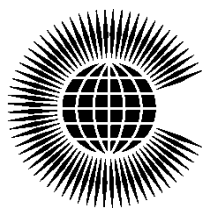


Report of the Commonwealth Observer Group

ZAMBIA GENERAL ELECTIONS

20 September 2011



COMMONWEALTH SECRETARIAT

Commonwealth Secretariat
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United Kingdom

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Commonwealth Observer Group Zambia General Elections 2011

26 September 2011

Dear Secretary-General,

The Commonwealth Observer Group has completed its Final Report of the observation of the Zambian Presidential, Parliamentary and Local Government elections and is pleased to submit it to you.

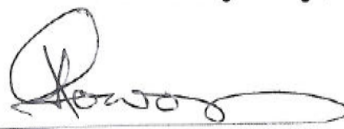
The elections were the country's fifth multi-party elections and were highly competitive. The democratic principles of participation and representation as well as the basic freedoms of association, assembly and movement were upheld. The campaign was generally peaceful, Election Day was largely calm, and voters were able to express their will freely.

We believe that the elections gave clear evidence of further progress in deepening democratic processes in Zambia but note that there are shortcomings which need to be addressed for the future. We have, in this regard, made a number of recommendations which, we believe, could further improve the electoral process in Zambia.

We recognise the centrality of election management bodies to the democratic process as a whole and wish to commend the Electoral Commission of Zambia for its role in managing a credible and transparent process. We also note, with delight, that the hand-over of power has been smooth and dignified.

We take this opportunity to express our gratitude for the support provided to us by the Commonwealth Secretariat staff team.

We thank you for the opportunity to participate in this important mission and hope that our report can contribute to the further strengthening of democratic processes in Zambia.



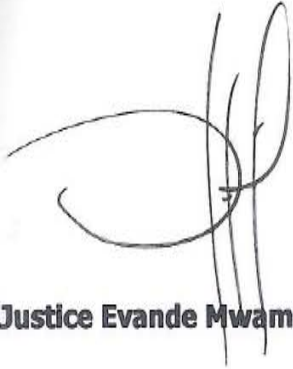
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Mr Alberto August



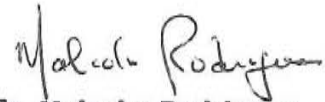
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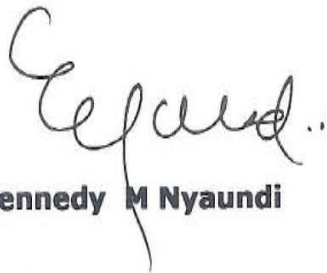
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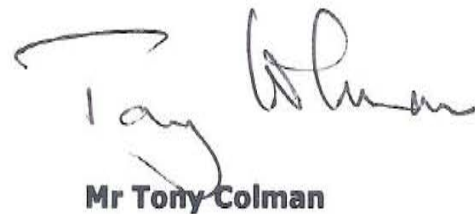
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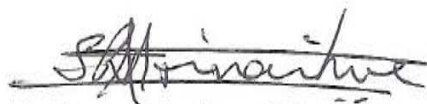
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Mr Tony Colman



Dr Rwomukubwe Silvester

Chapter 1

INTRODUCTION

At the invitation of the President of Zambia, the Commonwealth Secretary-General, Mr Kamallesh Sharma, constituted an Observer Group for the 20 September 2011 General Elections. In line with usual practice, the Secretary-General sent an Assessment Mission to Zambia to assess the prevailing situation as well as the pre-electoral environment, prior to his final decision on whether to constitute a Commonwealth Observer Group. The Assessment Mission was in the country from 31 July to 5 August 2011.

The Commonwealth Observer Group for the 20 September 2011 elections was led by H.E. General Yakubu Gowon, who is a former Head of State of Nigeria, and comprised twelve eminent persons. The Observer Group was supported by a six-person staff team from the Commonwealth Secretariat. A full list of members is at Annex 1.

Terms of Reference

"The Group is established by the Commonwealth Secretary-General at the request of the President of Zambia. It is to observe relevant aspects of the organisation and conduct of the General Elections which are scheduled to take place on 20 September 2011, in accordance with the laws of Zambia.

The Group is to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgment whether the elections have been conducted according to the standards for democratic elections to which Zambia has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Group is to act impartially and independently and shall conduct itself according to the standards expressed in the International Declaration of Principles to which the Commonwealth is a signatory. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgment accordingly. In its Final Report, the Group is also free to propose to the authorities concerned recommendations for change on institutional, procedural and other matters as would assist the holding of future elections.

The Group is to submit its report to the Commonwealth Secretary-General who will forward it to the Government of Zambia, the Electoral Commission, political and civil society organizations and thereafter to all Commonwealth Governments."

Activities

The Observer Group was present in Zambia from 13 September 2011. During four days of briefings, the Group met with the Electoral Commission of Zambia, political party representatives, civil society groups, women's groups, youth representatives, media,

Commonwealth High Commissions, and national, regional and international observer missions.

An Arrival Statement was issued on 15 September 2011 (see Annex 2). The Observer Group was deployed from 18-22 September. Teams were based in eight of the nine Provinces of Zambia. During deployment teams met with election officials, political party and civil society representatives, security agencies as well as other observers, national regional and international, in their respective areas to build up a comprehensive picture of the conduct of the process.

On the basis of the Group's initial findings and observations, the Chairperson issued an Interim Statement on 22 September 2011 (Annex 3). The Group's Final Report was completed in Lusaka prior to departure and transmitted to the Commonwealth Secretary-General on 26 September 2011.

Chapter 2

POLITICAL BACKGROUND

Early History

The early inhabitants of modern day Zambia were the San, who were hunter-gatherers. In the 15th century, the Bantu or Tonga migrated from the North. The 16-19th century saw the emergence of organised kingdoms, including the Kazembe (North), Bemba (North-East) Chewa (East) and the Lozi (West). There are 73 ethnic groups in present day Zambia.

Colonial History of Zambia

Significant and far-reaching political changes began in 1890 when Cecil Rhodes of the British South Africa Company signed a series of treaties with local leaders, leading to the establishment of Northern Rhodesia in 1911, administered by the Company. Great Britain formally assumed control in 1923. Copper mining, which began in the early 20th century, led to an influx of Europeans, although white settlement never reached the levels it did in Southern Rhodesia. In 1953 the two Rhodesias were joined with Nyasaland (now Malawi) in the short-lived Federation of Rhodesia and Nyasaland. This move was vociferously opposed by Black Nationalist leaders who viewed it as a vehicle for white domination.

Barotseland (now Western Province) became a separate British Protectorate from Northern Rhodesia, on the signing of the Lochner Treaty in 1890. Its separate sovereignty was recognised in Section 112 of the 1953 Constitution of Northern Rhodesia.

After the Federation's collapse in 1963, Barotseland amalgamated with the Northern Rhodesia Protectorate, under the Barotseland Agreement of May 1964.

The United National Independence Party (UNIP), led by Dr Kenneth Kaunda, won the January 1964 pre-independence elections. Northern Rhodesia gained independence on 24 October 1964, and was renamed the Republic of Zambia. This date also marked the birth of the First Republic.

Post-Independence Politics

The Constitution was amended on 25 August 1973 to make Zambia a one-party state, and this marked the birth of the Second Republic. Political and economic pressures, largely the result of a fall in copper prices, but also arising from the country's support for independence movements elsewhere in southern Africa, and food riots, led to social unrest and a coup attempt in 1990. In December 1990, President Kaunda accepted the need for multi-party democracy, and the National Council accepted his recommendation that multi-party elections be held. The Constitution was accordingly amended that same month. On 31 October 1991 the Movement for Multi-party Democracy (MMD), led by the late trade unionist President Frederick Chiluba, swept to power in both parliamentary and presidential elections. UNIP became the main opposition party.

The 1991 Constitution, amended in 1996, provided for a multi-party system, a President whose tenure is limited to two terms of five years and a National Assembly of 158 members,

150 elected and eight nominated by the President. There is also a 27-member House of Chiefs, which is an advisory body.

Dr Kaunda returned to active politics in 1994. He regained the UNIP leadership at a party convention in June 1995. In the run-up to the Presidential and National Assembly elections in November 1996, the Chiluba Government became increasingly intolerant of opposition. In May 1996, the National Assembly passed an Act requiring Presidential candidates to have Zambian parents and limited Presidential terms to two terms of five years in office. Dr Kaunda's parents were alleged to have originally come from what is now Malawi. UNIP and a small number of opposition parties boycotted the elections. Dr Chiluba and the MMD won a landslide victory, taking 139 out of 150 seats in the National Assembly. In August 1997, Dr Kaunda and an opposition ally were wounded at a UNIP rally when police opened fire. A subsequent enquiry into the incident was inconclusive.

After a promising start by the new MMD government, initially characterised by political liberalisation and improved relations with International Financial Institutions and donors, both living standards and political freedoms declined from 1997.

In October 1997 a small group of middle-ranking army officers took over the media centre at the headquarters of the Zambia National Broadcasting Corporation (ZNBC) and claimed to have overthrown the government. The army quickly restored order, and detained the ringleaders. President Chiluba declared a State of Emergency (later extended by the National Assembly to May 1998). Over 100 people, including Dr Kaunda and the leader of one of the other main opposition parties, were detained. Dr Kaunda was charged with having prior knowledge of the coup. Trials began in June 1998. Dr Kaunda was discharged and immediately released. At the conclusion of the trials in September 1999, 58 soldiers were found guilty of treason and given mandatory death sentences. These were later commuted to varying terms of imprisonment by President Levy Mwanawasa in December 2003.

President Chiluba's attempt to change the Constitution, in order to stand for a third Presidential term, provoked a political crisis in 2001. There was widespread opposition, and 67 anti-third-term MPs signed a motion to impeach President Chiluba. The next day, Dr Chiluba announced that he would leave office at the end of his term.

2001 General Elections

In the 27 December 2001 Presidential election, another MMD candidate, Levy Mwanawasa, was elected with 28.69% of the popular vote, closely followed by Anderson Mazoka of the United Party for National Development (UPND), with 26.76%. Ten candidates participated in the presidential poll. Voter turnout was 67.81%. MMD was the single largest party in parliament, but without an overall majority. There was international criticism of the handling of the elections. Legal challenges to both the parliamentary and presidential results were only finally resolved in February 2005, when the Supreme Court rejected an opposition challenge to President Mwanawasa's victory, but agreed that the election had flaws. Challenges to the parliamentary results led to a number of by-elections.

In July 2002, the National Assembly voted to remove immunity from prosecution from former President Chiluba. In February 2003, he was arrested and charged with corruption. Subsequent long-running trials were dogged by adjournments and procedural problems. In September 2004 many charges of corruption were dropped, but within hours he was re-arrested on six new charges.

President Mwanawasa suffered a minor stroke in April 2006. He resumed light duties after some weeks and later declared himself fit to run for re-election at polls which were due later that year.

