

# THE CARTER CENTER



**ZAMBIA**

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## Reporting Organization

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has observed more than 100 elections in 39 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance.

## The Carter Center in Zambia

The Carter Center deployed an expert election observation team to Lusaka from July- Sept. 2021 to observe the Aug.12, 2021, Zambian general elections. A summary of its findings can be found [here](#). In addition, The Carter Center observed Zambia's presidential and parliamentary elections of 2016, 2001, and 1991. The final reports for these years can be found [here](#), [here](#), and [here](#), respectively. Since 2019, the Center has implemented a program to advance women and youth political participation in Zambia. As part of the program, the Center held 98 consultations in 22 districts across seven provinces to gather perspectives from women and youth on the challenges to political participation. A total of 737 women, youth, and men joined the sessions. Sessions were held in rural, peri-urban, and urban districts with self-employed youth; unemployed male youth; single young mothers; and self-employed women. The Center conducted six consultations with 42 women aspirants and candidates across six provinces.

## Introduction

During the third UPR Cycle, Zambia received several recommendations, including on eliminating discrimination based on gender, sexual preference, and disability; reforming the Public Order Act; promoting the participation of women; creating a level playing field among political parties; and protecting freedoms of assembly and expression for Zambian citizens and the press.

Zambia has ratified several UN and regional instruments, including the International Covenant on Civil and Political Rights (1966), the International Convention on Elimination of Racial Discrimination (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention on the Rights of Persons With Disabilities (2006), the Convention Against Corruption (2003), the African Charter on Human and Peoples' Rights (1981) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).<sup>1</sup>

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<sup>1</sup> Other regional treaties and instruments include the 2007 African Charter on Democracy, Elections, and Governance; the 2015 Southern Africa Development Community (SADC) Principles and Guidelines Governing

This report addresses the degree to which the recommendations of the last cycle have been implemented and the degree to which Zambia's human rights obligations have been fulfilled.

Carter Center observers for the 2021 Zambia election were accredited by the Electoral Commission of Zambia (ECZ) and worked in accordance with the 2005 Declaration of Principles for International Observation.<sup>2</sup> The Center commended the Zambian civil society for its commitment to democracy, including on election day. Incumbent President Edgar Lungu of the Patriotic Front (PF) conceded defeat to current President Hakainde Hichilema of the United Party for National Development (UPND), bringing about a peaceful transition of power on Aug. 24, 2021.

However, the electoral process was marked by a low number of women candidates (only 21 percent or 181 of 857 candidates for the National Assembly were women),<sup>3</sup> instances of violence, loss of life as well as an uneven playing field that restricted the constitutionally guaranteed rights to free movement, association and of expression.

## Key Findings and Recommendations

***Right to Assembly and Association:*** Misapplication of the colonial era Public Order Act (1955) continues to pose serious challenges to the right to assembly and association in Zambia.<sup>4</sup> The Act grants police the discretion to regulate public assemblies<sup>5</sup> and was used to stifle the ability of opposition political parties and civil society organizations to organize meetings and other activities during the 2021 elections. This is linked to gaps that remain in the legal framework guiding the implementation of the law. A 2014 Supreme Court decision pronounced that Section 5(6) of the Act falls short of the constitutional threshold for limiting rights to assembly, association, and expression<sup>6</sup> since it does not compel the police to provide a “reasonable alternative date in the very near future” when a request to assemble is denied.<sup>7</sup>

The decision, however, did not address the lack of a provision in the Section that would compel the police to provide grounds for refusal when permission to assemble is denied. The Carter Center found that civil society is apprehensive because the current situation does not guarantee the

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Democratic Elections; the 1997 SADC Declaration on Gender and Development; and the amended 2018 SADC Protocol on Gender and Development

<sup>2</sup> Carter Center observers — four international experts and a local analyst — initiated their work remotely in mid-July 2021. Because of the mission's limited size and scope, the team was unable to assess the full electoral process and did not conduct a robust assessment of the voting, counting, and tabulation processes surrounding election day.

<sup>3</sup> According to reports from the Ministry of Gender and the World Bank, women constitute over 50.5% of Zambia's population. In addition, 53.4% of the electorate in the 2021 general elections were women. However, there were 181 (21%) women candidates for National Assembly out of a total of 857 candidates; one female presidential candidate out of 16; 22% of women candidates for the mayoral and council chairpersons' elections; and 10% for councilor elections.

<sup>4</sup> See; UPR third cycle recommendations 129.4, 131.70 and 131.73.

