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**AFRICAN UNION ELECTION OBSERVATION MISSION
TO THE 20 JANUARY 2015
PRESIDENTIAL BY-ELECTION IN
THE REPUBLIC OF ZAMBIA**

Preliminary Statement

22 January 2015

INTRODUCTION AND BACKGROUND

1. At the invitation of the Government of the Republic of Zambia, and the Electoral Commission of Zambia (ECZ), H.E. Dr. Nkosazana Dlamini-Zuma, deployed an African Union Election Observation Mission (AUEOM) to the 20 January 2015 Presidential By-Election in Zambia.
2. The Mission is headed by His Excellency Kgalema Motlanthe; former President of the Republic of South Africa. The Mission comprises 23 Short-Term Observers (STOs). The observers were drawn from the Pan African Parliament, Electoral Management Bodies, Civil Society Organisations, and experts from the following countries: Algeria, Botswana, Ethiopia, Gabon, Kenya, Malawi, Mauritius, Niger, Namibia, Nigeria, Uganda, Sudan, South Africa, South Sudan, Tanzania, and Saharawi Republic.
3. The Mission is supported by a technical team drawn from the AUC, the Pan-African Parliament (PAP), and the Electoral Institute for Sustainable Democracy in Africa (EISA).
4. The AUEOM has a mandate to observe the 20 January 2015 Presidential By-Election in conformity with the relevant provisions of the African Charter on Democracy, Elections and Governance, which entered into force on 15 February 2012. The AUEOM's mandate is further strengthened by the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa; the African Union Guidelines for Election Observation and Monitoring Missions both adopted by the Assembly of the African Union Heads of State in July 2002; as well as other relevant regional and international benchmarks for election observation and the legal framework for the conduct of elections in the Republic of Zambia.
5. The observations and recommendations of the AUEOM are based on the principles and standards for the conduct of democratic elections as enshrined in the aforementioned AU instruments.

MISSION OBJECTIVES AND METHODOLOGY

Objective

6. In fulfilling its mandate in conformity with the aforementioned instruments in paragraph 4, the objective of the AUEOM is to make an independent, impartial and objective assessment of the 20 January 2015 Presidential By-election in the Republic of Zambia.

Methodology

7. To achieve its stated objective, the AUEOM undertook the following activities:
 - i. AU observers arrived in Lusaka on the 17 January 2015, and held a briefing and training on 18-19 January 2015. This provided an opportunity for observers to be trained on the African Union observation methodology, security and safety procedures, reporting and AU code of conduct for observers before deployment.
 - ii. Observers also received comprehensive briefing from the Electoral Commission of Zambia (ECZ) and legal and political experts on the preparations for the 2015 Presidential By-Election.
 - iii. The Head of Mission also held further consultations with key electoral stakeholders including the Acting President of Zambia H.E Dr Guy Scott; the Electoral Commission of Zambia; members of the diplomatic corps; civil society organisations and leaders of other International Election Observer Missions.
 - iv. On Election Day, members of the AUEOM were deployed in 11 teams to seven (7) districts in Lusaka and Central Provinces
 - v. On the Election Day, the teams visited 111 polling stations in their areas of deployment.
 - vi. AUEOM returned to Lusaka for a debriefing on 21 January 2015 and to report back on their findings.

8. Cognisant of the fact that the final results of the election is yet to be announced, this statement presents the AUEOM's preliminary findings up until the close of polling on 20 January 2015. These findings are based on data gathered through direct observations and consultation with stakeholders. A final report of the mission's assessment of the process will be published within 2 months of the announcement of final results.

PRELIMINARY FINDINGS AND OBSERVATIONS

(a) Context of the 2015 Presidential By-Election

9. The sudden death of President Michael Sata on 28 October 2014 occasioned the swearing in of the Vice President Dr Guy Scott as the Acting President for 90 days pending the holding of a Presidential By-Election within the same period as set out in Articles 36 and 38 of the Zambian Constitution.
10. The AUEOM notes that the 2015 Presidential By-Election was prepared and conducted within a limited timeframe of 90 days as mandated in Article 38(1) of the Zambian Constitution. The By-Election was contested by 11 candidates.
11. The AUEOM also notes that the pre-election context was overall peaceful and calm, though there were reports of sporadic violence in parts of the country during the campaigns.¹ The AUEOM therefore commends Zambians for their tolerance and peaceful conduct throughout the process.

