

## Chapter 6

# CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

The 20 September 2011 elections in Zambia were the country's 5<sup>th</sup> 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.