



**EUROPEAN UNION
ELECTION OBSERVATION MISSION**

FINAL REPORT

REPUBLIC OF ZAMBIA



General Elections and Referendum 11 August 2016



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I. EXECUTIVE SUMMARY

- On 11 August 2016, the Republic of Zambia held its sixth general elections since the reintroduction of multi-party democracy in late 1990. Following an invitation from the Government of the Republic of Zambia and the Electoral Commission of Zambia (ECZ), the European Union Election Observation Mission (EU EOM) was present in Zambia from 29 June to 12 September 2016. The Mission was led by Chief Observer Cécile Kyenge, a Member of the European Parliament (MEP). In total, the EU EOM deployed across the country 124 observers from the 28 EU Member States, as well as from Norway and Canada, to assess the entire electoral process in accordance with international and regional commitments for genuine and transparent elections and the laws of Zambia.
- Elections for president, parliament, mayors and council chairpersons, and local councillors, were held concurrent with a referendum on incorporating an amended bill of rights into the constitution. Following constitutional amendments earlier in 2016, to be elected president required an absolute majority of the votes.
- President Edgar Chagwa Lungu, who won the 2015 special election following the death in office of President Michael Sata, was the candidate of the Patriotic Front (PF). His principal challenger was Hakainde Hichilema of the United Party for National Development (UPND). There were seven other presidential candidates, of whom the Forum for Democracy and Development (FDD)'s Edith Nawakwi was the only woman.
- On 15 August, the Electoral Commission of Zambia (ECZ) announced final presidential election results, declaring President Lungu president-elect. President Lungu received 1,860,877 votes, representing 50.35 per cent of the valid votes cast, narrowly surpassing the 50 per cent plus one requirement to be elected. UPND presidential candidate Hichilema received 1,760,347 votes, 47.63 per cent of the valid votes cast. The margin of victory was 100,530 votes. Other parties contesting the presidential election received a collective 74,486 votes, 2.02 per cent of the valid votes cast.
- The prominence of and focus on the presidential contest largely overshadowed other electoral competitions and particularly the constitutional amendment referendum, for which the PF campaigned in favour, while the UPND campaigned against. The referendum failed to pass the required threshold.
- Parliamentary and local elections were held on the basis of first past the post. Zambia's unicameral parliament, the National Assembly, now comprises 156 elected seats, an increase of 6 seats from the parliament elected in 2011. There were 651 candidates for the National Assembly.
- The legal framework for the 2016 general elections and referendum was substantially changed shortly before the elections. Extensive amendments were made to the constitution in January 2016; key electoral legislation only entered into force in June 2016, two months before election day. The rushed drafting process resulted in a number of unclear provisions, gaps, and contradictions between new legislation and the constitution. The late introduction of these revisions, contrary to best international practice, meant the legal framework was unfamiliar to many electoral stakeholders.
- The legal framework provided a good basis for the conduct of genuine elections, and generally protected freedoms of assembly, movement, expression and association, in line with Zambia's international and regional commitments. However, both the provisions and the application of the Public Order Act (POA) unreasonably restricted freedom of assembly, which was to the benefit of the incumbent party.

- The Electoral Commission of Zambia comprises five members. Under the ECZ Act, the president may remove members of the commission at any time and without cause. The ECZ does not have decentralised structures, and was reliant on local government officials in the preparation and conduct of elections.
- The ECZ prepared for the elections in a largely professional manner and generally demonstrated competence in conducting key electoral operations. The organisation of four elections and a constitutional referendum made a heavier burden of logistics, counting, tabulation and voter education, and was reflected in some weaknesses in the implementation of each of these tasks. Problems with the results management system (RMS) contributed to the slow tabulation and announcement of results. The ECZ did not make full use of the administrative measures at its disposal to enforce the Electoral Code of Conduct.
- Political parties and civil society organisations (CSOs) expressed concern at the procedure of appointment of the ECZ commissioners, which potentially exposed commissioners to undue influence from the ruling party. Initially seen as insufficiently responsive, the ECZ progressively introduced measures in an effort to build public confidence. However, the ECZ did not allow international nor domestic observers to access a number of important activities, such as verification of results at national level, thus missing opportunities to enhance the transparency of, and trust in, the process. The ECZ was unclear about the timeframe and detail of the publication of results on the ECZ's website, which would have further contributed to transparency.
- Following a voter registration update conducted by the ECZ, there were 6,698,372 voters on the register, amounting to 89 per cent of the overall projected population. A voter registration audit commissioned by the ECZ found some 132,000 national registration numbers shared by more than one voter. Allegations of foreign registration were raised by some political parties. Apart from a high number of deceased voters on the register, the anomalies identified did not appear to undermine the register's accuracy or inclusiveness.
- The requirements for the registration of political parties and candidates are largely reasonable and in line with international and regional commitments. However, a new eligibility requirement that candidates for all elected positions have the minimum academic qualification of a completed secondary education (or its equivalent) was found to both limit the right of citizens to stand for election and the choice afforded to voters, especially at lower elected levels and with respect to prospective female candidates and those from rural areas. A significant increase in the non-refundable candidate registration fees were criticised by many political parties and further restricted the right to stand, particularly of women.
- The electoral campaign began on 16 May and ended on 10 August. The EU EOM observed campaign events in all 10 provinces. Candidates and parties campaigned vigorously, and usually respected campaign regulations. However, throughout the campaign, both the PF and the UPND made statements that inflamed tensions. There were several serious incidents of violence, including an attack on the parliamentary candidate of the FDD for Namwala, Southern Province on 17 June, and the death of a UPND supporter on 8 July in Lusaka, after the cancellation by the police of a UPND rally at short notice. The subsequent suspension of the campaign by the ECZ in the districts of Lusaka and Namwala from 9 – 18 July was a disproportionate response. A narrative was developed by the ruling party to portray the opposition as violent and trouble making, features disliked in a peace-loving country such as Zambia.
- CSOs played an active role throughout the electoral process and were present throughout on the day of election. The Christian Churches Monitoring Group (CCMG) conducted the largest independent parallel vote tabulation (PVT) for the presidential elections. The results of the PVT were consistent with the official results announced by the ECZ.

- The campaign period was marred by systematic bias in state media, which failed to provide fair and equitable coverage of the campaigns of all parties, limiting the possibility for voters to make an informed choice. News coverage of the state broadcaster was biased in favour of the PF and largely excluded other parties, or only reported other parties negatively. Restrictions on private newspaper *The Post* constituted a serious infringement on freedom of expression during the campaign and severely limited the opposition's access to print media. On 21 June, the offices and printing facilities of *The Post* were seized by the Zambia Revenue Authority (ZRA). The timing of action against *The Post* contributed to decrease the diversity of viewpoints and the right of voters to freely receive information.
- The constitution provides that the electoral system ensure gender equity in the National Assembly and local councils but no specific measures to achieve this are prescribed in legislation. Only 26 women were elected as members of parliament, representing 17 per cent of MPs, an increase of 4 from the 22 women in the previous parliament.
- Prosecutions for election related offences were made for assault, damage to property and unlawful gathering. These include the 22 UPND supporters tried for unlawful gathering in Lusaka on 8 July and the 28 UPND cadres charged with violence against police and possession of weapons in Kasama, Northern province, on 23 July. In most cases, the accused were released on bail and trial hearings were scheduled for after the elections.
- On election day, the EU EOM observed voting procedures at 520 polling streams in all ten provinces. Voting was conducted in a calm atmosphere. The overall conduct of voting was positively assessed in 97 per cent of polling streams observed. The EU EOM, as well as domestic observers, were able to observe the voting process without restriction in virtually all polling streams. Party agents were seen in all polling streams. The overall assessment of the closing and counting process was good or very good in 80 per cent of polling streams. The protracted counting of five different ballot papers at polling streams, followed by results consolidation at polling station level, introduced the possibility of computational error. The quality of this part of the process was assessed considerably worse than that of voting procedures. Copies of results forms were sometimes not provided to party agents. In 38 per cent of cases, results were not posted outside the polling station. Tabulation of results at constituency level was positively assessed in 87 per cent of the 40 totalling centres observed.
- From the totalling centres, results were transmitted to the national results centre. The EU EOM was not able to observe this process. Unmet expectations and delays in announcing final presidential results fuelled suspicion amongst opposition parties. The ECZ chairperson announced final results at 14:00 on 15 August. Voter turnout was 56.45 per cent, slightly above the 53.65 per cent recorded in the last general elections in 2011.
- Parliamentary results were announced by the respective returning officers in the three days following the polls. The distribution of the 156 directly elected seats in the National Assembly was as follows: 80 seats to the PF, 58 seats to the UPND, three seats to the Movement for Multiparty Democracy (MMD), one seat to the FDD and 14 seats to independent candidates. Overall voter turnout in the parliamentary election was 56.03 per cent, comparable to the presidential turnout. In some constituencies, voter turnout of parliamentary and presidential elections significantly differed.
- No less than 84 parliamentary elections petitions were filed at the High Court, 15 of which challenged the election of former PF ministers or deputy ministers, whom the Constitutional Court had earlier ruled had illegally remained in office after the dissolution of the National Assembly. At the time of the departure of the EU EOM, no parliamentary petitions had yet been heard.

- Following announcement of the results, Hakainde Hichilema of the UPND rejected the outcome. The UPND filed a challenge to the presidential election results on 19 August. UPND requested the Constitutional Court declare president-elect Lungu was not validly elected and that the presidential election was invalid by reason of non-compliance with the legal framework for election. The petition was based on arguments pertaining to both the electoral environment, such as bias in the public media, restrictions on movement and campaigning, as well as alleged irregularities during polling, counting, tallying, transmission and announcement of results.
- Following violent post-election demonstrations in Southern province, about 300 UPND supporters were arrested. On 22 August, during the preliminary hearings of the presidential election petition, the Independent Broadcasting Authority (IBA) suspended the broadcasting licenses of three media outlets. The largest privately-owned television channel, Muvi TV, which had provided extensive coverage to the UPND during the campaign, had planned to provide extensive coverage of the presidential election petition. The suspension of the broadcasting licenses of these media for alleged professional misconduct before, during and after the 11 August elections and for posing unspecified risks to national peace and stability, was another setback for freedom of expression in Zambia, at a sensitive moment of the electoral process.
- The UPND petition was dismissed on 5 September on procedural grounds, without any evidence being heard, when the Court, in a split decision, ruled it did not have jurisdiction to extend the 14 day constitutional period for hearing the petition. While most of the 14 days were spent dealing with preliminary issues raised by UPND, prompting allegations that UPND was intentionally stalling due to its weak legal case, the Court failed to provide clear, timely and authoritative directions to parties regarding the timeline of the trial. This ultimately resulted in a situation where the petitioners could not exercise their right to a fair and public hearing, and undermined public confidence in the election complaints process.

Enhancement of several aspects of the electoral process, including a review of the legal framework, is required for the full realisation of fundamental rights of individuals and groups, as provided for in international and regional principles for democratic elections. In this regard, the following priority recommendations are offered for consideration and action to the Government of the Republic of Zambia, the ECZ, political parties, civil society and the international community. Discussions on implementation of all recommendations should be considered as early as possible in order to address in a timely manner the shortcomings identified in the 2016 electoral process. A detailed table of recommendations can be found in Annex I to this report, while the priority recommendations are listed below:

1. 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.
2. 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.
3. 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. 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,

of a roster of credible professionals from which to appoint district electoral officers and returning officers.

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

II. INTRODUCTION

Following an invitation from the Government of the Republic of Zambia and the Electoral Commission of Zambia (ECZ), the European Union Election Observation Mission (EU EOM) was present in Zambia from 29 June to 12 September 2016. The Mission was led by Chief Observer Cécile Kyenge, a Member of the European Parliament (MEP). In total, the EU EOM deployed across the country 124 observers from the 28 EU Member States, as well as from Norway and Canada, to assess the entire electoral process in accordance with international and regional commitments for genuine and transparent elections and the laws of Zambia. A delegation from the European Parliament, headed by Michael Gahler MEP, also joined the mission to observe election day.

The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation commemorated at the United Nations in October 2005. This report presents a detailed assessment of the findings of the EU EOM on the various stages of the electoral process, and, based on these findings, includes a series of recommendations for the improvement of the process in future elections.

The EU EOM expresses its appreciation to the Government of the Republic of Zambia, the ECZ, political parties, civil society, media, as well as the people of Zambia for their cooperation and assistance in the course of the observation mission. The EU EOM is grateful to the Delegation of the European Union to Zambia and the European Union Member States' diplomatic missions in Zambia for their support throughout.

III. POLITICAL BACKGROUND

On 11 August 2016, the Republic of Zambia held its sixth general elections since the reintroduction of multi-party democracy in late 1990. The first elections in the modern multi-party era were held in 1991. Subsequent general elections took place in 1996, 2001, 2006 and 2011; special presidential elections were held in 2008 and 2015, following the deaths of the presidential incumbents. Elections for president, parliament, mayors and council chairpersons, and local councillors, were held concurrent with a referendum on incorporating an amended bill of rights and article 79 into the constitution. Mayors and council chairpersons were directly elected for the first time.

Following constitutional amendments earlier in 2016, to be elected president required an absolute majority of the votes. This gave rise to the possibility that for the first time Zambia would hold a second round of presidential elections, between the first and second placed candidates. Given the closeness of the 2015 elections, the overall economic situation and a number of defections from the ruling Patriotic Front (PF) to the opposition, the election was perceived as being extremely competitive with the major parties keen to mobilize voters in their respective strongholds.

President Edgar Chagwa Lungu, who won the 2015 special election following the death in office of President Michael Sata, was the candidate of the PF, which has ruled Zambia since 2011. His principal challenger was Hakainde Hichilema of the United Party for National Development (UPND), who stood as a presidential candidate for the fifth time, including in 2015, when he was runner-up to Lungu by a margin of fewer than 28,000 votes. There were seven other presidential candidates, of whom the Forum for Democracy and Development (FDD)'s Edith Nawakwi was the only woman. Nawakwi also contested the 2015 elections, coming a distant third.

This election was also the first time that the vice-president was directly elected, rather than appointed by the president. The PF selected incumbent Vice-President Inonge Wina as its candidate. The selection by the UPND of a former PF politician was more controversial: allegations of corruption, assault and domestic violence were levelled at running mate Geoffrey Bwalya Mwamba, and doubts were raised as to whether Mwamba held the requisite educational qualifications to be eligible for office.

Parliamentary and local elections were held on the basis of first past the post. Zambia's unicameral parliament, the National Assembly, now comprises 156 elected seats, an increase of 6 seats from the parliament elected in 2011. There were 651 candidates for the National Assembly, for which the PF and the UPND presented candidates in almost every seat. The FDD and Rainbow Party fielded 110 and 51 parliamentary candidates respectively; there were 110 independents, many of whom had earlier failed to win the internal party nomination for either PF or UPND.

On 15 August, the Electoral Commission of Zambia (ECZ) announced final presidential election results, declaring President Lungu of the PF president-elect. President Lungu received 1,860,877 votes, representing 50.35 per cent of the valid votes cast, narrowly surpassing the 50 per cent plus one requirement to be elected in a first round. UPND presidential candidate Hichilema received 1,760,347 votes, 47.63 per cent of the valid votes cast. The margin of victory was 100,530 votes. Other parties contesting the presidential election received a collective 74,486 votes, 2.02 per cent of the valid votes cast.

The prominence of and focus on the presidential contest largely overshadowed other electoral competitions and particularly the constitutional amendment referendum, for which the PF campaigned in favour, while the UPND campaigned against. The referendum failed to pass the required threshold.

IV. LEGAL FRAMEWORK

A. Universal and Regional Principles and Commitments

Zambia has ratified the principal international instruments relating to human rights and the conduct of elections, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Convention on Elimination of Racial Discrimination, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 2006 Convention on the Rights of Persons with Disabilities, and the 2003 Convention against Corruption. Zambia is also party to the following regional commitments: the 1981 African Charter on Human and Peoples' Rights, the 2007 African Charter on Democracy, Elections and Governance, the 2015 Southern Africa Development Community (SADC) Principles and Guidelines Governing Democratic Elections and the 1997 SADC Declaration on Gender and Development.

B. Electoral Legislation

The legal framework for the 2016 general elections and referendum was substantially changed shortly before the elections. Extensive amendments were made to the constitution in January 2016; the Electoral Process Act (EPA) and Electoral Commission of Zambia (ECZ) Act only entered into force in June 2016, two months before election day. The rushed drafting process resulted in a number of unclear provisions, gaps, and contradictions between the new legislation and the constitution. The late introduction of these revisions, contrary to best international practice, meant the legal framework was unfamiliar to many electoral stakeholders. The ECZ continued to adopt new detailed procedural regulations even after the campaign had begun, with the regulations on polling and counting only adopted shortly before election day. Some legislation foreseen by the new constitution, such as a law on campaign finance, was not in place, weakening safeguards in the electoral process. Despite new constitutional provisions that foresee the enactment of a Political Parties Act, no specific law regulating political parties was adopted. Parties remained subject to the out-dated 1957 Societies Act.

The Electoral Code of Conduct, which sets out electoral offences and the obligations of political parties, media, police, observers and party agents, has been strengthened by its incorporation into the EPA, in accordance with the recommendation made by the 2011 EU EOM.

The legal framework provided a good basis for the conduct of genuine elections, and generally protected freedoms of assembly, movement, expression and association, in line with Zambia's international and regional commitments. However, both the provisions and the actual application of the Public Order Act (POA) unreasonably restricted freedom of assembly, to the benefit of the incumbent party. Following a 1996 Supreme Court ruling, the POA was amended to no longer require a formal permit for the holding of public meetings. Parties had to provide seven days notice of events to the police, which has broad powers to impose conditions and directives concerning the date and place of an event as well as the content and speakers. The POA fails to specify reasons for which the police can advise parties not to hold or outright ban meetings, thus allowing arbitrary decisions by the police. According to the POA, police may disperse an assembly in case of non-compliance with the conditions, or, if three or more persons taking part in an assembly disturb public order, arrest all its participants without warrant.

Given that the POA and its implementation by the police had been subject to criticism in previous years, the Law Association of Zambia (LAZ) applied to the Supreme Court for a declaration that the provisions of the POA contradicted the constitution. In a May 2016 judgment, the Supreme Court confirmed the constitutionality of the POA, but declared the habitual implementation of the POA's provisions by the police as overly restrictive of freedom of assembly. The judgement gave detailed guidelines for the interpretation of the POA by the police, stating that it is the duty of the police to

protect persons who are properly exercising their right to assemble from those that are threatening to infringe upon that right, and that police resources should not be used to prevent such assemblies. However, during the campaign period, in some provinces, notably Lusaka, the police failed to adhere to these principles in their application of the POA. Furthermore, public meetings of the president, the vice-president and ministers were exempt from notification under the POA, a provision that unduly benefited the incumbent party.

On 9 August, the Constitutional Court ruled that after the dissolution of the National Assembly in May 2016, the continuation in office of ministers and deputy ministers contravened the constitution, and that use of ministerial prerogatives and state facilities by the former ministers and deputy ministers was illegal. This argument was used after election day in several parliamentary election petitions against former ministers and deputy ministers who had won seats.

C. The Electoral System

Zambia is a constitutional republic governed by a directly elected president and a unicameral National Assembly. Executive power in Zambia rests with the president, who is the head of state, head of government and commander-in-chief of the armed forces.

The president is directly elected in a majoritarian system, where the winning candidate must receive more than fifty per cent of valid votes cast. In the event that no candidate secures such a majority, a run-off election is to be held between the two leading candidates no later than 37 days from the initial ballot. The president is elected for a five-year term and can serve a maximum of two terms in office. The president appoints ministers and provincial ministers from among the members of the National Assembly and also appoints the attorney-general, solicitor-general and director of public prosecutions and the chairs of various commissions foreseen in the constitution.

Following constitutional amendments, the vice-president is directly elected as the running mate of a presidential candidate. The vice-president would assume the presidency for the remainder of the mandate in the eventuality of a president dying or leaving office early.

Legislative powers are vested in the National Assembly, which now consists of 156 elected members. The president may appoint up to eight additional members. The speaker and deputy speaker are chosen from outside the National Assembly by the elected and appointed parliamentarians. The vice-president serves as leader of government business in the Assembly. Elected members serve five-year terms from single-member constituencies, elected on the basis of first past the post.

The constitution provides for a system of local government, establishing a local authority in each of the 106 districts. The local authority has the power to administer the district, oversee programmes and projects in the district and to make by-laws. There is a local council in each district, consisting of directly elected councillors, elected on the basis of first past the post in 1624 wards, a mayor (in urban areas) or a council chairperson (in rural areas). For the first time, mayor and council chairpersons were directly elected.

V. ELECTION ADMINISTRATION

A. Structure and Composition

The Electoral Commission of Zambia (ECZ) is established by article 229 of the constitution and the ECZ Act. The commission is an autonomous, permanent body mandated to organise elections and referenda, conduct and supervise voter registration, regulate the conduct of voters and candidates, accredit observers and party agents, delimit electoral constituency boundaries, conduct voter information and education, adjudicate disputes of an administrative nature, and establish and maintain cooperation with political parties.