(b) Legal and Institutional Framework

12. The legal framework for the 2015 Presidential By-Election comprises the 1996 Constitution of the Republic of Zambia, the 2006 Electoral Act, the 1996 Electoral Commission Act and the 2011 Electoral Regulations.

¹ Lusaka Times - PF factions clash in Lusaka, New PF SG condemns the violence, Zambia" [www] www.lusakatimes.com/2014/12/02/pf-factions-clash-lusaka-new-pf-sg-condemns-violence/

ECZ press release http://www.elections.org.zm/media/scanner_20150112_152102.pdf

13. The AUEOM notes that the constitutional and legal framework serves as the basis for conducting democratic elections in Zambia. Within this framework, the AUEOM notes that the fundamental rights and freedoms of Zambians to elect their public representatives as well as the President of the Republic are guaranteed. The legal framework also provides for elections to be held every five years through direct universal adult suffrage.
14. Whereas the 1996 Electoral Commission Act provides for the establishment of the Electoral Commission of Zambia (ECZ) as an independent body responsible for organising and managing elections and referenda, the 2006 Electoral Act provides in detail the procedures to be followed during elections.

The Electoral System

15. Article 34 (8) of the Zambian Constitution stipulates that the candidate with simple majority of the votes casted shall be declared the winner of the Presidential Election. This system of first-past-the-post system has in the past allowed for Presidents to be elected with less than 50% of the total votes cast.² The AUEOM notes that this formula could negate the authority and legitimacy that a President would otherwise derive from the expression of the will of the majority of the people. There is a lacuna in the law, which is silent on how to deal with a tie between two or more contestants in the Presidential election.
16. The AUEOM further notes that the legal framework in Zambia does not allow any citizen to contest as a candidate unless sponsored by a registered political party, thus excluding persons who may be interested to contest as independent candidates.³ In this regard, the AUEOM notes that the right to vote and be voted for is one of the fundamental rights that should be guaranteed to all citizens.

² Article 34 (8) states that: 'The Returning Officer shall declare the candidate who receives the highest number of the total votes cast to have been duly elected as President.'

³ Article 34(3) A person shall be qualified to be a candidate for election as President if— (d) he is a member of, or is sponsored by, a political party;

Party and Campaign Finance

17. The legal framework does not make any provision for public funding of registered political parties. In this regards, the AUEOM also wishes to draw attention to article III (g) of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, which commits the governments of its member states to ensure that parties are adequately funded to participate in the electoral process.⁴

Election Dispute Resolution

18. The AUEOM notes that while the current legal framework provide a system for the resolution of election related disputes; it does not provide reasonable time for the resolution of disputes before the swearing of the new a President since Article 34(9) of the Constitution stipulates that the winner of a presidential election should be sworn-in not later than 24 hours after the declaration of election results.⁵
19. The AUEOM in its consultations with stakeholders was duly informed that a proposal for amendment of the current constitution, which hopefully would address some of the gaps mentioned, is yet to be passed by the Parliament. The AUEOM encourages the Parliament to pass the amendment Bill before the conduct of the 2016 tripartite elections.

PRE-ELECTION PERIOD

(a) Voter Registration

20. The AUEOM notes that the 2015 by-election was conducted using the 2011 updated voter register, which was considered as credible by stakeholders. The AUEOM was informed that due to financial and logistical constraints, the continuous registration of voters as mandated in

⁴ Article III (G) 'ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process.'

⁵ Article 34 (9) states that: 'A person elected as President under this Article shall be sworn in and assume office immediately but not later than twenty four hours from the time of declaring the election'.

article 4(2) of the Electoral Act⁶ has not been implemented. The AUEOM therefore notes that a significant number of citizens who turned 18 during the last three years were denied the opportunity to vote in this Presidential By-Election. The AUEOM therefore encourages the Commission to prioritise an update of the voters' register and the registration of young people ahead of the 2016 tripartite elections.

