



## PRELIMINARY STATEMENT

Lusaka, 14 August 2021

***A technically well-managed electoral process marred by unequal campaign conditions, restrictions on freedoms of assembly and movement, and abuse of incumbency.***

*This preliminary statement of the EU election observation mission (EU EOM) is delivered before the completion of the entire electoral process. Critical stages remain, including the tabulation of results and adjudication of petitions. The EU EOM is now only in a position to comment on observation undertaken to date, and will later publish a final report, including full analysis and recommendations for electoral reform. The EU EOM may also make additional statements on election-related matters if it considers it appropriate.*

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### Summary

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The 2021 general elections took place against a background of deepening political polarisation. Throughout the campaign, there were widespread concerns of potential escalation of violence. Despite COVID-19 challenges, the electoral process was technically well-managed. Arbitrary and selective application of the law hampered opposition candidates from competing under equal conditions and restricted freedoms of assembly and movement. The ruling party extensively used state resources, and its campaign was largely exempted from restrictions. The traditional and online media campaign was highly monetised, with the ruling party monopolising the prime-time on state and private media. Disinformation and tribalism pervaded online debate to the detriment of voters.

- Election day was mostly calm and orderly despite long queues of voters throughout the day. A few isolated violent incidents, resulting in at least one fatality, marred election day. EU EOM observers reported positive on the voting and counting proceedings in the observed polling stations. Polling staff were present and observed to be conducting elections professionally. Polling agents and national observers were able to observe unhindered the process. Thousands of voters were patiently queuing for several hours outside polling stations sharing the same premises. Voting was extended for several hours, and counting started later. Restrictions on access to social media and instant messaging platforms, from election day onwards, were not explained by either the ICT regulator or the ECZ, and unduly curbed freedom of expression and interfered with the right to access to information.
- The legal framework provides a reasonable basis for conducting democratic elections. Zambia has committed to most key international and regional standards. However, essential aspects of equality of the vote, women's participation, and political accountability are yet to be fully implemented. Some limitations on fundamental rights as well as outdated laws on defamation and public gatherings are inconsistent with international standards on freedom of expression and assembly. Such impediments to fundamental rights have been compounded by uncertainty of implementation of COVID-19 regulations.
- Overall, the ECZ carried out its work professionally under a challenging pandemic setting, but stakeholder trust in the institution remains low. Neither the current appointment system nor the recruitment of the electoral officers at the local level by the administration have reinforced public confidence in the institution. Most opposition parties and civil society organisations strongly criticised the lack of genuine consultations and clarity of communication.

- The technical aspects of the electoral process were well-administered, and key operational deadlines were generally met. The COVID-19 situation limited voter information activities on the ground to small-scale meetings with voters. The ECZ's social and print media campaign featured posters on voting procedures and discouraging vote-buying. The ECZ live-streamed on their Facebook page its key events and posted its resolutions, thus enabling direct access to information of public interest.
- In 2020, the ECZ compiled a new voter register introducing a biometric voter registration system to remove some 1.4 million deceased voters from the 2016 register. The certified voter register includes 7,023,499 voters, representing 83.2 per cent of the eligible voters. For the first time, the voter register included some 14,000 prisoners. There were some criticisms against the ECZ for inadequate planning and lack of broad consultations. The UPND alleged that the voter register had a partisan character arguing that more national registration cards, a prerequisite for voter registration, were issued in PF's strongholds.
- Large-scale gatherings, roadshows and door-to-door canvassing took place across the country against the backdrop of COVID-19 regulations. The campaign took place in a highly competitive and tense environment, dominated by the ruling Patriotic Front (PF) and the United Party for National Development (UPND). The Socialist Party (SP) and Democratic Party (DP) were the most visible other parties. The presidential campaign was deeply polarised. Violence, particularly clashes between the UPND and PF cadres, was a matter of concern. The ECZ responded to political violence by temporarily suspending campaigning. However, the lack of transparency in the decision-making process over the suspensions triggered public controversy. In an unprecedented move the President, on 1 August, announced the deployment of the Zambia Defense Force to beef up police capacity.
- Arbitrary application of COVID-19 campaign regulations and Public Order Act (POA) provisions hindered opposition candidates from competing under equal conditions and amplified widespread perceptions of an unlevel playing field in the campaign. The selective application of those rules restricted freedoms of assembly and movement and, at times, involved excessive use of force by the police to curb opposition campaigning. The ruling party was largely exempted from campaign restrictions. The PF presidential campaign demonstrated the absence of a clear distinction between the state and the ruling party. The use of state resources was evident with a broad range of state development, social protection, and relief programmes being used in the campaign.
- Campaign coverage on the traditional media was primarily paid for by parties. State-run broadcasters reported on all official visits by the President and Vice President, providing the PF with overwhelming campaign media coverage. COVID-19 propelled the PF, UPND and DP strategic use of Facebook as a key campaign tool. High-profile influencers supported both frontrunners, while partisan online foot soldiers amplified pre-existing tensions between different groups by exploiting tribal affiliation.
- Political party and campaign finance are unregulated. The overall lack of transparency and accountability of campaign expenditures disadvantaged parties with less financial resources. The campaign in traditional and online media was highly monetised. While the PF, UPND and SP bought considerable airtime on broadcast media, the PF spent far more on TV and radio adverts than any other campaign.
- The media landscape was highly polarised, with state media giving an extensive advantage to the ruling party. Private media coverage did not remedy the overall imbalance between the

time allocated to the ruling party and other contenders, even if those broadcasters gave higher exposure to a few prominent opposition figures. Overall, the ruling party monopolised the prime-time on state and private media.