The ECZ may adopt regulations pertinent to the electoral process and has a duty to enforce the Electoral Process Act (EPA). As per the Electoral Code of Conduct, the commission should ensure that legally convened campaign events are not disrupted, that state resources are not used for campaign purposes and that the police act impartially. However, the Act provides the ECZ with limited, administrative means of enforcement. The commission may reprimand a stakeholder for any conduct in violation of the code, report breaches of the code to the police or other agency, revoke accreditations for access to electoral institutions and impose administrative measures on a person, candidate or party for persistent breaches of the Code.

The ECZ is composed of a chairperson, a vice-chairperson and three other full-time members. The current chairperson, Justice Esau Chulu, was appointed in April 2015 and is a retired Supreme Court judge. All members are appointed by the president and confirmed by the National Assembly for a seven-year term, renewable once. A chief electoral officer is appointed by the commission, and serves as an *ex officio* member. The chief electoral officer is responsible for the administration and day-to-day management of the ECZ.

The EPA stipulates that the ECZ shall not be subject to the direction or control of any external party in exercising its functions.¹ However, under the ECZ Act, the president may remove members of the commission at any time and without cause. The president's approval is necessary for the commission to invest funds not immediately required for the performance of its functions. Release of the budget allocation of the ECZ, as voted by the National Assembly, is dependent on availability of funds and overall government priorities.²

The ECZ does not have decentralised structures, and is reliant on local government officials in the preparations and conduct of elections. District electoral officers appoint returning officers in each constituency, on behalf of the ECZ, and supervise the recruitment of polling staff. Over 77,000 presiding officers and polling assistants were recruited and trained for the 2016 electoral process and a total of 7,001 polling stations were established, divided into 10,818 polling streams. In addition, close to 7,000 separate polling streams were established for persons who were only eligible to vote in the constitutional referendum.

¹ Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 20: "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."

SADC Principles and Guidelines Governing Democratic Elections of 2015, Section 5.1.3: "Establish impartial, professional, independent, all inclusive, competent and accountable EMBs staffed by eminent, non-partisan and capable commissioners, and efficient and professional personnel".

² Section 2, Article 4 (e) of the African Union Declaration on the Principles Governing Democratic Elections in Africa, 2002: "Democratic elections should be conducted [...] by impartial, all inclusive competent and accountable electoral institutions staffed by well trained personnel and equipped with adequate logistics."

SADC Principles and Guidelines Governing Democratic Elections of 2015, Section 5.1.5: "Ensure that the EMB, or other legally designated institution, is independent and that it has adequate logistics, human, financial resources and contingencies made available for the entire Electoral Cycle, including the authority to recruit, train and build the capacity of permanent and temporary electoral staff."

B. The Administration of Elections

The ECZ prepared for the elections in a largely professional manner and generally demonstrated competence in conducting key electoral operations. The electoral calendar was respected. Late adoption of the electoral legal framework caused the ECZ to rely in part on its past practice when adopting procedures and guidelines. The simultaneous organisation of four elections and a constitutional referendum made a heavier burden of logistics, counting, tabulation and voter education, and led to some weaknesses in the implementation of each of these tasks. Problems with the results management system (RMS) contributed to the slow tabulation and announcement of results.

The ECZ was in regular contact with media houses and police concerning the respective duties of these institutions in the electoral process. However, the ECZ did not make full use of the administrative measures at its disposal to enforce the Electoral Code of Conduct, as for example in the provision of equal public airtime to contesting parties. Following the late adoption of the EPA in June 2016, the ECZ had the authority to reprimand a stakeholder for any conduct in violation of the code, report breaches of the code to the police or other relevant agency, revoke accreditations related to election day and impose unspecified administrative measures on a person, candidate or party for persistent breach of the Code.

The EU EOM assessed communication between the ECZ and local levels of electoral administration as generally effective. District electoral officers organised trainings whose quality was positively assessed by the EU EOM, and generally administered electoral operations in a satisfactory manner. Some political parties raised concerns at local government officials with electoral duties being transferred shortly before, as well as during, the electoral process. In some cases, local government officials were mandated to perform the duties of several election officers. Despite continuing issues of mistrust and accusations of bias from some political parties, many stakeholders at district and provincial levels expressed a high degree of trust in the electoral process.

Political parties and civil society organisations (CSOs) expressed concern at the procedure of appointment of the ECZ commissioners, which potentially exposed commissioners to undue influence from the ruling party. Initially seen as insufficiently responsive, the ECZ progressively introduced measures in an effort to build public confidence. The ECZ organised stakeholder meetings, press briefings and outreach on social media, publicly disclosed findings of the voter registration audit, involved stakeholders in the process of ballot paper production and distribution, and granted access to representatives of the presidential candidates to the verification phase of national tabulation, in efforts that increased transparency in the electoral administration.

However, the ECZ did not allow international nor domestic observers to access a number of important activities, such as verification of results at national level, a series of stakeholder and mediation meetings, the arrival of ballot papers, nor did it provide copies of all draft regulations and an electronic list of voters per polling station, thus missing opportunities to enhance the transparency of, and trust in, the process. The ECZ was unclear about the timeframe and detail of the publication of results on the ECZ's website, which would have further contributed to a more transparent process.

C. Delimitation of Constituencies

As per article 58 of the constitution, responsibility for determining and reviewing constituency boundaries for parliamentary seats rests with the ECZ. In conducting boundary delimitation, 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.

The number of constituencies is equal to the number of seats of elected members in the National Assembly, as established by the constitution. Therefore, any boundary delimitation review requiring a change in the number of constituencies requires constitutional amendment.

Following the 2010 census and prior to the 2011 general elections, the ECZ conducted a consultative delimitation review process nationwide. The commission's delimitation report recommended an increase from 150 to 235 parliamentary constituencies, but was not acted on by the executive. Based on new administrative districts established by the executive and once the new constitution was adopted, six new constituencies were created in 2016, bringing the total number to 156.³

Some highly populated areas remain severely under-represented in terms of the number of their allocated seats in the National Assembly. In many constituencies, the current register shows greater inequality than previously, due to the increase in urban population. The equality of the vote is undermined by such disparities, thus contravening the constitution⁴ and the international principle of equality in representation.⁵ For example, urban Mandevu in Lusaka province has 148,889 registered voters, while rural Lufubu in Central province has only 9,080 registered voters, a 16-fold difference; Kapiri Mposhi, in Central province has 103,986 registered voters while Zambezi West in North-Western province has 12,067. At least 16 constituencies have fewer than 20,000 registered voters and six constituencies have more than 100,000.

D. Voter Education

The ECZ is responsible for arranging delivery of voter education. In line with its mandate, the commission established voter education committees at both the national and the district levels, comprising CSOs, faith-based organisations and state agencies. 3,250 voter education facilitators were trained and deployed to every ward. The voter education campaign began on 29 May and continued until 29 July. Voter education programmes were delivered using various methods to increase the public's awareness of the significance of voting and the right to participation. The ECZ received support from the UNDP-managed electoral assistance programme to conduct voter education activities involving persons with disabilities. The commission also undertook voter and referendum education through the print, broadcast and social media. Even though voter education activities were usually assessed by EU observers as of good quality, their impact was sometimes limited due to difficulties in reaching remote rural areas and the end of all activities almost two weeks before the election.

Notable was the much later start of the referendum awareness campaign, with voter education material only developed and ready for distribution in national languages in July. The late start of the referendum voter education campaign, the complexity of the subject and the linking of two separate questions on the ballot, a lack of familiarity with referenda, and low literacy amongst some sections of the population contributed to a limited understanding of the referendum by the public.

³ Article 68 (2) of the Constitution of Zambia: "The National Assembly shall consist of (a) one hundred and fifty-six members directly elected on the basis of a simple majority vote under the first-past the-post system"

⁴ Art. 45 (1) (b) of the Constitution: "universal adult suffrage based on the equality of a vote"

⁵ Article 25 of the ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 21: "...within the framework of each State's electoral system the vote of one elector should be equal to another. The drawing of electoral boundaries and method of allocating votes should not distort the distribution of voters or discriminate against any group."

VI. VOTER REGISTER

A. *The Right to Vote*

There are no unreasonable requirements to register as a voter in Zambia. Under the constitution, a citizen who has attained the age of eighteen years is entitled to be registered as a voter and vote.⁶ According to the EPA, to qualify to be registered as a voter a person must be a Zambian citizen, at least 18 years old and in possession of a national registration card (NRC). The EPA specifies categories of disqualified persons, including persons suffering from mental disability, detained under the criminal procedure code, in lawful custody or having their freedom of movement restricted by law, or serving a criminal sentence. The provisions of the EPA prescribing limitations of the right to vote thus contradict those of the constitution, which provides for unlimited franchise, including of persons in detention. The constitutional framework is thus in line with international principles of universal suffrage and inclusiveness, while the EPA is not.⁷

B. *Voter Registration*

The current voter register was established in 2005 using optical mark recognition technology. Prior to the 2011 elections, the ECZ conducted an update of the 2005 voter register, during which a biometric voter registration system based on thumbprint capture and facial portrait was adopted, which remains the system currently in use.

The holding of a NRC is a condition to register as a voter. NRCs can be requested at 103 permanent district offices of the Department of National Registration, Passport and Citizenship (DNRPC), a unit of the Ministry of Home Affairs. The voter registration update conducted by the ECZ between September 2015 and February 2016 was organised in coordination with a mobile NRC issuance exercise. Teams from the DNRPC, including immigration services and police, conducted an eligibility screening of people requesting NRCs. Some political parties criticised the scheduling of the mobile voter registration update exercise, claiming that some eligible voters had not yet received their NRCs. The number of voters eventually registered was close to the ECZ's targets, based on projections from the Central Statistical Office.

Following the update, 6,698,372 voters were on the register, of whom 50.35 per cent are women and 49.65 per cent are men, an increase of 1,535,419 from 2011 and amounting to 88.98 per cent of the overall projected population. The highest increase in registration was in Southern province followed by Lusaka province, and the lowest in the Copperbelt. In two provinces, Western and North-Western, registration exceeded the Central Statistical Office's projections. All sectors of population were broadly reached but the participation of youth aged 20-24, was significantly lower compared to that of the other age groups.

A voter registration audit was conducted by a team of international experts, recruited by the ECZ from the United Nations Single Electoral Roster, in parallel with the inspection and certification of the register. The Christian Churches Monitoring Group (CCMG) observed the voter registration process but its request to conduct an independent audit, with technical assistance from NDI, was denied. The ECZ's public disclosure of the audit's findings and steps taken to implement some of its recommendations were efforts to improve the integrity of the voter register and promote confidence, although the audit was only completed shortly before election day. The audit detected

⁶ Art. 46 of the Constitution

⁷ Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 4: "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed"

anomalies, which could be expected in a voter register not linked to a system of permanent and continuous civil registration. Multiple entries were identified, namely a total of 132,000 shared NRC numbers, widely spread across the country and partly due to the NRC system being based on manual records and prone to some degree of error. Steps taken by the ECZ reduced this number to 128,000. Based on statistical analysis, approximately 400,000 deceased voters remain on the register since 2010; extrapolating from that figure, over 700,000 deceased voters may be on the register since its initial creation in 2005. Only a few names of deceased voters were removed from the registry prior to these elections; no systematic and comprehensive removal of the deceased took place, as this would have required a full-fledged voter registration exercise. While future register inspection phases and greater collaboration with relevant authorities would reduce the number of deceased voters on the register, until June 2016, registration of deaths by the DNRPC was conducted without recording the person's NRC number, thus limiting the ability to clean the register.

Allegations of registration of foreigners were raised by some political parties. However, no significant evidence of registration of foreigners was produced, and the voter register audit confirmed that all registered voters were in possession of NRCs and therefore, by definition, Zambian citizens. Some interlocutors stated that registration of foreign nationals in border areas was not atypical, and has been a recurring feature of national registration in Zambia.

Apart from the high number of deceased voters on the register, the anomalies identified did not appear to undermine the register's accuracy or inclusiveness.

The date of certification of the register was set by the ECZ. In 2011, the voter register was certified seven weeks before the general elections. In 2016, the commission stated that the register would be certified on 31 July, only 11 days before election day, citing a decision to increase youth participation by opening voter registration to those who would only turn 18 on 31 July. While the purpose was commendable, the possibility to certify the register before all registered voters have turned 18 should be explored, with those expected to reach the age of majority during an election cycle included. Once certified, the register was made available to political parties on 5 August, only six days before election day. Significantly earlier release of the register could have increased overall public confidence in its reliability, allowed political parties and civil society organisations to better plan their electoral activities, and permitted timely adoption of a final polling station list.

VII. REGISTRATION OF POLITICAL PARTIES AND CANDIDATES

A. *Registration of Political Parties*

The requirements for the registration of political parties are reasonable and in line with international and regional commitments related to freedom of association.⁸ A Political Parties Act was introduced, but not enacted, before the end of the term of parliament. Thus, as there is no specific law on political parties, these continue to register as per the very general terms of the 1957 Societies Act, which does not prescribe any unreasonable restrictions. Political parties cannot be founded on the basis of religion, race, ethnicity, tribe, or gender and are prohibited from engaging in propaganda based on these identities. According to article 60 of the constitution, political parties have the right to disseminate information on their political ideology, sponsor candidates for elections and conduct primary elections to select candidates. Parties are obliged to conduct regular internal elections and to respect the rights of their members to participate in the affairs of the party. Members have the right to seek redress from the courts if aggrieved by decisions of the party. These provisions need to

⁸ Article 22 and 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 26: "The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25." See also Article 10 of the African Charter of Human and Peoples' Rights 1986 and African Union Declaration on the Principles Governing Democratic Elections in Africa, IV. Elections: Rights and Obligations, paragraph 5: "Every citizen shall have the freedom to establish or to be a member of a political party or organization in accordance with the law."

be operationalized in dedicated legislation that has not yet been enacted.

B. Registration of Candidates

Requirements for candidate nomination are largely reasonable, and generally in line with international standards. The requirement that both parents of presidential candidates be Zambian citizens at birth was dropped; independent candidates are now allowed to stand for all elections. However, the amendment to the constitution introduced a new eligibility requirement that candidates for all elected positions have the minimum academic qualification of a completed secondary education, attested by a Grade 12 certificate, its equivalent, or a superior qualification. Such a requirement both limits the right of citizens to stand for election and curtails the choice afforded to voters, especially at lower elected levels and with respect to prospective female candidates and those from rural areas.

The Examinations Council of Zambia verified education certificates and announced that 100 were forged, but neither it, nor the Electoral Commission of Zambia, disclosed which candidates held a forged certificate, thus limiting the voters' right to make a fully informed choice. The ECZ had no legal means to immediately address the matter, since the period for the validation of nominations had concluded. Consequently, the forged certificates could have become grounds for post-vote election petitions, and could lead to repeated elections if petitions were upheld. Submission of a forged document for nomination is an electoral offence punishable by imprisonment of up to five years, however it does not appear that any criminal proceedings were initiated for this offence.

Aspiring candidates were required to pay a non-refundable nomination fee. ECZ originally announced a steep increase in nomination fees for all elected positions; the nomination fee for presidential candidates was increased from K10,000 (€900) to K75,000 (€6,800); from K5,000 (€450) to K 10,000 (€900) for parliamentary candidates, and from K50 (€4.50) to K1,500 (€135) for councillors in rural areas. Although eventually reduced from the figures first set: 65,000 (€5,900) for the presidential candidates, K7,500 (€680) for parliamentary and K400 (€36) for the councillors in the rural areas, the significant increase in nomination fees, particularly at councillor and parliamentary levels, were criticised by many political parties as prohibitive. The increase in fees further restricted the right to stand, particularly of women.

ECZ rejected the nomination of several FDD candidates on the grounds that nomination fees had not been paid, however the party had paid the fees centrally for all of their candidates in Lusaka, via the ECZ main's bank account. ECZ explained that the FDD candidates, when submitting their nomination files to returning officers in constituencies and wards, did not provide proof of payment. FDD brought this complaint alleging violation of political rights to the Constitutional Court, which dismissed it for not having jurisdiction, stating it should have been filed as a nomination petition at the High Court. UNIP reported to the EU EOM a similar problem, with ECZ refusing the nomination of several parliamentary candidates whose fees had been paid centrally, but the party did not seek judicial redress in the matter. The ECZ denied refusing the nominations of any UNIP candidates.

Thirteen petitions relating to nomination of parliamentary and local government candidates were filed at the High Court, mostly concerning ECZ rejection of late nominations and intraparty disputes regarding the selection of candidates. However, all were filed after the prescribed seven-day period and hence rejected by the High Court on this ground. This, coupled with the incorrect filing of some nomination petitions at the newly established Constitutional Court, showed the lack of clarity of relevant provisions of the EPA and underlined the limited understanding of the newly adopted procedures.

VIII. ELECTION CAMPAIGN AND PRE-ELECTION ENVIRONMENT

A. *Election Campaign*

The electoral campaign began on 16 May, prior to the arrival of the EU EOM, and ended on 10 August. No schedule of presidential campaign events was agreed, which led to mistrust between political parties and some avoidable scheduling conflicts. An attack on the parliamentary candidate of the FDD for Namwala, Southern Province on 17 June, left her in hospital with serious injuries. On 8 July, a rally of the UPND in Lusaka was cancelled by the police at short notice, resulting in clashes between party supporters and the police later that afternoon. A UPND supporter was killed, reportedly by the police. In response to these events, the ECZ ordered the suspension of the campaign in the entirety of Lusaka and Namwala districts for a period of 10 days, ending 18 July. The legal authority of the ECZ to suspend the campaign, in whole or in part, is unclear and not specified. The suspension of the campaign was a disproportionate response by the ECZ, and unduly affected small parties and independent candidates, particularly in light of credible reports and direct EU EOM observations that the ruling party did not fully comply with the suspension order. Even the ECZ conceded in public statements that political parties did not fully comply with the suspension of the campaign in Lusaka, without specifying the violator(s). In making this decision, the ECZ appeared to have exceeded its authority to adopt and amend the election timetable; on this ground, the decision was challenged by FDD at the Constitutional Court.

Throughout the campaign, both the PF and the UPND made statements that inflamed tensions. The PF painted the UPND as the instigator of mass violence, and claimed the opposition party would commit electoral fraud by encouraging ECZ staff to deliberately invalidate ballots. The UPND alleged the PF had threatened the lives of some of its candidates and that the constitutional referendum would be used to allow non-registered voters to also cast votes in the election. These claims weakened public confidence in the integrity of the elections. There were several serious incidents of violence around the country, including the Lusaka and Namwala incidents. A narrative was developed by the ruling party to portray the opposition as violent and trouble making, features disliked in a peace-loving country such as Zambia.

While the PF, UPND and some smaller parties published policy manifestos, the campaign did not demonstrate a substantive ideological difference between the largest parties. The PF campaigned on its record of achievement in government, and heavily focused on its record in delivering improvements in infrastructure and public service delivery, but also used its position of incumbency to offer new incentives to the electorate during the campaign and made promises for further devolution and public service delivery provision.

The UPND centered its appeal on campaign for change and a 'ten point' plan, which promised, amongst other priorities, to create new jobs, reduce inequality, and improve electrification and agriculture. UPND decried the PF for its poor governance and mismanagement of the country's economy. Other parties struggled to be heard given the dominance of the PF and UPND. Much of the campaign focused on personalities, with the UPND being especially subject to negative attacks, and portrayed by the PF as being in favour of domestic and political violence and tribalism.

On 15 July, the ECZ invited all presidential candidates to recommit to a peaceful campaign, following the suspension of the campaign in Lusaka and Namwala, and offered a peace pledge document as the basis for the remainder of the campaign. Several parties levelled criticisms at the police for only taking action against opposition party supporters, letting violations by the ruling PF go unaddressed. A number of opposition parties criticized the ECZ-drafted peace pledge as insufficient to address incidents of violence, and for only repeating what had already been agreed by all parties in earlier meetings, notably a church-mediated meeting held prior to the start of the campaign in March 2016. While the ECZ was unwilling to revise the text of the pledge, it did agree that an addendum could be

drafted to respond to the concerns expressed by some parties, and on that basis most parties signed, with the UPND and Rainbow Party refusing to sign until the addendum was finalized. In public messaging that followed the meeting, both the PF and state media portrayed the non-signatories as being forces against peace, thereby contributing to further inflamed rhetoric between the contesting parties. While there were attempts to draft an addendum, the effort fizzled out and the peace pledge initiative appeared to have no lasting impact on the conduct of the remaining weeks of the campaign.

The EU EOM observed 47 campaign events in all 10 provinces, of which 23 were for PF, 20 were for UPND, one was for FDD, one was for UNIP and two were of independent candidates. In observed campaign events, candidates and parties campaigned vigorously, and usually respected campaign regulations, but the aggressive rhetoric of some speakers contributed to an occasionally intolerant tone. Disputes between activists of PF and UPND were witnessed in some parts of the country, but such incidents did not typically result in serious escalation.

While in many areas the police were commended for their management of campaign and election security, this was not the case in all provinces, notably in Copperbelt, Lusaka and Northern. The early morning police raid on a UPND campaign office in Lusaka on 1 July, in an apparent search for seditious material appeared to be an excessive use of police authority. Responsibility for the death of a UPND supporter on 8 July in Lusaka largely falls on the police, given that the sequence of events resulting in the fatality began after the police moved to cancel a UPND rally. On 20 July, in Kasama, Northern province, the police forcibly entered the residence of the UPND vice-presidential candidate, and arrested 28 UPND supporters present on the property. While the arrests may have been justified by possible stoning of the police by UPND supporters, the force used by the police appeared to be disproportionate to the offense. The police subsequently stated that weapons were found at the home, but produced only unconvincing evidence of this.

