



European Union  
Election Follow-up Mission

# REPUBLIC OF ZAMBIA

Final Report



June 2019



**EUROPEAN UNION  
ELECTION FOLLOW-UP MISSION  
TO THE REPUBLIC OF ZAMBIA 2019**

**FINAL REPORT**

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## ACRONYMS

CCMG	Christian Churches Monitoring Group
CCZ	Council of Churches in Zambia
CSO	Civil Society Organisation
DNRPC	Department of National Registration, Passport and Citizenship
ECZ	Electoral Commission of Zambia
EFZ	Evangelical Fellowship of Zambia
EPA	Electoral Process Act
EU EFM	European Union Election Follow up Mission
EU EOM	European Union Election Observation Mission
FDD	Forum for Democracy and Development
FODEP	Foundation for Democratic Process
GEARS	Governance, Elections, Advocacy and Research Services
HRC	Human Rights Commission
IBA	Independent Broadcasting Authority
LAZ	Law Association of Zambia
MISA	Media Institute of Southern Africa
MoFA	Ministry of Foreign Affairs
MoHA	Ministry of Home Affairs
MoJ	Ministry of Justice
MMD	Movement for Multiparty Democracy
MP	Member of Parliament
NA	National Assembly
NDC	National Democratic Congress
NDF	National Dialogue Forum
NDSS	National Democracy Stakeholders Summit
NGOCC	Non-Governmental Organisation Coordinating Council for Gender and Development
PF	Patriotic Front
POA	Public Order Act
SACCORD - SADC	Southern African Centre for the Constructive Resolution of Disputes Southern African Development Community
TIZ	Transparency International Zambia
UN	United Nation
UNDP	United Nations Development Programme
UPND	United Party for National Development
ZAPD	Zambia Agency for Persons with Disabilities
ZCEA	Zambia Civic Education Association
ZCCB	Zambia Conference of Catholic Bishops
ZCID	Zambia Centre for Interparty Dialogue
ZLDC	Zambia Law Development Commission
ZNBC	Zambia National Broadcasting Corporation
ZNWL	Zambia National Women's Lobby

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***The Electoral Follow-up Mission is independent from the institutions of the European Union. The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy and position of the European Union.***

## 1 Executive Summary

An EU Election Follow-up Mission (EFM) was deployed from 27 May to 19 June in Zambia to assess, at the mid-term point in the electoral cycle, the status of implementation of the recommendations of the 2016 EU Election Observation Mission (EU EOM).

At the invitation of the authorities, the EU EOM assessed the electoral process in 2016 and concluded that the elections were highly competitive and prepared in a largely professional manner, while at the same time highlighting several areas where steps could be taken to enhance inclusivity and credibility in future. Both missions were led by Cecile Kyenge, Member of the European Parliament (MEP). The main weaknesses that were identified by the EU EOM had focused on certain areas of electoral management, the adjudication of disputes by the courts and aspects of voter education. The EOM had also identified limitations on the freedoms of assembly and expression during the campaign, bias of the state media and reported incidents of political violence. In the light of its assessment, the EU EOM offered 33 recommendations to improve the electoral framework, for consideration by national stakeholders and institutions.

After extensive consultations of electoral stakeholders during the high-level visit by MEP Kyenge, the experts attached to the 2019 EFM organized a technical roundtable on 14 June, gathering 38 participants from 32 institutions, civil society organisations (CSOs), religious organisations, political parties and personalities from across the political spectrum. Around 10 recommendations, those viewed by stakeholders as the most urgent and relevant for credible, inclusive and transparent elections in 2021, were discussed, with a focus on the challenges and opportunities for their implementation. Participants and stakeholders reiterated the continuing relevance of the EU EOM recommendations and the importance of their implementation ahead of the 2021 general elections.

The EFM found the environment in which electoral reform has taken place to be polarized, and that such polarization increasingly affects CSOs, media and political parties. Several stakeholders expressed their concerns at the lack of genuine dialogue between opposition and government. Some of the by-elections conducted since 2016 were characterized by electoral violence and allegations of malpractices.

In her preliminary conclusions, Cecile Kyenge emphasized: *“2021 is not so far away, and it is important to provide legal certainty to those managing, participating and voting in the elections: at the same time, this implies broad ownership of the electoral framework across society, to guarantee its successful implementation and acceptance of the outcome of the process. In line with the country's longstanding commitment to democracy and its current role under the Southern African Development Community (SADC), I want to reiterate our readiness to accompany Zambia to ensure the achievement of inclusive, credible and transparent elections”*.

As the EFM reached its conclusion, relevant draft legislation was published on 21 June and placed before Parliament on 3 July. Proposed legislative reforms are notably enshrined in three bills: one amending the Constitution, one amending the Electoral Process Act (EPA), and one repealing and replacing the Public Order Act (POA).

To avoid any prejudice to the ongoing parliamentary scrutiny and consideration of these proposals, this report seeks only to assess how far the new bills as they stand address issues covered in the recommendations of the 2016 EU EOM. More broadly, the report makes observations on the context and environment in which the proposed reforms are being considered.

The EFM noted that the proposed legislation put before Parliament has the potential to address some gaps and inconsistencies in the current legal framework as recommended by the EU EOM. The bills also remove most limitations to the right to vote and harmonize the relevant provisions. Further modifications to the draft legislation would still be possible while the bills go through Parliament and receive stakeholders' submissions. Such a review process could potentially lead to the adoption of reforms in line with EU EOM recommendations that would enhance the integrity of the electoral process, and also promote citizen participation in governance matters.

Key to a successful legal review will be the compliance of the reviewed legal framework with international standards and principles for credible, genuine, inclusive and transparent elections.

Freedom of assembly is closely related to both the letter and the application by the authorities of the Public Order Act, which has been contentious in previous general elections and remained so in subsequent by-elections. Clarification of the principle of notification instead of permission in the Public Order Bill 2019, and its translation into procedures, could result in progress in the implementation of the EOM recommendations. The Public Order Bill also introduces the possibility for the Minister of Home Affairs to issue Guidelines and Regulations for the implementation of the POA, which would have the potential to increase transparency and impartiality in the implementation of the POA as per the 2016 EU EOM recommendation. However, the proposed extension of the terms of Parliament and Council until election day in the Constitution Amendment Bill, coupled with an increased list of exemptions in the Public Order Bill, would arguably give a significant advantage to all incumbents in campaigning, with respect to non-elected candidates.

Three recommendations related to political parties functioning and to campaign finances were not implemented. The adoption of the Political Parties Bill would have been an important opportunity to enhance the integrity and transparency of the electoral process as per the 2016 EOM recommendations. A lot of consultation efforts had been deployed in the last two years to draft the Political Parties Bill, but it eventually was withdrawn from the draft bills put before the Parliament.

Some EU EOM recommendations also echo recommendations which were accepted by Zambia during its Universal Periodic Review process (3rd UPR, March 2018): these relate to freedom of expression and freedom of assembly, and include for example the de-penalisation of defamation of the President, the need to review the POA and to ensure the Police applies it impartially, and the need to reform the Zambia National Broadcasting Corporation (ZNBC) and the Independent Broadcasting authority (IBA) to enhance their independence.

The role of the Electoral Commission of Zambia (ECZ) is of course fundamental for successful elections. The ECZ identified 22 EU EOM recommendations addressing its independence, tasks and competencies, and gave positive consideration to, or partially addressed, a number of them. The ECZ has in particular the opportunity to improve several technical aspects of the process that do not require legal amendments, consistent with the ECZ General Election and Referendum Report of March 2018 and the subsequent Strategic Plan. The current amendment process of the EPA also still presents an opportunity to address a key issue on results transparency by prescribing that all results be published per polling station. Furthermore, future by-elections could be used to test conversion of polling stream into polling station, as well as to enhance efficiency in the results transmission as per the EOM recommendations. The ECZ could launch consultative meetings with stakeholders from the very start of any review process, particularly in the field of results management and related systems, and on fostering the recourse to mediation to resolve and prevent electoral conflicts.

Finally, during the EFM stakeholders' roundtable, the EU EOM recommendation related to civic education benefited from a large consensus. The adoption of a national civic education programme would allow a quick impact on citizen involvement in democracy. The contents of the programme

could be jointly defined by relevant stakeholders, such as the Ministry of Education, the ECZ and civil society organisations.

Overall, the EFM concludes that, out of the 33 recommendations of the Final report of the 2016 EOM report, 12 have not yet been implemented and, for eight other recommendations, activity is ongoing but implementation has yet to be confirmed. While only two recommendations are so far fully implemented (continuous efforts to ensure the inclusion of persons with disabilities, and increased stakeholder consultation and communication throughout the cycle), six are partially implemented (e.g. with regard to the legal review, the independence of the ECZ and its capacity to implement sanctions, civic and voter education and collaboration between the ECZ and agencies in charge of population registers). Five recommendations refer to activities that should be assessed closer to the next elections.

## 2 Mission Information

The 2016 EU Election Observation Mission (EU EOM) was led by Cecile Kyenge, Member of the European Parliament (MEP) and observed the four elections and a constitutional referendum held concurrently during a three-month period. The EU EOM was conducted at the invitation of the authorities to observe independently all aspects of the electoral process in 2016, to offer an impartial and balanced assessment based on the Zambian law as well as regional and international standards for elections. The EU EOM concluded that the elections were highly competitive and prepared in a largely professional manner while highlighting several areas where steps could be taken to enhance the inclusivity and credibility of elections in future. In its final report, the EU EOM offered 33 recommendations for consideration.

The EU Election Follow-up Mission (EFM) was deployed at a key moment, mid-term through the electoral cycle, the next general elections being due to take place in August 2021. The EFM was again led by the Chief of Mission Cecile Kyenge, MEP, who visited Zambia from 9 to 14 June 2019 (see Annex I). Two electoral experts arrived in Lusaka on 27 May, and remained in-country until 19 June 2019. The purpose of the EFM is to assess the continuous relevance of the EU EOM recommendations and the status of their implementation.

During this period, the EFM met with H.E. the Republican President of Zambia, the Speaker of Parliament, the Permanent Secretary of the Ministry of Foreign Affairs, the Minister of Justice, the Minister of Information and Broadcasting, the Minister of Home Affairs, the President of the Constitutional Court, and Hon. Justice members of the Supreme Court. Statutory independent bodies were also met e.g. the Electoral Commission of Zambia (ECZ), the Human Rights Commission (HRC), the Zambia National Broadcasting Corporation (ZNBC), the Independent Broadcasting Authority (IBA), the Zambian Law Development Commission (ZLDC). The EFM met several political parties and personalities, represented and not represented in Parliament, as well as a broad range of civil society organisations (CSOs) and representatives of the Church Mother Bodies.<sup>1</sup> The Zambia Centre for Inter-Party Dialogue (ZCID) and the Law Association of Zambia (LAZ) were also met. Finally, the EFM organized a roundtable on 14 June, gathering 38 participants from 32 institutions, CSOs, religious organisations, and political parties and personalities from across the political spectrum (see annex II). The EFM was welcomed and received positive feedback about the EU EOM, its findings and recommendations. In general, the EU EOM is seen as having made a significant contribution to the strengthening of the electoral process.

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<sup>1</sup> Caritas, the Christian Churches Monitoring Group (CCMG), the Non-Governmental Gender Organisations Coordination Council (NGOCC), the Foundation for Democratic Process (FODEP), the Southern African Centre for Constructive Resolution of Disputes (SACCORD), the Zambia Association for Persons with Disabilities, the Media Institute of Southern Africa (MISA), the Governance Elections, Advocacy and Research Services (GEARS), Transparency International Zambia (TIZ), BBC Media Action, the National Democratic Institute (NDI).



## **3 Political and Institutional Contexts since 2016 elections**

### **3.1 Political Context**

#### **a) Post-election Developments**

On 11 August 2016, the Republic of Zambia held its sixth general elections since the reintroduction of multi-party democracy in late 1990. Elections for President, Member of Parliament, Mayor and Council Chairperson, as well as local Councillor, were held concurrently with a referendum on repealing and replacing article 79 and incorporating an amended Bill of Rights into the Constitution. The presidential election granted a close victory to the incumbent President Edgar Chagwa Lungu of the Patriotic Front (PF) over the opposition's leading candidate, Hakainde Hichilema of the United Party for National Development (UPND). The UPND did not recognize the results of the presidential election. The lack of certainty stemming from the Constitutional Court handling of the presidential petition, the detention of Hakainde Hichilema on charges of treason from April to August 2017, and the temporary suspension of 48 opposition MPs for not attending the President's official opening of Parliament, all exacerbated political divisions.

The referendum failed to pass the required threshold. The legislative elections and consecutive by-elections resulted in a simple majority for the ruling party but so far short of an absolute majority.<sup>2</sup> Some of the by-elections<sup>3</sup> held since 2016 were marred by election violence and alleged malpractices.

Shortly after the 2016 elections the IBA ordered the suspension of the broadcasting licenses of Muvi TV, Komboni Radio and the Itezhi-Tezhi community radio. The Post newspaper, whose offices and printing facilities had been seized in June 2016 in a bid to recover an outstanding tax debt, had its properties auctioned in April 2017, while the case was being heard in the High Court.

#### **b) Initiatives to Promote a National Dialogue and Reconciliation**

Various initiatives were aimed at addressing the post-electoral situation. In August 2017, Commonwealth Secretary General Patricia Scotland visited the country and separately met President Lungu and opposition leader Hichilema, with the aim of fostering reconciliation through dialogue. Following the mission of the Commonwealth Secretary General, Hichilema was released from prison after 100 days in custody after a nolle prosequi application. Between September and December 2017 Professor Ibrahim Gambari, appointed by Patricia Scotland as her Special Envoy, started developing a framework to support Zambia's reconciliation and dialogue, as a result of broad stakeholder consultations. While this initiative was about to be officially launched, the Government of Zambia felt that the country's situation did not warrant an external facilitation but rather an internal one.

