AFRICAN UNION ELECTION OBSERVATION MISSION TO THE 20 JANUARY 2015 PRESIDENTIAL BY-ELECTION IN THE REPUBLIC OF ZAMBIA

REPORT

April 2015
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### ABBREVIATION/ACRONYMS

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<tr>
<th>Abbreviation</th>
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<tr>
<td>AUC</td>
<td>African Union Commission</td>
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<td>AUEOM</td>
<td>African Union Elections Observation Mission</td>
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<td>AU</td>
<td>African Union</td>
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<td>CDP</td>
<td>Christian Democratic Party</td>
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<td>CSO</td>
<td>Civil Society Organizations</td>
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<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>ECZ</td>
<td>Electoral Commission of Zambia</td>
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<td>EMB</td>
<td>Election Management Bodies</td>
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<tr>
<td>EISA</td>
<td>Electoral Institute for Sustainable Democracy in Africa</td>
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<tr>
<td>FDA</td>
<td>Forum for Democratic Alternatives</td>
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<tr>
<td>FDD</td>
<td>Forum for Democracy and Development</td>
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<tr>
<td>FPTP</td>
<td>First-Past-The-Post</td>
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<td>GREENS</td>
<td>Green Party of Zambia</td>
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<tr>
<td>MMD</td>
<td>Movement for Multiparty Democracy</td>
</tr>
<tr>
<td>NAREP</td>
<td>National Restoration Party</td>
</tr>
<tr>
<td>NEC</td>
<td>National Executive Committee</td>
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<tr>
<td>PAP</td>
<td>Pan-African Parliament</td>
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<tr>
<td>PF</td>
<td>Patriotic Front</td>
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<tr>
<td>UNIP</td>
<td>United National Independence Party</td>
</tr>
<tr>
<td>UPND</td>
<td>United Party for National Development</td>
</tr>
<tr>
<td>ZNBC</td>
<td>Zambia National Broadcasting Corporation</td>
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<tr>
<td>ZAF</td>
<td>Zambian Air Force</td>
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EXECUTIVE SUMMARY

African Union Election Observation Mission (AUEOM) to the 20 January 2015 Presidential By-elections had objectives (a) to make an independent, impartial and objective assessment election including the degree to which the conduct of the elections meets regional and international standards for democratic elections; (b) to offer recommendations for improvement of future electoral processes in the country; and (c) to demonstrate AU’s solidarity and support for Zambia’s elections process to ensure that the conduct of genuine elections will contribute to the consolidation of peace and stability in the country.

In its assessment of the 2015 presidential by-election, the AUEOM made the following key findings:

- The 2015 presidential by-election took place against the backdrop of the death of President Michael Sata on 28 October 2014. It was the second presidential by-election held in Zambia’s history. The lead up to election was marked by keen intra-party contestation, and inter-party endorsements among the major political parties;

- The institutional and infrastructural framework required as the basis for the conduct of the presidential by-election was in place and the political context was largely peaceful. However, the AUEOM noted that gaps in the legal framework such as the adoption of a simple majoritarian electoral system which could compromise the legitimacy of the president; the silence of the constitution on the possibility of a tied outcome in a presidential election; and the absence of regulatory provisions on party and campaign finance which opens the electoral process to the undue influence of money in politics;

- The 2015 presidential by-election was the first national election to be conducted during the rainy season in Zambia. The poor weather conditions and the limited timeframe (90 days) for planning the election were key challenges the ECZ faced;

- Election day procedures were conducted in accordance with stipulated procedures in an orderly and professional manner. Voter turnout was low compared to previous elections; and

- There were delays experienced during the vote tabulation process, which raised suspicions and complaints from political parties. The AUEOM commended the ECZ for its openness to consultation and its professional response to the complaints raised by parties.
The AUEOM also made recommendations for improvement of future elections in the Republic of Zambia. These recommendations include:

- Parliament should give immediate attention to the pending Constitutional Amendment Bill that will strengthen the legal framework;

- Parliament should amend the Electoral Law in order to include regulatory provisions on party and campaign finance;

- The ECZ should amend the Electoral Guidelines to ensure that the secrecy of the ballot is protected at all times;

- The ECZ should review and update the voter register to guarantee its credibility ahead of the 2016 elections; and

- Political parties should adopt programmes aimed at improving women’s representation in elected positions.

The AUEOM concluded that the election was conducted peacefully in a manner that enabled qualified Zambians to exercise their right to vote. The by-election was conducted in accordance with the laws of Zambia and it acceptably met basic international standards for democratic election.
I. INTRODUCTION

1. In response to the invitation from the Government of the Republic of Zambia and the Electoral Commission of Zambia (ECZ), the Chairperson of the African Union Commission (AUC), Her Excellency Dr. Nkosazana Dlamini Zuma, deployed an African Union Election Observation Mission (AUEOM) to the Republic of Zambia, to observe the Presidential By-Election that was held on 20 January 2015. The AUEOM was in the country from 17 January to 25 January 2015.

2. The AUEOM was led by H.E. Kgalema Motlanthe, former President of South Africa and comprised 23 observers drawn from the Pan-African Parliament (PAP), African Ambassadors to the AUC, Election Management Bodies (EMBs) and African Civil Society Organizations (CSOs) from different African Countries.

3. The AUEOM was supported by a team of experts from the AUC, PAP and the Electoral Institute for Sustainable Democracy in Africa (EISA).