2006 General Elections

Presidential, National Assembly and Local Government elections were held on 28 September 2006. President Levy Mwanawasa was re-elected, with 42.98% of the vote, while Michael Sata of the Patriotic Front (PF), obtained 29.37% and Hakainde Hichilema of UPND, 25.32%. Voter turnout was 70.77%. The results of the National Assembly elections were as follows: MMD 72 seats, PF 44 seats, United Democratic Alliance which comprised the United Party for National Development (UPND), United National Independence Party (UNIP) and Forum for Democracy and Development (FDD) 27 seats, United Liberal Party (ULP) two seats, National Democratic Focus (NDF) one seat, independents two seats, with two seats not determined. The United Democratic Alliance later collapsed.

A Commonwealth Observer Group led by Hon Paul Berenger, former Prime Minister of Mauritius, was present for the 2006 Presidential, National Assembly and Local Government Elections. It concluded that in most parts of Zambia a largely successful effort was made to enable the will of the people to be expressed. It also noted some issues to be addressed, particularly with respect to transparency and credibility of the collation, tabulation and transmission of the results process.

The 2008 Presidential By-Election

President Mwanawasa passed away on 19 August 2008, in a Paris hospital, where he was being treated for the effects of another stroke he suffered in June 2008 while attending the African Union Summit at Sharm el Sheikh, Egypt. A Presidential by-election was held on 30 October 2008 for a replacement to serve out the remainder of his term. Four candidates contested the election. Acting President Rupiah Banda, MMD, was elected with 40.09%, Michael Sata, PF, 38.13%, Hakainde Hichilema, UPND, 19.70% and Godfrey Miyanda of Heritage Party, 0.76%. Voter turnout was 45.43%. President Banda's margin of victory was a narrow 35,209 votes, and Mr Sata alleged fraud. He petitioned the Supreme Court for a recount. This petition was rejected.

A two-person Commonwealth Secretariat team was present for the Presidential By-Election. Their overall assessment was that the by-election electoral process was generally well managed, and that conditions existed for voters to freely express their will, and that, on the whole, the outcome broadly reflected the wishes of the majority of Zambians who voted.

Other Developments

In August 2009, former President Frederick Chiluba was cleared of corruption after a six-year trial. The Head of the Anti-Corruption Task Force was dismissed after initiating an appeal against Mr Chiluba's acquittal. Mr Chiluba passed away on 18 June 2011. He was a founding member of the MMD and remained a strong supporter. Mr Chiluba had continued to command considerable support among the Bemba-speaking people in the Northern, Luapula and Copperbelt provinces, and had endorsed Mr Banda in February 2010. Analysts suggested that his passing potentially weakened the MMD campaign.

The two leading opposition parties, PF and UPND, formed an electoral pact in June 2010. This alliance soon became embroiled in acrimony over several issues, including the question of who would be joint Presidential candidate, how other candidates would be chosen and a joint manifesto. Mr Hichilema announced the UPND's withdrawal from the pact on 7 March 2011.

Constitutional Review

Zambia underwent a constitutional review process over much of the past eight years, beginning in 2003, which resulted in a draft Constitution produced by a National Constitutional Conference which met between 2007 and 2010. Proposed constitutional amendments included several clauses that would, if passed, have a bearing on future elections. These included, *inter alia*, a referendum on the introduction of an absolute majority system for presidential elections; the introduction of a mixed-member proportional representation system for the National Assembly elections; an increase in the number of Members of Parliament; a fixed date for elections; new regulations on political party campaign finance, transparency and accountability; revision of the powers and process of appointment of the Electoral Commission of Zambia, and the creation of a transition period between the declaration of the Presidential election result and the swearing-in of the President-elect.

On 29 March 2011 the Zambian government lost the vote in the National Assembly on the Constitutional Amendment Bill after the bill fell ten votes short of securing the required two-thirds majority in the National Assembly. Most Members of Parliament belonging to the largest opposition party, the Patriotic Front (PF), voted against the Bill, although 17 PF MPs voted for it, alongside the ruling MMD party. The PF had repeatedly expressed reservations about legitimacy of the National Constitutional Conference, the body created to debate the amendments. The second-largest opposition party, the UPND, abstained from the vote. Its leader, Mr. Hichilema, said that the Bill was unsatisfactory, as it did not include a number of critical amendments, particularly the 50%-plus-one requirement, which would have changed the presidential voting system from the current first-past-the-post system to one in which a candidate would need more than 50% of the vote to win. All major political parties promised to deliver a new Constitution, if elected to power, during the just-concluded campaign, and the Constitution of Zambia (Amendment) Bill is likely to be re-tabled before the new National Assembly, perhaps with some further amendments.

Clashes in Barotseland

On 14 January 2011 violent clashes took place between police and demonstrators agitating for the secession of western Zambia, known as Barotseland. Police said two people died, several were wounded and both private and government property was extensively damaged or destroyed.

The Barotseland Agreement, of May 1964 was signed by then Prime Minister Dr Kenneth Kaunda, the Litunga (King) of Barotseland Sir Mwanawina Lewanika, and British Secretary of State for Commonwealth Relations, Rt Hon Duncan Sandys. This gave birth to the independent Republic of Zambia in October 1964, upon the unification of Northern Rhodesia and the Barotseland Protectorate, both of which were previously under separate British rule.

The agreement gave the Litunga a degree of autonomy to administer the region within the confines of the Constitution of the independent Republic of Zambia. However, the Kaunda

government reneged on the agreement in 1969, through a constitutional amendment. Subsequently, any discussion of the restoration of the agreement was discouraged.

In recent years, there have been growing calls by various individuals and groups originating from Western Province, for the restoration of the agreement. Most recently, representatives of the Litunga's traditional authority, the Barotse Royal Establishment, made written submissions to the National Constitutional Conference (NCC) for the recognition of the agreement in the proposed new constitution. However, the submission was rejected by the majority of NCC delegates.

Since then, advocates for the restoration of the Barotseland Agreement have become more militant, and the police have used force to quell meetings called by the activists to discuss the restoration of the Barotseland Agreement.

Zambia and the Commonwealth

Zambia plays an active role in Commonwealth affairs, and hosted the Commonwealth Heads of Government Meeting in 1979, which adopted the seminal Declaration on Racism and Racial Prejudice. President Kaunda was, for many years, one of the leading figures in the Commonwealth, especially active in the Commonwealth's campaign against apartheid in South Africa. The Commonwealth Youth Programme Africa Centre is located in Lusaka, Zambia, and promotes youth development for all Commonwealth states in Africa, as well as Cyprus, Malta and the United Kingdom. Zambia is currently a member of the Steering Committee of the Commonwealth Network of National Election Management Bodies.

Chapter 3

THE ELECTORAL FRAMEWORK AND ELECTION ADMINISTRATION

Background

Executive power in Zambia rests with the President, who is the Head of State, Head of Government and Commander-in-Chief of the armed forces. The President is elected for a five-year term and can serve a maximum of two terms in office. The President appoints the Vice-President, ministers, deputy ministers and provincial ministers. In addition the President also appoints the Attorney-General, the Solicitor-General and the Director of Public Prosecutions and the permanent secretaries in the ministries.

The President is elected in a single national constituency under the first past the post system.

Legislative powers are vested in the unicameral parliament, which is known as the National Assembly. The National Assembly consists of 150 elected members, the Speaker of the National Assembly and not more than eight members nominated by the President.

The 150 members are elected for a five-year term using the first-past-the-post system from 150 single member constituencies.

International and Regional Commitments and National Legal Framework

Zambia has signed or agreed to a wide range of regional and international commitments and instruments relating to human rights and the conduct of elections. These include:

- Port of Spain Affirmation of Commonwealth Values and Principles (2009)
- SADC Principles and Guidelines Governing Democratic Elections (2004)
- International Convention on the Elimination of All Forms of Racial Discrimination (1996)
- African Charter on Human and Peoples' Rights (1986)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- International Covenant on Civil and Political Rights (1966)
- Universal Declaration of Human Rights (1948)

The Zambian Constitution guarantees fundamental rights and freedoms, including freedom of expression, assembly, association and participation in elections.

The key documents providing the legal and regulatory framework for the conduct of the elections are:

- The Electoral (Code of Conduct) Regulations (2011)
- The Electoral Act (2006)
- The Electoral (General) Regulations (2006)
- The Constitution of Zambia (1996, as amended)
- The Electoral Commission Act (1996)
- The Local Government Elections Act (1991)

The Electoral Commission of Zambia (ECZ)

The Electoral Commission of Zambia (ECZ) is established in accordance with Article 76 of the Constitution and the Electoral Commission Act.

The Constitution provides that the ECZ shall be autonomous and with responsibility for the registration of voters, the conduct of presidential, parliamentary and local government elections and to review the boundaries of the constituencies for the purposes of the National Assembly elections.

The ECZ consists of a Chair and up to four Commissioners. The Chair must have held, or be qualified to hold, high judicial office. The current Chair is Justice Irene Mambilima. Members are appointed by the President, subject to ratification by the National Assembly, for a term not exceeding seven years. There is a Director of Elections, who heads the ECZ's executive arm. The Director and staff are appointed by the ECZ and their role is to support the ECZ in its work and implement its policies.

The ECZ does not have a permanent structure at either provincial or district level. For the purpose of elections Provincial Local Government Officers are temporarily appointed as Provincial Electoral Officers and Town Clerks or District Council Secretaries are temporarily appointed as District Electoral Officers (DEO) in all 74 Districts of the country with responsibility for coordination of electoral preparations in each District and Province respectively. In addition, ECZ recruited some 55,000 ad hoc staff as polling officials.

DEOs, on behalf of the ECZ, appoint a Returning Officer, Assistant Returning Officer and an IT officer in each constituency. Returning Officers announce results for the National Assembly and local elections and the Chief Justice is the Returning Officer for the presidential elections.

Voter Eligibility and Voter Registration

To be eligible as a voter a person must be a citizen of Zambia, at least 18 years of age and registered to vote.

In preparation for the 2011 elections the ECZ decided to conduct an update of the voter register, which had previously been done in 2005. The intention was to capture new registrants, persons who had lost their Voter Card and persons who had since changed residence. In addition, the ECZ undertook a cleaning of the list to identify persons who had died as well as erroneous and double entries.

The updated registration used a digital registration kit to capture thumbprints and photos and which also enabled cross checking with the old register. The exercise was conducted in two phases, with mobile registration units deployed from 21 June to 18 September 2010 and then from 19 September to 30 November 2010. Based on existing data, the ECZ had set itself a target number of 2.5 million new registrants, but it did not meet this target. Thus, a third phase was undertaken between 10-31 March 2011. Following this there was a public verification exercise between 30 May and 12 June 2011, during which registered persons could confirm their details.

The voter register was certified by the ECZ on 31 July 2011 and contained 5,167,174 voters, 50.14% of whom were women and 49.86% were men. Some 1.2 million of the total are new registrants and approximately 54% of the total number of registered voters in Zambia are aged between 18-35.

Candidate Eligibility and Nomination

To be eligible as a candidate for the Presidential election a person has to be a citizen of Zambia, at least 35 years of age and domiciled in Zambia for at least 20 years. In addition, both parents must be Zambians by "birth or descent" and the proposed candidate must be a member of, or sponsored by, a political party. The nomination process for presidential candidates was conducted between 7-10 August 2011 and nomination papers were filed with the Chief Justice.

