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# EISA ELECTION OBSERVER MISSION REPORT

# ZAMBIA



PRESIDENTIAL BY-ELECTION  
30 OCTOBER 2008



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EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa.

# CONTENTS

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<b>Acknowledgements</b>	<b>vii</b>
<b>Executive Summary</b>	<b>viii</b>
<b>1. Political and Historical Overview</b>	<b>1</b>
1.1 Background	1
1.2 The First Republic (1964-1972)	2
1.3 The Second Republic (1973-1990)	2
1.4 The Third Republic and return to multipartyism	3
1.5 The 2001 Elections	4
1.6 The 2006 Tripartite Elections	5
<b>2. Electoral Framework</b>	<b>7</b>
2.1 Constitutional, legal and regulatory instruments	7
The constitution of Zambia	7
The Electoral Act	8
The Electoral Commission Act	8
The Electoral (Code of Conduct) Regulations	9
2.2 The Electoral System	10
2.3 Election Administration	11
Assessment of the legal framework	11
<b>3. The Pre-Election Phase</b>	<b>12</b>
3.1 Voter registration and voters' roll	12
3.2 Nomination of candidates	13
3.3 Voter education and information	14
3.4 Media access and coverage	15
3.5 Campaign process	15
3.6 Election Materials	16
3.7 Accreditation of observers	17
<b>4. The Election Phase</b>	<b>19</b>
4.1 Polling stations	19
4.2 Voter turnout	19
4.3 Polling staff, party agents and security officers	20
4.4 Voting process	20
4.5 Counting process	20

<b>5. The Post-Election Phase</b>	<b>21</b>
5.1 Tabulation	21
5.2 Announcement of results	21
5.3 The Election results	22
<b>6. Conclusions and Recommendations</b>	<b>24</b>
<b>Appendices</b>	
Appendix 1: Composition of the Eisa Observer Mission	27
Appendix 2: Code of Conduct	28
Appendix 3: Stakeholders Briefing Programme	32
Appendix 4: EISA Election Observer Mission Arrival Statement	34
Appendix 5: EISA Election Observer Mission Interim Statement	36
About EISA	45
Electoral Observer Reports	47
<b>List of tables</b>	
Table 1: Presidential election results, 2006	6
Table 2: Parliamentary election results, 2006	6
Table 3: Election results	22

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Our Mission is indebted to the people of Zambia for sharing their experiences with our observers. We commend all the stakeholders for contributing to a peaceful environment in which the election took place.

We acknowledge the roles played by the Elections and Political Processes Department in organising and co-ordinating the mission, and to Dr Lucien Toulou for compiling this report.

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Our gratitude is extended to the Swedish International Development Agency (Sida), whose generous funding made this mission possible.

## EXECUTIVE SUMMARY

Upon an invitation extended by the Electoral Commission of Zambia (ECZ), EISA deployed a continental observer mission to 30 October 2008 Zambian Presidential elections following the sudden death of the incumbent President Levy Mwanawasa, who passed away in France on 19 August 2008.

The EISA mission was led by Leshele Thoahlane, chairperson of the EISA Board of Directors and Director of Lesotho's Directorate on Corruption and Economic Offences. Assisting Mr Thoahlane as deputy mission leader was Ms Ilona Tip, EISA Operations Director. The mission comprised 20 members from Algeria, Angola, Burundi, Cameroon, Chad, Côte d'Ivoire, the Democratic Republic of Congo (DRC), Lesotho, Kenya, Madagascar, Malawi, Nigeria, Senegal, South Africa, Sudan and Zimbabwe. The logistical and administration arrangements for the mission were provided by EISA staff.

The observation of the Presidential elections began with a pre-deployment orientation and briefing workshop in Lusaka from 23 to 25 October 2008. The orientation workshop covered the theoretical foundations of election observation and the standards and principles used for election assessment. The briefing was provided by a range of stakeholders, including the ECZ, representatives of the contesting presidential candidates, the media, civil society and the security forces. The mission was updated as to the legal and constitutional framework, the logistical and administration arrangements and political and social climate in which the election was taking place. Nine observer teams were deployed across the country to observe the immediate pre-election period as well as voting and counting.

The EISA mission used the Principles for Election Management, Monitoring and Observation in the SADC region (PEMMO) as the basis for its election assessment. PEMMO is a document that was developed under the auspices of EISA and the Electoral Commissions Forum of SADC Countries (ECF). It outlines standards and best practices for the conduct and assessment of elections in the Southern African Development Community (SADC) region.

Using the PEMMO, the mission concluded that the elections were conducted in a transparent manner and in a way that allowed the people of Zambia to freely express their will.

This report sums up the main observations, findings and conclusion of the EISA mission and makes appropriate recommendations to the relevant stakeholders for further improvements.



# 1

## Political and Historical Overview



- 1.1 Background
- 1.2 The First Republic (1964–1972)
- 1.3 The Second Republic (1973–1990)
- 1.4 The Third Republic and return to multipartyism
- 1.5 The 2001 elections
- 1.6 The 2006 tripartite elections

### 1.1 BACKGROUND

A presidential election was held in Zambia on 30 October 2008 following the death of the incumbent president Levy Mwanawasa, who passed away in France on 19 August 2008. This election was unprecedented in the history of Zambia, as it was the first time a sitting president had died in office. The 30 October 2008 presidential election was also the fifth consecutive multiparty election since 1991. Before then, the country was a single-party state (from 1973 to 1991). Although more than one party contested elections in 1962, 1964 and 1968, the UNIP dominated the Zambian political scene. This domination was further entrenched under the single-party system. Presidential and National Assembly elections were held every five years (1973, 1978, 1983 and 1988), resulting in UNIP invariably governing alone.

After 17 years of single-party rule, the 1991 elections were regarded as constituting a landmark event in Zambia's transition to democracy. The elections that followed in 1996, 2001 and 2006 were expected to consolidate democratic reforms. However, progress made was limited. Controversies marred constitutional changes allowing only candidates with Zambian parents to stand for president and barring former president Kenneth Kaunda from participation. Alleged coups and detention of prominent politicians, including Kaunda, an attempt by President Frederick Chiluba to run for a third term and allegations of vote-rigging also raised doubts about the ability of Zambia to consolidate its democratic process amidst pressure for constitutional and electoral reform.

Zambia (formerly Northern Rhodesia) gained independence from Britain in 1964. Located in Southern Africa, the country is landlocked and covers a total area of 752,614 km<sup>2</sup>. It is bordered by eight countries: Angola to the west; the Democratic Republic of Congo (DRC) to the northwest; Tanzania to the northeast; Malawi to the east, Mozambique to the southeast; Zimbabwe to the south; and Botswana and Namibia to the southwest.

Three distinctive periods marked the evolution of modern Zambia: the First Republic (1964–1972), which provided a framework for the first set of multiparty elections; the Second Republic, which lasted from 1973 to 1990 and institutionalised a one-party system; and the Third Republic, which saw the inauguration of a new wave of multiparty elections.

### **1.2 THE FIRST REPUBLIC (1964–1972)**

The First Republic saw the country's first experience with political pluralism, with two multiparty elections organised in 1964 and 1968. Kenneth Kaunda of the United National Independence Party (UNIP), the winner of the January 1964 elections, became the first president of the Republic of Zambia. UNIP was one of the two factions that emerged from the split of the African nationalist movement of the then Northern Rhodesia in 1958. It pursued a more progressive stance than the more moderate African National Congress (ANC), the second faction. The first African government formed in 1962 was a coalition between UNIP and the ANC. While Zambia achieved independence with a Constitution that provided for a pluralist political system, UNIP remained dominant throughout the First Republic. The party overwhelmingly won the legislative seats in 1968. This domination was further entrenched in 1973, when the Kaunda regime introduced a single-party system, arguing that the existing co-operation with the ANC was a threat to the country's unity.

### **1.3 THE SECOND REPUBLIC (1973–1990)**

Under the so-called 'one-party participatory democracy' limited competition was allowed for the National Assembly elections. Nominations were filled within party primaries and up to three candidates competed for each parliamentary seat before the final list of contestants was adopted by the central committee of UNIP. The party had supremacy over parliamentary or governmental decisions according to the Constitution of the Second

Republic. However, Zambia's dominant political institution remained the powerful executive presidency. Kenneth Kaunda, leader and candidate of the single de jure party, was elected unopposed President of Zambia successively in 1973, 1978, 1983 and 1988. Parliament, cabinet and party was becoming increasingly subordinated to 'one-man' rule. Public dissatisfaction with the country's economic decline, challenges to the president's authority from within the party, military coup attempts in 1988 and 1990 as well as growing demands for political liberalisation worldwide and from Zambia's civic organisations left Kaunda's regime with little choice but to accede to the opposition's demand for the repeal of Article 4 of the Second Republic Constitution and once again allow multiparty elections.

#### **1.4 THE THIRD REPUBLIC AND RETURN TO MULTIPARTYISM**

The October 1991 elections were the first since the return of Zambia to multiparty politics. The Movement for Multiparty Democratic (MMD), a loose coalition that emerged from the transformation of civic organisations demanding political liberalisation into a political party, won the elections. Frederick Chiluba, a former union leader, became the second President in Zambia's history with 75.8 per cent of the votes. UNIP, formerly the only party, became the main opposition party. The elections were judged to be largely fair and transparent by international and domestic observers. However, the introduction of structural adjustment programmes thereafter did not lead to the anticipated improvement in the living standards of the Zambians. On the contrary, increased unemployment worsened poverty in the country.

