

**ELECTION OBSERVATION MISSION
ZAMBIA, GENERAL ELECTIONS AND REFERENDUM, AUGUST 2016**

PRELIMINARY STATEMENT

**Carter Center Expresses Concerns Regarding Pre-Election Environment and Urges
Patience While Results Come In**

August 13, 2016

Contact: Rachel Fowler, Lusaka, +216 (0) 96 817 8434

This statement is preliminary; a final report will be published four months after the end of the electoral process.

Executive Summary

The Zambian general elections and referendum were held Aug. 11, 2016. The pre-election and campaign period was characterized by significant interparty tensions and polarization, exacerbated by the introduction of a new electoral framework, a referendum on the Bill of Rights and constitutional amendments held at the same time, and an untested legal framework. Widely reported incidents of violence increased tension between political parties and their supporters, especially in the weeks preceding election day. Media bias and the absence of a level playing field were among the most significant challenges of the electoral period. Civil society organizations played a key role in observing and reporting on the process.

Voting was reported as largely peaceful, with initial reports suggesting a high voter turnout. The prevailing calm on election day, despite the large crowds, reflects the extraordinary efforts of polling agents, police, and voters to ensure an orderly and inclusive process.

At the time of writing, delays in the announcement of results have led some stakeholders to raise anew concerns about transparency of the process. Although these complaints may prove premature, we note with concern a renewed environment of tension and mistrust. We urge the Electoral Commission of Zambia to release results in the most expeditious and transparent manner possible and to communicate regularly as the results are received and verified.

Though the Aug. 11 election has concluded, the weeks ahead will pose a critical test to Zambia's democratic institutions. The country still faces significant challenges as its nascent dispute-resolution processes will surely be tested for the first time. Politicians and their supporters must seek to utilize legal means of redress, such as the new Constitutional Court, to address their concerns about the process.

Legal Framework and Electoral System. The electoral legal framework was significantly amended in January and June 2016. These amendments changed the presidential electoral system, established a fixed election date, modified candidate nomination requirements; altered the timeline for post-election petitions and presidential inauguration; and established the Constitutional Court. Regulations governing the new electoral process were adopted only two days before the elections. The timing and manner of the adoption of these amendments

and regulations introduced gaps and inconsistencies in the legal framework, hindered understanding of the legal framework, and undermined the ability of electoral stakeholders to fulfill their respective functions. Enacting such substantial amendments so close to an election is at odds with international good practice.

Election Administration. An independent and impartial election management body promotes transparency and facilitates citizen participation in a genuine democratic process. The ECZ is composed of a chairperson, vice chairperson, and three other members appointed by the president and subject to parliamentary ratification; however, the president holds the power to remove fulltime members. As The Carter Center first noted in its 2001 election observation report,¹ the president's prerogative to appoint and dismiss ECZ members contributes to mistrust that the electoral body is free from political interference. Thus, the system for appointing ECZ members is inconsistent with best practices for recruiting election officials.

Electoral Constituencies. International best practices recommend that constituency boundary delimitations and seat allocations ensure that voters are represented in the legislature in roughly equal population ratios. Following the 2011 elections, 31 new districts were created. The ECZ subsequently proposed, and the cabinet approved, new constituency delimitations to accommodate the new districts. Contrary to the principle of equal suffrage, Lusaka province has constituencies with a more than tenfold population variance — for example, Feira with 13,327 voters and Mandevu with 148,889. Lusaka province has an average constituency population more than double that of the newly created Muchinga province.

Voter Education. Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ made a commendable effort to conduct voter education, CSOs and political parties indicated that voter-education efforts were insufficient, particularly outside major urban centers. They also indicated that materials in local languages did not reach all areas and that the education campaign on the referendum should have started several weeks earlier to better inform voters. A number of CSOs also conducted voter education across the country, though limited resources made it difficult to conduct adequate education programs.

Voter Registration. In preparation for the 2016 general election, the ECZ held a registration drive from Sept. 14, 2015, to Feb. 29, 2016, to update the 2011 register of voters. Mobile teams conducted the voter-registration drive, travelling to polling centers across the country. The Carter Center did not observe the voter-registration process; however, CCMG, a local CSO, did observe and concluded that the registration process was adequate. The verification exercise took place May 15-25, 2016, and was extended from seven to 11 days after political parties criticized the ECZ for not providing voters with sufficient time to verify their details.

In response to concerns raised by political parties and CSOs, the ECZ carried out an independent audit of the voter registry. Although the audit found certain issues related to shared and duplicated information and deceased voters, the ECZ concluded that the register was adequate for conducting the election. These issues should be addressed by the ECZ and relevant ministries following the conclusion of the election.

¹ The Carter Center deployed election observation missions in 1991 and 2001, and released the following reports in addition to preliminary statements regarding the process: "The October 31, 1991, National Elections in Zambia," and "Observing the 2001 Zambia Elections, 2001."

Referendum. The 2016 election included a public referendum that proposed to amend the Bill of Rights and certain provisions regarding the election and appointment of government officials, including the president, vice president, ministers, and provincial ministers. Zambians who had attained the age of 18 and possessed a national registration card were eligible to vote on the referendum, whether or not they were included on the register of voters. While the Center recognizes that the desire to minimize costs was the rationale for including the referendum with the general election, substantial confusion arose among both electoral stakeholders and the electorate over both the substantive provisions of the referendum and the procedural requirements for a valid exercise.

Candidate Eligibility and Nomination. Several candidate nomination requirements hinder the right to stand on an equal basis. Constitutional amendments introduced a new requirement of minimal academic qualification of a Grade 12 (G12) certificate or its “equivalent,” which disproportionately affected female and rural aspirants who may not have enjoyed the same educational opportunities as male and urban aspirants. In addition to the G12 requirement, monetary fees for candidate nomination were raised substantially and were viewed by interlocutors and stakeholders as being excessive and unreasonable barriers to candidacy, especially for women and youth, who may face greater challenges in raising the required, non-refundable fees.

Candidates, Parties, and the Campaign Environment. Political pluralism and genuine voter choice are critical aspects of democracy. Equitable treatment of candidates and parties and the maintenance of an open and transparent campaign environment are important to ensuring the integrity of democratic elections. Electoral stakeholders expressed concerns about the lack of a level playing field for opposition parties, with the most serious issues being the inequitable application of the Public Order Act, media bias, campaign use of official resources, and the interference with opposition rallies and travel.

The competitiveness of the campaign, the new “50 percent +1” format, and the decamping of former Patriotic Front (PF) officials to the United Party for National Development (UPND) further heightened political tensions and increased the potential for electoral violence. Candidates from PF and UPND both made statements that further inflamed political tensions, and there were widespread reports of conflict and violence among party cadres. A trend of cadre wearing military fatigues was also noted with concern. While many reports of electoral violence could not be confirmed, there were a significant number of verified episodes, including the death of a UPND supporter shot by police in Lusaka, the hospitalization of a UPND bus driver injured when PF cadres attacked a UPND campaign bus with stones, and an attack on election day that led to the hospitalization of a PF supporter in Southern Province. Both PF and UPND alleged that the other party was responsible for the electoral violence or that the violence attributed to them was perpetrated by people impersonating their party cadres.