There were ten registered candidates for the Presidential election, of which one was a woman. The ten contestants were (in alphabetic order):

- Rupiah B Banda Movement for Multiparty Democracy
- Elias C Chipimo National Restoration Party
- Hakainde S Hichilema United Party for National Development
- Tilyenji C Kaunda United National Independence Party
- Ng'andu P Magande National Movement for Progress
- Charles L Milupi Alliance for Development and Democracy
- Godfrey K Miyanda Heritage Party
- Fredrick Mutesa Zambia for Empowerment and Development
- Edith Z Nawakwi Forum for Democracy and Development
- Michael C Sata Patriotic Front

To be eligible as a parliamentary candidate a person has to be a citizen of Zambia, at least 21 years of age, literate and conversant with the official language of Zambia. For the parliamentary elections a person can be nominated by a political party or stand as an independent. Chiefs may not stand for parliament unless they abdicate their chieftaincy and the law also excludes persons serving in the Zambian defence force, police, public service and teachers from standing as a candidate. Parliamentary candidates had to register on 14 August 2011 with the Returning Officer in the respective constituency.

A total of 769 candidates registered for the parliamentary elections, of which 140 were standing as independents. Of the 769 candidates, 111 were women, representing some 14%. The 769 candidates were from 20 political parties across the 150 parliamentary constituencies. Only the ruling MMD was able to field parliamentary candidates in all constituencies. The PF fielded 148 candidates, and the UPND fielded 136 candidates.

Complaints and Appeals and Election Petitions

Election-related disputes (including infringements of the Code of Conduct) are referred to Conflict Management Committees (CMCs), which are established by the ECZ at national and district levels and seek to address disputes through mediation. Decisions of CMCs are to be reached by majority vote within 24 hours, but are not legally binding and not made public. Failure to resolve disputes can lead to cases being taken to the courts.

CMCs comprise representatives of the Electoral Commission, political parties, civil society organisations, the police, the Ministry of Justice and the Anti-Corruption Commission.

Appeals against decisions of the Voter Registration Officers could be lodged with the ECZ.

The Electoral Act defines a series of election offences, which are stated to be: bribery and treating; impersonation; undue influence; publishing false statements about candidates; inciting disorderly conduct at an election meeting; misuse of a ballot paper.

Petitions against the results of the Presidential election must be filed with the Supreme Court within 14 days after a candidate is sworn in as a President. There is no time limit for the Supreme Court to reach its decision.

Petitions regarding individual parliamentary constituency results must be filed at the High Court within 30 days of the election day. The High Court has 180 days within which to deal with the petition.

Youth Representation

There were 1.2 million new voters registered which represents 23% of the overall voting population. 54% of registered voters were between the ages of 18 and 35. These figures suggested that the youth voters would have a considerable influence on the outcome of this election.

Despite what appeared to be the mobilisation of the youth to be involved in the electoral process, the overall voters' turnout remained quite low (around 50%). Some of the key youth stakeholders indicated that some of the reasons for the low involvement by the youth as electoral candidates or voters were because the youth feel marginalised and have lost confidence in the electoral system. They claim that youth also perceive a "recycled political landscape" of persons who have been affiliated with politics for decades. In addition, it was reported that youth believe that there are currently limited opportunities for young people to be a part of the national development of the country as there exists few opportunities for youth representation on key decision-making bodies in government.

Several youth stakeholders stated that some of the key issues that they would like to see addressed are youth unemployment and greater transparency in the electoral process and a reduction in the perceived corruption by government officials

Key Issues

1. Appointment of ECZ Commissioners

Under the Constitution, the Chair and Members of the Electoral Commission are appointed by the President, subject to ratification by the National Assembly. During the course of this election, the Commonwealth team found that the ECZ acted with integrity and professionalism and that its Chair was highly regarded. However, some stakeholders did raise concerns regarding the suitability of such sensitive positions being appointed by the President - who may be a contestant in the election - especially in a scenario where a President's party also has a majority in the National Assembly.

2. Constituency Delimitation

The Constitution mandates the ECZ as responsible for constituency delimitation. Article 77.4 states that "The boundaries of each constituency shall be such that the number of

inhabitants thereof is as nearly equal to the population quota¹ as is reasonably practicable". Article 77.4 also provides for some flexibility to take account of the means of communication, geographical features and the difference between urban and rural areas in respect of density of population.

The last review by the Electoral Commission was conducted prior to the 1991 elections. The ECZ had been undertaking a review of constituency boundaries in early 2011 in preparation for the constitutional review process. However, this was not completed and the process for consideration of the new Constitution was not concluded. Thus the existing constituencies reflect the population figures of 1991 and will therefore be very much out of date, notably for the highly populated urban areas, some of which reportedly have up to ten times the population of sparsely populated rural constituencies. As a consequence equal suffrage in the context of the National Assembly elections is not fully provided for.

To illustrate the point, based on the total number of registered voters and the number of constituencies, the average number of voters per constituency is 34,447. However, Kanyama in Lusaka has 89,777 registered voters, Kabwata also in Lusaka has 72,833 voters and Kwacha in the Copperbelt has 55,819 voters. Conversely in Western Province, Luena constituency has 20,944 voters, Nalikwanda 19,674 voters and Mulobezi 13,665 voters.

3. Eligibility Criteria for Presidential Candidates

During the nomination process the PF brought a case in the High Court challenging the eligibility of the incumbent President to stand as a Presidential candidate, alleging that his parents were not of Zambian nationality. The challenge failed but an appeal is pending.

This particular eligibility clause was inserted in 1996 and at that time prevented the former President Kenneth Kaunda of UNIP from contesting the election against the then-incumbent President Chiluba of MMD.

Previously the Supreme Court had ruled that the nationality clause for eligibility presented difficulties as it lacks clarity as to what is meant by 'parents' (i.e. biological or adoptive) and also due to the lack of sovereign state borders until independence in 1964. Further, this clause has the appearance of being politically motivated, given the origins of its adoption in 1996. However, it remains part of the legislative framework.

4. Women's Participation and Representation

The number of women standing as candidates for the presidential and National Assembly elections was extremely low. Out of the ten Presidential candidates only one was a woman and out of the 769 candidates for the National Assembly a disappointing 111 were women. Women make up more than 50% of the population and registered electorate but the level of women's representation as candidates is discouraging, well below the targets set by both SADC and the Commonwealth.

¹ Article 77.7 defines the 'population quota' as the number obtained by dividing the number of inhabitants of Zambia by the number of constituencies" Article 77.8 states that the 'number of inhabitants' shall be ascertained with reference to the latest population census.

5. Civic Education

The ECZ is mandated to conduct civic education and for this election deployed teams of civic educators to conduct programmes across the country. However, they were withdrawn after being accused of campaigning for the ruling party. Such a reaction to civic educators is regrettable as they are responsible for a critical activity.

6. Enforcement of the Electoral Code of Conduct (2011)

The Code of Conduct establishes the rights and responsibilities of electoral stakeholders during the course of the election, and applies to the conduct of political parties, candidates, election and polling agents, the Zambia Police Force, media and the Electoral Commission.

Under the Code political parties are obliged, among other things, to issue directives to their members and supporters to observe the Code and carry out campaign meetings and rallies peacefully. Supporters of political parties are prohibited from using language which incites hatred or violence, destroying campaign materials of other parties, or disrupting another party's rally.

In terms of the Code's regulations relating to media, it states that all print and electronic media shall provide fair and balanced reporting of the campaigns of all registered parties and candidates and report election news in an accurate manner and not make any abusive editorial comment.

Under the Code, the Electoral Commission is empowered to reprimand a political party, candidate or stakeholder for any violation of the Code. The Commission can also report breaches to the police and impose administrative measures on any person, candidate or party for persistent breach. In addition, the Code identifies the "use of Governmental or parastatal transportation or facilities for campaign purposes" as an offence. This prohibition does not apply to the President and Vice-President "in connection with their respective offices".

However, it is clear from the conduct of the election campaign (see Chapter 4) that the Code was neither adequately respected nor enforced. The Electoral Commission lacked the capacity to adequately pursue violations and several interlocutors suggested they appeared to lack the will to do so. While the Commission did rebuke some offenders (such as some media for their coverage and certain parties for failing to control their supporters) such actions did not reverse the trend of media bias, misuse of state resources and clashes between party supporters.

The CMCs established under the Code operated informally and undertook mediation as a conflict management strategy. However, they proved ineffective in reversing some of the more serious negative trends, notably biased media coverage and misuse of state resources.

As a consequence, the Code of Conduct, while in theory providing a good regulatory framework for the conduct of the campaign and for regulating behaviour of stakeholders throughout the electoral period, proved inadequate and a weak deterrent due to a lack of substantive enforcement mechanisms.

7. Campaign Financing and Expenditure

At present there are no provisions, either statutory or under the Code, requiring the disclosure of campaign financing. Nor is there any obligation to account for and report on campaign expenditure. These omissions undermine transparency and accountability. They also facilitate the misuse of state resources for campaign purposes as parties are not obliged to account for the resources utilised in the conduct of their respective campaigns.

Further, there are no campaign spending limits. Such limits can be an effective tool in helping to create a more level playing field in the conduct of the election campaign.

8. ECZ Recruitment of Staff

The ECZ undertook a thorough and inclusive recruitment process for its 55,000 ad hoc polling station staff. It advertised for the positions and suitable applicants were then trained and tested on their suitability. Appointments were made on the basis of the tests. This approach is welcomed and contributed to the high calibre of staff working in the polling stations on the day of the election.

Such a process also helped to prevent, or reduce, allegations of nepotism or politically motivated appointments, ensuring a higher level of confidence in the electoral administration.

9. Election Petitions and the Timeframe for Swearing-in the President-Elect

Under the Constitution, the newly elected President is to be sworn in within 24 hours of the results being announced. However, any election petition against the results is likely to take substantially longer to be resolved. As a result, an election petition is unlikely to provide an effective legal remedy in this regard. Further, such a short timeframe for the swearing-in may, under certain conditions, create mistrust and tension in the event of a serious allegation against the outcome of the election.

Recommendations

- The current mechanism for appointing members of the ECZ provides for members to be appointed by the President subject to ratification by the National Assembly. However, in the event that the party of the President enjoys a majority in the National Assembly, this mechanism does not necessarily ensure political consensus in the appointment of ECZ members. Measures should be put in place to ensure that election commissioners do enjoy broad support and thereby political and public confidence. We note that Sections 192-197 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
- In order to ensure equal suffrage is broadly provided for, constituency boundaries for the National Assembly need to be reviewed in order to take account of variations in population size.

- Consideration could be given to reviewing the current eligibility criteria for presidential candidates, which currently provides that both parents must be Zambian citizens at birth. This clause has created much controversy in the Zambian context and the Supreme Court has also questioned its value. We note that Section 34 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
- Political parties are encouraged to put forward more women candidates in order to improve the level of representation of women as elected representatives.
- The ECZ requires stronger enforcement mechanisms in order to be able to address violations of the Code of Conduct and thereby ensure the Code also acts as an effective deterrent against malpractices.
- In order to increase transparency and accountability, there needs to be a requirement for party and candidate financial disclosures on campaign financing and expenditure. Consideration might also be given to introducing spending limits for election campaigning, thereby ensuring a more level playing field and preventing escalating costs of elections. We note that Sections 203-208 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
- In order to give sufficient time for the resolution within any established timelines by the courts of any election petition, the period within which the President-elect should be sworn in should be extended accordingly.