21. The AUEOM notes with satisfaction that 50.14% of the 5,166,088 registered voters are female⁷.

(b) Preparedness of the Electoral Commission of Zambia

22. The AUEOM notes with satisfaction that the ECZ on 20 January 2015 successfully conducted the Presidential By-Election within a very limited timeframe and other logistical constraints such as the unfavourable weather conditions.
23. The AUEOM notes with satisfaction that the ECZ was provided with the budget for the elections by the government of Zambia and additional support from international donors.
24. The AUEOM also notes that the ECZ put in place the requisite logistics necessary for the conduct of the Presidential By-Election. It established 6,456 polling stations across the country and successfully recruited and trained polling officials. The AUEOM notes that these preparations were however affected by poor weather conditions, which necessitated the extension of voting hours in some polling stations until 21 January 2015.

(c) Civic and Voter Education

25. The AUEOM was informed that the ECZ partnered with civil society groups to undertake voter education ahead of the by-election. Its campaign messages were focused on non-violence and the need to exercise the

⁶ Article 4(2) of the 2006 Electoral Act states that: 'The Commission shall compile, maintain and update on a continuing basis, a register of voters, which shall include the names of all persons entitle to vote In any election under this Act, local government election under the Local Government Elections Act or referendum under the Referendum Act: Provided that the register of voters shall not preclude any person from voting in a referendum under Article 79 (3) of the Constitution.

⁷ See ECZ website for voter registration statistics www.elections.org.zm

franchise. The Commission also provided materials to enlighten voters on the voting procedure in the Presidential By-Election.

26. The AUEOM was informed that CSOs were faced with funding constraints in their efforts to sensitize voters. This was mainly due to the limited timeframe for the by-election.

(d) Candidate Registration and Campaigns

27. The AUEOM is satisfied that the entry requirements for Presidential candidature are reasonable and non-restrictive.
28. The AUEOM notes with satisfaction the existence of a code of conduct for political parties. Cognisant of the isolated reports of violence during the campaigns,⁸ it was noted that the campaigns were generally peaceful.
29. The AUEOM commends the role of the Inter-Party Liaison Committee in promoting and maintaining political tolerance during election campaign.

(e) The Media Environment

30. The AUEOM notes the role of the Zambian media to inform and enlighten the general public in the period leading up to the Presidential By-Election. The AUEOM also commends the media house that took the initiative to organise the presidential debates, which provided a platform for candidates to present their programmes.

(f) Women Participation in the Electoral Process

31. Whilst women constitute over 50% of registered voters, their participation in the election as candidates was very limited. Similar to the 2011 tripartite elections, only one female candidate contested the 2015 Presidential By-election. The AUEOM draws attention of the Zambian authorities to their commitments as AU member states under the African Union Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

⁸ Lusaka Times - PF factions clash in Lusaka, New PF SG condemns the violence, Zambia" [www] www.lusakatimes.com/2014/12/02/pf-factions-clash-lusaka-new-pf-sg-condemns-violence/ (accessed 03 Dec 2014)

ELECTION DAY FINDINGS

(a) Opening Process

32. On Election Day, the AU observer teams were present at the opening of the poll. Observers noted that polling officials complied with stipulated procedures and 86% of the stations observed opened on time.
33. The AUEOM also noted that the opening was delayed in a number of stations across the country, but in some polling stations, polling hours was extended until 21 January 2015 as a result of late delivery of materials.
34. Most observed polling stations had short queues at opening time, and the environment was generally calm and peaceful.

(b) Voting Process

35. AU teams visited 111 polling stations in seven (7) districts of Zambia where they observed the voting process, of which 58.06% were located in rural areas. Observers noted that the atmosphere in the polling stations visited was peaceful.
36. The AUEOM noted that stipulated procedures for voting were generally adhered to by polling staff. There were few exceptions of some stations where the ballot issuer did not record the voter registration number on the counterfoil of the ballot before issuing.
37. The AUEOM also notes the possibility of this procedure being abused in a manner that could compromise the secrecy of the vote as a voter's choice could very easily be traced.
38. The AUEOM noted the simplicity of the voting procedures and the ease with which voters were able to cast their votes.
39. The AUEOM notes that the turnout was generally low as the queues outside most polling stations visited were short and by mid-day most stations no longer had queues.
40. It is noted with satisfaction that in most of the stations visited, priority was given to elderly voters, expectant mothers and voters with infants. Voters who required assistance during the process were given such assistance without compromising the secrecy of the ballot.