4. This is the final report of the AUEOM, which presents in more details the findings and assessment of the AUEOM on the 20 January 2015 presidential by-elections in Zambia. This final report also presents the AUEOM’s recommendations for the improvement of future electoral processes in Zambia.

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1 Algeria, Botswana, Ethiopia, Gabon, Kenya, Malawi, Mauritius, Niger, Namibia, Nigeria, Uganda, Sudan, South Africa, South Sudan, Tanzania, and Saharawi Republic. See Annex 1 for the full list of the AUEOM members.
II. OBJECTIVE AND METHODOLOGY

(a) Objective

African Union Election Observation Mission (AUEOM) to the 20 January 2015 Presidential By-elections had objectives:

- to make an independent, impartial and objective assessment election including the degree to which the conduct of the elections meets regional and international standards for democratic elections;
- to offer recommendations for improvement of future electoral processes in the country; and
- to demonstrate AU’s solidarity and support for Zambia’s elections process to ensure that the conduct of genuine elections will contribute to the consolidation of peace and stability in the country.

(b) Methodology

5. To achieve its stated objective, the AUEOM undertook the following activities:

   i. AU observers arrived in Lusaka on the 17 January 2015, where they held a briefing and orientation programme on 18-19 January 2015. This programme provided an opportunity for the observers to be trained on the African Union observation methodology, security and safety procedures, observer reporting obligations and the AU Code of Conduct for observers prior to their deployment;

   ii. During the orientation programme, observers also received comprehensive briefing on pre-election issues pertaining to the Zambia 2015 presidential by-elections from national stakeholders such as the Electoral Commission of Zambia (ECZ) and legal and political experts;

   iii. High-level consultations were held by the Head of Mission with national stakeholders, including the Acting President of Zambia, Dr. Guy Scott, the ECZ, members of the diplomatic corps, CSOs, and leaders of other international election observer missions present in Zambia.
iv. On Election Day, members of the AUEOM were deployed in 11 teams to seven (7) districts in Lusaka and Central Provinces. The teams visited 111 polling stations in their areas of deployment; and

v. The Observers returned to Lusaka for a debriefing on 21 January 2015 to report back on their findings and compare notes. The debriefing presented an opportunity for observers to adopt the AUEOM preliminary statement that was presented at a press conference on 22 January.

vi. The Mission issued its Preliminary Statement on 22 January 2015 at a Press Conference at the Radisson Blu Hotel, Lusaka, in the presence of local and international media.
III. BACKGROUND TO THE 2015 PRESIDENTIAL BY-ELECTION

6. The political landscape in post-independent Zambia has been characterised by peaceful transition processes through regularly held elections. Since its independence in 1964, Zambia has been under the rule of three political parties. From 1964 to 1991, Zambia was under a one-party state entrenched by President Kenneth Kaunda of the United National Independence Party (UNIP). Since its return to multi-party democracy, the country has held 5 multi-party elections.

7. President Kaunda was voted out of power in the country's first multi-party elections in 1991. The decision to hold the 1991 elections was preceded by public and international pressure to reinstate multi-party democracy. The following 20 years were again dominated by one political party – the Movement for Multiparty Democracy (MMD). Thereafter, the MMD won the 1996, 2001, 2006 elections. The death of President Mwanawasa in office in 2008 necessitated the conduct of the first presidential by-election in Zambia. The by-election that was again won by the MMD, albeit by a small margin that brought President Rupiah Banda to power. The 2011 elections, however, brought an end to the 20 years rule of the MMD when President Michael Sata of the Patriotic Front (PF) came into power.

8. The conduct of 2015 presidential by-election was based on Article 38 of the Constitution, which prescribes that an election should take place within 90 days of the vacancy of the office of the President. President Michael Sata’s death on 28 October 2014 necessitated the conduct of the second presidential by-election in Zambia’s history.

9. After the death of President Michael Sata, in accordance with article 38 (2) of the constitution, the Vice President, Dr. Guy Scott was sworn in as Acting President, pending the conduct of a presidential by-election within 90 days.

10. The lead up to the 20 January 2015 presidential by-election was marked by keen intra-party contestation, and inter-party endorsements among the major political parties. Within the PF, Acting President, Dr. Guy Scott was precluded

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2 Article 38: If the office of the President becomes vacant by reason of his death or resignation or by reason of his ceasing to hold office by virtue of Article 36, 37, or 88, an election to the office of President shall be held in accordance with Article 34 within ninety days from the date of the office becoming vacant.”

3 Article 38(2) Whenever the office of the President becomes vacant, the Vice-President or, in the absence of the Vice-President or if the Vice President is unable, by reason of physical or mental infirmity, to discharge the functions of his office, a member of the Cabinet elected by the Cabinet shall perform the functions of the office of the President until a person elected as President in accordance with Article 34 assumes office.
from running in the election on the basis of article 34 (3) of the constitution, because his parents were of British and Scottish descent. The Supreme Court of Zambia pronounced itself on the issue of parentage in 1998 in the case of *Lewanika and others Vs Chiluba*. When the Court held that persons who were ordinarily resident in Zambia at independence in 1964 are regarded as Zambians as there was no Republic of Zambia before then. Despite this interpretation Acting President Dr. Guy Scott announced his intention not to contest the presidential by-election.

11. The 2015 presidential by-election was the first national election to be conducted during the rainy season in Zambia. The poor weather conditions and the limited timeframe for planning the election were key challenges noted in the run-up to the election.