Media Environment. The media play a critical role during democratic processes by enabling political parties to communicate with voters. As noted above, media bias was one of the most significant challenges during the campaign period. The Media Institute of Southern Africa (MISA) implemented a comprehensive media monitoring project, and its data objectively showed that public print and TV media outlets strongly favored PF. Both CSOs and political parties filed legal actions challenging bias in public media coverage of the election; however, only UPND’s petition was resolved prior to the election, and that only two

days before the election. Another area of concern was the closing of *The Post*, the private daily newspaper most favorable to UPND, which was party to legal action resulting in the seizure of its offices and equipment by the Zambia Revenue Authority, ostensibly to satisfy accrued tax liabilities. MISA also reported that “citizen journalists” at community radio station, have been subjected to harassment and intimidation, mostly by PF cadres, for their coverage of the electoral process.

Participation of Women and Persons with Disabilities. Despite Zambia being signatory to several regional and international conventions and protocols regarding gender equality, representation by women in elected office remains low. The Human Rights Commission (HRC) indicated that the level of women participation is actually worsening. As noted above, the G12 requirement and the elevated nomination fees were significant barriers to female aspirants. The Disability Rights Watch indicated that notwithstanding commendable efforts by ECZ, persons with disabilities continue to face significant logistical and cultural barriers to political participation.

Civil Society and Domestic Observation. Several domestic CSOs carried out election observation missions. The Christian Churches Monitoring Group (CCMG) carried out a parallel vote tabulation (PVT) exercise that used a statistically valid sample of polling stations to validate the official results of the ECZ, and the Zambian Election Information Center (ZEIC), a coalition of CSOs, deployed monitors to polling stations to observe the electoral process and to coordinate with the ECZ and police to report and quickly resolve incidents or issues.

Electoral Dispute Resolution. Electoral dispute-resolution procedures are essential to ensure that effective remedies are available for the redress of violations of the electoral process. As provided in the amended Electoral Act, the ECZ established conflict management committees (CMCs) to mediate electoral conflicts, advise the conflicting parties, and report appropriate matters to police for further actions. Although the primary aim of CMCs is to serve as an alternative to lengthy court proceedings, they were not an effective mechanism dispute resolution during these elections. While the High Court can hear petitions related to parliamentary elections and the referendum, the newly established Constitutional Court is charged with resolving petitions on the presidential election, as well as parliamentary and referendum appeals. Its decisions are final. The Constitutional Court has faced a number of logistical and operational challenges. The court held its first hearing on June 29 and has resolved 20 of the 27 cases brought before it. Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints did not provide effective or timely redress in a consistent manner.

Voting and Counting. The Center did not field a short-term observation mission for election day and cannot make an independent assessment of the voting process; however, its limited observations in Lusaka, Copperbelt, and Southern provinces on polling day are consistent with the findings of most other international observer election mission and domestic observers. Recognizing its limited scope, the Center commends the ECZ staff, party polling agents, and domestic observers for their dedicated efforts in conducting the polling process.

Background. Following an invitation from Ministry of Foreign Affairs, The Carter Center was accredited by the ECZ to observe Zambia’s national elections and referendum. The Center deployed a limited election observation mission, focusing on the political and electoral

environment of the campaign period; the legal framework; and electoral dispute resolution mechanisms. The Carter Center mission was led by Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi, and Jordan Ryan, vice president of the Center's peace programs. A core team of four persons were based in Lusaka. The team held meetings with key stakeholders, including political party candidates, civil society organizations, citizen election observers, members of the international community, and representatives of the electoral commission. Four medium-term observers were deployed to the Copperbelt and Southern provinces in advance of election day to assess election preparations. The Center will continue to assess the tabulation of results, and will remain in Zambia to observe the post-election environment.

The mission's findings are evaluated against Zambia's national and international obligations for genuine democratic elections, and all assessments are made in accordance with international standards for elections. The observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted by the United Nations in 2005 and is currently endorsed by 49 organizations.

The Carter Center has a long history of working in partnership with the people of Zambia. The Center worked extensively on agricultural development in Zambia in the late 1980s, and President Carter was personally involved in the 1991 elections that saw Zambia peacefully transition from a single-party state to a multiparty democracy. The Center also deployed an election observation mission to Zambia in 2001. The current mission launched in July 2016.

Statement of Preliminary Findings and Conclusions

BACKGROUND

Zambia underwent a transition to multiparty politics in 1991 and has held multiparty elections at regular, five-year intervals over the past 25 years. Although some of these elections, particularly those in 1996 and 2001, had significant irregularities, Zambia stands out in Africa, not only for its track record of uninterrupted electoral politics, but for an electoral environment that has been substantially peaceful and extremely competitive —especially since 2001 — and elections that twice resulted in the defeat of longstanding incumbent parties and political turnover (in 1991 and 2011). Zambia’s founding democratic elections in 1991 were observed by The Carter Center, which also deployed an international election observation mission for the 2001 elections.

Zambia was ruled by a single party, the United National Independence Party (UNIP), and a single president, Dr. Kenneth Kaunda, for 27 years. When multiparty elections were finally permitted in 1991, the newly established Movement for Multiparty Democracy (MMD) soundly defeated UNIP by over 80 percent of the vote. MMD remained in power for the next 20 years — although beginning in 2001, Zambian elections, then on a simple plurality system, became increasingly competitive at the presidential level. The parliament also became more competitive and representative. In 2011, Zambia experienced its second political turnover and an important marker in its democratic development when the Patriotic Front (PF), led by Michael Sata, defeated the incumbent MMD and President Rupiah Banda by a comfortable margin, 42 percent to 35 percent.

The death of President Sata triggered a by-election in 2014, only three years into his term. The constitution required that the by-elections be held within 90 days. In the ensuing election on January 20, 2015, former Defense and Legal Affairs Minister Edgar Chagwa Lungu became Zambia’s sixth president, but by the narrowest of margins, defeating United Party for National Development (UPND) candidate Hakainde Hichilema by barely 27,000 votes. Because he was fulfilling the term of President Sata, President Lungu’s mandate was due to expire in 2016. Among a series of constitutional and electoral law changes was the decision to permanently hold Zambia’s elections every five years on the second Thursday in August.

The Zambian election on Aug. 11, 2016, included presidential, parliamentary, and local government elections, as well as, for the first time, mayoral elections. At the presidential level, the election was nearly a rerun of the January 2015 contest; although nine parties fielded presidential candidates, the leading contenders were again Hichilema and Lungu.