- Freedom of expression online is curtailed by several clauses in the Penal Code and the recently adopted Cybersecurity and Cyber Crimes Act inducing self-censorship online. Political exchanges on the most followed Facebook groups with participants from across the political spectrum, featured divisive rhetoric. Disinformation and tribalism pervaded online debate to the detriment of voters. Facebook did not act to preserve electoral integrity on the platform and failed to engage in a meaningful manner with national stakeholders.
- Despite a complicated and unclear accreditation process, the ECZ accredited all national observer organisations that applied.

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*The European Union Election Observation Mission (EU EOM) has been present in the Zambia since 30 June following an invitation from the Ministry of Foreign Affairs. The Mission is led by Chief Observer, Maria Arena, a Member of the European Parliament (from Belgium). In total, the EU EOM deployed 75 observers from 25 EU Member States and Norway across the country to assess the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Zambia. On Election day, observers visited over 423 polling stations in 62 of the 156 constituencies of Zambia to observe voting and counting. This preliminary statement is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the tabulation of results, and the handling of possible post-election day complaints and appeals. The EU EOM remains in country to observe post-election developments and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.*

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## **Preliminary Findings**

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### **I. BACKGROUND**

The 2021 general elections took place against a background of deepening political polarisation and shrinking democratic space. The very narrow margin of victory for President Edgar Chagwa Lungu in the 2016 presidential election and the unsuccessful United Party for National Development (UPND) legal challenge to the final results widened the political divide. Initiatives for reconciliation through national dialogue and efforts to proceed with constitutional reform were unsuccessful. Economic distress, restrictions on fundamental freedoms of assembly and expression, pressure on the media, excessive use of police force against opposition supporters and leaders and the COVID-19 pandemic contributed to a further deterioration of the political environment.

On 12 August, Zambians voted for president, national assembly members, mayors and council chairpersons, and local councillors. The presidential election was highly competitive with leading contenders President Lungu of the Patriotic Front (PF) and Hakainde Hichilema of the UPND facing each other in a presidential race for the third time. There were 14 other presidential candidates, including one woman. Twenty-one political parties, as well as independent candidates, competed in the parliamentary elections.

## II. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

*A reasonable but complex legal base for democratic elections requires clarity of law and more robust protections of fundamental rights and freedoms to ensure equity and transparency.*

The legal framework provides a reasonable basis for conducting democratic elections. Zambia has committed to most key international and regional standards. However, essential aspects of equality of the vote, women's participation, and political accountability are yet to be fully implemented.<sup>1</sup> Some limitations on fundamental rights as well as under-formed and outdated laws on defamation and public gatherings, are inconsistent with international standards on freedom of expression and of assembly.<sup>2</sup> Such impediments to fundamental rights have been compounded by uncertainty linked to various COVID-19 regulations, guidelines, and directions issued before the elections.<sup>3</sup>

The legal framework is largely unchanged since the 2016 elections. It comprises the 2016 Constitution, the Electoral Commission of Zambia Act (ECZA), establishing the independent Electoral Commission of Zambia (ECZ), and the Electoral Process Act (EPA) for conducting elections and embedding a Code of Conduct (CoC) for parties, candidates, observers, police, and others. Amendments to the ECZA and the EPA, in 2019 and 2021 respectively, strengthened the ECZ's independence and extended the franchise to prisoners. Other laws, regulations, and court decisions cover some legal gaps, but also expose inadequacies and ambiguities.

Aspects of the law affect the principles of equity, inclusivity and transparency in the electoral process and leave scope for inequitable treatment of stakeholders and erode public confidence in key institutions. Timelines for various procedures and modalities for accessible publication of key information, including candidate nomination forms, declarations of assets and liabilities, and results, are insufficiently prescribed.<sup>4</sup> Key aspects of political party conduct are insufficiently regulated, including mechanisms for inclusivity, intra-party democracy, and campaign funding and expenditure. The Public Order Act (POA) and other laws, lacking precision in various procedures and timelines, entail uncertainty of law for parties, candidates and the ECZ.

Constitutional and high court decisions exposed a need for reforms, including to improve nomination processes and to protect the right of assembly.<sup>5</sup> After some controversial early

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<sup>1</sup> On equality of the vote, the number of registered voters varies widely among constituencies. For example, in Lufubu, Central Province there are 11,411 registered voters, in Luapula, Luapula Province 17,353 and Zambezi West, North Western province (11,676), while in Munali there are 151,573 registered voters, in Kanyama, 177,495 and in Kabwate 108,729. All three constituencies are in Lusaka province. On women's participation, 2015 legislation for CEDAW has not been fully operationalised. A 2012 law on UNCAC and other instruments on corruption omits political and campaign funding.

<sup>2</sup> Public Morality is a basis to limit fundamental rights over which the High Court has jurisdiction. Fundamental Rights provisions of the constitutional framework are found in the Bill of Rights, unchanged since 1991. For example, defamation is a criminal offence. ICCPR, Human Rights Committee (HRC), General Comment (GC) 34, at para. 22 provides that restrictions imposed on freedom of expression must "...conform to the strict tests of necessity and proportionality". The Public Order Act (POA) regulating public gatherings and the law for political party registration (the Societies Act) both date from the 1950s and do not reflect contemporary international standards.