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4 Article 34(3): *A person shall be qualified to be a candidate for election as President if- (a) he is a Zambian citizen; (b) both his parents are Zambians by birth or descent; (c) he has attained the age of thirty-five years;*

IV. PRE-ELECTION OBSERVATION

(a) Legal Framework


13. The 1996 constitution provides for democratic multi-party democracy in Zambia. Within this framework, the AUEOM noted that the fundamental rights and freedoms of Zambians are guaranteed. Furthermore, the Constitution provides for: a system of separation of powers and an independent judiciary; conduct of regular direct elections by universal suffrage; and limits to presidential tenure.⁶

14. With regard to the conduct of elections, the Zambian Constitution provides for the establishment of an independent body responsible for the management of elections and referenda.⁷ It also provides mechanisms for management of election-related disputes.

15. The 1996 Electoral Commission Act establishes the Electoral Commission of Zambia (ECZ) as an independent body responsible for organising and managing elections and referenda. This law stipulates the functions and powers of the Commission and its relations with stakeholders in the electoral process.

16. The 2006 Electoral Act provides in detail the procedures to be followed during the electoral process such as the registration of voters; registration of candidate nomination; and election day procedures. The law also stipulates what constitutes election offences and it provides procedures for complaints and appeals.

17. The AUEOM noted that the role of independent observers is formally recognised and stipulated in the Electoral Act. This is considered best practice and commendable.

18. The ECZ issued guidelines and codes of conduct for different stakeholders such as political parties, independent observers and the media. These guidelines also form part of the regulatory framework for the conduct of the presidential by-election.⁸

⁶ Article 34 of the Constitution.
⁷ Article 76 (1).
19. While the AUEOM noted that the current legal framework provides the basic foundation for multi-party democracy, the AUEOM was also informed that a proposal for amendment of the legal framework beginning with the Constitution, which hopefully would address some of the gaps mentioned, is yet to be passed by the Parliament. The AUEOM therefore encouraged the Parliament to pass the amendment Bill before the conduct of the 2016 tripartite elections.

(b) The Electoral System

20. Article 34 (8) of the Zambian Constitution provides for the president to be elected by a simple majority in a First-Past-the-Post (FPTP) system. The AUEOM noted that in Zambia’s electoral history, past presidents have been elected with less than 50% of the total votes cast. For instance, in 2001, President Mwanawasa was elected with 28.96% of the votes cast. However, in 2006, he was elected with 42.98% of the votes, the highest percentage of votes won by any president prior to the 2015 presidential by-election.

21. The AUEOM further noted that the FPTP system could negate the authority and legitimacy that a President would otherwise derive from the expression of the will of the majority of the people.

22. The AUEOM also noted that there is a lacuna in the law, which is silent on how to deal with a tie between two or more contestants in the presidential election. Such a gap in the law could lead to political uncertainty in future elections and should be addressed.

23. The Constitution provides for the President to be elected for five-year tenure, but in the event of his resignation or death, the Vice President should be sworn-in as Acting President, pending the conduct of presidential by-elections within 90 days. This constitutional requirement was complied with after President Sata’s death.

(c) Election Dispute Resolution

26. The Zambian Constitution provides mechanisms for complaints and appeals during and after elections. The procedures for complaints and appeals arising...
from presidential elections are guided by Article 41 (2) of the Constitution\textsuperscript{10} and part IX of the Electoral Act. The Constitution stipulates that questions arising from presidential elections will be determined by the full bench of the Supreme Court.

27. The AUEOM noted that, while the current legal framework provides a system for the resolution of election related disputes, it does not provide reasonable time for the resolution of disputes before the swearing-in of the new president. In line with Article 34(9) of the Constitution that stipulates that the winner of a presidential election should be sworn-in not later than 24 hours after the declaration of election results.\textsuperscript{11}

28. The AUEOM noted with satisfaction the provision for establishment of Conflict Management Committees as an alternative dispute resolution mechanism\textsuperscript{12}, which involves citizens and political party representatives.

(d) Political Party and Campaign Finance

29. Equitable access to resources is a crucial element of the electoral process that contributes to the levelling of the playing field for all contestants. In this regard, it is important to ensure that the influence of money in politics is regulated. Towards the creation of a level playing field, there should be public funding of political parties as stipulated in Article III (g) of the AU/OAU Declaration on the Principles Governing Democratic Elections in Africa. Furthermore, an effective regulatory framework for party and campaign finance should include mandatory disclosure of sources of party funding, provide for ceilings on campaign expenditure, and sanctions for defaulting parties or candidates.

30. The AUEOM noted that the Zambian legal framework does not include a regulatory framework for party and campaign finance. It also does not include a provision for public funding of registered political parties. In this regard, the AUEOM drew attention to Article III (g) of the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, which commits the

\textsuperscript{10} Article 41 (2) Any question which may arise as to whether— (a) any provision of this Constitution or any law relating to election of a President has been complied with; or (b) any person has been validly elected as President under Article 34; shall be referred to and determined by the full bench of the Supreme Court.

\textsuperscript{11} Article 34 (9) ‘A person elected as President under this Article shall be sworn in and assume office immediately but not later than twenty-four hours from the time of declaring the election.’

\textsuperscript{12} Section 111 (1) of the Electoral Act states: ‘The Commission shall, for purposes of resolving electoral disputes, constitute such number of conflict management committees as the Commission may determine.'
governments of its Member States to ensure that parties are adequately funded to participate in the electoral process.\textsuperscript{13}

31. The AUEOM further noted that the absence of party and campaign finance regulatory provisions in the legal framework open the electoral process to the unregulated influence of money. Such uncontrolled influence of money could impact on the fairness of the process by tilting the access to resources in favour of some parties to the disadvantage of others.