After lots of deliberations, all parties agreed that the dialogue would be chaired by the three Church Mother Bodies – Council of Churches in Zambia (CCZ), Evangelical Fellowship of Zambia (EFZ) and

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<sup>2</sup> The President made use of his prerogative of nominating a maximum of eight members of the National Assembly. Over the six parliamentary by-elections so far held, the UPND lost two seats to the PF, while the PF lost one seat to the newly founded National Democratic Congress (NDC). The PF currently has 87 members in Parliament. Due to the death of one UPND MP and awaiting the new by-election, the UPND currently has 55 members. Of the 156 directly elected seats in the National Assembly, in 2016 80 seats went to the PF, 58 seats to the UPND, three seats to the Movement for Multiparty Democracy (MMD), one seat to the Forum for Democracy and Development (FDD) and 14 seats to independent candidates

<sup>3</sup> In particular, heavily contested constituencies such as Sesheke or Roan.

Zambia Conference of Catholic Bishops (ZCCB) – and facilitated by the ZCID. In June 2018, political parties including UPND gathered in Siavonga for a two-day meeting under the auspices of the ZCID, adopting a series of resolutions on potential constitutional, institutional and electoral reforms.

After attempting to promote national dialogue throughout the post-election phase, the three Church Mother Bodies came together through a Framework for Dialogue and Reconciliation calling for a broad dialogue to be conducted over a two-year period. Consultations were conducted on proposed thematic areas from July to November 2018. A high level political party meeting was organised in December, followed by the official launch of the Dialogue and Reconciliation process in January 2019. Following the lack of participation by the ruling PF party at the launch, this process however stalled.

### **c) The National Dialogue Forum as a Legally Binding Consultation on Reform**

The Ministry of Justice (MoJ) took the initiative to set up a National Dialogue framework in the form of a legally binding process via the National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Act 2019, which was introduced in Parliament on 14 March and enacted on 10 April 2019. The Act established a National Dialogue Forum (NDF) “for the implementation and enhancement of the Siavonga resolutions”.

The NDF was set up to comprise all Members of Parliament (MPs), and members to be appointed by the Cabinet including representatives of all political parties, several CSOs, religious organisations, ministries, ECZ, statutory bodies, judiciary, customary chiefs. In addition, some individuals and organisations having made submissions in the legal review process were also listed as members.

The Act stipulated<sup>4</sup> that someone required to attend the NDF and absent from the meeting without reasonable excuse or permission, was liable to a fine or imprisonment for a term not exceeding six months if convicted. Out of 56 UPND MPs, only 14 reportedly registered to the NDF and in some cases later withdrew. The MPs absence was eventually not sanctioned under the National Dialogue Act, which prescribed its own repeal upon presentation of the draft bills to the MoJ.

Two of the three main Church Mother Bodies did not attend. On 21 May, 7 CSOs which had abstained from participating to the NDF issued a critical joint statement on its proceedings. A UPND MP filed a formal petition in court, seeking a declaration that some provisions of the Act were in violation of his constitutional rights and freedoms, contrary to the Constitution and therefore null and void. The petition was dismissed by the High Court on 12 May for lack of merit.

The NDF lasted a total 16 days between 25 April and 15 May 2019. There was live media coverage of the NDF plenary and its broad conclusions were shared through press statements. The NDF examination of the proposals stemming from the June 2018 Siavonga political parties meeting led to the adoption of 9 of the total 15 resolutions. The NDF adopted three draft bills: a draft Constitution of Zambia (Amendment) Bill, 2019, a draft Electoral Process (Amendment) Bill 2019 and a draft Public Order Bill 2019. On 21 June, after going to the MoJ and receiving Cabinet approval, the draft bills were published on the NDF website and in the government Gazette. On 3 July, the Public Order Bill and the Electoral Process (Amendment) Bill were presented by the Minister of Justice to Parliament. These three Bills also include a series of provisions that are however beyond the scope of this report. The NDF adopted some resolutions providing contents for a draft Electoral System Bill 2019, including, inter alia, a new mixed-member proportional representation, and the possibility of a coalition government. A draft Political Parties Bill 2019, also within the mandate of the NDF, did not go through the Plenary and was withdrawn.

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<sup>4</sup> Art. 17(2), National Dialogue (Constitution, Electoral Process, Public Order and Political Parties) Act 2019

The quorum for a meeting of the National Assembly is one third of the Members of Parliament.<sup>5</sup> An ordinary bill is voted by a majority of the members of Parliament present and voting.<sup>6</sup> Parts of the Constitution, other than those requiring a referendum (the Bill of Rights and art. 79), can be amended by a bill that should be first published in the Gazette, not less than thirty days before its first reading in the National Assembly. A bill to amend the Constitution needs to receive support of the votes of not less than two thirds of all the members of the Assembly, which equals to 112 members.<sup>7</sup>

### **3.2 Institutional Context**

Following the 2016 elections, a post-election review was conducted and the ECZ published a General Election and Referendum Report in March 2018, presenting good practices, challenges and a number of relevant recommendations. The Commission organised a number of stakeholders' meetings and public forums, and adopted a Strategic Plan 2018-2022.

In view of the government's intention to review the Constitution, in September 2017 the ECZ contracted three eminent lawyers to review the legal framework in order to identify gaps and make recommendations supporting harmonisation of the Constitution, the Electoral Process Act (EPA) and the ECZ Act.

Two ECZ commissioners were reportedly removed in February 2017, and replaced by two new commissioners appointed in April 2018, one of them taking the vacant role of ECZ Vice-Chairperson. In the course of 2017 some senior staff members resigned and the Commission's CEO left at the expiry of her contract. As the CEO and other senior staff positions became vacant shortly before the EFM, candidates were reportedly being selected.

Since 2016, the Commission has conducted six parliamentary by-elections (in Chilanga, Kasenengwa, Mangango, Sesheke, Roan and Bahati), 19 district by-elections (Mayor or Council Chairperson), and 78 ward by-elections (Councillor). A seventh parliamentary by-election in Katuba constituency and six more ward by-elections are scheduled to be held on 30 July 2019.

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<sup>5</sup> Art. 77(4) Constitution

<sup>6</sup> The Speaker of the Parliament is not directly elected by voters and does not hold a right to vote.

<sup>7</sup> As confirmed by the Speaker. Under the Constitution, Art.68, the National Assembly consists of 156 directly elected members, not more than eight nominated members, the Vice-President, the Speaker and the First and Second Deputy Speakers.

## 4 EU Actions on EOM Follow-up

Since the November 2016 return visit of the CO, the EU has taken an active stance in following-up and promoting the EU recommendations, at political as well as technical level. At political level, besides high level bilateral meetings with institutions such as the ECZ, the EU EOM recommendations form an integral part of the political dialogue between Zambia and the EU. Political dialogue is also a recurrent subject in EU Heads of Mission meetings with international partners.

At technical level, the EU has provided support to governance and elections in Zambia since 2006, particularly via a programme that ended in December 2018 supporting the 2016 elections as well as post-election activities. This programme was implemented through agreements with the British Council and the United Nations Development Programme (UNDP). In 2017, the project was reoriented taking the 2016 EU EOM recommendations as one of its baselines.<sup>8</sup> An EU-UNDP joint formulation mission for a future electoral assistance project was conducted in Lusaka in November 2018. The mission took place in the framework of the joint EC-UNDP “Sustaining peace through elections” initiative<sup>9</sup>.

The new EU “Democracy Strengthening in Zambia: Electoral Support 2019 – 2022” programme, currently under preparation, will take into full consideration the EU EOM recommendations. The specific objective of the project is to ensure improved transparency, legitimacy and credibility of the 2021 elections. A substantial part of this programme will be implemented via a UNDP-managed multi-donor Election basket fund and another part by CSOs engaging in domestic observation and voter education. The project will be accompanied, more broadly, by strengthened policy exchanges with the United Nations.

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<sup>8</sup> In particular recommendations 1, 2, 3, 4, 5, 6, 8, 11, 13, 14, 18, 19, 25, 28, 29, 32, and 33

<sup>9</sup> Initiative resulting from the EU-UNDP Global Conference; Brussels, 8 – 10 October 2018.

## 5 Implementation Status of EOM Recommendations

The 2016 EU EOM concluded that the general elections in Zambia were highly competitive and prepared in a largely professional manner, and highlighted some areas for improvement. Recommendations were offered with regard to the legal framework; the right to stand; freedom of assembly; the role of the Police; electoral offences, sanctions and powers of the ECZ; obligations and accountability of political parties and campaign finance; independence and transparency of the ECZ; constituency boundaries; voter registration; polling and counting procedures; results transmission and publication; civic education; use of state resources; freedom of expression; the right to effective remedy; participation of women and persons with disabilities.

The EU EFM conducted a systematic and participatory review of all the 33 EU EOM recommendations, whose findings are presented in this section.

### 5.1 EU EOM Recommendations on the Legal Framework

#### - To Review and Reform the 2016 Legal Framework for Elections<sup>10</sup>

The legal framework for the 2016 general elections was substantially changed shortly before the elections. Extensive amendments were made to the Constitution in January 2016; the EPA and ECZ Act only entered into force in June 2016, two months before election day. The EU EOM noted that the late introduction of these revisions, contrary to best international practice, meant that the legal framework was unfamiliar to many electoral stakeholders and resulted in a number of unclear provisions, gaps, and contradictions. The EU EOM first priority recommendation was therefore to conduct a detailed review of the electoral legal framework - primarily the Constitution, the EPA and the ECZ Act - aimed at ensuring consistency and increasing legal certainty.

After the 2016 elections, many institutions such as the ECZ, the Zambia Police Force and the Human Rights Commission, as well as CSOs, conducted lessons learned exercises which included reviews, in parts or in total, of the legal framework. In its General Election and Referendum Report published in March 2018, the ECZ recommended that electoral laws should be amended not less than one year before the election date.

Two reports can be cited here that are particularly relevant. The first one, "Gap analysis of electoral laws (the Constitution, the EPA and the ECZ Act)" was initiated after the ECZ identified some legal gaps and drafted recommendations to contribute to the government's intended review of the Constitution. The Gap Analysis was commissioned by the ECZ to three prominent Zambian legal experts. It was finalised in November 2017, then submitted to the MoJ by the ECZ and later to the NDF.<sup>11</sup> The second one was the "Report on the legislative audit for constitutional conformity" of 2017, as the result of an in-depth research conducted by the ZLDC with the support of the EU and of GIZ<sup>12</sup>. Its objective was to identify areas of the law requiring reform following the 2016 Constitutional amendments, with a specific focus on human rights and governance.

Despite general acknowledgement that legal adjustments were necessary, the process of amending the Constitution has been a source of contention between the opposition, who wanted it to be part

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<sup>10</sup> Recommendation 1

<sup>11</sup> Justice (Rtd) Mathew Ngulube Dr. Ernest M. Beele and Mrs. Doris Mwinga. Available at: <https://www.ndf.gov.zm/wp-content/uploads/2019/05/FINAL-GAP-ANALYSIS-NOV-2017-revised.pdf>.

<sup>12</sup> Under the Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED)

of a broader and mediated dialogue process, and the government. In March 2018, the Minister of Justice presented to Parliament a roadmap to amend the Constitution, inviting stakeholders to submit contributions, with the aim of having a bill ready to be tabled in Parliament in June 2018. While some organisations submitted reports,<sup>13</sup> the process was lacking broad consultation. Following concerns by stakeholders the constitutional review was halted, to be later included on the agenda of the 2nd NDSS held by the ZCID in May 2018.<sup>14</sup> Constitutional and institutional reforms were further and importantly agreed during the June 2018 Siavonga political parties meeting.<sup>15</sup> In April 2019 the National Dialogue Act established the NDF, by including a Constitution refinement process, the regulation of political parties, a new Public Order Act 2019, and electoral process reforms among its purposes.

With regard to the EU EOM recommendation, some of the provisions of the draft bills adopted by the NDF seemingly address gaps and inconsistencies in the current laws<sup>16</sup> although the legal framework could benefit from a more systematic scrutiny in that regard.<sup>17</sup> Following the NDF and Cabinet approval, the draft EPA Amendment Bill 2019 was introduced in Parliament on 3 July along with the draft Public Order Bill, while the Draft Constitution Amendment Bill 2019 was gazetted on 21 June. Therefore, the law review process was still ongoing in Zambia at the time of the EFM and, importantly, stakeholder submissions were expected once the bills would be assigned to the relevant parliamentary committee.

The other piece of legislation referred to by the EU EOM recommendation, the ECZ Act 2016, was reviewed prior to and outside the scope of the NDF. Following review at the MoJ, which also took into account elements of the Gap Analysis Report, the ECZ Amendment Act was tabled in Parliament, received submissions from stakeholders before the Committee on Legal Affairs on 21 February and was enacted in April 2019. Also for the ECZ Amendment Act 2019, at least some inconsistencies were seemingly addressed<sup>18</sup>.