<sup>3</sup> The Ministry of Health issued three COVID related regulations: COVID-19 Regulations (No.21 of 2020) (13 March 2020); (No.22 of 2020) (13 March 2020) and (No.62 of 2020) (10 July 2020) - hereafter collectively, COVID-19 regulations. The most recent regulation requires written permission for all public gatherings. COVID-19 based directions also emanated from the Electoral Commission of Zambia (e.g. ECZ directions of 3 June 2021).

<sup>4</sup> There is no deadline for candidate resignation. There is no clarity on scheduling of nominations if the Constitutional Court nullifies an election. The forms have not been published. Early access to nomination forms would allow independent verification, gender disaggregation of candidates, as well as confirmation of fees paid and candidate party backing. ECZ regulations were not accessible through the ECZ Facebook page or website.

<sup>5</sup> See, [George Muhali Imbuwa v Electoral Commission of Zambia \(2021/HP/0587\) \[2021\] ZMHC 7 \(16 June 2021\)](#), showing that nominations papers rejected by the ECZ based on seemingly minor administrative errors must be appealed to the High

rulings, the Constitutional Court clarified its own procedures, including new rules for presidential petitions. The court ensured accountability and inclusivity by requiring the resignation of ministers ahead of elections and upholding the political rights of persons in detention. Recently, the court directed the ECZ to strictly implement its mandate and avoid novel procedures in nominations.

The president is elected by an absolute majority in a national vote. If no candidate reaches 50 per cent plus one vote of the valid votes cast, a second round of elections is held between the two lead candidates within 37 days. The first-past-the-post electoral system is used for parliamentary and local council, chairperson and mayoral elections.

### III. ELECTORAL ADMINISTRATION AND ELECTORAL PREPARATIONS

*The ECZ managed well the technical aspects of the electoral process; most stakeholders strongly criticised the lack of genuine consultations and clarity of communication.*

Overall, the ECZ carried out its work professionally under a challenging pandemic setting, but stakeholder trust in the ECZ remains low. Neither the current appointment system nor the recruitment of the provincial and district electoral officers by the local administration have reinforced public confidence in the institution. Most opposition parties and civil society organisations strongly complained that the level of consultations and communication at each stage of the electoral process was insufficient.

The ECZ is a five-member constitutional, autonomous, permanent body responsible for organising all elections. ECZ members are appointed for a seven-year term by the president subject to the approval by the National Assembly. Members may only be removed on grounds of misconduct and gross negligence, with investigation powers lying with the Chief Justice. The ECZ has the legal power to issue regulations and guidelines and a duty to enforce the Code of Conduct embedded in the EPA. The ECZ must ensure electoral processes are non-discriminatory, transparent and credible. Unclear ECZ external communication caused stakeholders to raise concerns at various stages, including on national observer accreditation. A narrow legal approach adopted by the ECZ, requiring independent candidates not to identify with political parties, led to accusations of restriction of the rights to freedom of expression and to campaign freely.

The ECZ operates without decentralised structures and relies on the local administration. Altogether 116 district electoral officers, recruited from local administrations, assisted operations. Ten provincial appointees played an *ad hoc* role coordinating activities between the ECZ and districts, although their role lacks a precise legal basis. The electoral administration at local level was well-organised, but frequently did not enjoy general trust among local stakeholders. Often, district election officers implemented ECZ instructions inconsistently, evidencing poor communication by the ECZ and causing controversy among local stakeholders.

The technical aspects of the electoral process were well-administered, and key operational deadlines were generally met. On 12 May, the ECZ published COVID-19 standard operating procedures, including general protective measures and specific procedures by electoral activity. Training of some 83,324 polling staff, including contingencies, was carried out on schedule

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Court. See, [Law Association of Zambia v Attorney General \(Appeal No. 8/2014\) \[2016\] ZMSC 46 \(13 May 2016\)](#). The need for police permits for public meetings held unconstitutional by the Supreme Court (SC) in 1997. The POA was subsequently amended, but the SC viewed the changes as ‘half-hearted’ noting the police were not fairly applying the POA.

and in a satisfactory manner as reported by EU EOM observers, although not always adhering to COVID-19 regulations.

The COVID-19 circumstances limited voter education/information activities on the ground to small-scale meetings with voters. Messages focused on the date of elections, on how to vote and how to mark the ballot paper in a valid manner. The voter information campaigns in traditional and social media picked up their pace two weeks before the elections. Election officials regularly participated in call-in programmes on local radio stations. However, the broadcast of ECZ's voter education clips was delayed. The ECZ's social and print media campaign featured posters on voting procedures and discouraged vote-buying. Voter information posts from the ECZ's Facebook page were frequently shared by the media and citizens. The ECZ live-streamed its key events on its Facebook page and posted its resolutions, thus enabling direct access to information of public interest.<sup>6</sup>

#### IV. VOTER REGISTRATION

##### *An enlarged voter register with greater inclusivity.*

In 2020, the ECZ compiled a new voter register introducing a biometric voter registration system to remove some 1.4 million deceased voters from the 2016 register. The certified voter register includes 7,023,499 voters, representing 83.2 per cent of the eligible voters. Women represent 53.4 per cent of the registered voters and men 46.6 per cent. Most EU EOM interlocutors, overall expressed confidence in the new voter register and all admitted that it is not inflated by deceased voters. However, some criticised the ECZ for inadequate planning, lack of broad consultations and limited time and locations allocated for citizens to register and scrutinise the voter list. The UPND alleged that the voter register had a partisan character arguing that more national registration cards, a prerequisite for voter registration, were issued in PF's strongholds.

