



EISA Election Observer Mission to the Zambia Tripartite Elections of 20 September 2011

Interim Statement

Introduction

At the invitation of the Electoral Commission of Zambia (ECZ), the Electoral Institute for Sustainable Democracy in Africa (EISA) deployed an Election Observer Mission for the 2011 Zambia Tripartite Elections of 20 September 2011.

The EISA Mission has made its assessment of 2011 electoral process, and its preliminary findings and recommendations are presented in this Interim Statement. Our observations and views are based on the Principles for Election Management, Monitoring and Observation in the SADC Region (PEMMO). PEMMO is a set of benchmarks against which an election can be measured to assess whether it is credible and legitimate. It was developed by EISA in partnership with the Electoral Commissions Forum (ECF) of SADC Countries.

EISA will produce a final, more comprehensive report on the entire election process within three months. The report will provide an in-depth analysis, detailed observations and recommendations. EISA will therefore continue to follow the process to completion, including the announcement of the final results.

On behalf of the EISA Election Observer Mission, we take this opportunity to extend our gratitude to the people of Zambia and the electoral stakeholders for the warm welcome and hospitality given to us. We also congratulate the people of Zambia for their political maturity and the peaceful manner and atmosphere in which the elections were conducted. During our mission, we were allowed unhindered and unrestricted access to all key offices dealing with elections and all polling sites and electoral offices. We acknowledge and appreciate the hospitable, courteous and friendly manner in which the Electoral Commission of Zambia personnel received our Mission.

Mission Composition

Led by Mr. Yusuf Aboobaker, Chairperson of the Mauritius Supervisory Electoral Commission, assisted by Mr. Miguel de Brito, EISA Country Director in Mozambique, the EISA Observer Mission consisted of twelve members, including representatives from electoral commissions and civil society organisations

from Cameroon, Cote d'Ivoire, the Democratic Republic of Congo, Kenya, Mauritius, Mozambique, South Africa, Tanzania, Thailand, Tunisia and Zimbabwe.

Mission Methodology

In order to have a holistic approach to election assessment, EISA conducted various activities covering the pre-election, the polling and the post-election phases.

The Mission met various electoral stakeholders including the ECZ, political parties, academics, civil society organisations, the media and domestic and international observer teams.

Following a two-day briefing in Lusaka, EISA deployed 6 teams of observers on Friday, 16 September 2011, covering the following provinces: Lusaka, Central, Eastern, Copperbelt, Northwestern and Southern provinces. Upon arrival in their areas of deployment, the EISA teams held further meetings with the main local stakeholders. This period was also used by the teams to familiarise themselves with the local context and observe the last days of campaigning.

On Election Day, the EISA teams visited a total of 103 polling stations and observed the voting and counting of ballot papers at the polling stations. The Mission also observed the tabulation of results at the Results Centre at the Mulungushi Conference Centre.

Preliminary Findings

After considering relevant legislation and documentation, statements by electoral stakeholders, media reports, and observations made by its different teams deployed on the ground, and basing itself on guidelines contained in the PEMMO, the EISA Mission has made the following preliminary findings:

On the Constitutional and Legal Framework for Elections

The Mission finds that Constitution of Zambia provides for the fundamental freedoms and basic human, civil and political rights. The legal framework for elections also provides for mechanisms to address conflict management in the electoral process and a right of appeal for aggrieved persons.

The Mission notes the stringent residential and parentage requirements for presidential candidates, and that the law does not allow for independent candidates for President. These restrictions are not in line with the PEMMO and other international best practices for democratic elections. The Mission notes with satisfaction that independent parliamentary and local government candidates are permitted by law.

The Mission was informed of the several unsuccessful efforts at constitutional reform in Zambia since 2003, notably the draft Constitution produced by National Constitutional Conference, between 2007 and 2010 which failed to pass the National Assembly in March 2011. Some of the proposed constitutional reforms that were brought to the attention of the Mission included:

- The introduction of an absolute majority system for the presidential election and mixed-member proportional representation for legislative elections;
- The introduction of a fixed date for the elections;
- The method for appointing the Chairperson and members of the ECZ, and the powers of ECZ;

- Regulations for public party and campaign financing, and their accountability and transparency;
- A transition period between the declaration of results and the swearing-in of the president-elect.