The EFM concludes that the first step of the first priority recommendation has been addressed and the second step (“redraft unclear, ambiguous and conflicting provisions in order to ensure consistency and increase legal certainty”) might be addressed once the legal review process is concluded; key will be the compliance of the reviewed legal framework with international standards and principles for credible, genuine, inclusive and transparent elections. Importantly, as Cecile Kyenge emphasized in her preliminary conclusions: “In her preliminary conclusions, Cecile Kyenge emphasized: *“2021 is not so far away, and it is important to provide legal certainty to those managing, participating and voting in the elections: at the same time, this implies broad ownership of the electoral framework across society, to guarantee its successful implementation and acceptance of the outcome of the process. In line with the country’s longstanding commitment to democracy and its current role under the Southern African Development Community (SADC), I want to reiterate our*

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<sup>13</sup> E.g. the Law Association of Zambia

<sup>14</sup> Where the delegates agreed that “there would be need for Government to avail the draft refined Constitution to key stakeholders including ZCID, or similar public platforms in order for it to become a point of reference and debate.” The NDSS also agreed to have the public input process come to an end by July 2018. - <https://www.ndf.gov.zm/wp-content/uploads/2019/05/ndss-ZAMBIA-CENTRE.pdf>

<sup>15</sup> Attended by the Secretaries General of political parties.

<sup>16</sup> Primarily by eliminating resignation of a candidate from among the grounds for cancelling of elections; harmonising constitutional and EPA provisions on restrictions to the right to the vote, specifying that “hearing” of petitions also includes their determination; clarifying the notion of juristic person.

<sup>17</sup> For instance, in the sense of introducing a clear timeframe for petitioning the election of an MP, or by introducing provisions on publication of results,

<sup>18</sup> Primarily by specifying the ECZ responsibility to manage the process rather than supervise it; reducing the quorum of members present at meetings from five to three; increasing the frequency of meetings. For other aspects of the ECZ Amendment Act 2019, see *infra*, Election Administration section.

*readiness to accompany Zambia to ensure the achievement of inclusive, credible and transparent elections”.*<sup>19</sup>

- **Freedom of Assembly and the Public Order Act**<sup>20</sup>

The EU EOM noted that the legal framework offers a good basis for the conduct of genuine elections, and generally provides for freedoms of assembly, movement, expression and association, in line with Zambia’s international and regional commitments.

However, the EU EOM noted that both the provisions and the application of the Public Order Act unreasonably restricted freedom of assembly at the benefit of the incumbent party. A priority recommendation of the EU EOM called on removing overly restrictive limitations of freedom of assembly in the POA, clearly defining the grounds for the Zambia Police Force to impose conditions and restrictions, and narrowing their geographic scope. The EU EOM further recommended to shorten the notice period and to respect the principle of notification as opposed to permission, in accordance with the May 2016 judgment of the Supreme Court. Within the context of Zambia's third Universal Periodic Review Process in 2017-2018, six countries made a similar recommendation, which Zambia accepted.<sup>21</sup>

The EFM found a general consensus that the POA is outdated<sup>22</sup> and contentious both in its provisions as in its application, and that it needs to be reformed, with some stakeholders arguing it should be repealed completely. The Supreme Court decision of May 2016 stated that the right to assembly cannot be denied and offered some guidelines for the Zambia Police Force.<sup>23</sup> The EFM found that the Police continued being accused of partiality in regard to public gatherings in the period following the 2016 elections and during by-elections campaigns. The procedure of notification of a public gathering itself lacked clarity and in its application, continued to be mistaken with an authorisation request.

There have been intense talks on reforming the POA since 2016. In 2017-2018, the MoJ and ZLDC held stakeholders’ consultations both at national and provincial level, involving CSOs, political parties and the Zambia Police Force itself. An entirely new draft Public Order Bill 2019 was later discussed and adopted at the NDF, to repeal and replace the current POA. In its memorandum, the draft bill is presented in a positive light “to provide for the enjoyment of the right of freedom of assembly”<sup>24</sup> and further in the bill, the provision on the powers of officers<sup>25</sup> insists for the first time on their role “to protect the right to (fundamental) freedoms”. Among the new provisions, some noticeable ones seem to be in line with the EU recommendation: the scope of what constitutes a public gathering is better defined (by excluding gatherings in private places and internal meetings of political parties and unions); the timeline to submit the (still compulsory) notification is reduced from 7 to 5 days before the event and the permission is replaced by an obligation for the Police to “acknowledge receipt” of the notification within two days;<sup>26</sup> there is an obligation for the Police to justify a potential refusal; a deadline has been introduced for the Police to notify a refusal (at least 48 hours before the event); and, in case of refusal, an obligation for the Police to propose an alternative

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<sup>19</sup> Zambia is part to the African Charter on Democracy, Governance and Elections, which, in its article 10 (2) calls for: “State Parties shall ensure that the process of amendment or revision of their Constitution reposes on national consensus, obtained if need be, through referendum.”

<sup>20</sup> Recommendation 3

<sup>21</sup> Canada, France, Finland, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland.

<sup>22</sup> The POA, which regulates assemblies, dates back to 1955, with some more recent amendments.

<sup>23</sup> In May 2016, shortly before the elections, in a landmark decision, the Supreme Court stated that, whereas the POA is not in contradiction with the Constitution, the Act does not adequately reflect the spirit, purport and object of the Constitution, e.g. the POA did not provide for the Police to give alternative arrangements, nor was it specific enough for the reasons upon which the Police could deny a public gathering.

<sup>24</sup> In comparison with the 1955 Public Act, presented as « An Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order.”

<sup>25</sup> Section 11.

<sup>26</sup> If the political party does not receive an acknowledgement within those two days, the gathering is deemed to be allowed.

date/place. The possibility to appeal the decision of the Police, to the Minister first and later to the High Court, is also foreseen.

However, the draft Public Order Bill 2019 does not narrow the geographic scope for restrictions, which was part of the EU EOM recommendation, and might represent a serious shortcoming. Also, the Police seem to be granted a considerable level of discretion in restricting public gatherings<sup>27</sup>, as well as in evaluating the special circumstances under which a shorter deadline for notice may be authorized.<sup>28</sup>

Importantly, the draft Public Order Bill 2019 broadens the list of persons exempted from the obligation to notify the Police prior to an event. The current POA already exempts the President, Vice-President, Ministers, Speaker and Deputy-Speakers of Parliament from its application - exemptions which have proven contentious in past elections, since in the application of the law, when someone from this list is campaigning, all authorized campaign events are suspended in the same area, whose delimitation is at the discretion of the Police and typically rather extensive. The duration of suspension of other gatherings is also left to Police discretion. Stakeholders met by the EFM reported that this practice continued to heavily hamper campaign in subsequent by-elections, sometimes leading to violent incidents.<sup>29</sup>

The draft Public Order Bill 2019<sup>30</sup> extends the exemption to MPs, Mayors, Council Chairpersons and Councillors, and to public officers in the performance of government functions. Whilst the spirit of such extended exemptions is reportedly to grant the same advantage to all elected political actors, its implementation modality is not foreseen and may prove de facto complicated - the general principle for managing notifications for multiple gatherings at the same time and same place being "first requested, first granted".<sup>31</sup> While the bill does foresee that those exemptions do not apply where Parliament is dissolved in accordance with the Constitution, the Constitution Amendment Bill 2019<sup>32</sup> prescribes that Parliament (as well as local Councils) would no longer stand dissolved 90 days before the elections, as currently the case, but only on the date of the election. MPs and Ministers, as well as Mayors, Council Chairpersons and Councillors, would thus keep their mandate for the duration of the campaign, and be exempted from the obligations of the POA. Modifying the parliamentary term, together with increasing the list of POA exemptions, would give an important advantage to all incumbents in campaigning, against non-elected candidates.

The bill introduces the possibility for the Minister of Home Affairs to make Guidelines and Regulations for the implementation of the POA. Those would be of paramount importance for imparting transparency, clarity and impartiality to the implementation of the POA. In particular, the management of the exemption cases and the discretionary powers of the Police should be regulated, inter alia to protect Police officers from undue influence. The application of article 6 on the notification process should translate into procedures that very clearly distance the notification from a request of authorisation. Political will remain crucial for guaranteeing respect for fundamental

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<sup>27</sup> E.g. Art. 7: An authorised officer may restrict the holding of a public gathering where the authorised officer reasonably believes that the public gathering is likely to (...) 7. d) "give rise to the commission of an offence under any written law";

<sup>28</sup> Art. 5.(3): "Despite subsection(1), an authorised officer may accept a notice of not less than two days where five days' notice is impracticable."

<sup>29</sup> During the campaign for the Sesheke by-elections, in January 2019, Police forces dissolved an allowed opposition political rally by the use of disproportionate force (tear gas, reported use of live ammunition). The reason given was the presence of the President in the same district, at a distance of 30 to 40 km.

<sup>30</sup> Art.4

<sup>31</sup> Art.8 (1) "Where an authorised officer receives a notice to hold a public gathering from more than one person seeking to hold a public gathering at the same place and at the same time, the authorised officer shall facilitate the holding of multiple concurrent public gatherings or allocate an alternative place for the holding of one or more of the public gatherings where it is not practicable to hold multiple concurrent public gatherings. (2) An authorised officer shall ensure that priority is given to the first notice of the public gathering received.

<sup>32</sup> Constitution of Zambia Amendment Bill 2019, Art. 81.(1) "The term of Parliament shall be five years commencing from the date that the Members of Parliament are sworn into office after a general election and ending on the date of the next general election."



freedoms in the implementation of the POA. For this reason, the EFM considers that activity is ongoing to reach the implementation of this recommendation, but implementation has not yet been confirmed.

- **The Minimum Education Requirement.**<sup>33</sup>

The 2016 amendment to the Constitution introduced a new eligibility requirement that candidates to all elected positions must have the minimum academic qualification of a complete secondary education, attested by a Grade 12 certificate or its equivalent. While the value of having educated representatives is recognised by many Zambians, such a requirement limits the right of citizens to stand for election and thereby limits the choice afforded to voters, especially when it comes to prospective candidates from rural areas and to female candidates. The EU EOM recommended removing the minimum education qualification requirement, seen as an unnecessary restriction on the right to stand.

The EFM found that CSOs, and some small parties complained about this requirement, which, in conjunction with registration fees, restricts ability to field candidates. However this constitutional provision was not modified during the NDF process and the EFM found that there was intention to address this recommendation at the moment.<sup>34</sup> The EFM however still considers the recommendation as relevant, as it is in line with Zambia's international commitments to democratic elections.<sup>35</sup>

## **5.2 Recommendation on Boundary Delimitation**<sup>36</sup>

Under the Constitution<sup>37</sup>, the ECZ is responsible for reviewing names and boundaries of constituencies and wards at intervals of no more than ten years. The Commission must seek to achieve approximate equality of constituency population, while taking into account history, diversity, population density, means of communication and geographical features. A 2011 ECZ Constituency Delimitation Report, recommending an increase from 150 to 235 constituencies, was not acted upon as the required constitutional amendment failed to pass in Parliament. The Commission undertook further, limited, delimitation exercises in 2014 and 2016.

Zambia comprises 10 provinces, 1,624 wards and, following the Constitution Amendment Act 2016, 156 parliamentary constituencies. More than 30 new districts were established across the country since 2010 (the last seven were declared by President Lungu in April 2018), thereby bringing the overall number to 116 districts. Under the Constitution, the Commission must also ensure that constituencies and wards are wholly within districts.

Observing large discrepancies between size of constituencies and severe under-representation of densely populated areas, the EU EOM 2016 recommended that a review of constituency boundaries be undertaken to ensure that constituencies better reflect population distribution, thus contributing to greater equality of the vote. Based on census projections of adult population<sup>38</sup>, the ECZ undertook preparations for a new boundary delimitation exercise to be conducted from June to November

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<sup>33</sup> Recommendation 2

<sup>34</sup> Zambian stakeholders often refer to the fact that the Grade 12 requirement is an outcome of the intensive deliberations of the National Constitution Commission, which led to its inclusion in the 2016 Constitutional Amendment.

<sup>35</sup> Art. 25 (a) ICCPR: "the right to take part in public affairs(...) through freely chosen representatives". See General Comment 25 Para. 15 'Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education (...)'

Also, see SADC Principles and Guidelines Governing Democratic Elections, 4.1.7: "Guarantee an environment of open contest with no undue exclusion and restrictions on (...) the right of eligible and qualified citizens to stand as candidates in any election".

<sup>36</sup> Recommendation n. 12

<sup>37</sup> Art. 58

<sup>38</sup> From the Central Statistical Office, indicating that the adult population in Zambia has grown from 7.5 million in 2016 to approximately 8.3 million in 2019

2019. Despite financial constraints, the required budget allocation was approved by Parliament in June 2019. Transparency was listed by the Commission as a founding principle for the exercise. Meetings with traditional chiefs, political parties, CSOs and MPs were held throughout June 2019, and stakeholder sittings were foreseen at district and provincial level. Some CSO groups expressed interest in observing the entire operation.

The ECZ indicated that the delimitation exercise addresses a need to ensuring that all new districts comprise at least one constituency, as well as realigning the boundaries of wards and constituencies affected by the creation of new districts. The exercise aims at establishing new polling stations and relocating some existing ones. The 2011 delimitation report is being used as a baseline, as recommended by the EOM. Among the purposes of the exercise the Commission cited enhancing representation, although the extent to which the new delimitation will contribute to greater equality of the vote will have to be measured on actual outcomes. The ECZ expects to be able to submit a report on delimitation in the first quarter of 2020 for government approval.

### 5.3 Recommendations on Election Administration

#### - Confidence in the EMB's Independence<sup>39</sup>

The ECZ, established by article 229 of the Constitution and the ECZ Act, is an autonomous, permanent electoral management body composed of a Chairperson, a Vice-Chairperson and three other full-time members. All members are appointed by the President and ratified by the National Assembly for a seven-year term, renewable once.