(e) Election Management

32. Article 76(1) of the Zambian Constitution establishes the ECZ as an autonomous institution responsible for voter registration, constituency delimitation and conduct of electoral processes.\textsuperscript{14} The Electoral Commission Act provides in further details the composition and powers of the ECZ.

33. The AUEOM noted that the ECZ is appointed by the President subject to ratification by the Parliament. It is comprised of a Chairperson who is a judicial officer and four commissioners. The members of the Commission are appointed for tenure of up to seven years in a manner that allows for ‘retirement by rotation’.\textsuperscript{15} The AUEOM noted this as good practice that allows for continuity and institutional memory. The Act also establishes the office of the Director of Elections who serves as the Chief Executive Officer (CEO) of the Commission.

34. The Commission is funded through the national budget and it is also permitted to receive grants and donations.

(f) Voter Registration

35. The legal framework provides that a Zambian who has attained the age of 18 and holds a national identity card is qualified to be registered as a voter.\textsuperscript{16}

\textsuperscript{13} Article III (G) ‘ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process.’

\textsuperscript{14} Article 76(1) ‘There is hereby established an autonomous Electoral Commission to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.’

\textsuperscript{15} Section 5(1) of the Electoral Commission Act ‘A member referred to in subsection (2) of section four shall be appointed for a term not exceeding seven years, subject to renewals and ratification by the National Assembly: Provided that the first members shall be appointed for periods ranging from two to five years in order to facilitate retirement by rotation.’

\textsuperscript{16} Section 5 of the Electoral Act ‘Subject to the provisions of section seven, every person shall be qualified for registration as a voter in direct elections who—(a) is a citizen of Zambia; (b) has attained the age of eighteen years; and (c) is in possession of a national registration card.’
Section 4(2) of the Electoral Act also provides for continuous registration of voters by the ECZ.\(^\text{17}\)

36. The AUEOM noted that the 2015 by-election was conducted using the 2011 updated voter register, which was considered credible by stakeholders. The AUEOM was informed that due to financial and logistical constraints, the continuous registration of voters as mandated in section 4(2) of the Electoral Act was not implemented. The AUEOM also noted that a significant number of citizens who turned 18 during the last three years were denied the opportunity to vote in the presidential by-election. The AUEOM, therefore, encouraged the Commission to prioritise an update of the voters’ register and the registration of young people ahead of the 2016 tripartite elections.

37. The AUEOM noted with satisfaction that the total number of registered voters for the 2015 elections stood at 5,166,088 of which 50.14% are female voters.\(^\text{18}\)

(g) Political Parties and candidate nominations

38. Article 34 (3) of the constitution stipulates that:

A person shall be qualified to be a candidate for election as President if—
(a) is a Zambian citizen;
(b) Both parents are Zambians by birth or descent;
(c) Has attained the age of thirty-five years;
(d) Is a member of, or is sponsored by, a political party;
(e) Is qualified to be elected as a member of the National Assembly; and
(f) Has been domiciled in Zambia for a period of at least twenty years.

39. While the AUEOM noted that these legal requirements for candidature are reasonable, it highlighted two restrictive provisions:

- Sub-section (d) of Article 34 (3) of the Constitution\(^\text{19}\), restricts presidential candidature to persons sponsored by a registered political party, thus excluding persons who may be interested to contest as independent candidates. In this regard, the AUEOM noted that the right

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\(^{17}\) Section 4 (2) of the Electoral Act ‘The Commission shall compile, maintain and update on a continuing basis, a register of voters, which shall include the names of all persons entitled to vote in any election under this Act, local government election under the Local Government Elections Act or referendum under the Referendum Act: Provided that the register of voters shall not preclude any person from voting in a referendum under Article 79 (3) of the Constitution.’

\(^{18}\) See the ECZ website [www.elections.org.zm](http://www.elections.org.zm) for details of registration statistics.

\(^{19}\) Article 34 (3) ‘A person shall be qualified to be a candidate for election as President if—(d) he is a member of, or is sponsored by, a political party’
to vote and be voted for is one of the fundamental rights that should be guaranteed to all citizens; and

- Furthermore, the requirement for candidates to have been domicile in Zambia for 20 years could also be considered as restrictive for Zambians in diaspora who may be interested to contest elections. The AUEOM urged that the requirement should be reconsidered by reducing the required number of years for presidential aspirants to be domiciled in Zambia.

40. The AUEOM noted that the candidate nomination processes within the major parties was characterised by intra-party disputes that had to be referred to the Courts. Within the ruling party – the PF – the nomination process saw internal disputes beginning with claims by members of the Late President Sata’s family expressing their interest to contest the elections. There was also the question of whether the Acting President would contest the election. After his announcement of his decision not to contest the election, nine other presidential aspirants within the PF expressed their interest to contest on the platform of the PF. The internal politics of the ruling PF came to play during the party congress when two factions emerged, one led by Edgar Lungu, the then Minister of Defence and Justice, who was at the time the Secretary General of the party, and another by Miles Sampa, Deputy Minister of Commerce, Trade and Industry, who had the support of Acting President Scott. In December 2014, these two factions held parallel party congresses. Edgar Lungu was elected party president and presidential candidate by the congress organised by his faction. None of the other aspirants attended this congress. The election of Edgar Lungu was declared null and void by the Acting President Guy Scott, on the basis that the congress did not follow due procedures. An alternative congress, chaired by Acting President Guy Scott, saw Miles Sampa (a nephew to late President Michael Sata) elected. This was followed by a High Court injunction obtained by the Edgar Lungu faction declaring Sampa an illegitimate candidate. An internal settlement was reached by the party that saw the withdrawal of Sampa’s candidacy and Lungu emerged as the candidate of the PF in the presidential by-election.