Every Zambian citizen who has reached 18 years and has a national registration card may register to vote in their area of residence. An amendment to the EPA allows persons with a mental disability, pre-trial detainees, those under imprisonment and detainees held in custody or under a restriction of movement to register to vote. For the first time, the voter register included some 14,000 prisoners.

#### V. CANDIDATE REGISTRATION

##### *Largely reasonable candidacy requirements but high fees and restrictive educational requirements affected predominantly women and the marginalised.*

Requirements to stand as a candidate in elections are largely reasonable. Elections are open to both party-sponsored and independent candidates. A specific education certificate is required for all elections,<sup>7</sup> which hampers the right to stand for those without formal education and impacts mostly on the marginalised and women. Women, youth and persons with disabilities pay lower nomination fees. EU EOM interlocutors considered the fees still high, especially for being non-refundable.<sup>8</sup> Twenty-one political parties contested the parliamentary elections.

<sup>6</sup> From 1 July to 11 August, the ECZ live-streamed 14 events, with an average of 5,272 views, shared more than 100 times.

<sup>7</sup> Candidates must produce a grade 12 certificate or equivalent as validated by the Examinations Council. ICCPR, HRC GC 25, Para. 15 "[...] Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, [...]."

<sup>8</sup> Fees vary from ZMK 95,000 (EUR 3000 approx.) for male presidential candidates to ZMK 500 (EUR 20 approx.). Overall fees range between 10 and 30 per cent less for youth, women and persons with disabilities. Where elections in any constituency are cancelled, the nominations process must be recommenced and the same fees are payable again. ICCPR, HRC GC 25, Para. 16 "[...] Conditions relating to nomination dates, fees or deposits should be reasonable....".

Some 857 candidates, including 200 independent candidates almost twice as many as in 2016, ran for 156 parliamentary seats. Of these 21.1 per cent were women. There were 28 parties competing in the local elections with 6,130 candidates, running for 1,858 seats with women representing some ten per cent.

## VI. CAMPAIGN ENVIRONMENT

### *Rights of assembly and expression skewed, advantaging the ruling party in an unlevel campaign playing field.*

The campaign took place in a highly competitive and tense environment, dominated by the two major parties, the ruling PF and the opposition UPND. The Socialist Party (SP) and Democratic Party (DP) were the most visible other parties. The presidential campaign was deeply polarised and lacked dialogue thus weakening the message of peace initiatives and furthering the entrenched political divide. Parliamentary and local government campaigns mirrored more complex local dynamics due to the high number of independent candidates and related internal party conflicts.

Arbitrary applications of COVID-19 campaign regulations hindered opposition candidates to compete under equal conditions and amplified widespread perceptions of an unlevel playing field in the campaign. Nevertheless, large-scale gatherings, roadshows and door-to-door canvassing took place across the country against the backdrop of COVID-19 regulations and ECZ directions. These regulations and POA provisions were selectively applied to restrict freedoms of assembly and movement and, at times, involved excessive use of force by the police to curb opposition campaigning.<sup>9</sup> Overall, COVID-19 campaign regulations<sup>10</sup> lacked detail and precise supervisory and enforcement mechanisms.

The ruling party was largely exempted from COVID-19 campaign restrictions. Most controversial were the President's and Vice President's official visits, which were widely used for campaign purposes. Notably, the President's market visits presented as "COVID-19 sensitisation" and "facemask distribution" attracted large crowds and resembled campaign events. This prompted public criticism about respect of COVID-19 regulations. Opposition parties, particularly the UPND and DP, used the pretext of "facemask distribution" to launch their campaign activities, but unlike the President's they were often obstructed by the police.<sup>11</sup>

The PF presidential campaign demonstrated the absence of a clear distinction between the state and the ruling party. The use of state resources was evident with a broad range of state development, social protection, and relief programmes being used in the campaign.<sup>12</sup> Senior civil servants were widely involved in the PF presidential campaign. President Lungu publicly

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<sup>9</sup> At least seven times, the police used teargas against the UPND and DP candidates. Multiple times, high-profile opposition convoys and campaigns were blocked or obstructed by the police.

<sup>10</sup> The ECZ suspended campaign rallies on 3 June and roadshows on 15 June. Only a single car roadshow and door-to-door campaigning of not more than three persons were allowed.

<sup>11</sup> Between 19 and 23 July, the Human Rights Commission received information on some 18 cases of political violence. The majority of these related to a series of roadshows of the UPND in Lusaka and Central Provinces. The police reported 33 related arrests of UPND cadres.

<sup>12</sup> Examples include the Social Cash Transfer Programme (SCTP) and the Farmer Input Support Programme (FISP). A large-scale COVID-19 emergency cash started in May and continued throughout June and July. The Food Reserve Agency was recently allocated additional funds to buy maize from farmers and the PF ballot paper logo and the slogans "vote PF" and "vote Edgar Chagwa Lungu" were inscribed on the maize sacks used. transfers by the Disaster Management and Mitigation Unit was allocated ZMK 15 million to empower marketeers.

offered incentives to traditional leaders to influence the electorate's vote in his favour.<sup>13</sup> None of these widely publicised abuses of the incumbency were addressed by the ECZ.