Smaller parties and independent candidates in Copperbelt, Eastern, Northwestern and Southern provinces reported limited or ineffectual police action in response to alleged incidents of intimidation from the larger PF and UPND, who often acted as if no other party should be permitted to campaign in the larger party's respective stronghold. All parties usually relied on their political activists to ensure event security rather than on the police. The provisions of the POA were exploited to favour the PF, relying on the legal exemption from notification of events of the president and vice-president as grounds to prevent opposition events from taking place, when last minute visits of the president to various provinces were given priority over previously scheduled opposition meetings. This tendency became particularly acute towards the end of the campaign, when the UPND's final rallies in the Copperbelt province on 9 August were cancelled by the police on 7 August, despite having been earlier accepted by local authorities, on the grounds that the PF would be holding events on the same day.

The interpretation by police that no campaign events could be held in the same province in which the president was present was unnecessarily broad and an excessive restriction on the right to campaign, and was not convincingly supported by the explanations provided by the police and state authorities. Given the vastness of Zambia's provinces, it is entirely practicable that presidential candidates should be permitted to campaign in the same province as that in which the head of state may be present, subject to the appropriate planning and resources being put in place.

B. Use of State Resources

The PF unduly benefited from its position as the incumbent party. The EU EOM observed the misuse of state resources for campaign purposes in Copperbelt, Eastern, Northern and Western provinces, in contravention of Zambian law, further contributing to an unlevel playing field. In Luapula and Southern provinces, permission to use campaign venues used by the PF was denied to opposition

parties. The PF offered new incentives to the electorate during the campaign, which could only have been achieved through the use of state resources, including the allocation of land to former miners and the cancellation of water bills in Copperbelt province, the distribution of subsidized fertilizer in Central province, and the initiation of new road projects in Southern province. The inauguration of a number of infrastructure projects during the campaign further blurred the distinction between state and ruling party, reinforcing PF's campaign advantage.

While both the constitution and the Electoral Code of Conduct prohibit the use of state resources for campaign purposes, no enforcement of this prohibition was attempted. Since this prohibition did not apply to the president and vice-president, the incumbents have great latitude to exploit this provision for partisan purposes, which consequently unfairly advantaged on the electoral playing field those currently in office.⁹

C. Campaign Finance

New constitutional provisions established a framework for regulation of the sources of funding for political parties, the submission of audited accounts by political parties, and the maximum amount of money that can be used for election campaigns. The presidential, vice-presidential and parliamentary candidates had to publicly declare their assets and liabilities in order to qualify for nomination. This provided a reasonable basis for transparency in political finance, but not all provisions, for example, spending limits, explicitly applied to individual candidates. In the 2016 election, there was no regulation of the sources of funding, nor limits on campaign spending, as no relevant legislation had been adopted, failing to comply with constitutional requirements. The resources available to political parties and candidates varied considerably and there was no transparency or accountability in both the sources of funding and how funds were spent.

On 20 July, the ECZ published the list of assets and liabilities of all presidential and vice-presidential candidates, in compliance with constitutional requirements. While the ECZ claimed to have disclosed the assets and liabilities of parliamentary candidates prior to election day by way of local public notice, there was no apparent evidence that this had occurred, and even after election day the ECZ website failed to provide any details of such a disclosure.

IX. DOMESTIC AND INTERNATIONAL ELECTION OBSERVATION

Civil society organisations played an active role throughout the electoral process.¹⁰ Notably, the Christian Churches Monitoring Group (CCMG), an alliance of faith-based organisations, issued a pre-election statement on 25 July, in which it noted concerns about electoral violence, the inability of candidates to freely and fairly campaign, a lack of impartiality from police, imbalanced coverage by state media, and the closure of *The Post* newspaper as issues with the potential to undermine the integrity of the elections, and called on the government, the ECZ and political parties to immediately take action to address these issues. Following the vote, CCMG described the 2016 elections as a step backward for Zambia, while noting that the overall electoral process was credible. CCMG conducted the largest independent parallel vote tabulation (PVT) for the presidential elections, with a representative random sample of 1,404 polling streams located at 1,001 polling stations. The results of the PVT were consistent with the official results, as announced by the ECZ.

Some 10,000 domestic observers were deployed by the Foundation for Democratic Process (FODEP)

⁹ Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 19: "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party."

¹⁰ Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 20: "There should be independent scrutiny of the voting and counting process ... so that electors have confidence in the security of the ballot and the counting of the votes"

with 5,000 observers, the Southern African Centre for Constructive Resolution of Disputes (SACCORD) with 4,000 observers, Transparency International Zambia (TIZ) with 500 observers, Operation Young Vote (OYV) and Zambia National Women's Lobby (ZNWL) each with 300 observers. Some geographical coordination of domestic observers was facilitated through the Zambia Election Information Centre (ZEIC).

FODEP issued a statement on the electoral process on 17 August, describing the elections as lacking credibility due to irregularities and a lack of transparency in transmission, counting, and announcement of results. On 19 August, FODEP retracted this statement as not conclusive and announced it would issue a detailed report later.

Following the ruling of the Constitutional Court to dismiss the UPND's presidential election petition, FODEP released a statement arguing that the merits of the petition should have been addressed and that the case should not have ended on the technicality of time elapsing, describing this as an injustice to the petitioners and a bad precedent for future presidential petitions, which also eroded public confidence in the Constitutional Court.

SACCORD expressed concern at the delayed release of election results in easily accessible areas of Lusaka, and described ECZ's explanation of the delay as unsatisfactory. In its preliminary statement, SACCORD stated that the political violence experienced during the campaign, the misapplication of the POA and perceptions of bias in media coverage harmed the freedom and fairness of the elections. SACCORD criticised the lack of transparency at constituency totalling centres, and that party agents were not always able to verify the tallied results. SACCORD recommended that the ECZ enhance transparency in results management, especially of the intake of results at the national results centre.

Several regional and international observation missions were deployed, including the African Union (AU) led by Goodluck Jonathan, former President of Nigeria; the Commonwealth Observer Group led by Jakaya Kikwete, former President of Tanzania; the Southern African Development Community (SADC) led by Oldemiro Baloi, Minister of Foreign Affairs of Mozambique; the Common Market for Eastern and Southern Africa (COMESA), the International Conference of the Great Lakes Region (ICGLR), the Electoral Institute for the Sustainability of Democracy in Africa (EISA) and the Carter Center. All international observation missions issued their post-election statements on 13 August 2016.

X. MEDIA AND ELECTIONS

A. Legal Framework

Although the constitution guarantees freedom of expression, freedom of the press is not explicitly protected, and 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.

The governance structures of the public media, including the Zambia National Broadcasting Corporation (ZNBC) and the state-owned newspapers, leave these organizations highly vulnerable to government interference and undue political pressure. State-owned media lack impartiality and are perceived by the public as a mouthpiece for the government and the incumbent president, contrary to international principles on independence and editorial freedom of the media. The minister of information and broadcasting services may directly appoint the corporation's board of directors, without the recommendation of an appointments committee, as previously established by earlier legislation. Nominees must be ratified by the National Assembly.

Both state-owned newspapers, *Times of Zambia* and *Zambia Daily Mail*, are headed by ministerial appointees. The two newspapers were recently incorporated in a government holding company for state-owned enterprises, the Industrial Development Corporation, in which the president has the power to appoint board members.

The Independent Broadcasting Authority (IBA), which was established by legislation in 2002, amended in 2010, became operational in July 2013, and is responsible for regulating the private broadcasting media, but does not oversee ZNBC public radio and television. IBA grants, renews, suspends and cancels radio and television broadcast licenses and is in charge of ensuring the promotion of a pluralistic and diverse private broadcasting industry. The minister of information has powers to directly appoint the IBA's board of directors; a procedure that leaves IBA exposed to political interference, contrary to international standards for the independence of media regulatory bodies. Media advocacy organizations have called on the government to provide for full independence of the IBA board by reinstating a selection procedure, which requires a recommendation by an appointment committee, subject to ratification by the National Assembly as provided in the 2002 legislation.

The Electoral Process Act (EPA) establishes the duties of the media and tasks ECZ to enforce the obligation of the media to provide fair and balanced coverage of all registered political parties and candidates during the campaign. Moreover, the Constitutional Amendment Act introduced the right for political parties and candidates to have access to the media, especially during election campaigns. During the campaign period, ECZ received a number of complaints from parties, candidates and civil society linked to the uneven access to public media by opposition parties. ECZ also contracted a private company to monitor media for infringements including unbalanced coverage. In spite of being well aware of the situation, ECZ showed a systematic lack of will to enforce the law, and was ineffective in correcting or preventing violations of bias in campaign coverage.

The EPA places a specific obligation on ZNBC radio and television to allocate public airtime equally to all of the political parties for their political broadcasts. The EPA requires the ECZ to prescribe the amount of airtime in any given language on public television or radio to be allocated to a political party or candidate, which the ECZ failed to do. No clear and impartial criteria for parties to qualify for direct access airtime or for a method of time allocation were adopted. Instead, ECZ agreed with ZNBC's decision to provide access to opposition parties through talk shows and interview style programmes. This approach did not ensure equal opportunity for all contestants.

In addition to the legal framework governing media coverage of the elections, the ZNBC Act establishes that broadcast news and current affairs programmers shall be comprehensive, unbiased and independent. Commentary shall be clearly distinguished from news. Additionally, ZNBC's editorial policy states the public broadcaster shall provide equal access and news coverage to all parties and politicians without prejudice or bias and shall provide fair and balanced reporting of the campaigns, meetings, rallies and press conferences of all registered political parties and candidates. The Editorial Policy further obliges ZNBC to abide by SADC Principles and Guidelines Governing Democratic Elections, which establishes that SADC member states '[shall provide] equal opportunity for all political parties to access the state media.'

The EPA does not regulate paid advertising. Regulations previously in force limited the airtime a party can purchase on state-owned broadcast media, not to exceed 30 minutes in any single vernacular language per week. For most of the campaign, it was uncertain which regulations were in place, with ECZ stating the previous regulations were still valid, while ZNBC allowed coverage in excess of 30 minutes, notably during PF rallies, which were marketed as political adverts.

During the campaign, IBA distributed to the broadcast media Standard Operating Procedures for Broadcasting in Zambia, which outlines the duties of the media during the election period. The IBA created licensing and compliance election monitoring guidelines for IBA inspectors and licensing officers prescribing how election coverage ought to be conducted, specifying key areas of focus, such

as live phone-in programmes, news programmes, comment and opinion pieces and public concerns about media coverage of elections. As per these guidelines, licensees should not allow any person to make sentiments that are hateful, tribal, insulting to opponents or that may lead to civil disorder. News content shall conform to ethical standards such as fairness, objectivity and balance. The ethical guidelines for media practitioners issued by IBA outline the right to freedom of expression, and require media 'not to extend that freedom of expression to propaganda for war, incitement of imminent violence or advocacy of hatred based on race, ethnicity, gender or religion that constitutes incitement to cause harm.'

B. Media Environment

Radio is the most important source of information for Zambians, particularly in rural areas. As of June 2016, there were 96 radio stations licensed to operate, of which 88 were functioning, including 47 community and religious radio stations, 43 commercial, four public and two university radio stations, most of them based in Lusaka (29), Southern (16) and Copperbelt (11). Luapula (four) and Muchinga (three) are the provinces with the fewest radio stations. There were 33 licensed television stations, with 19 operational, of which only the public television broadcasts nationwide. Muvi TV is the country's largest privately-owned television station, but a decoder is required for reception. The station claims 4.3 million viewers.

State-owned ZNBC is dominant among broadcast media, operating the only nationwide media outlets, including four radio stations, Radio 1, 2, 4 and the parliament radio service, and three television channels - two news TV stations and one religious. TV 1 has a reported 6.5 million viewers. ZNBC was established as the public service broadcaster pursuant to the 1987 ZNBC Act, amended in 2002 and 2010. ZNBC is funded by a television license fee, government grants and advertising.

Newspapers have a limited circulation, mostly restricted to the major towns and provincial centres. Apart from the privately-owned *The Post*, founded in 1991, and prominent for taking a strong critical stance towards the ruling party and the president, all major print publications tend to favour the government, including the two state newspapers and the privately-owned *Daily Nation*, launched in 2012.

Only 25 per cent of the urban population and 3 per cent of the rural population have access to electricity. In 2015, according to the Zambia Information and Communications Technology Authority (ZICTA), there were 11.6 million mobile subscriptions, compared to an overall estimated Zambian population of 15.9 million. About a fifth of the population uses the internet.

Social media, Facebook, Twitter, WhatsApp and the proliferation of news sites have opened space for political debate and freedom of expression. Political contenders have a strong presence online and social media was extensively used to campaign. These platforms gained relevance during the campaign period for breaking news, but they were also extensively used to circulate unconfirmed reports and false information. Similar to the mainstream broadcasting and print media outlets, there was overwhelming evidence of polarization among the online publications. The election campaign period saw most of the online and social media take partisan stances in their coverage and reporting. The credibility of information on social media was often questionable and was sometimes challenged by the ECZ, particularly during the counting and announcement of results.

The campaign period was marred by systematic bias in state media, which failed to provide fair and equitable coverage of the campaigns of all parties, limiting the possibility for voters to make an informed choice. News coverage of the state broadcaster was biased in favour of the PF and largely excluded other parties, or only reported other parties negatively. Restrictions on private newspaper *The Post* constituted a serious infringement on freedom of expression during the campaign and

severely limited opportunities for the opposition to access print media.¹¹ On 21 June, the offices and printing facilities of *The Post* were seized by the Zambia Revenue Authority (ZRA) in a bid to recover an outstanding tax debt. Despite the severe restrictions, *The Post* continued to be produced and published, with very limited circulation and substantially reduced content. While it is beyond the scope of the EU EOM to assess tax compliance, the timing of action against *The Post* contributed to decrease the diversity of viewpoints and the right of voters to freely receive information.

Incidents of violence and intimidation against journalists during the campaign period also restricted media's ability to report freely. On 8 July, a journalist of *The Post* was arrested by the police and briefly detained. On 16 July, police raided Radio Mano in Kasama, Northern province, in an attempt to stop a live programme featuring the UPND vice-presidential candidate. On 20 July, PF supporters allegedly intimidated *The Post* journalists at the open-air newsroom from where they had been operating since the paper's offices were closed. *The Post* reported that the police refused to intervene, and the newspaper's operations relocated to the grounds of a church. On the same day, police and ZRA officers raided the house of a staff member of *The Post*, allegedly being used as a facility for production and distribution of the paper. On 23 July, church officials asked *The Post* journalists to leave the church premises. On 3 August, an off-duty reporter of *New Vision* newspaper was attacked in Chainta, Lusaka, by an alleged UPND cadre.

UNIP and UPND reported delays in approval by ZNBC of the content of political adverts, which disadvantaged candidates and appeared politically motivated. In May 2016, a UPND documentary was not broadcast by the public broadcaster on the grounds that its content did not comply with ZNBC's editorial policy. UPND challenged this decision in the Lusaka High Court, which resolved the complaint only two days prior to election day, ordering ZNBC to air the recording before the close of the campaign. This late ruling only allowed for a single broadcast on ZNBC TV 1, on 9 August, which was aired outside prime time hours.

The suspension on 22 August, ordered by the IBA, of the broadcasting licenses of three media outlets – the largest privately-owned television channel, Muvi TV, Lusaka based Komboni Radio and community radio Itezhi-Tezhi, in Central Province – during the election complaints and appeals process, for alleged professional misconduct before, during and after the 11 August elections and for posing unspecified risks to national peace and stability, was another setback to freedom of expression in Zambia. The IBA confirmed to the EU EOM that there was no imminent danger to national security and that they were acting in response to earlier violations by the stations, further undermining the case for such severe and arbitrary action.

The IBA's decision, particularly with respect to Muvi TV, had a negative impact on the flow of news and information during a sensitive moment of the electoral process. It violated the fundamental right of citizens to access a wide range of different perspectives and analyses through the media, including those critical of state institutions, and contravened Zambia's national and international commitments, including that of the IBA itself, to promote an independent, pluralistic and diverse media sector.¹²

¹¹ Articles 11 and 20 of the Zambian constitution guarantee freedom of expression including freedom to hold opinions, communicate and receive ideas and information without interference; United Nations Human Rights Committee, General Comment No. 25, paragraph 25, 12 July 1996: "The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion." Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia, stresses in its preamble "the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy."

¹² Article III, Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia: "Freedom of expression imposes an obligation on the authorities to take positive measures to promote diversity, which include among other things: availability and promotion of a range of information and ideas to the public; pluralistic access to the media and other means of communication,

The IBA decision was taken pursuant to the IBA Act, which gives the regulator the authority to suspend a license 'in the interest of public safety, security, peace, welfare or good order.' The Act requires the IBA to give broadcasters notice of a complaint and to give them an opportunity to be heard and respond before suspending the license. These procedures were not followed by IBA, which invoked national peace and stability to suspend the broadcasting licenses of the three private media outlets with immediate effect and for an indefinite period. The three licensees did not receive any notification or warning prior to suspension nor did IBA produce evidence of the alleged misconduct. On 26 August, Muvi TV and Komboni Radio challenged the IBA's decision to suspend the broadcasting licenses of the two stations at the High Court. The High Court declined to grant an injunction against the IBA, and referred the stations to the appeals procedure prescribed in the Act, which was problematic given that there was no minister of information in office.

On 30 August, the IBA lifted the suspension of Itezhi-Tezhi Radio and announced in a press statement that the decision was taken after a hearing accorded to the station.¹³ According to the IBA, at the hearing 'the station admitted it had aired a programme during which a guest was inciting violence.' The station had allegedly instituted disciplinary action against the presenter of the programme before the IBA suspension. The station further appealed to the IBA 'to be lenient and consider lifting the suspension' as the radio is the only source of information in the area.

According to the station manager, the content of the radio programme was later associated with violence which occurred in Itezhi-Tezhi on election day. On 10 August, Itezhi-Tezhi Radio featured Gift Chilombo, UPND candidate for local council chairperson, on a paid political programme. Reportedly, Chilombo said individuals with pre-marked ballot papers in Itezhi-Tezhi were trying to rig the election and called on the public to expose such individuals.

C. Electoral Coverage and EU EOM Media Monitoring

Elections dominated the broadcast and print media during the campaign. However, the imbalanced coverage provided by public media, the absence of genuine political discussion across print and broadcast media, and a lack of original editorial content limited the independent and analytical reporting available and decreased the possibility for voters to make an informed choice. The PF dominated media coverage of the elections in the state-owned media, which was inconsistent with Zambian laws and regional and international standards on free and equal access to the media during elections. There was a systematic and deliberate lack of effort by ZNBC to meet formal requirements to provide equal access. Key programming such as news bulletins of ZNBC radio and television were biased in favour of the PF and largely excluded other parties, or only reported other parties negatively.

In prime time news and current affairs coverage from 6 July – 10 August,¹⁴ EU EOM media monitoring showed ZNBC TV 1 provided a total of 84 per cent of time to the PF, the president and the government - 60 per cent to PF and the president and 24 per cent to government - and seven per cent to ECZ. The incumbent president, the vice-president and some ministers also obtained airtime through coverage of their official activities. There was often no distinction between official duties

including by vulnerable or marginalised groups, such as women, children and refugees, as well as linguistic and cultural groups; the promotion and protection of African voices, including through media in local languages; and the promotion of the use of local languages in public affairs, including in the courts." See also Article I.

¹³ The IBA lifted the two other suspension weeks later, at different times, after the stations rendered an apology to the authority's board and promised to undertake internal review, investigation and disciplinary actions.

¹⁴ The EU EOM's media monitoring started on 6 July 2016 and ended on 10 August. The sample consisted of three television channels (two public, ZNBC TV1 and TV2, and private Muvi TV, monitored from 1730 – 0000), six radio stations (two public, Radio One and Radio Two, and four private, Sky FM, QFM, Phoenix and Hot FM, monitored from 0600 – 0900 and 1200 – 1345) and four daily newspapers (two state-owned, *Times of Zambia* and *Zambia Daily Mail*, and two private, *Daily Nation* and *The Post*). Two radio stations in the regions, Icengelo, in Kitwe, Copperbelt; and Breeze FM, in Chipata, Eastern, were also monitored.

and campaigning, and the incumbent president was frequently depicted commissioning road construction and other infrastructure projects. Hakainde Hichilema of the UPND received three per cent of time. Other parties with presidential candidates were provided less than two per cent each. ZNBC TV coverage of PF and the president was overwhelmingly positive in tone; in contrast, coverage of other parties was neutral or, in the case of UPND, usually negative. A similar trend was observed on ZNBC TV 2.

Opposition parties received very little access to state radio. Within the combined monitored time on both ZNBC Radio 1 and Radio 2, of news coverage of political actors, PF received 63 per cent, government 13 per cent, ECZ 11 per cent, while UPND received five per cent and all other parties less than two per cent each. The two state-owned newspapers reported along the same pro-government lines. *Times of Zambia* and *Zambia Daily Mail* dedicated a combined 59 per cent of their coverage to PF, 11 per cent to government and the president and seven per cent to ECZ. The UPND received 10 per cent of coverage; FDD three per cent, UNIP two per cent, and other parties with presidential candidates less than two per cent each. Independent candidates running for the other different elections received two per cent of the space devoted to political news. The tone of state radio and state newspapers followed the trend of state television.