The incumbent President Chiluba and the MMD returned to power in 1996 amidst the abovementioned socio-economic challenges, concerns over internal democracy within the ruling party and controversy over a constitutional amendment that excluded Chiluba's closest rival, former president Kenneth Kaunda, from contesting the presidential election. A state of emergency was declared in late 1997 after a small group of army officers falsely claimed to have overthrown the government. Former President Kenneth Kaunda was briefly detained on accusations of having had prior knowledge of the coup attempt. Although order was restored, this was perhaps indicative of the fact that some segments of the population were becoming disillusioned with the government and the Chiluba administration

was following an authoritarian path. Political freedom decreased in Zambia between 1996 and 2001. In the meantime, Frederick Chiluba's attempt to run for a third term in office resulted in disagreements within the MMD. The party went to the 2001 elections with senior members opposed to the third term either being expelled or resigning from the party. The nomination of Levy Mwanawasa as the MMD presidential candidate resulted in a further split, as Michael Sata, the then secretary general, left the MMD to form the Patriotic Front (PF).

### **1.5 THE 2001 ELECTIONS**

Zambians went to the polls again on 27 December 2001 to choose their president, members of parliament (MPs) and local councillors for the third time since the re-introduction of multiparty democracy in the country. The ECZ introduced a new voter registration system, which, due to a number of factors (including a late start and lack of publicity), managed to register only 56 per cent of the eligible voters. The elections themselves were fiercely contested largely between Mwanawasa and Anderson Mazoka of the United Party for National Development (UPND) in the presidential poll, and their respective parties in the parliamentary and local government polls. The election campaign was largely free from violence and the voting period was quiet. The counting of votes at the polling stations, which took place immediately after voting, proceeded well. However, the greatest controversy of these elections concerned the manner in which the results were tabulated and compiled at the district levels, and their transmission to the national results centre in Lusaka.

Differences in the results announced at constituency level and those announced by the ECZ at the national results centre were reported by domestic and international observers. Some results sheets did not record any invalid or spoilt ballots. This was highly unusual given the low levels of literacy and limited voter education that had taken place before the elections. Compounding the matter was the fact that the margin between the two leading presidential candidates was small, making it imperative that the results be accurate. Despite these irregularities and protests in Lusaka during the results compilation process, the official results announced by ECZ four days after the end of polling declared Mwanawasa as the winner, with 28.69 per cent of valid votes as against 26.76 per cent of valid votes

for Mazoka. For the first time since 1991, the MMD lost its parliamentary majority. The MMD received 27.48 per cent of the votes, which gave it 69 elected seats against the UPND's tally of 49 seats from 23.31 per cent of the valid votes. However, with the eight additional MPs appointed by the president, informal coalitions and by-election victories, the MMD managed to secure a majority in parliament.

On the political front, President Mwanawasa placed the fight against corruption at the centre of his mandate. In the meantime, good economic management resulted in growth levels of more than five per cent and foreign debt reduction. While this initially won President Mwanawasa support from the people, the economic challenges that the country continued to face have led to growing disillusionment with the government's determination to alleviate poverty and social inequalities. Mwanawasa was further criticised for failing to deliver on his pledges to improve health, education and the country's infrastructure, and to modernise agriculture and tourism industry. President Mwanawasa dissolved parliament on 26 July 2006 and announced that tripartite elections would be held.

### **1.6 THE 2006 TRIPARTITE ELECTIONS**

Presidential, National Assembly and local government elections took place on 28 September 2006. Although over 11 parties registered to contest the elections, there were three main parties in the poll, namely the ruling MMD, the United Democratic Alliance (UDA), a coalition that included UPND, and the PF, led by Michael Sata. Anderson Mazoka, leader of UPND and the strongest challenger to Mwanawasa in 2001, died in a Johannesburg hospital on 24 May 2006.

Following his death the UPND was rocked by internal power struggles that culminated in the selection of the businessman Hakainde Hichilema as leader of the party. The UDA subsequently nominated Hichilema as its candidate for the presidential election. In the National Assembly elections, 13 parties participated and a total of 709 candidates contested the 150 parliamentary constituencies. A total of 4,095 candidates registered to compete in the elections for local government councils. Fifteen per cent of the parliamentary candidates were women and less than 10 per cent of the candidates running for local government were women.

Levy Mwanawasa of the MMD was re-elected for a second and final term as Zambia's president after winning 42.98 per cent of the votes, while Michael Sata of the PF received 29.37 per cent of the votes cast. Hakainde Hichilema scored 25.32 per cent of the popular vote. The MMD received the majority of parliamentary seats.

**Table 1**  
**Presidential election results, 2006**

Candidate	Party/Coalition	Votes received	% of valid vote cast
Levy Mwanawasa	MMD	1,177,846	42.98
Michael Sata	PF	804,748	29.37
Hakainde Hichilema	UDA	693,772	25.32
Geoffrey K. Miyanda	HP	42,891	1.57
Winright Ngondo	APCP	20,921	0.76
Rejected ballots		48,936	1.75
<b>Total votes cast</b>		<b>2,789,114</b>	<b>100</b>

Source: Electoral Commission of Zambia, 2006

**Table 2**  
**Parliamentary elections results, 2006**

Party	Number of seats	% of seats
MMD	75	50.00
PF	43	28.67
UDA	26	17.33
Independents	3	2.00
ULB	2	1.33
NDF	1	0.67
<b>Total</b>	<b>150</b>	<b>100.00</b>

Source: Electoral Commission of Zambia 2006a '2006 Parliamentary Results': [http://www.elections.org.zm/new\\_elections\\_data/parliamentary\\_results.pdf](http://www.elections.org.zm/new_elections_data/parliamentary_results.pdf) [PDF document, opens new window] (accessed 29 Oct 2007)

# 2

## Electoral Framework

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2.1 Constitutional, legal and regulatory instruments



2.2 Electoral system



2.3 Election administration

### 2.1 CONSTITUTIONAL, LEGAL AND REGULATORY INSTRUMENTS

The constitutional and legal framework in place for these elections was in line with regional and international standards for the conduct of credible elections and allowed the people of Zambia to freely express their will. The main legal instruments governing the presidential and the Mwanabombwe and Ndola Central parliamentary by-elections were:

- The Constitution of Zambia, adopted in 1991 and last amended in 1996;
- The Electoral Act, adopted on 19 May 2006;
- The Electoral Commission Act 1996;
- The Electoral Code of Conduct Regulations of 4 August 2006;
- Various ECZ Regulations.

#### **The Constitution of Zambia**

According to Article 34 of the Constitution the president of the Republic of Zambia is elected by direct universal suffrage and by secret ballot. Presidential elections must be held whenever the National Assembly is dissolved or within 90 days of the president vacating office by resignation, death or ceasing to hold office (Article 38). The Constitution also lays down qualifications for the presidency and MPs.

The Mission learnt with satisfaction that after some initial uncertainty the meaning of Article 38 of the Constitution providing for the holding of a

(by-) election in case of death of the sitting president was made clear by the Minister of Justice. This clarification of the constitutional framework before the election represented a positive effort by the Zambian government to allay any confusion and misunderstanding created around the number of years to be served by the next president.

### **The Electoral Act**

The Electoral Act No. 12 of 2006 lays out the institutional framework, electoral system, procedures for delimiting constituencies, qualifications and requirements for candidates, and guidelines on all matters relating to the electoral process. These include:

- Legislation (legal framework);
- Delimitation of constituencies, wards and polling districts;
- Voter registration and education;
- Candidate nomination;
- Registration of parties and candidates, including the design of ballots;
- Election campaigns;
- Polling (voting process);
- Counting and tabulation of votes;
- Declaration of results; and
- Verification of results and resolution of election-related disputes.

Section 25 of the Electoral Act also provides that elections for the National Assembly should be held not more than 90 days after the dissolution of the previous National Assembly.

### **The Electoral Commission Act**

The Electoral Commission Act No 24 of 1996 provides for the establishment of a full-time Electoral Commission of Zambia (ECZ), which is responsible for the conduct of elections. Its duties include:

- Registration of voters;
- Delimitation of boundaries for electoral districts;
- Voting operations;

- Vote counting; and
- Announcement of ward and constituency results.

The Electoral Commission Act provides for a commission made up of five commissioners, including a chairperson and four other commissioners who are appointed by the president of Zambia subject to ratification by the National Assembly (Section 4(1)(b), for a term not exceeding seven years. It also sets out the circumstances under which the president may remove a member of the Commission. The chairperson and members of the Commission serve on a full-time basis. The Commission that conducted the October 2008 presidential, and Mwansabombwe and Ndola Central parliamentary by-elections was made up of four commissioners under the chairpersonship of Judge Florence Mumba.

Section 129 of the Electoral Act confers upon the ECZ the administrative and regulatory powers to initiate legislation pertaining to the conduct of elections in the form of statutory instruments. The electoral (Code of Conduct) regulations and the electoral conflict management regulations gazetted in 2006 are an example of the ECZ's exercise of these regulatory powers in consultation with civil society, political parties and the public.

