



**Limited Election Observation Mission to Zambia  
September 2016 Statement**

**Overview**

The Zambian general elections and referendum were held Aug. 11, 2016. Final presidential election results indicated that President Edgar Lungu received 50.35 percent of valid votes cast, a vote total that also avoided a runoff election under the newly adopted 50 percent +1 electoral system. The parliamentary elections resulted in the Patriotic Front (PF) winning 80 seats, the United Party for National Development (UPND) winning 58 seats, the Movement for Multi-party Democracy winning three seats, the Forum for Democracy and Development winning one seat, and independent candidates winning 14 seats. The High Court received an unprecedented 84 petitions challenging parliamentary results. This put a significant burden on the judiciary to hear the cases. The referendum vote on a Bill of Rights and constitutional amendments did not meet the minimum threshold of 50 percent participation by eligible voters, and so did not pass.

The Carter Center fielded a limited observation mission focusing on the pre-election and post-election periods. The preliminary statement released by the Center on Aug. 13 found the pre-election period was significantly flawed. The environment was characterized by interparty tensions and polarization, and exacerbated by the introduction of new electoral and legal frameworks and a decision to hold a referendum on the Bill of Rights and constitutional amendments at the same time. Widely reported incidents of violence increased tension between political parties and their supporters, especially in the weeks preceding election day. In addition, the Center noted the absence of a level playing field, including harassment of private media, the abuse of public office by government ministers, and the application of the Public Order Act in ways that appeared to disadvantage the main opposition party, the UPND.

While the Center did not observe election day, Zambian citizen observers and other international election observation missions reported that the voting process was largely successful, with only relatively minor problems. Polling day was mostly calm, and long queues of voters waited patiently to cast ballots. Polling officials and police worked to ensure order, despite an extended counting process.

Following the polls, several factors served to weaken the confidence of a significant segment of the population in key institutions charged with administering the polls and addressing electoral disputes. Polling-station results were not posted at the polling stations in some instances.<sup>1</sup> The

---

<sup>1</sup> According to international best practices, results should be posted at the counting station. See, for instance, OSCE (ODHIR), Existing Commitments, p. 73 in The Carter Center, *Election Obligations and Standards*, p. 169.

Electoral Commission of Zambia (ECZ) ineffectively managed the vote tabulation, verification, and declaration of results, as well as public expectations surrounding these processes. Contrary to international standards, election observers were not allowed to observe the results-verification process, undermining its transparency.<sup>2</sup> The process unfortunately proved highly contentious and caused increased delays in the announcement of results. Despite pre-election statements that the results would be announced within 48 hours of the closure of the polls, the ECZ did not announce the presidential results until Aug. 15, four days after election day. There were outbreaks of localized violence following the announcement.

The ECZ clarified the requirement for passage of the referendum on the Bill of Rights following the polls and a day before these results were announced. The information contradicted the voter-education material that the ECZ had developed and distributed.

Several legal challenges were lodged, and the newly established Constitutional Court's handling of them raised serious concerns regarding the right of petitioners to receive adequate due process under the law. The UPND lodged a petition with the Constitutional Court on Aug. 19 challenging the outcome of the presidential election, alleging serious irregularities in the counting and tabulation process, among other concerns.

Although Zambia's constitution requires the Constitutional Court to hear electoral petitions within 14 days of their filing, it is silent as to the timeframe in which the court is required to issue a ruling. Despite these legal uncertainties, the court did not define clear timelines at the outset that would have allowed sufficient time for procedural matters and the hearing. Much of the court's deliberation was done in chambers, closed to the public. The court did not offer regular official public updates on the proceedings.

On Aug. 30, the court said that its calendar would be extended by five days, concluding on Sept. 8, to allow additional time for both the petitioners and the respondents to bring forward evidence and witness testimony. However, it later reversed its position and required both sides to present their cases on Sept. 2, or calendar day 14. Opposition lawyers argued that there was insufficient time and withdrew from the case. The full court again stated that four additional days would be provided, two each for the sides to argue the merits. In a surprise ruling when it reconvened on Sept. 5, it stated that its jurisdiction had ended at midnight on Sept. 2 and dismissed the UPND petition without hearing the case on its merits, citing the need to abide strictly by the constitutional time limits to hold a hearing. The vote was three-two.

---

<sup>2</sup> U.N. (CCPR), General Comment 25.

The end result of this decision is that, contrary to international standards, the legal and judicial processes surrounding the presidential petition failed to meet Zambia's national and international obligations to ensure due process, a fair hearing, and timely and effective legal remedy.<sup>3</sup>

While it is difficult to quantify the precise impact of the flaws in the pre- and post-election periods, cumulatively, these problems represent a significant step backward for Zambia. These issues polarize Zambian society, undermine the integrity of Zambia's electoral process, and weaken public confidence in the country's democratic institutions.