Violence, particularly clashes between the UPND and PF cadres, was a lasting matter of concern.<sup>14</sup> The use of hate speech ("tribal" language) in the campaign was publicly acknowledged but not effectively addressed by the ECZ.<sup>15</sup> The ECZ responded to political violence by temporarily suspending campaigning of political parties and candidates.<sup>16</sup> The suspensions were later lifted, but the lack of transparency in the decision-making process over the suspensions triggered public controversy.

On 1 August, the President announced the deployment of the Zambia Defense Force to beef up police capacity in response to political violence in Lusaka. This exceptional security measure in the context of elections received mixed reactions, with concerns of possible voter intimidation. Lack of public information on military deployment increased uncertainties among the population with soldiers, in some cases equipped with heavy weaponry, present in different parts of the country.

Campaign coverage on commercial media was primarily paid for by parties, disadvantaging less affluent opposition and smaller parties. At the same time, state-run broadcasters reported on all official visits by the President and Vice President, providing the PF with overwhelming media coverage, contrary to regional standards.<sup>17</sup>

COVID-19 propelled the PF, UPND and DP strategic use of Facebook as a key campaign tool.<sup>18</sup> High-profile influencers supported both frontrunners,<sup>19</sup> while partisan online foot soldiers amplified pre-existing fissures between different groups by exploiting tribal affiliation.<sup>20</sup> The UPND online campaign had a strong interlinkage of the grassroots-level online and offline electioneering. Clear instructions on guarding the vote were given through UPND-leaning Facebook pages and were repeated by the party's youth leaders during in-person canvassing across the country as well as via mobile app.<sup>21</sup> By contrast, the PF relied heavily on the paid-for cross-platform promotion of the President's leadership talent and the government's

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<sup>13</sup> On 22 April, the Ministry of Chiefs and Traditional Affairs released ZMK 20 million to pay Chiefs and their Retainers. During the meeting, traditional leaders were cautioned against taking a partisan stance. On 7 August, the President presented a newly built palace to the chieftaincies in Serenje.

<sup>14</sup> During the official campaign period from 12 May to 11 August, there have been at least 63 cases of election related physical violence based on reports by the CCMG and media.

<sup>15</sup> The ECZ lifted the hate speech suspension of the PF presidential campaigner Kambwili, who was later again recorded using "tribal language" in the campaign, for example, on 1 August in Mporokoso, Northern Province.

<sup>16</sup> On 15 July, ECZ suspended all campaign activities of the two main parties for two weeks in four contested districts in Lusaka, Southern, Northern and Muchinga Provinces. On 28 July, the ECZ suspended an UPND candidate in Ikelenge and an independent candidate in Sioma. On 2 August, the UPND campaign in Kanyama was suspended. All suspensions were lifted on 10 August.

<sup>17</sup> Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002, "...the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receives adequate politically balanced information, particularly during election periods."

<sup>18</sup> The PF, UPND and DP have 1.2, 1 and 0.6 million followers on Facebook, respectively, comprising 90 per cent of all accounts following presidential aspirants.

<sup>19</sup> Of 25 Facebook pages administered by most followed influencers, ten were UPND-leaning, and nine were PF-leaning.

<sup>20</sup> The EU EOM performed a manual assessment of 150 recently established accounts, who either promoted or criticised certain candidates on popular FB groups with participants across the political spectrum. Among them, 61 were PF-leaning and 45 UPND-leaning, seemingly operating in an organised manner and being linked with respective party's fan pages.

<sup>21</sup> The instruction was to vote, "to stay 400m from the polling station to count voters", and during the counting to observe if the number of ballots recorded in the protocol corresponded to the number of voters observed. The hashtag #VoteProtection was created on 11 July, while the party's youth leaders toured at least 40 constituencies in all provinces repeating the message. Video clips from their campaigns were placed on UPND-leaning FB pages and cross-shared further.

development programmes.<sup>22</sup> It echoed the extensive coverage of the President and Vice President in state-run media, hence obscuring the line between governing and campaigning.

## VII. CAMPAIGN FINANCE

***An absence of robust regulation, compounded by a lack of transparency and accountability, undermined the voters' right to make an informed choice.***

There is no law on political and campaign finance. A few scattered rules require candidates to declare assets and liabilities to contest elections, ban the use of corruptly obtained funds for party and electoral purposes, and impose limited political party financial disclosures. However, a lack of robust regulation on timely dissemination of key information, independent oversight, and sanctions for non-compliance strips these provisions of substance. It leaves funding and expenditure by contestants largely unknown to voters, contrary to international standards.<sup>23</sup>

Most parliamentary candidates stated having self-funded their campaigns. PF candidates appeared to be better funded, as exemplified by the higher visibility of campaign material, billboards and posters in all provinces, as observed by the EU EOM. The ECZ failed to publish any information on the presidential declarations of assets, stating that it has no explicit legal mandate to disclose such information.