<sup>5</sup> Section 5 of the Public Order Act outlines numerous conditions for the holding of an assembly (for instance, the applicants have to wait for police authorization before they can proceed to hold an assembly) gives the police the absolute power of determining whether or not an assembly, meeting, or procession should take place

<sup>6</sup> Articles 20, 21, and 28 of the Constitution of Zambia.

<sup>7</sup> The Supreme Court of Zambia Judgment in Law Association of Zambia v the Attorney General, Appeal No. 08/2014

unlimited enjoyment of rights and freedoms of assembly and association as envisaged in the Constitution since these rights are still conditioned on the opinion of a police officer.

Recommendation:

- Amend Section 5 (6) of the Public Order Act to introduce proper guidelines and standards that compel the police to justify the postponement of a peaceful assembly and to provide an alternative date for holding the postponed meeting.

***Freedom of Opinion and Expression:*** Freedom of expression and online campaigns were curtailed during the 2021 elections. Although the Ministry of Information earlier stated that there would be a free flow of information during the elections,<sup>8</sup> unprecedented restrictions were imposed on the commonly used social media platforms in Zambia on election day (Aug.12), including WhatsApp, Facebook, Twitter, Instagram, and Messenger, in disregard for the constitutionally guaranteed freedom to communicate without interference.<sup>9</sup> Access to social media was only restored on Aug. 14 after a court order was issued on Aug. 13, mandating the restoration of social media. Restrictions of social media followed the passing of a Cyber Security and Cyber Crimes Act (2021) and a Data Protection Act (2021) months before the start of electoral campaigns and without adequate consultations with civil society.

The Cyber Security Act's sweeping provisions stifled online expression, including online advertising, through its overly broad definitions of false information, harassment, emotional distress, and hate speech. Civil society and opposition parties raised concerns about the Act before election day and devoted time and resources to purchasing expensive communications equipment, conducting voter education on how to retain connection (and conduct parallel voting) in the event of an internet shutdown. The Cyber Security Act opens the door for politicized regulation of online campaigns and free speech. Decisions made under the Act are subject to oversight by the yet-to-be constituted National Cyber Security Advisory Coordinating Council, which is appointed by and supervised by a government minister. In addition, the Data Protection Act contains a vague definition of "national security" in relation to data collection that opens the possibility for the right to privacy infringements in violation of regional standards.<sup>10</sup>

Recommendation:

- Implement an open consultation that engages civil society groups, political parties, and specialists to amend the Cyber Security and Cyber Crimes Act and the Data Protection Act. This process should ensure both legislations conform with Article 11(b)<sup>11</sup> and Article 17<sup>12</sup> of the constitution, respectively, and with international standards.

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<sup>8</sup> On Aug. 6, the permanent secretary at the Ministry for Information issued a statement affirming that the government "remains committed to the free flow of information, even during the electoral period." Further, A court order was issued on Aug. 13 to restore access to social media. It was not until 3:30 p.m. on Aug. 14 that many internet users reported full restoration of access, more than 48 hours after the imposition of restrictions.

<sup>9</sup> Article 20 of the Constitution of Zambia guarantees the freedom to impart and communicate ideas and information without interference.

<sup>10</sup> Article 13 of the African Convention on Cyber Security and Personal Data Protection specifies the need for a "specific" and "explicit" purpose for data collection.

<sup>11</sup> Freedom of conscience, expression, assembly, movement, and association.

<sup>12</sup> Protection for privacy of home and other property.

***Right to Participation for Women:*** Despite constitutional provisions for gender equity in the National Assembly and the local councils, and previous UPR recommendations,<sup>13</sup> Zambia struggles to ensure gender equality. In a positive development, the vice-presidential candidates of the two major parties were women during the 2021 elections. This resulted in a continuation of the position of the vice president of Zambia being held by a woman. Following the elections, the National Assembly also took the unprecedented step of electing women as both speaker and deputy speaker. However, the participation and representation of women remained below international and regional standards. Out of the 155 members of Parliament elected in 2021, only 20 are women. This is a decrease in the 26 elected in 2016.

Participation generally was restricted by the imposition of significant candidacy fees, gender-based violence, societal and cultural barriers, a minimum education requirement that disproportionately affects women, and the lack of a regulatory framework to ensure the participation of women.

Gender-based violence creates significant barriers to women's participation. In consultations with The Carter Center, women aspirants described incidents of cyber-bullying; name-calling and defamation of character; threats of and actual physical assault; threats to burn down homes; intimidation of spouses; and rocks thrown at the aspirants and/or onto their property. In only two incidents did the police arrest the alleged perpetrators. Generally, victims were reluctant to lodge complaints as they believed the police would not investigate the issue. In some instances, police were present when the incident occurred and did nothing, or complaints were disregarded and not addressed.