The EU EOM proposed revising appointment procedures of ECZ members, providing security of tenure and ensuring financial independence of the Commission to increase stakeholders' confidence. The EOM recommendation is partially implemented under the ECZ Amendment Act of April 2019. The President's approval is no longer necessary for the Commission to invest those funds not immediately required for its functions<sup>40</sup>, thus potentially enabling the ECZ to implement some of its activities without waiting for funding from the Treasury, and enhancing its financial independence. Security of tenure is also increased, as the President may only remove Commission members on grounds of incompetence or gross misconduct. The Commission had recommended, via the Gap Analysis, that removal be subject to the findings of an ad hoc tribunal confirming the grounds. In the ECZ Amendment Act 2019<sup>41</sup>, nonetheless, it remains at the discretion of the President whether to refer the matter to the Chief Justice, so that a tribunal is appointed to conduct an investigation, hear and determine the question of removal.

The Gap Analysis suggestion that the ECZ adopts its own specific oath of office, rather than having Commissioners take an oath to bear allegiance to the President, and the proposal that the Commission submits reports to the National Assembly rather than to the President were not reflected in the revised law, which seemed a missed opportunity. Meanwhile, a proposed constitutional amendment<sup>42</sup> specifically prescribes that the ECZ shall be independent.

Reviewing appointment procedures of commissioners was among the resolutions adopted at the Siavonga meeting of political parties in June 2018. The Gap Analysis, which also included consulting national and regional legislation for best practices<sup>43</sup>, made no recommendation towards strengthening appointment procedures. While qualifications required for Chairperson and Vice-Chairperson were lowered in the ECZ Amendment Act 2019, appointment procedures of ECZ members remained unchanged.

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<sup>39</sup> Recommendation 7

<sup>40</sup> ECZ Amendment Act 2019, Section 5 providing amendments to Section 14 (4) of the principal Act

<sup>41</sup> ECZ Amendment Act 2019, Section 3 providing amendments to Section 5 (8),(9),(10),(11),(12),(13),(14) of the principal Act

<sup>42</sup> Draft Constitution Amendment Bill 2019, new art. 219

<sup>43</sup> Examples in the Region include gazetting vacancy of office of EMB members and establishing selection committees or panels tasked with shortlisting and interviewing candidates prior to their appointment.

- **Management of the electoral process**<sup>44</sup>

The ECZ does not have decentralised structures. Town Clerks and district Council Secretaries are temporarily appointed District Electoral Officers (DEO) and requested to coordinate the elections at district level, appoint Returning Officers (RO) in each constituency on behalf of the ECZ, and supervise the recruitment of polling staff. Article 229 of the Constitution provides for the ECZ to have offices in provinces and "progressively" in districts. A Commission plan, foreseeing gradual establishment of provincial offices between 2018 and 2020, was put on hold by the Treasury due to financial constraints.

When calling on the ECZ to exert greater direct management over the electoral process, the EU EOM recommended that a roster of credible, trained professionals be established at national and district level, from which to appoint DEOs and ROs as ECZ staff for the duration of the electoral process. The ECZ did not refer to possible implementation of this specific measure, which the EFM views as relevant.

- **The ECZ duties and powers with regard to the enforcement of the EPA and electoral Code of Conduct**<sup>45</sup>

The late changes to the electoral legal framework in 2016 imposed on the Commission the duty to ensure that legally convened campaign events are not disrupted, state resources are not used for campaign purposes and Police act impartially, while also conferring some administrative powers of enforcement. EU EOM recommendations suggested that the ECZ more actively pursue its duty of enforcement of the electoral Code of Conduct embedded in the EPA, and make full use of its powers. Some interlocutors of the EFM also argued that if the Commission resolved more disputes administratively, this would reduce the recourse to slower judicial avenues.

The EOM considered enhanced oversight of the public media as a priority, suggesting the ECZ could establish a specialised branch to handle campaign coverage complaints. The EFM found that the Commission did not consider this particular recommendation.

The EOM recommended that a broader range of sanctions be introduced, to provide the ECZ with greater latitude to respond to violations of the electoral Code of Conduct. At the same time the 10-day campaign suspension, ordered by the ECZ in July 2016 in two districts following attacks and clashes between Police and party supporters, was considered by the EU EOM as a disproportionate response taken without clear legal authority. It was further recommended that grounds and procedures for disqualification of a candidate or party be precisely defined, limited to the gravest violations and appealable to a court. The Electoral Process Amendment Bill 2019, as adopted by the NDF and later published on 21 June 2019, stipulates that the Commission can (a) suspend political campaigns (b) impose a monetary penalty on a candidate or political party or (c) disqualify a candidate or political party from an election, and that the decision of the Commission can be appealed to the Constitutional Court with a definite timeline. The ECZ stated that the Gap Analysis of November 2017 had taken into account some of the EOM recommendations by suggesting such system, and that the Commission powers would both be expanded and graduated by means of the proposed EPA amendments. While the proposed formulation seem to implement the EU EOM recommendation to a certain extent, the EFM finds that a proportionate fine or monetary penalty is a much lesser sanction than a campaign suspension; therefore fines should be clearly placed as first resort sanctions in the ongoing EPA amendment process. The ECZ maintained that in any case, campaign suspension could only be used sparingly, after carefully weighting the gravity of the offense and for a reasonable period of time, to avoid disenfranchisement. The EFM encourages this approach to be strictly adhered to.

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<sup>44</sup> Recommendation 8

<sup>45</sup> Recommendations 4, 5, 11, 29

It was further recommended by the EOM to increase coordination between the ECZ and Police, as a way to achieve more effective and unbiased policing and prevent political violence. In 2016 political parties typically relied on their activists to ensure event security rather than on the Police, while Police interpretation of geographical scope of events placed unnecessary restrictions on the right to campaign. The EFM was informed that these issues had been considered in a 2017 Police lessons learned workshop and resulted in recommendations, possibly to be developed as part of an action plan. The ECZ also mentioned the introduction of trainings on electoral management and process at Police training schools, starting with the new recruits in 2019. Several interlocutors of the EFM still referred to a need for increased coordination between the ECZ and Police under the EPA provisions.

- **Enhancement of public awareness and confidence**<sup>46</sup>

During the 2016 electoral process, after an initial lack of responsiveness the ECZ was seen to progressively introduce measures to increase transparency and build public confidence. In terms of communication the Commission made great efforts in 2016, although at time lacking consistency, as was the case with regard to communicating the timeframe and details of publication of results. The EU EOM recommended an increase of communication and of clear, timely and updated information.

Communication can be essential to confidence building, provided it is structured, comprehensive and clear to the public and the media. Further structuring communication and strengthening the public relation section of the ECZ would contribute to confidence building. At the time of the EFM, the ECZ was recruiting a Social Media Specialist, to “increase the Commission’s online presence to improve stakeholder engagement and communication efforts”. The Commission’s Facebook page was seen to be constantly updated, and the ECZ to be responsive to users’ comments. These good practices would need to be consistently sustained at general elections time.

The EU EOM also stressed the importance to increase stakeholder consultations throughout the electoral cycle - rather than just at election time - to enhance participation and confidence in the process. At the same time, the EFM learned that the ECZ had adopted a plan for increased consultations with stakeholders, based on which public forums were conducted in all provinces in the course of 2018. The Commission also held a national Open Day event, youth conference and meetings with traditional leaders, CSOs, political parties, Police, private sector and faith based organisations. At the time of the mission, a Political Party Liaison Committee meeting was held on the delimitation exercise and on by-elections, followed by a CSO meeting. The EFM concludes that the ECZ has so far positively increased stakeholder consultation efforts throughout the cycle, thus implementing the recommendation. Further genuine consultations are encouraged from the onset of each segment of the process.

## **5.4 Recommendations on the Right to Vote and Voter Registration**

- **The Right to Vote**

The EU EOM found the Constitution of Zambia to be in line with international principles of universal suffrage and inclusiveness when prescribing unlimited franchise for citizens to be registered and vote. The EU EOM also noted that contrary to the Constitution, the EPA specifies categories of disqualified persons including those suffering from mental disability and those in detention, thereby limiting the right to vote. In a judgment of 2017, the Constitutional Court held that provisions in the EPA prohibiting prisoners from voting or registering to vote are unconstitutional. The ECZ Gap Analysis also highlighted those inconsistencies.

While no specific EU EOM recommendation directly addresses the right to vote, the inconsistency between the Constitution and EPA provisions falls under the scope of the first priority recommendation on legal review suggesting amending the electoral laws. In the draft bills adopted at the NDF, the limitations to the right to vote are mostly removed and the provisions harmonized.

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<sup>46</sup> Recommendation 11

As per the Constitution Amendment Bill 2019<sup>47</sup> mental or physical disabilities are no longer a ground for disqualification, unless someone is “legally disqualified” by a court or quasi-judicial body established by law, and the same applies in the EPA Amendment Bill 2019<sup>48</sup> with regard to possible restrictions on voter registration. Furthermore, in the EPA Amendment Bill 2019 all current restrictions of the right to vote and register for citizens in detentions are lifted. The possibility for Zambians abroad to register and vote is also catered for. In its Strategic Plan 2018-2022, the ECZ foresees the establishment of registration centres and polling stations in correctional facilities. The EFM welcomes these developments.

- **Voter Registration**<sup>49</sup>

The EU EOM recommended that in the long run, the voter register could be extracted from a national population register, once the Department of National Registration, Passport and Citizenship (DNRPC) of the MoHA established a continuous, accurate and complete biometric population register. It was also recommended that all national institutions mandated with managing population data more effectively collaborate and exchange information with the ECZ.

In its 2018 General Election and Referendum Report, the ECZ cited inadequate coordination between the DNRPC and the ECZ among the challenges affecting the mobile voter registration exercise of 2016, leading to some areas not being visited in the right sequence by the two institutions thus potentially disenfranchising some voters. The ECZ therein encouraged further coordination with the DNRPC. Furthermore, the Commission pointed at inadequate mechanisms to remove deceased voters from the register, and recommended that information on the deceased be provided via public local structures and traditional leaders, and used as a basis to update the register.

The ECZ confirmed to have signed memorandums with institutions such as the DNRPC and the National Pension Scheme Authority (NAPSA) to ensure compatibility of databases and information sharing. As the EFM learned at the MoHA, once NRC numbers started to be recorded on deceased certificates in 2016, the ECZ requested the DNRPC to share lists of deceased on a monthly basis. The DNRPC had also convened the ECZ, NAPSA and the Zambia Revenue Authority (ZRA) to meetings to advance plans for the Integrated National Registration Information System (INRIS), and some ECZ registration kits were borrowed by the MoHA for possible use in biometric civil registration pilot exercises. However the INRIS, whose design started back in 2009, will certainly not be achieved by 2021. It was further suggested to the EFM that a civil register and a new National Identity Card (NIC) could possibly be set in place by 2026, provided they were regarded as a national priority. Conducting voter registration based on a comprehensive and continuous civil register and linking national databases remains, therefore, a forward-looking plan.

The Commission informed the EFM to be preparing for a new mobile voter registration exercise in 2020, following the new boundary delimitation and once polling stations location and number are revised.

The EU EOM also recommended that the ECZ ensures access to the final voter register and final polling station list to political parties and CSOs well in advance of the elections. In 2011, the voter register was certified seven weeks before the general elections, whereas in 2016 the register was only certified 11 days prior to election day. The difference was due to the Commission’s decision, in 2016, to open voter registration to those who would turn 18 on 31 July (i.e. 11 days before election day). The decision, and its purpose to increase youth participation, were commendable and ought to be maintained as good practice. However, the possibility to certify the register even before all registered voters have turned 18 should be explored in 2021, to ensure earlier release of the register,

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<sup>47</sup> Draft Constitution of Zambia Amendment Bill 2019, sec. 29, 30, 37, 48, 62, 76.

<sup>48</sup> Draft Electoral Process Amendment Bill 2019, Sec. 9: “The Commission shall not register a person as a voter if that person – (a) is not a citizen; (b) is not in possession of a national registration card; and (c) is legally disqualified”

<sup>49</sup> Recommendations 14, 15

allow stakeholders to plan their activities and increase public confidence. Although no initiative has been undertaken so far, the recommendation remains relevant.

## **5.5 Recommendations on Polling, Counting and Results<sup>50</sup>**

In its 2016 final report, the EU EOM stated that the ECZ prepared for the elections in a largely professional manner and generally demonstrated competence in conducting key electoral operations, with the heavy burden of simultaneously organising four elections and a constitutional referendum. The electoral calendar was respected throughout. However, some areas requiring improvement were highlighted, principally related to issues with the results management system, the inconsistent publication of results, as well as some level of restriction on the right to observe the entire electoral process.

In 2016 about a third of all polling stations were subdivided into several (between 2 and 13) polling streams. The counting was conducted at each stream and results were subsequently consolidated at polling station level. The subdivision of polling stations into polling streams is not based on laws or regulations, implies a lack of transparency since only polling station results are posted, adds time and complexity to results compilation and increases both fatigue and risk of computational errors. A priority recommendation was made that the polling streams should no longer be used, but only polling stations.

In the view of the EFM, the suggested conversion should in principle not involve a logistical or financial burden, given that transport of forms and materials could still be organised collectively per polling centre, under the responsibility of a presiding officer or polling centre supervisor.

The ECZ recommended converting polling streams into polling stations in its 2018 General Elections and Referendum Report, to enhance efficiency in the counting process and results transmission. While the conversion has so far not been applied in subsequent by-elections, the Commission confirmed its determination to the EFM, and mentioned to be exploring conversion modalities taking into account a possible transition to electronic results transmission from polling stations rather than constituency totalling centres. It seems very likely that the recommendation will be implemented during the 2021 general elections.

