



ELECTION OBSERVER MISSION TO THE 20 JANUARY 2015 PRESIDENTIAL BY-ELECTION IN ZAMBIA

Preliminary Statement Lusaka

22 January 2015

“In its assessment of the context and conduct of the 20 January 2015 election, the EISA Observer Mission has come to the conclusion that the process was so far generally peaceful and in conformity with the laws of Zambia and international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results is concluded, before making a final assessment of the process.”

1. Introduction

The Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Election Observation Mission to the 20 January 2015 presidential by-election in Zambia. The mission is comprised of 14 observers drawn from nine countries, and is led by His Excellency Cassam Uteem, former President of the Republic of Mauritius, with Denis Kadima, EISA's Executive Director, as the Deputy Mission Leader.

The EISA Mission began arriving in the country on 11 January after conducting a pre-election assessment mission in December 2014. EISA observers were provided with briefings by election stakeholders prior to deployment to five provinces (Copperbelt, Eastern, Northern, Southern and Lusaka) on 17 January 2015. The Mission met with the leadership of parties contesting in the election, as well as the Electoral Commission of Zambia (ECZ), the National Police, and civil society organisations. In their areas of deployment, observers witnessed election rallies and final preparations for elections by election stakeholders including the delivery and receipt of polling station materials. The observers also interacted with electoral stakeholders including political parties, civil society, the ECZ, the police and the media at local level. EISA observer teams were equipped with computer tablets that enabled them to capture and transmit data in real time.

EISA observers will begin to depart from Lusaka on 23 January 2015. An EISA team will remain in Lusaka to follow the final stages of the tabulation and announcement of results.

EISA's assessment of the electoral process was based on the principles and standards set out in the African Charter on Democracy, Elections and Governance, the African Union Declaration of the Principles Governing Democratic Elections in Africa, the International Principles for International Observation of Elections, and its respective Code of Conduct, the Principles for Election Management, Monitoring and Observation (PEMMO), as well as the Zambian legal framework governing the electoral process.

This statement presents EISA's preliminary findings, recommendations and conclusions on the 2015 electoral process in Zambia. It is being issued while the tallying of results at constituency tallying centres and tabulation at the national results centre are still ongoing, and therefore reflects only the Mission's observations up to the conclusion of the counting process at polling station level. A final report covering the entire process will be issued by EISA within a few weeks.

2. Preliminary Findings

2.1 Political Environment

The sudden death of President Michael Chilufya Sata on 28 October 2014 triggered the 20 January 2015 presidential by-election, which took place within the context of strong electoral competition among the eleven presidential contestants.

The pre-election environment was impacted on by conflicts within some political parties. Intra-party factionalism and competition for the party nomination led to sometimes-violent conflict and court cases. Incidents of election-related violence also emerged between supporters of different candidates. Particularly serious and deplorable was the use of weapons such as machetes during inter-party confrontations. The Mission noted with satisfaction the statements made by several presidential candidates to deter their supporters from electoral violence as well as the strong stance taken and statements made by the ECZ to speak against the violence, which in the final days of the campaign worked to deter further escalation.

The Mission notes also that the 2015 election was the fourth presidential election in the past eight years, and was conducted less than two years before the next scheduled elections, which places a great financial and human burden on the country and may lead to voter fatigue. The high number of parliamentary and local authority by-elections since 2011 has compounded this problem.

2.2 Constitutional and Legal Framework

The 2015 presidential by-election took place within the constitutionally mandated period of 90 days after the death of President Michael Sata, and the EISA Mission finds that the constitutional and legal framework governing this election, namely the Constitution of Zambia, the Electoral Act, the Electoral Commission Act, and the Electoral Code of Conduct meet the international, continental and sub-regional benchmarks for democratic and credible elections.