On the Political and Electoral System

The Mission notes with satisfaction that Zambians have the right to elect their representative government through regular and periodic elections through universal, direct and secret balloting, and there are term limits for the presidential mandate in accordance with international benchmarks and standards. Furthermore, the Mission considers that the choice of an electoral system is the prerogative of each country. However, in countries where cultural and political factors contribute to male-dominated politics, the first-past-the-post electoral system, as the one currently used in Zambia, has been noted for producing under-representation of groups such as women and youth in Parliament.

On the Election Management

The Mission notes that the Electoral Commission of Zambia is empowered to perform the main functions of election management, such as registration of voters, review of voters' roll, delimitation of constituencies, management of election disputes through Conflict Management Committees, conduct of national and local elections, and conduct of referenda.

The Constitution guarantees the independence of the Commission from external directions in its operations and the Mission considers that the ECZ generally discharged its functions with impartiality, professionalism, and efficiency. Most stakeholders contacted by the Mission are of the same opinion. However, the method of appointment of ECZ members by the President raises questions of appearance regarding the impartiality and non-partisanship of the Commission in the view of opposition parties and other stakeholders.

The Chairperson of the ECZ, Hon. Madam Justice, Irene C. Mimbilima, is a Supreme Court Judge, as recommended by PEMMO, and the Mission notes with satisfaction that the current composition of ECZ respects the principles of gender balance with three out of its five members being women, and the Director of Elections is also a woman.

On Conflict Management

The Mission noted with satisfaction that a National Conflict Management Committee (CMC) as well as 74 district-level CMCs were established by ECZ with membership by registered political parties and selected civil society organisations as an alternative dispute resolution mechanism to deal with election-related conflicts.

On the Electoral Code of Conduct

The Mission was informed that a new Electoral Code of Conduct was issued in 2011, and it covers campaign behavior by electoral contestants and observers, as well as certain activities by the police, media and other actors. It also provides a number of penalties for violations of the Code and contains provisions for lodging complaints. However, many stakeholders would have wished for a more vigorous

enforcement of the Code, and that violations be dealt with more forcefully and met with stiffer penalties.

On Voter Registration

The Mission was informed of the implementation by ECZ of a periodic continuous voter registration process for the 2011 tripartite elections, in tandem with the 2006 Electoral Act, which requires the Commission to conduct voter registration on a continuous basis. This exercise started in June 2010 and was completed in March, 2011.

Voter registration was conducted with the use of mobile computer kits and was regarded by most stakeholders as an efficient process. However, according to information provided to the Mission, the voter registration process was affected by the slowness in the issuance of National Registration Cards (NRCs), which are required for voters to register and vote. The Mission notes with satisfaction that the voter register is now connected to the national registration system which is a great improvement in order to facilitate the elimination of deceased voters from the register.

The Mission notes that the 2011 voter register has increased by 30 % from 2006, and includes about 80% of all eligible voters, with a balance between female and male registered voters, and a substantial number of first-time voters. The Mission regards this as a positive development.

Civil society organisations and opposition parties have indicated that the verification period allowed by ECZ for the public to review the provisional lists of voters was too short and that voters were not provided with enough information about the verification period.

The Mission notes with satisfaction that the Electoral Act provides for the public availability of copies of the voter register to any interested person, at a cost, and free of charge to the candidates.

On the Registration of Political Parties and Nomination of Candidates

In order to operate as legally recognised entities, political parties are required to be registered. Political parties and independent candidates were free to register to compete in the parliamentary and local government elections, and the Mission received no complaints regarding any hindrance to the registration of candidates.

The Mission was informed that the internal party process of selection of candidates was not always conducted in conformity with continental and international benchmarks for democratic parties. In relation to the nomination of women candidates, all political parties performed poorly in view of the SADC Protocol on Gender and Development that calls for gender parity in all decision-making bodies by 2015. These two factors may have led to the high number of independent candidates, including independent female candidates.

On the Electoral Campaign

The Mission noted the enthusiasm and passion with which the election campaign was conducted. Campaigning took the forms of posters, advertisements on big billboards, political rallies, television appearances by candidates and debates involving representatives of various candidates, and other types

of media outreach. The mission noted with regret that candidates often used personal attacks as a campaign tactics rather than the discussion of political and policy issues.

The Mission also received several reports of violations of the Electoral Code of Conduct by political parties and their supporters, but was unable to confirm them.

Given the polarised nature of the campaign and of the election, the Mission commends the ECZ for establishing a 48-hour cooling-off period between the end of the campaign and voting day.

Other aspects related to the electoral campaign, such as media, use of public resources, funding, and violence will be addressed in other sections of this Statement below.