Zambia has now held five presidential elections in the last decade, including the two presidential by-elections following the deaths of two incumbents. Effectively biennial elections would present a challenge for any country. In Zambia, in addition to placing a financial burden on the budget and contributing to voter apathy, the cycle has tested the capacity of the Electoral Commission of Zambia. These problems were compounded in 2016 by the promulgation of new electoral rules, amendments to the constitution that included the creation of a Constitutional Court, and a record five simultaneous elections, including national constitutional referendum. (Previous national elections were tripartite — president, parliament, and local government only.)

An environment characterized by rapidly shifting institutional terrain, some ambiguity about dispute-resolution mechanisms, two major candidates whose rivalry was escalated by the closeness of the contest, and restive followers — or cadres — backing each man, produced heightened political tensions. Allegations of violence by party cadres from both leading parties were reported almost daily. Although not all could be independently verified, the reports themselves had the effect of exacerbating tensions and a widespread sense of insecurity, often further inflamed by both public and private media.

Throughout the campaign period, PF benefited from its near-monopoly of state-owned media, as well as its control over enforcement of laws and regulations, such as the Public Order Act, which limited the ability of opposition parties to campaign and disseminate their message. Such advantages fueled perceptions among key political stakeholders that the playing field was not level and raised legitimate concerns about Zambia’s commitment to upholding critical freedoms of assembly, expression, movement, and the press.

LEGAL FRAMEWORK AND ELECTORAL SYSTEM

A comprehensive legal framework, without ambiguities or omissions, is essential to the administration of democratic elections and to ensuring that a country upholds its international obligations.² Zambia has signed or committed itself to the main international and regional commitments and instruments relating to human rights and the conduct of elections, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the United Nations Convention against Corruption, the African Charter on Human and Peoples' Rights, and the SADC Principles and Guidelines Governing Democratic Elections.

Fundamental rights and freedoms, including freedom of expression, assembly, association, and participation in elections are enshrined in the constitution of Zambia. It serves as a basis for the multiparty democracy, proclaims Zambia as a “Sovereign Democratic State” and protects the rights to genuine and periodic elections, including the right to be elected to public office by secret ballot and the right to vote according to the principles of equality and universal suffrage. The constitution also guarantees independence of the judiciary and equal rights and freedoms, and prohibits discrimination on the grounds of race or religion.

The legal framework governing the 2016 elections primarily consists of the 2016 Constitution, 2016 Electoral Process Act, 2016 Electoral Commission Act, 1991 Local Government Election Act, and the 1955 Public Order Act. The substantive constitutional changes entered into force in January 2016, and required subsidiary legislation was enacted shortly before the dissolution of the parliament and entered into force on June 7, 2016. Most of the electoral stakeholders — including CSOs and the Human Rights Commission — were given the opportunity to provide comments on the legislative amendments; however, this was carried out in an expedited manner, leaving them with less than a day to provide comments on a substantial volume of amendments. Introduction of the fundamental legislative changes, without effective public consultation in the electoral legal framework shortly before election amendments is at odds with international good practice.³

² The UNHCR Comment 19 indicate that “... elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.”

³ The Code of Good Practice in Electoral Matters of the Venice Commission states that “the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendments less than one year before an election,” sec. II.2.b.

The essence of any electoral system should be to translate the will of the people into a representative government, although no specific electoral system is prescribed.⁴ Recent amendments introduced a new electoral system for the presidential election that requires an absolute majority of votes to be cast in favor of one candidate. According to the constitution, if no candidate garners the majority of valid votes, a second round is to be held between the two leading candidates within 37 days of the initial election day. A vice president is directly elected and would assume the presidency for the remainder of the mandate in the eventuality of a president dying or leaving office early. Electoral stakeholders raised concerns that many voters were not aware of the new 50 percent +1 electoral system or the possibility of the runoff.

Members of the National Assembly are directly elected under the first-past-the-post system in each of the 156 constituencies. Mayors and council chairpersons were directly elected for the first time under the first-past-the-post system, competing in 105 districts. Candidates for local councils ran in each of the 1,624 wards and collectively form the local council at the district level.

The constitutional referendum on the Bill of Rights was held alongside the elections, reportedly to avoid costs of holding a separate referendum. The referendum vote required a threshold of 50 percent of all *eligible* voters to be considered valid. The question focused on proposed amendments to the Bill of Rights contained in Part III of the constitution, aimed at enhancing the human rights provisions as well as the repeal of Article 79 of the constitution, which regulates the process of future constitutional amendments.⁵ The proposed Article 303, replacing Article 79, foresees that only registered voters will have the right to vote in the constitutional referendum and specifies which articles do not require amending through referendum.

Thus, the referendum attempted to cover two essentially different issues in one question. The formulation of the referendum question lacked clarity, and voters expressed concerns that they did not understand its content. Comprehensive voter information and education was limited in the short timeframe before elections.

The recent amendments introduced, *inter alia*, a new electoral system for the presidential election, provided a fixed election date, introduced new candidate nomination requirements, enhanced deadlines for the president to be sworn into office with the account of possible post-election petitions, and established the Constitutional Court.

The number of essential ECZ regulations, clarifying various aspects of the process, were pending before the Ministry of Justice throughout the pre-election process and were adopted on Aug. 9, two days before the election and referendum. Therefore, a number of procedural issues — including regulations on disqualification criteria for candidates, rules for holding the referendum, and general electoral procedures — were not addressed in a timely manner, which led to legal uncertainty among key electoral stakeholders.

⁴ U.N., International Covenant on Civil and Political Rights, Article 25(b); United Nations Human Rights Council, General Comment 25, para. 21; International IDEA Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, p. 28.

⁵ The referendum question on the ballot is phrased as follows: “Do you agree to the amendment to the Constitution to enhance the Bill of Rights contained in Part III of the Constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia?”

Much of the legal framework governing these elections and referendum is new and untested. It lacks clarity and contains a number of gaps and inconsistencies, contrary to international standards, which require organization of elections be regulated by a clear, understandable, and transparent legal framework.⁶ These include candidate nomination and withdrawals, voting rights, referendum procedures, authorities of the election administration, campaign and campaign-finance rules, and electoral dispute-resolution, among others.⁷ The vast majority of interlocutors expressed the opinion that the late changes, combined with the complexity and lack of clarity in the law, negatively affected electoral stakeholders' understanding of the impact of new provisions and their ability to fulfil their functions.