While opposition candidates and political parties received wider coverage in private print and broadcast media, the polarization of political positions influenced the content and the tone of coverage, particularly in the print media, which provided very selective campaign coverage of the parties and their campaigns. Whereas *Daily Nation* clearly favoured PF and tended to associate the UPND with violence, *The Post* favoured UPND and strongly criticised the PF, particularly President Lungu. Candidate debate-style programmes in broadcast media, some of which were sponsored by civil society organisations, granted some access to contestants, but neither the incumbent president nor the vice-president participated, limiting the representativeness of the programmes.

A more balanced distribution of airtime amongst the two main parties was achieved in prime time news and current affairs programming provided by Muvi TV, which allocated 38 per cent of airtime to UPND and 28 per cent to PF. Government received 11 per cent and ECZ 14 per cent. Other parties contesting the presidential elections were provided much less time, with FDD receiving three per cent of the airtime in the news, and other parties with presidential candidates less than one per cent each. The overall tone was mostly neutral or positive with some instances of negative reporting towards PF and the government and a smaller amount towards UPND and ECZ.

Balance was slightly better on private commercial radio, however there was a tendency to grant more airtime to PF, followed by UPND or by FDD in the case of radio Sky FM, in Monze, Southern province, owned by the spouse of the FDD presidential candidate, Edith Nawakwi. The tone of coverage in private radio stations was mostly neutral or positive with instances of negative tone towards PF and UPND, mostly related to incidents of violence.

Coverage of parties and candidates by privately-owned regional broadcast media was predominantly achieved through airtime purchased by the parties. Although broadcasters are not subject to restrictions on political advertising, the large number of paid political advertisements, party-sponsored programmes and news based on press statements of political parties may have overshadowed original editorial content, limiting the independent and analytical reporting available to voters. PF and UPND purchased large amounts of time in various print and broadcast media. The increased cost of airtime during the election period on both public and private media disadvantaged smaller parties and independent candidates, and contributed to an uneven playing field. PF paid for 92 per cent of the overall airtime allocated to political advertisement on ZNBC TV 1. UPND paid for five per cent of airtime, while FDD purchased two per cent of airtime and UNIP and independent candidates less than one per cent each. ZNBC TV 2 aired PF advertising, 98 per cent, and UPND advertising, two per cent of the time. PF also purchased considerable amounts of time on Radio 1 and Radio 2, and on other radio stations, followed by UPND and FDD.

On Muvi TV, UPND paid for 62 per cent of the overall airtime allocated to political advertisement, PF paid for 32 per cent, FDD four per cent and PAC and other parties and independent candidates less than two per cent each. Female candidates from different political parties and independent candidates were sponsored by civil society organizations to obtain paid airtime on Muvi TV. PF and UPND also purchased space in print media. While PF adverts were published in the state-owned newspapers and *Daily Nation*, UPND adverts were placed only in *The Post*. ECZ purchased large amounts of airtime and space on broadcast and print media to advertise voter education messages.

XI. PARTICIPATION OF WOMEN

The constitution provides that the electoral system ensure gender equity in the National Assembly and local councils but no specific measures to achieve this are prescribed in legislation. In addition to the one female presidential candidate from the FDD, three vice-presidential candidates, from PF, United Progressive People (UPP) and Democratic Assembly (DA), were women. Amongst parliamentary and councillor candidates, women were significantly underrepresented, constituting only 16 per cent and nine per cent of candidates respectively. 26 women were elected as members of the parliament, 17 per cent of the MPs, a modest increase from the 22 women in the previous parliament, then 15 per cent of the MPs.

The Zambia National Women's Lobby (ZNWL) and the NGO Coordinating Council trained female candidates on campaign techniques and resource mobilization. They also printed campaign materials for selected female candidates from different parties, as not even the major parties were willing to materially support the campaigns of all of their female candidates. Even though the electoral system does not provide quotas or reserved seats for women, these civil society organisations lobbied major parties to nominate women as 40 per cent of their candidates, who pledged to do so. However, parties fell far short of this pledge, citing fears that they would not attract enough support from a traditionally patriarchal electorate. Given educational and financial constraints, women were especially affected by requirements to hold a Grade 12 certificate and by the increase in the nomination fees. Female candidates received minimal media coverage during the campaign. Almost all monitored coverage was provided to PF politicians and candidates, notably the incumbent vice-president. Amongst polling staff observed by the EU EOM, 30 per cent of presiding and assistant presiding officers, and 58 per cent of polling assistants, were women.

XII. PERSONS WITH DISABILITIES

The law provides for a special vote for persons who cannot vote at a polling station due to physical infirmity or disability, but the ECZ did not put in place such procedures. Legislation provides reasonable provisions on assisted voting in the polling station. Blind, disabled and illiterate could vote accompanied by an adult person of their own choice, or with the assistance of an election officer, in the presence of two polling agents from different parties or observers. The ECZ installed ramps in some polling stations to provide wheelchair access, following a 2011 High Court ruling ordering the ECZ to implement measures to ensure persons with disabilities are not disadvantaged. Tactile ballot guides for visually impaired were available in most polling stations, although only for the presidential election ballot. In cooperation with the Zambia Agency for Persons with Disabilities, ECZ conducted a targeted voter education programme in all provinces, implemented by facilitators recruited from among persons with disabilities, and produced educational material in braille and for the hearing impaired.

Zambia Federation of Disabilities Organisation and Disabilities Rights Watch observed elections as part of the FODEP domestic observer grouping and commended ECZ for its effort to increase accessibility, which included relocating most polling stations to the ground floor, which led to a

higher participation of persons with disabilities compared to previous elections. EU observers assessed 72 per cent of polling stations observed as accessible to persons with disabilities.

Zambia has ratified the Convention on the Rights of Persons with Disabilities (CRPD) and enacted in 2010 the Persons with Disabilities Act, ensuring the right of the disabled to vote and to be elected. The Commission for Human Rights and Good Governance (CHRAGG), which actively followed the electoral process, received complaints from people with disabilities on the lack of voter education, especially for deaf people. This was also a concern during the registration process as there were no sign language interpreters at registration centres.

XIII. ELECTORAL JUSTICE

A. Electoral Offences

The Electoral Process Act (EPA) creates a wide range of electoral offences, including illegal practices such as bribery, impersonation, undue influence, publishing false statements about candidates, submission of forged documents for nomination, inciting disorderly conduct at an election meeting and illegal practices related to the poll, and carries sentences of up to five years in prison, or a fine of up to K150,000 (€13,600). More minor misbehaviour at polling stations, including the breach of secrecy, as well as offences by election officers, are punishable by up to two years in prison or a fine of up to K60,000 (€5,450).

Additional offences, mostly related to campaigning, are specified in the Electoral Code of Conduct and include the offences of: members or supporters of parties or candidates using hatred or violence; to deface the material of others; disrupt rallies; show weapons at an election rally; organise a rally that clashes with the scheduled event of another party; and, use of government facilities for campaign purposes. It is for the police and the Anti-Corruption Commission, in the case of a corrupt practice, to investigate and initiate prosecutions in magistrates' court. However, electoral offences can also be raised in a post-election petition and can result in an election being nullified.

Only a small number of cases of these electoral offences were tried before magistrates' courts, the majority of which concerned defacing of campaign material, but which also included two UPND supporters charged with buying 33 voter cards in Chipata, Eastern province.

Prosecutions for election related offences were made under the Penal Code Act for assault, damage to property and unlawful gathering. These include the 22 UPND supporters tried for unlawful gathering in Lusaka on 8 July and the 28 UPND cadres charged with violence against police and possession of weapons in Kasama, Northern province, on 23 July. In most cases, the accused were released on bail and trial hearings were scheduled for after the elections, as criminal proceedings tend to be prolonged. For example, seven UPND cadres accused of beating a PF supporter in February 2016 in Choma, Southern province, were only sentenced on 19 August, after election day, to 24 months of imprisonment.

B. Complaints and Appeals

According to the constitution, ECZ shall settle minor electoral disputes. The ECZ Act specifies that ECZ has the power to adjudicate administrative disputes that may arise from the organisation, administration or conduct of elections. In response to complaints, but also on its own initiative, when enforcing the Code of Conduct, ECZ has power to reprimand political parties, candidates or stakeholders or impose unspecified administrative measures on any person, candidate or political party.

The EPA mandates resolution of electoral disputes and complaints first be attempted by mediation at the Conflict Management Committees (CMCs), established at district and national levels. These are composed of a chairperson nominated by ECZ, representatives from political parties, candidates, civil society, the police and other government agencies. However, the competencies of the CMCs are not clearly defined and these bodies were often called upon to deal with matters of a criminal nature, without having the requisite legal authority and powers of enforcement, and which were more appropriately the responsibility of the police and the courts. Similarly, on several occasions, district CMCs dealt with administrative issues, such as complaints regarding the recruitment of polling staff, which would have more properly been addressed by the administrative structures of the ECZ. CMCs lacked defined procedures for hearings, had limited transparency, and did not regulate public and observer access to hearings.

Nevertheless, in many districts, CMC mediation helped diffuse tensions and solve minor disputes between parties, although their performance and effectiveness greatly varied, and some interlocutors expressed little confidence in the utility of such mechanisms. The most common complaints dealt with were destruction of campaign material, inflammatory language and personal insults.

The national CMC met five times during the campaign period to mediate high profile political and campaign related disputes, almost exclusively focusing on PF and UPND. Although the parties usually reached agreement, the practical effect of these was minimal, as, for example, in the agreement not to abuse state transportation, including ZAF aircraft, for campaign purposes, as the president continued using this institutional privilege for the remainder of the campaign, as before. While useful as a discussion platform for political parties, the CMCs fell short of being a fully effective election dispute resolution mechanism.

The EPA provided ECZ the power to disqualify a candidate or party for breach of the Electoral Code of Conduct, without specifying a procedure for adopting such decisions, or detailing grounds for disqualification. The fact that the use of this power is only generally linked to breaches of the Code of Conduct, which may encompass misconduct ranging from minor to serious offences, leaves room for potential arbitrary disqualifications, and limits the ECZ from imposing other, less severe sanctions, more proportionate to less grave violations of the Code of Conduct.

Before election day, ECZ received a complaint seeking disqualification of PF and its presidential candidate Edgar Lungu on numerous counts of alleged breaches of the Code of Conduct, from a UPND supporter. In the absence of a specific procedure, ECZ asked the national CMC to attempt to resolve the dispute, despite the matter not being suitable for mediation. Finally, ECZ rejected the complaint in a letter stating that the presented grounds were not of sufficient volume to warrant disqualification. This underlined the lack of more detailed legal guidance and appropriate procedures for decision making on disqualification.

Even though on 9 August ECZ enacted a regulation on enforcement of the Code of Conduct, prescribing a new procedure for dealing with complaints regarding breaches of the Code, this failed to enhance clarity and legal certainty regarding this complaint mechanism. According to the regulation the competencies of CMC would extend to investigate and decide on such complaints, which would appear to go beyond their conciliation and mediation mandate.

In accordance with the rules on unlimited High Court jurisdiction, decisions of ECZ are subject to judicial review. At least two ECZ decisions were subjected to such review: the decision to ban mobile phones in polling stations was unsuccessfully challenged by UPND. The other case concerned UPND allegations of shortcomings in verification and announcement of results in which they asked the court to order ECZ to suspend three senior members of staff and to conduct a forensic audit of its computer system; this case was still pending as of the departure of the EU EOM.

The newly formed Constitutional Court is mandated to interpret the constitution and to hear matters relating to some violations of the constitution. However, as the provisions of part III of the constitution, the Bill of Rights, have not been amended, the High Court retains original jurisdiction to hear complaints concerning human rights violations. This uncertainty regarding which court had jurisdiction did result in the limitation of the right to effective remedy, as the Constitutional Court decided, in two cases, that a petition was not filed in the correct court.

The Constitutional Court has dealt with several cases pertinent to the elections and post-election period:

- Following the ECZ decision to suspend the campaign for ten days, FDD filed a constitutional complaint on violation of their political rights and freedom of assembly and expression.
- A case brought by the Prisons Care and Counselling Association seeking action from the ECZ to allow prisoners to vote. The case finds grounds in article 46 of the constitution, which provides for the unrestricted franchise of all adult citizens, which supersedes contradictory provisions of the EPA disqualifying from voting any person whose freedom of movement is legally restricted on voting day.
- The court dismissed a UPND petition to cancel the parliamentary election in Petauke Central, Eastern province, following the apparent withdrawal of an independent candidate. The court accepted the reasoning of the ECZ stating that no formal notification of withdrawal was delivered.
- In a case brought by the Law Association of Zambia (LAZ), two days before the election the court issued a judgment interpreting the constitution, stating that the ministers and deputy ministers stayed in their offices illegally after the dissolution of the parliament and hence illegally benefited from the use of state facilities in the campaign.

As of the departure of the EU EOM, the case concerning interpretation of the constitutional provisions of article 104 (3) of the constitution, according to which, where an election petition is filed against the incumbent, the speaker of the National Assembly shall perform the executive duties of the president, but may not make appointments, had yet to be heard. Article 106 (2) stipulates that the president shall hold office until the date the next president is sworn in. In this application, UPND also asked the court to order the president to hand over the powers to the speaker but the court dismissed the presidential election petition before hearing this case, rendering moot the application for such an order.

C. Election Petitions

The legal framework provides the possibility to challenge the results of any elections by a petition to competent courts. The Constitutional Court was the competent court to hear petitions relating to the presidential election. Its decisions are final. A petition could be filed by any person within a seven-day period, which ran until Monday, 22 August. A petition could be brought under either article 101(4) 'after initial ballot', or 103(1) which referred to petitions for nullification of the election of President-elect. The provisions, nearly identical, are confusing as to which was applicable in what circumstances, and the possibility that a petition could be brought under both articles simultaneously was not precluded.

According to the constitution, the Constitutional Court 'shall hear' the petition within 14 days, however, prior to its 5 September judgment dismissing the petition, there was uncertainty as to whether this period could be extended, and whether the petition should be decided within the same period of 14 days. The court had the explicit power to either declare the election of the president valid, or nullify the election. The court did not have the explicit power to alter results, order a recount, which as per the EPA is only provided for at polling station level by decision of the presiding

officer during the original count, nor order a repeat presidential election in only selected constituencies, nor order a second round to take place. Had the court decided to nullify the election, a new election would have to be held within 30 days of the date of the nullification.

When the election of a president is petitioned, the swearing in of the president is postponed, taking place on the Tuesday following the seventh day after the date on which the Constitutional Court declares the election valid.

84 petitions with regard to parliamentary elections were filed at the High Court, 15 of which challenged the election of former PF ministers or deputy ministers, whom the Constitutional Court had earlier ruled had illegally remained in office after the dissolution of the National Assembly. National Assembly election petitions were to be submitted within 14 days from the declaration of results. The High Court has to determine the petitions within 90 days. Its decisions can be appealed to the Constitutional Court. At the time of the departure of the EU EOM, no parliamentary petitions had yet been heard.

Petitions challenging local government elections are heard by the special ad hoc local election tribunals established by the chief justice. These tribunals are composed of a presiding magistrate and two legal practitioners, sworn in by the chief justice. One tribunal was established in each province, with the exception of Lusaka, Copperbelt and Southern provinces, where there were two in each province. These petitions were to be decided within 30 days. 51 petitions were filed to ad hoc tribunals around the country.

XIV. ELECTION DAY AND POST-ELECTION PERIOD

A. Voting and Closing

On election day, the EU EOM observed voting procedures at 520 polling streams in all ten provinces of the country. 72 per cent of polling streams observed opened on time or with a delay of less than 10 minutes. Political party representatives were present in all polling streams observed and were not seen to interfere with the process. Ballot papers received were not counted before voting started in 15 out of 46 streams observed. The overall conduct of the opening was assessed as very good or good in 98 per cent of cases.

Voting was conducted in a calm atmosphere, with some disturbances observed in the vicinities of eight polling stations. Voters showed remarkable determination by waiting in long queues, particularly in the morning. Ballot papers and/or boxes were not available in sufficient numbers in some polling streams, which led to merging of streams in a few cases. 41 streams observed had some materials missing. Voters' understanding of procedures was considered as good or very good in 71 per cent of observed streams. The overall conduct of voting was positively assessed in 97 per cent of polling streams observed, with some regional variations and less positive assessments in Eastern and Western provinces. Voting procedures were well implemented, providing appropriate safeguards to ensure the integrity of the vote and transparency of the voting process.

Although prescribed by polling day regulations, recording the voter card number on the ballot counterfoil could possibly compromise secrecy of the vote, as a unique serial number was printed on both the ballot and counterfoil.¹⁵ Polling assistants did not consistently check voters' fingers for the possible presence of indelible ink. The voters' wish to vote in some but not all elections, observed in 9 per cent of polling streams, was not always respected. In a number of cases, the self-inking stamp

¹⁵ Article 25 ICCPR, United Nations Human Rights Commission, General Comment No. 25, paragraph 20: "States should take measures to guarantee the requirement of the secrecy of the vote during elections This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant"

used in the official marking of ballot papers became ineffective after prolonged use, as also announced by ECZ. Some cases of overcrowded polling streams were observed, at times because multiple streams shared the same room.

The performance of polling staff was assessed as good or very good in 93 per cent of polling streams. The EU EOM, as well as domestic observers, were able to observe the voting process without restriction in virtually all polling streams. Party agents were seen in all polling streams. The transparency of the voting process was rated as good or very good in 96 per cent of cases.

Effective use of procedures provided adequate security measures and the secrecy of voting was largely maintained, although the position of the ballot booths was regarded as potentially compromising the secrecy of the vote.

B. Counting and Tabulation of Results

Counting started immediately after closing in almost all 40 polling streams observed at that stage and was conducted in the presence of political party representatives and observers, usually without interference. However, political party agents were usually assessed as passive or unfamiliar with counting procedures. The transparency of the counting process was positively assessed in 88 per cent of polling streams observed. The overall assessment of the closing and counting process was good or very good in 80 per cent of polling streams, and valid and rejected ballots were determined in accordance with procedures in 88 per cent of polling streams observed by the EU EOM. However, polling staff had difficulties completing results forms in 40 per cent of polling streams observed, possibly stemming from lack of training in this part of the process, the design of the forms as well as the sheer volume of work. In several polling stations, figures on the forms did not reconcile.

The protracted counting of five different ballot papers at polling streams, followed by results consolidation at polling station level, introduced the possibility of computational error, particularly in stations with many polling streams. In several polling stations, consolidation by weary presiding officers lasted several hours. The quality of this part of the process was assessed as considerably worse than that of voting. Copies of results forms were sometimes not provided to party agents, and there was a shortage of the so-called Gen 12 results forms in some areas. In some cases, party agents left the polling stations before completion of the forms. In 38 per cent of cases, results were not posted outside the polling station. Insufficient transport for polling staff and material were noticed in some areas.

Upon consolidation, result forms from the 7,701 polling stations were delivered by the presiding officers in tamper-evident envelopes to the constituency returning officers based at the 156 totalling centres, although envelopes sometimes arrived unsealed. Tabulation of results occurred in the presence of observers and party agents, and its overall conduct was positively assessed in 87 per cent of the 40 totalling centres observed. The process was overall assessed as transparent and orderly, although the intake of sensitive material was not always well organised. The EU EOM observed unrest outside of four totalling centres. The aggregation of results was conducted according to procedures in only 61 per cent of cases observed. In some instances, presiding officers did not stay throughout the processing of the material for their polling station, and returning officers did not always announce results, nor regularly print copies of the record of proceedings of the vote tabulation. The announcement of results form was not posted outside the totalling centre in 22 per cent of cases.

At the totalling centres, results from polling station forms were manually tallied, while in parallel they were entered in an electronic results management system (RMS), on condition that forms were complete and figures reconciled. This procedure, while intended as a safeguard, caused a number of results forms to be finalised at the totalling centres. This exercise largely seemed an attempt to remedy form filling deficiencies which occurred at the compilation of polling station results by overly

fatigued presiding officers. For the presidential election, all results forms were scanned via the RMS and transmitted together with electronic results.

EU EOM observers reported that the RMS transmission via satellite and mobile network was slow, delaying the electronic transmission of results to the national server in several cases and particularly in rural areas. One single computer for data entries and results transmission was often seen as being the bottleneck. Two tests of the RMS were conducted prior to the elections, demonstrating that the system was not completely reliable and that fax might need to be used as a backup transmission system. Issues on performance of the RMS were not clearly communicated to the public ahead of Election Day.

From the totalling centres, results were transmitted to the national results centre. A results management flow chart had been agreed by the ECZ with the stakeholders. For the first time, representatives of the presidential candidates were permitted to participate in the verification of national results in a dedicated national verification data centre. Some party representatives reported to the EU EOM that results were inconsistent at times with the data collected by their party agents. Further verification was granted by the ECZ in a few cases and some corrections were made. The EU EOM was not able to observe this process.

