

EISA TECHNICAL ASSESSMENT MISSION REPORT



**GENERAL ELECTION IN ZAMBIA,
12 AUGUST 2021**

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Acronyms and abbreviations

ACDEG	African Charter on Democratic Elections and Governance
AU	African Union
BVR	Biometric Voter Registration
CSO	Civil Society Organization
EISA	Electoral Institute for Sustainable Democracy in Africa
EMB	Election Management Body
ECZ	Electoral Commission of Zambia
FPTP	First-Past-The-Post
IBA	Independent Broadcasting Authority of Zambia
MP	Member of Parliament
NGO	Non-Governmental Organization
PF	Patriotic Front
PLWDs	People Living with Disabilities
PR	Proportional Representation
SADC	Southern African Development Community
TAM	Technical Assessment Mission
UPND	United Party for National Development
ZICTA	Zambia ICT Authority

EXECUTIVE SUMMARY

The Republic of Zambia held its 7th general elections since the end of one-party rule in the country on the 12 August 2021. Zambia has a well-established track record of peaceful elections, including peaceful transfer of political power which has occurred on two previous occasions since 1991. Zambia's legal framework and institutions are broadly aligned with international and regional standards for the conduct of democratic elections, including the SADC Principles and Guidelines for Democratic Elections and the African Charter on Democratic Elections and Governance (ACDEG). The Electoral Commission of Zambia is responsible for the management and delivery of democratic elections in the country, according to the Constitution of the Republic of Zambia and supporting electoral legislation. The elections took place during the Covid-19 pandemic, which placed additional requirements on all stakeholders to ensure that their conduct did not unduly endanger the lives of voters and ECZ officials.

EISA deployed a Technical Assessment Mission (TAM) to the Zambian elections to observe the general conditions under which the elections took place. This report reflects the data and information collected by the TAM from its stakeholder engagements, research and limited election day observations at some polling stations in Lusaka and surrounding areas. This report details EISA's assessment of the readiness of the ECZ for the 2021 polls, issues raised during stakeholder engagements and EISA's analysis of the prevailing conditions before, during and after the election day itself. The details of this report are based on the observations of the technical team members and does not claim in any respects to be representative of the full electoral context of the 2021 polls.

1. HISTORICAL AND POLITICAL OVERVIEW OF THE ELECTIONS

Zambia held its general election in 2016 under the new Constitutional Amendment which introduced changes

to the electoral framework. This amended constitution introduced the feasibility of a second presidential runoff when no candidate has secured 50%+1 of the votes in the first round of voting. Before 2016, the president was elected using a majority system in which the candidate with the highest number of votes was elected, even if they scored less than 50 percent of the valid votes cast (Article 47 of the 2016 Constitution)¹. 156 members of parliament are elected on the basis of the simple majority under the first-past-the-post system.

In the build up to the 12 August 2021 elections, which were the second to be held under the amended 2016 Constitution, there were fears expressed that this election may lead to similarly contested outcomes as those of the 2016 elections². The 2021 elections took place against a backdrop of fractious political and economic conditions, punctuated by moments of tension between the leader of the United Party for National Development (UPND), Hakainde Hichilema and state security forces. On one occasion, the leader of the opposition party was arrested and charged with treason, ostensibly for not moving out of the path of the President's motorcade, and later for plotting to overthrow the government. Hichilema had previously refused to recognize Edgar Lungu as the properly elected President of the Republic of Zambia after the 2016 elections and spent four months under arrest prior to a decision by the Zambian state not to prosecute the case against him.

The 2021 elections took place in the context of several contentious pieces of legislation, which critics claimed were designed to close the space for opposition political parties to contest the 2021 elections. The introduction of the Constitutional Amendment Bill (Bill 10), enforcement of the controversial Public Order Act (1955), Cyber Security and Cyber Crimes Act (2021), and the abolishment of the existing voter's register prior to the 2021 elections are some of the main examples which critics cited.

In 2019, the government introduced the Constitution Amendment Bill, commonly known as Bill 10, which was

¹ [https://www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution%20of%20Zambia%20%20\(Amendment\),%202016-Act%20No.%202_0.pdf](https://www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution%20of%20Zambia%20%20(Amendment),%202016-Act%20No.%202_0.pdf)

² Issues reported during the 2016 election period included: arrests of multiple opposition party leaders, an amended constitutional framework for the elections, accusations and counter accusations of perpetrating violence against party supporters between the PF and UPND, the security of the ballot paper, the ink used to stamp ballot papers, and the constitutional referendum run alongside the elections.

intended to increase presidential powers to nominate government ministers and court justices and introduce deputy ministers. The Bill would also allow for a coalition of government. This means that a presidential candidate who is not supported by the 50% +1 of registered voters could still be appointed into office through a coalition. In October 2020 it was shelved after an outcry by opposition parties and civil society. The UPND have criticized the Bill saying it was an electioneering tactic which would have allowed the government to create many new constituencies in its strongholds.

In 2021, just months before the election date, Zambia passed the Cyber Security and Cyber Crimes Act. The stated aim of this Act is to tackle digital crime. However, this Act proved controversial as civil society organizations and opposition parties felt that the Act was used to limit the freedom of the press and freedom of expression in the lead up to the August 2021 elections. UPND claimed that this Act would allow government to shut down internet on voting day. While there is recognition that there is need for effective regulation governing internet use, there is also concern over the extent of the regulation and its effect on freedom of expression, the right to information and the right to privacy³.