On the Media

It is generally accepted by most stakeholders that there was freedom of coverage and reporting by the media, both public and private. However, the public media was reported as being overtly partisan in favour of the party in government and their candidates, both editorially and in the coverage and reporting of the campaign. The private print media was also reported as being overtly partisan in favour of one particular political party. Although editorially the private media are held to different standards than the public media, they must always respect the principles of journalistic ethics in reporting and especially in the coverage and reporting of election campaigns which was often not the case.

On the Use of Public Resources

The Mission recorded several complaints from stakeholders to the effect that state resources were used by the ruling party for campaign purposes. However, the Mission had no means to verify these allegations.

On Political Violence and Intimidation

The Mission received several reports of campaign-related incidents of violence perpetrated by supporters of various political parties, and witnessed one such incident. Those incidents were sporadic and restricted, and the Mission found no evidence of orchestrated or sustained and widespread violence or intimidation. In the Mission's view, the climate of political tension and the high stakes of this election were often fueled by political statement, which contributed to the flaring up of occasional violence.

The Mission has an overall positive assessment of the level of peacefulness of the electoral campaign, but regrets the episodes of violence, which could have been avoided by more circumspect behaviour on the part of stakeholders.

On the Role of Security Forces

The Police force received training on how to handle political campaigns and electoral disputes in order to avoid the excessive use of force, of which it had been accused in previous elections. This training seems to have had a positive impact on police behaviour in this year's electoral campaign. However, some stakeholders have complained that the police was not active enough against incidents of electoral

violence, and sometimes seemingly reluctant to intervene. On voting day, the police presence in polling stations was discreet and did not interfere with the voting process, or with voters' ability to express their wish freely.

On Political Party and Campaign Finance

There is no public funding of political parties, or of electoral campaigns in Zambia. Disclosure of the sources, amounts and expenditure of private donations to parties or to electoral campaigns is not required by law, and there are no apparent restrictions or limits on the amounts of donations. Parties have to rely on their membership fees as well as on contributions from supporters to sustain themselves and to campaign for elections.

A number of political parties expressed concern that they did not have adequate funding for organising their parties and campaigns, and that the candidates from the ruling party took advantage of incumbency to use state resources for campaign purposes and thus had an unfair advantage in the election. Opposition political parties also claimed that private businesses are reluctant to fund them for fear of reprisals by the ruling party.

On Civic and Voter Education

The Mission was informed of the various efforts by the ECZ and by a variety of civil society organisations to educate voters about the electoral process in all its phases. Given the high number of new voters, most of which had just reached voting age, a great emphasis was put on the education of this group of voters. A special effort was also made to educate women voters. Stakeholders contacted by the Mission were generally happy with the content, coverage and reach of civic and voter education campaigns.

On Monitors and Observers

The Mission notes with satisfaction that various observer missions witnessed the Zambia elections. There were about 300 international observers and an impressive 9,000 domestic observers. Accreditation of international observers proceeded well.

The Mission commends the ECZ for its decision to decentralise accreditation of domestic observers to 74 accreditation centres across Zambia. This helped solve the problem of late accreditation that was common in previous elections. However, as it was to be expected in such a decentralised process, there were some instances of non-uniform application of procedures for accreditation. The Mission believes these minor problems can be easily corrected in future elections.

On election day, both party monitors and civil society observers were present at every polling stream visited by the Mission. The Procedures Guide on Voting, Counting and Results, provided by the ECZ, states that each party is allowed only two party agents per polling station. This could be problematic for polling stations with more than two streams as it would leave some streams without permanent monitors. However, in polling stations visited by the Mission, presiding officers allowed one party monitor per stream, regardless the number of streams. The Mission regards this decision by the presiding officers as positive and constructive, and contributing to the transparency of the process.

On Gender Representation

The Mission notes the strong participation of Zambian women in the electoral process as voters, civic educators, campaigners, polling staff, party monitors, and observers.

However, as pointed out in different sub-sections of this Statement, there is a serious challenge of gender balance both in nominations and candidatures, which will translate into a significant under-representation of women in the Zambian Parliament. It is expected that the number of female MPs elected in 2011 will be lower than in the previous election. This goes counter the goals of the SADC Protocol on Gender and Development, which aims at gender parity in all decision-making bodies at country level by 2015.

The Mission believes that there are several structural factors behind this phenomenon, namely the first-past-the-post single-member constituency system, the lack of public funding for electoral campaigns, which could offset the difficulties female candidates face in raising funds for their own campaigns, and strong skepticism about women in politics.