### **The Electoral (Code of Conduct) Regulations**

Statutory instrument No. 90 of 2006 is a legal document that provides for the Zambian Electoral Code of Conduct. This code outlines a set of principles that all electoral stakeholders, including all persons wishing to be elected, political parties, media institutions, election monitors and observers, must adhere to. The code guarantees rights and freedoms of both the electorate and the contestants, and forbids intimidation and violence, bribery, corruption, and inducements as a means of wooing voters during elections. It also details a list of electoral offences related largely to the election campaign, including the disruption of political rallies and the tearing of campaign posters. The code further forbids election-related abuses of government facilities and resources for campaign purposes. In the past, the main weakness of the code was the lack of a clear complaint mechanism and enforcing authority. The Electoral Act adopted for previous elections (the September 2006 elections) provided for institutions responsible for the enforcement of aspects of the code, including the ECZ, the Anti-Corruption Commission and the police.

In addition, conflict management committees were established under the authority of the ECZ.

## **2.2 ELECTORAL SYSTEM**

The president of Zambia is elected for a five-year term. Candidates for the office of presidency must be Zambian citizens, and so must both their parents. Presidential candidates must be over 35 years old and must be sponsored by a political party. In the absence of a law on political parties, party registration is regulated by the Societies Act in accordance with the Constitution.

Zambia uses the First-Past-the-Post (FPTP) electoral system. Under this system, the president and the MPs are elected to a one-chamber National Assembly. Legislative power is vested in the National Assembly and the president. The National Assembly consists of 150 elected members, eight members nominated by the president, as well as the speaker. For years, the electoral system adopted by Zambia has been under attack for not being fair enough, particularly after President Mwanawasa won the 2001 election with less than 30 per cent of the popular vote, putting his legitimacy into question. The new administration failed to reform the electoral system. Yet the president appointed the Constitutional Review Commission (CRC) in April 2003 and the Electoral Reform Technical Committee (ERTC) in August 2003. The CRC recommended that the president be elected with an absolute majority (50 per cent + 1 of the votes cast) as a response to the outcry raised in 2001.

Similarly, the electoral system was criticised for marginalising groups such as women and the youth. The Committee submitted to the Office of the President a 664-page report at the end of 2005. Changes suggested by the ERTC included changing the electoral system to a mixed member proportional system, which combines features of the FPTP and the proportional representation (PR) systems. Under a mixed-member proportional system, 160 MPs were to be elected by the existing single member plurality and 40 MPs elected under proportional representation with party lists. Of these 40 MPs, 35 seats would be for women, three for people with disabilities and two for youth. These changes had not taken place by the time that the 30 October 2008 presidential and by-elections were called, despite the government's pledge that they would take place after the 2006 elections and following

the establishment of a Constitutional Assembly comprising all the relevant stakeholders. The government decided that the contents of the report and the recommendations should form part and parcel of the workings of the National Constitutional Committee, which was expected to table its report at the end of 2009.

### **2.3 ELECTION ADMINISTRATION**

The conduct of presidential elections in Zambia is the responsibility of the ECZ, an autonomous Electoral Commission established under Article 76 of the Constitution. It is tasked with the conduct of voter registration and the review of the voters' roll, the delimitation of boundaries for electoral districts, voting operations, vote counting and the announcement of ward and constituency results.

A few allegations of fraud were made to the Mission. These included the issue of excess ballot papers and subsequent anxiety caused by the impounding of foreign trucks in Livingstone purportedly carrying ballot papers. In the latter case, the Mission sent a team to Lusaka international airport, where the two South African trucks involved in the incident were brought, to witness the verification of their contents on 29 October 2008. The mission found that the election materials included 18,000 lamps to be dispatched by the ECZ throughout the country for the counting process. This particular event clearly showed that the ECZ had done nothing wrong.

#### **Assessment of the legal framework**

While the Mission views concerns raised by stakeholders as an indication of their vigilance in making sure that the electoral process is conducted in a credible manner it noted that the suspicion that the ECZ had been subject to ahead of Election Day could have been avoided through better and prior consultations with stakeholders and more efforts to reach consensus with all competing parties on the various challenges the Commission faced. The Mission also noted that the ECZ issued several statements to reassure all stakeholders of its willingness to carry out its responsibilities with independence, and this served to improve ECZ interactions with the competing parties.

# 3

## The Pre-Election Phase

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- 3.1 Voter registration and voters' roll
- 3.2 Nomination of candidates
- 3.3 Voter education and information
- 3.4 Media access and coverage
- 3.5 The campaign process
- 3.6 Election materials

### **3.1 VOTER REGISTRATION AND VOTERS' ROLL**

To qualify for registration, an individual must be a citizen of Zambia, 18 years old at the time of voter registration and in possession of a green National Registration Card, an administrative document issued by the Ministry of Home Affairs. Although the ECZ has indicated its desire to provide for continuous registration it has not been possible to do this after the 2006 election, partly because of the timing of this election and partly because of the financial implications. Anti-Vote Rigging, a pro-opposition group, challenged the ECZ's decision to use the old voter's register before the High Court and the judges ruled that lack of resources, as well as the time constraint, could not allow for a specific voter registration exercise to be conducted in time for the 2008 presidential election. Citizens who turned 18 since the 2006 election as well as voters who had moved or changed address could therefore not be accommodated on the roll.

However, the Commission opted to replace cards misplaced by voters since the 2006 election. This exercise was undertaken countrywide from 21 to 26 September 2008. The Commission made it clear through a public notice that the operation was not a new registration exercise and was not to be extended beyond 26 September 2008.

The particulars required for the replacement of lost voters' cards were the National Registration Card number and the name of the polling station at which the voter was registered and voted in 2006. The Commission also

updated its register with the inclusion of some 4,000 voters who were registered for the 2006 election but had not appeared on the roll in 2006 to be included in the 2008 presidential election.

The Commission provided each presidential candidate with a free set of voters' registers and additional registers could be purchased at a fee of K25,000.00 per polling district. The Mission noted the effectiveness of this, as most party agents had a copy of the register at polling stations thereby ensuring transparency of the process.

While the willingness of the Commission to provide for continuous voter registration was a positive step towards long-term intervention, the ECZ should be provided with sufficient resources to maintain continuous registration. Government must adequately fund the ECZ in order for it to deliver a credible and legitimate election. This will remove the need for a new registration process for each new election and will reduce the financial burden on the Commission.

### **3.2 NOMINATION OF CANDIDATES**

Nominations for presidential elections took place from 23 to 26 September 2008, while parliamentary elections nominations for Mwansabombwe and Ndola Central constituencies were held on 27 September 2008. As in previous elections, the nomination of candidates was conducted in the absence of a specific law on political parties.

Criteria to register as a presidential candidate for these elections were the following, as provided for by Article 34(3) of the Constitution. A candidate must:

- be a Zambian citizen;
- have parents who are Zambians by birth or descent;
- be 35 years old;
- be a member or be sponsored by a political party;
- be qualified for election as a member of the National Assembly;
- be domiciled in Zambia for a period of at least 20 years;
- submit a declaration of assets and liabilities;

- have his or her nomination supported by a minimum of 200 registered voters; and
- pay a nomination fee of K20,000,000 (twenty million Kwacha).

As for parliamentary candidates, they should be at least 21 years old, have their nomination endorsed by a minimum of nine registered voters of their respective constituency and pay a K500,000 (five hundred thousand Kwacha) non-refundable nomination fee.

The sudden death of President Levy Mwanawasa raised fears over the impact of the presidential candidate nomination process on the ruling MMD's unity, as it was not known whether or not the president had anointed his successor before his death. The acting president, Rupiah Banda, was nominated as the MMD candidate by the party National Executive Committee on 5 September 2008. Michael Sata stood as the PF candidate, after he was unanimously chosen by his party at a meeting of its Central Committee on 30 August 2008. Other candidates nominated for these elections were Hakainde Hichilema for the UPND and Godfrey Miyanda standing for the HP. On 27 September 2008 the Supreme Court ruled that the above four presidential aspirants had validly filed their nomination papers and qualified to stand in the election.

### **3.3 VOTER EDUCATION AND INFORMATION**

The ECZ provided useful information to observers, monitors and political parties and utilised the print and electronic media to inform the electorate. This was done from 1 to 23 October 2008 following training sessions for Voter Education Committee members carried out by the Commission between 23 and 29 September 2008. However, the Mission noted, especially in the rural areas, that many voters were not sufficiently informed about the 2008 elections. Given the timeframe in which the elections were held, it appeared that political parties focused their energy and resources more on campaigning than providing voter information.

The Mission noted that there was not a systematic voter education and information programme to inform the electorate about the background to the elections or the requirements for voting. Local CSOs provided some education and information to voters, but because of the short time given to prepare these elections, as well as the demands that their ongoing

programmes placed on them, their ability to mount a full-scale voter education programme was limited.

The Mission was of the view that voter education needs to be a long-term intervention and not limited to an election. The focus should rather be on providing citizens with general information on democracy, governance and elections, with voter information provided for a specific election. This should not only be the responsibility of the ECZ but a partnership between all stakeholders to ensure that citizen participation is integrated at all levels.