In 2016 for the first time, representatives of the presidential candidates were permitted to participate in the verification of national results in a dedicated results verification room set up within the national results centre. In its 2018 General Elections and Referendum Report, the ECZ noted that the involvement of political parties in the verification of presidential results had indeed added to the transparency of the process. Given that such involvement also delayed the announcement of results to some extent, the same Report recommended that the level of involvement of political parties in the national results verification process be “revised”. In conversations with the EFM, the Commission also referred to being in the process of generally reviewing policies. Whatever review might be envisaged, the EFM would like to emphasize the paramount importance of associating candidate representatives to all stages of results management, to enhance transparency, accountability and confidence in the process.

While allowing candidates representatives in 2016, the ECZ did not grant access to the same national verification of results to observers, which according to the EU EOM would have increased transparency and trust. It was therefore recommended that access to the verification stage of the national tallying of results be granted to domestic monitors and international observers. As indicated to the EFM, the ECZ continues to explore the merits and demerits of expanding access to this

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<sup>50</sup> Recommendations 9,10, 20, 21, 22, 23, 24

important stage of results management to monitors and observers, and in doing so is looking at other EMBs and at best practices in the SADC Region.

Meanwhile, the ECZ 2018 General Elections and Referendum Report listed the witnessing of results at totalling centres by party agents, monitors, observers and media as a success and a good practice.

Regulations prescribed in 2016 that the voter card number be recorded on the ballot counterfoil. The EU EOM suggested ceasing this practice, which could possibly compromise secrecy of the vote since a unique serial number is printed on both the ballot and counterfoil. According to the ECZ, the practice does not compromise the secrecy of the vote and is instead a positive feature offering a guarantee against double voting, allowing to account for every ballot and providing evidence in case of petitions. It is entirely unlikely that this recommendation will be implemented, as the current practice is seen as a safeguard to the integrity of elections.

Based on some inadequacies in the counting and results tabulation process, attention was drawn by the EOM to the need to provide specific results management training, simplify results forms and possibly provide extra staff to avoid errors due to exhaustion. During the by-elections in 2017 and 2018, the ECZ reportedly started to improve the results forms. As indicated to the EFM, the Commission is currently in the process of reviewing the training policy and recruitment criteria for all elections staff, as well as reviewing forms in order to make them simpler and more user-friendly.

It was also recommended that standardized and transparent procedures be introduced to address polling station results forms found to be incomplete or inconsistent at the totalling centre. In 2016, upon arrival at a totalling centre, results from polling station forms were entered in an electronic results management system (RMS), which only accepted forms if complete and arithmetically correct. This validation rule, while intended as a safeguard, caused a number of results forms to be finalised at the totalling centres by overly fatigued presiding officers. The Commission argued that a procedure aimed at correcting or completing a form at a totalling centre would become controversial, even when standardised and transparent. In the ECZ view, the conversion of polling streams into polling stations will however greatly assist with ensuring correctness of results forms.

The EU EOM noticed that there are no legal requirements for publication of results in Zambia, apart from the obligation of posting results forms outside polling stations. Following past practice, the ECZ published results in 2016 per polling station for the presidential elections on its official website. Regretfully, results were temporarily removed without explanation, to be later restored. Parliamentary results were initially published per constituency and polling station, then removed and only partially restored the next day, this time at constituency level only. It was proposed by the EOM that the ECZ publishes individual polling station results for all elections in a timely manner, possibly alongside scanned polling station results forms.

For subsequent parliamentary and local by-elections, the results were published on the ECZ website as aggregated per constituency and ward respectively, still not providing the polling station breakdown.

Similar to what suggested in the ECZ Gap Analysis, the Electoral Process Amendment Bill 2019 provides that the Commission shall, by statutory instrument, prescribe the manner and form of counting, tallying, tabulating and transmitting of election results. The new provision does not appear to refer to publication of results. It is the EFM's view that the current amendment process of the EPA still presents an opportunity to prescribe that all results be published per polling station, thus introducing greater transparency and building confidence in the electoral process with regard to the crucial element of results publication. Furthermore the ECZ could use its regulatory powers to cater for adequate provisions on the matter, as well as review its current policy. While no progress has been made towards implementation of this recommendation so far, the time ahead of the 2021 elections still offers ample opportunities.

The EU EOM proposed that the ECZ considers conducting an analysis of the anomalies in turnout and votes cast in constituencies deviating from the national average. In some constituencies, there was a substantial difference between parliamentary turnout and presidential turnout at the same polling station, despite the fact that most voters cast all five ballots. A nationwide voter turnout survey was commissioned and completed in September 2018, whose report is still not public. There has not been any progress to date on tackling the specific issue brought about by this recommendation.

The recommendations of the EU EOM included proposals for the results management system (RMS) to be assessed for accuracy, timeliness and transparency, and for a revised RMS operational plan to be introduced. The recommendation needs to be read in combination with the one calling for enhanced stakeholder consultation, since early stakeholder engagement and the way technology is planned, prepared and managed are crucial for electoral integrity and confidence. The EFM offers the view that considering international best practices, an RMS operational plan could include lessons learned of the previous exercise, options to be considered, specifications as to standard operation procedures and resources needed, as well as a specific timeline outlining the various steps required to verify results before releasing them. All information should be shared with the wider public to manage unrealistic expectations and enhance confidence in the RMS.

The 2018 General Elections and Referendum Report of the ECZ suggested conducting a review of the RMS to incorporate the conversion of polling streams into polling stations, explore transmission of results from polling stations, provide projectors in all collation centres, and explore connectivity solutions. As stated to the EFM, the Commission has started conducting reviews of the RMS. For progress to be made towards the fulfilment of this recommendation, the EFM holds the view that an RMS review process would need to be publicly launched and given a broad scope.

## **5.6 Recommendations on Political Parties Activities and Campaign funding<sup>51</sup>**

To date political parties register under, and are governed by, the 1957 Societies Act, which does not prescribe any unreasonable restrictions on their registration and functioning, but also does not provide a framework for relationship between the Government and parties, or provisions on party finances.<sup>52</sup> Whilst the 2016 amendment of the Constitution had introduced, in its article 60, duties and obligations of political parties, registration, regulation, funding and accountability, those new provisions were not operationalized in prescribed legislation prior to the 2016 elections. Consequently, the EU EOM recommended to introduce new legislation on parties functioning and on campaign finances.<sup>53</sup>

In April 2017 Cabinet approved the principle to introduce a bill in Parliament to govern public funding for political parties and the regulation of campaign financing, and to provide for matters connected to the foregoing. The MoJ therefore started to draft a Political Parties Bill. In August 2017, the MoJ launched a process of stakeholder engagement on the development of the Political Parties Bill, which opened up the draft bill for public scrutiny by a cross section of stakeholders including political parties, CSOs and Government institutions.

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<sup>51</sup> Recommendations 6, 17,18,19

<sup>52</sup> Zambia is part to the 2003 UNCAC, and since 2007 has acceded to the African Union Convention on Preventing and Combating Corruption.

<sup>53</sup> 1) Introduce statutory provisions that provide a suitable set of obligations, governed by principles of accountability and transparency, for the registration and regulation of political parties. Regulation of political parties should specifically address the role and conduct of party members and cadres.

2) The ban on use of state resources for campaign purposes should be more effectively Policed, and the exclusion from the prohibition for the president and vice-president narrowed. A moratorium on ceremonial openings of public works projects by the president and vice-president for the period of the official campaign would also provide for a clearer distinction between party and state.

3) Campaign finance accounting mechanisms should be operationalized to provide clear monitoring and transparency in both campaign funding and expenses. Ceilings on expenditure for parties and candidates should be introduced.



In September 2017, the Ministry of Justice and the ZLDC held a National Stakeholders Consultative Forum, aimed at providing a platform for all stakeholders to make final submissions on the draft Political Parties Bill. In March 2018, the ZLDC submitted its report on the process, including recommendations on the draft Political Parties Bill, to the MoJ.<sup>54</sup> The EFM was informed that the bill was then ready to be tabled at Parliament. However, it was not until May 2019, with the establishment of the NDF, that the draft bill was again considered. Among the salient provisions of the draft bill were (1) the appointment of a Board (nominated by the President and subject to Parliament ratification) supported by a registrar, (2) the function of the Board to register and regulate political parties and manage a fund dedicated to finance parties, based on their proportional representation at Parliament. However, the draft bill proposed at the NDF did not take on board the recommendation of the September 2017 Forum on the distribution system of the Fund.<sup>55</sup>

During the NDF, article 60 of the Constitution was proposed for modification, therefore the legislation to operationalize provisions on parties funding, accountability and functioning would no longer be needed.<sup>56</sup> The draft bill was consequently withdrawn from the NDF agenda, surprisingly so since enactment of the Political Parties Bill was among the Siavonga Resolutions which the NDF had a legal mandate to implement. Further, the draft Constitutional Amendment Bill has removed relevant provisions under Article 60 on political party funding, increased transparency and expenditure ceiling. This represented a missed opportunity and a step backwards from the intent and purport of article 60 of the Constitution Amendment 2016.

While the Gap Analysis included references to international standards regarding limiting public resources being utilized by public officials in the electoral campaign, and suggested constitutional amendments, these aspects were not taken on board. Also, the EPA Amendment Bill 2019 did not introduce any change, compared to the current EPA, to the advantages granted to the President and the Vice-President while campaigning, and the use of state resources remained under-regulated.

In conclusion, the EU EOM recommendations remain unaddressed. The EFM was informed by the MoJ that a “Political Parties Code of Conduct Act” could be foreseen, that would regulate parties in between elections.<sup>57</sup> Other interlocutors still thought that a Political Parties Bill would be desirable.

The EU EOM also made a recommendation on the need to train political parties’ agents, particularly on their functions and responsibilities during the counting process. The EFM found that this recommendation does not receive much support from most parties, whose main difficulty and concern is to recruit and pay their agents.

## **5.7 Recommendations on the Freedom of Expression and the Media<sup>58</sup>**

The EU EOM offered four recommendations directly targeting the media and freedom of expression, relating to independence of the ZNBC, independence and powers of the IBA, decriminalisation of defamation of the President, and identification of paid airtime by the media. The media landscape in Zambia is diverse, yet polarized. The national State broadcaster ZNBC covers the whole territory with three TV and three radio stations; the private and community-based sector is vivid and dynamic, with 46 TV and 137 radio stations. The EU EOM reported that state-owned media lack impartiality and are perceived by the public as pro-government. This perception was confirmed by EFM interlocutors.

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<sup>54</sup> ZLDC received the support of the European Union and of UNDP to that end.

<sup>55</sup> Stakeholders suggested that the funds should be shared equally among all the political parties with seats in Parliament. See ZLDC “Report on Political Parties Bill” available at <https://www.zldc.org.zm/index.php/reports?folder=Research%2Breports>

<sup>56</sup> Stakeholders met by the EFM mentioned that the Constitution draft amendment bill was discussed in Plenary - where article 60 was proposed for modification - before the Political Parties Bill was discussed, making it potentially obsolete to adopt legislation on political parties.

<sup>57</sup> The 2016 amended EPA already includes a similar code of conduct during elections’ times.

<sup>58</sup> Recommendations 27,28,30,31

Polarisation of the media, in favour or against the government and to the detriment of professional journalism, was also widely reported to the EFM.

Aware of the need for enhanced professionalism and improved role of the media in providing fair and balanced coverage, the media unanimously agreed in May 2019 to adopt a self-regulatory framework, to be created by an Act of Parliament.

Freedom of expression ratings in Zambia are declining, with internet freedom being assessed as “partly free”, and the press “not free” in the 2018 Freedom House rating. The score declined compared to last year’s, as social media users increasingly faced legal penalties in retaliation for remarks critical of the government. The EFM heard reports of journalists and stations being harassed, sometimes violently; in June 2018 journalists were beaten up during the Chilanga by-elections by suspected UPND cadres; on 30 April 2019 cadres from the PF stormed Power FM radio station in Kabwe; on 1 May 2019 PF cadres stopped a programme from Radio Maria station in Chapata.

Although the Constitution guarantees freedom of expression, the Penal Code retains clauses on prohibited publications by the President (section 53) and defamation of the President (section 69) with disproportionate sanctions, inconsistent with international standards protecting freedom of expression. In combination with laws such as the State Security Act, the present environment induces self-censorship and limits freedom of speech.

One important recommendation from the EU EOM, shared by two countries during the third UPR process, was to de-penalise defamation of the President. There is a growing trend in Africa, as elsewhere, to de-penalise defamation, while it is increasingly admitted that public figures should allow a higher level of criticism and that penalties should be proportionate to the offense. The African Court on Human and People’s Rights sent a landmark signal in this direction in December 2014 in the case opposing a journalist v. Burkina Faso. However, EFM interlocutors did not express much optimism regarding this issue as there are still a number of cases of people being arrested, sent to court and sentenced to imprisonment, sometimes for up to six years, under section 69 of the Penal Code. Whereas there is an on-going reform of the Penal code under the auspices of the MoHA and MoJ, regrettably, sections 69 and 53 are reportedly not contemplated. The EFM can only reiterate the importance of implementing this recommendation, whose principle have been supported by the Zambian authorities during the third UPR, ahead of the 2021 elections.

Two EU EOM recommendations specifically targeted the enhancement of independence from government of the IBA, responsible for overseeing all private electronic media, and of the ZNBC, the national, state-owned, public broadcaster. The governance structure of ZNBC leaves the organization highly vulnerable to government interference and undue political pressure. The ZNBC and IBA are regulated under different Acts of Parliament, and the IBA authority does not extend to ZNBC. The IBA manages the licensing of all private electronic media, with the exception of the internet. In March 2019, the IBA temporarily suspended the license of Prime TV, a decision followed by relevant statements by the EU and the US. The EU EOM had recommended that the IBA power to suspend or cancel licenses be repealed.

