



**Zambia**

**FINAL REPORT**

**GENERAL ELECTIONS  
20 SEPTEMBER 2011**

**EUROPEAN UNION  
ELECTION OBSERVATION MISSION**

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## TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>II. INTRODUCTION .....</b>	<b>6</b>
<b>III. POLITICAL BACKGROUND .....</b>	<b>6</b>
A. Political Context .....	6
B. Key Political Actors.....	6
<b>IV. LEGAL ISSUES.....</b>	<b>7</b>
A. Legal Framework.....	7
B. Universal and Regional Obligations and Commitments .....	7
C. Election Legislation .....	8
D. The Electoral System.....	8
E. Delineation of Constituency Boundaries .....	8
<b>V. ELECTION ADMINISTRATION .....</b>	<b>9</b>
A. Structure and Composition of the Election Administration .....	9
B. The Administration of the Elections.....	9
<b>VI. VOTER REGISTRATION .....</b>	<b>10</b>
A. The Right to Vote .....	10
B. Voter Registration Procedures.....	11
<b>VII. REGISTRATION OF CANDIDATES AND POLITICAL PARTIES.....</b>	<b>11</b>
A. Registration of Political Parties .....	11
B. Registration of Candidates.....	12
<b>VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT.....</b>	<b>13</b>
A. Background to the Election Campaign .....	13
B. Overview of the Election Campaign.....	13
C. Campaign Finance and Use of State Resources.....	13
D. Voter Education.....	14
<b>IX. MEDIA AND ELECTIONS .....</b>	<b>14</b>
A. Media Environment .....	14
B. Legal Framework for the Media and Elections .....	15
C. Monitoring of Media Coverage of the Elections .....	16
<b>X. PARTICIPATION OF WOMEN AND MINORITIES .....</b>	<b>17</b>
A. Participation of Women .....	17
B. Participation of Minorities and Special Needs Voting .....	17
<b>XI. PARTICIPATION OF CIVIL SOCIETY .....</b>	<b>18</b>
<b>XII. COMPLAINTS AND APPEALS.....</b>	<b>18</b>
A. Electoral Offences .....	19
B. Complaints and Appeals .....	19
C. Petitions.....	20
<b>XIII. ELECTION DAY.....</b>	<b>20</b>
A. Overview of Voting .....	20
<b>XIV. RESULTS .....</b>	<b>21</b>
A. Counting, Aggregation and the Announcement of Results .....	21
B. Political Overview of the Election Results .....	22
<b>XV. RECOMMENDATIONS .....</b>	<b>23</b>
A. Table of Recommendations .....	28

## I. EXECUTIVE SUMMARY

The elections held on 20 September 2011 for presidential office, parliamentary seats in 150 constituencies and local government were the fifth general elections in Zambia following the reintroduction of a multiparty system in 1991. The European Union Election Observation Mission (EU EOM) was present in Zambia between 12 August and 8 October 2011 following an invitation from the President of the Republic of Zambia. The EU EOM was led by Ms. María Muñiz de Urquiza, Member of the European Parliament (MEP). It was also joined by a delegation from the European Parliament headed by David Martin, MEP. The mission deployed 120 observers from 27 European Union member states, Canada and Norway across the country to assess the electoral process against international and regional obligations and commitments related to holding genuine and periodic elections as well as the laws of Zambia. The EU EOM is independent in its findings and conclusions and adheres to the *Declaration of Principles for International Election Observation* commemorated at the United Nations in October 2005.

These presidential and parliamentary elections were organised in a transparent and credible manner according to the observations of both the EU EOM and other international and regional election observation missions that were present. Regional principles and international commitments to hold periodic and genuine elections have been mostly respected, but reform of key aspects of the electoral framework is required to fully meet these for future elections. Election day was generally calm and well managed. The election campaign took place in a highly competitive environment with key freedoms including those of assembly, expression and speech respected throughout the country during the campaign period. However, unequal access to resources meant there was not a level playing field for candidates or political parties to campaign. The change of president and government resulting from these elections represents an opportunity to further advance civil and political rights and strengthen the foundations of multiparty democracy.

The legal framework governing the presidential and parliamentary elections in Zambia provides an adequate basis for the holding of genuine elections in accordance with international and regional commitments and obligations adopted by Zambia. The constitution guarantees, and the courts are open to protect, fundamental rights and freedoms including the freedoms of assembly, association, conscience, expression and movement. Other fundamental rights related to genuine and periodic elections are protected including the right to be elected to public office by secret ballot and the right to vote according to the principles of equality and universal suffrage.

The Electoral Commission acted with impartiality organising these elections in a transparent and professional manner in accordance with its mandate. It demonstrated competence in planning for key stages of the electoral process and this was reflected in its delivery and organisational preparations. Although there were some glitches in the delivery of material on election day, nationwide the process went well. The lack of permanent and decentralised structures at provincial or district level did however limit the Electoral Commission's capacity to directly manage events. Reliance on seconded administrative structures both fuelled mistrust, questioning the Electoral Commission's independence, as well as reduced its ability to control all aspects of the process.

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Large discrepancies between the size of constituencies are inconsistent with the constitution and with the principle of equality in representation. The population census of 2010 indicates that some urban constituencies have more than 15 times the population of sparsely populated rural ones. For example Zambezi West constituency in North Western province has a population of 21,896 while Kanyama constituency in Lusaka has 366,170.

There are no openly discriminatory or unreasonable criteria to register as a voter. In advance of these elections the Electoral Commission conducted an update of the 2005 voter register. The final register was certified on 31 July 2011 and has 5,167,174 registrants (50.1 per cent women and 49.9 per cent men), or 85 per cent, of the eligible population. The number of first time voters is significant, up to 24.5 per cent of all registered voters. The majority of registered voters (53.8 per cent) are between 18 and 35 years old. The mobile voter registration exercise was well prepared and managed although there were some early delays regarding the issuance of national identity cards and a lack of timely public information available on the registration process itself. There remain anomalies in the register including details of a significant number of deceased persons and errors that have been generated by clerical mistakes.

Criteria for qualification as a candidate for the presidential and parliamentary elections set out in the constitution and Electoral Act are generally in line with Zambia's international commitments except in respect of the presidential election and the requirements of Zambian parentage and an absence of provisions for independent candidates to stand in these elections. A total of 10 individuals registered their presidential candidacies with the Chief Justice who acts as the returning officer for the presidential election, providing real choice for voters to elect the president. The parliamentary election was equally competitive with a total of 768 candidates registering from 20 parties across the 150 parliamentary constituencies.

Candidates and political parties enjoyed the rights of freedom of assembly, expression and movement during the campaign period with candidates and parties at liberty to move around the country without any major restrictions on their activities. Although the election campaign environment was highly competitive, unequal access to funding was clearly evident and there was not a level playing field. The president and officials attending inaugurations of large-scale public works, roads or hospitals, widely reported in the mass media, blurred the boundaries between official functions of the presidential office and campaigning. The use of state resources for campaign purposes was also at times overt in support of the Movement for Multi-party Democracy (MMD).

Freedom of expression in the media was respected during the campaign period. However, a highly polarised media environment led to highly selective campaign coverage. The state-owned television and radio stations failed to meet even their minimal obligations as public broadcasters and did not provide balance in key programmes such as news coverage that was dominated by the MMD. Newspapers' content demonstrated similar trends with entrenched editorial lines and highly selective news coverage. In contrast, the commercial television and radio stations provided balanced and impartial coverage of the campaign.

Barriers within the political parties, lack of access to resources and opportunities, and an absence of positive measures to encourage the participation of women in public life were reflected in the low percentage of women candidates in these elections. There was one female candidate in the presidential election. A total of 111 (14 per cent) of the 768 candidates standing for the 150 parliamentary seats were women. Reflecting these low ratios only 17

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women won parliamentary seats, or 11.5 per cent of the 148 seats that were contested on 20 September 2011, well below regional and international targets.

Civil society organisations played an important role in providing increased transparency during election day and then during counting and aggregation processes. The Civil Society Election Coalition 2011 deployed over 9,000 monitors to all the 6,456 polling stations to observe the polling and results management process.

There are clear channels for complaints and appeals related to electoral matters. The Conflict Management Committees were very active in places where the electoral contests were particularly hard fought, and they served a valuable role in resolving matters such as disputes about posters, insults traded between candidates, and threats of violence. There were a considerable number of electoral related cases in the High Court during the campaign period.

Counting of ballots at polling stations was conducted in a transparent manner, albeit slowly, in the spirit, if not according to the exact rules, laid out by procedures in the polling stations observed. It went on across the country throughout most of the night. Aggregation of results was undertaken immediately following counting and the arrival of polling data at constituency level aggregation centres. The quality of this part of the process deteriorated considerably compared with voting day procedures.