Concerns have also been raised about revamping the voter's register which expected millions of voters to be enrolled in 38 days. Opposition parties claimed that the new voter's register is not comprehensive enough and disenfranchised many potential voters in their strongholds. They have indicated that where Hakainde Hichilema holds strong support is in the rural areas which have very limited internet penetration.⁴ The addition of online voter registration and the restrictions to public gatherings due to Covid19 health concerns increased the importance of internet access ahead of the 2021 polls.

2. THE CONSTITUTIONAL, LEGAL, AND INSTITUTIONAL FRAMEWORK

Zambia has ratified various continental and international treaties governing universal human rights, democracy and rule of law⁵. The country's legal framework constitutes and mandates the Electoral Commission of Zambia (ECZ) to carry out elections in a free and impartial manner in the Republic.

The constitutional, legal framework within which elections are conducted in the Republic of Zambia comprises the following:

- The Constitution.
- The Electoral Process Act.
- The Law on the Electoral Commission of Zambia (which is explored further under the section dedicated to the Election Administration).
- The Local Government Election Act.
- The Public Order Act.

It should be noted that in addition to these laws, Standard Operating Procedures (SOPs) against Covid-19 were adopted which had an impact on the electoral processes.

2.1. THE CONSTITUTIONAL ORDER

Adopted in 2016 and amended in 2019, the Constitution of the Republic of Zambia provides a strong background for a democratic electoral process. The Constitution prescribes the protection of human rights and fundamental freedoms for all Zambian citizens without distinction. It also prescribes democratic principles, vesting sovereignty in the Zambian people (Provision 5) and promoting the rule of law.

The Constitution outlines the legal framework for the electoral system under Section 4. It sets the foundations of the electoral process by addressing the issue of representation of the people and the institutional

³ <https://www.dailymaverick.co.za/article/2021-05-10-zambias-new-cyberlaws-in-the-run-up-to-augusts-presidential-elections-draw-a-mixed-response/>

⁴ <https://mg.co.za/africa/2020-09-25-this-is-how-lungu-is-planning-to-rig-zambias-2021-general-election/>

⁵ International instruments ratified include the: Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on Elimination of all Forms of Discrimination against Women (CEDAW). African instruments include the: African Charter on Human and People's Rights, the African Charter on Democracy, Elections and Governance (ACDEG) and the Declaration of Principles on Freedom of Expression and Access to Information in Africa (DPFEA).

framework for elections: the Electoral Commission, delimitation of constituencies, political parties, and dispute resolution. The responsibility for implementing elections in Zambia is delegated to the ECZ as per Article 76 of the Constitution of the Republic of Zambia, 18, 1996 (amended), and the Electoral Commission of Zambia Act, 2016.

2.2. THE LEGAL FRAMEWORK

For national elections, the Electoral Process Act adopted in 2016 and amended in 2021 remain the main law under which the presidential and legislative elections are held. The Electoral Process Act sets and determines more precisely the framework of elections. The act describes the conditions and processes for the registration of voters and the electoral register. Registration to vote is open to all Zambian citizens who have attained the age of eighteen and have a National Identity Card. The Electoral Commission of Zambia is required to make necessary arrangements to facilitate the registration of eligible citizens. It shall conduct a continuous registration of voters. Conversely, registration on the electoral roll is refused to persons who do not have a National ID card, lack the ability to make “independent decisions”⁶ (mental health), or to citizens deprived of their civil and political rights by a court or other authority.

The Mission has noted that the amendment made to the Electoral Process Act in 2021 extended the right to vote to prisoners who have been allowed to vote for the first time. The recognition of electoral rights for prisoners, notably the right to vote, is a real achievement in terms of respect for the fundamental rights of citizens.

2.3. THE PUBLIC ORDER ACT

The Public Order Act lays down certain principles and regulates certain matters, including public meetings. The provisions of this Act referring to freedoms to assemble, hold public meetings and the like are general in scope, but in their application tends to favour the incumbent president and officials of the government including the

Speaker or Deputy Speaker of the National Assembly⁷. Those named are not, in fact, subject to the same constraints as opposition. The Mission was informed that, based on this Act, some opposition members were unable to hold all their intended meetings. The Act prohibits spontaneous public meetings which are specific to the electoral context due to the fact that a seven-day notice should be given to police officers who are authorized

“to fix the date, the maximum duration of the assembly/public meeting or procession, the person who may or may not be permitted to address such assembly or public meeting in such manner and any other matter to preserve public peace and order”⁸.

The legal framework governing the organisation and conduct of elections in the Republic of Zambia is largely aligned with international, continental, and sub-regional standards of elections. It recognizes the right for the Zambian people to freely choose its leaders and thus to participate in the management of public affairs. It is conducive to open and competitive elections.

The implementation of some of the provisions, however, reveals an inequity that needs to be addressed. This is particularly the case with the Public Order Act (Chapter 113 of the Laws of Zambia), which has been used to arbitrarily create distinctions between the permissible activities of incumbents and opposition candidates during campaigning.

The media landscape in Zambia is also highly polarized, and the suspension of operating licenses by the Zambia Independent Broadcasting Authority (IBA) of media critical to President Lungu and the Patriotic Front has severely impacted the voter’s access to information and an informed choice ahead of the 2021 elections.

3. THE ELECTORAL MANAGEMENT

The organisation and conduct of electoral processes in the Republic of Zambia is the sole responsibility of the

⁶ Mental Health Act, 2019.