The campaign in traditional and online media was highly monetised.<sup>24</sup> While the PF, UPND and SP bought considerable airtime on broadcast media, the PF spent far more on TV and radio adverts than any other campaign.<sup>25</sup> The PF also dominated across all categories of Google adverts and paid for a great number of genuine posts on Facebook media pages, reaching over four million users weekly.<sup>26</sup> Total spending in the media and online is unknown as there are no legal disclosure requirements for service providers such as media houses and tech companies. Further, Facebook's key transparency tool for political advertising - *Facebook Ad Library* - has not been introduced in Zambia. The overall lack of transparency and accountability disadvantaged parties with fewer financial assets and interfered with voters' right to make an informed choice.<sup>27</sup>

## VIII. MEDIA ENVIRONMENT

***Using executive powers and money, the ruling party monopolised the prime-time on state and private media.***

There are more than 200 media outlets, yet they lack in content diversity and editorial freedom.<sup>28</sup> Freedom of expression is not adequately protected, and freedom of the press is derogated on several grounds, contrary to international standards. Provisions in the Penal Code put pressure on media outlets and journalists, further limiting the right to freedom of expression. The Independent Broadcasting Authority (IBA) Standard Operational Procedures

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<sup>22</sup> The PF held nine online rallies, live streamed on its Facebook page and paid for live stream on more popular media pages. The second rally was also broadcasted live on state-run TV, with clips repeated during prime-time newscasts.

<sup>23</sup> UNCAC, art. 7(4), "[...] promote transparency and prevent conflicts of interest." The SADC Principles 4.1.6 "Promote necessary conditions to foster transparency, [...]; access to information by all citizens."

<sup>24</sup> On four TV stations monitored by the EU EOM, 33 per cent of all prime-time election-related programming is paid-for; on eight radio stations, the average paid-for time was 29 per cent. In four cases, the paid airtime exceeds the time of news.

<sup>25</sup> For example, from 9 July to 11 August, on four TV stations monitored by the EU EOM, all parties paid for some 1646 advertisements, among them – 809 were for the PF, 272 for NAREP, 243 for the SP and 126 for the UPND.

<sup>26</sup> The administrators of Zambia's top 5 Facebook media pages and a dozen of regional radio stations informed the EU EOM that political parties are paying for adverts and live broadcasts. Such content appears as genuine with a paid-for disclaimer.

<sup>27</sup> UNCAC, art. 7(3), "[...] enhance transparency in the funding of candidatures for elected public office [...]".

<sup>28</sup> The state-controlled Zambia National Broadcasting Corporation (ZNBC) is the only outlet with free nationwide coverage, watched by seven million people in prime time. In rural areas, radio remains the most important source of political news.

(SOP) require journalists to balance stories. However, the IBA used these provisions against media outlets who invited guests critical of the government, but not against outlets who provided disproportional coverage to the President.<sup>29</sup> Due to the constraining legal framework and harassment of journalists from both sides of the political spectrum and state actors, like the police and/or tax authorities, the media frequently opted for self-censorship.<sup>30</sup>

The media landscape was highly polarised, with the state media giving an overwhelming advantage to the ruling party. EU EOM media monitoring data shows that, contrary to the law, the ZNBC failed to provide equitable coverage. The ZNBC granted disproportional coverage to the President during prime time, blurring the line between government functions and campaign activities.<sup>31</sup> During the 34-day monitoring period,<sup>32</sup> the most-watched ZNBC channel, TV 1, allocated 86 per cent of its news coverage to the President, the PF and the government whereas the UPND received only six per cent of news coverage and was featured negatively.<sup>33</sup> President Lungu had almost three hours of direct speech within the news, while Hichilema had less than six minutes. No other candidate received a meaningful coverage within prime-time news bulletins. Such imbalance does not conform with regional standards for public broadcasting.<sup>34</sup>

EU EOM media monitoring data shows that the private media coverage did not remedy the overall imbalance between the time allocated to the ruling party and other electoral contenders, even if those broadcasters gave higher exposure to a few prominent opposition figures.<sup>35</sup> On a positive note, commercial broadcasters organised presidential debates.<sup>36</sup> ZNBC did not air any debate, thus reducing voters' chances to compare key campaign platforms directly.

COVID-19 negatively affected community radio stations' advertising revenue and interest in paid airtime often preceded editorial choices. Character assassinations, especially of female candidates, occasional hate speech and the use of language driving tribal division reduced the space for meaningful political debate. Furthermore, the PF reserved the last four hours of the

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<sup>29</sup> For example, the oldest private TV channel, Muvi TV, received its final warning from IBA for breaching its editorial policy and IBA's SOP by not guiding or cutting off EEP President Chilufya Tayali criticising the President, "who wasn't present".

<sup>30</sup> Journalists of private radio stations in Western province avoided covering politically sensitive issues as it is believed that negative coverage of parties might result in an attack by party cadres. Incidents reported included an attack on Liberty Community Radio station by PF cadres on 9 February 2021 during a live show with DP candidate Harry Kalaba. The Police in Luapula is investigating an incident of arson against Kalungwishi FM Radio Station in Chiengi District (24 June 2021). On 16 July, Chimemwe Community Radio Station's journalist reported harassment by PF cadres. There are also reports of trolls interrupting radio shows of Radio Phoenix and Hot FM. A private Sun TV (Copperbelt) reported that when they complained to PF for not paying for their ads, they were investigated by tax authorities and charged 7 million ZMW. Radio Breeze's journalists in Eastern province were intimidated by PF cadres when they investigated voter registration of non-Zambians. On 25 July, a ZANIS journalist was reportedly beaten by UPND cadres.

<sup>31</sup> President Lungu got more than 8 hours of all prime-time news coverage on ZNBC, while Hichilema received only 16 minutes. Some 3,6 hours of news coverage was given to President Lungu on state-run radio stations whereas Hichilema was featured for less than four minutes. On ZNBC TV 1 and TV 2, independent candidates received 21 minutes of news coverage. Some smaller parties were not featured at all.