The law did not impose a specific, detailed timeframe for announcement of results, nor did the official electoral calendar. Final presidential results were delivered within 70 hours in 2011, with only three elections and a simplified national verification process. The ECZ initially pledged to deliver final results of the 2016 presidential elections within 48 hours from the closing of the polls, later stating that the 48 hours would start from the closing time of the last polling station, but failed to meet this timeframe. Unmet expectations and delays in announcing final results fuelled suspicion, and there was inadequate explanation provided to the public as to why delays were occurring. Several factors contributed to a slow results management process: the protracted counting of five different ballot papers at polling streams followed by consolidation at polling stations; poor implementation of counting procedures and the completion of forms; the physical transport of results forms to the totalling centres; the RMS safeguard procedure requiring exact data matching; and the verification process at the national results centre involving representatives of presidential candidates.

C. Announcement of Results

The chairperson of the ECZ, as the returning officer for the presidential elections, announced final results at 14:00 on 15 August, declaring incumbent President Edgar Lungu of the PF president-elect. Lungu received 1,860,877 votes, representing 50.35 per cent of the valid votes cast and thus narrowly surpassing, by 26,045 votes, the 50 per cent plus one requirement to be elected. UPND presidential candidate Hakainde Hichilema received 1,760,347 votes, 47.63 per cent of the valid votes cast. The margin of victory was 100,530 votes. Other parties contesting the presidential election received a collective 74,486 votes, 2.02 per cent of the valid votes cast.

Voter turnout was 56.45 per cent, slightly above the 53.65 per cent recorded in the last general elections in 2011, and higher when taking into account the increased proportion of deceased voters on the register in the intervening five years. However, the 2016 turnout confirms decreased participation since the historical 70.77 per cent turnout of the 2006 general elections. The highest turnout was recorded in Southern province with 72.26 per cent, followed by North-Western at 61.28 per cent and Western at 57.24 per cent. Luapula and Eastern provinces had the lowest turnout with 50.6 per cent and 50.74 per cent respectively. The turnout in Lusaka province was 56.69 per cent, very close to the national average.

The number of invalid votes in the presidential election was 85,795, 2.27 per cent of the total votes cast, notably higher than in 2011 (1.43 per cent) and 2006 (1.75 per cent), with some constituencies in Eastern province reporting a proportion of invalid votes higher than 5 per cent. While the national

level of invalid votes does not exceed regional and international trends, some individual constituencies should be investigated to determine why rates of invalid votes were substantially higher than elsewhere.

There are no legal requirements for publication of results, besides the obligation of posting results forms outside polling stations. Following past practice, the ECZ published results per polling station for the presidential elections on its official website, soon after the announcement of the presidential results. On 15 August, presidential results were removed for 24 hours, without explanation. Results were later restored on 16 August. Parliamentary results were published on 24 August per constituency and polling station, and similarly, there was no explanation as to why all results were removed the next day and only partially restored on 26 August, this time at constituency level only, without any individual polling station data, making further comparative analysis impossible. The ECZ did not respond to the EU EOM's requests for clarification of these events.

Parliamentary results for the 156 constituencies were announced by the respective returning officers within the three days following the polls, and the winners thereby declared. The distribution of directly elected seats in the National Assembly was as follows: 80 seats to the PF, 58 seats to the UPND, three seats to the Movement for Multiparty Democracy (MMD), one seat to the FDD and 14 seats to independent candidates.

Overall voter turnout in the parliamentary election was 56.03 per cent, comparable to the presidential turnout. In some constituencies however, voter turnout of parliamentary and presidential elections significantly differed, despite the fact that most voters cast all five ballots as observed by the EU EOM. In 142 constituencies the presidential turnout was higher than the parliamentary turnout, whereas in 14 constituencies the parliamentary turnout was higher than the presidential. A significant turnout deviation, above 2 per cent, was reported in eight constituencies in six provinces: Central, Copperbelt (two constituencies), Luapula, Lusaka (two constituencies), Western and Southern. The two most affected constituencies, both in Lusaka, are among the most populous. In Kabwata, official results show a nearly five per cent higher turnout in the presidential election, amounting to almost 5,000 votes.

In neighbouring Kanyama, the opposite trend was demonstrated, with the presidential election showing a three per cent lower turnout, representing a difference of over 4,000 votes. In the brief period that polling station results were available on the ECZ website, apparent tabulation and data management errors explained some of these discrepancies; for example, in Kanyama, two polling stations at John Laing school, one with 12,562 registered voters and the other with 7,562 registered voters, reported an identical number of votes cast and identical results for all presidential candidates.

The failure of the ECZ to restore polling station results at parliamentary level made it difficult to reach further conclusions and may have disadvantaged candidates who petitioned parliamentary results. Overall, 21 constituencies presented a turnout deviation higher than 1 per cent, with 135 constituencies showing a less than 1 per cent deviation, indicating that the anomalies affected a limited number of constituencies.

The number of invalid votes in the parliamentary elections was 92,044, or 2.45 per cent of the total votes cast. Five constituencies in Eastern province alone reported higher than 4 per cent invalid ballots, while four constituencies across the country had over 5 per cent.

Presidential results

		Percentage
Registered Voters	6,698,372	
Voted	3,781,505	56.45%
Valid Votes	3,695,710	97.73%
Rejected Votes	85,795	2.27%

	Candidate Name	Gender	Party	Votes	Percentage
1	Edgar C. LUNGU	M	PF	1,860,877	50.35%
2	Hakainde HICHILEMA	M	UPND	1,760,347	47.63%
3	Edith Z. NAWAKWI	F	FDD	24,149	0.65%
4	Andyford M. BANDA	M	PAC	15,791	0.43%
5	Wynter KABIMBA	M	Rainbow	9,504	0.26%
6	Saviour CHISHIMBA	M	UPP	8,928	0.25%
7	Tilyenji C. KAUNDA	M	UNIP	8,198	0.24%
8	PETER C. SINKAMBA	M	Greens	4,515	0.12%
9	MAXWELL MWAMBA	M	DA	2,378	0.06%

D. Post-Election Environment

Following announcement of the results, Hakainde Hichilema of the UPND rejected the outcome and announced he would challenge the results in court. Hichilema criticised international election observer missions for prematurely declaring the elections ‘free and fair,’ national election observer groups for partisanship, and the CCMG PVT as flawed and enabling PF to further manipulate its vote totals, stating that UPND’s own PVT showed it had won the elections. The Rainbow Party, the People’s Alliance for Change (PAC) and the National Restoration Party (NAREP) accepted the outcome as generally representative of the will of the people. The United National Independence Party (UNIP), United Progressive People (UPP), and the Forum for Democracy and Development (FDD) all expressed reservations about the credibility of results, with each providing specific examples of where they believed results were falsified, but accepted that the instances of alleged malpractice documented were unlikely to have affected the overall outcome of the presidential election. However, several parties argued that the claims of fraud in Lusaka were credible and given the weight of representation in the capital region, could have been significant enough to affect the final result, or at least require a second round of elections.

Following violent post-election demonstrations in Mazabuka, Monze, Choma and Namwala in the Southern province, about 300 UPND supporters were arrested and charged with riotous behaviour, damage to property, assault and conduct likely to cause breach of peace. A senior UPND official, together with four others, were arrested and charged with aggravated robbery for allegedly intercepting the Gen 12 election results form for Chingola constituency, and were detained pending trial at the High Court. UPND’s provincial party chairperson in the Copperbelt province, together with seven others, was arrested in Kitwe on 14 August, for allegedly intercepting a vehicle allegedly transporting ballots and other sensitive electoral materials.

The UPND filed a challenge of the presidential election results on 19 August. UPND requested the Constitutional Court declare that President-elect Lungu and Vice-President-elect Wina were not validly elected and that the presidential election was invalid for non-compliance with the legal framework for election. Further, they requested a declaration that Lungu did not receive more than fifty per cent of the valid votes cast. UPND also asked the court to order a recount of all votes in the

presidential election, and scrutinize all rejected ballots. UPND further sought a declaration that UPND won the election, or, should the court order a second ballot, disqualify Lungu as a candidate in any future election. The petition was based on arguments pertaining to both the electoral environment, such as bias in the public media, restrictions on movement and campaigning, as well as irregularities alleged during polling, counting, tallying, transmission and announcement of results.

On 22 August, during the preliminary hearings of the presidential election petition, the Independent Broadcasting Authority (IBA) suspended the broadcasting licenses of three media outlets, including that of the largest privately-owned television channel, Muvi TV, for alleged professional misconduct before, during and after the elections and for posing unspecified risks to national peace and stability. Muvi TV, which had provided extensive coverage to the UPND during the campaign, had planned to provide extensive coverage of the presidential election petition.

The UPND petition was dismissed on 5 September on procedural grounds, without any evidence being heard, when the Court, in a three to two split decision, ruled that it did not have jurisdiction to extend the 14 day constitutional period for hearing of the petition prescribed in article 101 (5), declaring that this period had expired at midnight, Friday, 2 September. According to the majority ruling, the provision of 14 days should be literally interpreted to avoid an extended period of uncertainty in the determination of whether the president was validly elected.

Two judges, including the court president Justice Chibombo, joined a dissenting opinion, arguing that the constitution should be read as a whole. Since the intent of the constitution was to provide substantive remedy to election petitioners, and since the court should be guided by the fundamental principles of equity, fairness and justice, the dissent argued that the court had implied powers to continue hearing the election petition beyond 14 days. The dissent also referenced article 118 (2) of the constitution, which states in part that ‘justice shall be administered without undue regard to procedural technicalities,’ and noted that the failure to conduct the hearing was a missed opportunity to promote national healing after a divisive election process, and that the constitutional provisions for the hearing of a presidential election petition within 14 days were impractical.

While most of the 14 days, including the open court hearing on Friday, 2 September, were spent dealing with preliminary issues raised by UPND, prompting allegations that UPND was intentionally stalling due to its weak legal case, the court failed to provide clear, timely and authoritative directions to parties regarding the timeline of the trial. This ultimately resulted in a situation where the petitioners could not exercise their right to a fair and public hearing, and undermined public confidence in the election complaints process.

In the course of the proceedings, the court changed its position several times as to the interpretation of the 14 day period and whether the hearing could continue after the period expired. While on Friday, 26 August, Justice Sitali, sitting as a single judge, directed that the trial should continue until Thursday, 8 September, with each party having two and a half days to present evidence, on Tuesday, 30 August, the same judge ordered that the trial had to be concluded by midnight, Friday, 2 September. At midnight on 2 September, the court again directed that the trial could go on until Thursday, 8 September, only to change its stance once again by finally dismissing the petition on the morning of Monday 5 September. The court never explained its first direction to continue with the trial until 8 September, and the shift in position of the court between Friday night and Monday morning prompting speculation about the court coming under political pressure. According to the dissenting opinion of Justice Munalula, the parties should also have moved the court to interpret the 14 day period in view of the right to a fair trial, but failed to do so.

During proceedings, the court rejected several applications for preliminary issues raised by UPND. Justice Sitali dismissed the preliminary application for court custody of the electoral material on the grounds that it was ECZ who had a statutory duty to safeguard electoral material and that the petitioners failed to prove that ECZ was going to tamper with any materials.

The full bench further dismissed the UPND's applications: for leave to re-file 50 additional witness statements, which had originally been filed late; to amend the petition; to order ZNBC and ECZ to produce additional documentary evidence; and to decide whether the time limit for hearing of witnesses on Friday did not violate the right to a fair trial according to the constitution, all on procedural grounds as applications filed late or because the court did not have jurisdiction.

The day following the Constitutional Court decision, UPND petitioned the High Court that its right to a fair trial pursuant to article 18 (9) of the constitution was violated by the ruling of the Constitutional Court and that the decision was hence null and void. As interim relief, UPND requested an order to stay that ruling as well as to stay the swearing in of the president. This unusual legal situation, when the High Court has jurisdiction to decide whether human rights were violated by a Constitutional Court ruling is a result of the fact that the Part III of the constitution, which gives this jurisdiction exclusively to the High Court, has not been amended to be consistent with the rest of the constitution and convey such powers to the Constitutional Court since its creation. According to article 28 (1), the High Court may make any orders to enforce human rights. UPND interpreted this provision as giving the High Court the right to overrule the decision of the Constitutional Court, which while theoretically possible would compromise the original and final jurisdiction of the Constitutional Court with regard to presidential election complaints. Such circumstances have never been tested in Zambian courts. There is no legal deadline to conclude such a case.

XV. RECOMMENDATIONS

Enhancement of several aspects of the electoral process, including a review of the legal framework, is required for the full realisation of fundamental rights of individuals and groups, as provided for in international and regional principles for democratic elections. In this regard, the following recommendations are offered for consideration and action to the Government of the Republic of Zambia, the Electoral Commission of Zambia, political parties, civil society and the international community. Priority recommendations are in bold. Discussions on implementation of these recommendations should be considered as early as possible in order to address in a timely manner the shortcomings identified in the 2016 electoral process. A detailed table of recommendations, and relevant references to national legislation and regional and international standards is in Annex I of this report.

Legal framework

- 1. 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.**
2. Remove the unnecessary restriction, prescribed by the Constitution, of the right to stand, the minimum education qualification requirement.
- 3. 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.**
4. 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.
5. 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.
6. 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.

Electoral Administration

7. 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.
- 8. 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.

- 9. 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.**
10. 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.
11. 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.
- 12. 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.**

Voter and Civic Education

13. 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.

Voter registration

14. 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.
15. 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.

Campaign, Political Parties and Campaign Finance

16. 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.

17. 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.
18. 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.
19. **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.**

Election Day

20. 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.
21. 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.

Election Results

22. **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.**
23. 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
24. **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.**

Complaints and Appeals

25. **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.**
26. 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.

Media

- 27. 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.**
28. 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.
- 29. 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.**
30. 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 take over media houses should be repealed.
31. Media should clearly identify paid airtime or party-sponsored slots to inform the voters the nature of the programme.

Persons with disabilities

32. 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.

Participation of women

33. 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.

Annex I: Table of Recommendations

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
LEGAL FRAMEWORK				
To ensure consistency of legislation and increase legal certainty Final Report Page 11	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.	Amend the Constitution, Electoral Process Act and Electoral Commission of Zambia Act	ECZ, Ministry of Justice, National Assembly	Respect for Rule of Law
To promote right to political representation Final Report Page 18	Remove the unnecessary restriction, prescribed by the Constitution, of the right to stand, the minimum education qualification requirement.	Amend the Constitution	National Assembly	Art. 25 (a) ICCPR: 'the right to take part in public affairs...through freely chosen representatives' Gen. 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...' 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;'
To promote enjoyment of freedom of assembly Final Report Page 20	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.	Amend the Public Order Act	National Assembly, Police, Ministry of Justice, Ministry of Home Affairs	Art. 21 ICCPR: 'The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.' Gen. Comment 25, Para 12: 'Freedom of expression, assembly ...are essential conditions for the effective exercise of the right to vote and must be fully protected'; Para 26: "right to hold peaceful demonstrations and meetings."

<p>To promote enjoyment of freedom of assembly and right to campaign free from violence</p> <p>Final Report Page 20</p>	<p>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.</p>	<p>ECZ to actively pursue its duty according to Section 3 (1f) of the Code of Conduct “ensure that a campaign rally legally organized is not disrupted or arbitrarily prohibited”; Police to fulfil obligation of the Section 6 of the Code of Conduct</p>	<p>ECZ, Police</p>	<p>Art. 21 ICCPR: 'The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.'</p> <p>Gen. Comment 25. Para. 12. 'Freedom of expression, assembly...are essential conditions for the effective exercise of the right to vote and must be fully protected'</p>
<p>To increase the capacity of ECZ to enforce parties and candidates' legal obligations in the electoral process</p> <p>Final Report Page 30</p>	<p>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.</p>	<p>π</p>	<p>ECZ National Assembly</p>	<p>ICCPR Gen. Comment 25 Para. 20 'An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly and impartially...'</p>
<p>To fully guarantee the right of association and to provide rules and obligations of political parties</p> <p>Final Report Page 17</p>	<p>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.</p>	<p>Adopt legislation on political parties</p>	<p>National Assembly</p>	<p>Art. 22, ICCPR and ICCPR Gen. Comment 25: 'The right to freedom of association, including the right to join and form organisations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25'</p>

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
ELECTION ADMINISTRATION				
To increase confidence in the EMB's independence among all stakeholders Final Report Page 14	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.	Amend Electoral Commission of Zambia Act	ECZ, National Assembly, Government	Art. 25 ICCPR, Gen. Comment No. 25, Para 20: 'An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.' SADC Principles and Guidelines Governing Democratic Elections of 2015, section 5.1.3: 'Establish impartial, professional, independent, all inclusive, competent and accountable EMBs staffed by eminent, non-partisan and capable commissioners, and efficient and professional personnel.'
To increase confidence in the EMB's independence among all stakeholders Final Report Page 13	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. 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 roster of credible professionals from which to appoint district electoral officers and returning officers.	Amend Electoral Commission of Zambia Act, develop policies	ECZ	Section 2, Art. 4 (e) of the African Union Declaration on the Principles Governing Democratic Elections in Africa, 2002: 'Democratic elections should be conducted [...] by impartial, all inclusive competent and accountable electoral institutions staffed by well trained personnel and equipped with adequate logistics.' SADC Principles and Guidelines Governing Democratic Elections of 2015, Section 5.1.5: 'Ensure that the EMB, or other legally designated institution, is independent and that it has adequate logistics, human, financial resources and contingencies made available for the entire Electoral Cycle, including the authority to recruit, train and build the capacity of permanent and temporary electoral staff.'

To enhance transparency and accountability, as well as simplify results management and reduce possible computation errors Final Report Page 32	The <i>de facto</i> 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.	Adopt appropriate policy	ECZ	African Charter on Democracy, Elections and Governance, art. 3: Principle of transparent elections
To enhance transparency and accountability of the EMB, and confidence in the process Final Report Page 14	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.	Adopt appropriate policy	ECZ	African Charter on Democracy, Elections and Governance, art. 3: Principle of transparent elections
To enhance public awareness and confidence Final Report Page 14	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.	Adopt appropriate policy, strengthen public relation section	ECZ	ICCPR Gen. Comment 25, Para 26: 'In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.' ICCPR General Comment 34 on art. 19(2) of the ICCPR 'the right of access to information held by public bodies.'
To promote equal suffrage Final Report Page 15	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.	Conduct review of constituency boundaries	ECZ	Art. 25 ICCPR, United Nations Human Rights Commission, Gen. Comment No. 25, Para 21: '...within the framework of each State's electoral system the vote of one elector should be equal to another. The drawing of electoral boundaries and method of allocating votes should not distort the distribution of voters or discriminate against any group.'

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
CIVIC AND VOTER EDUCATION				
To ensure effective exercise of political rights Final Report Page 15	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.	Adopt appropriate voter education policies and guidelines	ECZ, CSOs	ICCPR Gen. Comment 25 Para. 11 'States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.'
VOTER REGISTRATION				
To ensure accuracy, inclusiveness and sustainability Final Report Page 16	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.	Increase coordination of responsible institutions, amend appropriate legislation	ECZ, DNRPC, Ministry of Home Affairs, Ministry of Local Government, NAPSA	ICCPR Gen. Comment 25, Para 11: 'States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.'

<p>To ensure transparency and enhance effectiveness</p> <p>Final Report Page 17</p>	<p>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.</p>	<p>Ensure timely conduct of voter registration inspection and certification exercise and timely scheduling of voter registration audit</p>	<p>ECZ</p>	<p>ICCPR Gen. Comment 25, Para 26: 'In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.' Gen. Comment 34 on art. 19(2) of the ICCPR 'the right of access to information held by public bodies.'</p>
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Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
CAMPAIGN, POLITICAL PARTIES AND CAMPAIGN FINANCE				
To promote a peaceful campaign Final Report Page 19	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.			Art. 21 ICCPR 'The right of peaceful assembly shall be recognized'; ICCPR Gen. Comment 25, Para 26: 'freedom to hold peaceful demonstrations and meetings'
To improve transparency and create a more level playing field for electoral competition Final Report Page 20	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.	Amend Electoral Process Act	National Assembly	SADC Parliamentary Forum Norms and Standards for Elections in the SADC Region, Part 2, art 3 (i): 'The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage'
To promote more effective political party engagement on election day Final Report Page 33	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.	Implement more extensive training for party agents	Political parties	
To promote increased transparency and public accountability in political party financing and to promote a more level playing field Final Report Page 21	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.	Adopt legislation with regard to political parties as foreseen in article 60(4) of the constitution, especially on campaign finance and regulation of the sources of funds for political parties.	National Assembly	Art. 25 (b) ICCPR: the right to elect freely chosen representatives... in genuine elections; Gen Comment 25 – Para 19 – limitations on campaign expenditure...to ensure that the free choice of voters is not undermined... by disproportionate expenditure Art. 7(3) Convention against Corruption consider taking appropriate legislative and administrative measures ... to enhance transparency in the funding of candidatures for elected public office

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
ELECTION DAY				
To ensure protection of the secrecy of vote Final Report Page 32	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.	Amend election day procedures for presiding officers and polling staff	ECZ	Art. 25 ICCPR, United Nations Human Rights Commission, Gen. Comment No. 25, Para 20: 'States should take measures to guarantee the requirement of the secrecy of the vote during elections This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant'
To improve results management and confidence in election results Final Report Page 33	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.		ECZ	Section 2, art 4 (e) of the African Union Declaration on the Principles Governing Democratic Elections in Africa, 2002: 'Democratic elections should be conducted [...] by impartial, all inclusive competent and accountable electoral institutions staffed by well trained personnel and equipped with adequate logistics. '

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
ELECTION RESULTS				
To ensure transparency and build confidence in the elections results Final Report Page 34	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.	Amend the Electoral Process Act	ECZ	African Charter on Democracy, Elections and Governance, art. 3: Principle of transparent elections
To improve future results management processes Final Report Page 35	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.		ECZ	
To improve effectiveness and transparency of results management system Final Report Page 33	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.		ECZ	African Charter on Democracy, Elections and Governance, art. 3: Principle of transparent elections

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
COMPLAINTS AND APPEALS				
To promote right to a timely and effective remedy and right to a fair trial Final Report Page 30	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.	Amend Constitution, Electoral Process Act and Electoral Regulations	ECZ, National Assembly	Right to timely and effective remedy, art. 8, UDHR, art. 2, ICCPR: (a) any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, (b) right determined by competent judicial, administrative or legislative authorities ICCPR Art. 14, 15, UDHR Art. 11 Right to a fair trial
To promote right to a timely and effective remedy and right to a fair trial Final Report Page 31	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.	Amend Constitution, Electoral Process Act	ECZ, National Assembly	Respect for rule of law, Right to timely and effective remedy, art. 8, UDHR, art. 2, ICCPR: (a) any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, (b) right determined by competent judicial, administrative or legislative authorities ICCPR Art. 14, 15, UDHR Art. 11: Right to a fair trial

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
MEDIA AND ELECTIONS				
To ensure editorial independence of the public media Final Report Page 22	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.	Amend the Zambia National Broadcasting Corporation Acts	National Assembly, Government, Media	ICCPR Gen. Comment 34, Para. 16: 'States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.' Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17-23 Oct, 2002: art. VI: 'state and government controlled broadcasters..should be governed by a board which is protected against interference; the editorial independence of public service broadcasters should be guaranteed; and the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.'