ELECTION ADMINISTRATION

An independent and impartial election management body promotes transparency and facilitates citizen participation in a genuine democratic process. A transparent and professional body is regarded as an effective means of ensuring that international obligations related to the democratic process can be met.⁸ The election management body should also ensure an accountable, efficient, and effective public administration as it relates to elections. It also has a responsibility to ensure that the electoral process is in compliance with Zambia's regional and international obligations for democratic elections and human rights.⁹

The Electoral Commission of Zambia is an independent and autonomous election management body governed and regulated by the 2016 Constitution of Zambia, 2016 Electoral Commission Act, 2016 Electoral Act, 2015 Referendum Act, and statutory instruments. The ECZ is composed of a chairperson, vice chairperson, and three other members appointed by the president and is subject to ratification by an *ad hoc* select committee of the National Assembly. Both the chairperson and vice chairperson must have held or be qualified to hold the office of judge of a superior court. All five members are appointed for a term of seven years that can be renewed for an additional seven-year term.¹⁰ The president holds the power to remove fulltime members.¹¹

The ECZ's appointment system is inconsistent with best practices for recruiting election officials based on transparency, efficiency, and equity.¹² As outlined in The Carter Center's final report on the 2001 general election in Zambia, the president's prerogative to appoint and dismiss ECZ fulltime members heightens mistrust among opposition political parties vis-à-vis the electoral body's independence.¹³ Interpretive sources of public international law suggest that in order to deter corruption, bodies appointing members of electoral commissions should be unable to dismiss them at will.¹⁴

⁶ See U.N. International Covenant on Civil and Political Rights, Article. 25; United Nations Human Rights Council, General Comment 25.

⁷ Moreover, the law does not contain any provisions related to the possible second round of the elections.

⁸ UNHRC, General Comment 25, para. 20

⁹ Venice Commission, Section II.3.1.c

¹⁰ No. 25 of 2016, *Election Commission Act*, Section 5.

¹¹ No. 25 of 2016, *Election Commission Act* Section 5. Article 5 (F).

¹² U.N., UNCAC, Article 7(1)(a); OAS, Convention Against Corruption, Article III (4); AU, Convention On Corruption, Article 7(4) in *The Carter Center, Election Obligations and Standards*, p. 70.

¹³ The Carter Center, *Observing the 2001 Elections*, para. 24: "The Center's LTOs also noted that the procedures for the selection, appointment, and removal of ECZ commissioners served to undermine the ECZ's independence. The Electoral Act gives power to the president to appoint members without obliging him to consult or seek nominations from political parties and other stakeholders. Consequently, the president is in position to influence the ECZ's administration of election activities."

¹⁴ U.N. (ICCPR), General Comment 25, para. 24.

While the new Election Commission Act prescribes that the ECZ shall have offices in provinces and districts,¹⁵ the ECZ does not have a permanent structure and relies on existing administrative state bodies to fill its managerial positions at the provincial and district levels. Citizen observer organizations expressed concern that administrative officials, appointed by the Local Government Service Commission, which itself is appointed by the president, could be biased or give the appearance of bias in their work. According to a constitutional amendment passed in January 2016, the chairperson of the ECZ will also serve as the returning officer for the presidential election.¹⁶ In previous elections, the chief justice of the Supreme Court filled this role.¹⁷ Provincial and district level returning officers declare National Assembly and local government results, respectively.

ELECTORAL CONSTITUENCIES

Equal suffrage requires that constituency boundaries are drawn so that voters are represented in the legislature in a roughly equal basis.¹⁸ Moreover, international best practices recommend consistency in population size in defining boundary delimitations and seat allocation. Variance should remain within 15 percent between constituencies.

Since the Patriotic Front gained power in 2011, 31 new administrative districts were established, increasing the total number of districts to 103. The ECZ proposed — and the cabinet approved — electoral boundaries for the 31 new districts. This created six new constituencies, bringing the total number of constituencies to 156. In contravention of the equality principle enshrined in the amended Zambian constitution,¹⁹ as well as internationally accepted criteria for boundary apportionment,²⁰ variances between the number of voters in constituencies well exceed 100 percent. For instance, the smallest constituency in Lusaka province (Feira) has 13,327 voters, while the largest has 148,889 (Mandevu). The average number of voters per constituency in Lusaka province is more than double the average number of voters per constituency in the newly created Muchinga province.

VOTER EDUCATION

Voter education is an essential part of the electoral cycle and is recognized under international law as an important means of ensuring that an informed electorate is able to effectively exercise their right to vote without obstacles to ensure universal and equal suffrage.²¹ The ECZ began voter education on May 29, 2016, including information on the code of conduct, electoral corruption, voting procedures, and the referendum. The ECZ deployed at least two voter-

¹⁵ Electoral Commission of Zambia Section 229. (1).

¹⁶ See No 2. of 2016, *Constitution of Zambia (Amendment)*, Section 99.

¹⁷ This was questioned by international observers as a “potential conflict of interest.” See NDI Pre-Election Delegation to Zambia’s September 2011 Elections Lusaka, Aug. 18, 2011, page 5.

¹⁸ U.N., ICCPR, General Comment 25, para. 21; U.N., ICCPR, *Istvan Matyas v Slovakia*, (2002), 2.2 in The Carter Center, *Election Obligations and Standards*, p. 59.

¹⁹ No. 2 of 2016 Constitution of Zambia (Amendment), Section 59 (e): “The Electoral Commission shall, in delimiting the boundaries of constituencies and wards seek to achieve an approximate equality of constituency and ward population, subject to the need to ensure adequate representation for urban and sparsely populated.”

²⁰ Per UNHCR, General Comment 25, the principle of one-person, one-vote must apply, and within the framework of each state’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters.

²¹ U.N., ICCPR, Article 25(b); AU, Declaration on the Principles Governing Democratic Elections in Africa, Article 1; United Nations Human Rights Council, General Comment 25 on “the Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,” para. 11.

education facilitators (VEFs) per ward. In every district, the ECZ established a District Voter Education Committee composed of 12 members — including the district election officers and civil society representatives — whose responsibility is to monitor all activities conducted by VEFs. The ECZ provided radio and television programs on the national broadcasters and private media. In addition, the commission used mobile network service providers and social media outlets to disseminate text messages in different languages regarding the general election and the referendum. The ECZ also recruited persons with disabilities to conduct voter-education workshops and cooperated with the network of performance arts organizations in the use of street theater for voter education.

In addition, a number of civil society organizations, including faith-based organizations, the Zambia National Women’s Lobby (ZNWL), youth groups, and other human rights CSOs, conducted voter education across the country.²² Radio reaches the largest audience in Zambia and therefore is key to the success of any voter-education campaign. BBC Media Action produced and shared voter-education materials with 17 radio station partners. Social media, notably Facebook and WhatsApp, also played an increasingly significant role in reaching the electorate.

Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ has made a commendable effort to conduct voter education in the runup to election, CSOs and domestic observer groups expressed their view that ECZ’s countrywide campaign of sensitization on the referendum should have commenced several weeks earlier, because many citizens did not understand what they were voting for. Civil society groups also indicated that the distribution of voter-education materials in local languages did not reach all areas, and those materials’ impact was limited in terms of enhancing voter’s understanding of critical aspects of the electoral process, such as the holding of a runoff presidential election if no candidate obtains more than 50 percent of votes cast on Aug. 11. Like CSO representatives, political parties and candidates reported that the level of voter-education efforts was insufficient, particularly outside major urban centers.