### **3.4 MEDIA ACCESS AND COVERAGE**

Free and fair access to the media is an important feature of elections. However, media reporting tended to be unbalanced, with the public media giving preference to campaign activities of the ruling party and the private media covering mainly those of the opposition.

The Mission observed that both public and private media displayed varying degrees of partisanship in their coverage of the campaign, and this had the potential of putting their professionalism into question. Some papers, including *The Times of Zambia* and *The Zambia Daily Mail*, clearly favoured the ruling MMD, while others such as *The Post* were pro Michael Sata's PF.

The Mission also learned that due to lack of resources, media coverage was not easily accessible to all contestants, with some of them not able to buy prime time, particularly on television. The Mission was informed that although the ECZ purchased media coverage and invited contesting parties to make use of it, the offer was not taken up.

The Mission recommends that an effective level playing field should be created for the fair access to the state-owned media by parties and candidates during the electoral process.

### **3.5 THE CAMPAIGN PROCESS**

Campaigning in Zambia is governed by two main instruments: the Public Order Act (1955) and the Electoral Code of Conduct Regulations of 4 August 2006. The campaign period for the 2008 elections commenced on 22 September 2008 and ended on 29 October 2008.

The election campaign was carried out in a calm and orderly manner with a relative degree of tolerance from presidential candidates despite the tendency of some candidates to focus less on issues than on the alleged characters of their opponents. The election campaign took the form of posters, advertisements on big billboards, political rallies, television appearances by candidates and debates involving representatives of various candidates, and other types of media outreach through newspapers and radio stations. The Mission was informed by the Inspector General of the Police that the security forces would remain impartial throughout the electoral process, and the Mission learned that opposition candidates were able to hold their rallies simultaneously with the presidential candidates, contrary to the situation prevailing before even though a few clashes involving MMD and PF supporters were reported.

The Electoral Code of Conduct prohibits the use of government or parastatal transport facilities for campaign purposes, except for the president and the vice-president in connection with their respective offices. Concerns were raised by stakeholders about the use of state resources during the campaign process by the presidential entourage. A complaint was also referred to the ECZ by the PF regarding distribution of food in rural areas by the acting president. The issue was brought before the National Conflict Management Committee, and both the MMD and the PF agreed that distributing food to rural women was not a violation of the Code of Conduct as it was done before the campaign period. Whether the acting president wanted to woo voters or not, this kind of activity ahead of a crucial election in which he stood gave the impression that he was already campaigning. This also illustrates how difficult it is to clearly delineate public functions involving officials from campaign events. To avoid suspicion, it is crucial that state resources are not used unreasonably to favour one candidate to the detriment of others.

### **3.6 ELECTION MATERIALS**

The Mission learned that the ballot papers were printed in Durban, South Africa, and that provision was made by the ECZ for major stakeholders (political parties, CSOs, law enforcement agencies and the media) to witness the printing, the packing and the process of receiving the ballot papers in Zambia as a way of promoting transparency. The Mission was made aware of the various challenges that the Commission faced with regard to the

dispatching of ballot papers in batches from South Africa to Zambia, their transportation to provinces, and the confusion surrounding the printing of excess ballot papers. While the ECZ pleaded that the phased airlifting of election materials was beyond its control, transporting sensitive election materials from one site to another is potentially risky. It is crucial that they are properly secured and accounted for. The Mission recommends that all stakeholders maintain a high level of awareness regarding the security of all ballots and other election materials.

It also came to the Mission's attention that the ECZ printed 600,000 more ballot papers to be used as substitute ballots, while the opposition viewed these extra ballot papers as a means to facilitate vote-rigging. The issue was resolved through consultation with all parties involved in the election. It was agreed that the 600,000 extra ballot papers would not be distributed to polling stations in the districts but instead kept by the ECZ.

### **3.7 ACCREDITATION OF OBSERVERS**

PEMMO emphasises the importance of election monitoring and observation. The Mission noted a high level of participation by various local and international observer missions with a view to enhancing the transparency, credibility and integrity of the process.

The accreditation of observers and monitors was conducted by the ECZ and centralised in Lusaka. This posed some challenge to domestic monitors, with local groups having to make arrangements to transport the accreditation cards to provinces. Accreditation of observers continued until the day before the election. Domestic monitors noted some challenges, with incorrect names on monitors' cards, for instance. Further accreditation was required for the Results Management Centre at the Mulungushi International Conference Centre.

International observers were provided with a list of polling stations and other relevant useful information. Domestic monitors were provided with information on request and free of charge. The Commission announced that a limited number of accreditation kits would be available to international observers for a fee of US\$100 to cover the production cost. The Mission was able to get accreditation kits for US\$20, and most documents, including

the list of registered voters per polling station and the contact directory for electoral officers, were provided free of charge to most observers.

The Mission also noted with satisfaction that there was no accreditation cost for either domestic or international observers. The Mission noted further the willingness of the ECZ to accommodate the accreditation of late arrivals.

# 4

## The Election Phase

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4.1 Polling stations



4.2 Voter turnout



4.3 Polling staff, party agents and security officers

4.4 Media access and coverage

4.5 Voting process

4.6 Counting process

### 4.1 POLLING STATIONS

The ECZ established polling stations with polling streams throughout Zambia allowing polling stations with more than 650 registered voters to have multiple streams. The streams were in alphabetical order, the voters' registers were available in each stream, and placards indicating the streams guided voters. The number of polling stations was adequate and accessible enough to ensure that as many eligible voters as possible cast their votes. It was also noted that most polling stations were located in neutral places such as schools and church centres and were further secured by unarmed police officers.

### 4.2 VOTER TURNOUT

The mission noted that the voter turnout in these elections was noticeably low. Only 45.4 per cent of the 3.9 million registered voters cast their ballots. In comparison, 70.8 per cent of the registered voters turned out in 2006. This is a matter of concern, as it may point to reduced interest and trust of citizens in the electoral process. Beyond apathy, the low voter turnout recorded during these snap elections could also be the result of insufficient and inadequate voter information with regard to the overall context of the 30 October 2008 elections as well as the particular circumstances in which the election took place. The Mission recommends that, in future, extensive voter education be conducted in order to stress the importance and value of participating in elections.

### **4.3 POLLING STAFF, PARTY AGENTS AND SECURITY OFFICERS**

Most polling stations were well staffed, with adequate numbers of polling staff showing good knowledge of the required voting procedures. Political parties were also able to field at least one polling agent in all the polling stations that were visited by the mission members. The police maintained a visible presence and by all accounts carried out their duties of maintaining peace and order as well as protecting the rights of voters to cast their ballots.

### **4.4 VOTING PROCESS**

Most polling stations opened and closed at the legislated times (opening at 06h00 and closing at 18h00), although a few opened late due to logistical problems such as the late arrival of election materials. Polling materials were available in adequate quantities and voting proceeded smoothly throughout the process. The ECZ also made use of transparent ballot boxes. On arrival the voter's name, National Registration Card (NRC) number and the page where his/her details and pictures could be found on the voters' roll were read out by the polling official and checked by party agents on their copy of the register. This verification of the voter's identity, the quality of the voters' roll and the use of indelible ink to avoid multiple votes contributed to enhancing the transparency of the voting process.

### **4.5 COUNTING PROCESS**

The counting of ballots, which took place at polling stations immediately after the end of voting, was conducted in a transparent manner. Counting was done in the presence of candidates' representatives and observers. All those present had a clear view of the marked ballot papers. After announcement of results signed copies of those results were pasted outside polling stations in an effort to promote greater transparency. Copies of the election results were given to each of the political parties' polling agents. The electronic transfer of election results was also commendable.

# 5

## The Post-Election Phase



5.1 Tabulation



5.2 Announcement of results



5.3 The election results

### 5.1 TABULATION

Following the counting of ballots, the presiding officer took the results sheet to the constituency tabulation centre, where the results were compiled by the constituency returning officer. After this process had been completed, the results were then transmitted to the ECZ elections office at the Lusaka headquarters, as well as to the National Results Centre, which was located at Mulungushi Conference Centre in Lusaka. At the Results Centre space was provided at the Conference Centre for political parties, the diplomatic corps, international and domestic observers as well as the media to observe the process. In addition, the chairperson of the ECZ would periodically announce the results on television and take questions from the press and other people present at the results centre. The results would be transmitted to the National Results Centre using a wide area network established especially for the transmission of results to the capital city. The system was designed with special security features: only the constituency returning officers could access the network by using fingerprint recognition. In this way, there could be no tampering with the results, as the system would do the tabulation automatically so that the results produced were authentic and final. The system was designed to meet the imperatives of speed, security and accuracy.

### 5.2 ANNOUNCEMENT OF RESULTS

Before the elections, the ECZ indicated through a press release on 9 September 2008 that the publication of the provisional results would take place from

3 to 9 November 2008. Due to the closer distances and infrastructural advantages, the results came in first from the urban areas. As in the case of the 2006 elections, it was no surprise that during the 2008 elections that Michael Sata of the PF was leading owing to the fact that his strongholds were mainly in those areas. The opposition's lead narrowed as the counting progressed. As more results came in from the rural areas, they showed that the two candidates were now neck-and-neck. The change in the results trend was almost immediately perceived as suspicious for Sata's supporters, who were already chanting victory.