Following the announcement of the final results there was general acceptance of the integrity of key parts of the election process. A comprehensive set of detailed recommendations is included at the end of this report for consideration by the relevant authorities in order to further improve certain areas in the election process. Central recommendations include:

- Reducing the reliance of the Electoral Commission on seconded administrative structures to prepare for elections by introducing more permanent structures at either provincial or district levels. Furthermore, an independent review process could be introduced for appointments in the Electoral Commission based on best practice models for public appointment processes.
- The introduction of statutory provisions establishing clear rules for regulating campaign finance as well as political party registration to introduce greater public transparency measures in the financing and expenditure of political parties. Appropriate regulatory oversight would ensure a separation between the resources attached to public office and campaign activities as well as to provide accountability in campaign finance.
- The establishment of an adequate, proportionate and tiered regulatory framework for the media sector to ensure independent and appropriate regulatory mechanisms that operate in the public interest.
- Affirmative policymaking to encourage a more active and fully representative position for women in parliament, public positions and political parties, including the introduction of quotas where necessary.
- Continued improvements in developing a reliable results system to guarantee integrity and reliability in the collection, aggregation and publication of results. A review of procedures is suggested to prepare suitable measures to put in place to ensure the accuracy and security of results as they are collected from polling stations as well as

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adequate systems that allow for continuous, meaningful and transparent presentation of provisional and final results.

## II. INTRODUCTION

The European Union Election Observation Mission (EU EOM) was present in Zambia between 12 August and 8 October 2011 following an invitation from the President of the Republic of Zambia. The EU EOM was led by Ms. María Muñiz de Urquiza, Member of the European Parliament (MEP). It was also joined by a delegation from the European Parliament headed by David Martin, MEP. The mission deployed 120 observers from 27 European Union member states, Canada and Norway across the country to assess the electoral process against international and regional obligations and commitments related to holding genuine and periodic elections as well as the laws of Zambia. The EU EOM is independent in its findings and conclusions and adheres to the *Declaration of Principles for International Election Observation* commemorated at the United Nations in October 2005. On election day, observers visited 540 polling streams in 77 of the 150 constituencies throughout Zambia to observe voting and counting.

## III. POLITICAL BACKGROUND

### A. Political Context

The elections held on 20 September 2011 for presidential office, parliamentary seats in 150 constituencies and local government were the fifth general elections in Zambia following the reintroduction of a multiparty system in 1991. The incumbent party, the Movement for Multiparty Democracy (MMD), has dominated politics in Zambia since the 1990s. These elections were competitive with 10 candidates contesting for presidential office and a total of 768 candidates competing for 150 parliamentary seats in the National Assembly. Parliamentary elections in two constituencies were postponed following the deaths of candidates. In respect of the presidential election the leading candidates included the incumbent president, Rupiah Banda of the MMD, and Michael Sata of the Patriotic Front (PF). Another significant challenge to the incumbent came from Hakainde Hichilema of the United Party for National Development (UPND). Michael Sata had contested presidential elections in 2001, 2006 and 2008 and Hakainde Hichilema in 2006 and 2008.

All three leading presidential candidates' parties fielded parliamentary candidates across the country and a total of 20 parties' candidates contested seats in parliamentary constituencies. Whilst the MMD represented the single largest party in the outgoing parliament there had been gradual erosion and a loss of its parliamentary majority as opposition parties increased their seats in by-elections in the period since the 2006 parliamentary elections. In October 2010 the PF and UPND forged a coalition alliance to contest these elections, but this dissolved in the run-up to the campaign due to disagreements between the two parties.

### B. Key Political Actors

- The incumbent party in government, MMD, had won all presidential elections and had held a majority of seats in the National Assembly for the past 20 years. This party is ideologically committed to liberal economic policies and human development. Whilst the dominant party in Zambian politics for two decades it suffered a series of setbacks following internal disputes and a number of prominent MMD members defected to the

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PF ahead of the 2011 general elections. MMD's heartlands are considered to be the Eastern, North Western and Central provinces. President Mwanawasa appointed Rupiah Banda as his vice-president following his re-election in 2006. On the death of President Mwanawasa halfway through his presidential term, Rupiah Banda was elected president in a midterm election.

- Since 2006 the largest opposition party has been PF which had managed to increase its number of seats in parliament significantly. It was formed by its presidential candidate, Michael Sata, as a breakaway party of MMD ahead of the 2001 elections. PF's strongholds are Lusaka and Copperbelt as well as urban constituencies in Northern and Luapula provinces. It has strong support within the Bemba speaking parts of the population. In 2006 and 2008 presidential elections Michael Sata was runner-up to the MMD candidates. According to its constitution PF is a socialist party.
- The final significant political party that competed in these elections is UPND which is a liberal party founded in 1998, again as is the case of the PF, as a splinter group from MMD. It performed very strongly in the 2001 elections, but its popularity has dropped since this highpoint. In 2006, Hakainde Hichilema was a presidential candidate of the United Democratic Alliance (UDA), an alliance of opposition political parties formed by UPND. Hakainde Hichilema is from Southern province and belongs to the Tonga ethnic group. UPND has a regional character and has a strong base of supporters predominantly in the Southern and Western provinces.

## IV. LEGAL ISSUES

### *A. Legal Framework*

The legal framework governing the presidential and parliamentary elections in Zambia provides an adequate basis for the holding of genuine elections in accordance with international and regional commitments and obligations adopted by Zambia. The constitution guarantees, and the courts are open to protect, fundamental rights and freedoms including the freedoms of assembly, association, conscience, expression and movement. Other fundamental rights related to genuine and periodic elections are protected including the right to be elected to public office by secret ballot and the right to vote according to the principles of equality and universal suffrage.

### *B. Universal and Regional Obligations and Commitments*

Zambia has signed the relevant international agreements on the protection of human rights, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of Racial Discrimination (ICERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Political Rights of Women (CPRW). As a member of the African Union and the Southern Africa Development Community (SADC), Zambia also has ratified the African Charter on Human and Peoples' Rights (ACHPR) with its Protocol on the Rights of Women (ACHPR-PW), the African Union Declaration on the Principles Governing Democratic Elections in Africa as well as the African Charter on Democracy, Elections and Governance that was adopted in 2007 but is yet to enter into force. Zambia also has commitments outlined in the SADC Principles and Guidelines Governing Democratic Elections and the SADC Declaration on Gender and Development.

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These international and regional instruments are not directly enforceable in the courts of Zambia unless incorporated into national law by statute of the National Assembly.

#### *C. Election Legislation*

Presidential and parliamentary elections were governed by the same laws which applied for the 2006 and 2008 elections that include the Constitution of Zambia as amended in 1996, the Electoral Commission Act 1996, the Electoral Act 2006, the Electoral (General) Regulations 2006 (with minor 2011 amendments), and the Electoral (Presidential Election) Regulations 1991. The Electoral Code of Conduct which contains important rules relating to the campaign and dispute resolution process, was reissued in 2011, with amendments including the introduction of new electoral offences. Many criminal offences applicable to the campaign are contained in the Penal Code Act.

#### *D. The Electoral System*

The 1996 constitution establishes that Zambia is a unitary, indivisible, multiparty and democratic sovereign state. All powers reside in the people who shall exercise their sovereignty through the democratic institutions of the state in accordance with the law. Executive power rests with the president who is elected for a maximum of two consecutive five year terms as the head of state, head of government, and commander-in-chief of the armed forces. Legislative powers are vested in the National Assembly. Both the president and parliamentary members are elected using a first-past-the-post electoral system. The president is elected in a single national constituency. The National Assembly is composed of single member seats in 150 constituencies across the country and the president also has the powers to appoint a further eight members. The president appoints the vice-president, ministers, deputy ministers and provincial ministers from members of the National Assembly.

#### *E. Delineation of Constituency Boundaries*

Responsibility for establishing and reviewing the constituency boundaries for parliamentary seats rests with the Electoral Commission. There must be at least 10 constituencies in each of the nine provinces. Under Article 77 (4) of the constitution the population of the constituencies must be as nearly equal to one another as is reasonably practicable. However, variation is allowed to take into account means of communication, geographical features and density of population. The last review of the boundaries was prior to the 1991 elections. In October 2010 the Electoral Commission initiated a programme for the review of these to bring them in line with the planned changes that would have been introduced had the draft constitution, which was then being debated, been adopted. As the draft constitution failed to win parliamentary approval the plans to review constituency boundaries were also put on hold and the 2011 elections went ahead with the existing constituency boundaries in place. In August 2011 the Electoral Commission introduced minor changes to five constituencies in Northern and North Western provinces as a result of the creation of two new administrative districts.