41. Within the MMD, the scenario was similar; the internal conflict saw former President Rupiah Banda peached against Mr. Nevers Mumba, a former Vice President during the Mwanawasa regime. Two factions emerged: one was led by Mr. Nevers Mumba and the other by former President Rupiah Banda. The party’s National Executive Committee (NEC) had suspended Mr. Mumba and nominated the former president as its candidate. Nevers Mumba approached the Courts to challenge the NEC’s decision, and judgment was issued in favour of Mr. Mumba in an appeal in December 2014. After losing in his party
nomination, former president Rupiah Banda endorsed the PF presidential candidate, Edgar Lungu.

42. At the end of registration of candidate nomination in December 2014, eleven candidates were duly nominated to contest the presidential by-election. Table 1 shows a list of candidates and Annex 3 shows a list of nominated candidates and the symbols of the parties they represented.

Table 1: List of Nominated Candidates

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<tr>
<th>No</th>
<th>Names of Candidates</th>
<th>Party</th>
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<tbody>
<tr>
<td>1</td>
<td>CHANDA Eric M</td>
<td>4 Revolution (4R)</td>
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<td>2</td>
<td>Chipimo Eilas CM</td>
<td>National Restoration Party (NAREP)</td>
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<tr>
<td>3</td>
<td>Hichilema Hakainde</td>
<td>United Party for National Development (UPND)</td>
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<tr>
<td>4</td>
<td>Kaunda Tilynjeji C</td>
<td>United National Independence Party (UNIP)</td>
</tr>
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<td>5</td>
<td>Lunga Edgar C</td>
<td>Patriotic Front (PF)</td>
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<td>6</td>
<td>Miyanda Godfrey K</td>
<td>HERITAGE</td>
</tr>
<tr>
<td>7</td>
<td>Mumba Nevers S</td>
<td>Movement for Multi-Party Democracy (MMD)</td>
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<tr>
<td>8</td>
<td>Nawakwi Edith Z</td>
<td>Forum for Democracy and Development (FDD)</td>
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<td>9</td>
<td>Pule Daniel M</td>
<td>Christian Democratic Party (CDP)</td>
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<td>10</td>
<td>Sinkamba Peter C</td>
<td>Green Party of Zambia (GREENS)</td>
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<td>11</td>
<td>Sondashi Luwig S</td>
<td>Forum for Democratic Alternatives (FDA)</td>
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Source: www.elections.org.zm.

(h) Campaigns

43. The AUEOM noted with satisfaction the existence of a code of conduct for political parties, which served as a regulatory framework for the campaigns. As mandated in the Electoral Act, the ECZ set the campaign period from 19 November 2014 to 18:00 on 19 January 2015.

44. The AUEOM noted that the campaigns were largely peaceful except for reports of violent clashes between PF factions in December 201420 and reports of clashes between PF and UPND supporters in Shiawangadu in January.21

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45. Cognisant of these isolated but controlled instances of violence and intimidation during the campaign period, the AUEOM noted that the political environment ahead of the by-election was considered conducive by a majority of Zambian stakeholders. The advanced interpretation of the Public Order Act levelled the playing field for the campaigns. In the past, a misinterpretation of the Public Order Act required rigorous and often biased police clearance for political parties desirous of holding political rallies. This biased and inflexible interpretation often disallowed opposition political parties from the exercise of their right to freedom of assembly and expression thereby hindering their efforts to reach out to voters.

46. The AUEOM commended the role of the Inter-Party Liaison Committee in promoting and maintaining political tolerance during campaigns.

(i) Gender and Minority Rights

47. Whilst women constitute over 50% of registered voters, their participation as candidates in the presidential by-elections was very limited. Similar to the 2011 tripartite elections, only one female candidate contested the 2015 presidential by-election. The AUEOM also noted that representation of women in the Zambian parliament stood at a dismal 10.8%.

48. The AUEOM drew the attention of the Zambian authorities to their commitments as AU member states under the African Union Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa and the UN Convention on the Political Rights of Women.

(j) Voter Education

49. The Electoral Act mandates the ECZ to conduct voter education. In this regard, the AUEOM gathered that the ECZ established a Voter Education Committee and partnered with civil society groups to undertake voter education ahead of the by-election. Its campaign messages were focused on non-violence and the need to exercise the franchise. The Commission also provided materials to enlighten voters on the voting procedure in the presidential by-election.

50. The AUEOM was also informed that CSO’s were faced with funding constraints in their efforts to sensitize voters. This was mainly due to the limited timeframe for the by-election to be conducted.

(k) The Media

51. The media plays a key role in promoting the transparency and fairness of an electoral process. The role of the media in the presidential by-election was regulated by the Code of Conduct for media.

52. The AUEOM noted from its consultation with stakeholders, their unconfirmed reports of imbalance in the media coverage of the by-election. The AUEOM also commended the initiative taken by some media houses to organise a presidential debate for the 11 candidates. Such an initiative provided equal opportunity to all candidates to publicly present their programmes.