Allegations of vote-rigging increased when the state television aired an MMD prediction forecasting Rupiah Banda's slim victory with a 60,000 vote margin. The 148 constituencies counted (out of 150) on 1 November 2008 showed Banda leading with 40.0 per cent to Sata's 38.5 per cent. Hichilema was following with 19.5 per cent while Miyanda was at 0.8 per cent. Riots broke out in a few cities as Rupiah overtook Sata in the results. Final results were eventually announced on 2 November 2008. Rubiah Banda was declared the winner, with 40.09 per cent of the vote against 38.13 per cent for Sata. Results from an independent Parallel Vote Tabulation (PVT) conducted by a local NGO, the Foundation for Democratic Progress (FODEP), showed that the PVT forecasts were consistent with the results released by the ECZ, suggesting that there was no evidence of manipulation. The president-elect was promptly sworn in on the very day the official results were announced by the Electoral Commission. The electronic transmission of election results was also commendable and could serve as a good example of the use of appropriate technology for elections.

### 5.3 THE ELECTION RESULTS

Table 3: Election results

Registered Voters	3,944,135
Votes Cast	1,791,806
Voter Turnout	45.43
Valid Votes	1,768,210
Invalid Votes	23,596
% Invalid	1.32

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<b>Candidate</b>	<b>Party</b>	<b>Votes</b>	<b>% Votes</b>
Rupiah Banda	Movement for Multiparty Democracy (MMD)	718,359	40.63
Michael MC Sata	Patriotic Front	683,150	38.64
Hakainde Hichilema	United National Independence Party (UNIP)	353,018	19.96
Godfrey K Miyanda	Heritage Party (HP)	13,683	0.77
Total		1,768,210	100.00

Source: Electoral Commission of Zambia 2008 Presidential Election: National Results Totals for 150 Constituencies, 2 November 2008

# 6

## Conclusions and Recommendations

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The 30 October 2008 snap elections were unique and presented unique challenges. Given the circumstances surrounding these elections, the Mission commends the smooth running of the electoral process by the Electoral Commission, the good interaction between the ECZ and the competing parties, and the responsible way in which the voters cast their votes. Despite the short timeframe it was given for preparations, the manner in which the Commission conducted the 2008 Presidential Election has further contributed to improving the democratisation process that Zambia has started with the holding of its first competitive elections in 1991.

Based on our observations it is the view of the EISA Mission that the elections were conducted in a credible and transparent manner and in a way that allowed the people of Zambia to freely express their will.

The Mission reiterates some of the recommendations it made for the 2006 tripartite elections and recommends the following for the improvement of election administration in Zambia:

**Electoral reforms:** the Mission recommends that Zambia move forward with the electoral reform process, drawing from the conclusions of the CRC and ERTC in order to improve aspects of the electoral process that poses problems;

- ❑ **Voter registration:** the ECZ should be provided with sufficient

resources to maintain continuous registration. Government must adequately fund the ECZ in order for it to deliver a credible and legitimate election. This will remove the need for a new registration process for each new election and will reduce the financial burden on the Commission;

- ❑ **Electoral Code of Conduct:** The electoral code of conduct should be agreed among the stakeholders and it should be laid down exactly who is responsible for its enforcement when it is breached;
- ❑ **Funding of political parties:** election-related abuse of public resources should be discouraged by providing clear mechanisms for sanctioning people and/or groups which abuse public resources. The law should provide for the public funding of political parties in order to build the capacity of parties to engage in politics. The law should provide for a mechanism for parties to disclose private funds received for campaigning. Stakeholders should agree on a formula for the amount and time period when campaign funding can be distributed to parties and/or individuals participating in elections;
- ❑ **Handling of election materials:** Transporting sensitive election materials from one site to another is potentially risky. It is crucial that they are properly secured and accounted for. The Mission recommends that all stakeholders maintain a high level of awareness regarding the security of all ballots and other election materials;
- ❑ **Voter education:** voter education needs to be a long-term intervention and not limited to an election. The focus should rather be on providing citizens with general information on democracy, governance and elections, with voter information provided for a specific election. This is not only the responsibility of the ECZ but a partnership between all stakeholders to ensure that citizen participation is integrated at all levels;

- **Media access and coverage:** The media, especially the public media, should be compelled to be fair to all political parties. The public broadcaster ought to set aside free time slots on national television and radio for parties and candidates contesting in the elections to present their manifestos to the public. Both the private and public media should be subject to the oversight of a media council, which will hold all media organisations (public and private) accountable for the way they cover election-related issues.

**APPENDIX I****Observers for the EISA Observer Mission to the Zambian Presidential Elections 30 October 2008**

	<b>Name</b>	<b>Organisation</b>	<b>Designation</b>	<b>Country</b>	<b>Gender</b>
1	Leshele Thoahlane	Former Chair-Lesotho IEC	Mission Leader	Lesotho	Male
2	Clement Wasah	Community Action for Popular Participation	Observer	Nigeria	Male
3	Omayma Elmardi	National Sudanese Women Association	Observer	Sudan	Female
4	Onesimo Setucula	Plataforma Eleitoral	Observer	Angola	Male
5	Njeri Kabeberi	Centre for Multiparty Democracy	Observer	Kenya	Female
6	Fatima Karadja	National Communication on Governance	Observer	Algeria	Female
7	Patrick Konin Ngouan	Convention de la Societe Civile Ivoirienne	Observer	Cote d'Ivoire	Male
8	Fatimata Diabate	Association of Women Lawyers	Observer	Cote d'Ivoire	Female
9	Justin Gore Doua	Civil Society Coalition for Peace and Development in Cd'I	Observer	Cote d'Ivoire	Male
10	Florence Peace	New Sudanese Indigenous Network	Observer	Sudan	Female
11	Ibrahim Niang	Goree Institute	Observer	Senegal	Male
12	Benoit Muhimuza	EISA Consultant	Observer	Burundi	Male
13	Serzhino Biharisoa	EISA	Observer	Madagascar	Male
14	Belinda Musanhu	EISA	Observer	Zimbabwe	Female
15	Maureen Moloji	EISA	Observer	South Africa	Female
16	Ilona Tip	EISA	Deputy Mission Leader	South Africa	Female
17	Lucien Toulou	EISA	Observer	Cameroon	Male
18	Thandi Kondleka	EISA	Observer	South Africa	Female
			<b>Secretariat</b>		
			Ilona Tip		
			Lucien Toulou		
			Belinda Musanhu		
			Thandi Kondleka		

## APPENDIX 2

### ELECTION OBSERVER MISSION PRESIDENTIAL ELECTIONS IN ZAMBIA 30 OCTOBER 2008

#### CODE OF CONDUCT

International election observation is widely accepted around the world. It is conducted by intergovernmental and international nongovernmental organizations and associations in order to provide an impartial and accurate assessment of the nature of election processes for the benefit of the population of the country where the election is held and for the benefit of the international community. Much therefore depends on ensuring the integrity of international election observation, and all who are part of this international election observation mission, including observers and leaders of the mission, must subscribe to and follow this Code of Conduct.

#### **Respect sovereignty and international human rights**

Elections are an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government. The rights of citizens to vote and to be elected at periodic, genuine elections are internationally recognised human rights, and they require the exercise of a number of fundamental rights and freedoms. Election observers must respect the sovereignty of the host country, as well as the human rights and fundamental freedoms of its people.

#### **Respect the laws of the country and the authority of electoral bodies**

Observers must respect the laws of the host country and the authority of the bodies charged with administering the electoral process. Observers must follow any lawful instruction from the country's governmental, security and electoral authorities. Observers also must maintain a respectful attitude toward electoral officials and other national authorities. Observers must note if laws, regulations or the actions of state and/or electoral officials unduly burden or obstruct the exercise of election related rights guaranteed by law, constitution or applicable international instruments.

**Respect the integrity of the international election observation mission**

Observers must respect and protect the integrity of the international election observation mission. This includes following this Code of Conduct, any written instructions (such as a terms of reference, directives and guidelines) and any verbal instructions from the observation mission's leadership.

Observers must: attend all of the observation mission's required briefings, trainings and debriefings; become familiar with the election law, regulations and other relevant laws as directed by the observation mission; and carefully adhere to the methodologies employed by the observation mission. Observers also must report to the leadership of the observation mission any conflicts of interest they may have and any improper behaviour they see conducted by other observers that are part of the mission.

**Maintain strict political impartiality at all times**

Observers must maintain strict political impartiality at all times, including leisure time in the host country. They must not express or exhibit any bias or preference in relation to national authorities, political parties, candidates, referenda issues or in relation to any contentious issues in the election process. Observers also must not conduct any activity that could be reasonably perceived as favouring or providing partisan gain for any political competitor in the host country, such as wearing or displaying any partisan symbols, colours, banners or accepting anything of value from political competitors.

**Do not obstruct election processes**

Observers must not obstruct any element of the election process, including pre-election processes, voting, counting and tabulation of results and processes transpiring after election day. Observers may bring irregularities, fraud or significant problems to the attention of election officials on the spot, unless this is prohibited by law, and must do so in a non-obstructive manner. Observers may ask questions of election officials, political party representatives and other observers inside polling stations and may answer questions about their own activities, as long as observers do not obstruct the election process. In answering questions observers should not seek to direct the election process. Observers may ask and answer questions of voters but may not ask them to tell for whom or what party or referendum position they voted.