There are large discrepancies between the size of constituencies, even considering geographical, communications and population density factors. The population census of 2010 indicates that some urban constituencies have more than 15 times the population of sparsely populated rural ones. For example Zambezi West constituency in North Western province has a population of 21,896 while Kanyama constituency in Lusaka has 366,170. The present

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boundary demarcations and constituencies are as a result inconsistent with the constitution and with the principle of equality in representation.<sup>1</sup>

## **V. ELECTION ADMINISTRATION**

### *A. Structure and Composition of the Election Administration*

In accordance with Article 76 (1) and (2) of the Constitution of Zambia and the Electoral Commission Act of 1996 the Electoral Commission of Zambia is established as an autonomous body with the mandate to organise and conduct presidential, National Assembly and local elections as well as referenda. To this end it is responsible for the supervision and maintenance of the voter register, reviewing the boundaries of the electoral constituencies and polling districts, voter education and undertaking all technical preparations for holding elections. It is composed of a chairperson and four commissioners who are directly appointed by the president, subject to parliamentary vetting and approval. The Commission appoints a Director, three Deputy Directors and a Commission Secretary to manage the directorate of the Electoral Commission and its role is to support the Commissioners in their work and implement their policies and decisions. The Electoral Commission has powers to make regulations pertinent to the electoral process.

Designed as a centralised body the Electoral Commission does not have a permanent presence either at provincial or district level. For the purpose of organising elections, provincial local government officers and town clerks or district council secretaries are temporarily appointed as provincial electoral officers and district electoral officers responsible for the coordination and preparation of elections in each province and district. The Electoral Commission appointed 150 returning officers and 300 assistant returning officers to oversee candidate nominations for the parliamentary election as well as aggregation and results processes. They are also responsible for announcing the final results of the parliamentary and presidential elections in their respective constituency. A total of 6,456 polling districts/ stations divided into 9,022 polling streams were established for election day and some 54,050 presiding officers and polling assistants were recruited and trained to deliver the elections at this level.

### *B. The Administration of the Elections*

The Electoral Commission acted with impartiality organising these elections in a transparent and professional manner in accordance with its mandate.<sup>2</sup> It demonstrated competence in planning for key stages of the electoral process and this was reflected in its delivery and organisational preparations. A well-designed electoral calendar ensured that logistic and technical deployment of material to district centres was carried out in advance of election day without major incident. Although there were some glitches in the delivery of material on election day, nationwide the process went well. The lack of permanent and decentralised

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<sup>1</sup> Article 25 of the International Covenant on Civil and Political Rights (ICCPR), United Nations Human Rights Committee, General Comment No. 25, paragraph 21: “The drawing of electoral boundaries and method of allocating votes should not distort the distribution of voters.”

<sup>2</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 20: “An independent electoral authority should be established to supervise the electoral process and to ensure that it is

<sup>2</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 20: “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.” See also Article 17 (1) African Union (not yet in force), African Charter on Democracy, Elections and Governance, 2007.

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structures at provincial or district level did however limit the Electoral Commission's capacity to directly manage events. Reliance on seconded administrative structures both fuelled mistrust, questioning the Electoral Commission's independence, as well as reduced its ability to control all aspects of the process.<sup>3</sup>

With a background of disputes relating to the independence of the Electoral Commission and appointments for the Electoral Commissioners there was already an element of mistrust in the electoral process on the part of key stakeholders prior to these elections. This continued throughout their organisation. Claims from opposition parties of bias in the electoral administration and allegations in the media at times questioning the integrity of the whole electoral process all created a climate of suspicion. In an attempt to reduce this the Electoral Commission introduced key confidence building measures such as stakeholder meetings and an open media and public relations policy that promoted a more inclusive environment for the administration of elections. These measures, however, did not reach all parts of the country and there was a lack of confidence amongst stakeholders in remote areas which were not fully included by these initiatives. The Electoral Commission also failed to adequately deal with speculation in newspapers regarding allegations of impropriety in the tendering process for ballot papers related to past elections that further promoted mistrust.

Selection committees headed by the district electoral officers for the recruitment of polling staff, the general instructions and the detailed criteria for their recruitment as well as tailored training solutions also enhanced the electoral process. The merit-based recruitment process was impartial and throughout the country the Electoral Commission's supervisory and polling staff acted professionally. They acted with transparency and prepared for and conducted the elections in a competent manner. Furthermore, by decentralising the accreditation process for domestic monitors, party agents and media, improved arrangements were put in place for enhanced access for stakeholders, despite some inconsistencies in respect to implementation at district level that led to different interpretations of the procedures.

## VI. VOTER REGISTRATION

### *A. The Right to Vote*

There are no openly discriminatory or unreasonable criteria to register as a voter. To vote a person must be a Zambian citizen, at least 18 years old and in possession of both a national registration card and a voter card, and have their details included in the voter register. There are categories of disqualified persons that include those of unsound mind, people detained under the Criminal Procedure Code or any other law in force in Zambia, those under a sentence of death or imprisonment or persons convicted of corrupt or illegal practices under the Electoral Act within the past five years, and those found guilty of such practices on an electoral petition within five years. These disqualifications are broadly in line with international standards. The major exception to this is the exclusion of persons held in custody who have not been convicted of an offence.

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<sup>3</sup> Section 2, Article 4 (e), the African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002: "Democratic elections should be conducted [...] by impartial, all inclusive competent and accountable electoral institutions staffed by well trained personnel and equipped with adequate logistics." See also Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections of 2004, Section 7, Article 7.3.

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### *B. Voter Registration Procedures*

In advance of these elections the Electoral Commission conducted an update of the 2005 voter register with a particular emphasis on increasing the number of new registrants, updating the information of those already registered and cleansing the database of any anomalies including entries of deceased persons. To these ends a new mobile system of voter registration was introduced that employed digital registration kits with a capability of capturing thumbprints for biometric and facial portrait data storage. The mobile voter registration update was conducted in three phases from June 2010 until March 2011 (183 days in total). The final register was certified on 31 July 2011 and has 5,167,174 registrants (50.1 per cent women and 49.9 per cent men), or 85 per cent, of the eligible population. The number of first time voters is significant, up to 24.5 per cent of all registered voters. A majority of registered voters (53.8 per cent) are between 18 and 35 years old. Overall the mobile voter registration exercise was well prepared and managed although there were some early delays regarding the issuance of national identity cards and a lack of timely public information available on the registration process itself.

There appears to be broad confidence in the integrity of the voter register. However, there remain some anomalies. There are estimated to be details of approximately 250,000 deceased persons on the register that have been carried over from the 2005 database which the new register has been built upon. Clerical mistakes in data recording and entries, such as name spellings and minor errors, have also been identified. To militate against these being a problem at polling station level the Electoral Commission issued clear and concise instructions on how to handle these matters to ensure voters who produced the required documents could vote. These responses to all these issues were appropriate and in line with best practice and the security measures put in place to ensure the integrity of the voter register were adequate. Due to technical errors during the data processing, the details of approximately 9,000 (0.17 per cent) voters were missing from the provisional voter register and these voters were unable to vote. According to the Electoral Commission, the majority of this data (99 per cent) has now been retrieved.

## **VII. REGISTRATION OF CANDIDATES AND POLITICAL PARTIES**

### *A. Registration of Political Parties*

Although the right to freedom of association is recognised by Article 21 (1) of the constitution and an individual is at liberty to form or be a member of a political party, there is no specific law on their registration or structures.<sup>4</sup> This leads to an absence of clear obligations on the parties to maintain internal democracy and a lack of transparency in their activities. Political parties register under the Societies Act, which involves the submission of an annual return to the Registrar of Societies. Any financial information included in such returns is not made public. Political parties are often in default of their obligations under this law but attempt to update these prior to an election.

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<sup>4</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 26: “The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.” See also Article 10 of the African Charter of Human and Peoples’ Rights OAU Document CAB/LEG/67/3 rev, 1986 and African Union Declaration on the Principles Governing Democratic Elections in Africa, IV. Elections: Rights and Obligations, paragraph 5: “Every citizen shall have the freedom to establish or to be a member of a political party or Organization in accordance with the law.”

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### *B. Registration of Candidates*

Criteria for qualification as a candidate for the presidential and parliamentary elections set out in the constitution and Electoral Act are mostly in line with regional and international commitments with a couple of exceptions. To qualify as a presidential candidate a person should be a citizen with Zambian parentage and be over 35 years of age, domiciled in Zambia for at least 20 years and sponsored by a political party. They should also meet all requirements to qualify to be elected as a member of the National Assembly. Nomination papers should be submitted with supporting documentation, a non-refundable deposit and a minimum of 200 supporters must be in attendance. Parliamentary candidates should be over 21 years of age and literate and they are required to demonstrate the support of nine voters in their constituency and submit a non-refundable deposit. Although there are no discriminatory measures, including those requiring a minimum level of completed education, there are categories of excluded persons including those that are bankrupt, of unsound mind and those who have been sentenced to imprisonment within the five years prior to an election.<sup>5</sup>

Whilst these provisions above are in line with international obligations there are a number of restrictions that are not. There is an overly broad provision that all civil servants including teachers as well as security personnel are not permitted to stand for elections and are required to resign, rather than take a leave of absence, from their posts to qualify as candidates. This represents an excessive restriction. In respect of the presidential election and the requirements of Zambian parentage this is also overly prescriptive and in breach of international obligations. A further issue was although presidential candidates submitted nominations during the week of 7-12 August 2011 at the Supreme Court in Lusaka, nominations for candidacy for the parliamentary election had to be registered in the respective constituency on 12 August 2011 with the returning officers during a one day nomination period. There have been no formal complaints from political parties on candidate registration; however, with the short time window, challenges in the case of errors or against any rejected nominations were without remedy except for an election petition after the poll.