To ensure the independence of the broadcast media regulatory body Final Report Page 23	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 cancellation of licenses should be repealed. IBA should work more closely with the ECZ in supervising aspects of media coverage of the election process.	Amend the Independent Broadcasting Authority (IBA) Act, 2002 and IBA (Amendment) Act, 2010	National Assembly, ECZ, Media	ICCPR Gen. Comment 25, Para 26: '...free communication of information and ideas about public and political issues is essential. This implies a free press and other media able to comment on public issues without censorship or restraint...' Declaration of Principles on Freedom of Expression in Africa, art. VII, 1-3: 'Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.'
To ensure political parties and candidates a equal and balanced coverage by the public broadcaster Final Report Page 23	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.	ECZ to more actively enforce the provisions of section 29(2) of the Electoral Process Act and sections 8 and 9 of the Code of Conduct	ECZ	SADC Principles and Guidelines Governing Democratic Elections: " SADC member states [shall] promote necessary conditions to foster transparency, freedom of the media; access to information by all citizens; and equal opportunities for all candidates and political parties to use the state media."
To promote freedom of expression Final Report Page 22	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 take over media houses should be repealed.	Amend the Penal Code Act	National Assembly, Government	ICCPR Gen. Comment 25, Para. 26: '...free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint...including freedom to criticize and oppose...'
To clarify the distinction between paid airtime or space and news coverage Final Report Page 23	Media should clearly identify paid airtime or party-sponsored slots to inform the voters the nature of the programme.		Media	

Purpose and reference in the Final Report	Recommendation	Suggested activities and timeline if suitable	Targeted institution and other stakeholders	Principle International and/or Regional Commitment
PARTICIPATION OF PERSONS WITH DISABILITIES				
To promote political participation of persons with disabilities Final Report Page 28	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.	Design dedicated voter education Provide training for polling staff, visually impaired	ECZ	Art. 29(a) CRPD: the equal right of persons with disabilities to 'effectively and fully participate in political...life, including the right and opportunity for persons with disabilities to vote.'
PARTICIPATION OF WOMEN				
To promote greater participation of women in political life Final Report Page 28	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.	Incorporate appropriate provisions into any new political parties legislation	National Assembly	ICCPR, art. 3: 'The equal right of women and men to enjoyment of all ... political rights;' CEDAW, art. 4.1 'Adoption of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination'

Annex II: EU EOM Media Monitoring Results



ANNEX II
Media Monitoring Results
6 July – 10 August 2016

• State-owned media	• Private media
TV	TV
ZNBC TV 1	MUVI TV
ZNBC TV 2	
Radio	Radio
Radio One	QFM
Radio Two	Phoenix
Newspapers	Hot FM
Times of Zambia	Sky FM, in Monze, Southern
Zambia Daily Mail	Icengelo, in Kitwe, Copperbelt
	Breeze, in Chipata, Eastern
	Newspapers
	Daily Nation
	The Post

Media Monitoring Results
6 July – 10 August 2016

The EU EOM conducted media monitoring of broadcast and print media outlets from 6 July till 10 August, using quantitative and qualitative analyses, assessing the amount of time/space allocated to contestants and other political actors, as well as the tone of their coverage.

Explanation of the charts

The pie charts show the percentage of airtime/space allocated to contestants and other subjects.

The bar charts show how much airtime/space contestants and other subjects received, and the tone of their coverage - positive, neutral and negative.

Direct speech is always coded as positive tone in favour of that actor / political party who speaks, independently the content of his/her speech.

Recordings schedule:

- TV channels were recorded daily, during the evening prime time from 1730 – 0000
- Radio stations were monitored daily from 0600 till 0900 and from 1200 till 1345
- Breeze and Icengelo radios were monitored from 18 July till 10 August, between 0600 – 0900.

List of political parties with presidential candidates
Democratic Assembly (DA)
Forum for Democracy and Development (FDD)
Greens
Patriotic Front (PF)
PEOPLE's Alliance for Change (PAC)
Rainbow
United National Independence Party (UNIP)
United Party for National Development (UPND)
United Progressive People (UPP)

List of other parties & candidates
All People's Congress (APC)
Alliance for Democracy and Development (ADD)
Christian Democratic Party (CDP)
Citizens Democratic Party (CDP)
Citizens for a Peaceful Zambia (CPZ)
Fourth Revolution Party (4R)
Genuine Peoples Platform (GPP)
Independent
Movement for Multiparty Democracy (MMD)
National Party (NP)
National Restoration Party (NAREP)
National Revolution Party (NRP)
New Congress Party (NCP)
People's Party (PP)
Republican and Progressive Party (RPP)
United Democratic Forum Party (UDFP)
United Democratic Front (UDF)
Zambia Direct Democracy Movement (ZDDM)
Zambia Republican Party (ZRP)
Zambian Conservative Party (ZCP)
Zambians for Empowerment and Development (ZED)

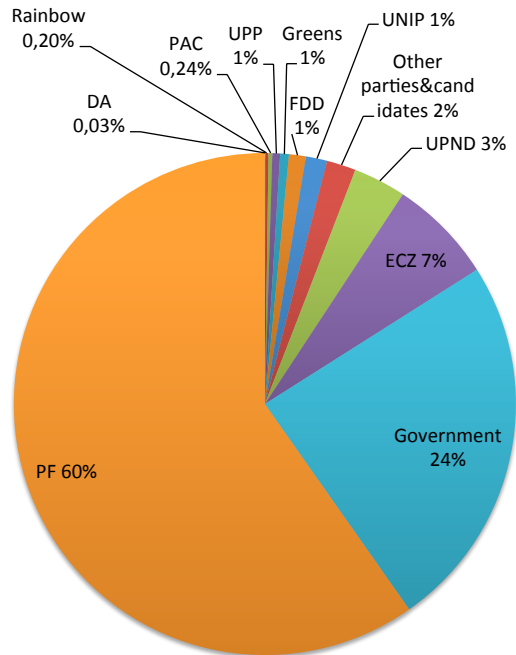
TV

ZNBC TV 1

ZNBC TV 2

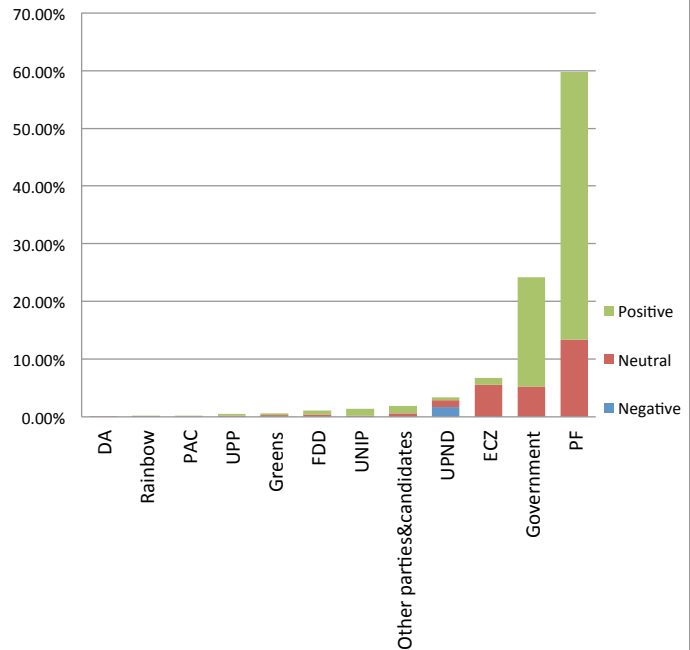
Muvi TV

ZNBC TV 1 – Time allocated to News 39hrs and 43 min



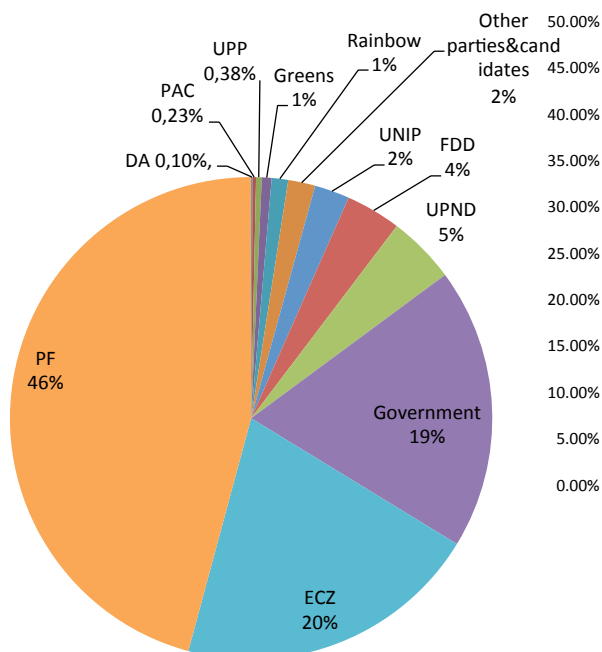
Graph 1 : PF and government dominated the news coverage provided by public ZNBC TV 1

ZNBC TV 1 - Tone in the News



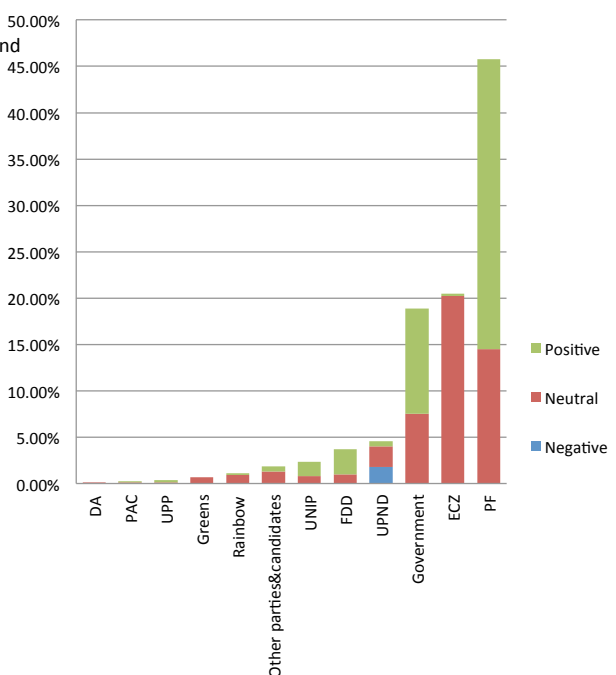
Graph 2: ZNBC TV 1 coverage of PF and the government was overwhelmingly positive in tone. Coverage of UPND was usually negative.

ZNBC TV 2 – Time allocated to News 12hrs and 35 min



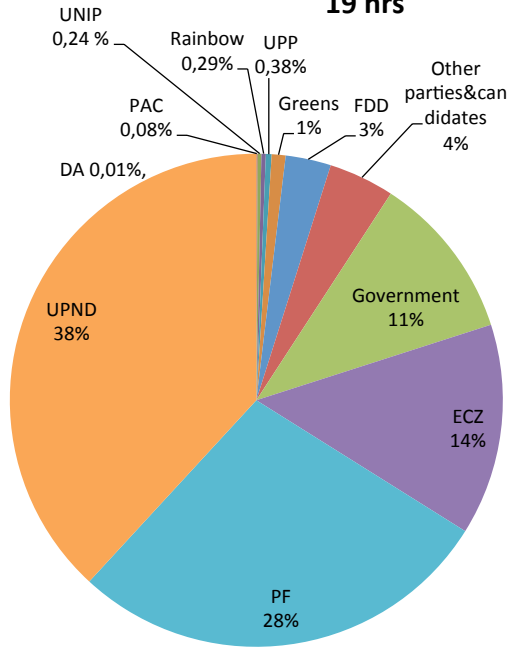
Graph 3: PF also received the largest share on the news provided by ZNBC TV 2

ZNBC TV 2 - Tone in the News



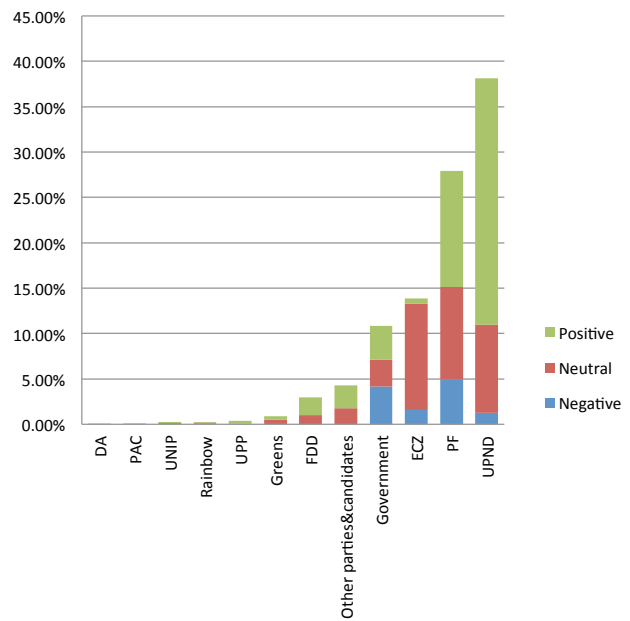
Graph 4: The tone in the news was mostly neutral or positive towards PF with instances of negative reporting towards UPND

MUVI TV – Time allocated to News 19 hrs



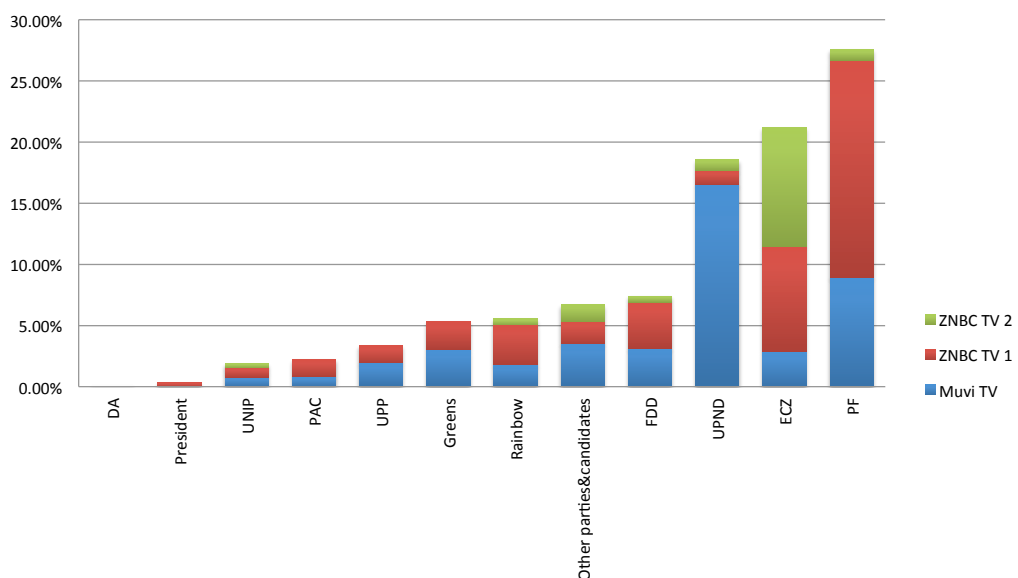
Graph 5 : A more balanced distribution of airtime amongst the two main parties was achieved in prime time news provided by MuvI TV, despite dedicating more time to UPND than to PF

MUVI TV - Tone in the News



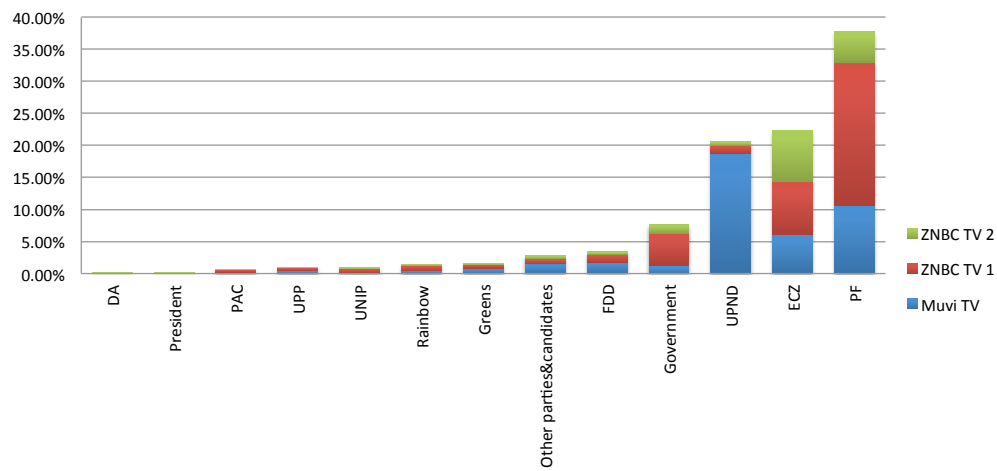
Graph 6: The overall tone was mostly neutral or positive with instances of negative reporting towards PF, government and a smaller amount towards UPND and ECZ

All TVs - Time allocated to political actors and ECZ on talk shows, interviews and other editorial programmes



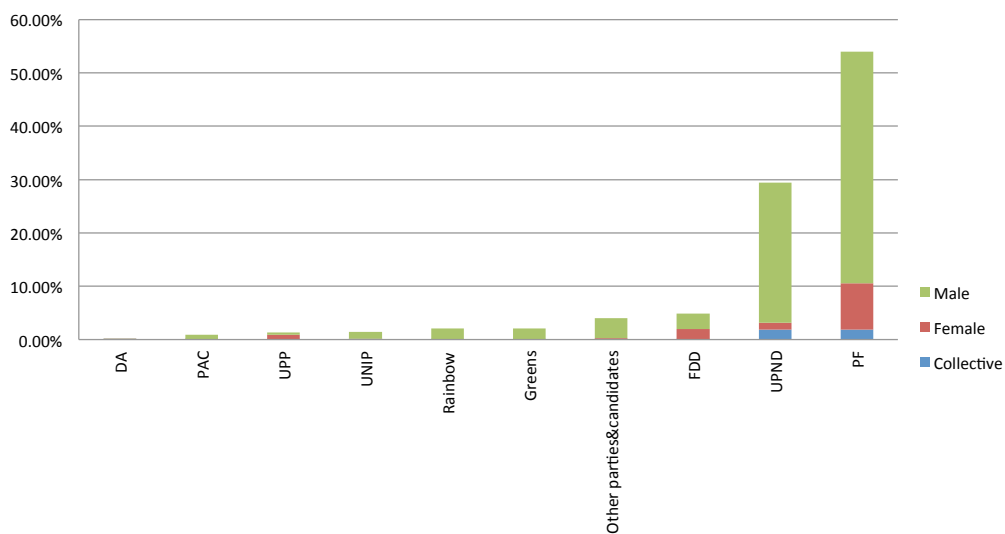
Graph 7: Talk shows and debate-style programmes granted some access to other parties. PF and UPND received a relevant share of airtime through interviews and talk shows. The president benefited from additional time in his official capacity through a speech delivered on the evening before election day

All TVs - Total time allocated to political actors Including political advertisement