Zambia was at the forefront of the democratic wave in Africa, having been one of the first countries on the Continent to reintroduce multi-party democracy and elections. However, the Zambian constitutional and electoral framework should be brought in line with current international best practices for a more mature democracy through a comprehensive and consensual reform process. Some of the shortcomings identified are:

- The lack of a combined election for President and Vice-President or a provision that allows the Vice President to take over the Presidency until the end of the term, makes presidential by-elections unavoidable when the Office of Presidency becomes vacant, placing a heavy financial and political burden on the country.
- The electoral system requires only a simple majority for someone to be elected President, which means the president is not necessarily elected by a substantial majority the popular vote. For instance, since the return to multi-party politics, no President has been elected with more than 50% of the votes cast.
- There is currently no legal provision for independent candidates in presidential elections. The absence of such a provision in the law impinges on the principle of equal opportunity to vote and to be voted for as provided in the SADC Guidelines and Principles.
- The provision of the Constitution that requires aspirants to the position of President to have been domiciled in the country for 20 years could be considered as a restrictive provision that may bar Zambians in the diaspora from legitimately and fully participating in their country's political life.
- The provision of the Constitution which provides for the person elected as president to be sworn-in within 24 hours also presents a challenge as it does not leave enough time for complaints and appeals to be adequately addressed before the person elected takes office.
- The Chief Justice is simultaneously the Returning Officer for the presidential election and presiding judge of the Court that has to hear and decide on cases regarding the outcome of the presidential election.

The Mission notes that the failure of successive constitutional reform initiatives has not allowed the country to address these shortcomings. Civil society groups produced a document that was signed by most presidential candidates prior to the 2015 presidential by-election, committing the winner of the elections to pass the amended Constitution by 2016.

2.3. Electoral Management

The Mission notes that the Electoral Commission of Zambia (ECZ) had less than 3 months to conduct a poll that normally takes a number of years to organise. Furthermore, the

Commission had just completed a data-gathering exercise for the new delimitation of constituencies, in addition to conducting a number of by-elections, which had consumed significant resources. To complicate matters further, this election took place in the middle of the rainy season, placing additional logistical burdens on the ECZ. The above circumstances notwithstanding, the ECZ was able to deliver this election professionally and efficiently. This included recruiting and training thousands of personnel, and procuring and distributing the election materials to the majority of polling stations on time.

The Mission however noted that as the ECZ does not have a decentralised structure outside of Lusaka, it recruited election staff from government departments at district and local level as returning officers. These same officials also selected polling staff on behalf of the ECZ. Although the lists of recruited staff were displayed for public scrutiny and some were challenged and names removed, this arrangement reduced the control that the ECZ must have over selection and recruitment of electoral staff, and was contested by some stakeholders.

The mission also noted the ECZ's commitment to a transparent electoral process through opening electoral events such as ballot paper production to scrutiny by political parties and monitors and by making the accreditation of international observers and local monitors accessible. However, stakeholders complained that they had insufficient time to scrutinise the newly introduced electronic results management system. Their reservations notwithstanding, stakeholders acknowledged that the new system may speed up transmission and tabulation of results and respond to the need of modernising the electoral process.

The Mission noted with satisfaction that the ECZ conducted the election largely in accordance with the legal framework of Zambia, and in line with international standards.

2.4 Voter Registration

The Mission noted that voter registration was not conducted prior to the election. This meant that citizens who came of voting age since the last voters' roll update in 2012 did not get the opportunity to register as no continuous voter registration, as required by law, has been conducted since then. Whilst this may be understood in the context of recurrent by-elections, that prevented the roll from being updated, lack of financial resources, and the short period of time before the election, it means that a significant number of young citizens were not able to exercise their democratic right to vote on 20 January. This limitation was extended to all voters who have changed their area of residence since 2012. The ECZ however allowed all voters who had lost their voter's card to have them replaced in the period from 28 December 2014 to 3 January 2015 although some stakeholders complained that the time was too short.

2.5 Campaign Finance

The legal framework in Zambia has no provisions for state funding of duly nominated electoral candidates for any elections. This presents the challenge for candidates who are not

adequately funded. Additionally, the lack of legislation which regulates the use of private funds during electoral campaigns, either placing limits on campaign spending and/or requiring parties and candidates to disclose their sources of funding, also creates opportunities for undue influence of private funds on the campaign as well as on the elected officials that would have benefitted from it.