Chapter 4

ELECTION CAMPAIGN AND MEDIA

Campaign Calendar

In accordance with the official election timetable issued by the Electoral Commission of Zambia on 3 August 2011, the official campaigns for the General Elections commenced on 29 July 2011 and concluded at 06.00 on 18 September 2011. The introduction of a two-day “cooling off” period, prior to the Election Day on 20 September 2011, was a new innovation. The programme for the campaign rallies of Presidential candidates was coordinated by the Electoral Commission of Zambia, in consultation with the parties and police.

Campaign Environment

The elections were highly competitive. The campaign was conducted with great passion and enthusiasm. The democratic principles of participation and representation as well as the basic freedoms of association, assembly, expression and movement were largely met.

The election campaign was also generally peaceful. However, some incidents were reported, involving clashes mainly between supporters of the two largest parties, in Lusaka. These incidents were sporadic and localised and did not adversely impact the overall campaign environment. There were also some allegations of inconsistent police responses to these clashes. The larger political parties held numerous rallies and meetings across the country. These rallies were largely conducted in a peaceful and celebratory atmosphere, where a range of party campaign materials were distributed. Some political parties lobbied traditional chiefs in an attempt to gain votes from their subjects, notwithstanding legal requirements for chieftains to remain apolitical.

Political parties and candidates also conducted door-to-door canvassing of voters. Other methods included posters, leaflets, billboards, print and electronic media, debates, roadshows, effigies and private media advertising. Social media such as Facebook, Twitter and YouTube, was also utilised to allow candidates the opportunity to disseminate their campaign messages across a wide audience. SMS text messages were also widely used mainly to invite party supporters to rallies and convey campaign messages. Parties also used websites to advertise their manifestoes and campaigning news.

Negative and inflammatory campaigning, including personal attacks, were widely observed and reported as occurring mainly at MMD and PF rallies. The Civil Society Election Coalition expressed concern about the use of hate speech, bitter rhetoric and character assassination, and noted that this phenomenon had unnecessarily heightened political tensions.

Advantage and Abuse of Incumbency

The Group received reports that state resources were misused by the ruling party in the 2011 election campaign. Previous observer reports from 2006 also noted these concerns. Furthermore, the power of incumbency was exercised in a manner that compromised the level playing field between the competing candidates and parties.

This advantage was further enhanced by the exploitation, by the ruling party, of the benefits of incumbency. Concerns were expressed by some opposition parties that activities of some senior functionaries of government blurred the distinction of what could be regarded as official duties and campaigning. Allegations were also made to the effect state resources were used by the ruling MMD to transport party stalwarts to rallies. These activities raised the perception of an abuse of incumbency.

Campaign Finances

There is a general view that the ruling party's 2011 campaign leveraged the most substantial financial resources in Zambia's history. Most stakeholders the Group met pointed to unequal access to funding as a major concern. It was apparent that the imbalance in resources available, in favour of the ruling party, disadvantaged other parties and candidates.

Political parties acknowledge receiving voluntary contributions and membership fees from supporters and well-wishers to fund party activities and campaigns. Several opposition political parties expressed concern about their lack of adequate funding for party activities and campaigns, and the impact of this on the democratic process.

Main Campaign Issues

Political parties attempted to engage in debate on concrete issues such as economic and social development, corruption, the rule of law, health, especially HIV/AIDS, education, jobs, infrastructure, investment, the Constitutional review, religious issues and foreign relations. However, the main purpose of presidential rallies, in particular, sometimes appeared to have less to do with articulating programmes and issues, and more to do with demonstrating capacity and mass support (even though many supporters are transported by the parties or candidates to rally venues). The key campaign issues of the three largest political parties were as follows:

The ruling MMD party campaigned on the basis of continued economic reforms and stability. It stressed its achievements which included, a real GDP growth forecast at seven percent in 2011, agricultural inputs that have led to bumper harvests, infrastructure investments, including new schools, roads and hospitals and Zambia's recent attainment of lower-middle income status. The MMD opposed the re-introduction of a windfall tax on mining corporations, arguing that this would be a disincentive to foreign investment and job creation.

On its part, the Patriotic Front campaigned on a populist and nationalist platform, and key PF campaign messages included the urgent need for change, job creation, reducing the size of government, tackling corruption, re-instating a windfall tax on mining corporations and forcing foreign-owned companies to improve working conditions and better education. The PF also promised to put more money in the pockets of all Zambians; the immediate enactment of a new Constitution; construction of new roads; and, better health services within 90 days of assuming power.

The third largest party, the United Party for National Development campaigned on a platform of creating more and better jobs with pensions for Zambians, increased incomes through lower taxes, quality healthcare and food security, investment in education, and clean and experienced leadership.

Media Background

Until the early 1990s, Zambia's media was completely state-owned. However in 1994, the Zambia National Broadcasting Corporation (Licensing) Regulations opened up the media sector to several new owners and operators, including commercial, community and religious stations. As a result, the media landscape is now quite diverse, with considerable choice for viewers and listeners.

Radio

Radio is the main source of information for Zambians. There are over 40 radio stations in Zambia. The state-owned Zambia National Broadcasting Corporation (ZNBC) operates three radio stations: Radio 1 which broadcasts a mix of news, cultural and call-in programmes in seven vernacular languages; Radio 2 which produces similar programmes in English; and Radio 4 which is an English language entertainment station.

Zambia's commercial stations include the popular *Radio Phoenix*, which began in 1994. It has a wide reach and a reputation for a high standard of programmes. There are also numerous community radio stations.

Television

ZNBC is the largest player in television. It operates its main channel, established in 1987, as well as a second, self-funded, channel that began in 2010. The private channel, MUVI TV, which started in 2004, has the largest audience reach after ZNBC. Programmes are produced in English and vernacular languages.

Despite the opening up of the media sector over the last two decades, and the success of some commercial and community stations, ZNBC is dominant because of its nationwide reach and its large share of the market.

Print and Internet

Zambia has three national daily newspapers - the *Zambia Daily Mail* and the *Times of Zambia* which are government-owned, and *The Post* which is privately-owned. Together the newspapers have a circulation of around 60,000, with *The Post* having by far the largest share. These newspapers also have online versions. The state-owned newspapers are pro-government, whereas *The Post*, an opposition paper, aligned itself exclusively with the PF in this election. There are also various news websites, including the *Zambian Watchdog* and *Lusaka Times*.

Media Self-Regulation

At present, there is no functional and effective self-regulatory mechanism for the media in Zambia. Media organisations have attempted to address this issue by establishing a framework for self-regulation with the creation of the Zambia Media Council (ZAMEC). However, this self-regulatory body is not yet operational. The Zambia Chapter of the Media Institute of Southern Africa (MISA) informed the Commonwealth Observer Group that there are still issues to be resolved.

Laws and Regulations

There are a number of laws and regulations that apply to the media:

- The Electoral (Code of Conduct) Regulations (2011)
- The Electoral Act (2006)
- The Zambia National Broadcasting Corporation (Amendment) Act (2002)
- The Independent Broadcasting Authority Act (2002)
- The Constitution (1996, as amended)
- The Defamation Act (1964, as amended)

The Electoral (Code of Conduct) Regulations, 2011 in relation to the media

These are the main provisions governing media coverage during elections:

Regulation 13 requires the media to provide fair, accurate and balanced reporting of campaigns and press conferences etc. for all registered political parties and candidates during the campaign period. It also obliges media to report election news in an accurate manner and to not make any abusive editorial comment, incite violence or advocate hatred based on race, ethnicity, tribe, gender, sex, political or religious conviction. Media are also required to identify any editorial comments and separate them from the reporting of news. There is also an obligation for broadcasters to refrain from broadcasting their political opinions and, in cases where they do so, they should be clearly signposted.

Regulation 14 requires public TV and radio to allocate airtime equally to all political parties and candidates for their political broadcasts. In addition, parties and candidates are prohibited from buying more than 30 minutes in any one language per week on public TV and radio.

Regulation 15 forbids speculation on election results, requiring media to broadcast confirmed election results as they are announced by presiding officers. It also obliges TV and radio stations to maintain a library of their broadcasting in relation to the election, and establishes a complaints process under which any complaint about media coverage should be sent in writing to the ECZ.

Media Coverage of the Election Campaign

Commonwealth Observers did not engage in a systematic analysis of the media during the election campaign. Observations are the result of sampling news coverage and holding discussions with electoral stakeholders. These observations are borne out by the quantitative and qualitative analyses produced by longer-term observation missions.

Media Freedom

Freedom of expression with regard to the media was, for the most part, respected during the campaign period. However, the media environment was extremely polarised, with important media outlets providing their viewers with biased and selective coverage. Coupled with some press reports that were potentially inflammatory, as well as bitter rhetoric from some parties and candidates, this divisive media environment heightened tension and mistrust throughout the election. Such partisan and, at times, provocative and irresponsible reporting led to suspicions about the electoral process, thereby appearing to undermine the

integrity of the ECZ. The Commonwealth Observer Group also received a few reports of the intimidation of some journalists at both MMD and PF rallies.

Broadcast Media

ZNBC did not serve the electorate in its duty as a public broadcaster. The bias of ZNBC towards the ruling party was a concern raised by almost all electoral stakeholders met by the Commonwealth Observer Group. ZNBC failed to provide fair and equitable coverage in key programmes, including news bulletins. Its television and three radio stations were dominated by the MMD at the expense of the main opposition parties. No free party political broadcasts were provided for. The debate-style programmes, sponsored by the Electoral Commission, provided time for candidates on state and private broadcasters. The PF, however, boycotted this election programming on ZNBC.

In contrast to ZNBC, the privately-owned broadcasters produced content that was considerably more balanced between political parties and candidates.

Print Media

The three national daily newspapers were all biased in their selection of election news, and took strong editorial stances in favour of either the MMD or PF. The *Times of Zambia* and *Zambian Daily Mail* devoted more of its news coverage to the MMD, whereas *The Post* ensured most of its coverage and all of its support went to the PF. In all three newspapers, the line between news reporting and editorial comment was extremely blurred, with entrenched editorial bias appearing in news reports as well as on the comment pages.

Media and the ECZ

Many of the Code of Conduct regulations concerning the media, particularly in relation to balanced coverage, were not adhered to. Some election stakeholders expressed concern that the ECZ did not act in response to media-related Code of Conduct violations.

In what is a positive development, media representatives said their working relationship with the ECZ had improved in comparison to previous elections.

Recommendations

The Election Campaign

- There needs to be greater respect for and compliance with relevant existing electoral legislation and the Code of Conduct by political parties and candidates.
- The ECZ should monitor more closely the use of state resources in election campaigns and should rigorously investigate complaints in this regard.
- Encouragement of responsible party leadership to champion political dialogue and tolerance, and to discourage intimidation and violence.
- The provision allowing the ECZ to refer alleged violations of the Electoral (Code of Conduct) Regulations, 2011, for criminal investigation should be removed in relation to the media. Instead, there should be a suitably limited set of penalties, linked to

the principle of proportionality, for breaches of the legal obligations placed on the media. These would include right of reply and correction.

