



## **COMESA ELECTION OBSERVER MISSION TO THE 20 JANUARY 2015 PRESIDENTIAL BY-ELECTION IN THE REPUBLIC OF ZAMBIA**

### **PRELIMINARY STATEMENT**

#### **1. Introduction**

In response to an invitation from the Electoral Commission of Zambia (ECZ), the Common Market for Eastern and Southern Africa (COMESA) deployed a Mission to observe the 20 January 2015 presidential by-election.

The COMESA Observer Mission is led by Ambassador Dr. Simbi Mubako, a member of the COMESA Committee of Elders. The Mission comprises twenty observers drawn from the diplomatic corps of COMESA Member States accredited to Zambia, representatives from the East African Community Electoral Management Bodies Forum, and international staff from the COMESA Secretariat. The Mission received technical assistance from the Electoral Institute for Sustainable Democracy in Africa (EISA).

The Mission's assessment of the 20 January 2015 by-election is primarily based on the Constitution and other legislation governing elections in Zambia. The assessment is also predicated on international and regional principles governing the conduct of democratic elections.

This statement contains preliminary findings, recommendations and conclusions made by the Mission based on its independent observation, interaction with electoral stakeholders including the Electoral Commission of Zambia, political parties, civil society organisations, security agencies, the media, international and citizen

observers present in Zambia, among others. As the electoral process is still ongoing, this statement limits itself to the assessment made on the process up to the counting of results.

After training on international principles and practice governing the conduct of international observation held on 17-18 January 2015, seven teams of COMESA Observers were deployed on 19 January 2015 to five provinces of Zambia namely Lusaka, Eastern, Copperbelt, Southern and Western. Each team was equipped with checklists as an aid for systematic collection of data on observation of the polling and counting processes.

## **2. Preliminary Findings**

### **2.1 General Context**

The 20 January 2015 presidential by-election in Zambia marked another important milestone in the consolidation of democracy in the country through upholding constitutional order in managing a delicate political transition. Equally important, the conduct of this election will go a long way in contributing to sustainable social and economic development in the country. For the second time in the history of multi-party democracy, the people of Zambia have demonstrated maturity in managing peaceful transition following the untimely demise of the incumbent President, His Excellency the late Michael Chilufya Sata. The ninety-day transition required by the Constitution leading to the 20 January 2015 by-election is also in line with the democratic principles outlined in the African Charter for Democracy, Elections and Governance (ACDEG). The COMESA Mission commends Zambia, which is among only a few states that have already ratified the Charter.

### **2.2 Legal Framework**

The Constitution of Zambia provides in Article 38, for the holding of a by-election within ninety days if the office of the President becomes vacant by reason of his death or resignation. This provision enunciates the importance accorded to the Constitution by the people of Zambia as the sovereign determinant of their next

leader, in line with the Universal Declaration of Human Rights. The Constitution also provides for fundamental freedoms and rights, which grant citizens the ability to effectively participate in the electoral process in choosing their leaders.

The First-Past-the-Post system for election of the president is fairly simple. The candidate with the highest valid votes becomes the winner. The COMESA Mission, however, notes that there is a legal lacuna in the event that there is no clear outright winner in the election, such as in a case of tie of votes between the leading candidates.

### **2.3 Voter Registration**

The COMESA Mission learnt that the voters register used in the 20 January 2015 by-election by the Electoral Commission of Zambia has not been updated since the 2011 general elections. Article 4 of the Electoral Act enjoins the Commission to maintain and update the voters' register on a continuous basis in order to include all persons entitled to vote. The Mission was informed of administrative and financial constraints that the Commission was facing in order to implement continuous voter registration. This impediment may have contributed to disenfranchisement of new potential voters; removal of deceased voters from the register; and updating voting stations of voters who have changed their residential address. The Mission, however, notes the remarkable efforts made by the Electoral Commission, within the limited time and resources, in issuing replacement of lost voter registration cards, thus enabling this category of voters to participate in the elections.

### **2.4 Electoral Campaign and Campaign Finance**

The election campaign was generally peaceful despite isolated incidences of violence. The Mission notes that there were intra-party conflicts within certain parties which resulted in factions, particularly during the candidate nomination process. This factionalism may have contributed to animosities that bred certain inter-party conflicts during the campaign process.

The Mission also notes the absence of a regulatory framework for campaign finance and party funding in Zambia. This is a void that can contribute to negative influence of money in electoral politics.

## **2.5 Preparedness of the Electoral Management Body**

The ninety days constitutional period for holding the presidential by-election provided for a limited lead-time for the Electoral Commission of Zambia to organise the polls. The conduct of the election during the rainy season particularly posed an operational challenge for the Commission. On the back of this, the Mission notes the remarkable efforts made by the Commission to prepare for the polls in a timely, open and transparent manner. Notably, the Commission engaged with the key stakeholders on various critical steps of the electoral process including in the procurement of ballot papers and the exhibition of the results tallying centre.

