acceptable and respected by all electoral stakeholders especially the contesting political parties and their supporters. In any election, transparency, respect for electoral laws, tolerance, coexistence and conflict resolution and management very critical.

Legal and Institutional Context

The August 11th, 2016 elections were held under the following legal framework:

- The Constitutional amendment number 2 of 2016;
- The Electoral Process Act No. 35 of 2016;
- The Electoral Commission Act No. 25 of 2016; and
- The Electoral Code of Conduct and Regulations;
Political campaigns prior to the August 11th polls was largely characterised by violence and clashes between political party cadres. The sporadic incidents of clashes were mainly recorded in Lusaka, Copperbelt and Southern provinces with the PF and UPND being at the root of the clashes.

We also observed with great concern the selective application and administration of the Public Order Act (POA) with a number of opposition political party rallies cancelled on the last minute with seemingly unjustifiable reasons. This was the case in Lusaka, Copperbelt and other parts of the country. The POA continued to be a source of tension and conflict in the country.

It is our considered view that the campaign period that commenced on 16th May 2016 has witnessed high levels of political violence in Zambia with the main protagonists being the opposition UPND and the ruling PF.

Electoral Preparations

We observed that the Electoral Commission of Zambia (ECZ) endeavoured to do its best to ensure a smooth preparation of the elections. The commission was on course with the voter registration exercise having achieved above 90% of their target to register 1.7 million new voters. However, due to the president’s assent to the amended constitution on 5th January, 2016, the commission had to adjust its electoral process workplan as the constitution provided for among other things the election date. This affected the schedule for inspecting the provisional register and make corrections. The commission had to further adjust the time required for an audit and late release of the 2016 register of voters. All these adjustments to the election timetable affected stakeholders in one way or another, for instance, political parties only received copies of the final register of voters on 6th August, 2016, and this meant that political parties did not have sufficient time to study the register.

We also note that the commission was not consistent when it came to consulting stakeholders in the electoral process. As SACCORD we note for instance the scant consultation and dialogue over the printing of ballot papers for the general election and the referendum. It is public knowledge the level of misgivings stakeholders had over the contract awarded to a printing company in Dubai. While the commission explained their decision, it was rather important to engage with the stakeholders in a much better way than being reactive. Another issue that was controversial during the build up to the 2016 general election was that of the nomination fees for candidates contesting elections. While the commission would have justified reasons to increase the fees, political players had the right to contest the new fees and engage with the commission on the possibility to reduce the fees. Though the commission reduced the fees, the spirit in which the decision to reduce was arrived at did not inspire confidence in the stakeholders. Furthermore, a number of women and youths could not still afford to pay their nominations as they were considered to be very high. This in a way deprived the country a chance to increase women and youth participation in politics. Further it gave an impression that politics are only for the elite and not the poor.

Generally, there was lack of trust in terms of the electoral management process and there was always a frosty relationship between the ECZ and the opposition resulting from the Commission’s perceived lack of transparency on many electoral management issues such as procurement of ballot papers, the initial reluctance to write words alongside figures on the GEN 12 form and the general hesitation by the Commission to evoke punitive clauses provided in the new electoral act against crimes perceived to be committed by the ruling PF among others. A perception continued to linger among the opposition ranks that ECZ was generally making decisions that favour the ruling PF and operated on the directives of the ruling PF.
**Civic and Voter Education**

Following the low voter turnout as witnessed in the 2015 Presidential election and the amendments to the constitution that border on the electoral process, SACCORD saw it fit to conduct civic and voter education. To do this, SACCORD trained and deployed 1041 voter education facilitators in 62 constituencies across the 10 provinces. SACCORD’s voter education focused mainly on the need for citizen’s participation, the new electoral system, and the referendum. Having anticipated increased levels of political violence, SACCORD incorporated in its voter education a component of peace and non-violence as a way of ensuring a peaceful election. SACCORD is cognisant of the fact that there was over 1.6 Million new voters on the register who are first time voters and so the organisation also provided education on how to mark the ballot. One thing which was common to most people was the choice of a running mate. SACCORD voter education facilitators provided sufficient information.

The commission should be commended for conducting extensive voter and civic education prior to the general election and the referendum. SACCORD noticed the presence of ECZ voter education facilitators in the 62 constituencies it monitored. The commission also produced information for voters on the referendum and general elections which was highly commendable.

**POLITICAL PARTY NOMINATION/CANDIDATE ADOPTION**

SACCORD noted with growing concern the poor levels of internal democracy and non-adherence to political party internal rules and regulations regarding selection of candidates by most political parties. A number of political parties conducted primaries to select candidates for the parliamentary, local government and Mayoral elections but we observed that despite these primaries being conducted, the party leadership had the final say on who was to be adopted. In many cases the candidates adopted by the party were, according to the public, imposed on the communities. Those imposed on the communities to contest an election where mainly those who were able to finance their own campaign as political parties claim that they do not have the capacity to finance campaigns for all its contesting candidates. The adoption of women and youths remained rather very low with parties advancing the reasons in the foregoing to justify.