Media

- The state is the key stakeholder in the media sector, with ZNBC's TV and radio stations, and two national newspapers. In its coverage, ZNBC must ensure proportional access to political parties and candidates in its programming, particularly news bulletins.
- Reform of the regulatory framework for the audiovisual sector should continue, with an appointments procedure agreed to ensure the independence of the boards of both ZNBC and the Independent Broadcasting Authority.
- It is imperative that progress is made in the area of media regulation. Efforts by the media community and others to establish an appropriate, credible self-regulatory body should be continued, and supported by all stakeholders.

Chapter 5

VOTING, COUNTING AND RESULTS

Background

On Tuesday 20 September 2011 elections took place across Zambia for the President, National Assembly and local councils. There were 6,546 polling stations, incorporating 9,022 polling streams. Polling stations were either single stream or multi-stream in the event that a polling station had in excess of 850 voters; though this was not consistently the case.

Polling was scheduled to take place from 06.00 – 18.00 and polling stations/streams were often located in schools, civic centres or under a canopy in open spaces. The boundary of the polling area had a 400 metre perimeter marked out in red and white tape.

Each polling station was run by a Presiding Officer (PO), who was supported by an Assistant Presiding Officer (APO) and five polling staff. In the event of multi-streams, each stream was run by an APO under the overall supervision of the PO. Ballot boxes had differently coloured lids to indicate the three different election types. Each stream also had an Usher to manage queues as well as a designated unarmed security officer.

Key Procedures for Opening and Voting

The stated procedures for opening and voting are as follows:

Prior to opening, the ballot boxes are shown to all present to confirm that they are empty. The boxes are then sealed and the seal numbers noted by polling officials, as well as party agents and observers.

Upon arrival at the polling station voters have to present both their National Registration Card and Voter Card. The polling official verifies the identity by checking their photo on the register and verifying that the numbers of the documents provided corresponded with the numbers on the register. The name of the voter and the numbers of the Voter Card and ID card are then called out so that party agents and observers can also verify the voter's identity on their respective copies of the register.

The right thumb nail of the voter is marked with indelible ink. The Voter Card number is then marked on the counterfoil of the presidential ballot book and the back of the presidential ballot paper is stamped. The voter then receives the ballots for the National Assembly and local council elections and the Voter Card number is marked on the ballot book counterfoil for each of those elections and the ballots stamped on reverse with the official stamp. The procedure for voting and folding of the ballots is explained to the voter and they are then directed to an empty booth to mark the ballots in secret. The voter then folds the ballots and places them in the respective ballot box for each election type.

Assessment of Opening and Voting

Overall, Commonwealth teams reported that the opening and voting processes were administered extremely well by polling staff. The procedures were adhered to and the process was highly transparent, with party agents and observers present in all polling stations. Women were generally well represented as polling officials.

In the vast majority of cases voters were found on the voter register and secrecy of the vote was upheld. Security at polling stations was very effective and not unduly intrusive, making a positive contribution to the process.

The opening of polling stations in some areas was delayed, due to the late delivery of materials or some errors in packing materials. But in the vast majority of cases these were rectified fairly promptly. However in some areas the delays were quite lengthy, with some polling stations opening between 2-4 hours late. But the law does provide for a corresponding extension of polling to ensure that there is still a 12 hour voting period, which meant that, in affected areas, while some voters may have left and not returned, others did have the opportunity to vote.

People formed orderly queues and waited patiently in the majority of cases, though it was quite common for people to wait several hours before being able to cast their vote. It was noted that there was an inconsistent approach to the arrangement for queuing. In some instances the queue was just a single line, in others it was by gender and in other cases it was in alphabetical groups. In most cases the premises used for polling were suitable, but some were not adequate. While it is understood that the ECZ may have limited options in some areas, a number of polling stations were very cramped and others lacked adequate lighting.

While Observers reported positively on the conduct of opening and voting, there were also some problems reported:

- In Kanyama Constituency (Lusaka), for example, there was some tension and violence, with a volatile crowd destroying some polling materials and setting fire to an ECZ vehicle. The problems in Kanyama stem from a phenomena noticed throughout the electoral period, which is that political parties and media rhetoric and rumour-mongering created a high level of mistrust and tension among the electorate. As a consequence unsubstantiated rumours could trigger a volatile reaction. In another example, also in Lusaka, there was a claim made to a Commonwealth team that 8,000 ballots were missing. However, voting was proceeding there – indicating that the ballots were in place - and the polling stations never had that number of ballots in any case as there were only 6,000 voters registered there.
- The delay in the start of polling in Chipangali, Eastern Province, was pronounced due to the late delivery of materials by a sub-contracted company. Voting did not get underway in one polling station until 11.00, which impacted on some people's participation.
- Also in Eastern Province it was noted that some polling officials and security did not receive a certificate to vote, which was required to enable them to vote where they were working as opposed to where they were registered. This meant that those affected were not able to vote.

- Voting in some polling stations in Lukulu West Constituency (Western Province) did not take place on 20 September because materials were not delivered. The vehicles transporting materials had broken down and the ECZ wanted to arrange for a military helicopter to deliver the materials but there were objections from some political parties. Eventually there was an agreement and the materials were ferried by a Zambia Air Force Helicopter and voting in affected polling stations was conducted on 21 September 2011.
- Voting did not take place in the constituencies of Nakonde and Magoye due to the death of a candidate in each. The parliamentary election will be held later in both constituencies.
- In a number of areas, elections for some local councils were postponed due to errors in the printing of ballots, such as the mixing up of candidate photos. This was observed, for instance, in wards in Lusaka, Mansa and Eastern Province.
- Many voters were unclear as to which box to put the ballots. The box lids were colour coded, but once the ballots were folded it was not obvious for which election type each ballot was for. This led to a number of ballots being placed in the wrong box.

Key Procedures for Counting and Results Aggregation

The stated procedures for counting and results aggregation are as follows:

Voting is scheduled to finish at 18.00, but any persons waiting to vote at that time is allowed to do so. In addition, if the polling station opened late then polling could be extended for the same period.

Counting takes place in each stream and is then consolidated for the overall polling station. The result is announced at the polling station and thereafter posted for public display. Party agents also sign the results forms and receive a copy. Upon completion the results and materials are to be delivered to the respective Constituency Collation Centre.

At the constituency, results are entered into the system and printouts of entered data should be shared with stakeholders present. Upon completion of the tabulation, totals are verified by the Returning Officer and stakeholders present and the Returning Officer announces the result for the constituency. Results are also transmitted to ECZ at the national level, and totals announced at the national results centre.

Assessment of Counting and Results Aggregation

Observers were generally positive in their reporting of the vote count at polling station level, though some polling officials did seem less sure of the process for the count compared to the voting process possibly indicating a lacuna in the training. It was also noted that there were many inconsistencies, with different streams undertaking the count and completion of the ballot paper account in differing ways. But the process was transparent and the relationship between polling officials, party agents and observers was constructive, collaborative and consultative. For instance, consensus was sought in determining validity of ballots where necessary.

Some polling stations had a lengthy wait for the transportation to the Constituency office, which, given the number of hours they had already worked, was unfortunate. This also caused some delay in finalizing results in affected areas. At the constituency tabulation, transparency was largely maintained, but the process was chaotic in some instances. Nonetheless, constituencies did largely report to ECZ nationally within the 48 hour timeframe the ECZ had set for itself.

Some of the issues reported by Observers were:

- There was a lack of clarity on the part of some officials on how to handle ballots placed in the wrong box and inconsistent decisions on whether or not they should be considered valid or not.
- Polling station results were not always posted outside the polling station, nor were they signed by party agents in all instances.
- In Chipangali in Eastern Province, it was observed at the Constituency Collation Centre that some result sheets lacked signatures.
- In Chipata Central, Eastern Province, the PF parliamentary candidate requested a recount before the Returning Officer announced the results, but this was refused as there is no provision in the law for this.
- The level of mistrust prevalent throughout the election continued in some areas during the tabulation. Tensions and clashes occurred for instance in Solwezi, Kitwe and Lusaka amidst unsubstantiated claims of irregularities and delays during the results aggregation.

Overview of the Countrywide Observation

Chipata

- A number of polling stations to the north of Chipata received their polling materials after 06.00 on polling day and some items were missing, including ballot box seals. Improvised string was used as seals, agreed to by all parties present.
- Polling in most streams was efficient, but better use of the available space would have further enhanced the process.
- At the Constituency Collation Centre there were no party agents to witness the aggregated results.

Kasama

- At polling stations in Kasama town, the majority of voters marked and folded their ballots in a way that demonstrated the 'myth' of a mark moving from one candidate to another had become quite entrenched. Voters brought their own pens, not trusting those provided by the ECZ, and either folded the ballot with their choice on the outside, or chose not to fold the ballot at all. That this was observed so frequently reflects the high levels of suspicion towards the ECZ, encouraged by some parties and media, which had taken hold among these voters.
- While familiarity with counting procedures was not as good as that of polling procedures, there were only minor irregularities and none that affected the integrity of the process. Although the tallying of votes at constituency level (Lukashya) took time, it was transparent and also conducted in the presence of party agents and monitors. A decision to change venue just after the close of polls, due to security

concerns at the first location, was taken by the District Electoral Officer after good consultation with political parties and other stakeholders, and apparently managed very well.

Kitwe

- The preparations for the voting were well done. The polling stations were accessible and well marked by the red/white ribbon. Electoral materials were delivered on the previous day to most of the polling stations and in some the polling officials had to sleep there to guard them and so it was easy to start the voting by 06.00. The political agents were sensitized and so they co-existed well at the polling stations even to the extent of two agents from different political parties sharing one Register. The voters turned out in big numbers to cast their votes, and they patiently waited in long cues from as early as 05.00. Polling stations were organized in accordance with the regulations. Although there were some invalid votes at counting, the percentage was small in comparison with cast votes.
- For the count at a polling station in Nkana Constituency the process was transparent and conducted in the presence of all the political agents, civil society election monitors and a few international observers and in the end there was no one who raised any complaint in regard to the entire exercise.
- However, people turned violent on 22 September 2011, the second day after voting, demanding the ECZ to announce the results of the elections as soon as possible. In so doing, two people lost their life unnecessarily because it was uncalled for.

Livingstone

- Polling stations observed appeared 'accessible' to voters with special needs. Only one 'special needs' person (visually impaired) was observed voting, with the assistance of a family member.
- Women were present as polling officials in all polling stations visited.
- While there were queues of up to 200 people in the opening hours on election day at some polling stations, there were no queues observed in the couple of hours prior to the closing of the polling stations

Lusaka

- The unrest in Kanyama on the day of the election created a lot of tension in the area and seriously disrupted the voting process at the affected polling stations.
- At the close of the voting at a polling station in central Lusaka, polling officials were unsure on how to proceed with the count and had to read through the manual. Even then, each stream came up with a different way of approaching the count and the associated paper work.