A total of 10 individuals registered their presidential candidacies with the Chief Justice who acts as the returning officer for the presidential election, providing real choice for voters to elect the president. The parliamentary election was equally competitive with a total of 768 candidates registering from 20 parties across the 150 parliamentary constituencies. The MMD fielded candidates in all 150 constituency seats, PF had 148 candidates contesting seats and UPND 136 candidates. A range of other political parties fielded candidates and a large number of 140 independent candidates also contested parliamentary seats. The modal average was four candidates contesting each seat.

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<sup>5</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 10: “Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation,” and paragraph 16: “Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory.” See also the African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002.

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## VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

### *A. Background to the Election Campaign*

The Electoral Commission set the campaign period from 29 July to 18 September 2011 at which time a 48 hour campaign moratorium came into force. During that moratorium period, campaigning, election rallies and the publication of campaign advertisements or statements were prohibited, but opinion polls and any election news stories, including ones critical of candidates, could still be published. The extent of the ban was only set out in a press release and not clarified in advance in any legal instrument and this led to a lack of clarity as to its full scope and provisions. The Code of Conduct sets out broad freedoms to campaign, and outlaws violent or inflammatory language or conduct, and false statements about opponents during the campaign. Arms and weapons are forbidden at rallies. Public meetings must comply with the Public Order Act. Previously rallies required police permits to go ahead but this was amended in 1996 after a Supreme Court judgment to require notice rather than permission.

### *B. Overview of the Election Campaign*

Candidates and political parties enjoyed the rights of freedom of assembly, expression and movement during the campaign period, with candidates and parties at liberty to move around the country without any major restrictions on their activities.<sup>6</sup> The election campaign environment was highly competitive with the candidates of the two major parties, MMD and PF, and a lesser extent UPND, travelling to the provinces to attend organised rallies. The parties also conducted large scale door-to-door canvassing of voters and lobbied traditional leaders such as chiefs in an attempt to increase votes. Rallies were peaceful with a festival-like atmosphere and a large range of party paraphernalia including clothing and food handed out as an inducement for people to attend. Whilst the campaign environment was generally calm, some inflammatory and negative campaigning, at times some vitriolic rhetoric, and personalised insults have been observed at a number of MMD and PF rallies. There have also been a number of sporadic, localised and small-scale clashes between supporters of political parties in Lusaka and Namwala in Southern province.

The police's response to these incidents was professional and balanced. Criminal investigations into statements allegedly inciting violence at rallies of the General Secretary of PF and the provincial Chairperson of the MMD each proceeded to the stage of seeking a cautioned statement but no charges were issued before the elections. Overall, the campaign environment was not adversely affected by such incidents or clashes. This generally calm environment was in sharp contrast to the tension on election day and immediately following when supporters of opposition parties clashed with security agencies and disrupted the process in some parts of the country (see election day section).

### *C. Campaign Finance and Use of State Resources*

There are no provisions regulating campaign finance. The resources available to political parties and candidates varied considerably and there was a complete lack of transparency and

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<sup>6</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 12: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected." See also Section 4, Article 3, the African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002.

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accountability in both the sources of funding and how this was spent.<sup>7</sup> Furthermore, in respect to state resources, whilst Section 27 of the Electoral Act, obliges state authorities and the public media to give equal treatment to all candidates the only other specific ban on the use of public property or revenues for campaigning is in the Code of Conduct, which made it an offence to use governmental or parastatal transport or facilities for campaign purposes. This prohibition does not apply to the president and vice-president. Section 16 (2) of the Finance (Control and Management) Act prohibits the spending of public money for purposes not sanctioned by law, and ensuring compliance is the responsibility of the Auditor General, a constitutional office. In the past officials who diverted funds to political campaigns were convicted of abuse of office, but that offence was repealed by the Anti Corruption Act 2010.

In the absence of appropriate provisions, and a lack of mechanisms to ensure that rules in place such as those in the Code of Conduct were enforced, there was no transparency in campaign funding or use of state resources and there was not a level playing field for the campaign. Advantages of incumbency were widely exploited by the MMD. The president also frequently attended ceremonial openings or inaugurations of large-scale public works, roads or hospitals that were widely reported in the mass media and blurred the boundaries between official functions of the presidential office and campaigning. The use of state resources for campaign purposes was at times overt, particularly in the use of public television, radio and newspapers. Use of government vehicles by the MMD to deliver campaign material was widely reported from the field. The lack of clearly defined parameters between private and public resources further dissolved boundaries between legitimate use of state resources used in an official capacity and use of them to campaign. In addition civil servants including provincial permanent secretaries and district commissioners were at times active in the election campaign for the MMD. Finally, the publicly funded relief maize programme was also frequently observed being used by the MMD in support of its campaign.

#### *D. Voter Education*

Pursuant to its mandate the Electoral Commission is responsible for providing voter education and in line with this it established the National Voter Education Committee that included civil society organisations and public institutions, and 74 District Voter Education Committees. A total of 1,422 voter education facilitators were trained to deliver these programmes in every ward. Specially tailored, and at times highly innovative, voter education programmes for each phase of the electoral process were delivered to increase the public's awareness of their rights, knowledge of voting procedures and to encourage them to vote. This included producing material in the seven main local languages, door-to-door campaigns, local drama groups targeting different social groups such as women and new voters, and highly visible radio and television campaigns.

### **IX. MEDIA AND ELECTIONS**

#### *A. Media Environment*

Freedom of speech in the media was respected throughout the campaign period with few reported incidents involving infringements to journalists to report on the campaigns of the

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<sup>7</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 19: "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party."

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political parties and candidates.<sup>8</sup> Whilst the entrenched positions of certain media outlets mean the media environment is highly polarised, there are also a range of commercial and religious radio and television broadcasters that are increasingly developing stronger ethical professional values in the sector. Radio is the most important source of information in Zambia, especially in rural areas. The emergence of new commercial radio and television broadcasters in 1991 together with newspapers means there is now an established history of competition to the state-owned media and a relatively plural media sector in general, opening up a space for critical discussion and debate. A long-standing dispute between the media and government about the nature of appropriate regulatory structures for the media sector has led to a regulatory vacuum, and little or no development, in respect to media industry regulation.

#### *B. Legal Framework for the Media and Elections*

Articles 11 and 20 of the constitution guarantee freedom of expression including freedom to hold opinions, communicate and receive ideas and information without interference. The Electoral Act, Section 27 (2) establishes that all candidates and parties have the right to have their campaigns and manifestos reported by all of the public media in a balanced manner. The key regulations for media coverage of the elections are, however, outlined in the Code of Conduct 2011, which has an extensive list of obligations for media for their coverage of the campaign established in Regulations 13, 14 and 15. Regulation 13 (1) *et seq.* obliges all print and electronic media to provide fair and balanced coverage of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period. There is also a requirement for media organisations to report election news in an accurate manner and make a clear distinction between news and opinion. There are a number of provisions in the Penal Code related to criminal defamation and criticism towards the head of state that contain disproportionate sanctions including penal sentences for publication that are inconsistent with international practices protecting freedom of expression.<sup>9</sup>

A specific obligation is placed on public radio and television channels of the Zambia National Broadcasting Corporation (ZNBC) to allocate airtime to all political parties for party political broadcasts and there is also a provision for parties to purchase no more than a maximum of 30 minutes airtime in any one language per week on one of the public radio or television outlets (Regulation 14). ZNBC is under an additional obligation from Section 7 of the ZNBC Act to broadcast news and current affairs programmes which shall be comprehensive, unbiased and independent. Commentary should also be clearly distinguished from news.

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<sup>8</sup> Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 25: “The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”

<sup>9</sup> See the Joint Declarations International Mechanisms for Promoting Freedom of Expression by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organisation for Security and Cooperation in Europe and the Organization of American States Special Rapporteur on Freedom of Expression, 1999 & 2004. The 2004 Declaration states “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with *appropriate* civil defamation laws..... civil sanctions should not be so large as to exert a chilling effect on freedom of expression [...] and should be strictly proportionate to the actual harm caused.” See also Article XIII, Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples’ Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia.

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### *C. Monitoring of Media Coverage of the Elections*

A highly polarised media environment led to very selective campaign coverage of the parties and their campaigns in some of the mass media monitored by the EU EOM.<sup>10</sup> The right of voters to have access to a broad range of impartial news was not always respected. At times irresponsible and partial media reporting of events openly sought to mislead viewers, listeners and readers and this contributed to increasing suspicions of the electoral process. There was a blurring of the lines between editorial opinion and news items across state and some privately owned media. The candidate debate style programmes, many of which were sponsored by non-state actors, granted access to contestants across broadcasters. Despite this access, key programming such as news bulletins of the state-owned radio and television channels of the ZNBC was dominated by the MMD at the expense of the main opposition parties. These stations failed to meet even their minimal obligations as public broadcasters.<sup>11</sup> Although PF boycotted these radio and television stations and subsequently did not participate in any of the election related programming produced by these channels for much of the campaign period the absence of balanced programming policies was pronounced.

