

ZAMBIA



CASE STUDY: ZAMBIA
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ACRONYMS AND ABBREVIATIONS

ANC	African National Congress
CCMG	Christian Churches Monitoring Group
CoC	Code of Conduct
CRC	Constitution Review Commission
CSEC	Civil Society Election Coalition
CVE	Civic and Voter Education
ECZ	Electoral Commission of Zambia
ERTC	Electoral Reform Technical Committee
FDD	Forum for Democracy and Development
FODEP	Foundation for Democratic Process
FTPT	First Past the Post
MMD	Movement for Multiparty Democracy
NEC	National Executive Committee
NRC	National Registration Card
PF	Patriotic Front
SACCORD	Southern African Centre for Constructive Resolution of Disputes
TIZ	Transparency International Zambia
UDA	United Democratic Alliance
UNIP	United National Independence Party
UPND	United Party for National Development
UPP	United Progressive Party
ZEA	Zambia Electoral Alliance
ZNBC	Zambia National Broadcasting Cooperation
ZNWL	Zambia National Women's Lobby

BACKGROUND AND POLITICAL CONTEXT

Zambia got its independence from Britain in 1964, and, like most former colonies of Britain, it follows a British-style parliamentary democracy. The country holds presidential and parliamentary elections every five years and the president can only run for two consecutive five-year terms. Since independence, ten elections have been held, with the last six being the most contentious and competitive (1996-2015). As leader of the United National Independence Party (UNIP), Kenneth Kaunda was elected first president of Zambia at independence in 1964, marking the first republic. During this first republic, which lasted from 1964 to 1972, two multiparty elections were held in which Kenneth Kaunda and UNIP emerged victorious. In 1973 and still under the leadership of Kenneth Kaunda, one-party rule was introduced and this system obtained during the four presidential and local government elections held in 1973, 1978, 1983 and 1988 – all of which were won by Kenneth Kaunda and his UNIP party.

In 1991, following heavy criticism and demand for change among citizens, the country reverted to multiparty elections. For the first time since independence elections were won by an opposition party, the Movement for Multiparty Democracy (MMD) under the leadership of Frederick Chiluba. The MMD won massively with 75.8% of the votes, ending the 27-year rule of UNIP. The subsequent elections held in 1996 and 2001 were won by Chiluba, although they were marred by controversy following some changes to the constitution regarding the parentage of presidential aspirants. The new provision in the constitution stated that only people with Zambian parents could contest the presidency. This clause effectively barred former president Kenneth Kaunda from re-contesting presidential elections because his father was of Malawian descent. Thus, Chiluba was assured victory without any significant challenger in the absence of Kaunda.

Having completed his two constitutional mandates, Frederick Chiluba attempted to run for a third term of office by altering the constitution. This led to major public disapproval, and some senior members of the MMD left in protest against this third bid by the president, with some even forming their own political parties. Significant among these was Anderson Mazoka, who formed the United Party for National Development (UPND). Following a failed third bid, the president chose Levy Mwanawasa as his successor, a development that was seen by many in the MMD as inconsistent with the party's procedures especially since at that time Mwanawasa had resigned from government and was also no longer an active member within the party. This led to more senior members leaving the party, including Michael Sata, who went on to form the Patriotic Front (PF). Both the UPND and PF became MMD's biggest political rivals. The UPND was runner-up in the 2001 general elections, while the PF took over power from the MMD in 2011.

Mwanawasa won the 2001 elections and became the third president of Zambia. The election results were petitioned by not only his closest competitor Anderson Mazoka of the UPND but also other opposition party members who felt the elections had been rigged. In 2005, President Mwanawasa appointed an Electoral Reform Technical Committee (ERTC) in response to calls among stakeholders for electoral reforms.¹

The build-up to the September 2006 general elections witnessed the birth of the United Democratic Alliance (UDA). The UDA was an alliance of the three main opposition political parties: the Forum for Democracy and Development (FDD), UNIP and the UPND. The three came together to rally behind one candidate, Anderson Mazoka, but his untimely death in May 2006 brought Hakainde Hichilema to power as the new UPND leader and subsequently UDA leader. On the other hand the PF under Michael Sata had also gained significant momentum and had proved a strong opposition force. However, the presidency was again won by Mwanawasa and the MMD.

Following the untimely death of President Mwanawasa in August 2008, and as per the constitution, a presidential by-election was held within ninety days and ushered in Rupiah Banda, who had been the vice-president. President Banda's term was to be a completion of Mwanawasa's tenure before the next elections in 2011. Banda was not successful in his bid to contest elections beyond the late Mwanawasa's term. The 2011 general elections were instead won by the PF under the leadership of Michael Sata, making him the fifth president of the Republic of Zambia. However, in October 2014, following a long illness, President Sata died, creating a vacancy in the Office of the President.