**Provide appropriate identification**

Observers must display identification provided by the election observation mission, as well as identification required by national authorities, and must present it to electoral officials and other interested national authorities when requested.

**Maintain accuracy of observations and professionalism in drawing conclusions**

Observers must ensure that all of their observations are accurate. Observations must be comprehensive, noting positive as well as negative factors, distinguishing between significant and insignificant factors and identifying patterns that could have an important impact on the integrity of the election process. Observers' judgments must be based on the highest standards for accuracy of information and impartiality of analysis, distinguishing subjective factors from objective evidence.

Observers must base all conclusions on factual and verifiable evidence and not draw conclusions prematurely. Observers also must keep a well documented record of where they observed, the observations made and other relevant information as required by the election observation mission and must turn in such documentation to the mission.

**Refrain from making comments to the public or the media before the mission speaks**

Observers must refrain from making any personal comments about their observations or conclusions to the news media or members of the public before the election observation mission makes a statement, unless specifically instructed otherwise by the observation mission's leadership. Observers may explain the nature of the observation mission, its activities and other matters deemed appropriate by the observation mission and should refer the media or other interested persons to the those individuals designated by the observation mission.

**Cooperate with other election observers**

Observers must be aware of other election observation missions, both international and domestic, and cooperate with them as instructed by the leadership of the election observation mission.

**Maintain proper personal behaviour**

Observers must maintain proper personal behaviour and respect others, including exhibiting sensitivity for host-country cultures and customs, exercise sound judgment in personal interactions and observe the highest level of professional conduct at all times, including leisure time.

**Violations of this Code of Conduct**

In a case of concern about the violation of this Code of Conduct, the election observation mission shall conduct an inquiry into the matter. If a serious violation is found to have occurred, the observer concerned may have their observer accreditation withdrawn or be dismissed from the election observation mission. The authority for such determinations rests solely with the leadership of the election observation mission.

**Pledge to follow this Code of Conduct**

Every person who participates in this election observation mission must read and understand this Code of Conduct and must sign a pledge to follow it.

**APPENDIX 3****Briefing Programme 23-25 October 2008****DAY ONE: 23 OCTOBER 2008**

- FINAL ARRIVAL OF OBSERVERS
- ACCREDITATION AT THE ZAMBIAN NATIONAL ELECTORAL COMMISSION
- LOGISTICS & FAMILIARISATION WITH LUSAKA

**ORIENTATION WORKSHOP – Hotel Intercontinental, Lusaka (14:30 – 17: 00)**

TIME	TOPIC	PRESENTER/FACILITATOR
14:30–14:45	Welcome & Introduction	Mr Leshele Thoahlane – Mission Leader
14:45–15:00	Mission Background & Plan	Ms Ilona Tip – Deputy Mission Leader
15:00–15:30	Election observation types, function & role of international observers	
15:30–16:00	TEA/COFFEE BREAK	
16:00–16:30	General features for free and fair elections	Dr Lucien Toulou – Mission Secretariat
16:30–17:00	Reporting Forms & Checklists	
19:00	Mission cocktail	

**DAY TWO: 24 OCTOBER 2008**

TIME	TOPIC	PRESENTER/FACILITATOR
09:00–09:15	Welcome & Introduction	Mr Leshele Thoahlane – Mission Leader
09:15–09:45	Terms of Reference and Code of Conduct	Ms Ilona Tip – Deputy Mission Leader
09:45–10:00	Press conference set-up	

10:00–10:30	<b>Arrival Press Conference</b>	Mr Leshele Thoahlane – Mission Leader
10:30–11:00	TEA / COFFEE BREAK	
11:00–12:00	The state of readiness of the Electoral Commission and preparations thus far	Electoral Commission of Zambia – ECZ
13:00–14:00	LUNCH	
14:00–16:30	The perspectives of the presidential candidates on the Electoral Process <i>Panel discussion where all presidential candidates (or their representatives) make a short presentation followed by a discussion</i>	Presidential Candidates

### DAY THREE: 25 OCTOBER 2008

TIME	TOPIC	PRESENTER / FACILITATOR
09:00–09:15	GROUP PHOTO	
09:15–10:30	The Political and Historical Context of the 2008 Presidential Elections	Prof. Jotham C. Momba Department of Political Science University of Zambia
10:30–11:00	TEA / COFFEE BREAK	
11:00–12:00	Preliminary Assessment of the electoral process: perspectives from civil society organisations	Foundation for Democratic Process (FODEP)
12:00–13:00	The Media and the 2008 Presidential Election	MISA – Zambia
13:00–14:00	LUNCH	
14:00–15:00	Briefing from Other Missions	
15:00–16:00	DEPLOYMENT PLANS	Ms Belinda Musanhu – Mission Secretariat

**APPENDIX 4**  
**ARRIVAL STATEMENT**  
**EISA Regional Observer Mission to the Zambia 2008 Presidential**  
**Election 24 October 2008**

EISA is pleased to announce the official launch of its Election Observer Mission to the Presidential and Mwanabombwe and Ndola Central Parliamentary By-Elections in Zambia scheduled for Thursday, 30 October 2008. The Mission, which is led by Mr Leshele Thoahlane, Chairperson of the EISA Board of Directors and Former Chairperson of the Independent Electoral Commission of Lesotho, is present in the country at the invitation extended by the Electoral Commission of Zambia. Ms Ilona Tip, EISA's Director of Operations, is the Deputy Mission Leader.

The EISA Mission consists of 20 members from different African countries, namely Algeria, Angola, Burundi, Cameroon, Chad, Cote d'Ivoire, the Democratic Republic of Congo (DRC), Lesotho, Kenya, Madagascar, Malawi, Nigeria, Senegal, South Africa, Sudan, and Zimbabwe.

The overall objective of the Mission is in line with EISA's vision of an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment.

Specific objectives for this mission include the following:

- To assess whether conditions exist for the conduct of elections that allow the people of Zambia to freely express their will;
- To assess and determine whether the elections are conducted in accordance with the constitutional and legal framework for elections in Zambia;
- To determine whether the final results of the electoral process as a whole reflect the wishes of the people of Zambia;
- To assess whether the elections meet the benchmarks set out in the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO), developed under the auspices of EISA and the Electoral Commissions Forum

(ECF) of SADC countries. These principles were officially adopted in South Africa on 6 November 2003 and launched in Zambia on 24 March 2006.

To assess the elections, the Mission will hold a series of meetings with election stakeholders, including the Electoral Commission of Zambia (ECZ), presidential candidates, CSOs, security forces, academics and the voters, ahead of Election Day.

On Sunday, 26 October 2008, EISA will deploy teams to provinces in selected rural and urban areas. On Election Day, 30 October 2008, the EISA teams will observe the voting and counting processes. On Saturday, 1 November 2008, all teams will reconvene in Lusaka, where an interim statement expressing the Mission's preliminary views and recommendations on the elections will be issued. The principles enshrined in the PEMMO will be taken into account to direct the Mission's observations on the polling and results processes, as well as the electoral environment as a whole. The EISA Mission will closely monitor post-polling activities.

The Mission undertakes to co-operate closely with the Zambian electoral stakeholders and other observers, and strives to act with impartiality, objectivity and independence.

EISA is a regional non-profit organisation established in 1996 and headquartered in Johannesburg, South Africa, with field offices in the DRC (Kinshasa), Mozambique (Maputo), Madagascar (Antananarivo), Sudan (Khartoum) and Cote d'Ivoire (Abidjan). EISA strives for excellence in the promotion of credible elections, participatory democracy, human rights culture, and the strengthening of governance institutions for the consolidation of democracy in Africa. EISA services electoral commissions, political parties, civil society organizations, governments and other institutions operating in the democracy and governance fields in Africa. The EISA Mission Secretariat is based at the Intercontinental Hotel, Lusaka and can be contacted at the following number: Dr Lucien Toulou, Mission Co-ordinator, on +260978063905

**Abel Leshele Thoahlane**  
**Mission Leader**

## **APPENDIX 5**

### **INTERIM STATEMENT**

Lusaka, 1 November 2008

#### **I INTRODUCTION**

In response to an invitation extended by the Government of Zambia, the Electoral Institute of Southern Africa (EISA) deployed a short-term Mission to observe the Presidential and Mwanabombwe and Ndola Central Parliamentary By-Elections in Zambia of 30 October 2008. Under the leadership of Mr Leshele Thoahlane, Chairperson of the EISA Board of Directors and Former Chairperson of the Independent Electoral Commission of Lesotho, the EISA Election Observer Mission consisted of 20 members from different African countries, namely Algeria, Angola, Burundi, Cameroon, Chad, Cote d'Ivoire, the Democratic Republic of Congo (DRC), Lesotho, Kenya, Madagascar, Malawi, Nigeria, Senegal, South Africa, Sudan, and Zimbabwe.