This particularly affected the diversity of ZNBC candidate debate style programmes. As a consequence overall coverage of political actors on ZNBC TV and Radio 2, which carried the debates, meant MMD received a total of 37 per cent share of coverage compared to the major opposition party PF receiving 4-8 per cent share of coverage on the two channels. Other parties that did attend these debates included UPND who received 21 per cent share of coverage, Alliance for Democracy and Development (ADD) seven per cent and the National Restoration Party (NAREP) six per cent. A range of other parties received a share of five per cent each. The impact of these debates was also undermined by the fact that ZNBC's news bulletins were highly imbalanced and dominated by MMD. As a result debate style programmes provided viewers and listeners with access to candidates, but at the same time highly imbalanced news coverage excluded candidates and parties and openly promoted MMD. In all the radio and television stations managed by ZNBC there was a lack of diversity and balance in news bulletins and between 70-76 per cent of coverage of political actors was afforded to MMD. In contrast PF received between 9-15 per cent with all other parties receiving negligible coverage in these stations' news coverage. The tone of coverage towards MMD was also positive.

Commercial radio and television broadcasters had wider and more balanced coverage of the candidates and political parties with key commercial broadcasters' programming demonstrating an equitable balance between key candidates and their political parties. Although in respect to volumes of coverage there was a tendency to grant more airtime to either PF or MMD, the tone of coverage was neutral. MUVT TV allocated 34 per cent of airtime to PF, 20 per cent to MMD, 16 per cent to UPND, nine per cent to NAREP with the

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<sup>10</sup> The media monitored daily by the EU EOM were the newspaper titles: *The Post*, *Times of Zambia* and *The Daily Mail*, six radio stations including ZNBC Radio 1, 2 and 4, Phoenix, Hot FM, QFM and a religious-based radio station, Christian Voice, as well as two television channels, ZNBC TV and MUVT TV.

<sup>11</sup> African Union, (not yet in force) African Charter on Democracy, Elections and Governance 2007, Chapter 7, Article 17 (3): State Parties shall "Ensure fair and equitable access to contesting parties and candidates to state controlled media during elections." See also Section 4, Article 12, African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII), 2002: "Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit their electoral adversaries from using the facilities and resources of the public media to air their campaign." Article 2.1.5 Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections of 2004: SADC member states [shall provide] "Equal opportunity for all political parties to access the state media."

remaining coverage divided between a range of smaller parties. Most coverage of political actors on commercial radio was in news bulletins. Radio Phoenix afforded PF 29 per cent, 26 per cent share to both MMD and UPND and NAREP 10 per cent with the remaining coverage shared between smaller parties. Radio Hot FM afforded MMD a total share of coverage of political actors of 24 per cent, PF 18 per cent, UPND 16 per cent, ADD 10 per cent, NAREP eight per cent, Forum for Democracy and Development (FDD) seven per cent, Heritage Party and Zambians for Empowerment and Development (ZED) six per cent, National Movement for Progress (NMP) five per cent and less than one per cent for the other parties. Radio QFM afforded PF 36 per cent, MMD 33 per cent and UPND nine per cent. Radio Christian Voice afforded PF 35 per cent, MMD 18 per cent and UPND 17 per cent.

State-owned and private newspapers' content demonstrated similar trends with the state-owned broadcasters with entrenched editorial lines and highly selective news coverage favouring either MMD in the case of the state-owned titles *The Daily Mail* and *The Times* or PF in respect to the private title, *The Post*.

## X. PARTICIPATION OF WOMEN AND MINORITIES

### A. *Participation of Women*

The principles of equality and non-discrimination are constitutionally protected. Although Zambia has signed key international and regional instruments for equality between women and men, women remain under-represented in public life. The national legal framework does not provide for affirmative action for the representation of women. Despite women constituting half of the voting population they account for less than 15 per cent of those participating in the legislative and decision making processes.

Barriers within the political parties, lack of access to resources and opportunities, and an absence of positive measures to encourage the participation of women in public life were reflected in the low percentage of women candidates in these elections. There was one female candidate in the presidential election. A total of 111 (14 per cent) of the 768 candidates standing for the 150 parliamentary seats were women. Only eight out of 20 parties contesting parliamentary elections nominated female candidates: UPND 22, MMD and PF nominated 20 each, ZED 10, ADD and United National Independence Party (UNIP) six, FDD, four and NAREP two. A total of 21 female candidates stood as independents. Reflecting these low ratios only 17 women won parliamentary seats, or 11.5 per cent of the 148 seats that were contested on election day, well below regional and international targets.<sup>12</sup>

### B. *Participation of Minorities and Special Needs Voting*

The constitution provides general guarantees of equal rights and freedoms and prohibits discrimination on grounds of race or religion. There are no legal obstacles to participation of any specific minority group as either candidates or voters. The constitution obliges the Electoral Commission to ensure access to voting for all eligible persons on the basis of non-discrimination including voters with disabilities. There were some provisions for assisted voting and 6,500 tactile ballot templates for the presidential election for the visually impaired

<sup>12</sup> Article 12 of the Southern African Development Community (SADC) Declaration on Gender and Development, 2008: "States Parties shall endeavour that, by 2015, at least fifty percent of decision making positions in the public and private sectors are held by women including the use of affirmative action measures as provided for in Article 5."

were distributed to polling stations. However, special voting provisions provided for in law to allow housebound and the hospitalised to vote were not implemented largely due to disagreements amongst stakeholders on the procedures to be adopted. Polling stations were also mostly located in schools and were not always adequate to accommodate the physically disabled. The Zambia Federation of Disability Organisations played an important role in enhancing access for persons with disabilities to all stages of the electoral process and the legal proceedings it pursued sets an important precedent for the future (see complaints and appeals section).

## **XI. PARTICIPATION OF CIVIL SOCIETY**

Civil society organisations played an important role in providing increased transparency during election day and then during counting and aggregation processes.<sup>13</sup> The coalition of eight civil society and faith based organisations that worked within the umbrella group, the Civil Society Election Coalition 2011, deployed over 9,000 monitors to all the 6,456 polling stations to observe the polling and results management process. This was despite some internal challenges experienced by the groups that were part of this consortium. After some initial controversy surrounding the plans of these groups to conduct a parallel vote tabulation, compromise was reached to accommodate such an exercise. This further enhanced transparency measures in the results process and its results were in line with the official results supporting their integrity. Civil society also contributed in delivering voter and civic education prior to the elections to increase public understanding of the electoral process as well as voter turnout. Constant calls by non-state actors, including the churches, to ensure peaceful elections were also important voices in the maintenance of a climate conducive to guaranteeing that key freedoms were respected.

A large number of regional and international observer missions were also deployed from the African Union (AU), the Commonwealth, the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), the Electoral Institute for the Sustainability of Democracy in Africa (EISA) and the National Democratic Institute (NDI).

## **XII.COMPLAINTS AND APPEALS**

There is provision in the constitution and Electoral Act for dispute resolution of electoral matters, by mediation through Conflict Management Committees (CMCs) and by action or petition through the High and Supreme Courts. The constitution provides that all judges shall be independent and impartial and subject only to the constitution and law. Supreme and High Court judges are appointed by the president on the advice of the Judicial Service Commission after a parliamentary vetting process, with the exception of some senior judges whose tenure has been extended by a decision of the president. In such an event the vetting process does not apply.

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<sup>13</sup> See Article 2 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 20: "There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes." See also African Union, Article 7 of the African Charter of Human and Peoples' Rights, OAU Document CAB/LEG/67/3 rev, 1986.

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#### *A. Electoral Offences*

Offences are categorised in Part VII of the Electoral Act into illegal practices and electoral offences. The first category of illegal practices includes corruption offences of bribery, impersonation, undue influence, publishing false statements about candidates, inciting disorderly conduct at an election meeting and misuse of a ballot paper. These carry a maximum sentence of up to five years imprisonment, or a fine not exceeding Kwacha 36 million (€5,237). The second category of electoral offences includes more minor misdemeanours at polling stations. These carry a maximum sentence of up to two years imprisonment or a maximum fine of Kwacha 1.8 million (€262).

The Code of Conduct also created a series of new criminal offences and some of these provisions, due to their gravity and nature, would have been more suitable in a statutory instrument. All political parties and candidates must sign up to the commitments in the code and if they refuse it is an offence. There is also in the code an offence for members or supporters of parties or candidates to use hatred or violence, or to deface the material of other parties, or disrupt rallies. A further list of general offences includes producing weapons at an election rally, scheduling rallies in the same location as one that is already planned and using government facilities for campaign purposes. Offences in the Code of Conduct carry a maximum sentence of two years imprisonment. The police, who are the responsible body for investigating and initiating a prosecution for any breaches to these provisions reported a total of 102 arrests relating to the election mostly in Lusaka and Copperbelt. The majority of these were minor offences of violence under the Penal Code Act.