## Summary of Key Findings

*Electoral Violence.* Both the pre- and post-election periods were marred by political tensions and instances of localized electoral violence largely carried out by party cadres, particularly in Central, Copperbelt, Lusaka, and Southern provinces, including rioting, property damage, and physical assault resulting in some deaths.

*Legal Framework and Electoral System.* The 2016 elections were held under a new, untested legal framework adopted shortly before the polls. Some regulations governing the electoral process were enacted only after election day. The timing and manner of the adoption of these amendments and regulations, existing gaps, and inconsistencies in the legal framework resulted in significant legal uncertainty.<sup>4</sup> This hindered understanding of the legal framework, and undermined the ability of electoral stakeholders to understand their implementation and to act in accordance with the laws and regulations. This situation was exacerbated by unclear constitutional provisions, including contradictory articles regarding the role of the speaker of the parliament should a petition challenging the results of the presidential election be filed, and a lack of clarity regarding the deadline for the Constitutional Court to issue a ruling on electoral petitions. Neither issue was clarified in due time, which contributed further to general confusion and uncertainty.

In one of its first rulings, three days before the election, the Constitutional Court granted a petition filed by the Law Association of Zambia that challenged the constitutionality of the continued stay of the ministers in office after the dissolution of parliament. The court ruled that ministers' mandate expired on the day of dissolution of the parliament and requested return of the salaries and allowances paid after that period.

---

<sup>3</sup> The Constitution of Zambia, Article 18(9), states, "Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time." The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." AfCHPR, Article 7 states, "Every individual shall have the right to have his cause heard. This comprises: (1) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force."

<sup>4</sup> UNHCR Comment 19 indicates that, "... elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights."

*Level Playing Field.* Biased public media, harassment of private media outlets, the use of state resources for political purposes, the abuse of office by government ministers, the inequitable application of the Public Order Act against the opposition UPND, and the denial of flight clearances for opposition candidates marred the campaign period and contributed to a lack of a level playing field.

*Political Polarization.* Support for the ruling PF and UPND is largely regional. Although support for various parties has shifted across the elections held since 1991, party support clusters in ethno-geographic patterns. The electoral reform requiring “50 percent +1” to win the presidential polls may have inadvertently fostered greater political polarization and ethnic overtones to a degree that most stakeholders had not previously experienced.

*Participation of Women.* Zambia has long suffered from low representation of women in elected political office, and many women who aspired to public office were disqualified by a new educational attainment requirement. Of the 156 elected members of parliament, only 26 are women (17 percent). While this remains comparatively low by regional standards, the representation of women in the newly elected National Assembly represents an increase over previous levels.<sup>5</sup> The election of a woman, Inonge Wina, as Zambia’s first directly elected vice president, is noteworthy. Edith Nawakwi, president of the Forum for Democracy and Development, was also a presidential contender.

*Candidate Eligibility and Nomination.* Constitutional amendments introduced a minimal academic qualification of a Grade 12 certificate or its “equivalent.” This disproportionately affected female and rural aspirants. Non-refundable fees for candidate nomination were raised substantially, and were seen as being excessive and unreasonable barriers to candidacy, especially for women and youth.

*Election Administration.* The ECZ’s appointment system is inconsistent with best practices for recruiting election officials based on transparency, efficiency, and equity.<sup>6</sup> The president’s prerogative to appoint and dismiss ECZ members heightens mistrust among opposition political parties of the electoral body’s independence from the executive branch.<sup>7</sup>

The ECZ suspended campaigns in two districts for 10 days in view of rising political violence by invoking Section 28 (2) of the Electoral Process Act. While some stakeholders felt the suspension contributed to a reduction in mounting tension, it is unclear whether the ECZ had the legal power to do so and whether it violated the parties’ right to freedom of assembly. The ECZ did not exert its powers to curtail abuses of the Code of Conduct (e.g. unfair administration of the Public Order Act that violated freedom of assembly of opposition parties), and no effective remedies were available to challenge the ECZ’s decisions on the code.<sup>8</sup> These issues furthered opposition parties’ concerns about the impartiality of ECZ.

---

<sup>5</sup>The SADC Protocol on Gender and Development established a target of 50 percent women representation by 2015: [http://www.sadc.int/documents-publications/show/Protocol\\_on\\_Gender\\_and\\_Development\\_2008.pdf](http://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf).

<sup>6</sup> U.N., UNCAC, Article 7(1)(a); OAS, Convention Against Corruption, Article III (4); AU, Convention On Corruption, Article 7(4) in *The Carter Center, Election Obligations and Standards*, p. 70.

<sup>7</sup> U.N. (ICCPR), General Comment 25, para. 24.