For the second time in one decade, Zambia experienced the death of a sitting president. Guy Scott, who was vice-president at the time of Sata's death, became the acting president as the country prepared for the imminent by-elections. The build-up to the January 2015 presidential by-elections was characterised by excessive and unprecedented intra-party and inter-party political violence. The PF appeared to have had no succession plan and went through serious turmoil mainly due to the rivalry between two factions, which supported Edgar Lungu, then defence and justice minister, and the acting president, Guy Scott. Like Kaunda, Guy Scott was automatically disqualified from the presidential race because of his foreign parentage (Scottish, in his case). Therefore, the best his faction could hope for was to nominate its preferred candidate over Edgar Lungu. Lungu was however eventually chosen as PF presidential candidate, and, similar to the MMD's Rupiah Banda in 2008, he elected to complete the presidential term of the late president. President Lungu's term of office therefore ends in 2016.

¹ Luke Mbewe, dissertation on the 'Effectiveness of the Zambian Electoral system', University of Zambia 2009.

It is against this background of a transition from a one-party state to a multiparty democracy characterised by a dominant party system, intra- and inter-party tensions and numerous by-elections that this study looks at the integrity of elections in Zambia. It begins with a look at the institutional framework in order to provide the setting within which the elections are conducted.

OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

The legal and institutional framework around elections in Zambia is adequate to guarantee credible elections. Concerns around the electoral process have mainly been around implementation of the legal framework as well as on the management of the elections. These are looked at in respective sections of this study. The constitution sets the principle and foundational basis for the electoral process. It also provides for the electoral system and enactment of acts of parliament to give meaning and force to its provisions. Besides the constitution, the key pieces of legislation that provide for the legal and regulatory framework for the conduct of elections are:

- i. The Electoral Commission Act (1996)
- ii. The Electoral (Code of Conduct) Regulations (2011)
- iii. The Electoral Act (2006)
- iv. The Electoral (General) Regulations (2011)
- v. The Local Government Elections Act (1991)

These pieces of legislation guide the tripartite elections, namely the presidential, parliamentary and local authority elections. There are also other pieces of legislation that reinforce the above laws during elections. For example, the Public Order Act is very critical during the campaign period. As indicated above, laws exist to ensure credible elections, but it is enforcement that is often problematic. For instance, the police are often accused by opposition parties in most cases of unequal treatment of the opposition and the ruling party when enforcing this act where there are offences during election campaigns. The perceived or real administration of the Public Order Act is seen by the opposition as disadvantaging and undermining the principles of holding free, fair and credible elections.

ELECTORAL SYSTEM

Zambia operates the First-Past-The-Post (FPTP) electoral system in which the presidential, parliamentary or local authority candidate who obtains the highest number of votes in an election is declared the winner.¹ In the event that a parliamentarian crosses the floor, a vacancy is declared by the Speaker of Parliament in line with Article 71 (2)

c of the constitution.¹¹ Such a vacancy has to be filled within 90 days of the seat being declared vacant. The constitution provides for the election of the president by a simple majority in an FPTP system. In the recent past, recommendations have been made to the Electoral Commission regarding the electoral system, with most of these suggesting that there is a need to change the electoral system from the FPTP to a Mixed Member Proportional System (MMP), with the view that this will help the country to avoid holding by-elections caused by floor-crossing. The MMP is also seen as ideal for the promotion of the participation of women in the absence of affirmative action for gender representation.

The advocates of the FPTP electoral system however argue that it guarantees broad representation of diverse political interests and population groups. Yet, by virtue of it being a winner-takes-all system, elections under this system are often highly competitive. In other words, only candidates who are seen as having a real chance of winning an election are nominated by their parties or individual supporters. Candidates also need to have financial support guarantees and other resources needed to campaign so that the party does not have to sponsor the candidate 100% in terms of resources. The FPTP electoral system therefore inhibits participation of a broader membership of political parties or individual citizens as candidates if they cannot demonstrate the ability to amass financial resources to run for political office.

In its report on the 2015 presidential by-elections, the African Union election observation mission notes that as a result of the electoral system, Zambia's presidents have never been elected by over 50% of the total votes cast. It further notes that the FPTP system could negate the authority and legitimacy that a president would otherwise derive from the expression of the will of the majority of the people. The AU does not however suggest that the electoral system as it pertains to presidential elections directly impacts on the integrity of the electoral process itself.

PARTY AND CAMPAIGN FINANCE

The Zambian constitution does not provide for public or private financing of political parties. Political parties therefore rely on the people who form them for their financial needs. This situation has time and again led to an outcry from opposition parties, which accuse the ruling party of abusing state resources, thereby benefiting from an uneven playing field. The MMD used to enjoy the incumbency advantage and did not heed opposition parties' call for changes, but now it is in the opposition ranks and among the parties which are crying foul over the absence of party and campaign finance. This issue is among the major concerns that are being given attention in the current draft constitution. The draft constitution enshrines party and campaign finance and account-

ability mechanisms. Article 125 (1) of the draft constitution states that:

- (1) A political party shall keep proper books and records of account.
- (2) Within three months after the end of the Government's financial year a political party, which is funded under this Part, shall submit its books and records of account to the Auditor-General for audit.¹¹¹

The 2015 African Union Electoral Observation Mission (AUEOM) report notes that the Zambian legal framework falls short of Article III (g) of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, which requires AU member states to put in place a regulatory framework for party and campaign finance in order to ensure that parties are able to partake in the electoral process. Most importantly, the report succinctly states the following:

31. The AUEOM further noted that the absence of party and campaign finance regulatory provisions in the legal framework open the electoral process to the unregulated influence of money. Such uncontrolled influence of money could impact on the fairness of the process by tilting the access to resources in favour of some parties to the disadvantage of others.