The EFM was informed that the IBA is considering a legal reform of its Act, and has submitted a proposal to the Ministry of Information including the possibility for the IBA to regulate the ZNBC, and to reform the nomination process of the IBA board, making it more independent and possibly aligning with the EU EOM recommendations.

In May 2019, the IBA issued a directive asking all radio and television stations in the country to submit their broadcast recordings every two weeks. Although this decision can find legal grounds in the IBA (Amendment) Act of 2010, it is widely perceived as a non-necessary burden on small stations which may not have the adequate logistics to record, store and send to Lusaka their last fifteen days

of broadcasting.<sup>59</sup> Furthermore, in the current context of perceived narrowing political space of private media, this decision could be interpreted as a further attempt to control private radio and TV.

It is too early within the electoral cycle to implement the last EU EOM recommendation on media, as it suggests a practice of clearly identifying paid airtime or party-sponsored slots during election times. The EFM reiterates the relevance of this recommendation.

### **5.8 Recommendations on Civic and Voter Education<sup>60</sup>**

A priority recommendation was made on the importance to provide continuous civic education throughout the electoral cycle, also cited as a key issue in Zambia by several EFM interlocutors in relation to the inadequate participation of citizens in the governance processes of the country.

The EOM further suggested that voter education campaigns be extended till election day, supported by CSOs and inclusive of special programs. Concerning the timeline the ECZ, responsible for arranging delivery of voter education, explained that activities on the ground (although not media campaigns) needed to be halted two weeks before elections to avoid political manipulation and ensure safety of personnel.

The EFM learned that the ECZ had approached the Ministry of Education to promote the inclusion of voter education content as part of the school curricula. The Commission had also set up School Clubs in all provinces and aimed at increasing their number, although reaching all districts remained a far goal since resources were inadequate. New knowledge hubs had also been set up, where students were invited to attend sessions. Lastly, the draft Electoral Process Amendment Bill 2019 provides for the Commission to publish the election timetable in a newspaper of nationwide circulation, in addition to the publication in the Gazette.

The ECZ called for a more active role of CSOs in voter education and civic education, while in turn some CSOs referred to a need for resources. Some interlocutors expressed concern on space to operate in relation to the requirements of the Public Order Act, and suggested that CSOs and the ECZ engage with the Police at an early stage.

### **5.9 Recommendation on the Participation of Women<sup>61</sup>**

The 2016 Constitutional Amendment provided for the electoral system to ensure gender equity in the National Assembly and local councils, but no specific measures to achieve this were prescribed in the legislation. Twenty-six women were elected in Parliament, seventeen per cent of total MPs. Given educational and financial constraints, women are especially affected by requirements to hold a Grade 12 certificate and pay high nomination fees. The EU EOM also noted that female candidates received minimal media coverage during the campaign. In 2017 Zambia ranked 144 out of 189 countries with a Gender Inequality index of 0.517.

The EU EOM recommendation to enhance women's participation in political life called on the political parties to apply affirmative action in terms of integrating women into party structures and selecting them as candidates. Whilst this recommendation has not been acted upon, the NDF has taken steps to broaden the number of women elected. The draft Constitution Amendment Bill 2019 prescribes a mixed-member proportional system for elections to the National Assembly, expected to promote representation of women, youth and differently-abled citizens. The provision refers to a law, possibly a future Electoral System Bill, to determine how the mixed-member representation would function in practice.

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<sup>59</sup> This amounts to all discussion programmes, talk shows, news bulletins and news analysis, and musical programmes.

<sup>60</sup> Recommendation 13

<sup>61</sup> Recommendation 33

However, the draft Constitution Amendment Bill includes a new obligation for public officers wanting to run for office to resign at least two years ahead of elections, which might potentially bear negative consequences on women's participation as candidates. The EFM would recommend further evaluating the possible impact of this decision on women's participation.

### **5.10 Recommendation on the Participation of Persons with Disabilities<sup>62</sup>**

The EU EOM made one recommendation for the ECZ to continue its efforts to improve the accessibility of the electoral process to persons with disabilities (PWD). The ECZ has continued to consult PWD organisations, e.g. through the voter education committee, the voter turnout survey initiative in 2018, and the 2016 elections lessons learnt process. The ECZ informed the EFM that efforts are made on a continuous basis to ensure the inclusion of PWD, notably in adapting polling stations with ramps and in recruiting PWD polling staff when possible. Further, the effective use of the tactile ballot folders will be targeted in future trainings of polling staff. The EFM considers that this recommendation is implemented and calls for the ECZ to continue its efforts. However, the EFM was informed that PWD face difficulties to receive a National Register Card, which de facto impedes the registration of PWD as voter.

### **5.11 Recommendation on Electoral Justice<sup>63</sup>**

The EOM drew attention on the need to enhance effective remedy, proposing that the rules and procedures for complaints for local, parliamentary and presidential elections be clarified, including the rules on which courts have jurisdiction. A contradiction between provisions of the 2016 amended Constitution and those of the Bill of Rights resulted in a lack of clarity as to whether original jurisdiction to hear petitions concerning human rights violations rests with the High Court or the Constitutional Court. The EFM found that the contradiction still remains.

Some interlocutors of the EFM expressed the view that the legal framework clearly defines competences of each court on electoral disputes. The Constitutional Court has jurisdiction on presidential election petitions, and its decisions are final. The High Court has jurisdiction on the National Assembly election petitions, and its decisions can be appealed to the Constitutional Court. Local Government Elections Tribunals have jurisdiction on Mayor, Council Chairperson and Councillor election petitions, and their decisions can be appealed to the Constitutional Court. To note, in the draft Constitution Amendment Bill 2019 all provisions on procedures for petitions handling by Local Government Elections Tribunals were repealed.

Regarding timelines, the High Court and Local Government Elections Tribunals have respectively 90 and 30 days to hear petitions challenging the election of an MP or the election of a Mayor, Council Chairperson or Councillor, from their filing. No term is prescribed for the Constitutional Court to decide on appeals against the decisions of the High Court or Local Government Elections Tribunals. Following the 2016 elections, 37 petitions on parliamentary elections and 11 petitions on local government elections were appealed to the Constitutional Court. Most petitions were resolved in the two years following the elections, and the last one only in January 2019. The ECZ Gap Analysis maintained that no process should be left open ended. Furthermore, it highlighted that no timeline is provided in the Constitution for lodging a petition against an MP election. The EFM holds the view, that the current constitutional review still presents opportunities to harmonize timelines.

The same EOM recommendation also referred to Conflict Management Committees (CMCs), suggesting that their competencies and procedures be better defined. CMCs, established by the ECZ at district and national level, are meant to mediate and settle minor disputes and electoral conflicts. However, the EOM noted that these bodies were often called upon to deal with criminal or administrative issues outside their mediation mandate, lacked defined procedures and had limited

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<sup>62</sup> Recommendation 32

<sup>63</sup> Recommendation 25, 26

transparency. In 2018, in an effort to streamline the operations of CMCs, the ECZ issued new policy guidelines regulating their composition as well as qualifications, exclusions and tenure of members, and some elements of procedures. The guidelines make reference to a Conflict Management Guide, as well as the possibility for CMC chairpersons to appoint mediation teams and lead mediators for particular complaints or matters. Also, the EFM learned that the ECZ recently invited the HRC and LAZ to be part of the national CMC for the next three years. The mediation role of the CMCs, and their potential to dispel electoral conflict, could be further put to the test in future by-elections. Furthermore, all mediation tools including the Conflict Management Guide would likely benefit from wide dissemination.

EU EOM recommendations further suggested that the current provisions for two types of presidential election petitions be clarified and harmonized. The EFM found that a distinction is made to some extent, in the Constitution Amendment Act 2019, between a petition on the initial ballot and a petition on the second ballot with regard to the presidential election. Also a chronological sequencing is provided. However, the proposed amendments restrict the right to petition to “losing candidates” whereas currently it is granted to all. The change would not be in line with international standards.

The same recommendation refers to the need to clarify rules and procedures of the Constitutional Court in deciding presidential petitions, particularly with respect to preliminary matters, which should be allocated less time to be heard to allow sufficient time for substantive petition issues. In 2016, the UPND presidential petition was eventually dismissed on procedural grounds, without any evidence being heard, after most of the 14 days timeline was spent dealing with preliminary issues.

More clarity was arguably provided by implementing some relevant suggestions from the Gap Analysis. Thereby, in the Constitution Amendment Bill 2019 all provisions relating to a court “hearing” matters or petitions were changed to “hearing and determining”. Furthermore, the timeline to hear “and determine” presidential petitions was brought from 14 to 30 days in the Constitution Amendment Bill 2019. It could be noted that the Constitutional Court expressed its concern to the EFM, that even 30 days would not be adequate time since the system is adversary. Preliminary matters could not be curtailed, and the risk of lacking time for substantive petition issues may therefore repeat itself in the future. In the view of the Court, there is a need to amend the rules of procedure.

## 6 Conclusions and short-term actions

After extensive consultations of electoral stakeholders, the EFM assessed the status of implementation of the EU EOM recommendations and highlighted options on how they could be further addressed.

The EFM concludes that all 33 recommendations are still relevant, two recommendations are fully implemented, six are partially implemented, for 8 other recommendations, an activity is ongoing but the implementation has yet to be confirmed and 12 have not yet been implemented. Five recommendations refer to activities that should be assessed closer to elections (see further details in Annex III).

Since the 2016 general elections, political divisions in Zambia have been growing and repeated attempts at political dialogue and reconciliation have not been conducive. However, the advancement of electoral reform was receiving great attention at the time of the EFM. Mid-way through the electoral cycle, Zambia has engaged in a legal review whose consultative character and potential to address EU EOM recommendations might further be enhanced.

Overall, the EFM found that the proposed legislation put before Parliament during the EFM has the potential to address a key recommendation of the EOM on generally addressing gaps and inconsistencies in the current legal framework. The bills also remove most limitations to the right to vote and harmonize the relevant provisions.

The implementation of the EOM recommendations related to freedom of assembly could result in progress with the clarification of the principle of notification instead of permission in the current Public Order Bill 2019, and its translation into procedures through Guidelines and Regulations. However, the proposed extension of Parliament and Council term until election day in the Constitution Amendment Bill, coupled with an increased list of exemptions in the Public Order Bill, would give a significant advantage to all incumbents in campaigning, against non-elected candidates.

Further steps in the implementation of the recommendations could further enhance the integrity of the electoral process and would still be possible while the bills go through Parliament and receive stakeholders' submissions. Key to a successful legal review will be the compliance of the reviewed legal framework with international standards and principles for credible, genuine, inclusive and transparent elections. The Public Order Bill introduces also the possibility for the Minister of Home Affairs to make Guidelines and Regulations for the implementation of the POA. Those would be of paramount importance for imparting transparency, clarity and impartiality to the implementation of the POA as per the 2016 recommendations.

Several provisions of the Constitution Amendment Bill 2019 refer to primary legislation or statutory instruments to further prescribe modalities. Based on best international practice on the need to ensure consistency of legislation and increase legal certainty, and as also recommended by the ECZ in its General Election and Referendum Report of March 2018, any law prescribed as a result of the current review should be passed in due time, and ideally no later than 12 months prior to elections. At the same time, adequate consultation should be conducted on the matter of any such legislation.

The adoption of the Political Parties Bill would have been an important opportunity to enhance the integrity and transparency of the electoral process as per the 2016 EOM recommendation. A lot of efforts had been deployed in the last two years, and the Bill was ready to be introduced in Parliament before the NDF. There would still be time before 2021 to reconvene dialogue around this issue.

While the Zambian government is considering reforms in the Media sector, those will need to be aligned with best standards and practice on freedom of expression, in particular in the electronic and social media fields. There is a growing trend in Africa, as elsewhere, to de-penalise defamation of the President, while it is increasingly admitted that public figures should allow a higher level of criticism and that penalties should be proportionate to the offense. Since this principle has been supported by the Zambian authorities during the third UPR, its implementation would be welcomed ahead of the 2021 elections.

Civic education appears to be widely recognised as a priority in Zambia. The adoption of a national civic education programme could be considered, whose contents could be jointly defined by relevant stakeholders, such as the Ministry of Education, the ECZ and the CSOs.

To better address key recommendations, The ECZ could launch consultative reviews, particularly in the field of result management and related systems, and on fostering the recourse to mediation to resolve and prevent electoral conflicts. CSOs and political parties, as well as other stakeholders, could ideally be granted an opportunity to articulate their views from the very start of any review process.

The ECZ has the opportunity to improve several technical aspects of the process, in line with the EU EOM recommendations, that do not require legal amendments. This would be consistent with the ECZ General Election and Referendum Report of March 2018 and the Strategic Plan. These improvements would increase transparency, especially in polling procedures. Each subsequent by-election presents an opportunity to test conversion of polling streams into polling stations, as well as enhance efficiency in the results transmission.

At election time, public confidence could be greatly enhanced by ensuring timely publication of full polling station results for all levels of elections. Despite this not being included in the bill as introduced in Parliament on 3 July 2019, the current amendment process of the EPA could present an opportunity to prescribe that all results be published per polling station, as per the relevant EU EOM recommendation, thus introducing greater transparency in the electoral process with regard to the crucial element of results publication. Furthermore the ECZ could use its regulatory powers to cater for adequate provisions on the matter, as well as review its current policy. While no progress has been made towards implementation of this recommendation so far, the time ahead of the 2021 elections still offers ample opportunities.

It is recommended that the best practice of associating candidate representatives to all stages of results management, to enhance transparency, accountability and confidence in the process, be maintained. Besides, observers and monitors should be granted access as per EU EOM recommendations.

Further structuring communication and strengthening the public relation section of the ECZ would contribute to confidence building. The current good communication practices of the Commission would need to be consistently sustained at general elections time and in the post-election period.