VOTER REGISTRATION

Voter registration is recognized as an important means to ensure the right to vote and should be made available to the broadest pool of citizens possible, without obstacles, to ensure universal and equal suffrage, fundamental rights critical for democratic elections.²³

According to the constitution, all Zambians who have attained the age of 18, possess a national registration card, and are registered, may vote in the election.²⁴ In preparation for the 2016 election, the ECZ held a registration drive from Sept. 14, 2015, to Feb. 29, 2016, to update the 2011 register of voters; mobile voter registration teams traveled to civic centers across the country from Nov. 23 – Dec. 13, 2015. The Carter Center did not observe the voter registration

²² The ZNWL, in collaboration with the Anti-Voter Apathy Project (AVAP), Operation Young Vote (OYV), and Young Women in Action (YWA), implemented the so-called Triple V Campaign (My Vote, My Voice, My Victory), aimed at addressing voter apathy in Zambia, particularly among youth and women.

²³ U.N., International Covenant on Civil and Political Rights, Article 25(b); AU Declaration on the Principles Governing Democratic Elections in Africa, Article 1; United Nations Human Rights Council, General Comment 25.

²⁴ Section 19 of the Electoral Process Acts disqualifies prisoners and those detained from voting, which is inconsistent with Article 46 of the constitution, which gives the right to vote to all citizens who have attained the age of 18 years and are registered as voters. A case requiring interpretation of this provision is currently pending in the Constitutional Court.

process, however, the CSO Christian Churches Monitoring Group observed the exercise and concluded that the process met the standards of transparency, inclusiveness, and non-discrimination.²⁵ The Center recognizes the ECZ for its efforts to conduct an inclusive process, and to meet the requests of political parties to extend the voter registration exercise. The verification exercise for the 2016 provisional register of voters, which took place May 15-25, 2016, was extended from seven days to 11, after parties criticized the initial timeframe.

In response to political parties and CSOs, the ECZ carried out an independent audit of the voter registry. Some stakeholders, most prominently the UPND and certain development partners, decried the ECZ's selection of experts from the U.N. roster. The team's audit was unflinching in reporting extensive flaws in the register, which the ECZ revealed publicly. Among the findings: 132,837 voters shared national registration card (NRC) numbers; 2,555 voter registration records shared NRC numbers, names, and dates of birth; and 492 records shared all registration details, including the individual's place of birth and chiefdom. The ECZ informed the public on July 18 that all voters sharing NRC numbers would be allowed to vote, as this duplication falls under the responsibility of the National Registration, Passport, and Citizenship Department. They also announced that 2,215 cases of duplications had been removed from the register of voters.

The audit also concluded that no evidence was found to support the alleged inclusion of significant numbers of foreign nationals in the provisional register of voters because all registration records were associated with NRC numbers, and the number of registered voters during the 2015-2016 registration drive was generally within the projected numbers of eligible voting population. According to projections conducted by the audit team using data from the Central Statistical Office, "the 2016 provisional register of voters possibly includes the particulars of more than 300,000 deceased voters since 2011, excluding 62,777 deceased voters removed since 2005."²⁶ This problem remains unaddressed, as upon completion of the verification exercise, the ECZ was only able to remove 10,985 deceased voters from the register.

The register of voters was certified on July 31. In total, 19,960 entries were eliminated from the provisional voter register. The number of registered voters was 6,698,372, which represented a 29 percent increase over the number of registered voters in 2011. Lusaka has the highest number of voters (1,119,318), followed by Copperbelt (1,034,548), and Southern provinces (810,000).

REFERENDUM

Eligible voters for the referendum consisted of all Zambians who attained the age of 18 and possess a national registration card; these individuals did not need to be included on the register of voters. The Central Statistical Office provided estimates of the number of eligible voters to the ECZ by applying the cohort component method. Population projections were based on the 2010 Census of Population and Housing, taking into account data on births, deaths, and migration. From the projected total population of 15,933,883, the Central Statistical Office estimated that 7,528,091 Zambians qualified to vote in the referendum.

²⁵Christian Churches Monitoring Group (CCMG), *Report on Mobile Voter Registration Monitoring*, conclusion, p. 17.

²⁶ See Election Commission of Zambia, *Audit Report – Executive Summary Audit of the 2016 Provisional Register of Voters as at 6 June 2016*, p. 4.

CANDIDATE ELIGIBILITY AND NOMINATION

A candidate for president must be a Zambian citizen by birth or descent, ordinarily reside in the country, be at least 35 years old and a registered voter, have a minimum academic qualification of 12 years or its equivalent, pay a required registration fee, and be supported by 100 registered voters from each province. The constitution disqualifies candidates for president if they hold dual citizenship, have mental or physical disabilities, are currently serving a prison sentence, or have served a prison sentence in three of the past five years preceding the election. According to international best practice, the exercise of one's right to stand as a candidate may not be suspended or excluded except on grounds that are established by law and that are objective and reasonable. Physical disabilities do not reach this threshold.²⁷ The constitution does not allow for independent candidates to run for presidency, which is equally contrary to international obligations.²⁸

National Assembly candidates must be a Zambian citizen, at least 21 years old, a registered voter, have a minimum academic qualification of 12 years or its equivalent, pay a required registration fee, and be supported by 15 registered voters from the constituency. The constitution explicitly allows independent candidates to stand for National Assembly elections.

Local council candidates must be at least 19 years old, reside in the district, have a minimum academic qualification of 12 years or its equivalent, and pay a required registration fee. Independent candidacy is allowed.

Several candidate nomination requirements hinder the right to stand on an equal basis and are contrary to Zambia's commitments and international obligations and standards.²⁹

Constitutional amendments introduced a new requirement of minimal academic qualification of a Grade 12 (G12) certificate or its "equivalent" as certified by the Examinations Council of Zambia in order to stand for all elected positions, including local councils. The law does not define the "equivalent" of the certificate. The High Court issued a decision clarifying that "a person who can prove having higher education does not need to produce the actual G12 certificate."³⁰ Moreover, the law does not provide clear mechanisms of verifying G12 certificates in a sufficient and timely manner.³¹ Notably, this requirement disproportionately disadvantaged and restricted the rights of female and rural candidates, who may not have had equal access to educational opportunities. Indeed, the Zambia National Womens Lobby, which

²⁷ U.N., CRPD, Article 29, "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected..."

²⁸ U.N., ICCPR General Comment 25 (17), The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.

²⁹ Para. 15 of the 1996 UNHRC General Comment 25 to the ICCPR states that any restrictions on the right to stand must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as residence. See also AU, AfCHPR, Article 2; Para. I.1.1.1.d.iii. of the Council of Europe Venice Commission's Code of Good Practice in Electoral Matters states that the proportionality principle must be observed when depriving an individual of the right to be elected.