It follows therefore that party and campaign finance remains a critical issue in the Zambian electoral process. There has to be a law guiding how this is to be done, including a formula for access to public resources, ceilings for campaign expenditure as well as disclosure of the sources of funding. At the moment only the Drug Enforcement Commission (DEC) has an act of parliament (the "Anti-money Laundering Act") as an immediate mechanism to address issues around suspicious sources of funding for political parties. Opposition parties complain that the ruling party has unfettered access to public funds that it uses for its campaigns. If left unchecked, this abuse of state resources will erode the integrity of the electoral progress.

ELECTION MANAGEMENT

The constitution of Zambia provides for the establishment of an election management body (EMB), the Electoral Commission of Zambia (ECZ). The ECZ is envisaged by Article 76 of the constitution as an independent type of EMB. The provisions of the constitution are operationalised through the enactment of the Electoral Commission Act No. 24 of 1996. This act provides for a commission comprising a chairperson and not more than four other members appointed by the president, subject to ratification by the National Assembly (Section 4), for a term not exceeding seven years. The renewal of this term is subject to approval by parliament.

The following functions are performed by the ECZ:

- Supervising the registration of voters
- Conducting presidential and parliamentary elections
- Conducting and supervising the local government elections
- Conducting voter education
- Resolving election disputes through the establishment of conflict management committees
- Performing any other statutory functions that the National Assembly assigns the commission

Below the commission is the secretariat headed by a director, who is the chief executive officer of the institution. The secretariat has three deputy directors, who support the implementation of policies and decisions. The chairperson and members of the commission constitute the policymaking body. The commission also has district electoral officers, who are responsible for managing elections at constituency level. The chief justice is the returning officer who declares the winner of the presidential results.

The commission has regulatory power to determine how all election activities shall be conducted. The Electoral Act empowers the commission to regulate the registration of voters, presidential and parliamentary elections, election offences, electoral code of conduct and penalties, election petitions and the hearing of applications relating to parliament.

Notwithstanding the clear provisions of the law, the appointment of the commissioners by the president has been questioned, mainly by opposition parties. Their contention is that by being the appointing authority of a commission which presides over an election in which he contests, the president has an undue influence over that commission. Thus, the independence of the ECZ has as a result been questioned, because it is assumed that the commissioners “will not bite the hand that feeds them”. The opposition further argues that the provision that the names of the would-be commissioners have to be vetted by parliament have no effect because the ruling party has a majority of seats in parliament and effectively uses this strength to rubber stamp the president’s appointees. This has contributed to the negative attitude towards the ECZ from among opposition ranks.

It is worth noting that the question of the independence of the ECZ is based more on who is the appointing authority rather than how the commissioners are appointed

and how they perform. The reports of some observer groups on this issue have also been directed at the appointing authority. This is the weakness of the instruments used to assess the integrity of the elections with regard to election management. The argument that a statutory body lacks integrity simply because it is appointed by the president and not because of concrete evidence is flawed. The pan-African instruments ought to interrogate the criteria of appointment to see if they are transparent.

ELECTION DISPUTE RESOLUTION MECHANISMS

Zambia has a two-pronged election dispute resolution mechanism. This comprises on the one hand the conflict management committees established by the ECZ at the national and district levels. These are multi-stakeholder structures consisting of:

- Chairperson appointed by the commission
- Vice chairperson
- A representative from each registered political party
- Civil society organisations
- Representatives of government ministries
- Institutions as determined by the ECZ

The committees mediate in conflicts within their jurisdictions in a timely and prudent manner to ensure a peaceful election environment. The electoral code of conduct stipulates that the conflict management committee resolves or encourages amicable settlement of disputes within twenty-four (24) hours from the date of receipt of the complaint. Where election-related crimes such as political violence and assaults of members of the public are committed, the national and district conflict management committees report these to the police.

The second way in which election disputes are settled is through the judiciary. Only the judiciary has powers such as the disqualification of candidates or imposing other sanctions where violation of the electoral laws warrants such an action. Previously, the judiciary has mainly dealt with cases regarding elections results in line with provisions of the electoral law. For instance, section 21 (3) of the Electoral Act stipulates that presidential petitions can only be referred to a full bench of Supreme Court judges. This is to be done within 14 days of the winner having been sworn in. There is no time limit specified for the resolution of presidential election results disputes. This means that by the time the court reaches its conclusions, the occupant of the disputed seat could have spent years in office. The provision of the law in resolving the presidential results disputes therefore serves little or no purpose. The AUEOM report is categorical about this weakness:

The AUEOM noted that, while the current legal framework provides a system for the resolution of election related disputes, it does not provide reasonable time for the resolution of disputes before the swearing-in of the new president. In line with Article 34(9) of the Constitution that stipulates that the winner of a presidential election should be sworn-in not later than 24 hours after the declaration of election results [sic].

Section 93 (1) of the Electoral Act mandates the High Court to preside over parliamentary election results petitions. Such petitions can be brought before the High Court within 30 days of the declaration of results. The High Court is supposed to finalise matters relating to parliamentary results in no more than 180 days.