Generally, Mayoral, Councilor, Parliamentary and Presidential nominations in particular in Lusaka, Mansa, Kitwe, Choma, Livingstone, Kasama, Chinsali, Solwezi, Chipata, Mongu and Kabwe went well. Most of the nominations proceeded incident free. However, in Kabwata during the parliamentary nominations, there was violence as gunshots were fired in Kabwata with independent candidate Clement Tembo allegedly blocked by PF cadres from filing in although he eventually managed to file in. Others who successfully filed are PF candidate Given Lubinda, Musician Maiko Zulu and UPND candidate Mulenga Sata.

The biggest observation was however more to do with the confusion that was caused by political parties that had more than one candidate handed with adoption certificates for the same constituency. Some examples include Munali and Livingstone for the UPND among others. Apart from these incidences, the nominations were conducted in a conducive environment. Huge crowds were recorded during the presidential nominations. The first nominations were mayoral nominations which were held on 30th May 2016 followed by the councillor nominations and Members of Parliament on 31st May, 2016. There was also a lot of anticipation and curiosity on the requirement of a grade twelve certificate for councillor and parliamentary candidates until the court stated that even other qualifications that are higher than grade twelve could be used.
At Presidential nominations, the first parties to file in on 1st June, 2016 were the Forum for Democracy and Development (FFD) candidate Ms Edith Nawakwi, United National Independence Party (UNIP) candidate Mr Tilyenji Kaunda and Democracy Alliance (DA) president Maxwell Banda. The nominations went well without any major incidents with the three candidates escorted with sizeable crowds during the nominations.

On 2nd June, the ruling party’s Patriotic Front (PF) candidate Mr Edgar Chagwa Lungu successfully filed in his nomination alongside his running mate Inonge Wina whom he had announced earlier in the run up to the nominations. The United Progressive Party (UPP) represented by Saviour Chishimba also filed in their nomination on the same day as well as the Rainbow Party candidate Winter Kabimba.

The UPND filed its nominations on 3rd June and there was anxiety as to who was going to be the running mate of the UPND Presidential Candidate Mr Hakainde Hichilema. He successfully filed his nomination and adopted Geoffrey Bwalya Mwamba as his running mate. The nominations were peacefully done despite there being a lot of people. However on the same day, alleged PF cadres attacked some UPND supporters. This however didn’t have any effect on the nominations. Other parties that filed in on the same day are: PAC with its Presidential Candidate Andyford Mayele Banda and Green Party candidate Peter Sinkamba. The nominations were largely successful without much incidents apart from the attacks by the PF on the UPND in Lusaka.

ELECTION CAMPAIGNS

During campaigns, there was an upsurge in political violence between the two leading political parties the United Party for National Development (UPND) and Patriotic Front (PF) and in most cases the opposition UPND have been victims of aggression from the PF supporters. In response or in order to defend themselves, they have ended up using violent means and their retaliation has led to violent clashes.

Furthermore, the opposition found themselves in a position where they felt not being protected by the police even when they were being attacked. The case in point is that of a young lady who was stripped naked in the apparent presence of police for wearing UPND regalia. These and many other incidences created animosity among the supporters of the two political parties and certainly affected the campaign period as it was littered with violence and intimidation. These incidents of violence were mainly recorded in Lusaka, Copperbelt and Southern provinces with the PF and UPND being at the root of the clashes.

SACCORD also observed with great concern the selective application and administration of the Public Order Act (POA) with a number of opposition political party rallies cancelled on the last minute with very unjustifiable reasons. A case in point was the UPND Chawama rally which was cancelled including several others on the Copperbelt. Police tended to act very slowly whereas in instances involving opposition party supporters, they acted very swiftly in apprehending the perpetrators of violence. Incidents of violence between UPND and PF left several people injured with two confirmed lives lost (Mapenzi of Chawama and Mukonka Malesu of Lusaka). A number of shootings were also witnessed in Lusaka’s Northmead area, this far it is not clear whether police affected arrests of the perpetrators despite them being identified.

SACCORD notes that the intimidation and violence that took place during the campaign period had a negative effect on the electoral process. It is SACCORD’s considered view that elections cannot be free if violence and intimidation are witnessed during the electoral cycle.

Our further observations during the campaigns include:

- **Campaign Financing:** SACCORD observed that the campaigns during the run up to the August 11th, 2016 were characterised by extravagance and high spending. SACCORD is worried that in the
absence of a mechanism to monitor the source of political party funding for campaigns, politicians could be auctioning the country in exchange for campaign resources.