#### *B. Complaints and Appeals*

In accordance with the Electoral Act and Code of Conduct, 75 Conflict Management Committees (CMCs), one for each district and one at national level, were established in August 2011. These committees were comprised of members of political parties, civil society organisations and state law enforcement agencies. They were very active in the constituencies that were closely contested and served a valuable role in resolving issues such as disputes over posters, incidents of any insults traded between candidates, and threats of violence. Some disputes such as aggravated violence went to a CMC but later resulted in criminal prosecution. On 12 September 2011 the Electoral Commission sent an evaluation team from the national CMC to visit district CMCs around the country over a five day period to report on their effectiveness, and following the election the national CMC also dealt with complaints from political parties about delays in the transmission of results to the Electoral Commission at Lusaka.

During the campaign period there were many election related cases in the High Court including a challenge to President Banda's candidacy on the grounds that his parents were not Zambian. The case was dismissed on a procedural issue that meant the matter was not addressed. The Zambia Revenue Authority was sued for allegedly failing to charge import duty on campaign material imported by the MMD leading to an abuse of state resources. This case was dismissed on 13 September 2011 on an issue of due notice, but the allegation itself was not addressed. Both these cases were taken by PF. In addition, during the campaign, the PF or its candidates obtained six court injunctions against media outlets to stop the continued publication of stories claimed to be defamatory. The court decided in each case that the protection of reputation during the election period outweighed the freedom of expression. A case was taken by the Zambia Federation of Disability Organisations against the Electoral Commission to force it to

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make special facilities available for visually impaired, deaf or wheelchair bound voters on election day. The court declared that the Electoral Commission was in breach of its constitutional obligation to provide access to voters, but deferred mandatory orders to comply until later elections.

#### *C. Petitions*

Post election challenges to results can be submitted to a full bench of the Supreme Court in the case of the presidential election within 14 days of the swearing-in of the declared winner. There is no time limit for dealing with those cases and some in the past have taken years to reach judgment after the declared winner has been sworn in. No such petition was brought in respect to this presidential election. Petitions relating to the parliamentary election must be submitted to the High Court within 30 days of the particular declaration, or if there is an allegation of corruption up to 30 extra days are available. The High Court has 180 days to conclude with the petition and has the powers to cancel the election of a declared winner. A person submitted an election petition in the High Court must pay a maximum of Kwacha 144,000 (€21) to court as security for costs unless the parties to the case agree a higher sum. For Supreme Court petitions no sum is set.

The test on such an election petition is as to whether the majority of voters may have been prevented from electing their preferred candidate. The procedures for election petitions are in line with international standards save that there should be shorter time limits for dealing with the cases. In electoral petitions and political cases the courts are widely perceived by stakeholders to display deference to government. Electoral cases are often deferred or dismissed on narrow procedural grounds. A total of 68 petitions challenging results of the National Assembly elections were filed at the High Court of Zambia during the 30 day period permitted. Of these 50 were filed by unsuccessful PF parliamentary candidates, 11 by UNPD candidates, five by MMD candidates and two by independents. The allegations consistently appearing in the petitions are of 'vote buying' by distribution of personal gifts or communal donations, undue influence that includes claims of pressure by local chiefs, and the abuse of state resources through the use of state vehicles and civil servants in campaigning. The Electoral Commission has been added as a party in the majority of petitions.

### **XIII. ELECTION DAY**

#### *A. Overview of Voting*

Material required for polling was transported prior to election day to district level without major incident. The local delivery of this material down to polling station level was generally efficient allowing for the timely opening of the poll nationwide. There were some isolated incidents of polling material arriving late, but the large majority of polling stations either opened on time or within an hour of the scheduled time. Material and polling staff arrived several hours later in some polling stations in Kanyama, Matero and Munali constituencies in Lusaka. Polling in these polling stations started later and was extended until the evening according to agreed procedures. There were other minor incidents of delay that were attended to by the Electoral Commission. The most extreme case was in Lukulu West constituency when supporters of political parties disrupted the transfer of polling material. Elections were conducted a day late as a consequence.

Nationwide voting proceeded throughout the day in a calm and orderly manner with some reports of disruptions in Lusaka and a few other areas of the country. Polling procedures in 94 per cent of polling stations observed by European Union observers were assessed as good or very good. In some of these polling stations procedures were not followed strictly or some material, mainly seals and official stamps, was missing, but this did not adversely affect the overall integrity of the polling. There were also some minor problems in regards to the voter register with people not being able to vote because their names were not included on it. The majority of these were resolved with presiding officers following the instructions issued by the Electoral Commission on how to deal with these cases in advance of the election. Polling staff were professional and overall acted with impartiality in the polling stations observed. Effective use of procedures provided adequate security measures and the secrecy of voting was largely maintained, although the layout and the position of the ballot booths in some polling stations did not guarantee the secrecy of the vote. In all polling stations observed there were a large number of party agents mostly from MMD, PF and UPND and domestic monitors. European Union observers assessed the overall environment for polling positively.

On election day sporadic incidents of violence erupted in small pockets of the country. These were all largely related to the increase in suspicions of the electoral process of PF supporters and rumours of electoral fraud. In Kanyama, Matero and Munali constituencies in Lusaka, rioting broke out as voters protested at delays in the opening of polling stations. Police fired tear gas and warning shots to disperse the rioters. These kinds of incidents continued in the days immediately following the elections and there was unrest in Ndola and Solwezi.

## **XIV. RESULTS**

### *A. Counting, Aggregation and the Announcement of Results*

Closing was assessed as fair to good in most polling stations observed. Counting of ballots commenced at all polling stations in clear sight of party agents and election monitors immediately following closing of the poll. It was conducted in a transparent manner, albeit slowly, in the spirit, if not according to the exact rules, laid out by procedures in the polling stations observed. It went on across the country throughout most of the night. Aggregation of results was undertaken immediately following counting and the arrival of polling data at constituency level aggregation centres. Whilst in general the process remained transparent it was not carried out at optimal speed, and in some aggregation centres European Union observers reported problems. The quality of this part of the process deteriorated considerably compared with voting itself, although both counting and aggregation were transparent, albeit undertaken with widely different understandings of the paperwork process.

Delays in aggregation were mainly attributable to 1) the late opening of polling stations meant these stations also closed late 2) the difficult infrastructure for the transportation of results from polling stations to the aggregation centres 3) overly complex paperwork for counting and forms that often led to staff confusion and misunderstanding of procedures; and 4) very low tolerance thresholds in the systems software that meant there were a number of incidents of rejection of data entry sets, even when data had very low margin errors or mistakes were minor, further complicating the process. European Union observers also reported a lack of adequate staff training and knowledge in these later stages of the electoral process. As a consequence verification was longer than anticipated and complex. However, despite this the Electoral Commission staff still managed to guarantee a transparent process that assisted in maintaining confidence in it, in many parts of the country. In other areas of the country heightened

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suspicions led to incidents of obstruction and an increasingly aggressive environment involving PF supporters acting in a threatening and menacing manner towards Electoral Commission staff during these final stages of the process.

The Chairperson of the Electoral Commission announced the certified results of the presidential election at 00:30 hours on 23 September 2011. Based on results obtained from 143 of the 150 constituencies Michael Sata of the PF was declared winner with a total of 1,150,045, or 43 per cent of valid votes. The incumbent president, Rupiah Banda of the Movement for Multi-party Democracy (MMD), received 961,796 votes (36.1 per cent) and Hakainde Hichilema of the UPND 489,944, or 18.5 per cent of valid votes cast. Based on these results the Chief Justice as the returning officer for the presidential election declared Michael Sata president-elect. All political parties accepted results of the presidential election and there is a general acceptance across society that the elections were credible and transparent. A swearing-in ceremony was held on 23 September 2011 in accordance with the law and the new president assumed office.

Compared with the 2006 elections voter turnout was significantly lower. It reduced from 70.77 per cent in 2006 to 53.98 per cent in 2011. Central and Western provinces had the lowest turnout with 47.24 per cent and 48.21 per cent respectively. The highest turnout was in Copperbelt, 59.67 per cent, followed by Southern at 58.37 per cent and Northern province at 57.73 per cent. The turnout in Lusaka province was 52.26 per cent, slightly lower than the national average. A total of 56,678 ballots were invalidated, representing 2.03 per cent of ballots cast. This level of invalid votes is in line with regional and international trends. However, it is an increase compared with the 2006 elections (1.75 per cent) and 2008 (1.32 per cent) presidential midterm election.

#### *B. Political Overview of the Election Results*

On 28 September 2011 the Electoral Commission published final presidential election results based on all 150 constituencies. Michael Sata of the PF received 1,170,966, or 41.98 per cent of valid votes. Rupiah Banda of the MMD was second and received 987,866, or 35.42 per cent and Hakainde Hichilema of the UPND 506,763, or 18.17 per cent of valid votes cast. The remaining seven candidates received a combined total of 4.43 per cent of valid votes.