The electoral code of conduct is not clear on intra-party conflict management mechanisms and this has seen the High Court dealing with many intra-party conflicts regarding presidential nominations during the 2015 presidential by-elections. For instance, the ruling Patriotic Front (PF) and its main rival the Movement for Multiparty Democracy (MMD) had serious intra-party wrangles. The two parties were saved by the courts of law in determining which of their presidential aspirants was legitimately elected. For instance, in the PF, cabinet ministers and members of the central committee endorsed the candidature of Mr Lungu, and only a few, including the then acting president Dr. Scott, thought they needed to go for a convention. The first convention elected Mr Lungu as presidential candidate (unopposed). The second convention held the next day elected Mr Miles Sampa by casting ballots. Mr Lungu was issued with an adoption certificate and declared duly elected presidential candidate by the High Court of Zambia through a consent judgement, while Mr. Sampa's candidature was nullified. He attempted to challenge the judgement but later withdrew the case.

The MMD presidential candidature was also resolved by the court of law. The party's National Executive Committee (NEC) had nominated former president Rupiah Banda, only to have the Central Committee challenging this and nominating the party president, Nevers Mumba. Mumba and the Central Committee approached the court to declare Mumba, and not Banda, the legitimate presidential candidate. The court decision was in favour of the former. Banda did not challenge the court decision. He was already facing another challenge from the PF, which threatened to withdraw his benefits as the former state president if he returned to active politics. According to the PF government, by returning to active politics Banda was surrendering all the benefits of a former head of state, and these were not going to be reinstated if he lost the elections.

VOTER REGISTRATION

In line with Section 129 of the Electoral Act, voter registration in Zambia is continuous. Prior to each general election, the ECZ conducts voter registration to capture new voters who may not have been of age in the previous election. It also transfers voters and updates the voters' register by removing the deceased. In order for someone to register as a voter, he/she should be 18 years or older and should possess a green National Registration Card (NRC) obtainable from the age of 16 years. The commission has not yet fully decentralised to all districts and councils, and, as a result, registration of voters at the district level is done in central places temporarily set up for the purposes of registration. The commission generally allocates enough time for the registration and verification processes. This allows voters and stakeholders to verify their registration to ensure that their full details have been correctly captured. Nonetheless, the voters' roll remains inaccurate, with some voters not appearing in it despite their having duly registered.

The other problem with the voters' roll is that it is often not up to date. Under statutory instrument number 38 of 2010, the commission has the power to suspend registration whenever a general election is due in order to update the register. Zambia has had over 30 by-elections since the last voter registration, and this means that most of these elections have been conducted using the voters' roll and information from previous elections. For instance, in 2008 and 2015, ECZ did not conduct voter registration due to the numerous parliamentary by-elections caused by floor-crossing, death or nullification by the courts of law on alleged corruption and other electoral malpractices. Therefore, the figures used for the 2008 election were based on the voters' roll last updated in 2006. Similarly, the figures used for the 2015 presidential by-election were based on the 2011 voters register and they cannot therefore be relied upon given that many people who would have attained the voting age are simply left out because of the statutory instrument.

The AUEOM observed the discrepancy in the voters' roll, yet stopped short of questioning the legality of the disenfranchisement of voters and how this affects the integrity of the elections. It simply recommends that the ECZ should register the young people before the next elections. The report states:

36. The AUEOM noted that the 2015 by-election was conducted using the 2011 updated voter register, which was considered credible by stakeholders. The AUEOM was informed that due to financial and logistical constraints, the continuous registration of voters as mandated in section 4(2) of the Electoral Act was not implemented. The AUEOM also noted that a significant number of citizens who turned 18 during the last three years were denied the opportunity to vote in the presidential by-election. The

AUEOM, therefore, encouraged the Commission to prioritise an update of the voters' register and the registration of young people ahead of the 2016 tripartite elections.

BOUNDARY DELIMITATION

The ECZ is responsible for delimiting constituencies equal to the number of seats of the National Assembly. The constitution further provides that the delimitation process ensures that there are at least 10 constituencies in each administrative province. The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.^{iv} The ECZ is also charged with delimiting the ward and polling district boundaries. In terms of the current legal framework, each constituency has to return only one Member of Parliament. The process is supposed to take into consideration the availability of means of communication and geographical features of the area being divided into constituencies. Section 9 of the Local Government Elections Act, Cap 282, authorises the ECZ to establish wards and polling district boundaries every 10 years after the national population census is conducted. Since the last general election in 2011, the PF government created a total of 33 new districts. The increase in the number of districts raised rural administration from 59 rural districts to 90, thereby increasing rural administration by 50% while reducing the number of inhabitants of rural districts.