⁷ Cf. Provision 5 of the Public Order Act.

⁸ Cf. Provision 5, sub-provision 5 of the Public Order Act.

Electoral Commission of Zambia (ECZ), an autonomous body delegated with this authority the Constitution in Article 229.

The ECZ is made up of five commissioners as follows:

- The Chairperson.
- The Vice-Chairperson.
- Three commissioners.

Those five members are appointed by the President of the Republic and these appointments are subject to ratification by the National Assembly⁹. The Chairperson and Vice-Chairperson are chosen among judges from the superior court, active or on retirement. Commissioners are appointed for a term of seven years and may be re-appointed for a second term of seven years.

The ECZ is responsible for appointing a Chief Electoral Officer to serve as its Chief Executive Officer¹⁰ who is responsible for the day-to-day administration of the Commission. In addition, the Commission is authorized, for the purpose of performing its functions, to establish committees as it considers necessary for a certain period.

The ECZ managed the elections within a general context of political tensions, security incidents between ruling and opposition parties' supporters and the Covid-19 pandemic. In the opinion of most of stakeholders with whom the mission met, the ECZ demonstrated control of its timetable and professionalism in the conduct of both the preparatory operations and the conduct of the quadruple ballot¹¹. However, some stakeholders were critical of the ECZ's silence on certain issues such as (i) acts of the ruling party's supporters who blithely violated the ban on rallies enacted as part of the fight against the spreading of the Covid-19 pandemic during the election period; (ii) the ruling party's monopoly of public media, and (iii) the slowing down/interruption of the internet connection on the election-day and certain times thereafter. This interruption constituted a serious violation of a fundamental right, notably the access to

information, as prescribed by the Zambian Constitution.

The TAM is of the opinion that the process of appointment and approval of the members of the Electoral Commission, respectively by the President of the Republic and the National Assembly, reinforces the independence of the Commission. Furthermore, the freedom given to the plenary of the Commission to set up the administrative structures and the various committees is welcomed.

No fundamental complaint was brought to the mission's attention regarding the composition of the ECZ Commission, whose members demonstrated professionalism in the preparation and the conduct of the elections. However, the TAM notes that the ECZ should be more assertive in dealing with actions that may affect the fairness, transparency and conduct of the electoral process. This could be done through a firm call to order of violators or prosecution to ensure compliance with the electoral legislation. Close coordination with the police and security forces would also build confidence in the ECZ to deal with violence and intimidation during an election.

4. ELECTORAL SYSTEM, POLITICAL PARTIES AND CAMPAIGN FINANCING

Zambia's electoral system, as prescribed by the Constitution of the Republic of Zambia, is informed by four fundamental principles, which emphasise the centrality of citizens' political rights; universal adult suffrage based on the equality of vote; fair representation of the various interest groups in society; and gender equity in the National Assembly or council¹².

There are three types of elections in Zambia, namely Presidential, through which the President is chosen; National Assembly, electing members of the National Assembly; and Local Government Elections, where mayors (in cities and municipal councils), council chairperson (in districts) and councillors (in wards) are elected¹³.

⁹ Art. 5 of the Act no 25 of 2016 on the Electoral Commission of Zambia

¹⁰ Art. 9 of Act no 25 of 2016.

¹¹ Four ballot papers for the Presidential, National Assembly, Mayor/Council Chair & local councilor elections were produced for the 2021 election.

¹² As per article 45 of the Constitution of Zambia.

¹³ For details, please see: <https://www.elections.org.zm/verc/electoralSystems.php>, as consulted on 15 August 2021.

The electoral system includes both a PR and FPTP system for different types of elected officials. The Presidential election is a Proportional Representation, majoritarian system, requiring an absolute majority of 50%+1 vote, failing which a run-off between the two most popular candidates is declared¹⁴. The election of the members of National Assembly and councils is a First-Past-The-Post system¹⁵ – one candidate is elected for each of the constituencies (156 in general)¹⁶, in a context in which each district elects one councillor per ward. One mayor or council chairperson is elected per each district, plus not more than three chiefs representing chiefs in the district, which are elected by the chiefs established in the concerned district¹⁷. Under the Constitution of Zambia¹⁸, the President can nominate not more than eight members of Parliament, when and where he considers it necessary to enhance the representation of special interests, skills and gender in the National Assembly¹⁹.

In addition to the general elections, held to elect the President, members of the National Assembly and elected representatives of Local Governments, Zambia also has by-elections, which are organised when the office of a member of parliament, mayor/chairperson or councillor becomes vacant²⁰.

In Zambia, political parties are constitutionally regarded as platforms for the promotion of good governance and accountability, and as instruments for enabling citizens participation in the republic businesses, which is substantiated by their rights and duties, as follows²¹:

- Dissemination of information on social and economic programmes of a national character and of its political ideology;
- Sponsoring of candidates for election or nomination to a state office in respect of which elections are required to be held; and

- Conducting of primary elections for the selection of their candidates.

Political parties are registered under the Societies Law as non-profit private entities. In Zambia, political parties are obliged to promote the values and principles specified in the Constitution; have a national character; promote and uphold national unity; promote and practice democracy through regular, free and fair elections within the party; respect the right of its members to participate in the affairs of the political party; respect the right of its members to seek redress from a court or tribunal when aggrieved by a decision of the political party; and subscribe to and observe the code of conduct for political parties, as prescribed²².