Results of the parliamentary election were released in conjunction with the presidential results. From the 148 parliamentarian seats contested on election day (elections in two constituencies were postponed due to the death of candidates) the PF won 60 seats, MMD 55 seats and UPND 28 seats. Three independent candidates won seats and one seat each was won by ADD and FDD. The president also appointed another eight members of parliament as permitted under constitutional provisions. In respect to parliamentary seats the PF managed to maintain its popularity with voters in urban centres and Bemba speaking areas and it has retained seats in Copperbelt. It also increased the number of parliamentary seats it has in the rural areas of its traditional strongholds (Northern, Luapula and Lusaka provinces) by winning 12 additional seats. This party also won seats in MMD heartlands: three seats in Central, two in Western and one in Eastern province. Voting patterns also changed in the former traditional MMD stronghold of Western province, where MMD lost seats that were won by the opposition, mainly UPND. The UPND maintained its core regional support in the south and won all but one seat in Southern province.

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## XV. RECOMMENDATIONS

The following recommendations to improve the electoral process and related areas are offered for consideration and action by the Government of Zambia, Electoral Commission, political parties, civil society and the international community.

### Legal Framework

1. The legal basis of the Electoral Code of Conduct could be strengthened. In particular a number of the provisions in this code could be established in statutory law to reflect their gravity. The Electoral Commission also requires wider powers necessary to ensure compliance by all stakeholders with all aspects of this code.
2. Statutory provisions providing for a suitable set of obligations, governed by principles of accountability and transparency, for the registration of political parties are lacking. Such provisions would encourage the development of internal and democratic structures and accountability and include provisions relating to the transparent financing of political parties. Furthermore, a statutory instrument providing for the regulation of campaign finances would encourage greater accountability and serve to reduce the possibility of misuse of state resources during campaigns.
3. A review of the Penal Code Act, Electoral Act and the Code of Conduct could be conducted to ensure that any sanctions for offences are proportionate and consistent. This should also include the provisions on defamation. At the same time certain provisions such as those regarding the campaign moratorium could also be clarified.
4. Consideration could be given to introducing a fixed calendar for general elections. A clearer timeframe would provide for improved and consistent planning of the electoral administration. A longer time period between the announcement of presidential results and the inauguration ceremony would also allow for any petitions to be dealt with before the president assumes office.

### Electoral System

5. The Electoral Commission will require adequate resources to carry out a review of constituency boundaries under the provisions of Article 77 of the constitution in order to ensure boundary demarcations reflect population patterns and their weighting in parliamentary representation.

### Election Administration

6. The problem of a lack of trust in the Electoral Commission by stakeholders could be addressed by revising the appointments process for key positions in the Electoral Commission based on best practice principles for public appointments.
7. To ensure consistency the Chairperson of the Electoral Commission could replace the Chief Justice as the returning officer for the presidential election. Such a step would avoid a potential conflict of interest in the event of a petition to the Supreme Court over the validity of a presidential election.

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8. Introducing more permanent structures at either provincial or district levels would reduce the reliance of the Electoral Commission on seconded administrative structures to prepare for elections and provide it with greater direct managerial control over all aspects of the process.
9. Broader provisions for special voting and the simplification of existing procedures in place would better ensure all groups that are eligible to vote are able to do so. This applies to a number of categories of voters including election monitors, party agents, security personnel on duty on the days around the elections, as well as the housebound and hospitalised. It also includes prisoners held in custody at the time of an election.
10. A review of the size and number of the larger polling stations could benefit the efficient processing of voters within the time limits set by law while at the same time guaranteeing a more regulated environment that can be sufficiently managed by presiding officers.

### **Voter Registration**

11. The Electoral Commission could build on the success of the recent mobile voter registration exercise by reviewing the voter register as soon as practicable. This could include efforts to expunge anomalies from the database such as the details of deceased persons or corrections of clerical errors. A system to enable those eligible to register, or those that want to change their details, to do so on a continuing basis would ensure that management of the register is in line with legal provisions.

### **Candidate Registration**

12. In respect to candidate nominations, removal of the provisions of Zambian parentage and sponsorship by a political party to qualify as a presidential candidate would guarantee the universal right to stand for public office to all Zambians, in line with Zambia's international commitments.
13. Extending the time period for parliamentary candidate registration would ensure nominees for parliamentary elections have adequate access to appeals and complaints mechanisms during the campaign period.
14. The current provision that civil servants are not permitted to stand for election is unnecessary and prevents a large number of individuals from standing for public office. An appropriate alternative would seek to provide for a voluntary suspension period whilst registered as a candidate with an option to return to the workplace following the election if unelected.

### **Political Parties and Candidates**

15. Positive measures introduced by political parties to ensure that women are encouraged to hold key positions within their decision making structures at all levels could enhance the role of women in political life. If deemed necessary legislative provisions related to any political party law could also include those for ensuring gender equality in the parties.

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16. Party agents would benefit from both more training on their role during elections and a suitable code of conduct building on the existing provisions contained in Regulation 11 of the Code of Conduct. Visibility material identifying them as agents in polling stations and other levels of the process would also be beneficial.

### **Campaign Environment**

17. Clearer regulation and cataloguing of state resources during an election period, including vehicles or the publicly funded maize programme, would ensure they are not used for campaign purposes. Other measures, including a moratorium on ceremonial openings of public works by the presidential office and public officials for the period of the official campaign, would ensure a separation between the resources attached to public office and campaign activities. The prohibition on the use of state resources should be reflected in the Electoral Act and the exclusion from the prohibition for the president and vice-president should be narrowed.

18. Clear monitoring and transparency of campaign funding and spending can provide greater public accountability with the introduction of campaign finance accounting mechanisms. Consideration to placing a ceiling on spending may also serve to reduce the monetisation of politics. Maximum transparency would be guaranteed by requiring political parties to submit accounts of their donations and spending on a regular basis to a relevant authority for the duration of the campaign period.

19. The complete separation of civil servants from election campaigns of political parties would be strengthened by a statutory provision clearly stipulating that no civil servant including Permanent Secretaries and District Commissioners are allowed to participate in campaign activities. Appropriate guidelines for civil servants during election periods could be issued by a special committee to be established within the Public Service Management Division of the Cabinet Office.

20. The government could consider granting the Electoral Commission more scope to set out guidelines for the conduct of stakeholders during the pre-election period so it is able to regulate pertinent activities prior to the commencement of the official campaign period.

### **Voter Education**

21. More extensive and permanent voter and civic education would ensure that all citizens are informed and educated of both their rights as voters as well as registration and voting procedures. The Electoral Commission is in a good position to do this by building on its library of innovative material produced for these elections and ensure, in partnership with civil society organisations that this reaches all levels of the community.

### **The Media Sector**

22. An adequate, proportionate and tiered regulatory framework for the media sector would ensure independent and appropriate regulatory mechanisms that operate in the public interest are in place.

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23. There is a lack of an adequate regulatory environment for the broadcast media. Whilst respecting the principle of freedom of speech, a radio and television act developed in public consultation would provide a suitable framework for setting out programme standards and broadcaster obligations as well as provisions relating to media coverage of elections including equitable coverage obligations.
24. Zambian law sets out obligations for the Zambia National Broadcasting Corporation (ZNBC) to act as a public service broadcaster. Enhanced regulatory oversight would ensure ZNBC fulfils its legal obligations as a public service broadcaster. Internal reform based on principles of independence and public accountability with clear monitoring mechanisms would also assist in guaranteeing impartiality and balance is maintained.
25. Consideration could be given to privatising elements of the state-owned media, including divesting all state interests in the two newspaper titles as well as interests in the news agency ZANIS that would increase the pluralism of the media sector.

### **Promote the Participation of Women and Minorities**

26. Affirmative policymaking can encourage a more active and fully representative position for women in parliament, decision making and administrative bodies and political parties. The introduction of quotas where deemed necessary may ensure greater compliance with Zambia's commitments to gender equality.
27. The High Court has already ruled that the Electoral Commission was in breach of its constitutional obligation to provide access to disabled voters, deferring mandatory orders to comply with this ruling until later elections. This provides an adequate timeframe for the Electoral Commission to enhance and implement appropriate provisions for both disabled voters and polling staff, ensuring also that in the design and layout of polling stations and polling material full consideration be given to the needs of this part of the community in respect to having access to all stages of the electoral process.

### **Civil Society and Domestic Observation**

28. Continued support from all stakeholders will ensure that the active participation of civil society and other non-state actors in their election related work can be maintained. By continuing to work together in observing elections civil society organisations will be able to ensure coordination that continues to have nationwide reach.

### **Complaints and Appeals**

29. A special court or judicial tribunal could be established to deal with pre-election complaints about nomination and the campaign and post election petitions about results. A time limit for dealing with these disputes could ensure that such matters are dealt with in a more expeditious manner.