Some stakeholders raised concerns around the delimitation process in the past. For instance during the 2011 general elections, the Foundation for Democratic Process (FODEP) noted that the ECZ had in fact not conducted any delimitation but had merely increased the number of polling stations. It stated that:

FODEP has come to the conclusion that the preparations of the elections were not adequately and properly handled. For instance, the delimitation exercise ended up being a review of constituency boundaries as opposed to the real delimitation. Though the exercise was undertaken, there were no changes in the number of constituencies. The exercise only resulted in the increment of polling stations from 4,610 to 5,509. However, the increment of polling stations was commendable, though the experience on voting day showed the need for more polling districts in most high density areas.^v

Furthermore, even though new districts were created by the ECZ in September 2014 in preparation for the 2016 general elections some stakeholders still indicated that they needed further delimitation in some areas. Newspaper reports indicated that the Katombola Member of Parliament Derrick Livune and other councillors expressed concern over the commission's decision not to consider Kazungula district for delimitation of wards, stating that the district is vast and needed one or two more wards to add to the existing 14.^{vi}

PROCUREMENT AND ELECTION ADMINISTRATION

The ECZ is responsible for procuring all election-related materials and services. The commission advertises public tender notices for goods and services. The procurement of services such as the printing of ballot papers is done with other stakeholders such as political parties, which are extensively consulted on procurement and given an opportunity to observe the printing procedure. The concern around the procurement of election materials has been the cost, because, among other things, the printing of ballot papers is done outside the country.

The ECZ has limited human resources and therefore recruits polling staff during elections. Most of the people recruited for this are a mixture of civil servants and members of the public. Although the ECZ does not necessarily recruit with gender parity as a key criterion, the recruited polling personnel comprise men and women, with women being slightly higher in number because most teachers are female. The recruitment of polling personnel has not been without its problems. For instance, during the 2015 presidential by-elections, there were a number of concerns from the opposition parties and in the media that PF party cadres were being imposed by the governing party onto the ECZ allegedly with the intention to use them to sway results in favour of the PF. No proof was presented in this regard, and so it remains just an allegation which has had no impact on the integrity of the elections in the past two electoral cycles. The recruited staff is trained by the ECZ at national, provincial and district levels.

CIVIC VOTER AND VOTER CIVIC EDUCATION

According to article 76 (9) of the constitution, the ECZ is responsible for voter and civic education for the presidential and parliamentary elections. The ECZ has by and large fulfilled this mandate, despite being constrained by lack of funds. Some local non-governmental organisations have also carried out civic and voter education during elections but their contribution has also been limited due to the fact that the ECZ has not been able to provide financial support to the NGOs. Consequently, civic and voter education remains generally low, leading to an increase in spoilt ballots and voter apathy. There has been a continued decline of voter turnout in the last few elections, with the lowest turnout (32%) recorded during the 2015 presidential by-election. Observer missions including the African Union have recommended that more attention be paid to voter education to address the issue of low voter turnout.

Over and above the voter and civic education efforts by the ECZ and NGOs, political parties also have a role to play in civic and vote education. Although political parties are expected to play a role, there have been concerns that they are not impartial when carrying out voter and civic education. Parties conflate this education with campaigning, because they tend to encourage voters to vote for their parties and candidates.

The media has also failed to inform citizens by not focusing on civic and voter education messages. It has for the most part covered presidential candidates instead of broader election issues that those individuals and their parties raised. This weak reporting by the media is exacerbated by the fact that the media is polarised and therefore uses partisan lenses in its determination of what is worth reporting. The Media Monitoring Africa's 2015 interim report indicated: "The media is clearly not doing enough to report elections in a way that enables the electorate to participate as an informed citizen. Event based coverage has led to some of the key issues such as health and education being ignored."^{vii}

CANDIDATE NOMINATION

According to the Electoral Act, 2006, the ECZ prescribes the date, place and procedures for candidate nominations. In terms of procedure, the act states that:

- Every person who desires to be candidate for election in any constituency shall lodge with the returning officer for that constituency that person's nomination paper in the manner and form prescribed.^{viii}
- A nomination submitted under subsection (1) May be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the election officer a written notice to that effect

Whereas the legal and procedural requirements for candidate nominations are clear, challenges have always existed mainly as a result of lack of intra-party dialogue. Most political parties tend to sideline party hopefuls who wish to contest elections, particularly if they are seen as posing a threat to the party hierarchy or may not be in good books with the leader. Most stakeholders that observe such processes note discrepancies in the parties' nomination procedures and leadership selection during party conventions. All of this has a ripple effect on the nomination process, because the ECZ is often faced with situations where parties submit different names for the same candidature. As indicated in the dispute resolution section of this report, the courts of law have had to intervene to address intra-party nomination processes.

While women in Zambia make up over 50% of the electorate, they have not been adequately represented in the decisionmaking structures of political parties and they are usually marginalised when it comes to candidate nomination. An indication of this is the mere 13.9% representation of women in the National Assembly^{ix} at present,

which is far below the 50% target agreed by the SADC region member states. In the few cases where women have been accommodated to contest elections, they are usually nominated to contest in areas where the party is weaker and they therefore have little or no chance of winning. Additionally, given the absence of campaign finance to parties, resources are limited, making it difficult for women to compete with their male counterparts.

During the 2011 general elections, of ten presidential candidates only one was a woman, while of the 769 candidates for the national assembly only 111 were women. There was also only one female presidential candidate in the 2015 by-elections.