2.6 Electoral Campaign

The electoral campaign for the election began on 19 November 2014 and ended on 19 January 2015 at 1800hrs, and provided adequate time for candidates to expose their manifestos to the electorate. However, some candidates were forced to start their campaigns late due to internal party disputes over candidate selection.

The Mission noted that the electoral campaign was marred by instances of political intolerance exhibited in the use of abusive language which could be characterised as hate speech. Incidents of violence were also recorded within political parties and between the different political parties. Two of these incidents were fatal. Some of the perpetrators of electoral violence from different parties were arrested and taken before the relevant legal mechanism whilst others were taken before the conflict management structures of the ECZ.

The Mission notes the efforts made by the Zambian Police Service and Electoral Commission of Zambia to defuse the tension by using the Conflict management Committees to resolve political party violence. The Commission went as far as to threaten to suspend the campaign if the violence continued. Although incidents were still being recorded up to the last days of the campaign, they were significantly reduced as a result of these interventions.

The Mission also noted and commends the decision by the Police to suspend application of the Public Order Act, which requires political parties to receive authorisation from the Police before holding public meetings and activities, in order to give all parties unfettered opportunity to campaign.

2. 7 The Role of the Media

The Mission noted that the media environment in Zambia is diverse and vibrant and that the media can operate without undue restriction, although there was clear bias and partisanship on the part of the most media outlets in their coverage and reporting. Two parties officially lodged complaints against perceived bias by the Zambia National Broadcasting Corporation (ZNBC) to the corporation.

The ZNBC allocated 30 minutes a week on both TV and Radio to each candidate for the broadcast of their campaign activities, and this was largely respected. In addition to the allotted slots, candidates were free to buy airtime for campaign adverts, and this clearly advantaged those candidates that were well funded.

Media stakeholders shared with the EISA Mission some instances of media intimidation during the campaign, including a physical attack on a journalist.

For the first time presidential candidates participated in televised debates which added a new dimension to the electoral campaign and reached large segments of the voting public via the television and the radio.

2.8 Participation of Women

Women participated in the election in high numbers, but at different levels. The Mission observed that women were well represented in election management, as the Chairperson of the ECZ and the Director of Elections, among others, are both women. The Mission noted also the high numbers of women amongst the polling station staff, party agents and at the totaling centres.

However, there was only one woman amongst the eleven candidates and attendance of women at the rallies observed was not high. This mirrors the gender situation in Zambia, where only 12.66% of MPs are women. There are only six female cabinet ministers out of a total of 22, and women are generally poorly represented in the leadership structures of political parties.

The Mission also noted that the number of female registered voters was lower than that of men, although there are more women than men in the adult population. During the operation mounted by the ECZ for the replacement of voters' cards, fewer women than men replaced their cards. Additionally the violence during the campaign could have deterred women from participating in the process.

2.9 The Police

The Mission noted that there is lack of consensus amongst stakeholders on whether the police acted strongly enough against perpetrators of election violence. However, the Mission is satisfied that the police's approach of avoiding criminalisation of all cases and seeking mediation acted to defuse tensions and reduce alarm amongst the population. As indicated above, the Mission finds that the decision by the police to suspend enforcement of the Public Order Act during the campaign period was a positive step to allow vibrant and unimpeded campaigning.

The Mission also commends the decision to deploy unarmed police officers to provide security during the voting process.

2.10 Civil Society

The mission noted that civil society organisations participated in the electoral process through voter education and election monitoring. Although these efforts were limited by the fact that there was insufficient time to marshal funding for all the desired activities, the Mission noted the contribution of civil society to improving the transparency of the election through the deployment of thousands of election monitors, including the conduct of parallel vote tabulation.

The Mission noted with satisfaction that Zambian electoral legislation allows Zambian citizens a very active role on election day through election monitoring, which represents a more vigorous form of participation than regular election observation.

2.11 Polling Day Observation

EISA observer teams observed election day procedures, including opening, voting, closing and counting, in a total of 70 polling stations in the five provinces where they were deployed, namely Copperbelt, Eastern, Northern, Southern and Lusaka. This is a summary of their observations and relates only to those polling stations observed by the EISA Observer Mission:

The atmosphere in and around all observed polling stations was peaceful and orderly. Security personnel were present at all stations, but were professional and discreet. Party agents were able to monitor all phases of the process on election day. Our teams found at least 2 and sometimes as many as 6 parties represented at the observed polling stations.