<sup>8</sup> U.N. (CCPR), Leonid Sinitsin v. Belarus Communication No. 1047/2002 (2006) para. 7.3 in *The Carter Center*,

Both Zambian citizen observers and other international observation missions reported that voting processes were relatively well-managed, with some technical shortcomings. However, concerns were raised during all stages of the results-management process. Contrary to best practices for transparency,<sup>9</sup> observers and party agents reported inconsistent availability of polling station results forms (called GEN 12 forms), which are needed to complete thorough independent checks, coupled with slow counting and tabulation procedures at both the polling station and constituency levels. The verification of results was highly contentious and resulted in disagreements between political parties and the ECZ on verification procedures, including UPND's complaint that the final presidential results should not have been announced by the ECZ chairman because of inconsistencies between polling-station results and the verified consolidated results.

Vote tabulation should be a transparent and observable process.<sup>10</sup> Though party representatives had access to the verification room at the National Results Centre, observers did not have access to the transmission and verification exercise at the national level and were unable to observe the ECZ's verification of results transmitted from totaling centers. This lack of access undermined the transparency of what evolved into a highly contentious process. The verification process lacked clear and effective remedy mechanisms by which political parties could appeal the ECZ's actions to correct tabulation errors made by electoral officers on the polling station level.

While the ECZ chairman had forecast that final presidential results would be declared 48 hours after the last polling station completed counting, final presidential results were announced only on Monday, Aug. 15, four days following election day. The delay was caused by slow counting and totaling of results, as well as disputes over verification procedures between party representatives and the ECZ at the results center. The arrest on Aug. 12 of Samuel Chavula, a suspected hacker who had been accredited by the ECZ and given access to the verification room, raised concerns among political parties about improper accreditation and further delayed the process.

*Electoral Dispute Resolution.* ECZ conflict management committees, which were meant to serve as an alternative to lengthy court proceedings, did not provide an effective dispute-resolution mechanism during the elections. The newly established Constitutional Court faced a number of logistical and operational challenges.

On Aug. 19, the opposition UPND filed a petition with the Constitutional Court challenging the outcome of the presidential election and alleging serious irregularities in the counting and tabulation process, among other issues.

Much of the court's deliberations were done in chambers, closed to the public. The court failed to hear evidence on the merits of the petition and to rule on the validity of the elections. On Sept. 5, the court dismissed the petition by a majority decision on the technicality that the petitioner

---

*Election Obligations and Standards*, p. 76.

<sup>9</sup> Norwegian Helsinki Committee, Human Rights Monitoring, p. 14 in The Carter Center, *Election Obligations and Standards*, p. 170.

<sup>10</sup> U.N. (CCPR), General Comment 25, para. 20 in The Carter Center, *Election Obligations and Standards*, Section 9 on Vote Counting and Tabulation, p. 170.

failed to present its case within the 14-day timeline, which expired on Sept. 2. Three out of five judges ruled that the 14-day deadline prescribed by the constitution is unambiguous, and therefore the petition could not be heard outside of the legal deadline. This ruling came after the court twice provided additional days, 2.5 days in the first instance and two days in the second instance, to each side to present their case.

The UPND then filed a petition with the High Court, alleging a violation under the Bill of Rights of the constitution of its right to a fair trial and seeking to enjoin the inauguration. The High Court stated it had no jurisdiction to grant interim relief to stop the inauguration and that the decision could be appealed to the Supreme Court. The Supreme Court refused to enjoin inauguration or to review the Constitutional Court's actions. Effectively, the petitioner's legal remedies have been exhausted.

The legal process to resolve the presidential petition was marred by a lack of clear guidelines on the timeframe for the court to resolve the matter and inconsistency in their decision-making. This led to confusion and circumvented the principles of a fair trial and effective legal remedy, preventing due process under the law. Overall, the legal framework for electoral dispute resolution and the manner in which conflict management committees and the courts dealt with electoral complaints failed to ensure due process, and to provide effective and timely legal redress.

*Electoral Constituencies.* Variances between the number of voters per constituency contravene the equality-of-suffrage principle for parliamentary races enshrined in the Zambian constitution, as well as internationally accepted standards for boundary apportionment.<sup>11</sup> The total number of eligible voters in the largest constituency was over 16 times larger than that of the smallest.

*Voter Education.* Given the significant changes to the electoral framework, the need for voter education was critical. While the ECZ made a commendable effort to conduct voter education, civil society organizations and political parties indicated that voter-education efforts were insufficient, particularly outside major urban centers. They also indicated that materials in local languages did not reach all areas and that the voter-education campaign on the referendum on the Bill of Rights should have started several weeks earlier to inform voters adequately. A number of civil society organizations also conducted voter education across the country, though limited resources made it difficult to conduct adequate education programs.