ELECTION CAMPAIGNS

The ECZ is responsible for the enforcement of the electoral code of conduct (CoC), the campaign period commencement and closure. Every candidate for presidential, National Assembly and local government elections is compelled to subscribe to the electoral code of conduct. Failure to comply with the code of conduct is an offence. This notwithstanding, election campaigns are marked by character assassinations, and they do not focus on substantive issues contained in manifestos. The ECZ does not seem to have total control over the situation. This was also noted by the SADC Parliamentary Forum (SADC PF) in 2011. It recommended that there be a review of the legal framework to give the ECZ adequate powers to enforce the electoral code of conduct.^x

The abovementioned atmosphere has deprived voters of the opportunity to learn more about the parties and candidates in terms of their policy positions and what they have to offer in the following electoral cycle. As a result of populist and personality-based campaigns, voters have ended up voting for candidates with questionable track records, including party hopping in successive different elections. In an effort to reverse this, presidential debates were introduced during the 2015 presidential by-elections. Although personality issues still tended to characterise the campaigns, the public debates were a good start in getting political candidates to focus on issues rather than personalities.

Campaigns have in recent times also been characterised by high levels of political violence owing to the fact that the state is increasingly seen as the sole means of survival in the country. One of the stakeholders consulted indicated that "In Zambia as in most SADC countries, being in control of state apparatus means having access to government contracts, better education, health care and access to all human needs."^{xi} Over the years there has been an increase in the cases of political violence in the country both at intra- and inter-party level. This has been attributed to the fact that the cur-

rent electoral system is zero-sum and as such political players try to ensure that they win state apparatus even if it is through political violence. Those in government have constantly been accused of misusing state resources such as campaign facilities like stadiums and community halls, motor vehicles, media and funds. The opposition has also been accused of acquiring resources from questionable personalities and groups.

The legal framework has no provision that compels political parties to declare their source of campaign finances. A number of recommendations have been made by stakeholders such as civil society and international election observer groups, calling for electoral reform requiring political parties to disclose their sources of income. For instance the EISA Election Observer Mission report of September 2011 suggested that a public fund for political parties be set up for political parties and electoral campaigns on the basis of clear criteria such as share of popular vote or seats gained in parliament.^{xii}

International and local media are accredited by the ECZ. Media organisations wishing to cover elections should be accredited for nomination and polling day. Accreditation for nomination and the polls is decentralised to district level (district councils) for each of the 103 districts. Those wishing to cover the tabulation of election results are supposed to obtain accreditation from the ECZ in order to cover activities at the Election Results Centre.^{xiii}

The media is required to provide fair and balanced reporting of the whole electoral process, including policies, meetings, rallies, campaigns, press conferences, political parties and candidates.^{xiv} While the diversity of media in Zambia should ideally provide a environment conducive to media practitioners effectively playing a role in building sustainable peace in the electoral process,^{xv} there have been cases of the media fueling conflict.

During the 2015 presidential elections the Zambian National Broadcasting Corporation (ZNBC) was probed for publishing incorrect election results.^{xvi} This was contrary to the electoral code of conduct 13 (1).^{xvii} The ECZ through a submission made before the parliamentary committee on legal affairs, governance and human rights, engaged information technology forensic experts to help with investigations into what led to the ZNBC broadcasting incorrect results.

The duties of the media are comprehensively outlined in the electoral code of conduct, which highlights their duties, allocation of airtime and election results programs. Despite the fact that the CoC states that all public media print and electronic should allocate public airtime equally to all political parties and candidates for their political broadcasts, the public media is continually accused of failure to comply with the CoC.

In 2014, the UPND campaign manager Dipak Patel sued ZNBC for bias and failure to be impartial in the coverage of their campaigns for the elections. It was argued that the biased reporting by the ZNBC in favour of the ruling party was affecting the major opposition parties' campaigns and was in breach of section 8 of the electoral code of conduct regulations, 2011, and the Independent Broadcasting Authority (IBA) Act.^{xviii} The UPND campaign manager lost the case, suggesting that not much has changed in this regard.

STAKEHOLDERS

The Zambian electoral process is generally inclusive. Stakeholders such as civil society organisations, traditional institutions, security agencies and the media carry out their role throughout the various stages of the process, albeit in varying degrees as already mentioned. Civil Society Organisations play a watchdog role mostly through election monitoring, civic and voter education, creating platforms for engagement for the electorates and candidates. For instance, there have been a number of coalitions formed around election monitoring, including coalition 2000 during the 2001 elections, the Civil Society Election Coalition (CSEC) in 2011, and the Christian Churches Monitoring Group (CCMG) and Zambia Electoral Alliance (ZEA) in 2015. Civil Society Organisations (CSOs), including faith-based organisations (FBOs) and non-governmental organisations (NGOs), have also contributed to the electoral reform process through the ERTC and National Voter Education Committee, among others.

The involvement of traditional leaders in the electoral political process remains a source of concern to most stakeholders. Section 129 of the constitution states that “a person shall not while remaining a chief join or participate in Partisan Politics”.^{xix} Some Chiefs around the country continue to endorse candidates of certain political parties. In some chiefdoms, the endorsement by such traditional leaders has led to intimidation and violence among subjects who opt to support other parties. For instance, Paramount Chief Mpezeni of the Eastern Province endorsed Edgar Lungu's candidature for president during the 2015 presidential election. He said Lungu was the right person to continue with late President Sata's legacy and vision.^{xx} At the same time, chiefs from the Southern Province endorsed Hakainde Hichilema's candidature, thus polarising both the institution of traditional leaders and the people who fall within the jurisdiction of the chiefs who declared their political preferences for President of the Republic.