³⁰ The High Court decision 2016/HB/24 of May 10, 2016, on the *Sibongile Zulu v. ECZ* case.

³¹ The Examination Council of Zambia declared a number of G12 certificates forged after the nomination period was closed. The ECZ stated they are not in the position to address the matter as it is of criminal nature and proceedings need to be initiated.

had engaged with aspiring women, reported that the passage of the G12 requirement disqualified 95 percent of the women with whom it had worked for more than a year as prospective candidates for office.

According to the constitution, candidates can withdraw after the close of nominations and at any point before elections, which will require the ECZ to cancel elections and begin a new nomination period.³² Yet, the law does not provide further details on the form or procedures of withdrawal.³³ Regulations should include provisions regarding the time and conditions for the withdrawal of registered candidates. A number of complaints related to candidate nominations and withdrawals were not finalized prior to the start of the official campaign period, undermining the equal opportunity to campaign for some candidates.

Most interlocutors remarked that monetary fees for candidate nomination are excessive and thereby present an additional unreasonable barrier to candidacy. The fees are non-refundable, regardless of whether a candidate takes office. The initial published fees were reduced, but still remain beyond the reach of many.³⁴ Another problem was the refusal of the district electoral authorities to allow political parties to pay nomination fees in Lusaka on behalf of candidates contesting in provinces — leading to the disqualifications at the district level of some candidates.

Following the constitutional amendments, a new legislation regulating campaign expenditures and reporting should have been adopted; however, no legislation was enacted prior to election day. This leaves an important aspect of the electoral process unregulated, circumventing transparency and accountability, and leaving the process open to the undue influence of money. Zambia is obligated to take measures to prevent corruption, particularly in the context of campaign financing.³⁵ Campaign-finance regulations should enforce a transparent process in which all political parties and candidates are treated equally. Even where these ideal conditions are met, it will not erase the major advantage of resources available to the incumbent party, which is amplified by the party's use of state resources in the campaign.

CANDIDATES, PARTIES AND THE CAMPAIGN ENVIRONMENT

Political pluralism and genuine voter choice are critical aspects of democracy. Equitable treatment of candidates and parties and the maintenance of an open and transparent campaign environment are important to ensuring the integrity of democratic elections. Zambia supports several important international obligations in relation to candidates, parties, and the campaign

³² Article 52(6) of the constitution states, “Where a candidate dies, resigns or becomes disqualified ... after the close of nominations and before the election date, the Electoral Commission shall cancel the election and require the filing of fresh nominations by eligible candidates and elections shall be held within thirty days of the filing of the fresh nominations.”

³³ The Constitutional Court in its decision of Aug. 9, 2016, stated that even though the law is silent on the form of withdrawal, an official written document should be submitted for the ECZ's consideration.

³⁴ In late May, presidential nomination fees were reduced from K75,000 to K60,000; National Assembly fees from K10,000 to K7,500; Mayors from K7500 to K5,000; council chairs from K3500 to K2,000; city and municipal councilors from K1,500 to K750; and district councilors from K750 to K400. Those who had already paid the higher fees were refunded the difference by ECZ. <https://www.lusakatimes.com/2016/05/29/ecz-revises-nomination-fees-downward/>

³⁵ U.N., Convention Against Corruption, Article 7, 18, 37; AU, Convention on Corruption, Article 7.

environment, including ensuring that every citizen has the right to be elected³⁶ and the right of freedom of assembly.³⁷

Several factors combined to produce a highly tense atmosphere, even well before the official start of campaigning in May. One element was the closeness of the 2015 presidential by-election, in which PF and UPND were separated by less than 28,000 votes.³⁸ The expectation by each party and its supporters that they had a realistic chance to win the presidency in 2016 contributed to an environment in which political tensions and the potential for electoral violence was widely perceived to be at an all-time high for Zambia. This tension was elevated further by the uncertainties resulting from the electoral reforms that introduced the “50 percent +1” format.

Political tensions were also heightened by the decamping of former PF officials to join the UPND, most notably UPND vice-presidential candidate Geoffrey Bwalya Mwamba, who had previously served as PF minister of defense. In adopting Mwamba, who is from Northern Province, as the vice-presidential candidate, UPND was widely perceived to have sought to expand its reach beyond its stronghold in Southern Province into PF strongholds in Northern, Muchinga, and Copperbelt provinces.

Further, both PF and UPND made pre-election statements that raised concerns about whether the parties were prepared to accept the electoral results announced by ECZ and to respect the democratic institutions of government. President Lungu regularly alleged that UPND supporters were engaged in electoral violence,³⁹ warned that he was “prepared to sacrifice democracy for peace,”⁴⁰ and said that he would “crush” Hichilema if he refused to accept a PF electoral victory.⁴¹ UPND officials also stated publicly and privately that UPND was convinced that it would win the presidential election if the electoral process was credible and free of irregularities. Whereas such expressions of confidence are both routine and hardly incendiary on their own, Hichilema was also quoted prior to election day as saying that he had already won and would not accept the results if he were not declared the winner.⁴² UPND also expressed a complete lack of confidence in all institutions through which it could challenge the electoral results — including the ECZ, Constitutional Court, and judiciary.

The pre-election period was marred by widespread reports of political tensions and electoral violence. Following the death⁴³ of a UPND supporter in Lusaka on July 8, 2016, which occurred when police denied permission to hold a scheduled rally, the ECZ suspended campaigning for 10 days.⁴⁴ The campaign suspension did seem to defuse tension and conflict in Lusaka for a time, but it also prevented opposition parties from campaigning in a critically important location. Regrettably, another major outbreak of electoral violence occurred in Mtendere, Lusaka, on Aug. 8, 2016, when PF and UPND supporters encountered each other: PF supporters attacked the UPND supporters and vehicles with stones — video of which was

³⁶ UDHR, Article 21(1); UN, ICCPR, Article 25(b); AU, ACHPR, art 13(1).

³⁷ U.N., ICCPR, art. 21; AU, ACHPR, Article 11.

³⁸ https://www.elections.org.zm/results/2015_presidential_election

³⁹ <https://www.lusakatimes.com/2016/06/30/president-lungu-condemns-upnd/>;

⁴⁰ <http://zambia.news24.com/National-News/zambian-leader-warns-of-draconian-measures-over-poll-violence-20160802?>

⁴¹ <https://www.daily-mail.co.zm/?p=60617>

⁴² <https://www.daily-mail.co.zm/?p=75765>

⁴³ <https://www.lusakatimes.com/2016/07/09/police-shoot-dead-female-upnd-supporter-lusaka/>

⁴⁴ <http://ecz-news.com/news/press-release-9th-july-2016-ecz-suspends-campaigns-in-lusaka-and-namwala-districts/>

widely circulated online and on social media. The ECZ released a statement the following day condemning the violence and demanding the parties neither instigate violence nor retaliate against such attacks, but otherwise made no use of its conflict management mechanisms;⁴⁵ however, there was another attack on election day that led to the hospitalization of a PF supporter in Southern Province. In public statements⁴⁶ and private consultations, PF and UPND both alleged that the other party was responsible for electoral violence or that the violence was perpetrated by people impersonating their respective party cadres. The trend of cadre wearing military fatigues was also noted with concern.