<sup>32</sup> The EU EOM monitored four TV channels: State-run TV ZNBC 1, ZNBC 2, two private TV channels: Diamond TV and Muvi TV, and eight radio stations, including six regionals: Icengelo FM in the Copperbelt; Radio Mano in the Northern province; Radio Yangeni in Luapula; Spice FM in the Central and Eastern province; Oblate Radio Liseli in the Western province; Sky FM in the Southern province; Hot FM in Lusaka; and the national state radio ZNBC 1.

<sup>33</sup> ZNBC featured the UPND and Hichilema 18 times in a negative context, while the coverage of President Lungu was always positive.

<sup>34</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019 (DPFEA), Chapter V. Article VI of DPFEA requires that "the public service ambit of public broadcasters should... ensure that the public receives adequate, politically balanced information, particularly during election periods".

<sup>35</sup> President Lungu received 97 minutes of news coverage on privately-owned Diamond TV against 31 minutes of Hichilema, President Lungu received 94 minutes on Muvi TV news, while Hichilema received 46 minutes. Smaller parties are mostly invisible. President Lungu was also featured on the news on monitored regional radio stations for 26 minutes, while Hichilema was mentioned for less than 11 minutes.

<sup>36</sup> Privately owned Diamond TV organised a Presidential Debate on 3 and 4 August, with many other outlets and social media re-broadcasting. It was a good example of issue-based debate. The UPND candidate could not participate claiming restrictions on his movement, President Lungu claimed not to have been officially invited, and the Socialist Party candidate did not show up.

campaign on most private media outlets, effectively monopolising the prime time nationwide.<sup>37</sup> Only a few high-profile female candidates and running mates had coverage in the media while the rest were scarcely represented.<sup>38</sup> In the four TV stations monitored, female candidates have featured nine per cent in all programmes and 17 per cent of the time in monitored radios.

## IX. DIGITAL COMMUNICATIONS AND SOCIAL MEDIA

### *Disinformation and tribalism pervaded online debate to the detriment of voters.*

Freedom of expression online was curtailed by several clauses in the Penal Code and the recently adopted Cybersecurity and Cyber Crimes Act. The Act grants broad powers to the ICT regulator and police without requiring transparency and accountability for their actions. During the last two years, arrests were made and criminal charges proffered, based on the Penal Code, against at least 14 citizens for Facebook posts perceived as critical of the President and the government.<sup>39</sup> Such laws and heavy-handed application induce self-censorship online and do not conform with regional and international standards for freedom of expression.<sup>40</sup>

Up to 56 per cent of Zambians are connected to the Internet. Among social networks, only Facebook, with more than 2.5 million users, shaped political narratives in the public space and constituted a key channel for reaching young, urban voters. Political exchanges on the most followed Facebook groups with participants from across the political spectrum featured divisive rhetoric ranging from personal insults to outright tribalism and hate speech. The administrators of Zambia's most followed pages on Facebook pro-actively removed inciteful comments. Two weeks before the elections, PF-leaning pages seeded harmful disinformation campaigns that demonised the UPND leader, capitalised on anti-foreign sentiments and heralded violence.<sup>41</sup> Those false claims were repeated during PF's corner meetings.<sup>42</sup> Four days before elections, a concerted character assassination campaign against Hichilema was observed. Such campaigns are aimed at suppressing voters and discouraging participation in elections.<sup>43</sup>

Facebook did not act to preserve electoral integrity on the platform. None of the posts featuring manipulated tweets or fake letters was labelled as false. The company failed to engage in a

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<sup>37</sup> With no limits on paid-for airtime, community radios provided more coverage to parties who could pay. The PF is reported to have threatened several community radios with legal action if they did not air the party's last virtual rally on 11 August, and pressured media outlets to abandon existing contracts with other advertisers. As a result, PF's last virtual rally aired on at least 21 radio stations, covering the entire country.

<sup>38</sup> President Lungu's running mate featured 91 times in the news on ZNBC TV 1 and TV 2; Hichilema's running mate wasn't mentioned. On 26 July, *The Mast* newspaper published a 4-page spread on nine female candidates under "Gender Focus-News". "Times of Zambia" state newspaper published general ads from the ruling party on the female presidential running mate.

<sup>39</sup> Penal Code, Chapter XVIII Defamation, Art. 191-198; Art. 67 (publication of false news) and Art. 69 (defamation of the president). Declaration of Principles on Freedom of Expression in Africa (DPFEA), Chapter XIII: "*States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.*"

<sup>40</sup> AU Convention on Cybersecurity, Art. 25 at para 3: "*In adopting legal measures [...] and establishing the framework for implementation, each State Party should ensure that the measures [...] will not infringe other basic rights, such as freedom of expression.*" See DPFEA, Chapter II: "*No one shall be subject to arbitrary interference with his or her freedom of expression.*"

<sup>41</sup> On 22 July, the PF official FB page published a fake letter from Africa Liberal Network (ALN), alleging that the UPND leader received USD 720,000 for removing "*Christian values from the Constitution*" and for instituting "*a gay pride parade in every city*". The anti-foreign notion first was featured in the President's speech on 23 July. On 25 July, the PF-leaning FB page posted a false story on the UPND hiring ex-military from the UK to hack ECZ's tallying system. On 30 and 31 July, four pages published two fake tweets pinned to Hichilema; one read: "*My association with satanism [...].*"