The Mission commends the efforts of the 94 women who stood as candidates, both through political parties and as independents, despite all the odds.

On Polling Day – General Observations

The Mission observed that generally the polling arrangements allowed the participation of all registered voters. Polling officials conducted their duties in an efficient and transparent manner and endeavoured to follow the opening, closing and counting procedures as provided in the law.

There was a discernible climate of peace, tolerance and general enthusiasm for the process. The Mission noted a positive and calm police presence at almost all the polling centres visited. It found a good level of cooperation between police, ECZ officials and monitors. The Mission was impressed by the widespread presence of party monitors and domestic observers and their good preparedness for the process. The Mission also noted some inconsistencies and issues, that are detailed below, but which did not affect the general outcome of the process, nor did they prevent voters from expressing their choice.

The Mission was informed that in two constituencies, namely Magoye in Southern Province and Nakonde in Northern Province, legislative elections were postponed due to the untimely death of two candidates.

On the Polling Stations

The ECZ established 6,456 polling stations with a total of 9,022 polling streams, and the Mission found the number of polling stations to be adequate and accessible enough to ensure that as many eligible voters as possible cast their votes.

The layout of the polling stream rooms observed by the Mission was generally conducive both to a good flow of voters and ensuring the secrecy of the vote.

In most polling stations, voting began at 6:00 am. However in some stations, voting materials arrived late which resulted in some stations opening late. However where voting commenced late the stations remained open for the scheduled 12 hours.

On the Ballot Papers, Ballot Boxes and Election Materials

The Mission noted that ballot boxes were transparent which promoted confidence of voters in the process. The lids of the boxes were colour-coded for each of the three elections for ease of identification.

However, at the beginning of voting process, the ballot boxes had no written marking indicating what election they belonged to. The colour codes were not known to most voters and to some polling assistants. This resulted, in some cases, in voters being given wrong directions as to which of the ballot boxes to use to cast their ballots. This led to several situations of ballot papers being inserted in the wrong boxes, and later on caused some constraints in the counting process, as the number of ballot papers used for each election would not always tally with the number of ballot papers inside their respective boxes. These discrepancies were easily addressed by the polling officials at later stages of the counting process. In the charged political environment of this election, such problems led to unnecessary tensions.

In general polling materials were available and in adequate numbers. The Mission commends ECZ for its decision to distribute all non-security materials to the polling areas well in advance.

On the Voting Process

The voting process was fairly uneventful with a good degree of consistency throughout the polling stations observed by the Mission. However, first-time voters were not entirely clear about voting procedures. Also, intense rumours about the use of ink of some special type and special paper that would transfer voters' marks to other candidates or would make them disappear in many cases overrode civic education efforts. Many voters folded ballot papers with the voting mark visible to the public or even attempted to cast their ballots without folding them. In many instances voters preferred to allow people to see the way they voted rather than folding the ballot papers as instructed. Also a high number of voters refused to use the pens supplied by ECZ and brought and used their own pens.

The Mission is happy to report that, in the polling stations observed, there were almost no cases of voters in possession of both cards unable to vote because their names were not on the voters' register.

The Mission observed a balanced turnout of both female and male voters and a good turnout of young voters. However, general turnout seemed to be low in rural areas.

The Mission congratulates the ECZ for increasing the transparency of the process by providing copies of the voters' register to all party monitors. The Mission also congratulates ECZ for the gender balance among polling station officials and assistants.

On the Counting and Tabulation Process

Counting of ballots took place at every stream which allowed for a fast and efficient process, especially with three sets of ballots to be counted. The Mission commends ECZ for that decision.

The Mission found that polling officials were well-trained in counting procedures and generally followed them. The Mission also noted that in cases where situation occurred that were not foreseen in the

counting procedures (such as ballots placed in the wrong boxes), the situations were handled in a logical and acceptable manner.

The Mission noted that the counting process was generally conducted in an open and transparent manner ensuring that all those present had a clear view of the marked ballot paper. The Mission was also favourably struck by the level of cooperation between the agents of the various parties, observers and polling officials, which made for a generally orderly counting procedure.

The Mission notes with satisfaction the very low number of rejected or spoiled ballots in the polling stations observed.

As this Statement was drafted, the tabulation and transmission of results was still taking place. Although it is still early to assess the use of the electronic transmission system adopted by ECZ for these elections, the Mission congratulates the Commission for finding cost-effective solutions for speedier and safer transmission of results from the totalling centres to the Central Results Centre. The efficient use of technology in elections with the appropriate safeguards is strongly encouraged by EISA.