Given the relevance of political parties as platforms for good governance and citizens' political participation, the Constitution of Zambia prescribes for the establishment and management of a Political Parties' Funding Act, aimed at providing financial support to political parties²³. The TAM notes however, that although a Political Party Funding Bill was drafted in 2017, as of the 2021 elections this Bill has not been enacted into law, meaning that this provision of the Constitution is not presently covered by supporting legislation.

5. THE PRE-ELECTION PHASE

5.1. CIVIC AND VOTER EDUCATION

Zambia's voter education campaign began on the fourth of June throughout the country, and ended on the fourth of August 2021. It was extended to jails, where registered prisoners were entitled to vote for the first time in 2021. Implemented primarily by the ECZ, political parties, the media, and Civil Society Organisations (CSO), civic and

¹⁴ As per articles 47(1) and 101 of the Constitution of Zambia.

¹⁵ As per articles 47(2) and 68 of the Constitution of Zambia.

¹⁶ As per article 68, 2(a) of the Constitution of Zambia.

¹⁷ As per articles 47, 153 and 154 of the Constitution of Zambia.

¹⁸ As per article 68,2(b) of the Constitution of Zambia.

¹⁹ Articles 69(1) of the Constitution of Zambia.

²⁰ Ditto.

²¹ As per article 60(1) of the Constitution of Zambia.

²² As per article 60(2) of the Constitution of Zambia.

²³ As per article 60, 4(a) of the Constitution of Zambia.

voter education has been made difficult by COVID-19 and a general shortage of funding and capacity of CSOs. The most common approach to civic education during the 2021 voter education period was through mobile and digital media platforms, using electronic distribution of materials to reduce the costs of dissemination across a country with one of the lowest population densities in Africa. Although the TAM and other observer groups did not observe major issues relating to voter education campaigns, CSOs consistently reported reduced capacity to support these efforts due to funding and human resource constraints.

5.2. ELECTORAL CAMPAIGN

The Electoral Commission set the campaign period from May 12 to August 11, 2021. The election campaign was suspended due to the Covid-19. During the suspension, ordinary campaigning activities were embargoed, including prohibition on public gatherings and meetings, the dissemination of campaign materials in-person, and door-to-door campaigning. This situation has had a negative impact on the ability of candidates to reach out to the electorate. However, the mission observed that the application of the Electoral Commission's decision was not uniformly and fairly applied. While some political parties were banned from holding rallies and meetings, others campaigned with impunity. The mission deplores this biased treatment of candidates and recommends that the ECZ and Zambian Police Service should urgently review their conduct in responding to reports and complaints regarding unequal treatment of candidates based on their respective parties.

5.3. ROLE OF CIVIL SOCIETY

Zambian civil society is engaged in the electoral process through civic and voter education and election monitoring and observation. The TAM was concerned about feedback received from stakeholder organisations it met regarding the closing of space for civil society organisations in relation to not just elections, but Zambia's broader political life. The Cyber Security and Cyber Crimes Act, 2021, created an unhealthy environment for the freedom

of expression, sharing of information and the engagement of different ideas. Given the reliance of civic and voter education campaigns on digital platforms, the impact of this Act and its heavy-handed enforcement, created a pre-election environment which did not lend itself to a healthy democratic election process.

Limited financial resources also curtailed the participation of CSOs in the electoral process, and combined with the impact of the Covid-19 pandemic, travel restrictions and limitations on public gatherings, the general sense of engagement among CSOs with the electoral process appeared significantly reduced relative to previous elections. This reflects a reversal in trends, as Zambia's civil society has historically played a vibrant and enthusiastic role in the electoral processes.

5.4. BOUNDARY DELIMITATION

The ECZ is responsible for boundary delimitation in Zambia. According to Article 229 of the Constitution of Zambia (Amendment) Act No. 2 of 2016; Article 58 of the Constitution and Section 21 of the Electoral Process Act No. 35 of 2016, the ECZ is mandated to delimit Constituencies, Wards and Polling District boundaries for the purpose of conducting elections.

In delimiting Constituencies and wards, the ECZ is mandated to take into account the history, diversity and cohesiveness of the constituency or ward; have regard to population density, trends and projections; ensure that the number of inhabitants in each constituency or ward is reasonable, taking into account the means of communication and geographical features; ensure that constituencies and wards are wholly within districts; and seek to achieve an approximate equality of constituency and ward population, subject to the need to ensure adequate representation for urban and sparsely populated areas.²⁴

Boundary delimitation should be conducted at intervals of not more than ten years. The exercise should be consultative and engage all relevant stakeholders.

²⁴ Article 59 of the Constitution of Zambia

Stakeholders consulted included members of the House of Chiefs, political parties, Civil Society Organisations (CSOs) and Members of Parliament (MPs). If aggrieved, a person may apply to the Constitutional Court for review of a decision of the Electoral Commission.

Boundary delimitation for the 2021 elections was undertaken from July to December 2019. The process resulted in the increase in the number of wards and polling districts. Wards increased from 1,624 (in 2016) to 1,858 and Polling Districts from 7,700 (in 2006) to 8999 then to 12,152 after conversion of streams and those in Correctional Facilities. The Republic of Zambia currently has 10 provinces; 116 Districts; 156 Constituencies; 1,858 wards; and 12,152 polling stations.

5.5. VOTER REGISTRATION

Voter registration is the mandate of the ECZ. The law provides that ECZ shall conduct a continuous registration of voters.²⁵ Article 46 of the Constitution of Zambia (amendment), act No. 2, 2016 provides that a citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote in an election by secret ballot. A person is disqualified from registration as a voter if they are: not a citizen; not in possession of a national registration card or if legally disqualified.