(l) Preparedness of the ECZ

53. In line with its constitutional mandate, the ECZ put in place the requisite logistics for the by-election within a 90-day period despite unfavourable weather conditions.

54. The AUEOM noted with satisfaction that the ECZ was provided with a budget for the elections by the government of Zambia and additional support from international donors.

55. The AUEOM also noted that the ECZ put in place the requisite logistics necessary for the conduct of the Presidential By-Election. It established 6,456 polling stations across the country and successfully recruited and trained polling officials. The AUEOM noted that these preparations were, however, affected by poor weather conditions, which necessitated the extension of voting hours in some polling stations lasting until 21 January 2015.

56. Cognisant of the poor weather conditions, the ECZ approached the Zambian Air Force (ZAF) to request logistical and operational support to enable the Commission reach far-flung areas that would otherwise have been inaccessible.

57. The AUEOM noted amidst challenging circumstances and constraints, the ECZ prepared and conducted the elections in a professional manner.

58. Based on its findings on the pre-election context, the AUEOM noted that the institutional and infrastructural framework required as the basis for the conduct of the presidential by-election was in place and the political context was largely peaceful.
V. ELECTION DAY OBSERVATION

(a) Opening the Poll

59. On Election Day, the AU observer teams were present at the opening of the poll. Observers noted that polling officials complied with stipulated procedures in all the stations visited and 86% of the stations observed opened on time.

60. The AUEOM also noted that the opening was delayed in a number of stations across the country, but in some polling stations, polling was extended until 21 January 2015 as a result of late delivery of materials.

61. Most observed polling stations had short queues at opening time, and the environment was generally calm and peaceful.

(b) Polling Stations

62. The AU teams noted that the layout in most of the polling station visited allowed for easy flow of voters and guaranteed the secrecy of the ballot. The observer teams reported that the location of 77.9% of polling stations visited was easily accessible to persons with disability.

63. The AUEOM noted the inadequacy of signposts at the polling stations to direct voters to the appropriate stations and streams. Furthermore, it was noted that election officials serving as ushers within the polling centres did not effectively guide voters. This resulted in some voters spending longer periods on the queue as they were redirected to respective stations.

64. In some stations observed, it was noted that the voting procedures were interrupted due to the rains.

(c) Voting Process

66. AU teams visited 111 polling stations in seven (7) districts of Zambia where they observed the voting process. Of these 58.06% were located in rural areas. Observers noted that the atmosphere in the polling stations visited was peaceful.

67. The AUEOM noted that the stipulated procedures for voting were generally adhered to by polling staff. There were few exceptions in some stations where
the ballot issuer did not record the voter registration number on the counterfoil of the ballot before issuing.

68. The AUEOM noted the possibility of this procedure being abused in a manner that could compromise the secrecy of the vote as a voter’s choice could very easily be traced.

69. The AUEOM noted the simplicity of the voting procedures and the ease with which voters were able to cast their votes.

70. The AUEOM noted that the turnout was generally low as the queues outside most polling stations visited were short and by mid-day most stations no longer had queues.

71. It is noted with satisfaction that in most of the stations visited, priority was given to elderly voters, expectant mothers and voters with infants. Voters who required assistance during the process were given such assistance without compromising the secrecy of the ballot.

72. The AUEOM also noted the efforts put in place by the ECZ to ensure that polling stations with voters exceeding 850 were divided into streams, which further facilitated the process.

73. The AUEOM commended the ECZ for providing copies of the voter register at polling station level to all political parties. This contributed to the transparency of the process.

(d) Polling Personnel

74. The AUEOM noted with satisfaction that 49.8% of the staff and 58.7% of party agents in stations visited were women.

75. The AUEOM noted that polling personnel largely conducted their duties in a professional manner and they were conversant with the required procedures.

(e) Party Agents and Independent Observers

76. AU observers noted the presence of party agents in most of the polling stations visited. The presence of citizen observers was also noted in most of the stations visited.

77. The AUEOM also noted that international observer groups were accredited to observe the elections and they were visible in the field on Election Day.
78. Party agents and observers were granted free access to the stations and they were able to discharge their duties without hindrance or interference.

(f) Security Personnel

79. Security personnel were visibly present at most polling stations visited and their presence was unobtrusive.

(g) Closing and Counting Process

80. AU observers witnessed the closing and counting in their areas of deployment. Most of the polling stations observed closed on time. It was also noted that polling personnel complied with stipulated closing procedures by allowing voters in the queues at closing time to vote.

81. The AUEOM commends election officials for their attention to detail during the counting process.

82. The AUEOM noted that there were delays experienced in the distribution of election materials in some parts of the country. This necessitated an extension of polling until 21 January in the affected stations. Amidst these operational challenges, the AUEOM commended the ECZ for its efforts to ensure that all Zambians got an opportunity to exercise their franchise. Overall, the AUEOM assessed Election Day as calm and peaceful.
VI. POST ELECTION OBSERVATION

(a) Result Tabulation

84. The ECZ established a result tabulation process that enabled a transmission of results from the polling stations to the constituency collation centres from where results were transmitted to the national tabulation Centre located in Mulungushi Centre, Lusaka. The AUEOM was informed that whilst the collation centres were be open to party agents and observers, the result verification process was not be open to parties.