- **Use of government resources:** There were also reports of the PF allegedly using state resources and government institutions in the campaigns. Stakeholders made reference to the decision by the President to allow Cabinet Ministers to serve even after the dissolution of parliament and alleged that such a decision could have led to the use of government resources under the guise of performing government duties during campaigns. With only a few days left before the elections the Constitutional Court ruled against the decision to have Cabinet Ministers serve after the dissolution of Parliament. Use of state resources such as government transport for party campaigns is contrary to the Electoral Code of Conduct. Unfortunately because ministers were still holding ministerial positions, it made it difficult to determine when these ministers were discharging their duties or campaigning because they continued to enjoy their ministerial privileges even when they were campaigning.

- **Restriction on airspace:** Furthermore, the restriction by ZAF for opposition political parties to use airspace created a new challenge in the campaigns because this was clearly seen as a way of restricting the reach of the opposition during campaigns using the fastest possible mode. Unfortunately this restriction was not been applied to the ruling party. An example of such restriction was the opposition UPND allegedly being refused to use the airspace for campaigns in Luapula. This was a serious affront to the holding of democratic and competitive elections. Furthermore the involvement of some service chiefs in politically inclined statements appeared to create intimidation and fear among citizens.

- **Apprehension over Rigging:** It has become common during any election to experience apprehension over rigging. Trucks allegedly laden with election materials were stopped by UPND members in Livingstone on suspicion of having pre-marked ballots. The trucks in question were transporting lumps and other election materials. On the early morning of the voting day, an Ethiopian Airline plane that landed in Zambia at KK International Airport was suspected of having carried pre-marked papers from Dubai. According to the airport officials, the plane was in fact laden with medical supplies.

**THE MEDIA**

In any competitive election environment, the media is very influential and plays a crucial role in promoting free and credible elections. The media especially the public media should be unbiased in its coverage and reporting. Unfortunately during the elections, this was not the case despite freedoms of speech and the press being constitutionally guaranteed. These freedoms were not fully enjoyed as studies showed that the ruling PF enjoyed more media coverage compared to their opposition counterparts.

Community and privately owned radio stations that provided alternative coverage to the opposition faced stepped-up harassment and threats by alleged government officials and PF party cadres, especially in retaliation for hosting opposition figures on call-in shows or criticizing local officials on the air. An example is radio Mano is Kasama that received media coverage over such. SACCORD noted that this situation could not guarantee the fairness of the elections.

Our general observation, also supported by studies by other organizations in the electoral process, was that the public media provided more coverage to the ruling PF while the private media endeavoured to provide some coverage to the opposition. Media coverage during the 2016 general elections was uneven, biased and polarized.
ELECTION DAY OBSERVATIONS

In all the polling stations covered, our monitors closely watched the opening process, voting, closing and counting of the results at polling stations as well as the results tabulation at constituency collation centres. Below are some of the observations noted by the monitors on polling day:

**Opening and Voting Process**

Most of the polling stations around the country opened on time as witnessed by about 90% of the SACCORD monitors deployed who witnessed the opening of the polls. The 10% difference did not witness the opening mostly due to denied access to the polling stations by the presiding officers. Examples of polling stations where SACCORD monitors were denied access include Musungu polling stations in Kawambwa; Luthean Church polling station in Nyimba; Kasaya School Mombowa Primary in Southern Province; Petauke Board School in Nyimba among others. Polling started as early as 06:00hrs in most polling stations across the country. However, some polling stations experienced some delays in opening and examples of these include: Chainda, Kalundu, Kabwata in Lusaka Province; Mfuwe in Muchinga Province; Lupande in Katete in Eastern Province; Hamwimbu basic school in Monze Southern Province; Musofu in Mpongwe on the Copperbelt among others. SACCORD further noted that some polling stations did not open on the stipulated time because there was no sufficient lighting in the polling station.

SACCORD noted with concern the limited implementation by the ECZ of the Special Vote provision and that monitors and some of the Polling staff did not participate in voting in locations where they had been posted. This is despite Section 24 of the 2006 Electoral Act providing for such personnel to vote using the special vote. As a result, some potential voters were disenfranchised by such a lack of implementation of the provision.

Finally, SACCORD received reports that some polling stations monitored ran out of election materials such as the stamping ink. Examples of some of these polling stations include Woodlands B polling station in Lusaka; and Chibwika and Makuya polling station in Mwinilunga among others. Generally the opening and voting process was peaceful and conducted in a conducive environment despite the increased violence experienced during campaigns.