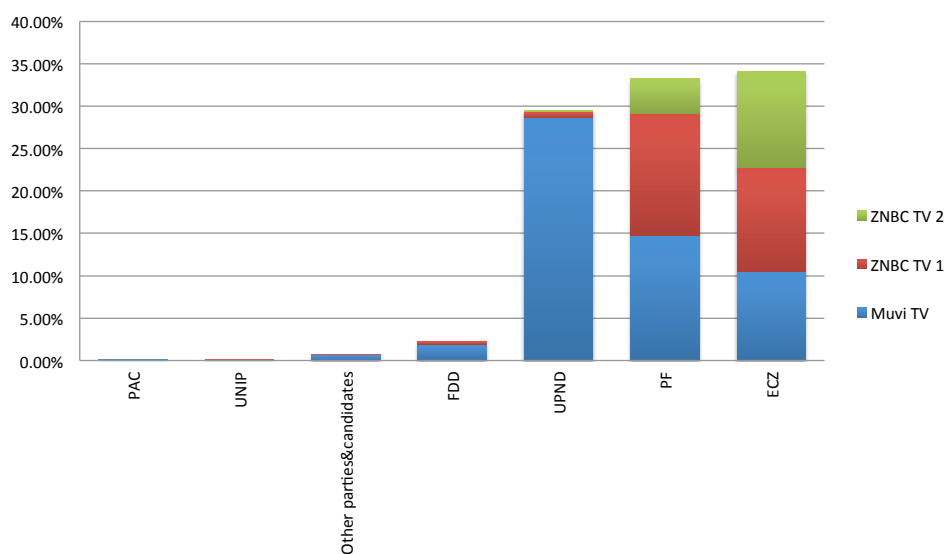
Graph 8: PF and UPND received most of the airtime allocated to political actors on the three TV channels combined

All TVs - Airtime allocated to political actors according to gender



Graph 9: Female candidates received minimal media coverage during the campaign. Almost all monitored coverage was provided to PF female politicians and candidates

All TVs - Time allocated to political advertisement



Graph 10: PF and UPND were the parties that purchased more time in the monitored TV channels. PF placed political advertisement on the three channels, while UPND advertisement was more visible on private Muvi TV and less on the public channels. ECZ also purchased large amounts of airtime to advertise voter education materials

Radio

Radio One

Radio Two

Phoenix

Hot FM

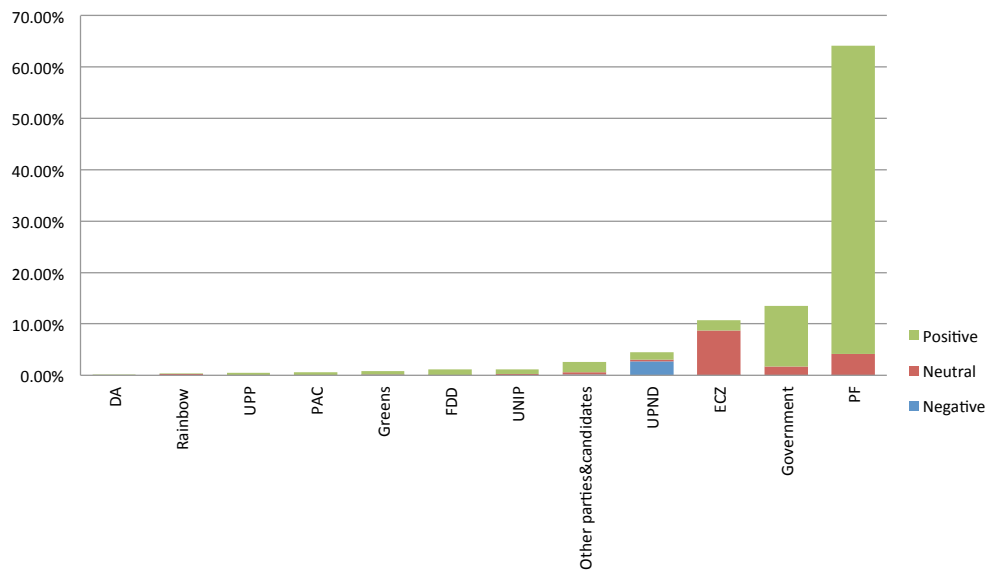
QFM

Sky FM

Icengelo

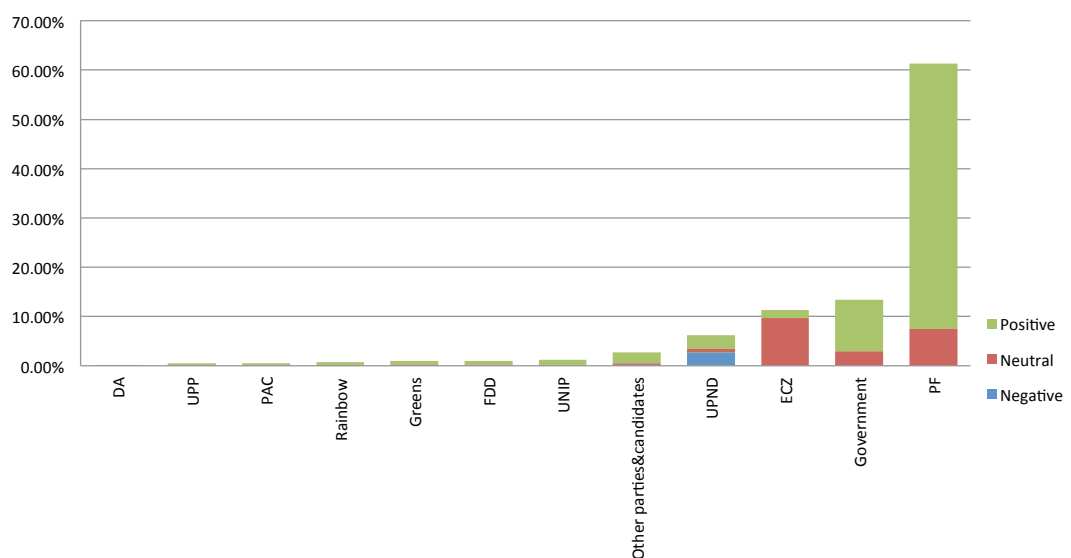
Breeze

ZNBC Radio One Time allocated to News and Tone of the coverage 10 hrs and 13 min



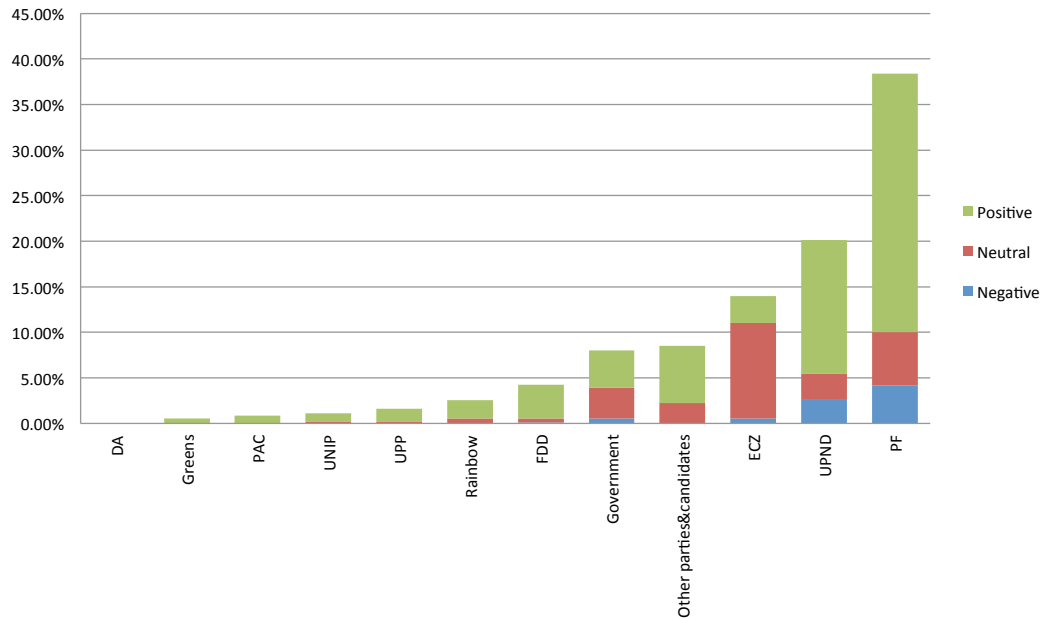
Graph 11: Opposition parties received very little access to the public Radio One. The tone was mostly positive towards PF, while UPND was usually reported in a negative way

ZNBC Radio Two Time allocated to News and Tone of the coverage 10 hrs and 34 min



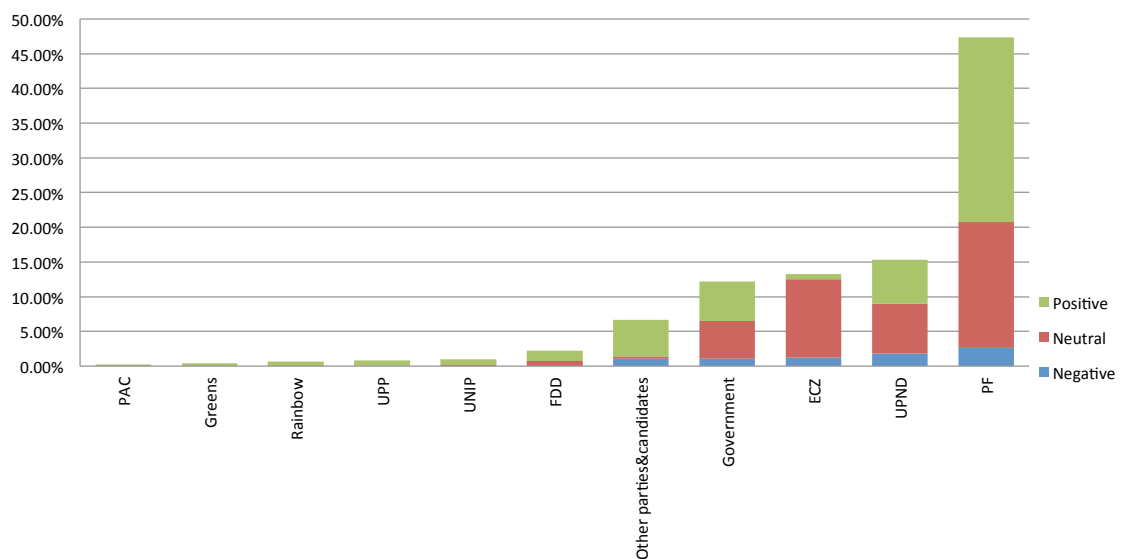
Graph 12: : PF dominated the news coverage on public Radio Two. UPND received a very small amount of the time allocated to news bulletins. The tone was mostly positive towards PF, while UPND was usually reported in a negative way.

Radio Phoenix Time allocated to News and Tone of the coverage 5 hrs and 30 min



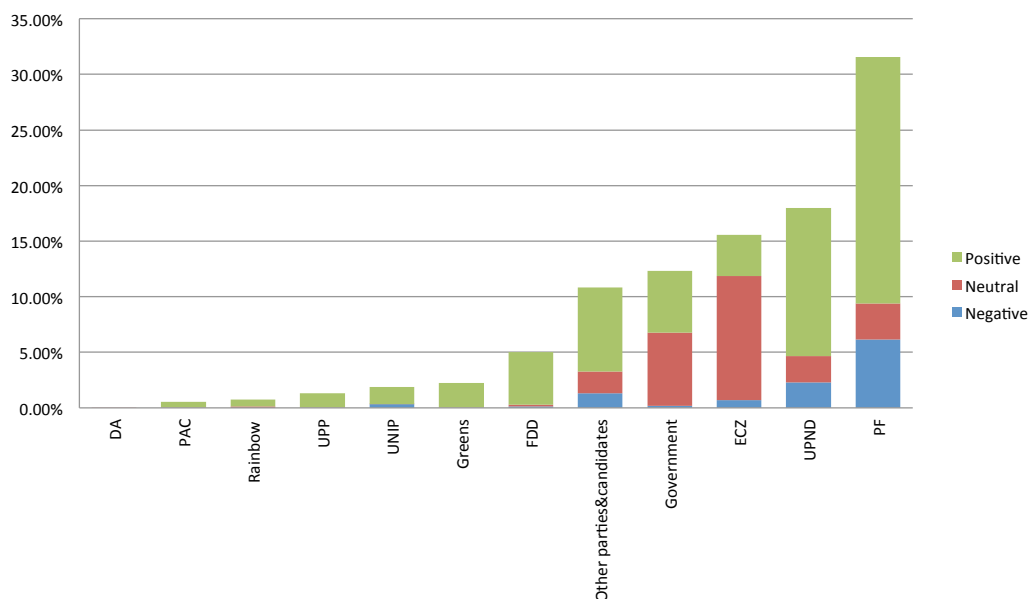
Graph 13: PF received most of the news coverage on private Radio Phoenix, followed by UPND. The tone was mostly neutral or positive with instances of negative tone towards PF, UPND, government and ECZ

Radio Hot FM Time allocated to News and Tone of the coverage 5 hrs and 31 min



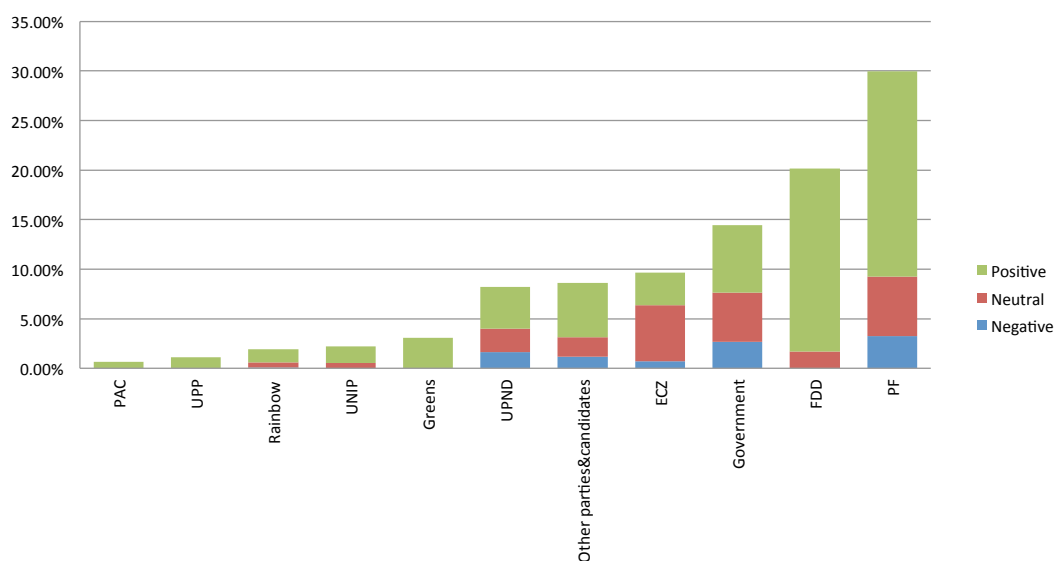
Graph 14: PF dominated the news on Hot FM, followed by UPND. The tone was mostly neutral or positive with instances of negative reporting towards PF, UPND, government and ECZ

Radio QFM Time allocated to News and Tone of the coverage 4 hrs



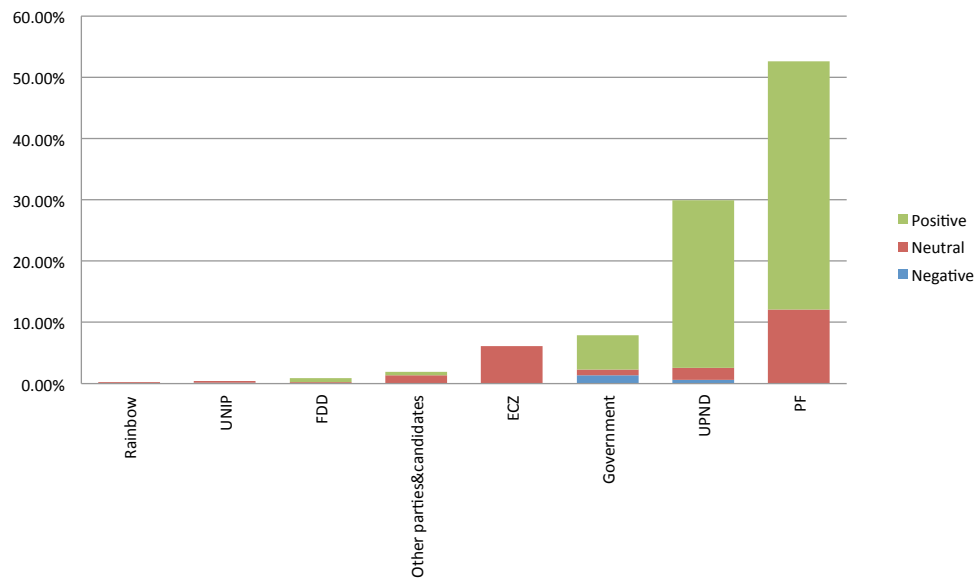
Graph 15: Radio QFM granted more air time to PF in its news bulletins, followed by UPND. The tone was mostly neutral or positive with a significant amount of negative tone towards PF and a smaller amount towards UPND

Radio SKY FM Time allocated to News and Tone of the coverage 4 hrs and 25 min



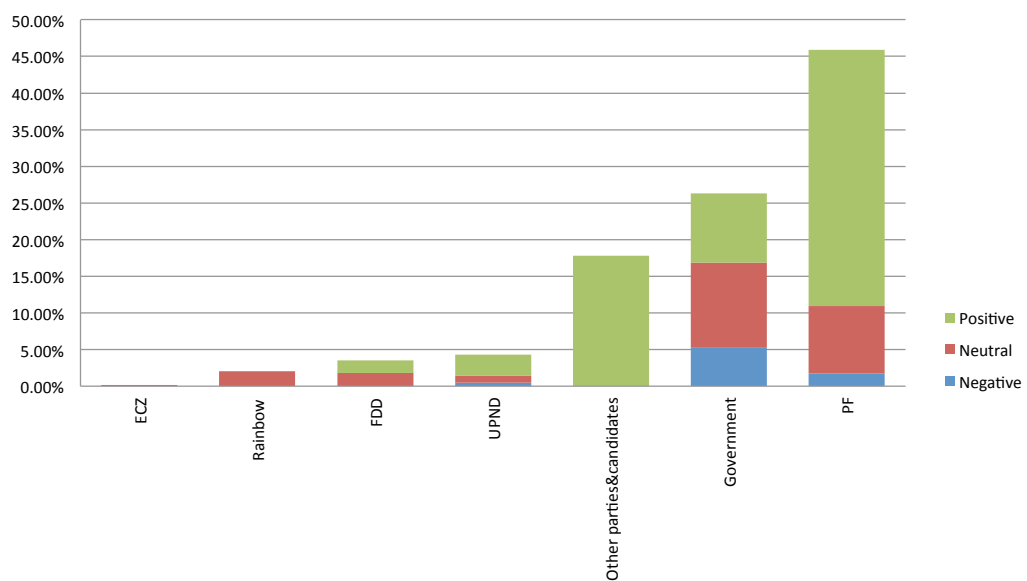
Graph 16: Sky FM allocated to FDD a relevant amount of airtime in its news bulletins, but still granted PF the largest share on the news. The tone provided to FDD was mostly neutral or positive, while PF and UPND received a certain amount of negative tone mostly related to violence

Radio Breeze FM Time allocated to News and Tone of the coverage 4 hrs



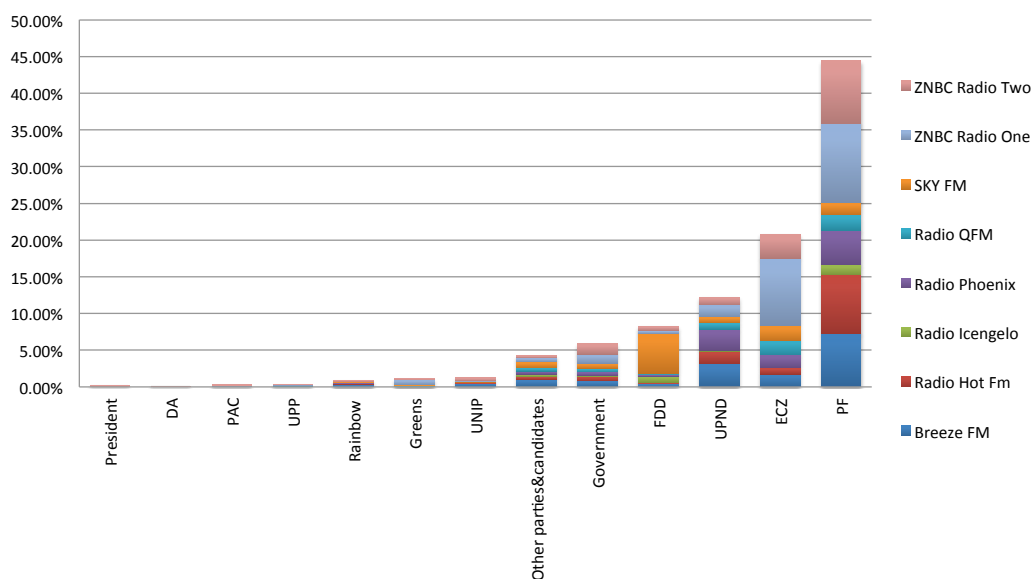
Graph 17: PF and UPND received more news coverage than other parties. The tone was mostly neutral or positive with instances of negative reporting towards UPND and the government

Radio Icengelo - Time allocated to News and Tone of the coverage Total time 37 min