*Voter Registration.* ECZ selected two experts from the United Nations election roster to conduct an audit of the voter register. According to the voter register audit projections, the certified register of voters included data for more than 300,000 deceased voters. Other irregularities were identified by the audit and not addressed in a timely fashion (e.g. voter identification cards with the same national registration card number). There are also questions about how the ECZ determined the number of voters eligible to vote on the referendum. The final number was based on a statistical projection from the 2010 census, which resulted in uncertainty regarding its accuracy.<sup>12</sup>

---

<sup>11</sup> UN, ICCPR, General Comment 25, para. 21; U.N., ICCPR, *Istvan Matyas v Slovakia*, (2002) in The Carter Center, *Election Obligations and Standards*, p. 59.

<sup>12</sup> UNGA, *Guidelines Concerning Personal Data Files*, art. 2 in The Carter Center *Election Obligations and Standards* Section 4 on Voter Registration, p.86.

*Referendum on the Bill of Rights and Constitutional Amendments.* According to the constitution and the Referendum Act, the referendum vote required a threshold of 50 percent of all *eligible* voters to be considered valid. Had it passed, the constitutional amendment would have allowed the president to amend the constitution more easily, and the Bill of Rights would have offered greater protection for human rights, including economic and social rights.

The voter-education materials produced by ECZ indicated that a “yes” vote by more than 50 percent of eligible voters was required for a referendum to pass. However, shortly before the announcement of the results, the ECZ provided additional clarification, stating that in order for the referendum to succeed, it needed to pass two thresholds: 50 percent of all eligible voters would have to cast a ballot in the referendum, and at least 50 percent of those voters would have to cast ballots in favor of the referendum. Unfortunately, the formulation of the referendum question also lacked clarity, and voters expressed concerns that they did not understand its content. Comprehensive voter information and education was limited in the short timeframe before elections.

The referendum vote did not meet the participation threshold. Of those who voted in the referendum, 1,852,559 voted in favor of it, while 753,549 voted against it. In addition, 739,363 referendum ballots were rejected — almost nine times as many as the presidential-race ballots rejected and almost equal the number of votes cast against it, signaling either poor voter-education efforts or a significant number of protest votes cast by opposition supporters hoping to keep the PF and President Lungu, who had strongly advocated its passage, from a political win.

*Civil Society.* Civil society organizations played a key role in observing and reporting on the process. Several local organizations deployed citizen observers for polling day, including a coalition of nongovernmental organizations under the umbrella Zambia Election Information Center. Christian Churches Monitoring Group (CCMG) observed the voter-registration process and conducted a parallel vote tabulation. The CCMG broadly affirmed that the official results for the presidential elections were within a statistically credible range.

## **Conclusion**

Zambia has held five presidential elections within the last 10 years, which has led to fatigue among the electorate, stretched the resources and capacity of the ECZ and other agencies, and heightened political tension. During the course of the elections held between 1991 and 2015, election observers have identified several significant concerns that remain today, including unbalanced media reporting, improper and biased application of the Public Order Act, instances of party cadre violence and intimidation, misuse of state resources, and concerns about the ECZ’s lack of full independence.

Many electoral stakeholders reported that these concerns were significantly elevated during the highly polarized 2016 election. These dynamics, coupled with the failure of the newly established Constitutional Court to provide adequate due process under the law, suggest a disturbing trend and serve to significantly erode public and voter confidence in the electoral system and seriously undermine the integrity of democratic institutions in Zambia.

Zambia faces great challenges. It is essential that all Zambians, especially governmental authorities and opposition political leaders, engage one another peacefully and work to find

constructive ways forward. It is incumbent upon political leaders from all parties to play a constructive role in strengthening the country's democratic institutions, lessening the tensions, addressing divisions, and ending electoral violence.

### **Background**

Following an invitation from the Ministry of Foreign Affairs, The Carter Center was accredited by the Electoral Commission of Zambia to observe Zambia's national elections and referendum. The Center deployed a limited election observation mission, focusing on the political and electoral environment of the campaign period; the legal framework; and electoral dispute resolution mechanisms. The Carter Center mission was led by Her Excellency Sylvie Kinigi, former prime minister and acting president of Burundi; and Jordan Ryan, vice president of the Center's peace programs.

A core team of four people arrived in mid-July and were based in Lusaka. The team held regular meetings with key stakeholders, including political party candidates, civil society organizations, citizen election observers, members of the international community, and representatives of the electoral commission. Four medium-term observers were deployed to the Copperbelt and Southern provinces in advance of election day to assess election preparations. The core team remained in Zambia through mid-September to observe the post-election period, which included observation of the Constitutional Court hearing of the petition challenging the election results. Because of the limited nature of its mission, the Carter Center observers did not assess election-day procedures. The mission's findings are evaluated against Zambia's national legal framework and international obligations for genuine democratic elections. All assessments were made in accordance with international standards for elections, and the observation mission was conducted in accordance with the Declaration of Principles for International Election Observation.