A significant concern raised by opposition parties and CSOs was the apparent lack of a level playing field for opposition parties. Several factors contributed to this climate, including a substantially one-sided media environment characterized by an overwhelming public media bias toward the ruling PF and corresponding interference with private media houses. Another dimension was the use of state resources for political purposes, including by ministers whose continuation in office after the dissolution of parliament was deemed unconstitutional.

Following the constitutional amendments, some ambiguity existed about the legality of cabinet ministers remaining in office beyond the dissolution of parliament. Taking advantage of this apparent loophole, the ministers continued in office, and continued to utilize state resources, in the course of the political campaign. The Law Association of Zambia (LAZ) challenged this practice in the Constitutional Court. Finding in favor of the petitioners, the Court ruled that the ministers' mandate, in fact, had expired on the day of dissolution of the parliament; it requested return of the salaries and allowances paid after that period. While this case represents an important demonstration of judicial independence, its announcement three days prior to the election did little to offset the electoral advantage enjoyed by the ruling party during the campaign period.

The playing field was affected by the government's successful effort to curtail the campaign movements of opposition parties, particularly the UPND. Two of the principal methods utilized were the denial of flight clearances for opposition party aircraft by the Zambian Air Force,⁴⁷ and even more severely, the over-broad interpretation and inequitable application of the Public Order Act (POA) by police to deny permission for UPND to hold rallies.

The POA requires only that groups notify the police prior to planning gatherings; permits are not required. However, stakeholders noted that police did not invoke the POA proportionally and that PF rallies were not prohibited. UPND rallies, on the other hand, were routinely denied or cancelled. A typical explanation was that President Lungu was traveling in the same *province* — not the same town or city — and that his security might be compromised by the presence of a rally. This rationale appears specious on its face, given the geographic expanse of Zambia's provinces. Moreover, although the Human Rights Commission (HRC) trained police on the application of the POA, police officers reported to the HRC that they had been directed to implement it against UPND in ways that the officers believed to be improper but felt unable to refuse.

MEDIA ENVIRONMENT

⁴⁵<http://ecz-news.com/news/electoral-commission-of-zambia-%E2%80%8Bchairpersons-pre-election-statement/>

⁴⁶ <https://www.daily-mail.co.zm/?p=75767>

⁴⁷ <https://www.lusakatimes.com/2016/05/25/upnd-want-ecz-meet-zaf-flight-permissions-campaigns/>

The media play a critical role during democratic processes by educating voters and political parties about major issues, thus giving them access to information so they can make informed decisions.⁴⁸

As noted in the above campaign environment section, one of the most significant challenges to opposition parties during the pre-election period was the lack of equitable coverage by and access to public media. The Media Institute of Southern Africa (MISA) and the Media Liaison Committee, supported by BBC Media Action, implemented a comprehensive pre-election media monitoring project, and their data objectively showed that public media outlets strongly favored PF and/or the government in its coverage. UPND also alleged that it faced significant barriers to accessing public media for various programs and advertisements. On Aug. 9, 2016, ZNBC was ordered by the High Court to air a documentary on Hichilema before the close of the campaign period; this was too late in the campaign to affect his candidacy in any measurable way.⁴⁹ MISA also filed legal action against ZNBC regarding its bias in political coverage. That matter was not resolved before election day.

Another area of concern for media independence was the interference with the ability of *The Post*, the private daily newspaper most favorable to UPND, to publish freely in the pre-election period. *The Post* was party to legal action and subject to seizure of its offices and equipment by the Zambia Revenue Authority (ZRA), ostensibly to satisfy accrued tax liabilities. *The Post* was forced to continue its operations literally in the street, with limited print editions and online reporting. *The Post* acknowledged tax arrearages, but it claims to have been in discussions with the ZRA to resolve the matter at the time of the property seizures. Other media stakeholders noted that even state-owned ZNBC has outstanding tax obligations, but that the minister of information stated that ZNBC is “family,” and “you don’t punish family.” This suggests that the action by the ZRA may have been motivated by an attempt to silence critical voices as well as to collect taxes owed.

Other journalists, notably “citizen journalists” at community radio stations, were subjected to harassment and intimidation, mostly by PF cadres, for their coverage of the electoral process. Larger media outlets in urban areas were less vulnerable to such intimidations. These instances of media harassment were reportedly carried out in view of police, who made little effort to protect journalists and sometimes even participated in the efforts to power down community radio stations.

PARTICIPATION OF WOMEN

International and regional obligations protect women’s rights and ensure their democratic right to participation.⁵⁰ Zambia is signatory of several regional and international conventions and protocols regarding gender equality, including the Protocol to the African Charter on Human and Peoples’ Rights concerning the Rights of Women in Africa (May 2006) and the Convention on the Elimination of all Forms of Discrimination against Women (June 1985). Despite this fact, representation by women in elected office in Zambia is among the lowest levels in the SADC region.⁵¹ The Human Rights Commission encourages parties to adhere to SADC target of 50 percent representation by women, but the level of women participation is actually worsening. The HRC indicated that a gender equality bill that would have affirmed the 50

⁴⁸ OSCE, Election Observation Handbook (Fifth Edition), p. 48.

⁴⁹ <http://power997.com/court-rules-for-upnd-documentary/>

⁵⁰ U.N., ICCPR.

⁵¹ <http://www.ipu.org/wmn-e/classif.htm>

percent representation target failed in parliament. Moreover (as noted earlier), many women were disqualified from candidacy because of the G-12 requirement.

Among the various political parties, the Forum for Democracy and Development (FDD) presidential candidate was Edith Nawakwi, and the the PF vice-presidential candidate was Inonge Wina. The PF party structure allows its central committee to direct the adoption of women candidates, and it adopted women candidates for four of the seven Lusaka constituencies. Other parties also adopted women candidates, but collectively the number of women adopted by the parties remains extremely low.