## **2.6 Polling Day Observation**

The Election Day was commendably characterised by a generally peaceful atmosphere. This was witnessed throughout the polling and counting processes in all the areas where COMESA observers were deployed.

Most polling stations visited opened at 6.am as per the electoral procedures. While in a few cases polling stations were opened late; notably in Msanzala and Kapoche in the Eastern province - where polling stations opened after 4.pm due to late arrival of material. The Mission was informed that this delay was because of the rain that affected the timely deployment of materials to these areas. Also, these and other areas in the country were not easily accessible by road, hence the need for polling materials to be delivered by helicopters.

The COMESA observers also noted low voter turnout in most polling stations visited in both rural and urban areas. In some cases, voters were constrained by the rain especially during the morning hours of polling, while in most polling stations visited in the afternoon, the level of turnout was as low as 30 per cent.

The voting process took place in a generally transparent manner as witnessed by COMESA observers. Political party agents and citizen observers were present in most polling stations. However, not all political parties were represented in all polling stations visited.

The procedures for polling were adhered to by polling officials who demonstrated professionalism in all polling stations observed. The officials provided assistance to voters who needed guidance. COMESA observers noted that some voters presented themselves in the wrong polling stations, and were accordingly redirected to the right stations by the polling officials.

Most polling stations visited were not easily identifiable as the sign posts indicating the location of polling stations were small and not always visible. The ribbons surrounding the locality of polling stations were not a clear indication in the absence of a visible signpost.

The layout of polling stations generally permitted the free flow of voters and safeguarded secrecy of the ballot. The ballot box was placed in a central location visible to everyone present in the polling station.

Polling stations closed at 6.p.m after which counting proceeded in an open and transparent manner as per the procedures. Voters on the queue at the time of closing were allowed to cast their vote. There were no incidences reported during the counting process. Results were signed by the political party agents present and posted outside the polling stations.

The Mission noted, however, that there were a number of polling stations which faced operational constraints and continued the polling process on 21 January 2015. Whilst this was necessary in order to ensure that the affected voters are able to cast their votes. This took place at the same time as the initial results were being transmitted in real-time by the Electoral Commission of Zambia. This may have had a psychological effect on the voter.

### **3. Recommendations**

Drawing from the foregoing findings, and in a bid to contribute to further consolidation of democracy in Zambia, the Mission makes the following recommendations to inform future electoral reforms:

#### **To the Government:**

- Avail funds to the Electoral Commission to conduct continuous voter registration in order to ensure all citizens at the voting age are enfranchised.

#### **To the Electoral Commission of Zambia:**

- Put measures in place to ensure that continuous voter registration is conducted throughout the country in order to make the process more accessible and inclusive;
- Examine the possible causes of low voter turnout in the by-election and explore remedial measures to increase participation in future;
- Develop clear and more visible sign posting to enable easier identification of polling stations; and
- Whenever operational constraints necessitate continuation of polling beyond the legally prescribed day of voting, measures should be taken to ensure that the communication of results to the public is delayed until the polling process is completed. In the event of a delay, the Commission should accordingly communicate to the public.

#### **To Political Parties:**

- Explore mechanisms for improving both intra- and inter-party democracy by drawing on best practices in the region and beyond. This will not only minimise election-related conflicts but also enhance their capacity as vehicles of democratic governance.

#### **To the Parliament:**

- Explore measures aimed at improving the legal framework governing the conduct of elections in Zambia such as adoption of a regulatory framework for campaign

finance and party funding as well as making a provision for a run-off in case of a tie of votes between the leading candidates in an election.

#### **4. Conclusion**

The 20 January 2015 presidential by-election constituted an important phase of Zambia's history of multi-party democracy. Zambia has served as an example for the rest of the continent in managing political transition peacefully. The COMESA Observer Mission congratulates the transitional President for exercising leadership during the delicate transition and the people of Zambia for peacefully participating in this important election to elect their next leader. The Mission would also like to congratulate the Electoral Commission of Zambia for conducting the election in a transparent and professional manner, despite the operational constraints that faced the process.

The COMESA Observer Mission is of the opinion that the 20 January 2015 presidential by-election was generally conducted in accordance with the laws governing elections in Zambia. The Mission urges all parties to pursue legally established channels to resolve disputes that may arise relating to the outcome of the election. The Mission would also like to reiterate the need for all stakeholders in Zambia to collaboratively explore mechanisms for correcting shortcomings identified during this entire electoral process.

**Issued at COMESA Secretariat, Lusaka**

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