**Closing, Counting & Tabulation Process**

SACCORD monitors witnessed the closing of polling and the counting process at each of the polling stations monitored. Nearly all the polling stations that started voting on time also commenced the counting immediately upon completing the voting. SACCORD observed that a good number of polling stations closed late due to the number of people that turned out to vote and this affected the counting of votes which was prolonged due to the number of ballots that were cast which included the referendum, mayor, local government, Presidential and parliamentary ballots. There were also some monitors and political party agents who were not given the Gen 12 form and this compounded the problem at the totalling centres. Clearly there was no transparency at some of the totalling centres in the tabulation of results that were coming from the polling stations. For instance in Chawama, Kanyama, Kabwata, Matero, Mandevu and Munali results were delayed but there was no clear explanation. SACCORD visited these totalling centres but there was no evidence of results being stuck on the wall as should be the practice. Results from different polling stations were held on to until the following day despite being available in the totalling centre and there was no clear indication of the reasons for this delay. The ECZ officials in places like Kabwata and Mandevu totalling centres were computing these totals on their own without any verification from monitors and party agents. When queried, these officials were reluctant to
provide information of what they were tallying. A free and fair election demands transparency and continued engagement with stakeholders. With all these anomalies it becomes difficult to guarantee free and fair elections.

**Election Day Critical Incidents:**
The election-day was generally peaceful and calm across the country with very few incidents. SACCORD observed and recorded the following incidents:

**Results Tabulation:**
SACCORD closely followed the announcement and tabulations of election results by the Electoral Commission of Zambia. There was a lot of anxiety from participating political parties with regards the delayed announcement of results by the commission. While the general citizenry remained calm, It was observed that the process of counting and transmitting of results from different totalling centres was rather very slow. Such disparities have great potential to undermine efforts that have been put in by all stakeholders to ensure that elections are credible.

Notwithstanding the above, we wish to commend all political parties for heeding to the call for calmness and restraint and for having prevailed on their members to maintain a peaceful atmosphere throughout the results announcement process despite all the shortcomings.

**CONCLUSION AND RECOMMENDATIONS:**
An election is credible according to international standards for democratic elections if among others - all pre-election processes are done transparently; equal and universal suffrage is guaranteed; electoral laws are applied; and clear procedures that guarantee the accuracy of the results, and if such procedure are followed in an open and verifiable way and enforced impartially; the political environment during campaigns is generally levelled and free of intimidation, bribery and manipulation. In view of these benchmarks, SACCORD believes that it is rather difficult to conclude in absolute terms that the just ended elections were free and fair and met the internationally acceptable standards of free and fair elections. This is largely on account of the political violence experienced during campaigns, the misapplication of the public order act, perceived biased media coverage, and some intimidation throughout the electoral period among others.

SACCORD wishes to congratulate all the contesting political parties for putting up a spirited fight in the race to State House and maintaining peace in the August 11th, 2016 polls. Furthermore, we salute the people of Zambia for keeping the peace during the voting and counting process and for turning out in large numbers to exercise their democratic right. It is our considered view that the increased levels of political violence witnessed during the run up to the 2016 general elections could have had affected the turnout. This is from the background that the voter registration exercise conducted prior to the election gave an impression of very high turnout which in our view would have translated to more than 56.4% voter turnout recorded in the ended election.

**Recommendations**
Based on our observ-ations, we would like to offer the following as out interim recommendations:

- There is need for ECZ to enhance transparency in the results management especially the results intake stage at the Tabulation Centre;

- ECZ should make provision to allow electoral personnel to vote using the *special vote* provision as provided under section 24 of the Electoral Act No. 12 of 2006 as not doing so would continue to unfairly disenfranchise the affected citizens;
• The ECZ should review its strategies for provision Voter Education with a view to improving its impact. In this regard, voter education should be continuous, more widespread and should allow for other stakeholders such as Civil society groups to effectively participate in exploiting their outreach capacity in delivery of voter education if voter turnout is to improve;

• Political parties should invest in ensuring full coverage by deploying their party agents in all polling stations to increase transparency and minimize allegations of vote tampering;

• All contesting parties should have equal access to the public media and enjoy fair coverage for them to put- across their messages for the electorates to make decisions from an informed point of view;

• ECZ should draw lessons from the occurrences during the pre-election period particularly transparency in the procurement and transportation of all electoral materials by ensuring prior communication and publicity to all stakeholders about procurement and transportation of all electoral materials. This will help avoid the regrettable seizure of ECZ trucks or materials on suspicion of “rigging.”

• There is need for the Public Order Act (POA) to be administered fairly and impartially by the law enforcement agencies so that it does not continue to be a source of tension, disunity, discord and conflict.

• There is need to ensure that perpetrators of political violence are brought to book irrespective of political affiliation. This will go a long way in ensuring that incidents of political violence that contribute to not holding free and fair elections are minimized or eradicated.

• Notwithstanding the increase in the voter turnout, there is need to increase and intensify civic and voter education so that more registered voters can continue to exercise their democratic rights to vote.

Issued by:

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