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### **Polling, Counting and Publication of the Results**

30. Protection of the secrecy of the vote would be enhanced by ceasing the practice of recording the voter card number of the voter on the counterfoil of the ballot papers. The variety of other security measures put in place at polling station level to protect against any fraud. Positioning and layout of ballot booths could also be more sensitive to the issue of protecting the secrecy of the vote.
31. An increase in planning, inventory design and recording of delivery and arrival of electoral material systems, as well as addressing transport, logistics and human resource management issues, would better ensure the minor problems observed in these areas for the 2011 elections do not recur. Checklists could be introduced at all levels to create adequate inventory systems as well as assist polling station level staff manage processes.
32. The management of the counting process requires improvements both to the design of material, such as forms, and procedures as well as subsequent training of staff to ensure full comprehension of the counting process, improving the management of this critical part of the election.
33. The Electoral Commission should have a statutory power to cancel a result or adjust a result according to narrow criteria or apply to court for such an order.
34. A review of sites for aggregation centres in terms of their appropriate facilities and space would better ensure that such centres offer the maximum guarantees to enable accurate aggregation. This could also include transportation and retrieval of polling material arrangements so that efficient systems are in place and delivery and arrival is well documented.
35. The arrival of results and their aggregation at the centres would be made more transparent if they were projected in real time on localised screens. A greater number of operators with specialised training on this part of the process would also increase the efficacy of the collection of results. The Electoral Commission could review the procedures used during this stage of the electoral process with a view to improving delivery times and transparency of aggregation.
36. A review of the procedures and mechanisms for publicising provisional election results as well as greater use of communications tools such as the Electoral Commission's website, particularly during the results process, would also further enhance transparency for all stakeholders, including voters. Any enhancement of the website could also consider the possibility of posting individual polling station level results as a further transparency measure.

**A. Table of Recommendations**

Area covered	Essential	Desirable	Targeted at	Timeline
Election administration	Review of appointment procedures for the commissioners.	The Chairperson of the Electoral Commission to declare the presidential winner.	Electoral Commission, Parliament and Government	
	Establish a permanent decentralised structure for the Electoral Commission at provincial or district level.		Electoral Commission, Parliament and Government	
	Activate and properly implement special voting provisions.	Review the size of polling stations and redesign the polling area to ensure secrecy of the vote and access to disabled persons.	Electoral Commission	
	Review of the number and size of constituency boundaries.	Greater use of communications tools such as the Electoral Commission's website encouraged.	Electoral Commission	
	Improve the management of counting and aggregation processes.		Electoral Commission	
Legal framework	Consideration should be given to introducing a fixed calendar for general elections.	A review of the Penal Code Act, Electoral Act and the Code of Conduct to ensure that any sanctions for offences are proportionate and consistent. Criminal provisions in the penal code related to publications and broadcasting possibly removed.	Parliament and Government	
	The Electoral Commission afforded statutory power to cancel or adjust a result according to narrow criteria or being able to apply to court for such an order.	The practice of continuing retired judges in office by contract at the option of the president should desist.	Parliament and Government	
	The constitutional requirements for Zambian parentage and sponsorship by a political party removed.		Parliament and Government	
	Provisions in the Code of Conduct which impose additional sanctions or obligations included in primary legislation.		Parliament and Government	
	The time window for nomination of candidates to the parliamentary election extended.	The extent of, and legal basis for, the restrictions during the moratorium period clarified.	Parliament and Government	

Area covered	Essential	Desirable	Targeted at	Timeline
	An amendment considered for the candidacy rules so civil servants have an option to take leave for the purpose of standing for election.		Parliament and Government	
	The prohibition on the use of state resources reflected in the Electoral Act and the exclusion from the prohibition for the president and vice-president narrowed.	Guidelines on the use of state resources issued.	Parliament and Government	
	A review of the exclusion of prisoners and persons in custody from the right to vote.		Parliament and Government	
Voter register	The voter register opened on a continuing basis for voters to register or change their details.		Electoral Commission	
	Timely correction of the anomalies identified such as clerical mistakes and missing names. Details of deceased persons should also be removed from the voter register.		Electoral Commission	
Electoral material	An increase in planning, inventory design and recording of delivery and arrival of electoral material systems is required that includes transport and logistics and human resource management.	Checklists could be introduced at all levels to create adequate inventory systems as well as assist polling station level staff manage processes.	Electoral Commission	
	To protect the secrecy of the vote the process of recording the voter card number of the voter on the counterfoil of the ballot papers should cease. Positioning and layout of ballot booths needs to be more sensitive to protecting the secrecy of the vote.		Electoral Commission	
	Sites for aggregation centres reviewed to guarantee they offer the appropriate facilities and space to enable accurate aggregation. Transportation and retrieval of polling material could also be reviewed to ensure efficient systems are in place and delivery and arrival is well documented.		Electoral Commission	

Area covered	Essential	Desirable	Targeted at	Timeline
Media sector	An adequate and proportionate and tiered regulatory framework established for the media sector to ensure independent and appropriate regulatory mechanisms that operate in the public interest are in place.		Parliament, Government and media community	
	A radio and television act developed in public consultation to provide a satisfactory regulatory environment for the broadcast media.		Parliament and Government	
	Effective regulatory structures introduced for the Zambia National Broadcasting Corporation to ensure it fulfils its legal obligations as a public service broadcaster.		Parliament and Government	
	Consideration should be given to privatising elements of the state-owned media, including divesting all state interests in the two newspaper titles as well as interests in the news agency ZANIS to increase pluralism in this sector.		Parliament and Government	
Civic and voter education	Introduction of voter/ civic education projects to the national educational programme.	Introduction of voter and civic education on a permanent basis to inform and educate voters, in particular social groups such as illiterate voters, women and first time voters.	Electoral Commission	
Political parties	Statutory provisions to provide for a suitable set of obligations, governed by principles of accountability and transparency for the registration of political parties. The introduction of a statutory instrument providing for the regulation of campaign finances would further strengthen accountability.		Parliament and Government	
	Positive measures introduced by political parties to ensure that women are encouraged to hold key positions within the decision-making structures at all levels.	Party agents would benefit from both more training on their role during elections and a suitable code of conduct building on the existing provisions contained in Regulation 11 of the Code	Political parties	

Area covered	Essential	Desirable	Targeted at	Timeline
		of Conduct. Visibility material identifying them as agents in polling stations and other levels of the process would also be beneficial.		
Campaign environment	<p>State resources such as vehicles or the publicly funded maize programme to be more clearly regulated and catalogued during an election period to ensure they are not used for campaign purposes. A moratorium on ceremonial openings of public works by the presidential office and public officials for the period of the official campaign would also provide for greater transparency and accountability.</p> <p>Campaign finance accounting mechanisms put in place to provide clear monitoring and transparency in both campaign funding and spending. Consideration could be given to placing a ceiling on spending.</p>	<p>Guidelines for civil servants and their activities during campaign periods and elections introduced.</p> <p>The government could consider granting the Electoral Commission more scope to set out guidelines for the conduct of stakeholders during the pre-election period so it is able to regulate pertinent activities prior to the commencement of the official campaign period.</p>	Parliament and Government	
Complaints and appeals	<p>A special court or judicial tribunal established to deal with pre-election complaints about nomination and the campaign and post election petitions about results. There could be a time limit for dealing with these disputes.</p> <p>A longer time period introduced between the announcement of presidential results and the inauguration ceremony to ensure that any petitions can be dealt with before the president assumes office.</p> <p>A review of electoral offences in the Penal Code Act, the Electoral Act and the Code of Conduct to ensure that sanctions are proportionate and to reduce the duplication of offences.</p>	<p>It should be set out in the Electoral Act that the essential question on an election petition is the validity of the expression of the will of the people and that procedural matters should not stand in the way of addressing that question.</p>	Parliament and Government	

Area covered	Essential	Desirable	Targeted at	Timeline
	The introduction of an appropriate structure for dealing with complaints and appeals related to the nomination of parliamentary candidates.		Parliament and Government	
Gender	Affirmative policymaking can encourage a more active and fully representative position for women in parliament, decision making and administrative bodies and political parties. The introduction of quotas where deemed necessary may ensure greater compliance with Zambia's commitments to gender equality.	Strengthening of capacities of existing bodies, such as the Gender in Development Division.	Parliament and Government	
	Introduction of pro-active gender policy and more transparent internal decision-making processes by political parties.	Introduction of specific skills training targeted at female candidates and parliamentarians.	Political parties	
	Consideration by the Electoral Commission to introduce quotas in its recruitment policy for women and maintain disaggregated data on gender.	Introduction of civic and voter education programme specifically targeted at empowerment of women.	Electoral Commission	
	Greater gender sensitive workplace practices in parliament to encourage more women at all levels.		Parliament and Government	
Civil society		Continued support to civil society in respect to their election related work.	International Community and civil society organisation.	
		Civil society organisations continue to work together in observing elections to ensure coordination between organisations.		