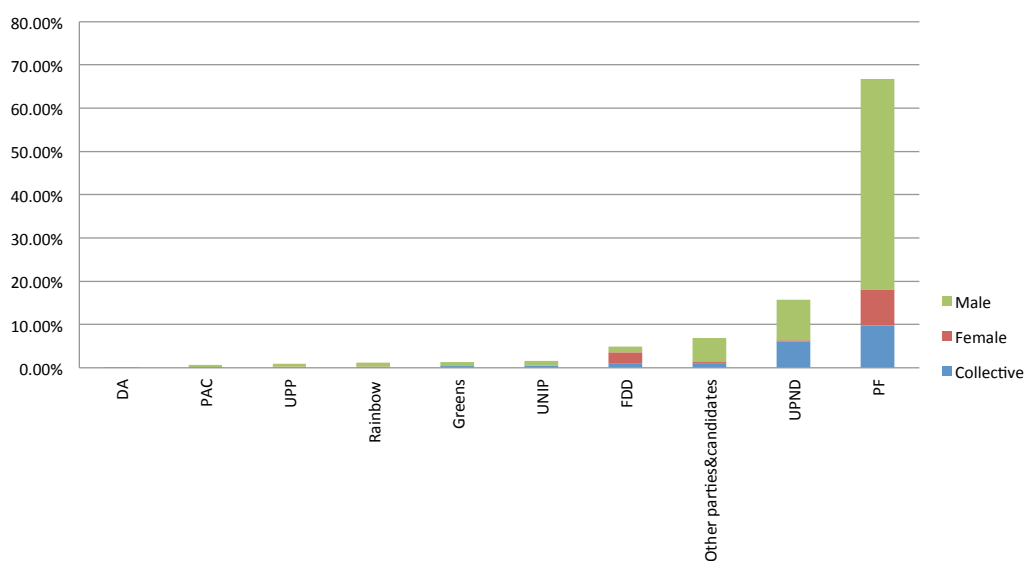
Graph 18: Radio Icengelo provided very low volumes of news coverage. PF was still dominant on the news. The tone was mostly neutral or positive with instances of negative tone towards the ruling party, UPND and government

All Radios - Total time allocated on radios to political actors Including political advertisement



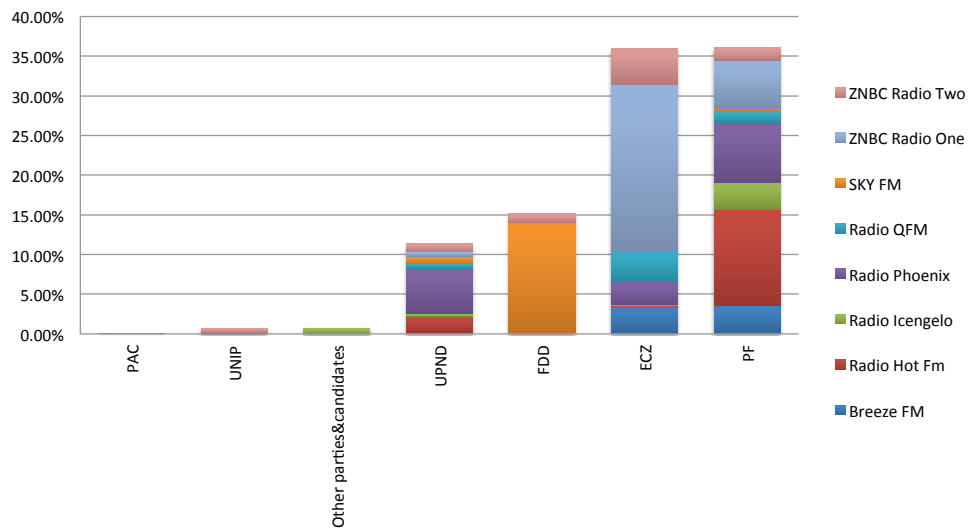
Graph 19: PF received most of the airtime allocated to political actors on the monitored radios followed by UPND and FDD

All Radios - Airtime allocated to political actors according to gender



Graph 20: Female candidates received very low volumes of coverage on the monitored radios. Almost all airtime was provided to PF female politicians and candidates

All Radios - Time allocated to advertisement



Graph 21: PF followed by FDD and UPND were the parties that purchased more paid airtime in the monitored radio stations. ECZ also purchased large amounts of airtime to advertise voter education materials

Newspapers

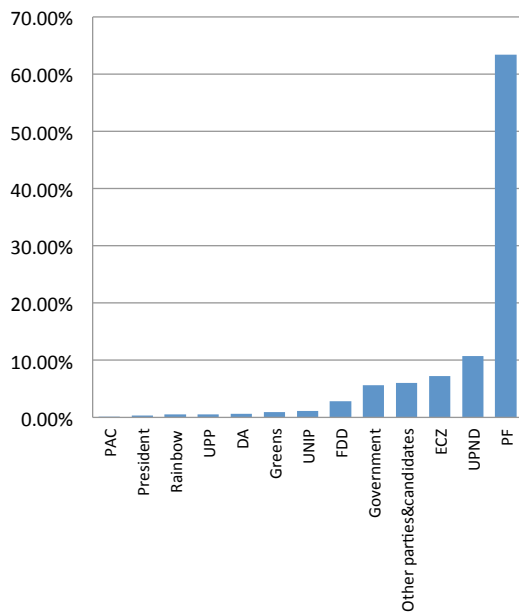
Zambia Daily Mail

Times of Zambia

Daily Nation

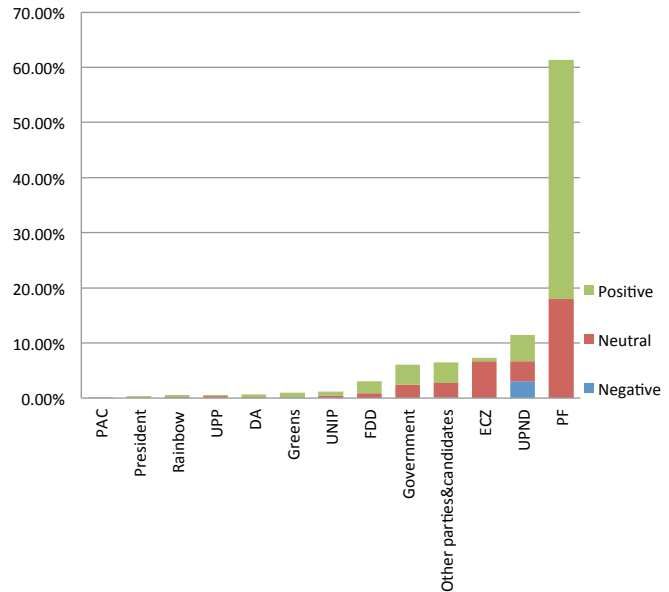
The Post

Zambia Daily Mail
Total space allocated to political actors
129.166 cm²



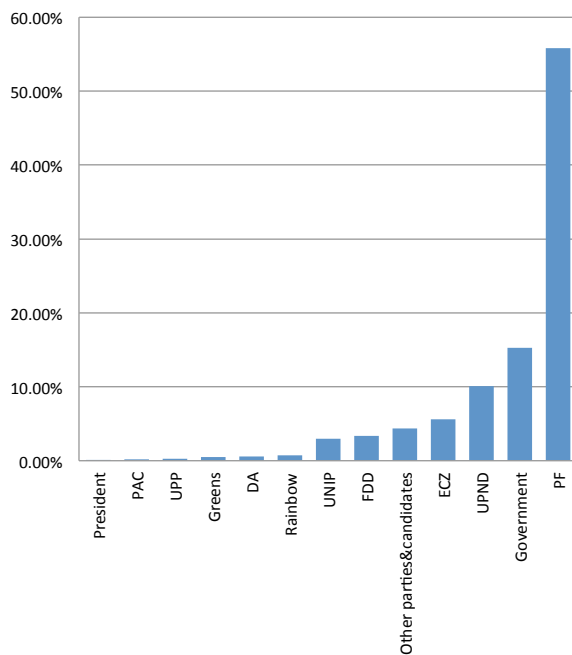
Graph 22: The print media followed the same trend as public electronic media, allocating to the ruling party PF significantly more coverage than to other parties

Zambia Daily Mail
Tone devoted to political news
Total space 121.052 cm²
Without political advertisement



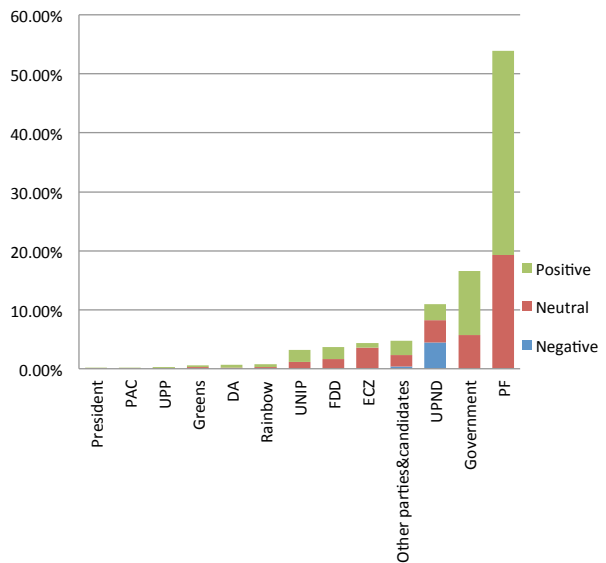
Graph 23: The tone was mostly neutral or positive with instances of negative reporting towards UPND

Times of Zambia
Total space allocated to political actors
127.138cm²



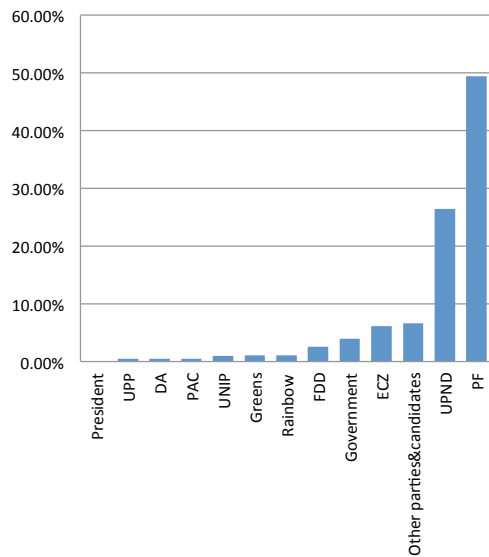
Graph 24: PF also dominated in space in state-owned newspaper *Times of Zambia*

Times of Zambia
Tone devoted to political news
Total space 117.294 cm²
Without political advertisement



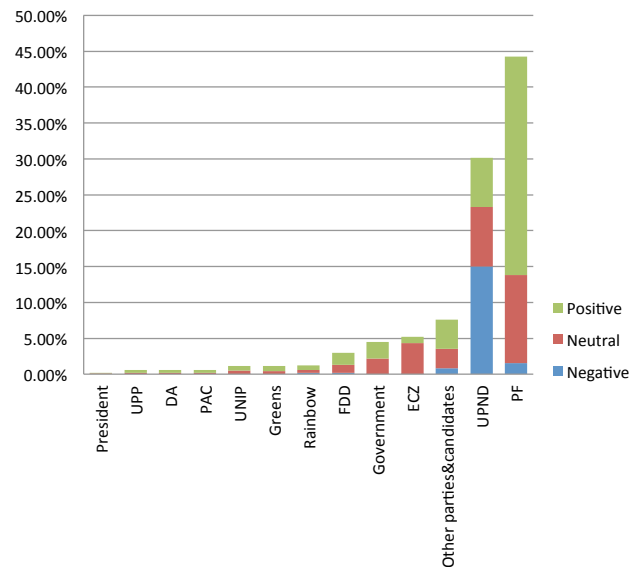
Graph 25: Following the pattern of other state-owned media, the tone in *Times of Zambia* was mostly neutral or positive with instances of negative reporting towards UPND

Daily Nation
Total space allocated to political actors
124.898cm²



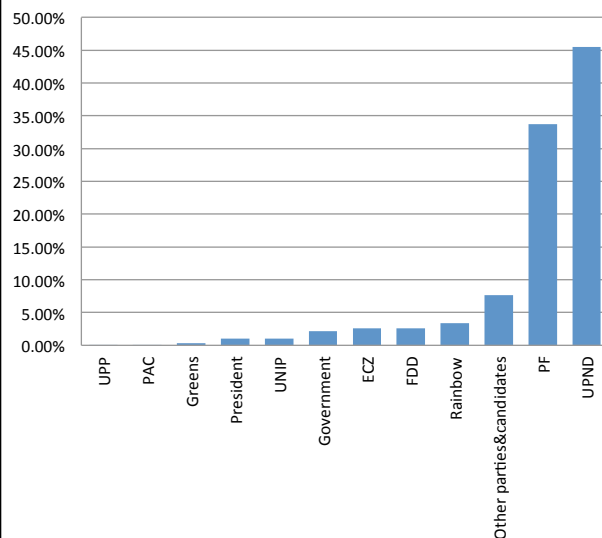
Graph 26: Private *Daily Nation* allocated more space to PF. The newspaper also covered UPND, but provided very little space to other parties

Daily Nation
Tone devoted to political news
Total space 109.765 cm²
Without political advertisement



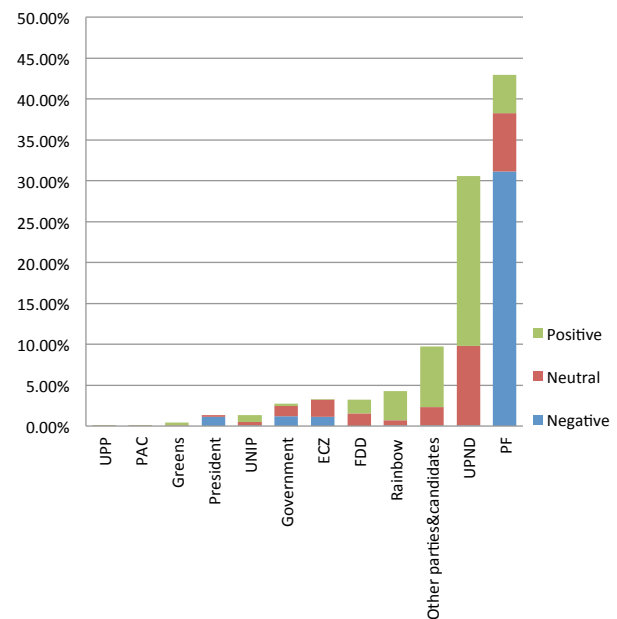
Graph 27: *Daily Nation* clearly favoured PF and tended to portray UPND negatively, associating the opposition party with violence

The Post
Total space allocated to political actors
90.453cm²



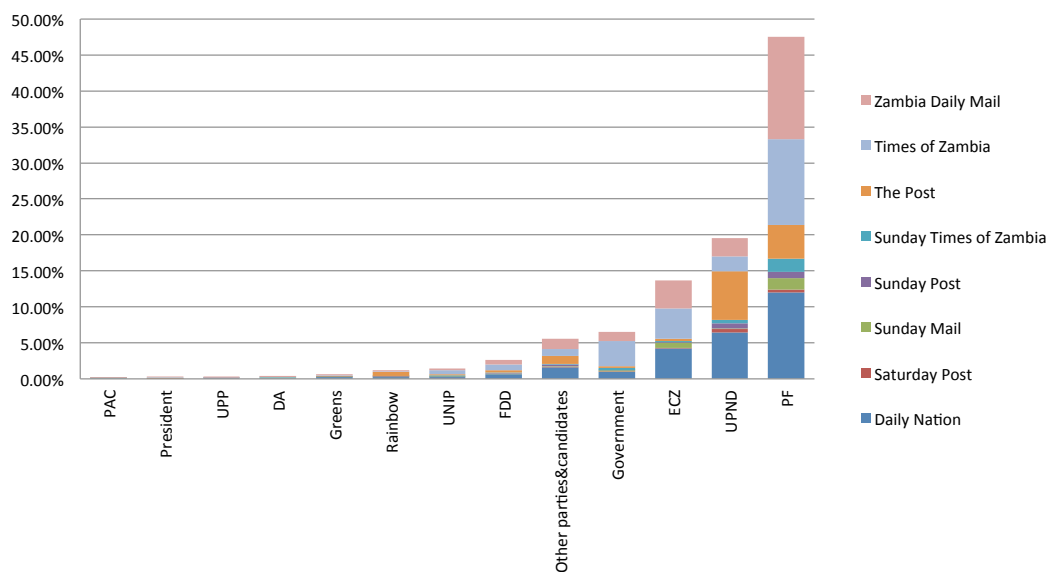
Graph 28: Private newspaper *The Post* provided more coverage to the PF in its political news, but UPND received more space in the total amount of space allocated to political actors, which includes advertisement

The Post
Tone devoted to political news
Total space 70.951cm²
Without political advertisement



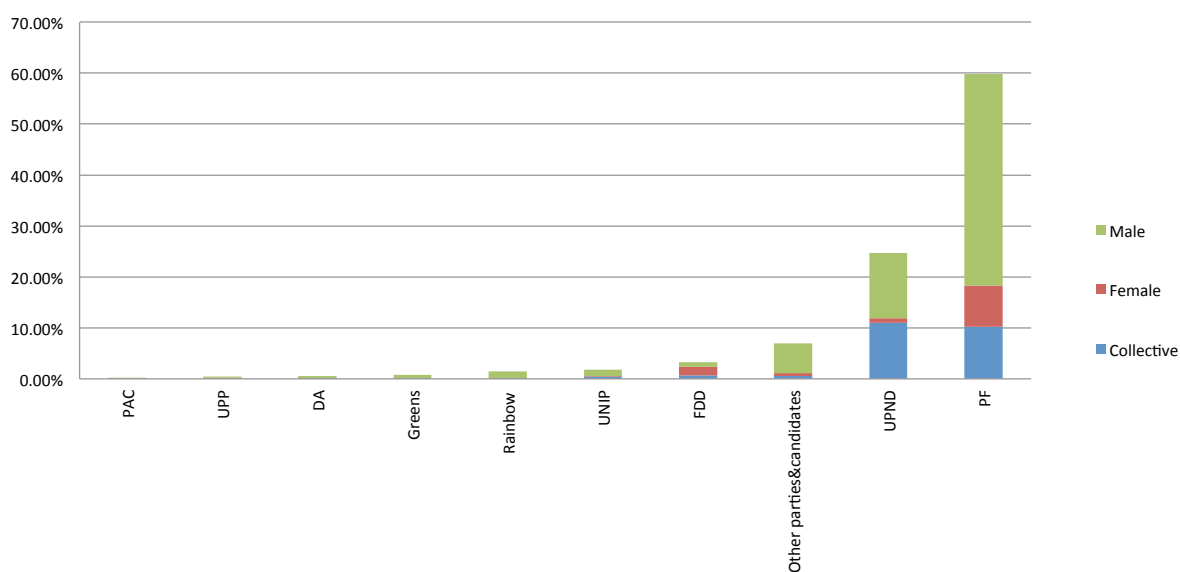
Graph 29: *The Post* favoured UPND and strongly criticised the PF, particularly the president Lungu

All newspapers - Total space allocated to political actors



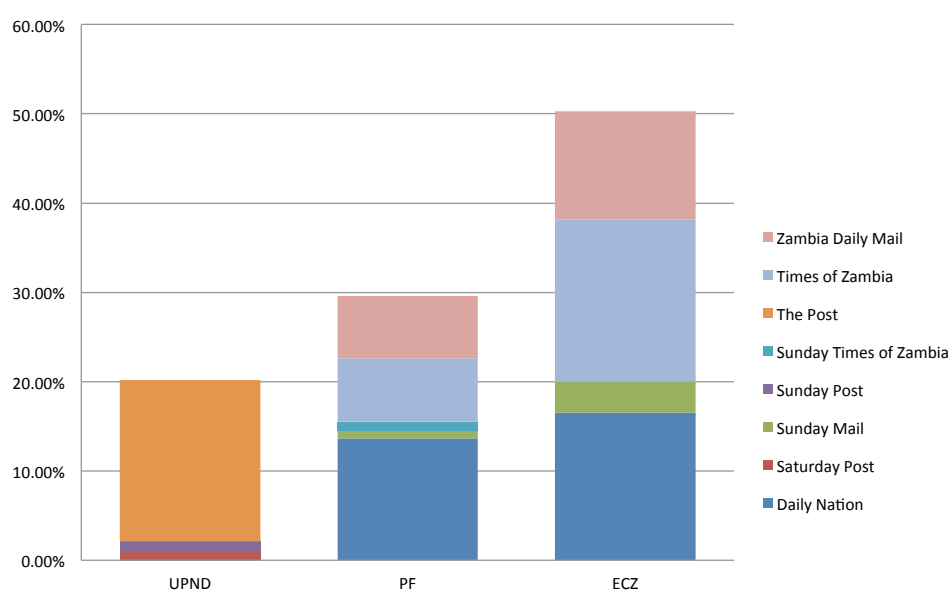
Graph 30: The print media allocated to PF more coverage than to other parties. The ruling party dominated the political news on all monitored newspapers

All newspapers Total space allocated to political actors according to gender



Graph 31: The print media followed the same trend as electronic media, allocating to female candidates very little coverage. Almost all the space was allocated to PF female politicians

All newspapers - Space allocated to advertisement



Graph 32: PF and UPND were the only political parties purchasing space on the monitored newspapers. ECZ also purchased large amounts of space to advertise voter education materials