**EUROPEAN UNION  
ELECTORAL FOLLOW UP MISSION  
ZAMBIA – 2019**

**PRESS RELEASE**

**FRIDAY 14 JUNE 2019**

**EUROPEAN UNION ELECTION FOLLOW-UP MISSION TO ZAMBIA**

The Electoral Follow-up Mission (EFM) of the European Union (EU) has concluded its visit to the Republic of Zambia. The EFM was led by Mrs. Cecile Kyenge, Member of the European Parliament, supported by two electoral experts and two EU officials.

Mrs Kyenge served as the Chief Observer of the EU Electoral Observation Mission (EOM) to Zambia in 2016, which was established following an invitation from the Government of Zambia. The mandate of the mission was to observe independently all aspects of the electoral process and to offer an impartial, balanced and informed recommendations based on the Zambian law, as well as regional and international standards for elections.

The principal objective of the 2019 EFM to Zambia was to assess the continuous relevance and status of implementation of EU EOM recommendations. During her stay in Zambia, from 9 to 14 June 2019, Mrs Kyenge, met and exchanged with a wide range of national stakeholders.

Mrs. Kyenge set out her preliminary findings in Lusaka this morning, following a technical round table discussion: *“I want to express my appreciation for the availability and openness of all those we met, which testifies to the timeliness of this EFM. I welcome the continued commitment of Zambian stakeholders to implementation of the recommendations of the EU EOM report on the 2016 elections.*

*2021 is not so far away, and it is important to provide legal certainty to those managing, participating and voting in the elections: at the same time, this implies broad ownership of the electoral framework across society, to guarantee its successful implementation. I want to reiterate our readiness to accompany Zambia to ensure the achievement of inclusive, credible and transparent elections and a further deepening of democracy.”*

A comprehensive EFM Final Report will be published in the next months. The EU Election Observation and its Follow-up Mission operate in accordance with the “Declaration of Principles for International Election Observation” adopted in 2005 at the United Nations.





**EUROPEAN UNION  
ELECTION FOLLOW UP MISSION  
Zambia – 2019**

***Invitation***

***ROUNDTABLE DISCUSSIONS WITH ELECTION STAKEHOLDERS  
ON THE 2016 EU ELECTION OBSERVATION MISSION'S RECOMMENDATIONS***

Ms Cecile Kyenge, Chief Observer of the 2016 European Union Election Observation Mission (EU EOM) to Zambia and Chief of Mission of the EU Election Follow-up Mission, kindly invites you to participate to a roundtable discussion, to be held on **Friday 14 June from 8.30 am – 12.30 at the hotel Intercontinental, Lusaka.**

The aim of the roundtable is to bring together key national stakeholders to discuss the implementation of recommendations on the electoral process, in order to contribute to its strengthening.

Registration will be at 8.30 am and will be followed by an initial presentation about the Election Follow-up Mission and the recommendations of the EU EOM 2016. Participants will be invited to exchange views on priority areas for improvement, within the EU EOM recommendations, that could benefit the 2021 elections.

Your participation, or the participation of the person you would nominate for this event within your organization, will be most welcome. For technical reasons, the participation of each organization is limited to one person.

## Annex III: List of Stakeholders attending the EFM Roundtable

14 June

Intercontinental Hotel

8.30 – 13.00

		<b>Organisation</b>	<b>Name</b>
1	EMB	Electoral Commission of Zambia (ECZ)	Commissioner – Emeline Sikazwe
2	EMB	ECZ	Operations Manager ICT- Memory Mwamba
3	EMB	ECZ	Director ICT - Dylan Kasonde
4	EMB	ECZ	Manager Voter Education – Emma Mwiinga
5	EMB	ECZ	Acting CEO/Legal Counsel/ Commission Secretary – Bob M Musenga
6	CSO	Non-Governmental Organisation Coordinating Council for Gender and Development (NGOCC)	Executive Director- Engwase Mwale
7	CSO	CARITAS ZAMBIA	Director - Eugene Kabilika
8	CSO	Christian Churches Monitoring Group (CCMG)	Peter Munangombe
9	CSO	Southern African Centre for the Constructive Resolution of Disputes (SACCORD)	Director - Boniface Cheembe
10	CSO	Governance, Elections, Advocacy and Research Services (GEARS)	Director - Macdonald Chipenzi
11	CSO	Zambia Conference of Catholic Bishops (ZCCB)	Secretary General – Father Cleophas Lungu
12	CSO	Transparency International Zambia (TIZ)	Martin Matabishi
13	CSO	Zambia Center for Inter-Party Dialogue (ZCID)	Sophie Kaoma
14	CSO	Foundation for Democratic Process (FODEP)	President - Mwenda M. Mumbuna
15	CSO	Zambia Agency for Persons with Disabilities (ZAPD)	Programmes Officer - John M Kinuna
16	CSO	Chikondi Foundation	President - Bishop John Mambo
17	CSO	Zambian National Women's Lobby (ZNWL)	Programmes Manager – Golden Nachibinga
18	CSO	Operation Young Vote (OYV)	President - Fresa Moonde
19	CSO	Action Aid Zambia	Programmes Officer - Jeston Lunda
20	CSO	Zambia Civic Education Association	Director - Judith Mulenga
21	CSO	Civil Society for Poverty Reduction (CSPR)	Executive Director – Kryticous P.Nshindano
22	Statutory body	Zambia Law Development Commission (ZLDC)	Director - Hope Chanda
23	Statutory body	Law Association of Zambia (LAZ)	President - Eddie Mweetwa
24	Statutory body	Independent Broadcasting Authority (IBA)	Leah Komakoma Kabanda

25	PP	Patriotic Front (PF)	Vice Chairman Elections Lazarous H Chota
26	PP	United Party for National Development (UPND)	Chairperson Elections Hon Garry Nkombo
27	PP	Movement for Multiparty Democracy (MMD)	Secretary General - Hon Raphael Nakacinda
28	PP	Forum for Democracy and Development (FFD)	Levi Kafuli
29	PP	Democratic Party (DP)	Secretary General – Precious Ntambu
30	PP	Patriots for Economic Progress (PeP)	President - Sean Tembo
31	Govt.	Ministry of Foreign Affairs	Constance Chiwende
32	Govt.	Ministry of Foreign Affairs	Deliwe Mumbi
33	Govt.	Ministry of Justice	Director of Governance – Kalimbika Charm
34	Govt.	Ministry of Home Affairs	Deputy Director Dept. of National Registration - Martin Nyahoda
35	Govt.	Ministry of Home Affairs	Senior Assistant Comm. Police Election taskforce - Nawa Alfred
36	Govt.	Ministry of Information and Broadcasting	Grace Kasungami
37	Public media	Zambia National Broadcasting Corporation (ZNBC)	Director of Programmes – Grivazio Zulu

## Annex VI: Matrix on the Implementation Status of EOM Recommendations

Category	Description
1	No change
2	Action or activity is ongoing but implementation of the recommendation has not yet been confirmed
3	Partial implementation of recommendation
4	Full implementation of recommendation
5	Too early in electoral cycle to determine
6	Recommendation is no longer relevant

This matrix provides an overview of the status of implementation of the 2016 EU EOM recommendations for easier reference by the relevant authorities and stakeholders. The matrix indicates broad level of implementation as assessed by the EFM and should be read in conjunction with the narrative of the report for a more detailed feedback.

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
1	2016	<i>Conduct a detailed review of the electoral legal framework and redraft unclear, ambiguous and conflicting provisions in order to ensure consistency and increase legal certainty.</i>	Legal Framework	3 Partial implementation of recommendation	<ul style="list-style-type: none"> <li>• Partial implementation of recommendation</li> <li>• There have been different reviews of the legal framework in the past two years, to date, only one act, the ECZ Amendment Act 2019, partially addresses this recommendation. At the time of drafting, some bills were presented to Parliament while the Constitutional Amendment Bill was published in the government gazette.</li> </ul>
2	2016	<i>Remove the unnecessary restriction, prescribed by the Constitution, of the right to stand, the minimum education qualification requirement.</i>	Legal Framework	1 No change	<ul style="list-style-type: none"> <li>• No action has been taken to implement this recommendation.</li> <li>• There is no intention to address this recommendation at the moment.</li> </ul>
3	2016	<i>Remove overly restrictive limitations of freedom of assembly in the Public Order Act. In order to limit the possibility of arbitrary restrictions during the election campaign, clearly define the grounds for the police to impose conditions and to restrict assemblies, and narrow the geographic scope of any such restrictions. Shorten the notice period required for public campaign events, and respect the principle of notification as opposed to permission in accordance with the May 2016 judgment of the Supreme Court.</i>	Legal Framework	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>• Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>• A Public Order Bill 2019 was presented to Parliament on 3 July; some provisions of the bill, if enacted, would aim at improved freedom of assembly.</li> <li>• In particular, grounds to restrict assemblies are more defined, the notice period has been reduced from 7 to 5 days, and the principle of notice vs permission is more clearly formulated.</li> <li>• The implementation of the POA Act will be key; the future Regulations and Guidelines enacted by the MoHA will play a paramount role in the implementation of the POA.</li> <li>• Political will remains crucial for guaranteeing respect for fundamental freedoms in the implementation of the Public Order Act.</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
4	2016	<i>Increase co-ordination between ECZ and police. More effective and unbiased policing should be the appropriate measure to prevent political violence, regardless of the political affiliation of instigators or perpetrators. The power to suspend campaigning should be avoided, as a disproportionate measure that unnecessarily limits the right to campaign.</i>	Electoral administration	1 No change	<ul style="list-style-type: none"> <li>The ECZ mentioned the introduction of trainings on electoral management and process into Police training school, starting with the new recruits in 2019.</li> <li>Some of the by-elections conducted since 2016 were characterized by electoral violence, partly as a result of misapplication of POA.</li> <li>The power to suspend campaigns, in 2016 not explicitly among the ECZ powers, has been introduced in the Electoral Process Amendment Bill that was presented to Parliament on 3 July , among provisions that might both expand and graduate the Commission's powers.</li> </ul>
5	2016	<i>Grounds and procedures for disqualification of a candidate or party should be precisely defined, limited to the gravest violations and be appealable to a court. Application of these measures should include other serious violations of legal obligations by candidates and parties, and not be limited to breaches of the Electoral Code of Conduct. A broader range of sanctions, including fines, could be introduced to provide the ECZ with greater latitude to respond to violations.</i>	Electoral Administration	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>The ECZ indicated that the Gap Analysis of November 2017 had taken into account the recommendation.</li> <li>Under the Electoral Process Amendment Bill (in Parliament) the ECZ powers are likely to be both expanded and graduated.</li> <li>Since fines have been included in the Electoral Process Amendment Bill,, the ECZ should ideally use them (and not campaign suspension) as first resort sanctions, in future implementation of the law to address the recommendation.</li> </ul>
6	2016	<i>Introduce statutory provisions that provide a suitable set of obligations, governed by principles of accountability and transparency, for the registration and regulation of political parties. Regulation of political parties should specifically address the role and conduct of party members and cadres.</i>	Legal Framework/ Political parties	1 No change	<ul style="list-style-type: none"> <li>Despite two years of consultations a draft Political Parties bill was not agreed upon during the NDF.</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
7	2016	<i>The appointment of ECZ commissioners should be revised in order to increase confidence among all stakeholders in the ECZ's independence. Security of tenure of the ECZ commissioners should be provided. The ECZ's financial independence should be ensured.</i>	Electoral Administration	3 Partial implementation of recommendation	<ul style="list-style-type: none"> <li>• Partial implementation of recommendation</li> <li>• The appointment procedures of ECZ commissioners were not revised under the ECZ Amendment Act 2019.</li> <li>• Security of tenure was increased, although not ensured.</li> <li>• Financial independence was enhanced.</li> </ul>
8	2016	<i>The ECZ should rely less on local government officials and local administrative structures and exert greater direct management over all aspects of the electoral process. The development of a permanent independent structure of the ECZ at regional level should be implemented, as well as a temporary independent structure at constituency levels during the immediate period of elections, which could be accompanied by the establishment, at national and district level, a of roster of credible professionals from which to appoint district electoral officers and returning officers.</i>	Electoral Administration	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>• Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>• An ECZ plan, foreseeing gradual establishment of provincial offices between 2018 and 2020, was put on hold by the Treasury due to financial constraints.</li> <li>• The ECZ has not yet contemplated the establishment of a roster of professionals at national and district level from which to appoint DEOs and ROs as ECZ staff.</li> <li>• No relevant provisions were included in the revised ECZ Act of April 2019.</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
9	2016	<i>The de facto subdivision of a polling station into polling streams should no longer be used. All locations where voters cast ballots should be called polling stations, be duly gazetted and identified by a unique code, with results individually posted and published, to enhance transparency and simplify results management.</i>	Electoral Administration	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>The ECZ recommended converting polling streams into polling stations in its 2018 General Elections and Referendum Report, to enhance efficiency in the counting process and results transmission.</li> <li>The conversion was so far not applied in subsequent by-elections</li> </ul>
10	2016	<i>Access to the verification stage of the national tallying of results, as well as access to mediation and conflict resolution meetings, should be granted to domestic monitors and international observers.</i>	Electoral Administration	5 Too early in electoral cycle to determine	<ul style="list-style-type: none"> <li>Too early in electoral cycle to determine</li> <li>The ECZ continues to explore the merits and demerits of expanding access to this important stage of results management to monitors and observers, and in doing so is looking at other EMBs and at best practices in the SADC Region.</li> </ul>
11	2016	<i>The ECZ should increase consultations and communications with stakeholders throughout the electoral cycle, to enhance stakeholder involvement and confidence. More regular meetings with political parties and civil society organisations should be held. Clear and updated information should be published and disseminated in a timely fashion to all stakeholders, including the media. Decisions and regulations produced by the ECZ should be clearly explained to stakeholders.</i>	Electoral Administration	4 Full implementation	<ul style="list-style-type: none"> <li>Full implementation of recommendation</li> <li>The ECZ has so far positively increased stakeholder consultation efforts throughout the cycle.</li> <li>The ECZ has so far increased communication efforts and responsiveness, whose effort needs to be sustained.</li> </ul>