Mansa

- Campaign material was still visible on the exterior walls of some polling stations on election day
- The level of suspicion amongst the voters was high in some polling stations with some election observers being verbally encouraged by voters to not enter the polling station with bag
- There was concern that the ballot boxes and ballot papers were delivered at night and many persons preferred that it would have been done during daylight hours
- There was conflict management training and a comprehensive stakeholder meeting one week prior to elections to manage any potential challenges that could arise on election day

- There was reported incident of ballot papers being delivered that were marked for another constituency in another part of the country

Mongu

- Voting was delayed for a full 24 hours in the Lukulu West Constituency due to the non-arrival of election supplies in time for the opening of the polls. This was due primarily to the remoteness of the area and rugged terrain. The initial ECZ plan was to airlift election supplies by use of Zambia Air Force (ZAF) helicopters but this plan was shelved because of concerns expressed by candidates from some of the political parties. However, when the land transportation failed, due to vehicular breakdowns, it was agreed to revert to the airlifting of supplies into Lukulu. By the time the supplies arrived via ZAF helicopters, it was too late to begin the voting process that day and so it was agreed to start polling the following day.
- While only 40.6% of the 856 electors, registered to vote at the Council Chamber Polling Station, cast their ballot, it took over 5 hours to count the 348 ballots cast, being (1,044 or 348 for each of the three elections). In keeping with the procedure, each vote was counted three times – first when they were emptied from the box onto the table; secondly to be placed into individual trays for each candidate and thirdly to count the contents of each tray.
- The tabulation process was another drawn out exercise as the Returning Officer waited until every Presiding Officer brought in the hard copy of the results from their respective polling stations before conveying this information to party officials and agents witnessing the results. This created near chaos as with the arrival of each team the clustering of the room increased with sealed ballot boxes, trays, lanterns and other materials crowding the space. The chaos was further compounded with the presence of an ECZ staffer cross checking the correct return of all election material in the same confined space among individuals who had been up all night and into the evening taking notes of the results as they were announced by the Returning Officer.
- The summation of the results in Mongu Central Constituency was done manually after agreement between stakeholders after some party agents raised a concern regarding the electronic results management system.

Ndola

- The Polls opened on time at Ndeke Basic School, Itawa Ward, Bwana Mkubwa Constituency, and all materials were available. Polling proceeded smoothly in other polling stations visited in the constituency.
- The poll was closed on time at the School of Continuing Education, Kanini Ward, Ndola Central Constituency. Ballots found in the wrong ballot box were not regarded as spoilt, but were instead transferred, and included in the relevant totals. Polling staff and party agents were unclear about what constituted a valid or invalid vote, and a mini-seminar was conducted, during the count, after disputes arose, with the Presiding Officer reading aloud the relevant provisions in the Election Officers' Handbook and sharing the illustrations contained therein with the party agents.
- Violent protests broke out in Ndola on 22 September 2011, with opposition supporters demanding that the ECZ released the results of the election forthwith.

Solwezi

- Voting in a number of polling stations in the Solwezi Central constituency took place in an orderly manner with most voters casting their ballots early in the day

- The checking of the voters' register during polling and the counting of votes was conducted in a very transparent manner with presiding officers involving party agents in both processes
- Believing that ballot stuffing had taken place, on the morning after polling a large crowd gathered outside the Solwezi Civic Centre, the Central Collation Centre for the Solwezi Central Constituency. The crowd prevented ballot boxes being transferred into the Centre and threatened to burn both the ballot boxes and the vehicle in which they had been transported to the centre. Police attended and fired tear gas in order to disperse the crowd.

Election Results

During the aggregation of the presidential election result by the ECZ at the national results centre, the Chair of the ECZ stated that the ECZ's website had been "hacked into" and false results were posted. This led to ECZ shutting down their website. In addition, ECZ took out an injunction against some private media, claiming they were putting out mis-information on the results.

The result for the presidential election was announced by ECZ just after midnight on 23 September 2011. This was with seven constituencies outstanding. However, the number of remaining potential votes from the seven constituencies was less than the difference between the first and second placed candidates. The Chief Justice duly announced that Mr. Michael Sata of the PF was the winner. On 28 September, the ECZ placed public notice of the final result:

Name	Votes	% of Votes cast	% of registered voters
Mr. Michael Sata (PF)	1,170,966	41.98%	22.66%
Mr. Rupiah Banda (MMD)	987,866	35.42%	19.12%
Mr. Hakainde Hichilema (UPND)	506,763	18.17%	9.81%
Charles Milupi (ADD)	26,270	0.94%	0.51%
Elias Chipimo (NAREP)	10,672	0.38%	0.21%
Tilyenji Kaunda (UNIP)	9,950	0.36%	0.19%
Edith Nawakwi (FDD)	6,833	0.24%	0.13%
Ng'andu Magande (NMP)	6,344	0.23%	0.12%
Godfrey Miyanda (Heritage)	4,730	0.17%	0.09%
Fredrick Mutesa (ZED)	2,268	0.08%	0.04%
Ejected Ballot Papers	56,678	2.03%	
Total Votes Cast	2,789,340		53.98%

Results for the National Assembly elections are:

Party	Total Seats	Women MPs
PF	60	8
MMD	55	6
UPND	28	2
ADD	1	1
FDD	1	-
Independents	3	-

As mentioned above by-elections will be held in two constituencies following the death of candidates in those constituencies. Seventeen of the 148 MPs elected thus far are female.

Recommendations

- The colour coding of ballots needs to be more distinctive, to help voters in identifying the correct ballot box once they have folded their ballots.
- The ECZ needs to ensure the timely delivery of polling materials to all areas, ensuring that voters are not inconvenienced by delays, which can result in disenfranchisement.
- Polling officials were extremely methodical in administering the voting but seemed less aware of the procedures for the count and completion of the accompanying paperwork. During the training of polling staff there could be an increased focus on the count and the paperwork in order to increase capacity, ensure compliance with regulations and provide for greater consistency.
- It is important to ensure that the results are signed by party agents and are posted outside the polling station in all instances. Further, it must be ensured that party agents are able to sign the results at the Constituency level prior to them being posted outside the Constituency Collation Centre.
- As far as is feasible, the ECZ should secure extra transportation so as to minimize the length of time polling staff have to wait to be collected at completion of their duties. This will not only improve the experience of polling staff but will also speed up the results process.
- There should be consideration for the law to provide for a recount to be provided for if the Returning Officer is so reasonably requested to do so by a candidate or their agent.

Chapter 6

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The 20 September 2011 elections in Zambia were the country's 5th multi-party elections and despite some shortcomings represent further progress for the country in strengthening its democratic processes. Many of the benchmarks for democratic elections have been met, even though some shortcomings do remain to be addressed for the future, and overall the process was credible.

The elections were highly competitive, in terms of the number of parties as well as the number of candidates contesting. There were 10 presidential candidates and 769 candidates from 20 political parties for the National Assembly elections. The democratic principles of participation and representation as well as the basic freedoms of association, assembly and movement were largely met.

The Group noted with regret a decrease in the number of women candidates for the National Assembly elections even though women account for more than 50 per cent of the electorate and the population. Out of the ten Presidential candidates only one was a woman and out of the 769 candidates for the National Assembly just 111 (14%) were women. Such a level of women's representation as candidates is disappointing and well below the targets set by both SADC and the Commonwealth.

The regulatory framework for the campaign is set out in the Code of Conduct. It prohibits, among other things, use of intimidating or provocative language and the use of state resources for campaign purposes (save for the President and Vice-President). However, there are no rules on campaign funding, no spending limits and no requirements to report on campaign expenditure, thus foreclosing the obligation for accountability and transparency in this regard. The election campaign was generally peaceful. However, some incidents were reported, often involving clashes mainly between supporters of the two largest parties. Political parties, particularly the larger ones, held numerous rallies and meetings across the country. In addition, the rhetoric used by some parties during the campaign heightened tension and mistrust.

During the 2006 elections it was found that state resources were misused by the ruling party for campaign purposes. This trend has continued in 2011, including the use of state vehicles to transport party stalwarts to rallies, and has remained a source of concern. Furthermore, the power of incumbency was exercised in a manner that compromised the level playing field between the competing candidates and parties.

Media coverage of the elections is another area of concern. The state-owned broadcaster, the Zambia National Broadcasting Corporation (ZNBC) did not meet its obligations to treat candidates of all political parties equally; indeed, its television channel gave the incumbent President and the ruling Movement for Multi-Party Democracy (MMD) substantially more coverage than the other parties. At the same time, the leading private print media, *The Post*, was overtly biased in favour of the main opposition party, Patriotic Front (PF). The concern here is not only that the provisions in the Code of Conduct relating to a requirement for fair and balanced coverage are not adhered to or enforced, but also that some press

reports were quite inflammatory and coupled with party rhetoric, served to heighten tension and mistrust throughout the election. On the whole, media practitioners fell short of ethical standards of fair electoral reporting. It is imperative that ways of overcoming these challenges are urgently explored.

The Electoral Code of Conduct is a good innovation and sets out the responsibilities of stakeholders in the election process. However, not all stakeholders adhered to its provisions and the ECZ was ill-equipped to ensure adequate enforcement.

The ECZ was well prepared for the elections, ensuring that materials were procured in good time and that staff were recruited and trained well. There were some concerns expressed regarding the choice of a foreign company to print ballot materials. The major opposition parties had expressed preference for the printing to be done in-country. However, the ECZ took measures to protect the integrity of the printing process through an inclusive and transparent process that actively engaged all contesting political parties.

The ECZ conducted an update of voter registration, a public verification exercise and a cleaning of the list to reduce the number of erroneous entries. This resulted in the registration of 1.2 million new voters, representing a welcome increase in the participation of younger voters. Overall this signified a notable improvement in the quality of the voter register and meant that universal suffrage was provided for.

On the day of the election, voting proceeded generally well across the country. Commonwealth Teams reported that the process was well managed and people were free to express their will. The secrecy of vote was guaranteed. There were delays in some areas, resulting in frustration for some voters and there was tension in a couple of areas, such as Kanyama in Lusaka, but this was not characteristic of the national experience. Generally, voters waited calmly and patiently to cast their ballots and poll officials worked extremely hard to administer the process, which was closely monitored by large numbers of party agents and domestic observers, adding to the high level of transparency. Security at polling stations was visible and effective but not intrusive, thus making a positive contribution to the process.

The count at polling stations was also highly transparent, with local observers and party agents playing their role too. During the vote count, officials again worked hard and in a transparent manner, although in some cases they were slightly less sure of the procedures for the count as opposed to the vote. Some tensions emerged during the tabulation process, amidst unsubstantiated claims of irregularities and delays, but in the end the ECZ delivered a transparent and reasonably timely result which was accepted by all stakeholders as reflecting the will of the voters.

Recommendations

The Electoral Framework and Election Administration

1. The current mechanism for appointing members of the ECZ provides for members to be appointed by the President subject to ratification by the National Assembly. However, in the event that the party of the President enjoys a majority in the National Assembly, this mechanism does not necessarily ensure political consensus in the appointment of ECZ members. Measures should be put in place to ensure that election commissioners do enjoy broad support and thereby political and public

confidence. We note that Sections 192-197 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.