All the polling stations had all the necessary materials for the election day operations to proceed normally. However, we were informed by the ECZ that due to the bad state of some roads, 51 polling stations opened too late or didn't open at all, as they were waiting for materials coming by helicopter. The Mission commends the ECZ's decision to extend the voting period for those polling stations in order allow those voters to exercise the right to cast their ballot.

Only 3 of the 70 observed polling stations did not open on time, but by 06H45 the situation had been normalised in all three stations. All observed polling stations closed on time, at or around 18H00.

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

Opening Procedure

The EISA teams observed opening procedures in seven polling stations. All procedures were properly followed, and all ballot boxes were properly sealed before voting began.

All EISA observers assessed the opening process to be good or very good, although some polling officials, at times, seemed unsure about some procedures.

Voting Process

The EISA teams observed voting procedures in 70 polling stations, of which 62% were in urban areas and 38% in rural areas.

The layout of most of the visited polling stations was adequate for an easy flow of voters and to ensure secrecy of the ballot, but one-third were not accessible to voters with disabilities, and up to 5% were too small and inappropriate for the rainy season, offering very poor working conditions for polling staff, party agents, monitors and observers.

More than half of polling station staff was women. However, only 43% of party agents and citizen monitors were female.

The voting process as observed by EISA was conducted smoothly and efficiently with the average time for a voter to complete the full voting process under 3 minutes. There were a few instances of voters being turned away for not having the required ID, or not finding their names on the voters' roll.

EISA observers assessed the voting process and the competence of polling station staff to be good or very good.

Closing and counting process

The EISA teams observed closing and counting procedures in seven polling stations.

Some closing and counting procedures, such as reconciliation of ballots and verification of the number of ballots in the boxes against number of used ballots, were conducted inconsistently or without public announcement by polling station officials in some polling stations. Party agents were, however, generally satisfied with the overall process and its outcome.

EISA observers assessed the closing and counting process and the competence of polling station staff to be good or very good in most observed polling stations, but noted that some polling officials, at times, seemed unsure about some procedures.

3. Conclusion

In its assessment of the context and conduct of the 20 January 2015 election, the EISA Observer Mission has come to the conclusion that the process was so far generally peaceful, in conformity with the laws of Zambia and in line with international, continental and sub-regional standards for credible elections. EISA will continue to observe the process until the tabulation and announcement of results is concluded, before making a final assessment of the process.

4. Recommendations

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

1. Within the framework of constitutional reforms:
 - a. Introduce the joint election of the President and Vice-President as running mates on a single ticket to avoid costly and disruptive presidential by-elections
 - b. Introduce the election of the President by absolute majority to strengthen the legitimacy of the Office
 - c. Expand the period between the announcement of results and the presidential inauguration to allow for the full and final resolution of electoral complaints and appeals before the inauguration
 - d. Allow independent candidates to run for President
 - e. Review and revise the residency requirement clause to ease restrictions on who can be a presidential candidate
 - f. Separate the functions of Returning Officer of the presidential election from those of Chief Justice
2. Within the context of electoral reforms:
 - a. Decentralise the structure of the election management body so that it exercises greater control over the selection and recruitment of electoral staff at local level, particularly polling station officials and returning officers
 - b. Introduce legislation to provide for equitable public funding of electoral campaigns and to regulate private donations to electoral campaigns
 - c. Enshrine in the electoral law the regulations for the equitable allocation of airtime in the public broadcaster for political party and candidate campaign propaganda
3. Ensure resumption of continuous voter registration in order to avoid disenfranchisement of eligible citizens
4. Increase opportunities for women to ascend to leadership positions within political parties through quotas or other mechanisms
5. Improve the accessibility of polling stations to people with disabilities
6. As much as logistically and financially possible, ensure that all polling stations meet basic requirements of size and quality to allow for appropriate working conditions and an easy flow of voters.
7. Improve training of polling station officials, especially around closing and counting procedures.