No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
12	2016	<i>A review of constituency boundaries should be undertaken to ensure that constituencies better reflect population distribution, thus contributing to greater equality of the vote and to an equal weight in parliamentary representation. The consultative review conducted in 2011 by the ECZ could represent the basis for a future exercise.</i>	Electoral Administration	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>• Action or activity is ongoing, but implementation of the recommendation has not yet been confirmed</li> <li>• The ECZ officially launched the 2019 delimitation exercise on 4 July 2019.</li> <li>• The Commission included enhancing representation among the purposes of the current delimitation exercise.</li> <li>• The extent to which the new delimitation will contribute to greater equality of the vote will have to be measured on actual outcomes.</li> <li>•</li> </ul>
13	2016	<i>Extensive and continuous civic education throughout the electoral cycle would ensure all citizens are informed of their rights as voters, electoral systems, role of elected institutions and main aspects of governance. Voter education campaigns should continue until election day, and provide clear instructions on how to mark a ballot. CSOs could play a more active role in implementation of voter education activities. Ballot samples should be produced and distributed. Special programs aimed at first time voters, female voters and persons with disabilities could be run.</i>	Voter and Civic Education	3 Partial implementation of recommendation	<ul style="list-style-type: none"> <li>• Partial implementation of recommendation</li> <li>• The ECZ approached the Ministry of Education to promote the inclusion of voter education content as part of the school curricula.</li> <li>• The Commission set up School Clubs in all provinces as well as new knowledge hubs where students were invited to attend sessions.</li> <li>• Under the EPA amendments, the Commission would publish the election timetable in a newspaper of nationwide circulation, in addition to the Gazette.</li> <li>• CSOs lack resources,</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
14	2016	<i>With a long-term perspective, consideration should be given to extracting the voter register from a future national population register. Data from the planned biometric population registry managed by the Department of National Registration, Passport and Citizenship (DNRPC) of the Ministry of Home Affairs could, once established, be regularly provided to the ECZ, and form the basis of a future voter register. Institutions mandated with managing population data, such as the Ministry of Home Affairs, Ministry of Local Government, National Pension Scheme Authority (NAPSA), and Central Statistical Office could more effectively collaborate and exchange information with the ECZ.</i>	Voter Registration	3 Partial implementation of recommendation	<ul style="list-style-type: none"> <li>• Partial implementation of recommendation</li> <li>• Collaboration and information exchange between the ECZ, DNPRC, NAPSA and ZRA were increased and to some extent structured.</li> <li>• The Integrated National Registration Information System will certainly not be achieved by 2021.</li> <li>• Conducting voter registration based on a comprehensive and continuous civil register and linking national databases remains a forward-looking plan.</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
15	2016	<i>The ECZ should ensure that political parties and civil society organisations have access to the final voter register well in advance of the elections, as has historically been the case in Zambia. The final polling station list should also be made public well in advance, to allow for timely allocation of material and polling staff as well as voter orientation.</i>	Voter Registration	5 Too early in electoral cycle to determine	<ul style="list-style-type: none"> <li>• Too early in electoral cycle to determine</li> <li>• For this recommendation to be implemented, the possibility to certify the register even before all registered voters have turned 18 should be explored in preparation for the 2021 elections.</li> <li>• No initiative has been undertaken so far.</li> </ul>
16	2016	<i>Political parties, facilitated by the ECZ, should mutually agree and publish in advance a schedule of major campaign events, to avoid conflicts and facilitate appropriate allocation of police to campaign events.</i>	Campaign, Political Parties and Campaign Finance	3 Partial implementation of recommendation	<ul style="list-style-type: none"> <li>• Partial implementation of recommendation</li> <li>• Under the Police authority, Political parties coordinated their campaign events during last by-elections; however this was not enough to avoid conflicts.</li> </ul>
17	2016	<i>The ban on use of state resources for campaign purposes should be more effectively policed, and the exclusion from the prohibition for the president and vice-president narrowed. A moratorium on ceremonial openings of public works projects by the president and vice-president for the period of the official campaign would also provide for a clearer distinction between party and state.</i>	Campaign, Political Parties and Campaign Finance	1 No change	<ul style="list-style-type: none"> <li>• No change</li> <li>• The draft EPA bill does not contemplate new/a change in the provisions related to use of state resources</li> <li>• There is no intention to address this recommendation at the moment</li> </ul>
18	2016	<i>Party agents would benefit from more training from their respective political parties on their role during elections, particularly on their functions and responsibilities during the counting process.</i>	Campaign, Political Parties and Campaign Finance	5 Too early in electoral cycle to determine	<ul style="list-style-type: none"> <li>• Too early in electoral cycle to determine</li> <li>• Political parties more concerned on the recruitment and payment of their agents</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
19	2016	<i>Campaign finance accounting mechanisms should be operationalized to provide clear monitoring and transparency in both campaign funding and expenses. Ceilings on expenditure for parties and candidates should be introduced.</i>	Campaign, Political Parties and Campaign Finance	1 No change	<ul style="list-style-type: none"> <li>• No change</li> <li>• Despite two years of consultations a draft Political Parties bill was not agreed upon during the NDF; the draft amendment bill to the Constitution includes a modified article 60 which is not conducive to the implementation of the recommendation.</li> </ul>
20	2016	<i>The practice of recording the voter card's number on the counterfoil of the ballot papers should cease, to enhance secrecy of the vote. Positioning of ballot booths should be more sensitive to protecting the secrecy of the vote.</i>	Election Day	1 No change	<ul style="list-style-type: none"> <li>• No change</li> <li>• It is entirely unlikely that this recommendation will be implemented, as the current practice is seen as a safeguard to the integrity of elections.</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
21	2016	<i>Specific results management training, including completion of result forms and reconciliation, should be provided to presiding officers, to enhance and accelerate the results process at the polling station. Results forms should be simplified and more intuitively designed. Provisions for extra counting and tallying staff, to avoid errors due to exhaustion, should be given consideration. Standardized and transparent procedures should be introduced to address polling station results forms found to be incomplete or inconsistent at the totalling centre.</i>	Election Day	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>The ECZ is in the process of reviewing the training policy and recruitment criteria for all elections staff, as well as reviewing forms in order to make them simpler and user friendly.</li> <li>No standardised procedure is foreseen. In the ECZ view, the conversion of polling streams into polling stations will by itself help with ensuring correctness of results forms.</li> </ul>
22	2016	<i>To increase transparency, the ECZ should publish individual polling station results for all elections in a timely manner. Scanned polling station results forms could also be published, to further build confidence.</i>	Election Results	5 Too early in electoral cycle to determine	<ul style="list-style-type: none"> <li>Too early in electoral cycle to determine</li> <li>For parliamentary and local by-elections, the results were published on the ECZ website as aggregated per constituency and ward respectively, still not providing the polling station breakdown.</li> <li>Even though relevant provisions were not included in the EPA Bill presented to Parliament, the current amendment process of the EPA might still offer an opportunity to prescribe that all results be published per polling station.</li> </ul>
23	2016	<i>As part of any post-election review, consideration could be given by the ECZ to an analysis of the anomalies in turnout and votes cast in constituencies deviating from the national average</i>	Election Results	1 No change	<ul style="list-style-type: none"> <li>No change</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
24	2016	<i>The results management system (RMS) should be assessed for accuracy, timeliness and transparency, following which a revised operational plan for the RMS should be introduced. Consideration should be given to introducing double-blind data entry, to better ensure data integrity.</i>	Election Results	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>The ECZ 2018 General Elections and Referendum Report suggested conducting a review of the RMS.</li> <li>The Commission has started conducting reviews of the RMS. For progress to be made towards the fulfillment of this recommendation, the RMS review process would need to be publicly launched and given a broad and participatory scope.</li> </ul>
25	2016	<i>The right to effective remedy should be enhanced by clarification of the rules and procedures for complaints, for local, parliamentary and presidential elections. The rules on which courts have jurisdiction should be unambiguous. The competencies and procedures for conflict management committees (CMCs) should be defined in detail and ensure that they do not overlap with those of police and the courts.</i>	Complaints and Appeals	3 Partial implementation of recommendation	<ul style="list-style-type: none"> <li>Partial implementation of recommendation</li> <li>Ambiguities remain in the Constitution Amendment Bill, but the constitutional review process may still offer opportunities to clarify procedures and harmonize timelines.</li> <li>The ECZ issued new policy guidelines regulating CMCs composition as well as qualifications, exclusions and tenure of members, and some elements of procedures.</li> <li>The Human Rights Commission and the Law Association of Zambia were invited to be part of the national CMC for the next three years.</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
26	2016	<i>Provisions for the two types of presidential election petitions should be clarified and harmonized. Equally, rules and procedures of the Constitutional Court in deciding presidential petitions, particularly with respect to preliminary matters, should be clarified. Preliminary matters should be allocated less time to be heard, to allow sufficient time for the substantive petition issues to be addressed.</i>	Complaints and Appeals	2 Action is ongoing but implementation has not yet been confirmed	<ul style="list-style-type: none"> <li>Action or activity is ongoing but implementation of the recommendation has not yet been confirmed</li> <li>A distinction is made to some extent, in the Constitution Amendment Act 2019, between a petition on the initial ballot and a petition on the second ballot with regard to the presidential election. Also a chronological sequencing is provided. However, the proposed amendments restrict the right to petition to “losing candidates” whereas currently it is granted to all.</li> <li>In the Constitution Amendment Bill 2019 all provisions relating to a court “hearing” matters or petitions were changed to “hearing and determining”. Also the timeline to hear “and determine” presidential petitions was brought from 14 to 30 days</li> <li>The Constitutional Court nonetheless holds that even 30 days would not be adequate time and refers to a need to amend the rules of procedure.</li> </ul>
27	2016	<i>ZNBC should be transformed into a public service broadcaster enjoying full editorial independence from government. Protection of tenure of the board of directors and senior management should be guaranteed, who should be appointed in a transparent manner, with the involvement of media professionals and civil society organizations. News and content management staff should also be appointed in a manner protected from political interference, and be subject to public interest rules.</i>	Media	1 No change	<ul style="list-style-type: none"> <li>No change</li> <li>There is no intention to address this recommendation at the moment</li> </ul>

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
28	2016	<i>The IBA should be transformed into a truly independent structure that regulates public, private, and community broadcasting. The board of directors and director should be appointed in a transparent manner. The powers of the IBA to make arbitrary decisions on the suspension and cancelation of licenses should be repealed. IBA should work more closely with the ECZ in supervising aspects of media coverage of the election process.</i>	Media	1 No change	<ul style="list-style-type: none"> <li>• No change</li> <li>• IBA decided to suspend Prime TV licence in March 2019 (suspension was eventually lifted after fifteen days)</li> <li>• The EFM was told IBA was considering reforms of its Act and submitted a proposal to the MoI. The reform has not been assessed yet.</li> </ul>
29	2016	<i>The ECZ should exercise enhanced oversight over the public media, and more actively address complaints related to campaign coverage. A specialized ECZ branch could be established during elections with responsibilities on implementing an expedited procedure for hearing complaints related to media coverage of the campaign. This body should be empowered to order a right of reply, correction or retraction.</i>	Media	1 No change	<ul style="list-style-type: none"> <li>• No change</li> <li>• There is no intention to address this recommendation at the moment</li> <li>• The ECZ did not indicate to be giving consideration to this recommendation</li> </ul>



No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
30	2016	<i>The ongoing review of the Penal Code Act should ensure that sanctions for offences are proportionate and consistent. Defamation and prohibited publication offences should be decriminalized. The extraordinary powers of the President to ban publications and takeover media houses should be repealed.</i>	Media	1 No change	<ul style="list-style-type: none"> <li>There is no intention to address this recommendation at the moment</li> </ul>
31	2016	<i>Media should clearly identify paid airtime or party-sponsored slots to inform the voters the nature of the programme.</i>	Media	5 Too early in electoral cycle to determine	<ul style="list-style-type: none"> <li>Too early in electoral cycle to determine</li> </ul>
32	2016	<i>ECZ should continue its efforts to improve the accessibility of the electoral process to persons with disabilities. If tactile ballot folders are used in future, the ECZ should ensure that this is widely advertised and that polling staff are fully trained in the use of the folders.</i>	Persons with Disabilities	4 Full implementation	<ul style="list-style-type: none"> <li>Full implementation of recommendation</li> <li>Efforts are made to ensure the inclusion of PWD, notably in foreseeing polling stations with ramps and in recruiting PWD polling staff when possible.</li> <li>Effective use of the tactile ballot folders will be targeted in future trainings of polling staff.</li> </ul>
33	2016	<i>Legal requirements, such as mandatory quotas, for the political parties to apply affirmative action gender policies within parties, in terms of integrating women into party structures and selecting women as party candidates, should be considered.</i>	Participation of Women	1 No change	<ul style="list-style-type: none"> <li>There is no political will from across the spectrum to address this recommendation at the moment</li> <li>Whilst this recommendation has not been acted upon, the NDF has taken steps to broaden the number of women elected. The draft Constitution Amendment Bill 2019 prescribes a mixed-member proportional system for elections to the National Assembly, expected to promote representation of women, youth and differently-abled citizens</li> </ul>