<sup>42</sup> For example, on 28 July, during a meeting with the clergy in Kasempa (North-Western province), the PF presidential running mate cited the fake ALN letter and caution the church against supporting Hichilema

<sup>43</sup> ICCPR, HRC GC 25, at para 19: "*Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.*"

meaningful and timely manner with national stakeholders, including civil society. Such inaction falls short of United Nations guiding principles on business and human rights.<sup>44</sup>

Harassment and cyber-bullying of female candidates, rights activists, and journalists was observed, hindering an inclusive political debate. The police and ICT regulator did not take any action against the perpetrators.<sup>45</sup> By contrast, civil society organisations tried to counter hate speech by holding training sessions on digital literacy. The nationwide fact-checking project iVerify also contributed to protecting voters' rights to information and to political participation.

## **X. CITIZEN OBSERVATION AND INTERNATIONAL OBSERVATION**

### ***Active role of citizen observers; complicated accreditation process.***

The law provides for observation by national and international observers accredited by the ECZ. The ECZ introduced a decentralised accreditation process at the district level, setting a tight deadline for accreditations that was later extended twice. The accreditation procedures were published late and included cumbersome requirements for the accreditation of national observers, such as certified copies of the national registration card and the physical presence of the observers at the accreditation centres. Despite a complicated and unclear accreditation process, the ECZ accredited all national observer organisations that applied.

The leading citizen groups were the Christian Church Monitoring Group, an alliance of faith-based organisations, with 1,500 monitors that conducted a sample-based parallel vote tabulation. The SADC Good Governance and Election Monitoring accredited some 3,000 observers mostly under the Good Governance Zambia (GGOZA) and various other organisations operating at the local level. In line with COVID-19 regulations and ECZ guidelines, no more than five observers were present in a polling station at the same time.

The most prominent international election observation missions were deployed by the African Union, the Commonwealth and COMESA whereas the Carter Center and EISA fielded expert and technical teams for the elections.

## **XI. ELECTION DAY: POLLING, COUNTING AND TABULATION OF RESULTS**

Election day was mostly calm and orderly despite very long queues of voters throughout the day, particularly in clusters of polling stations in urban areas. Thousands of voters were patiently queuing for several hours in premises hosting many polling stations. In such premises, COVID-19 regulations outside the polling stations were not respected (in particular social distancing), voting was extended for several hours, and counting started later. A few isolated violent incidents, resulting in at least one fatality,<sup>46</sup> and unverifiable allegations of electoral malpractices marred election day.<sup>47</sup>

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<sup>44</sup> UN Guiding Principles on Business and Human Rights, adopted by the UN HRC in 2011. See also the joint declaration on freedom of expression and “fake news”, disinformation and propaganda, sec. 4 Intermediaries.

<sup>45</sup> The Cybersecurity Act, Art. 69 stipulates that it is an offence to use electronic communication with “*intent to coerce, intimidate, harass, or cause emotional distress*” and is punishable with a fine or imprisonment (up to five years).

<sup>46</sup> The police confirmed that the PF Chairperson for Solwezi (North-Western province) was beaten to death by an angry mob and that the PF parliamentary candidate in Matero Constituency (Lusaka) was stabbed. In both cases, unverified allegations of possession of pre-marked ballot papers were levelled against the victims on social media.

<sup>47</sup> At least eight videos alleging that party cadres had pre-marked ballot papers in their possession (possession??) were widely shared on social media without providing any proof of such misconduct. The ECZ and the police failed to promptly debunk the allegations, leaving ample room for speculations and distorting voter’s trust in the electoral process.

The EU EOM observed opening and voting proceedings in 349 polling stations in 62 constituencies. The overall assessment of the opening and voting was overwhelmingly positive. Opening procedures were well-implemented, and the majority of polling stations opened on time. Delays in the opening were reasonable and mainly due to the unpreparedness of the polling staff to set up the polling station.

Voting took place efficiently and in a well-organised manner in the observed polling stations. Electoral materials were available, and polling staff were present conducting elections professionally and transparently. The polling station layout was adequate and compliant with COVID-19 regulations. Polling agents and citizen observer groups, such as GEARS, Operation Youth Vote, FODEP and CCMG, were present without interfering, and they were able to observe the process unhindered. Voting procedures were generally followed, and the secrecy of the vote was largely respected. The large numbers of voters allocated to each polling station, the slow identification of voters and the issuance of four ballot papers contributed to delays in the voting process.

Closing and counting were assessed positively in the polling stations observed. Most polling stations closed on time. However, delays of more than two hours were observed mainly in Lusaka District and Copperbelt province due to long queues. Procedures were largely followed but not in a systematic manner. The counting process was slow. The process at the totalling centres is still ongoing. The ECZ started announcing results at the national results centre on 14 August, at 01:17 am.

Neither the ICT regulator nor the ECZ explained the nature, duration, or reasoning why, from midday 12 August onwards, access to WhatsApp, Facebook and Instagram was blocked or hindered. Restrictions on access to social media and instant messaging platforms unduly curbed freedom of expression, interfered with the right to access to information and undermined the overall transparency of elections.

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An electronic version of this Preliminary Statement is available on the Mission website ([www.zambia2021.eueom.eu](http://www.zambia2021.eueom.eu)). For further information, please contact:

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