41. The AUEOM also notes the efforts put in place by the ECZ to ensure that polling stations with voters exceeding 850 were divided into streams, which further facilitated the process.
42. The AUEOM commends the ECZ for providing copies of the voter register at polling station level to all political parties. This contributed to the transparency of the process.

(c) Security Personnel

43. Security personnel were visibly present at most polling stations visited and their presence was unobtrusive.

(d) Polling Stations

44. The AU teams noted that the layout in most of the visited polling stations allowed for easy flow of voters and guaranteed the secrecy of the ballot. The observer teams reported that the location of 77.9% of polling stations visited was easily accessible to persons with disability.
45. The AUEOM also noted the inadequacy of signage at the polling stations to direct voters to the appropriate stations and streams. Furthermore, it was noted that election officials serving as ushers within the polling centres did not effectively guide voters. This resulted in some voters spending longer periods on the wrong queue as they were redirected to respective stations.
46. In some stations observed, it was noted that the voting procedures were interrupted due to heavy rains.

(e) Polling Personnel

47. The AUEOM notes with satisfaction that 49.8% of the staff and 58.7% of party agents in stations visited were women.
48. The AUEOM notes that polling personnel conducted their duties in a professional manner and they were conversant with the required procedures.

(f) Party Agents and Independent Observers

49. AU observers noted the presence of party agents in most of the polling stations visited. The presence of citizen observers was also noted in most of the stations.

50. The AUEOM also notes that international observer groups were accredited to observe the elections and they were visible in the field on Election Day.
51. Party agents and observers were granted free access to the stations and they were able to discharge their duties without hindrance or interference.

(g) Closing and Counting Process

52. AU observers witnessed the closing and counting in their areas of deployment. Most of observed polling stations closed on time. It was noted that polling personnel complied with stipulated closing procedures by allowing voters in the queues at closing time to vote.
53. The AUEOM commends election officials for their attention to detail during the counting process.

RECOMMENDATIONS

54. Based on its observations and findings up to the close of poll on 20 January 2015, the AUEOM offers the following recommendations:

55. *The AUEOM encourages the parliament to:*

- a. Give immediate attention to the pending constitution amendment bill to strengthen the legal framework in the following aspects:
 - i. The provision for independent candidature
 - ii. Review of the electoral system to provide for the President to be elected by absolute majority.
 - iii. Provision for a reasonable time limit for the resolution of election-related disputes prior to the swearing-in of a new President.
- b. Amend the electoral law to include regulatory provisions on party and campaign funding.

56. *The AUEOM encourages the ECZ to:*

- a. Amend the Electoral Guidelines to remove the requirement for recording voter card numbers on the counterfoil of the ballot to avoid possible abuse leading to compromise of the secrecy of the ballot.

- b. Provide adequate signage to polling stations and polling streams and strengthen the training of ushers.
- c. Undertake and update and review of the voter register and work with the civil registration institution to harmonise the register of voters with the national civil registry. This will simplify the documentation required of voters at the polling stations.
- d. Intensify their efforts at voter education and sensitisation to address the issue of low voter turnout.

57. The AUEOM encourages political parties in Zambia to undertake programmes that will promote the participation of female aspirants in future elections.

CONCLUSION

- 58. Cognisant of the fact that the final results of the election are yet to be announced, the AUEOM congratulates the People and Government of the Republic of Zambia for the conduct of the second Presidential By-Election within two consecutive terms.
- 59. The AUEOM notes that the 20 January 2015 Presidential By-Election was conducted peacefully in a way that enabled qualified Zambians to exercise their right to vote. The by-election was conducted in accordance with the laws of Zambia and acceptably met basic international standards for democratic elections.
- 60. The AUEOM encourages Zambians to continue to conduct themselves peacefully until the end of the process.