The ECZ commissioned a new voters register instead of updating the previous roll as had been the tradition since 2005. Previously, an update of the voter registration in between elections entailed the registration of first-time voters as well as persons who had lost or needed to replace their voter card. It also entailed registration of persons who needed to change their voting locations, in terms of either the constituency, district, ward, or polling stations. All eligible citizens who planned to participate in the 2021 elections were therefore required to register afresh. These included those who had attained the age of 18 years as well as citizens who had registered during previous elections.

Voter registration was conducted for a period of 38 days. The official period of 34 days was from November 9 to December 12, 2021. This was followed by a four-day extension period from December 17–20. Section 17 of the Electoral Process Act No.35, 2016 provides for inspection of the Provisional Register. This took place from March 29 to April 7, 2021 across the country. Verification was either through a USSD number, ECZ website or physically at the various registration centers. The Commission certified the 2021 Register of voters on 9th May 2021. Out of their projection of 8,414,840 eligible voters, ECZ registered a total of 7,023,499 voters comprising 83.5% of their projections. Out of these 3,751,040 (53.40%) were female while 3,272,459 (46.60%) were male. 56.33% of the total registered voters were youth below the age of 35.

A Constitutional Court decision in 2020 extended the right to vote to prisoners.²⁶ This was actualized through Section 24A of the Electoral Process (Amendment) Act no. 32 of 2021. The Act also repealed provisions which disqualified persons in lawful custody from registration as voters. As a result, prisoners were registered and allowed to vote for the first time during the 2021 elections.

Stakeholders consulted by the Mission highlighted the issue that the ECZ did not subject the register to an independent audit. In response to the concerns, the ECZ stated that an independent audit was not necessary given that the voters' roll was new and that it had addressed most of the concerns that stakeholders had raised. It further urged stakeholders wishing to conduct an independent audit of the register to take advantage of the verification of voter details during the verification and physical inspection of the Voters Register²⁷. An independent audit of a voter register is vital as it enhances credibility of the data and demonstrated commitment by Election Management Body (EMB) to ensure transparency. This further enhances confidence of various stakeholders on the accuracy of the data.

²⁵ Section 7 of the Electoral Process Act No.35, 2016.

²⁶ The case of Godfrey Malembeka (Prisons Care and Counselling Association – PRISCA) Vs Attorney General and ECZ <https://zambialii.org/zm/judgment/constitutional-court-zambia/2017/1> accessed on August 14, 2021.

²⁷ The response was contained in a Press Release by the ECZ on January 25, 2021 titled: Responses to Various Stakeholders Views <https://www.elections.org.zm/2021/01/25/responses-to-various-stakeholders-views/> accessed on August 13, 2021.

Other concerns were raised regarding the limited period of time granted for the exercise as well as the weather conditions under which it was undertaken. Voter registration took place for 38 days during the rainy season. The prevailing environmental conditions were highly likely to have impacted on accessibility by some voters, preventing them from registering. While the ECZ was able to undertake all scheduled voter registration related activities during the set period and extended the period by some days, the period was deemed inadequate by stakeholders and may have disenfranchised some eligible voters who may have planned to register.²⁸ This is not in line with international standards that suggest that adequate time for the voter registration process, including associated processes of exhibition of register, objections and dispute resolution, should be ensured. The voter registration process should be undertaken within a realistic timeframe, promote broad participation and not inhibit the participation of eligible voters.

5.6. POLITICAL PARTY REGISTRATION AND CANDIDATE NOMINATION

5.6.1. Political party registration:

Article 11 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 provides for Freedom of Assembly and Association. It holds that no law shall be held to be inconsistent with or in contravention of the article. Political parties are registered under the Societies Act by the Registrar of Societies. The Act provides that an application for registration must be made within 28 days of its founding. On registration, a party is issued with a registration certificate. A Registrar may refuse to register a political party if it's: goals are illegal or prejudicial to law and order; the party's constitution violates Zambia law; the application fails to comply with the terms of the Societies Act, or regulations made under it; the party does not exist; and if the name is illegal or resembles that of another organisation in a way that is deceptive. A party may appeal to the Minister of Home Affairs and Internal Security against refusal of registration by the Registrar within 21 days of refusal.

Article 13(2) and 17 provides for the deregistration of a political party by the Minister if he/she believes that the party concerned is being used for illegal activities or activities prejudicial to law and order. The Registrar may cancel a political party if it violates the terms of registration; changes its name or constitution without informing the Registrar within a month of doing so; if it affiliates with a foreign political body without informing the Registrar within a month of doing so. A political party is granted an opportunity to defend itself before deregistration. Appeals against deregistration by the Registrar may be made to the Minister within 21 days of cancellation.

Political parties are required to, among others, respect the right of its members to seek redress from a court or tribunal when aggrieved by a decision of the political party as well as subscribe to and observe the code of conduct for political parties.

The Mission noted that there are no legal provisions for state funding of political parties. Parties therefore rely on party membership to fund their activities.

5.6.2. Candidate nomination

Political parties are, through internal party procedures, responsible for nomination of candidates for the various elective seats. Once nominated by the political parties, candidates lodge their nominations with the ECZ. The Constitution of Zambia (Amendment) Act No. 2, 2016 provides for the eligibility criteria for the candidates to the various political seats. A person is eligible for nomination as a candidate for election as President if he/she is a citizen by birth or descent; has been ordinarily resident in Zambia; is at least thirty-five (35) years old; is a registered voter; has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent; is fluent in the official language; has proof of paid taxes; declares his/ her assets and liabilities; pays the prescribed election fee on, or before, the date fixed for the delivery of nomination papers; and is supported by at least one hundred (100) registered voters from each Province.