PARTICIPATION OF MINORITIES

Persons with disabilities also face significant barriers to political participation. The Disability Rights Watch indicated that while the ECZ has taken positive steps to better assure access to all polling stations, and to conduct training of trainers of persons with disabilities, there remain significant obstacles to political participation. Of note, disabled persons are still confronted with challenges to cast secret ballots without assistance and face cultural resistance to being adopted by the parties as candidates.⁵²

CIVIL SOCIETY AND DOMESTIC OBSERVATION

Several domestic CSOs carried out election observation missions. The Zambian Election Information Center (ZEIC), a coalition of CSOs, deployed up to 9,000 monitors to all polling stations. ZEIC monitors focused on the electoral process rather than results tabulation, and they coordinated with the ECZ and police to report and resolve incidents or issues that arose on election day. ZEIC also published data and reports addressing issues related to voter registration, political parties, and weekly reports addressing issues of concern during the campaign period.⁵³

The Christian Churches Monitoring Group (CCMG), working with the technical assistance of the National Democratic Institute (NDI), carried out a parallel vote tabulation (PVT) exercise that used a statistically valid sampling of polling stations across Zambia to validate the official results of the ECZ. The first PVT in Zambia was carried out in 1991 and has been implemented in subsequent elections. Based on its data derived from its PVT monitors, CCMD issued a preliminary post-election statement on Aug. 12 that assessed the early voting process but did not address the closing and counting processes.⁵⁴ CCMG also deployed long-term observers to monitor the pre-election and campaign environment and issued a series of statements and reports assessing various aspects of the electoral process.⁵⁵

ELECTORAL DISPUTE RESOLUTION

Clear, fair, and effective procedures for electoral dispute-resolution are essential to ensuring that effective remedies are available for the redress of violations of fundamental rights related

⁵² U.N., CRPD, Article 29.

⁵³ <http://zambivote2016.org/>

⁵⁴ <http://ccmgzambia.org/2016/08/12/ccmg-post-election-preliminary-statement/>

⁵⁵ <http://ccmgzambia.org/category/elections/>

to the electoral process.⁵⁶ Voters and other electoral stakeholders must be given, and must perceive that they possess, a voice in the quality of the electoral process if these processes are to retain credible. Electoral dispute resolution is primarily governed by the 2016 Constitution, the 2016 Electoral Process Act, the 2016 Code of Conduct, and conflict management committee guidelines. The electoral dispute-resolution framework lacks clarity and does not guarantee complainants an effective and timely remedy for violations of their rights. Courts, election commissions, specialized *ad hoc* tribunals, and conflict management committees have jurisdiction to consider electoral disputes, depending on the nature of the complaint.

In accordance with the Electoral Act, the ECZ established conflict management committees (CMCs) at the national and district levels to fast-track the resolution of electoral disputes. CMCs are mandated to mediate electoral conflicts, advise the conflicting parties, and report matters to police for further actions. These committees are composed of a chairperson appointed by the ECZ, a vice chairperson, representatives of registered political parties, a representative from CSOs, and from various governmental institutions. District CMCs are based in council offices and are managed by the town clerks or council secretaries on behalf of the ECZ. Their decisions are not legally binding and are not published. CMC proceedings are not public, which contravenes the transparency of the process and is at odds with international standards.⁵⁷ Complainants can choose to refer the matter directly to the court, surpassing the CMCs. However, in one case the High Court refused to consider a case as it had not been brought to a CMC.⁵⁸ Although the main aim of CMCs is to serve as an alternative to lengthy court proceedings, the CMCs did not appear to provide a transparent mechanism of effective dispute-resolution during the elections.

According to the constitution, the High Court hears complaints and petitions on National Assembly elections and the referendum. A person may file an election petition with the High Court to challenge the election of a member of parliament. The law provides for a 90-day deadline of holding a hearing on petitions against National Assembly results; however, there are no deadlines for passing the final decision, and a member of parliament should only hold a seat when challenges are resolved according to Article 73 of the constitution. Petitions regarding election results can be presented by any person who voted or had the right to vote in the referendum within 21 days of the declaration of the referendum results, on the grounds that corrupt practice prevailed or on the grounds of error or misconduct by the ECZ. The High Court received 11 petitions prior to election day, mostly related to candidate nomination. Most of these cases were rejected as they were filed after the prescribed deadline.

The newly established Constitutional Court is entitled to hear complaints regarding presidential and parliamentary elections, and its decisions are final without further possibility of appeal. The Constitutional Court was established in January 2016 pursuant to the constitutional amendments. The president appointed six of the 13 judges required under the constitution; their appointments were ratified by the parliament in March 2016. The Constitutional Court rules, providing for the process and procedure of the court, were adopted in May 2016. The Constitutional Court has been accepting complaints since January 2016; however, it only became operational when the procedures were established in May, and it held its first hearing on June 29. It currently operates with a limited capacity of six judges, faces a number of

⁵⁶ U.N., Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 47.

⁵⁷ U.N., ICCPR, art. 19(2); AU, Convention on Corruption, art. 9; ACHPR, art. 13(1).

⁵⁸ Case was filed by UPND against ZNBC and dismissed by the High Court on July 22, 2016.

logistical and operational challenges, and lacks institutional experience, which might prove to be problematic during electoral dispute-resolution processes.

According to the constitution, the Constitutional Court should hear an election petition relating to the presidential elections within 14 days of filing the petition; however, it does not provide a deadline for passing a decision. The absence of a legal deadline to consider petitions leads to legal uncertainty and might unreasonably prolong the process and fail to guarantee effective and timely dispute resolution. There have been 27 cases filed to the Constitutional Court to date, mostly related to matters of interpretation of the constitution as well as candidate nomination and appeals from the High Court. Seven cases are still pending. The Constitutional Court granted a petition filed by the Law Association of Zambia that challenged the constitutionality of the continued stay of the ministers in office after the dissolution of parliament. The court ruled that ministers' mandate expired on the day of dissolution of the parliament and requested return of the salaries and allowances paid after that period. While the decision was issued only a few days before the polls, it is still to be determined what the implications of the decision will be on other potential challenges to the process.

Special *ad hoc* local election tribunals are established by the chief justice at the district level to deal with issues pertaining to local elections, including the results. The tribunals and their rules of procedures were established shortly before election day, affecting the right to legal redress.

Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints did not provide stakeholders with effective or timely redress on a consistent basis, which is contrary to international standards.⁵⁹

VOTING

The Center did not field a short-term observation mission for election day and cannot make an independent assessment of the voting process; however, its limited observations in Lusaka, Copperbelt, and Southern provinces on polling day are consistent with the findings of other international observer election mission and domestic observers, which determined that most, but not all, polling stations opened on time; that there was high voter turnout, and that there existed a largely peaceful, calm environment. These preliminary assessments by domestic and international observers are similar to assessments of the voting process in recent prior elections conducted by ECZ.

COUNTING

As noted, the Center made only a limited observation of the polling day process and cannot make an independent assessment of the closing and counting processes. Recognizing the limited scope of its observations, Center observers noted within the polling stations visited that

⁵⁹The Universal Declaration of Human Rights states, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Article 8), and "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (Article 10). The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

there were some instances of uncertain closing procedures and more generally, long vote-counting processes. The Center commends the ECZ staff, party polling agents, and domestic observers for their dedicated efforts in conducting the polling process.

The Carter Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 65 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production. Visit: www.cartercenter.org to learn more about The Carter Center.