Recommendations

Based on its observations and findings, the Mission makes the following recommendations with the aim of contributing to the improvement of future electoral processes in Zambia:

1. On the Constitutional and Legal Framework for Elections

Within the framework of a future constitutional review process, the Mission encourages Zambians to review the unnecessary restrictions for presidential candidates in line with international principles.

2. On the Political and Electoral System

From the constitutional review process that ended in 2010 it is clear that a discussion on the most appropriate electoral system for Zambia has not been concluded, and the Mission encourages Zambians to continue with that debate and reach a decision that reflects the will of the majority of the people. Such debate should pay particular attention to the relationship between the electoral system and the representation of women and youth.

3. On Election Management

The Mission recommends that in forthcoming constitutional and electoral reform processes consideration be given to a process of selection and nomination of ECZ members that ensures the independent, impartial and non-partisan nature of the Commission in the eyes of all stakeholders and the general public.

4. On the Electoral Code of Conduct

A stronger effort should be made in future elections to improve the enforcement of the Code of Conduct, both by imposing stiffer penalties and having clearer enforcement procedures.

5. On Voter Registration

Given that possession of the National Registration Card is a requirement both for voter registration and voting, the linkage between the issuance of NRCs and voter registration should be strengthened and improved for future processes.

Although the percentage of eligible voters captured by the voter registration process is quite high, an effort should be made in future processes to reduce even further the number of eligible voters excluded from the electoral process for lack of registration.

A longer verification period for the provisional voters' register is recommended for future processes.

6. On the Registration of Political Parties and Nomination of Candidates

The Mission strongly recommends that political parties be encouraged by law and through codes of conduct to enshrine internal democratic practices in what concerns the selection of candidates, including female candidates.

7. On the Media

The Mission strongly recommends that an effective level playing field should be created for the fair access to the media by parties and candidates during the electoral process, and that stronger regulation of the media, in particular of the public media, through an enforceable Code of Conduct or other similar mechanism, be put in place to ensure balanced coverage and reporting of electoral campaigns.

8. On Political Violence and Intimidation

The Mission calls upon the political parties, their leaders and candidates to have a more proactive role in promoting peaceful elections in future electoral contests and abstain from inflammatory language and accusations.

9. On Political Party and Campaign Finance

The Mission suggests that consideration be given to the establishment of public funding for political parties and electoral campaigns, on the basis of clear criteria, such as share of the popular vote, or seats obtained in Parliament. Public funding helps leveling the playing field, and will encourage increased participation by women candidates.

The Mission also suggests that rules governing the disclosure of all sources of funding for political parties and campaigns as well as how funds are spent should be established.

10. On Civic and Voter Education

The Mission recommends that special attention be given to voter education for first-time voters on voting procedures.

More importantly, the Mission suggests that efforts be made to increase voter turnout by improving the quality and intensity of civic education, especially for rural voters.

11. On the Polling Stations

An effort should be made to replace as much as possible makeshift polling stations, in order to avoid lighting constraints at the time of counting.

12. On Ballot Papers, Ballot Boxes and Election Material

In order to avoid confusion about the different ballot boxes, and in addition to the coloured lids, clear written inscriptions should be placed on the side of the boxes, indicating what election they are for. Furthermore, ballot papers could be colour-coded to correspond to the colours of the boxes to further facilitate the casting of ballots.

13. On the Voting Process

Polling officials should provide more instructions to voters, especially first-time voters, on voting procedures, particularly on folding the ballot papers after voting.

14. On Gender Representation

The Mission strongly recommends that corrective measures, such as appropriate legal reforms and quota requirements, be undertaken in order to achieve greater gender parity not only in the nomination process, but also in the final makeup of the Zambian Parliament.

Conclusion

At the time of the drafting of this statement, the tabulation and announcement of results were still in progress. Therefore, our conclusion on the conduct of these elections is restricted to the period of our observation up to this day, 22 September 2011. On the basis of its observation thus far and using the guidelines enshrined in the PEMMO, the EISA Election Observer Mission concludes that the Tripartite Elections held on 20 September 2011 in Zambia were conducted in a manner that allowed the people of Zambia to express freely their democratic choice. It is the hope of the mission that the tabulation and announcement of the final results will be conducted in the same manner as the preceding stages so that the final electoral outcome can reflect the will of the Zambian voters.

Lusaka, 22 September 2011

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