Similar requirements are mirrored at the National Assembly level. However, a candidate for Member of Parliament (MP) should be at least twenty-one (21) years old and should be supported by at least fifteen (15) persons registered as voters in the constituency in which the candidate is standing for election. In addition to the above qualifications, a person is eligible for election as an independent candidate for a National Assembly seat if he/she is not a member of a political party and has not

been a member of a political party for at least two months immediately before the date of the election.

Nominations for Presidential, Parliamentary and Local Government Elections (mayoral/ Council Chairpersons and Councilor elections) were conducted from May 17 to May 12, 2021. The ECZ reported that other nominations, due to deaths and resignations, were conducted on 12th July 2021.

Summary of candidate nomination 2021

Election Type	Female	% Female	Male	% Male	Total
Presidential	1	6.25	15	93.75	16
Member of Parliament (MP)	181	21.12	676	78.88	857
Councilor	565	9.92	5128	90.08	5693
Council Chairperson/ Mayor	56	12.81	381	87.19	437
Total	803	11.47	6200	88.53	7003

The mission noted that participation of women as candidates was dismal. Women comprised 11.47% of all candidates compared to 88.53% male candidates. The lowest entry was at the presidential level where only one female candidate participated comprising 6.25% of the total number of presidential candidates. In the other elective posts, female MP candidates comprised 21.12%; Councilor 9.92% and Council Chairperson/ Mayor 12.81%. The low numbers could be because of limited formal structures within political parties to boost political participation of women.

participate and contribute to the maximum of their capacities and to benefit equally from national development.

However, the mission observed many shortcomings in the implementation of this commitment. In terms of women's representation in elected assemblies and decision-making bodies, statistics show that 32.03% of ministers are women and 16.08% of deputies are women. Regarding women's participation in the August 2021 electoral process, the mission notes the following regarding candidacies:

6. CROSS-CUTTING ISSUES

6.1. GENDER, YOUTH AND PEOPLE LIVING WITH DISABILITIES (PLWDS)

The Zambian Legal Framework affirms equal rights for all citizens. Based on the constitution, the African Charter on Human and Peoples' Rights and the Convention on the Elimination of All Forms of Discrimination against Women, the national gender policy aims to ensure the achievement of gender equality in the development process by redressing existing gender imbalances. It also provides for equal opportunities for women and men to actively

- 1 woman out of 16 candidates for the presidential election
- 565 women out of 5693 candidates for the councilor election
- 181 women out of 857 candidates for the MP election
- 56 women out of 437 candidacies for Council Chairperson/mayor

As voters, women represent 53.41% of the electorate (3,739,971 women out of a total of 7,002,393). The mission congratulates the Zambian Electoral Commission for the efforts observed in terms of the representativeness of women both

within the Commission (2 out of 5 women), and within the polling stations where the mission was able to observe, the effective presence of women, many of them as presiding officers. Young people constitute 56.33% of the Zambian electorate. For example, they represent 35.98% of the deputies in the national assembly.

The Zambian legal framework promotes equal rights for all. The Zambian Election Commission as an illustration, has taken several steps for the participation of people with disabilities in the electoral process. Beyond the conventional provisions, the Commission has been innovative by introducing the Tactile Ballot Jackets which can be placed over a ballot paper to enable visually impaired persons to vote independently from assistance for the first time in Zambia. The mission congratulates the electoral commission for this innovation and nevertheless notes the need to facilitate greater access for people with disabilities at polling stations. The TAM noted that although ECZ staff are trained on how to assist person's voting with a disability, the application of the procedures to assist such voters were erratic in their application.

6.2. ROLE OF THE MEDIA

Coverage of the leading candidates in the Presidential Ballot on the national broadcaster and other state-owned media platforms tended to give disproportionate coverage to the incumbent, President Lungu. While there were clearly efforts to ensure coverage of all the major candidates, the proportion of airtime, coverage and types of stories tended to favour the President over all other candidates. The closure and censoring of independent media, internet bloggers and journalists impacted the quality of information available to voter's during the 2021 elections. The ability of the media to cover political activities, to capture the issues concerning voters and to encourage debate and dialogue was also negatively impacted by the Covid-19 pandemic.

Debate on traditional media platforms was rare, and when the TAM did note evidence of this, the engagement was often quite muted. It is concerning

that across multiple electoral cycles, the state of Zambia's media (both national and independent) has been found wanting, despite the legislative and institutional tools needed for the media to play a positive role in strengthening and deepening democracy in the country. There is need for greater attention around media issues and the role of the media in Zambia going forward.

The TAM noted the court petition brought by a local NGO, the Chapter One Foundation, to overturn a blackout of all social media platforms including: WhatsApp, Facebook and Instagram. The ban had been originally ordered by the Zambia ICT Authority (ZICTA), but after the court ordered that all restrictions on access to these platforms be lifted, access to these applications was mostly restored within 24 hours after the election.

6.3. THE ROLE OF SECURITY AGENCIES

The role of the security forces during the 2021 elections was successful in preventing any serious outbreaks or conflict, and the election day itself was generally peaceful, with some isolated incidents reported by the media and CSOs. Although incidents of violence were not widespread, the elections took place within the context of heightened political risks, predominantly as a result of tensions between supporters of the two largest political parties, PF and UPND, and a perception of partisan treatment by the police. These tensions required careful management and created unnecessary additional anxiety for voters as election day approached.