2. In order to ensure equal suffrage is broadly provided for, constituency boundaries for the National Assembly need to be reviewed in order to take account of variations in population size.
3. Consideration could be given to reviewing the current eligibility criteria for presidential candidates, which currently provides that both parents must be Zambian citizens at birth. This clause has created much controversy in the Zambian context and the Supreme Court has also questioned its value. We note that Section 34 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
4. Political parties are encouraged to put forward more women candidates in order to improve the level of representation of women as elected representatives.
5. The ECZ requires stronger enforcement mechanisms in order to be able to address violations of the Code of Conduct and thereby ensure the Code also acts as an effective deterrent against malpractices.
6. In order to increase transparency and accountability, there needs to be a requirement for party and candidate financial disclosures on campaign financing and expenditure. Consideration might also be given to introducing spending limits for election campaigning, thereby ensuring a more level playing field and preventing escalating costs of elections. We note that Sections 203-208 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
7. In order to give sufficient time for the resolution within any established timelines by the courts of any election petition, the period within which the President-elect should be sworn in should be extended accordingly.

The Election Campaign and Media

The Election Campaign

8. There needs to be greater respect for and compliance with relevant existing electoral legislation and the Code of Conduct by political parties and candidates.
9. The ECZ should monitor more closely the use of state resources in election campaigns and should rigorously investigate complaints in this regard.
10. Encouragement of responsible party leadership to champion political dialogue and tolerance, and to discourage intimidation and violence.
11. The provision allowing the ECZ to refer alleged violations of the Electoral (Code of Conduct) Regulations, 2011, for criminal investigation should be removed in relation to the media. Instead, there should be a suitably limited set of penalties, linked to the principle of proportionality, for breaches of the legal obligations placed on the media. These would include right of reply and correction.

Media

12. The state is the key stakeholder in the media sector, with ZNBC's TV and radio stations, and two national newspapers. In its coverage, ZNBC must ensure proportional access to political parties and candidates in its programming, particularly news bulletins.
13. Reform of the regulatory framework for the audiovisual sector should continue, with an appointments procedure agreed to ensure the independence of the boards of both ZNBC and the Independent Broadcasting Authority.
14. It is imperative that progress is made in the area of media regulation. Efforts by the media community and others to establish an appropriate, credible self-regulatory body should be continued, and supported by all stakeholders.

Voting, Counting and Results

15. The colour coding of ballots needs to be more distinctive, to help voters in identifying the correct ballot box once they have folded their ballots.
16. The ECZ needs to ensure the timely delivery of polling materials to all areas, ensuring that voters are not inconvenienced by delays, which can result in disenfranchisement.
17. Polling officials were extremely methodical in administering the voting but seemed less aware of the procedures for the count and completion of the accompanying paperwork. During the training of polling staff there could be an increased focus on the count and the paperwork in order to increase capacity and ensure compliance with regulations and provide for greater consistency.
18. It is important to ensure that the results are signed by party agents and are posted outside the polling station in all instances. Further, it must be ensured that party agents are able to sign the results at the Constituency level prior to them being posted outside the Constituency Collation Centre.
19. As far as is feasible, the ECZ should secure extra transportation so as to minimize the length of time polling staff have to wait to be collected at completion of their duties. This will not only improve the experience of polling staff but will also speed up the results process.
20. There should be consideration for the law to provide for a recount to be provided for if the Returning Officer is so reasonably requested to do so by a candidate or their agent.

Annex I

Biographies of COG Members

General Yakubu Gowon, (Nigeria) - Chair

General Yakubu Gowon, GCFR, was the Head of State of the Federal Military Government of Nigeria from 1966 to 1975. He initiated the establishment of the Economic Community of West African States (ECOWAS) as a way of promoting regional economic integration. He later chaired the Committee of the Eminent Persons on the revision of the ECOWAS Treaty in 1992-1993 and was a member of the first ECOWAS Council of Elders in 2001 and 2002. He led the ECOWAS Election Observer Team to Ghana for the 2008 elections. More recently, he led the Carter Centre International Election Observation Delegation to Guinea Conakry's 2010 elections and the November 2010 re-run. General Gowon is President and Patron of the Yakubu Gowon Centre founded in 1991/2 and the Yakubu Gowon Foundation.

Professor Dr. Nazmul Kalimullah (Bangladesh)

Prof Kalimullah is the Founder and Chairman of the National Poll Monitoring Body, JANIPOB - the National Election Observation Council of Bangladesh. Prof Kalimullah is also the Co-Chair of Election Working Group (EWG), the National Network of poll monitoring organizations supported by the Asia Foundation. Prof Kalimullah teaches public administration in the University of Dhaka. He got his Ph.D from the University of Birmingham and carried out his Post Doctoral research at the University of Bath in the U.K. He also earned a Post Graduate Diploma in Journalism from the National University of Bangladesh. Apart from Zambia Prof Kalimullah observed elections in Mozambique, Nigeria, Egypt, Hong Kong, Nepal, Pakistan, Sri Lanka and the UK.

Mr Alberto August JP (Belize)

Alberto August has been a member of the Elections & Boundaries Commission of Belize for the past 12 years, the last three of which he has been serving as Chairman of the Commission. He is also a Director on the board of the Belize Water Services Limited and a Trustee on the board of Belize Natural Energy Trust.

Justice Paul Evande Mwambo (Cameroon)

Justice Evande Mwambo Paul Rellie, is a judge in the Republic of Cameroon. He was appointed President of the High Court of Meme Judicial Division, Kumba, in the South West Region, while serving as Advocate General (Deputy Attorney-General) North West Region. He also served as 'Procureur de la Republique'. Presently, he is serving a second consecutive three years mandate as Regional Vice-President for West Africa, in the Commonwealth Magistrates' and Judges Association (CMJA). He is schooled in constitutional and environmental law, child trafficking and refugee law. He is a member of the international Association of Refugee Law Judges.

Ms Alexandra Devon (Canada)

Ms Devon, an international governance consultant, has a Masters Degree in Sociology in the areas of social justice and social change, and has pursued those goals through a twenty-five year government career in Canada in the field of human and democratic rights. In

that capacity she has served as Human Rights Investigator, Policy Manager of the Provincial Status of Women Office, Chairperson of a Committee on Aboriginal Health Policy, and Deputy Commissioner of Vulnerable Persons. Over the last 14 years, Ms Devon has worked in the field of elections in South America, Canada, the Balkans, Europe, the Middle East, and Africa. Ms Devon was awarded the Government of Canada Canadian Peacekeeping Service Medal, 2004, for service in Kosovo, FRY, from 1999 to 2002

Ms Liesl Harewood (Guyana)

Liesl Harewood is a Development Consultant. She is a member of the Commonwealth Youth Sub-Committee on Human Rights and Democracy. She has worked with government, non-governmental and international organizations including, the United Nations Population Fund (UNFPA), the Canadian International Development Agency (CIDA) and the Inter-American Institute for Cooperation in Agriculture (IICA). Previously she worked on issues related to trade agreements, gender and development, youth and entrepreneurship, human rights and democracy, social media, sexual and reproductive health rights and HIV/AIDS.

Father Malcolm Rodrigues (Guyana)

Father Rodrigues is a member of the Society of Jesus (Jesuits). He is currently Chairperson of the local observer group in Guyana, the Electoral Assistance Bureau. He was previously Senior lecturer in Physics at the University of Guyana and Deputy Vice-Chancellor of the University of Guyana. He retired from the University in 2001.

Mr Kennedy Nyaundi (Kenya)

Mr Nyaundi is a Commissioner on the Interim Independent Election Commission of Kenya. During his time as a Commissioner his duties have included being Chairman of the Referendum Committee and Chairman of the Legal Affairs Committee. He is a qualified lawyer and is a partner in a law firm. He has also undertaken several consultancies involving research and documentation in the area of governance and the general sphere of administration of justice and has been involved in policy formulation and drafting of legislation for parliament. Mr Nyaundi is also a member of the Kenya Section of the International Commission of Jurists.

Ms Sarah Fradgley (New Zealand)

Sarah Fradgley is a media and communications consultant working with international organisations, including the UN and EU. She has extensive experience of media relations, public information campaigns and grassroots communications on a wide range of political, security and development issues. In 2009-2010, she worked on a UN-funded programme providing communications support to the African Union Mission in Somalia and the Transitional Federal Government in Mogadishu. Ms Fradgley has worked as an election observer in Indonesia, Bangladesh and Lebanon, as well as in the Balkans and former Soviet Union. She also worked as spokesperson for the Iraq Out-of-Country Voting Programme in the UK. She began her career as a journalist at the BBC, where she spent six years as a producer on TV and radio news programmes.

Hon. John J. Mnyika (Tanzania)

Hon. Mnyika is a politician and development activist with experience in elections and political party development in Tanzania and across Africa. He is a Member of Parliament for Ubungo

Constituency in Dar es Salaam and Director for Foreign Affairs and International Relations of CHADEMA, an opposition party in Tanzania. He is the Shadow Minister of Energy and Minerals and the Secretary of official opposition of the United Republic of Tanzania. Hon. Mnyika's has been a local elections monitor, campaign coordinator and a candidate. He was previously a member of the secretariat of the Democratic Union of Africa and was the national youth leader of CHADEMA between 2005 and 2009. He was the Founder Secretary General and later became the Chairperson of Tanzania Youth Vision Association (TYVA).

Dr. Silvester Arinaitwe Rwomukubwe (Uganda)

Dr Silvester is an Executive Secretary of the Uganda Joint Christian Council (UJCC), an ecumenical organization that was established in 1963. Its current membership comprises of the Church of Uganda, The Roman Catholic Church and the Uganda Orthodox Church, which together constitute about 78% of Uganda's population. Dr. Silvester is also the Chairperson of the Democracy Monitoring Group (DEMGROUP) a body that monitors Uganda's government institutions in order to promote the growth of democracy in Uganda. DEMGROUP is also a major national observer group, monitoring elections in Uganda.

Tony Colman (UK)

Tony Colman is a former Member of the UK Parliament. He is currently a researcher on water governance in SADC, particularly Botswana, at the Water Security Centre at the School of International Development, University of East Anglia. He is also Associate Fellow at the ESRC UK Centre. Tony is a Councillor of the World Future Council. Tony is also a member of the Commonwealth Partnership for Technology Management Smart Partnership movement and a researcher for the Commonwealth Local Government Forum. Previously he was a member of the Commonwealth Observer Group for the 2006 General Elections in Guyana.