ELECTION DAY AND RESULTS MANAGEMENT PROCESS

Polling stations are usually prepared and arranged a day before polling day. The presiding officer sets the layout of the polling station and arranges furniture and equipment

to enable voters to cast their ballot easily. In terms of procedures prior to, during and after polling, the polling officials have largely complied with the provisions of the law and guidelines from the ECZ. For example, the opening procedure requires the presiding officers to inspect ballot boxes to ensure they do not have any ballot papers in them before sealing them. The inspection is done not more than 10 minutes before the beginning of the polling. Polling agents are then allowed to record numbers appearing on the ballot box seals as the numbers recorded numbers at the beginning are supposed to tally at the close of polls. The presiding officer also records the serial number on the ballot papers account according to the stream to which each book of ballot papers has been issued. This procedure has been followed across the country and various domestic and foreign observers have witnessed it.

Voting begins at 06h00 and ends at 18h00 in line with the electoral law. This period is sufficient for people to cast their votes. However, there have been problems in the past in the interpretation on the closing of polling stations. In some instances, voters who were in the queue at 18h00 have been sent away as opposed to being permitted to stay and vote. As for the secrecy of the ballot once voting has commenced, the ECZ has generally ensured that voters make their choice in secret. Polling agents, monitors and observers have always been present inside polling stations around the country to observe that the polling staff follow all the procedures such as the checking of the names of voters on the voters' roll, inking of the voter's thumb, issuance of the ballot papers and, most importantly, assisting voters where such assistance is required.

The voting process in Zambia has generally been smooth, save for isolated incidents where there have been delays in polling stations opening or extension of voting to the following day due to the late delivery of materials or unforeseen circumstances including weather conditions. The law enforcement agencies always ensure that the process goes off without incident. The counting of ballot papers at the polling station level has also been carried out to the letter. A major area of concern, however, has been the period of time taken before the announcement of results. For instance, there was a three-day delay in the recent 2015 presidential elections. Such delays are usually perceived as a means of rigging elections. The non-specific timeframe for the announcement of results tends to create a lot of anxiety, agitation and suspicion.

STAKEHOLDERS

There have been calls for the equitable participation of persons with disabilities (PWD) in the electoral process by CSOs, specifically disability people's organisations such as the Zambia Federation of the Disabled (ZAFOD) and the Disability Rights Watch (DRW). The United Nations Convention on the Rights of Persons with Disabilities

stipulates that “State parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”.^{xxi} There is also a need to guarantee the secrecy of ballot for the disabled, especially the blind. At the most basic level, the convention suggests that voting procedures, facilities and materials be accessible to the disabled. The ECZ has not been able to provide all the necessary tools to enable people with disabilities to vote, thereby depriving them of their right to vote.

In September 2011, the Zambia Federation for the Disabled (ZAFOD) instituted legal action against the ECZ. The dispute arose from the ECZ’s alleged failure to initiate legislative reform to ensure equitable participation in the electoral process by persons with disabilities. The court ruled in favour of ZAFOD and other persons living with disabilities, pointing out that the ECZ had unlawfully discriminated against ZAFOD and persons with disabilities, which was contrary to article 23 of the constitution of Zambia. The court ordered the ECZ to provide:

- Temporary ramps for use by PWD in all polling stations where there were wheelchair users
- Ensure that all polling stations are located on ground floors and in places accessible to PWD
- Provide a tactile ballot guide for voters who are blind and do not wish to be assisted in casting their secret vote

There has been a rise in the number of organisations and groups conducting parallel voter tabulation (PVT). All of the PVT results released by election observation groups such as the Christian Churches Monitoring Group (CCMG), Transparency International Zambia and Chikondi Foundation, Foundation for Democratic Process and National Womens Lobby (NWL) were consistent with the ECZ results. According to the Southern African Centre for Constructive Resolution of Disputes (SACCORD),^{xxii} the ECZ needs to support effective PVT in order to enhance accountability on people’s votes. It was observed that at the lower level (polling station) there is transparency, and that this progressively diminishes once the results are transmitted to the higher results collation centres. There is a need to ensure transparency at all levels in order to enhance confidence in the ECZ. None of the pan-African observation groups paid attention to this aspect, and this reveals one of the weaknesses on the instruments used.

APPLICATION OF AFRICAN ASSESSMENT TOOLS INSTRUMENTS

The following were recommendations made by some of the regional election observer groups to Zambia including the African Union, SADC Parliamentary Forum, The Commonwealth and EISA:

	African Union	SADC PF	Commonwealth	EISA
Election Campaigns/ Party Financing/ Civic/Voter Education		-There is a need to come up with a legislative framework for public funding of parties as well as provisions for disclosure of sources in order to level the playing field.	-There needs to be a party and candidate financial disclosures on campaign financing and expenditure. -Campaign spending limits to be considered to ensure a more level playing field and prevent escalating costs of elections. ^{xxiii}	-Public funding to be established for parties and electoral campaigns. -Civic and voter education should be provided long-term and continuously. -Regulation for the disclosure of all sources of funding and parties' campaign expenditures.
Stakeholders	-The ECZ should intensify its efforts at voter education and sensitisation to address the issue of low voter turnout. -Undertake an update and review of the voter register and work with the civil registration institution to harmonise the register of voters with the national civil registry. This will contribute to the credibility of the voter register and simplify the documentation required of voters at the polling stations. -Intensify efforts at voter education and sensitisation to address the issue of low voter turnout	-There is need to review the legal framework to give the ECZ adequate powers to enforce the electoral code of conduct. -The polarisation and bias by the media also calls for the establishment of a media services regulatory framework in terms of the law to enhance ethical and professional reportage of political parties and political activities by the media.		An effective level playing field should be created for fair access to the media by parties and candidates during the electoral process.