The TAM also received reports from civil society and opposition parties of heavy-handed police response to political gatherings, and the UPND complained that the application of the Covid-19 restrictions announced during the campaigning were being ignored by the governing party while all other parties were required to halt campaigning. Based on its own observations and discussions with the other observer groups, the TAM is concerned at a pattern of behaviour that suggests that treatment of the governing party by the police could indeed be characterized as preferential, undermining trust in the role of the security forces during the election. It is essential that these security forces should be

seen as impartial and not showing favour during political contests, as prescribed by the laws and Zambian Constitution.

7. THE ELECTION AND POST-ELECTION PHASES

7.1. POLLING DAY

The TAM did not deploy sufficient observers to make any definitive findings regarding the electoral process. The following remarks are simply a summary of what was observed by the TAM team in polling stations where it observed during election day and should not be seen as representative of the situation in all regions of Zambia.

The TAM team was dispersed to different polling stations on the election day. During the opening of the polling stations, the mission observed a smooth and calm process. The polling stations opened on time (06h00) and remained opened for the stipulated period of time. Empty ballot boxes (four) were displayed before sealing during the opening. The ballot boxes were rightly sealed and given the seal numbers. All eligible voters were allowed to cast their vote without fear or intimidation. The mission also observed that priority was granted to people with disabilities, pregnant and essential workers such as nurses and security officers. Other polling stations were using the Biometric Verification Technologies to verify the voters. However, the manual verification was still used in all the polling stations. Sufficient electoral materials were available for voting at all polling stations visited during the day.

The polling staff were sufficient in number and conducted elections in a professional manner. However, in some instances, the TAM teams noted inconsistencies in the application of Covid-19 protocols, and when assisting voters who required or requested assistance from the ECZ staff. Party agents and Citizen observer groups were granted access in the polling stations and conducted themselves in a fair manner without

any interference in the voting processes. These groups were given the voter register to confirm the voters as the electoral staff called out their names. Security forces were adequately present in all the polling stations the mission visited. They conducted themselves in a professional and discreet manner and made no intimidations to the voters. Security officers who were deployed on election day were allowed to cast their vote in any polling station, but were only issued with the Presidential ballot.

International observers were granted accreditation by the ECZ on time. As such, at the polling stations, the observers were granted full access to the polling stations upon presentation of their accreditation cards. The observer groups were also free to interact with the stakeholders inside the polling stations including, party agents, citizen observer groups and presiding officers.

The closing of the polling stations also proceeded smoothly and in a calm manner. However, some polling stations did not close at the stipulated time given that the queues were still long, and many people still needed to vote. Counting process began immediately after closing of the polling stations, even though it was slow.

The TAM has noted the following challenges experienced in polling stations:

- Long queue and poor queue management (Made worse where BVR were used);
- No adequate lighting at some polling stations especially during the counting process;
- No secrecy of the ballot at some polling stations; and
- Polling stations in close proximity within a single polling centre making it difficult to adhere to the Covid-19 safety measures, particularly social distancing.

8. THE POST-ELECTION PHASE

8.1. AGGREGATION OF RESULTS

The ECZ announced the final result of the election within the 72-hour period prescribed in the laws, with the final results being declared on the 16 August 2021. The transmission of results was monitored at the national tallying centre by party agents and ECZ officials, and an additional security measure allowed polling agents to view verified results coming into the national centre from the field. Accredited international and national observers were also permitted access to the national tallying centre. The ECZ provided regular updates and press briefings until the final announcement and these measures enhanced the transparency of the electoral process.

8.2. COMPLAINTS PROCESS AND DISPUTE RESOLUTION ARISING

On 14 August, after early results showed Hichilema leading Lungu, the President released a statement rejecting the results, stating that: “President Lungu says the general election in three provinces, namely, Southern province, North-western province, and Western Province, were characterised by violence, rendering the whole exercise a nullity”²⁹. Citing the killing of a PF Party Chairman in North-western Province, President Lungu unilaterally declared the elections were “not free and fair”. Although it was widely expected that Lungu and the PF would petition the Constitutional Court regarding the election results, after the final announcement and high-level talks between former Heads of State under the banner of the AU and Lungu, the President relented and later conceded defeat.

8.3. ANNOUNCEMENT OF THE FINAL RESULTS

According to the officially announced results, the UPND Presidential candidate, Hakainde Hichilema won 59.02% of the vote, and incumbent President Edgar Lungu, candidate for the Patriotic Front won 38.71%. In total, 16 candidates contested the Presidential elections, and the other 14 candidates

secured less than 3% of the vote. The Parliamentary seat allocation was: 82 seats for the UPND, 59 seats for the Patriotic Front, 1 seat for the PNUP and 13 independent seats. On 24 August 2021, Hakainde Hichilema was sworn in as the new President of Zambia, marking the 3rd peaceful transfer of power via the ballot box in Zambia since the end of one-party rule.

9. CONCLUSION AND RECOMMENDATIONS

9.1. CONCLUSIONS

Although the 2021 Zambian elections were held during a period of elevated tensions between political actors, and despite the regrettable incidences of violence reports in some locations, EISA was pleased to witness an election that concluded in a peaceful and transparent manner, and which facilitated a non-violent transfer of political power from the incumbent to the President-elect.