85. The tabulation of results was conducted electronically. The electronic system was supported by parallel faxing of results, in cases where the heavy rains tampered with the network. The AUEOM noted that the process experienced operational and technological challenges that led to complaints by political parties. Specifically, there were delays in the transmission of results from areas located in difficult terrains where the Zambian Air Force (ZAF) was required to physically collect the ballot and transport them to collation centres.

86. The result management process took place from 21 to 25 January 2015 when the results were announced. The result tabulation process had to be suspended briefly on 22 January at the demand of the UPND candidate, Mr. Hichilema Hakainde, who raised concerns about the contradictory results published by the ECZ and the Zambia National Broadcasting Corporation (ZNBC) were immediately addressed in a closed meeting between the PF, UPND and the ECZ. The AUEOM noted and commended the efforts of the ECZ to consult political parties and allay the suspicions raised as a result of the delays experienced during the tabulation process.

87. Although the UPND candidate released a statement before the final announcement of the results, alleging that his victory had been stolen as a result of manipulation by the PF, these allegations were yet to be investigated at the time of the President’s inauguration.

(b) Announcement of Results and Inauguration

88. Article 74 (2) of Zambia’s Electoral Act mandates the ECZ to determine and declare the result of an election immediately after the close of polling. While there is no provision for a specific timeframe as to when the announcement should take place, the ECZ had in the past released the results within 48 hours
after the close of polling. The three-day delay therefore raised tensions and suspicions, which were effectively addressed by the ECZ.

89. On 25 January 2015, the Chief Justice declared Edgar Lungu of the PF as the winner of the closely contested presidential by-election with 48.3% of the votes cast, while the UPND candidate received 46.7% of the votes. The president-elect was sworn into office on the same day. The inauguration ceremony was attended by international dignitaries, including presidents of neighbouring countries.

90. The AUEOM welcomes the appointment of the first female Vice President in Zambia, Inonga Wina. This is seen as a positive start towards increasing women participation in Zambian politics.

Table 2: Results of the 2015 Presidential By-Election

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Party</th>
<th>Votes</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edgar Lungu</td>
<td>Patriotic Front</td>
<td>807,925</td>
<td>48.33</td>
</tr>
<tr>
<td>Hakainde Hichilema</td>
<td>United Party for National Development</td>
<td>780,168</td>
<td>46.67</td>
</tr>
<tr>
<td>Edith Nawakwi</td>
<td>Forum for Democracy and Development</td>
<td>15,321</td>
<td>0.92</td>
</tr>
<tr>
<td>Nevers Mumba</td>
<td>Movement for Multi-Party Democracy</td>
<td>14,609</td>
<td>0.87</td>
</tr>
<tr>
<td>Tilyenji Kaunda</td>
<td>United National Independence Party</td>
<td>9,737</td>
<td>0.58</td>
</tr>
<tr>
<td>Eric Chanda</td>
<td>Fourth Revolution Party</td>
<td>8,054</td>
<td>0.48</td>
</tr>
<tr>
<td>Elias Chipimo Jr</td>
<td>National Restoration Party</td>
<td>6,002</td>
<td>0.36</td>
</tr>
<tr>
<td>Godfrey Miyanda</td>
<td>Heritage Party</td>
<td>5,757</td>
<td>0.34</td>
</tr>
<tr>
<td>Daniel Pule</td>
<td>Christian Democratic Party</td>
<td>3,293</td>
<td>0.20</td>
</tr>
<tr>
<td>Ludwig Sondashi</td>
<td>Forum for Democratic Alternatives</td>
<td>2,073</td>
<td>0.12</td>
</tr>
<tr>
<td>Peter Sinkamba</td>
<td>Green Party of Zambia</td>
<td>1,410</td>
<td>0.08</td>
</tr>
<tr>
<td>Invalid/blank votes</td>
<td></td>
<td>17,313</td>
<td>–</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>1,671,662</td>
<td>100</td>
</tr>
<tr>
<td>Registered voters/turnout</td>
<td></td>
<td>5,166,084</td>
<td>32.36</td>
</tr>
</tbody>
</table>

Source: Electoral Commission of Zambia

91. It is important to note that presidential elections have been won with a less than 50% majority of votes since 2001. This relative majority has been largely attributed to the simple majority electoral system in Zambia. The 1.66% difference between the PF and UPND further highlights the advantage of an electoral system that provides a threshold to ensure that the President is elected by popular vote.

92. With the lowest voter turnout (32.36%) in the history of Zambian elections, the UPND closely lost the election. It is worth mentioning that Mr. Hichilema received the highest votes and outperformed any previous UPND candidate.
The UPND vote share increased from 17% in 2011 to 47% in 2015 gaining an increase in every province in the country. The PF garnered an increase in all provinces, except the UPND stronghold of the Western province. It is also important to mention that President Lungu was elected with highest percentage of votes in Zambia’s history of multi-party democracy. The closest being President’s Mwanawasa’s 42.98% during the 2006 elections.²²

See www.elections.org.zm for a detailed breakdown of the 2015 presidential by-election results and previous presidential election results.

²² See www.elections.org.zm for a detailed breakdown of the 2015 presidential by-election results and previous presidential election results.
VII. CONCLUSION AND RECOMMENDATIONS

(a) Conclusion

93. Based on its findings and observations and cognisant of the attendant challenges around the electoral process, the AUEOM noted that the 20 January 2015 Presidential By-Election was conducted peacefully in a manner that enabled qualified Zambians to exercise their right to vote. The by-election was conducted in accordance with the laws of Zambia and it acceptably met basic international standards for democratic elections. These standards include: space for peaceful political contestation, the existence of an impartial election management body, the existence of an independent judiciary to adjudicate disputes, and a culture of political tolerance.