The Mission's overall objective was in line with EISA's vision of an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment. The EISA Mission had the following specific objectives:

- To assess and determine whether the elections were conducted in accordance with the constitutional and legal framework for elections in Zambia;
- To assess whether conditions were set out for the conduct of elections that allowed the people of Zambia to freely express their will;
- To establish whether the final results of these elections reflected the will of the people of Zambia;
- To assess whether these elections met the benchmarks set out in the Principles for Election Management, Monitoring and Observation in the SADC (PEMMO) developed under the auspices of EISA and the Electoral Commissions Forum (ECF) of SADC countries. These principles were officially adopted in

South Africa on 6 November 2003 and launched in Zambia on 24 March 2006.

The Mission's preliminary findings and recommendations are presented in this interim statement. EISA will produce a more comprehensive and final report on the entire electoral process within ninety (90) days. This final report will provide detailed observations, in-depth analysis of the Zambian electoral landscape for the 2008 by-elections, and offer recommendations for the improvement of the country's electoral process.

## 2 METHOD OF WORK

In order to ensure a systematic and comprehensive observation of the electoral process, the EISA Mission adopted the following methodology:

- *Pre-deployment orientation and briefing workshop, 23–25 October 2008.* The purpose of this workshop was twofold. Firstly the workshop gave the opportunity to EISA Election Observers to discuss in detail the theory and practices of election observation based on the PEMMO, which is the EISA's election assessment tool and to share experiences from elections in their own countries. In addition, the Mission had extensive briefings with Zambian election stakeholders. These included the Electoral Commission of Zambia (ECZ) representatives of presidential candidates, civil society organisations (CSOs), the police, academics and the media. The aim of these briefings was to learn about the constitutional and legal framework, the overall context in which the elections took place, the level of preparedness of election stakeholders as well as the main concerns raised by the different stakeholders;
- *Deployment plan.* on Sunday, 26 October 2008, EISA deployed nine (09) teams covering the following areas:
  - Lusaka Central
  - Lusaka Rural
  - Luangwa
  - Kabwe

- Livingstone
- Ndola
- Chipata
- Mongu

On arrival in the areas of deployment, the teams held meetings with local stakeholders, attended political rallies including those addressed by contesting presidential candidates in Chipata, Lusaka and Ndola, observed the logistical arrangements by the ECZ ahead of polling day, and mapped polling stations in their areas of deployment. On Election Day, EISA teams observed the voting and counting of ballot papers at polling stations and also attended at the Election Results Centre at Mulungishi International Conference Centre.

### **3 PRELIMINARY OBSERVATIONS AND FINDINGS OF THE MISSION**

After being briefed by various election stakeholders in Lusaka and in the provinces and basing itself on the observations made by its different teams deployed on the ground as well as on norms and guidelines contained in the PEMMO, the EISA Mission has made the following preliminary observations and findings:

#### **3.1 Background to the 30 October 2008 Elections**

The 30 October 2008 Presidential Election took place against the backdrop of the passing away of the incumbent President, Mr Levy Mwanawasa, on 19 August 2008 in France. President Mwanawasa still had three years to serve under the mandate he was given in the 2006 elections. Article 38, section one (1) of the Constitution of Zambia provides for the holding of an election within ninety (90) days from the date of the office of the president becoming vacant by reason of his death, resignation or impeachment. The president-to-be on 30 October 2008 will serve only the remaining term of office until the elections scheduled for 2011.

This presidential by-election is unprecedented in the history of Zambia, as it is the first time a sitting president has died in office. The transition period provided a test for the country's political stability, particularly its ability to survive potential crisis. The maturity displayed by the Zambian people, as well as the restraint shown by the main political players following the

death of President Mwanawasa, contributed to fostering a sense of national unity during this difficult time. This was in spite of the short timeframe the ECZ had to meet the constitutional requirement and prepare for a fresh poll, which also put the Commission and other election stakeholders under intense pressure to deliver a successful election.

### **3.2 The constitutional and legal framework for the elections**

The constitutional and legal framework in place for these elections was in line with regional and international standards for the conduct of credible elections in and allowed the people of Zambia to freely express their will. The main legal instruments governing the Presidential and the Mwanasambwe and Ndola Central Parliamentary By-Elections were:

- The Constitution of Zambia adopted in 1991 and last amended in 1996;
- The Electoral Act adopted on 19 May 2006;
- The Electoral Commission Act 1996;
- The Electoral Code of Conduct Regulations of 4 August 2006;
- Various ECZ Regulations.

According to Article 34 of the Constitution, the President of the Republic of Zambia is elected by direct universal suffrage and by secret ballot. The Mission learnt with satisfaction that after some initial uncertainty the meaning of Article 38 of the Constitution providing for the holding of an election in case of death of the sitting president was made clearer by the Minister of Justice. This clarification of the constitutional framework before the election represented a positive effort by the Zambian government in allaying any confusion and misunderstanding created around the number of years to be served by the next president.

Zambia uses a simple majority electoral system for the election of the president.

### **3.3 Election administration**

The conduct of presidential elections in Zambia is under the responsibility of the ECZ, an autonomous Electoral Commission established under Article 76 of the Constitution. It is tasked with the conduct of voter registration and

the review of the voters' roll, the delimitation of boundaries for electoral districts, voting operations, vote counting and the announcement of ward and constituency results.

A few allegations of electoral fraud were made to the Mission. These included the issue of excess ballot papers and subsequent anxiety caused by the impounding of foreign trucks in Livingstone purportedly carrying ballot papers. In the latter case, the Mission sent a team to the Lusaka international airport, where the two South African trucks involved in the incident were brought, in order to witness the verification of their contents on 29 October 2008. The mission found that the election materials in the trucks were not ballot papers but 18,000 lamps to be dispatched by ECZ throughout the country for the counting process. This particular event and the manner in which it was managed suggested that the ECZ had nothing to hide.

While the Mission views concerns raised by stakeholders as an indication of their vigilance in making sure that the electoral process is conducted in a free and credible manner, it noted that the suspicion that ECZ was subject to ahead of Election Day could have been avoided through better and prior consultations with stakeholders and more efforts to reach consensus with all competing parties on the various challenges the Commission faced. The Mission also noted that the ECZ issued several statements to reassure all stakeholders of its willingness to carry out its responsibilities with independence and this served to improve ECZ interactions with the competing parties.

### **3.4 Voter registration and voters' roll**

Although the ECZ has indicated its desire to provide for continuous registration, it was not possible to do this after the 2006 election. Lack of resources, as well as the time constraint, did not allow for a specific voter registration exercise to be conducted in time for the 2008 presidential election. Citizens who turned 18 since the 2006 election as well as voters who had moved or changed address could not be accommodated in the current roll and thus could not vote.

The Commission opted to replace those cards misplaced by voters since the 2006 election. This exercise was undertaken countrywide from 21 to 26

September 2008. The Commission made it clear through a public notice that the operation was not a new registration exercise and was not to be extended beyond 26 September 2008. The particulars required for the replacement of lost voters' cards were the National Registration Card number and the name of the polling station at which the voter was registered and voted in 2006. The Commission also updated the register used in 2008 to include some 4,000 voters who were registered for the 2006 election but had not appeared on the roll in 2006.

The Commission provided each presidential candidate with a free set of voter's registers and additional registers could be purchased at a fee of ZMK25.000.00<sup>1</sup> per polling district. The Mission noted the effectiveness of this, as most party agents had a copy of the register at polling stations, thereby ensuring transparency of the process.

While the willingness of the Commission to provide for continuous voter registration is a positive step towards long-term intervention, the ECZ should be provided with sufficient resources to maintain continuous registration. Government must adequately fund the ECZ in order for it to deliver a credible and legitimate election. This will remove the need for a new registration process for each new election and will reduce the financial burden on the Commission.

### **3.5 Voter education and information**

The ECZ provided useful information to observers, monitors and political parties and utilised the print and electronic media to inform the electorate. However, the Mission noted, especially in the rural areas, that many voters were not sufficiently informed about the elections. Given the timeframe in which the elections were held, it appeared that political parties focused their energy and resources more on campaigning than providing voter information.

The Mission noted that there was not a systematic voter education and information programme to inform the electorate about the background

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1 Zambia Kwacha (ZMK) is the national currency of Zambia. One ZMK is equal to 0.0002210 US Dollar (1 November 2008).

to the elections or the requirements for voting. Local CSOs provided some education and information to voters, but because of the short time given to prepare these elections, as well as the demands that their ongoing programmes placed on them, their ability to mount a full-scale voter education programme was limited.

The Mission is of the view that, as for voter registration, voter education needs to be a long-term intervention and not limited to an election. The focus should rather be on providing citizens with general information on democracy, governance and elections, with voter information provided for a specific election. This is not only the responsibility of the ECZ but a partnership between all stakeholders to ensure that citizen participation is integrated at all levels.

### **3.6 Media access and coverage**

Free and fair access to the media is an important feature of elections. However, media reporting tended to be unbalanced, with the public media giving preference to campaign activities of the ruling party and the private media covering mainly those of the opposition. The Mission observed that both public and private media displayed varying degrees of partisanship in their coverage of the campaign, with the potential of putting their professionalism into question. The Mission also learned that due to lack of resources, media coverage was not easily accessible to all contestants with some of them not affording to buy prime time, particularly on television.