The conduct of the ECZ and its staff should be commended for delivering an election that delivered to a large extent the mandate imposed on it by Zambia’s constitution and legal framework, and in line with regional and international standards and benchmarks. While the TAM noted areas for future improvement, the will of the electorate was reflected in the final results.

Finally, the TAM noted with appreciation the increase in the number of young and first-time voters in Zambia during the 2021 elections. The engagement of young voters in particular is a positive trend and EISA wishes to applaud the youth of Zambia for turning out in their numbers to reflect their preferences at the ballot box.

9.2. RECOMMENDATIONS

To the Government of Zambia:

- Address the underlying conditions which lead to pre-election violence, intimidation and acts of vandalism.

²⁹ <https://www.reuters.com/world/africa/zambias-opposition-leader-hichilema-takes-early-presidential-election-lead-2021-08-14/>

- Review the legislation governing campaigning to clarify the conditions for campaign rallies by political parties and to level the playing field for all parties.
- Review the state's laws and policies on mainstream and alternative media platforms to enhance a plurality of voices, opinions and debates, protecting the right to freedom of speech and freedom of expression.

To the Electoral Commission of Zambia:

- Review the performance of the ECZ with respect to civic and voter education, as well as the support provided to Zambian CSOs who have historically played a key role in this area in previous elections.
- Enhance training of polling staff to ensure familiarity with procedures and for effective processing of voters.
- That the ECZ ensures that future updates to the Voter's Roll are done in a timely fashion, sufficient days are allocated to the registration process to allow all voters who wish to register to do so, and that an independent audit of the voter's roll is conducted in time to make amendments to the voter's roll prior to the election date.

To the political parties:

- To refrain from the types of political intimidation and posturing that in a few instances spilled over into actual violence between rival groups of supporters.
- To fully commit to the legislated mechanisms for dispute resolution and redress prior to resorting to mass protest action.
- To urgently review the performance of political parties in promoting the representation and election of women to political office both within the party and into public office.

To the media:

- To review the current policies around campaign coverage to address the clear favouritism demonstrated to an incumbent candidate, and to draw lessons from the 2021 elections on how to improve this performance in future elections.
- To embrace a culture of openness and debate, civil disagreement and dialogue that enhances the capacity of the voter to make informed choices.

To all stakeholders:

- To review Zambia's performance in conducting a mass event like an election during the Covid-19 pandemic, identifying what worked well and what did not work well in protecting ECZ staff and the electorate and at the same time allowing Zambians to enjoy their democratic rights.

ABOUT EISA

EISA has since its inception in July 1996 established itself as a leading institution and influential player dealing with elections and democracy related issues in the African continent. It envisions an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment. The Institute's vision is executed by striving for excellence in the promotion of credible elections, citizen participation, and the strengthening of political institutions for sustainable democracy in Africa.

Having supported and/or observed over 120 electoral processes in Africa, EISA has extensive experience in formulating, structuring and implementing democratic and electoral initiatives. It has built an internationally recognised centre for policy, research and information and provides this service to electoral management bodies, political parties and civil society organisations in a variety of areas, such as voter and civic education and electoral assistance and observation. Besides its expanded geographical scope, the Institute has, for the past several years, been increasingly working in new in-between election areas along the electoral and parliamentary cycle, including constitution and law making processes, legislative strengthening, conflict management and transformation, political party development, the African Peer Review Mechanism (APRM) and local governance and decentralisation.

EISA provides assistance to inter-governmental institutions like the African Union and Regional Economic Communities to reinforce their capacity in the elections and democracy field, having signed an MoU with many of these institutions. Within the framework of these signed memoranda, the Institute provides assistance to these intergovernmental institutions.

With offices in Johannesburg (South Africa) and Abidjan (Côte d'Ivoire), EISA has had field offices across the African continent and currently has offices in Central African Republic, Democratic Republic of Congo, Madagascar, Niger, Tanzania, Somalia and Sudan, and a regional liaison office at the secretariat of the ECCAS in Libreville, Gabon.

Election observation activities

Since its inception EISA has deployed continental observation missions including missions, notably to Angola (2008), Botswana (1999, 2004, 2009), Central African Republic (2010, 2011), Côte d'Ivoire (202) Democratic Republic of Congo (2005 referendum, 2006 elections), Egypt (2011, 2012, 2014), Ghana (2008, 2012), Guinea Conakry (2010), Lesotho (1998, 2002, 2007, 2012, 2015), Liberia (2011), Madagascar (2005, 2007, 2013), Malawi (1999, 2004, 2009), Mauritius (2000, 2005, 2010, 2014), Mozambique (1999, 2004, 2009, 2013, 2014, 2019), Namibia (1999, 2004, 2009), Senegal (2012), Seychelles (2011), South Africa (1999, 2004, 2009, 2014), Tanzania (2005, 2010, 2020), The Gambia (2021) Uganda (2011), Zanzibar (2005, 2010), Zambia (2005, 2008, 2011, 2015, 2020), and Zimbabwe (2000, 2002, 2008), Reports on these missions can also be found on our website.



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About EISA

EISA is a not-for-profit-organisation established in 1996 based in Johannesburg, South Africa with regional offices in Abidjan Côte d'Ivoire and Libreville, Gabon. EISA currently has and has had field offices in 20 African countries.

Our vision

An African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment.

Mission statement

EISA strives for excellence in the promotion of credible elections, citizen participation, and strong political institutions for sustainable democracy in Africa.

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