(b) Recommendations

94. The AUEOM offers the following recommendations for consideration by Zambian stakeholders to improve future elections:

The Parliament should:

- Give immediate attention to the pending constitutional amendment bill to strengthen the legal framework for the conduct of elections in the following aspects: (a) the provision for independent candidature; (b) review of the electoral system to provide for the election of the president by an absolute majority; (c) provision for a reasonable time limit for the resolution of election-related dispute prior to the swearing-in of a new president; and
- Amend the electoral law to include regulatory provisions on party and campaign funding.

The ECZ should:

- Amend the Electoral Guidelines to remove the requirement for recording voter card numbers on the counterfoil of the ballot to avoid possible abuse that could compromise of the secrecy of the ballot;
- Provide adequate signposts to polling stations and polling streams and strengthen the training of ushers;
- Undertake an update and review of the voter register and work with the civil registration institution to harmonise the register of voters with the national civil registry. This will contribute to the credibility of the voter
register and simplify the documentation required of voters at the polling stations; and

- Intensify their efforts at voter education and sensitisation to address the issue of low voter turnout

**Political Parties should:**

- Undertake programmes that will promote the participation of female aspirants in future elections.
### ANNEX 1: AUEOM OBSERVER BRIEFING AND ORIENTATION PROGRAMME

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>16:00-16:20</td>
<td>Welcome Remarks Introduction</td>
<td>• Mission Leadership&lt;br&gt;• Mission Coordination</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16:20-17:20</td>
<td>Understanding the political context and Legal framework for the 2015 by-elections</td>
<td>SACCORD/FODEP</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17:20-17:30</td>
<td>Tea break and close of day 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17:30-18:30</td>
<td>Election observation rationale, Code of conduct, benchmarks and methodology</td>
<td>• Coordination Team&lt;br&gt;•</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>09:00-10:15</td>
<td>Briefing by Electoral Commission of Zambia (ECZ)</td>
<td>• ECZ</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10:15-10:30</td>
<td>Tea break &amp; group photo</td>
<td>•</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10:30-11:45</td>
<td>Election Day observation and reporting (AU checklist)</td>
<td>• Coordination Team</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11:45-12:45</td>
<td>Deployment Briefing/Communication Plan/ security briefing</td>
<td>• Coordination Team&lt;br&gt;•</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12:45</td>
<td>Lunch Break &amp; end of briefing programme</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Distribution of deployment kits and supplies and departure for areas of deployment</td>
<td>• Mission Coordination</td>
</tr>
</tbody>
</table>
## ANNEX 2: AUEOM DEPLOYMENT PLAN

<table>
<thead>
<tr>
<th>Team no</th>
<th>Team members</th>
<th>Province</th>
<th>Based in</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mission Leadership: H.E. Kgalema Petrus Motlanthe, Ms Lerato Zimbili</td>
<td>Lusaka</td>
<td>Lusaka</td>
</tr>
<tr>
<td>2</td>
<td>Mr. Ibrahim Likita Mashi, Dr Kennedy Monchere Nyaundi</td>
<td>Lusaka (covering Chongwe)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>3</td>
<td>Hon. Zerouali Mokhtar, Hon. Assoumana Sanam Issa</td>
<td>Lusaka (covering Kafue)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>4</td>
<td>Mr. Ollen Mwiza Kabango, Mrs Pauline Franciska Dempers, Mr. Meshach Ampwera</td>
<td>Central (covering Chibombo)</td>
<td>Central</td>
</tr>
<tr>
<td>5</td>
<td>Ms Pamela Wasato Kanora, Ms Jalele Erega Defa</td>
<td>Nangoma/ Itezhitezhi</td>
<td>Lusaka</td>
</tr>
<tr>
<td>6</td>
<td>Hon. Said Brahim Said, Ms Ashwanee Budoo</td>
<td>Lusaka (Lilayi, Chilanga, Makeni, Linda, Kanyama)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>7</td>
<td>Mr. Djilio Kumbi-Kumbi Kalombo, Hon. Francois Ango NDOUTOUME</td>
<td>Lusaka (Misisi, Chawama, John Howard, Kamwala)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>8</td>
<td>Mr Dalha Isa Ladan, Mrs. Dalia Abuelhassan Eissa Mohamed, Mr. Leonard Lenna Sesa</td>
<td>Lusaka (Matero, Mandevu, Roma, Emmasdale)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>9</td>
<td>Mr. Ignatius Oli (Trained LTO), Ms Selam Tsegaye Lulseged</td>
<td>Lusaka (Kabwe, Libala, Chilenje, Woodlands, Kabulonga)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>10</td>
<td>Mr. Emmanuel Jacob Gale, Ms Colleen Kerubo Obino</td>
<td>Lusaka (Northmead, Olympia, UNZA, Munali, Chelstone)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>11</td>
<td>Hon. Assoumana Sanam Issa, Hon. Zerouali Mokhtar</td>
<td>Lusaka (PHI, Mutendere, Kaunda Square, Stage 1,2,3, Kalingalinga)</td>
<td>Lusaka</td>
</tr>
<tr>
<td>12</td>
<td>Christine NAKIRYA, Mr. Dweba Andile</td>
<td>Zingalume, Twikatane, Lusaka West</td>
<td>Lusaka</td>
</tr>
</tbody>
</table>