Commonwealth Secretariat Staff Support Team

Ambassador Ayodele Oke, Adviser and Head, Africa Section – Team Leader

Mr Mark Stevens, Adviser and Head, Democracy Section

Mr Mark Guthrie, Legal

Mr Martin Kasirye, Political

Ms Yvonne Chin, Media

Ms Zippy Ojago, Democracy

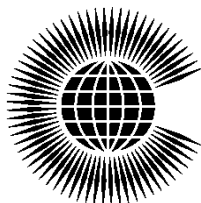
Annex II

Deployment Plan

Team	AREA	NAMES
1	Lusaka & Environs	Chair – General Gowon (Nigeria) Ayo Oke an Yvonne Chin
2	Lusaka & Environs	Mark Stevens Zippy Ojago
3	Ndola (Copperbelt)	Martin Kasirye
4	Kitwe (Copperbelt)	Rev. Silvester (Uganda)
5	Mansa	Liesl Harewood (Guyana) Justice Mwambo (Cameroon)
6	Kasama	Sarah Fradgley (New Zealand) Kennedy Nyaundi (Kenya)
7	Livingstone (Southern Province)	Alexandra Devon (Canada) Dr Nazmul Kalimullah (Bangladesh)
8	Solwezi	Mark Guthrie
9	Chipata (Eastern Province)	Tony Colman (UK) Malcolm Rodrigues (Guyana)
10	Mongu (Western Province)	John Mnyika (Tanzania) Alberto August (Belize)

Annex III

Arrival Statement



Commonwealth Observer Group Zambia General Elections 2011

NEWS RELEASE

Arrival Statement by H.E. General Yakubu Gowon Chairperson of the Commonwealth Observer Group

The Commonwealth Secretary-General, Mr. Kamalesh Sharma, constituted an Observer Group for the 2011 Zambia General Elections following an invitation from the President of Zambia. It is my honour and privilege to have been asked to lead the Group and to be here in Zambia for these important elections. These are Zambia's fifth multi-party elections and we are pleased to be in the country to contribute to the further consolidation of its democracy.

Democracy and good governance are key Commonwealth principles and ones which our Observer Group is constituted to promote and uphold. These elections are crucially important for the people of Zambia, as they elect their representatives for local councils, National Assembly and the Presidency, and it is therefore imperative that the electoral process is transparent, fair and credible.

Our task as the Commonwealth Observer Group is to consider all the factors impinging on the credibility of the electoral process as a whole, and assess whether the elections have been conducted according to the standards for democratic elections to which Zambia has committed itself, with reference to its own election-related legislation as well as relevant regional, Commonwealth and other international commitments.

We will consider, among other things, whether conditions exist for free and competitive elections; the voter register provides for universal suffrage; state apparatus and public media are impartial; there is a level playing field in the campaign; freedom of expression is provided for; voters are free to express their will; and, the results process is transparent and timely.

In conducting our duties and undertaking our assessment, we will be impartial, objective and independent. We are here in our individual capacities as eminent Commonwealth citizens. The assessment by the Group will be its own, and not that of any member government. We will be constructive in our observation and remarks, with the intent to help further strengthen the democratic process in the country.

Our Group has been drawn from across the Commonwealth, and includes politicians, members of election commissions, and representatives of civil society, academia, youth and the media.

In the pre-election period we will meet a wide range of stakeholders, including the Electoral Commission, representatives of political parties, civil society and media, as well as High Commissions and representatives of other international and national observer groups.

Prior to election day, Commonwealth teams will deploy to a variety of locations around the country to observe the voting, counting and results processes. Our teams will coordinate with other observers in the field in order to maximise our overview of the process. We will issue an Interim Statement after the election and a final report at a later stage.

For Zambia, the conduct of credible elections is vital and I am hopeful that this will be the case. At this crucial stage of the elections we call on all political parties and stakeholders to adhere to the Electoral Code of Conduct and adopt a constructive approach to the entire electoral process in order to ensure a peaceful poll.

I wish the people of Zambia well and also wish to pledge the unwavering solidarity of the Commonwealth family as you go into these elections.

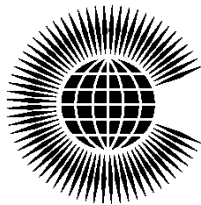
Lusaka, 15 September 2011

Note to Editors

For media enquiries, please contact Ms. Yvonne Chin at +260 (0)96 111 0402 or y.chin@commonwealth.int

Annex IV

Interim Statement



Commonwealth Observer Group Zambia General Elections 2011

INTERIM STATEMENT

**H.E. General Yakubu Gowon
Chairperson of the Commonwealth Observer Group**

The Commonwealth Observer Group has been present in Zambia since 13 September 2011. During this period we met with the Electoral Commission of Zambia (ECZ), representatives of political parties, civil society, media, Commonwealth High Commissions as well as other international and national observers. Commonwealth teams were based in each of the nine Provinces. Our teams observed the voting, counting and results aggregation and also met with electoral officials, national and international observers and other stakeholders at the constituency level in order to build a larger picture regarding the conduct of the electoral process.

The results process is ongoing. This interim statement reflects the observations and assessments of the Commonwealth Observer Group on the electoral process up to this point. We will issue a Final Report at a later stage, containing our final conclusions on the entire process.

Key Findings

- The 20 September 2011 elections in Zambia were the country's 5th multi-party elections and despite some shortcomings represent further progress for the country in strengthening its democratic processes. Up to this point, and with some aspects of the process continuing, many of the benchmarks for democratic elections have been met, even though some shortcomings do remain to be addressed for the future.
- The elections were highly competitive, in terms of the number of parties as well as the number of candidates. There were 10 presidential candidates and 769 candidates from 20 political parties for the National Assembly elections. The democratic principles of participation and representation as well as the basic freedoms of association, assembly and movement were largely met. However, the Group noted with regret a decrease in the number of women candidates for the National Assembly elections even though women account for more than 50 per cent of the electorate and the population.

- The election campaign was generally peaceful. However, some incidents were reported, often involving clashes mainly between supporters of the two largest parties.
- During the 2006 elections it was found that state resources were misused by the ruling party for campaign purposes. This trend has continued in 2011 and has remained a source of concern. Furthermore, the power of incumbency was exercised in a manner that compromised the level playing field between the competing candidates and parties.
- Media coverage of the elections is another area of concern mirroring past elections. The state-owned broadcaster, the Zambia National Broadcasting Corporation (ZNBC) did not meet its obligations to treat candidates of all political parties equally; indeed, its television channel gave the incumbent President and the ruling Movement for Multi-Party Democracy (MMD) substantially more coverage than the other parties. At the same time, the leading private print media, *The Post*, was overtly biased in favour of the main opposition party, Patriotic Front (PF). The concern here is not only that the provisions in the Code of Conduct relating to a requirement for fair and balanced coverage are not adhered to or enforced, but also that some press reports were quite inflammatory and coupled with party rhetoric, served to heighten tension and mistrust throughout the election.
- The Electoral Code of Conduct is a good innovation and sets out the responsibilities of stakeholders in the election process. However, not all stakeholders adhered to its provisions and the ECZ was ill-equipped to ensure adequate enforcement.
- The ECZ was well prepared for the election and managed the process well. Materials were procured and distributed in good time and staff recruited and trained for their respective duties. In addition, ECZ's updating and cleaning of the voter registers improved the level of voter participation.
- On the day of the election, voting proceeded generally well across the country. Commonwealth Teams reported that the process was well managed and people were free to express their will. The secrecy of vote was guaranteed. There were delays in some areas, resulting in frustration for some voters and there was tension in a couple of areas, such as Kanyama in Lusaka, but this was not characteristic of the national experience. Generally, voters waited calmly and patiently to cast their ballots and poll officials worked extremely hard to administer the process, which was closely monitored by large numbers of party agents and domestic observers, adding to the high level of transparency.
- Commonwealth teams followed the count at polling stations, which was also highly transparent, with local observers and party agents playing their role too. The tabulation and results processes are on-going and we will reflect more on these in our Final Report. We are aware that at this point some results have been announced and also that there has been tension in a couple of areas.

At this crucial stage of the process, the Commonwealth Observer Group urges all Zambians to continue to exercise patience and to allow the ECZ to conclude its work creditably. We also call on them, in case of any complaints, to avail themselves of avenues provided for in the Electoral Act for seeking legal redress. For the ECZ, it is paramount that the high level of

transparency achieved thus far is maintained during the results process in order to ensure accountability and to maintain confidence.

Election Campaign

Political parties, particularly the larger ones, held numerous rallies and meetings across the country. The regulatory framework for the campaign is set out in the Code of Conduct. It prohibits, among other things, use of intimidating or provocative language and the use of state resources for campaign purposes (save for the President and Vice-President). However, there are no rules on campaign funding, no spending limits and no requirements to report on campaign expenditure, thus foreclosing the obligation for accountability and transparency in this regard. This must be addressed for future elections.

During the campaign there were reports of clashes between party supporters, notably between those of the ruling MMD and the opposition PF. It was also reported state resources were used by the ruling MMD, including the use of state vehicles to transport party stalwarts to rallies. The requirement in the Electoral Act and the Electoral Code of Conduct for all print and electronic media to “provide fair and balanced reporting of the campaign, policies, meetings, rallies and press conferences of all registered political parties and candidates during election campaigning” was not fulfilled. On the whole, media practitioners fell short of ethical standards of fair electoral reporting. It is imperative that ways of overcoming these challenges are urgently explored.

Women make up more than 50% of the population and registered electorate but the level of women’s representation as candidates is discouraging, well below the targets set by both SADC and the Commonwealth. Out of the ten Presidential candidates only one was a woman and out of the 769 candidates for the National Assembly a disappointing 14% were women.

Electoral Framework and Management of the Electoral Process

The ECZ was well prepared for the elections, ensuring that materials were procured in good time and that staff were recruited and trained well. There were some concerns expressed regarding the choice of a foreign company to print ballot materials. The major opposition parties had expressed preference for the printing to be done in-country. However, the ECZ took measures to protect the integrity of the printing process through an inclusive and transparent process that actively engaged all contesting political parties

The ECZ conducted an update of voter registration, a public verification exercise and a cleaning of the list to reduce the number of erroneous entries. This resulted in the registration of 1.2 million new voters, representing a welcome increase in the participation of younger voters. Overall this signified a notable improvement in the quality of the voter register and meant that universal suffrage was provided for.

The Electoral Code of Conduct provides a framework for conflict resolution through the creation of Conflict Management Centres (CMCs). The CMCs were useful in addressing some infringements and disagreements in the electoral environment but were less effective in addressing more significant issues. More so, decisions of the CMCs are not binding or public, which means there is a lack of accountability and transparency in addressing some complaints.

Voting, Counting and Results

On the day of the election, Commonwealth teams reported from all nine Provinces of the country and we maintained close contacts also with other observer groups. Poll officials worked hard and methodically to process voters, secrecy of the vote was provided for and voters were free to express their will. Voters waited patiently in most cases and the process was followed by a wide range of party agents and domestic observers, who worked in a very constructive manner with polling officials. Security at polling stations was visible and effective but not intrusive, thus making a positive contribution to the process.

There were delays in the start of voting in some areas due to difficulties in delivering materials or some errors in packing materials, but these were soon rectified. There were also some reports of tensions in a couple of areas, notably in Lusaka, but this was not characteristic of the overall experience. In a small number of local council elections there were errors in the ballot paper and so affected Ward elections will have to be held later.

During the vote count, officials again worked hard and in a transparent manner, although in some cases they were slightly less sure of the procedures for the count as opposed to the vote.

Lusaka, 22 September 2011

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Declaration of Principles for International Election Observation

The Commonwealth Secretariat is a signatory to both the Declaration of Principles for International Election Observation and the associated Code of Conduct for International Election Observation Missions, which were commemorated on 27 October 2005 at the United Nations in New York.

Commonwealth Observer Groups are organised and conducted in accordance with the Declaration and Commonwealth Observers undertake their duties in accordance with the Code of Conduct.