The Mission was informed that although the ECZ purchased media coverage and invited contesting parties to make use of it, the offer was not taken up.

The Mission recommends that an effective level playing field should be created for the fair access to the media by parties and candidates during the electoral process.

### **3.7 The campaign process**

The election campaign has been carried out in a calm and orderly manner with a relative degree of tolerance from presidential candidates despite the tendency of some candidates to focus more on the alleged character

shortcomings of their opponents rather than on policy issues. The election campaign took the forms of posters, advertisements on big billboards, political rallies, television appearances by candidates and debates involving representatives of various candidates, and other types of media outreach through newspapers and radio stations. The Mission was informed by the Inspector General of the Police that the security forces would remain impartial throughout the electoral process and the Mission learned that opposition candidates were able to hold their rallies simultaneously with the presidential candidates, contrary to the situation prevailing before.

### **3.8 Use of state resources**

The Electoral Code of Code prohibits the use of government or parastatal transport facilities for campaign purposes, except for the president and the vice-president in connection with their respective offices. Concerns were raised by stakeholders on the use of state resources during the campaign process by the presidential entourage.

It is crucial for the Mission that state resources should not be used unreasonably to favour one candidate to the detriment of others.

### **3.9 Accreditation of observers**

PEMMO emphasises the importance of election monitoring and observation. The Mission noted and commends the high level of participation by various local and international observer missions with a view to enhancing the transparency, credibility and integrity of the process.

The accreditation of observers and monitors was conducted by the ECZ and centralised in Lusaka. This posed some challenge to domestic monitors, with local groups having to make arrangements to transport the accreditation cards to provinces. Domestic monitors noted some challenges, with incorrect names on monitors' cards. Further accreditation was required for the Results Management Centre at the Mulungushi International Conference Centre.

International observers were provided with a list of polling stations and other relevant useful information. Domestic monitors were provided with information on request and free of charge. The Commission announced that a limited number of accreditation kits would be available to international

observers for a fee of US\$100 to cover the production cost. The Mission was able to get accreditation kits for US\$20, and most documents, including the list of registered voters per polling station and the contact directory for electoral officers, were provided free of charge to most observers.

The Mission also noted with satisfaction that there was no accreditation cost for either domestic monitors or international observers. The Mission noted further the willingness of the ECZ to accommodate the accreditation of late arrivals.

### **3.10 Ballot papers**

The Mission learned that the ballot papers were printed in Durban, South Africa, and that provision was made by the ECZ for political parties and CSOs to witness the printing, the packing and the process of receiving the ballot papers in Zambia as a way of promoting transparency.

The Mission was made aware of the various challenges that the Commission faced with regard to the dispatching of ballot papers in batches from South Africa to Zambia, their transportation to provinces, and the confusion surrounding the printing of excess ballot papers. While the ECZ pleaded that the phased airlift of election materials was beyond its control, a certain degree of laxity was displayed by the Commission as far as the security of the ballot papers and other election materials was concerned. Transporting sensitive election materials from one site to another is potentially explosive. It is crucial that they are properly secured and accounted for. The Mission recommends that all stakeholders should maintain a high level of awareness regarding the security of all ballots and other elections materials.

It also came to the Mission's attention that the issue of the extra ballots was resolved through consultation with all parties involved in the election. It was agreed upon that the 600,000 extra ballot papers would not be distributed to polling stations in the districts but rather kept by the ECZ.

### **3.11 Polling stations**

The ECZ established polling stations throughout Zambia, allowing polling stations with more 650 registered voters to have multiple streams. The streams were in alphabetical order, the voters' registers were available in each

stream, and placards indicating the streams guided voters. The number of polling stations was adequate and accessible enough to ensure that as many eligible voters as possible cast their votes.

It was also noted that most polling stations were located in neutral places such as schools and church centres and were further secured by unarmed police officers, according to assurances given to the Mission by the Inspector-General of the police during the pre-election stakeholder briefings.

### **3.12 Voting process**

Most polling stations opened and closed at the legislated times, although a few opened late due to logistical problems such as the late arrival of election materials. Polling materials were available in adequate quantities, and voting proceeded smoothly throughout the process. On arrival the voter's name, National Registration Card (NRC) number and the page where his details and pictures could be found on the voters' roll were read out by the polling official and checked by party agents on their copy of the register. This verification of the voter's identity, the quality of the voters' roll and the use of indelible ink to avoid multiple votes contributed to enhance the transparency of the vote.

### **3.13 Voter turnout**

The mission noted that the voter turnout in this election was noticeably lower than in the previous election. This is a matter of concern, as it may point to reduced interest and trust of citizens in the electoral process. We recommend that in future extensive voter education must be conducted in order to stress the importance and value of participating in elections.

### **3.14 Counting and tabulation of results**

The counting of ballots, which took place at polling stations immediately after the end of voting, was conducted in a transparent manner. Counting was done in the presence of candidates' representatives, monitors and observers. All those present had a clear view of the market ballot papers. After announcement of results signed copies of those results were pasted outside polling stations in an effort to promote greater transparency.

The electronic transmission of election results was also commendable,

and could serve as a good example to other African countries in the use of appropriate technology for elections.

#### **4. CONCLUSION**

These elections were unique and presented unique challenges. Given the circumstances surrounding these elections, the Mission commends the smooth running of the electoral process by the Electoral Commission, the good interaction between ECZ and competing parties, and the responsible way in which the voters cast their votes. Despite the short time frame it was given for preparations, the manner in which the Commission conducted the 2008 Presidential Election has further contributed to improving the democratisation process that Zambia has started with the holding of its first competitive elections in 1991.

Based on our observations thus far it is the view of the EISA mission that the elections were conducted in a transparent manner and in a way that allowed the people of Zambia to freely express their will. It is the hope of the Mission that the management and announcement of results will be handled in the same manner. We commend the people of Zambia for their peaceful conduct during these elections.

EISA will continue to observe the process until the elections have been finalised and will issue a fuller assessment in its final report.

**Abel Leshele Thoahlane**  
**Mission Leader**

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## ELECTORAL OBSERVER REPORTS

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CODE	TITLE
EOR 1	Mauritius Election Observation Mission Report, 2000
EOR 2	SADC Election Support Network Observer Mission's Report, 1999/2000
EOR 3	Tanzania Elections Observer Mission Report, 2001
EOR 4	Tanzania Gender Observer Mission Report, 2001
EOR 5	Zimbabwe Elections Observer Mission Report, 2001
EOR 6	South African Elections Observer Mission Report, Denis Kadima, 1999
EOR 7	Botswana Elections Observer Mission Report, Denis Kadima, 1999
EOR 8	Namibia Elections Report, Tom Lodge, 1999
EOR 9	Mozambique Elections Observer Mission Report, Denis Kadima, 1999
EOR 10	National & Provincial Election Results: South Africa June 1999
EOR 11	Elections in Swaziland, S. Rule, 1998
EOR 12	Lesotho Election, S. Rule, 1998
EOR 13	EISA Observer Mission Report: Zimbabwe Presidential Election 9-11 March, 2002 (P/C)
EOR 14	EISA Observer Mission Report: South Africa National and Provincial Elections 12-14 April 2004
EOR 15	EISA Observer Mission Report: Malawi Parliamentary and Presidential Elections 20 May 2004
EOR 16	EISA Observer Mission Report: Botswana Parliamentary and Local Government Elections 30 October 2004
EOR 17	EISA Observer Mission Report: Mozambique Parliamentary and Presidential Elections 1-2 December 2004
EOR 18	EISA Observer Mission Report: Namibia Presidential and National Assembly Elections 15-16 November 2004
EOR 19	EISA Observer Mission Report: Mauritius National Assembly Elections 3 July 2005
EOR 20	EISA Observer Mission Report: Tanzania Presidential, National Assembly and Local Government Elections 14 December 2005
EOR 21	EISA Observer Mission Report: The 2005 Constitutional Referendum in the DRC/ Le Référendum Constitutionnel en RDC 18-19 December 2005
EOR 22	EISA Observer Mission Report: Zanzibar Presidential,

- House of Representatives and Local Government Elections  
30 October 2005
- EOR 23 EISA Observer Mission Report: Zambia Presidential, Parliamentary  
and Local Government Elections 28 September 2006
- EOR 24 EISA Observer Mission Report: Madagascar Presidential Elections  
3 December 2006
- EOR 25 EISA Observer Mission Report: DRC Presidential, Parliamentary  
and Provincial Elections/Elections Presidentielles, Parlementaires et  
Provinciales 30 July and 29 October 2006
- EOR 26 EISA Election Observer Mission Report Lesotho National Assembly  
Elections 17 February 2007
- EOR 27 EISA Election Observer Mission Report Madagascar National  
Assembly Elections 23 September 2007
- EOR 28 EISA Election Observer Mission Report The Zimbabwe Harmonised  
Elections of 29 March 2008 Presidential, Parliamentary and Local  
Government Elections with Postscript on The Presidential Run-off of  
27 June 2008 and the Multi-Party Agreement of 15 September 2008
- EOR 29 EISA Election Observer Mission Report Swaziland House of  
Assembly Election 19 September 2008
- EOR 30 EISA Election Observer Mission Report Malawi Presidential and  
Parliamentary Elections 19 May 2009