<p>Election Day Results and Management</p>	<p>-Provide adequate signposts to polling stations and polling streams and strengthen the training of ushers.</p>		<p>-The ECZ needs to ensure the timely delivery of polling materials to all areas, ensuring that voters are not inconvenienced by delays, which can result in disenfranchisement.</p>	
<p>Legal Framework</p>	<p>-Amend the electoral law to include regulatory provisions on party and campaign funding</p> <p>-Amend the Electoral Guidelines to remove the requirement for recording voter card numbers on the counterfoil of the ballot to avoid possible abuse that could compromise secrecy of the ballot;</p> <p>-Amend the electoral law to include regulatory provisions on party and campaign funding.</p>	<p>-Implementation of the provisions in the Electoral Act which provide for the facilitation of voting by special groups such as the sick, the disabled and the pregnant.</p> <p>-There is need for the establishment of a special Electoral Court to expedite the resolution of election-related disputes in keeping with good practices.</p>	<p>-Measures should be put in place to ensure that election commissioners enjoy broad support and thereby political and public confidence. We note that Sections 192-197 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.</p> <p>-In order to give sufficient time for the resolution within any established timelines by the courts of any election petition, the period within which the president-elect should be sworn in should be extended accordingly.</p>	<p>-improve the enforcement of the code of conduct, both by imposing stiffer penalties and having clearer enforcement procedures.</p> <p>-The powers of the ECZ should be extended so as to promote compliance by all stakeholders with the code.</p> <p>-Stronger regulation of the media, public media in particular, through an enforceable code of conduct or other similar mechanism, should be put in place to ensure balanced coverage and reporting of electoral campaigns as well as to compel the media to comply with standards of ethical reporting.</p>

<p>Women's Participation</p>	<p>-Political parties should undertake programmes that will promote the participation of female aspirants in elections.</p>	<p>-Political parties should incorporate gender parity in their constitutions and policies in line with the SADC Protocol on Gender and Development.</p>	<p>Political parties are encouraged to put forward more women candidates in order to improve the level of representation of women as elected representatives</p>	<p>-Appropriate action reforms and quota requirements should be undertaken to achieve greater gender parity, not only in the nomination process, but also in the final makeup of the Zambian parliament. -Affirmative action taken internally by political parties will ensure higher representation and greater visibility of women at various decision-making levels.</p>
<p>Delimitation</p>			<p>-In order to ensure equal suffrage is broadly provided for, constituency boundaries for the National Assembly need to be reviewed in order to take account of variations in population size. -ECZ should review the establishment of polling stations closer to voters in some remote areas in the provinces in order to shorten the distance voters have to travel in order to cast their votes.</p>	

BIBLIOGRAPHY/ RESOURCES

- I CSEC Report on Zambia's 2011 Tripartite Elections: December 2011
- II Constitution of the Republic of Zambia Article 71 (2)C of the laws of Zambia
- III First Draft Constitution of the Laws of Zambia, 2012
- IV The Constitution of Zambia (1996) of the laws of Zambia
- V http://www.microrev.eclipse.co.uk/zambia/Interim_Statement/FODEP-contents.html
- VI <https://www.lusakatimes.com/2014/09/24/ecz-intensifies-delimitation-exercise-preparation-2016-tripartite-elections/>
- VII http://www.mediamonitoringafrika.org/images/uploads/Interim_Elections_Results_-_Final.pdf
- VIII The Electoral Act, 2006
- IX <http://www.parliament.gov.zm/members/gender>
- X SADC Parliamentary Forum, Mission Report 2011 Pg. 32
- XI Interview with SACCORD Executive Director, Boniface Cheembe July, 2015
- XII EISA Election Observer Mission Report Zambia, 20 September, 2011
- XIII Handbook on election reporting, Electoral Commission of Zambia, September 2011
- XIV The electoral (code of conduct) Regulations, 2011 of the Laws of Zambia
- XV *ibid*
- XVI www.daily-mail.co.zm/#article/20279
- XVII The electoral (code of conduct) Regulations, 2011 of the Laws of Zambia
- XVIII zambiadailynation.com/2014/12/17/dipak-patel-sues-znbc-over-biased-up-and-coverage/
- XIX The Constitution of Zambia, Part XIII section 129 of the laws of Zambia
- XX www.lusakatimes.com/2015/01/02/chief-mpezeni-endorses-edgar-lungu/
- XXI Article 29, United Nations Convention on the Rights of Persons with Disabilities
- XXII Interview with Boniface Cheembe, Executive Director , July 2015
- XXIII Constitution of Zambia (Amendment) Bill, 2010 Sections 203-208