Societal and cultural barriers also impede participation. Beliefs about a woman's role (as a mother and in the home) and marital status influence community members' support for women's equal participation. Returning to school is not an easy or viable option for many women with the interest, natural leadership skills, and community support to seek elected office or other leadership roles. Largely male-dominated political parties hindered women's participation. While party leaders committed to supporting women candidates, support was limited. Women aspirants found the political party adoption process a significant barrier to participation. Candidates with financial standing received the most support, and party leadership often opted for its preferred candidate, pushing women with local community support out.

No regulation has been enacted to implement the 2015 Gender Equity and Equality Act. The Gender Equity and Equality Commission established by the statute to work towards the elimination of gender discrimination has also not been operationalized.<sup>14</sup> In addition, protective measures provided by the Anti-Gender-Based Violence Act (2011) are hardly enforced to prevent violence against women while engaging in political and electoral activities.

#### Recommendations:

- Consider amending Article 47 (2) of the constitution to adopt an electoral system such as mixed-member or any other system more favorable to achieving gender equity, including

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<sup>13</sup> See; UPR third cycle recommendations 129.2, 129.20 and 129.79.

<sup>14</sup> The creation of the commission under the office of the president was announced on Sept. 24, 202, following the dissolution of the Ministry of Gender.

specific affirmative action measures to achieve the 50/50 gender parity in elected offices articulated in Article 259.

- Operationalize the Gender Equity and Equality Commission by appointing the seven board members and providing sufficient funds to implement the mandate of the Commission.
- Operationalize and fully resource the Anti-Gender-Based Violence Committee established in the Anti-Gender-Based Violence Act, 2011.

***Right to Participation for Youth:*** Societal and cultural barriers impede youth participation. Beliefs about a youth's role (subordinate to the elder) and concerns about lack of experience stymie support for youth aspirants. In consultations with The Carter Center, young men and women aspirants describe political party structures that are difficult to engage with many disinclined to become active party members. Young women aspirants are very vulnerable to gender-based violence, especially cyberbullying and name calling. Early marriage and pregnancies lead many young girls to drop out of school. Young unemployed men are incentivized to engage in political violence, exacerbating an insecure environment during elections and influencing perceptions of youth in leadership roles. Anecdotal information suggests that the number of young men elected at the councilor level during the 2021 general election is higher than in past elections. However, a lack of sufficient age disaggregated data undermines the ability to measure and monitor sufficiently youth engagement in the election process.

Recommendations:

- Incentivize political parties to institute integration mechanisms for women, youth, and people with disabilities to increase their meaningful participation in party decision-making and leadership roles within the party structure and as adopted candidates.
- Review the National Youth Policy and revise it as required to increase the meaningful political participation of youth.

***Right to Participation for Persons with Disabilities:*** Treaty sources obligate the state to accommodate people with disabilities so that they can vote and polling stations are accessible.<sup>15</sup> Zambia has progressed towards more robust participation of people with disabilities since its third cycle review.<sup>16</sup> In line with a 2011 High Court ruling that urged Zambia's Electoral Commission to put in place measures to address discrimination against people with disabilities,<sup>17</sup> more user-friendly polling booths were provided to people with disabilities during the 2021 elections. The Commission also included more people with disabilities as polling staff. However, the meaningful participation of people with disabilities remains a crucial challenge. The prevailing social attitude towards people with disabilities makes their participation enormously difficult, especially as candidates, where they are often discounted or subjected to verbal abuse.<sup>18</sup> In addition, the legal

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<sup>15</sup> U.N., CRPD, Article 29

<sup>16</sup> See; UPR third cycle recommendation 129.20 (on the need for the state to intensify efforts to eliminate discrimination).

<sup>17</sup> Brotherton N.O. v Electoral Commission of Zambia (2011/HP/0818) [2011] ZMHC 32 (18 September 2011)

<sup>18</sup> Legislation uses demeaning and derogatory language to define people with disabilities. Examples of such legislation include the Penal Code Act No. 87 (Section 139 on "defilement of imbeciles or person with mental illness"), the Criminal Procedure Code Act No. 88 ("procedure in case of insanity or other incapacity of an accused person"), and the Prisons Act No. 97 (Section 70 on "mentally disordered or defective prisoners"). See also the wording and interpretation of Sections 5, 19, and 23 of the Mental Disorders Act, Chapter 305 of the Laws of

framework designed to promote the participation of people with disabilities is not adequately implemented. Of the four people with disabilities that contested National Assembly seats, only one was elected. In addition, a local observer organization reported problems with accessibility in 62 percent of the 74 polling stations it observed, and tactile braille jackets for blind voters and sign language instructions were only available at 43 percent and 34 percent of the observed polling stations.<sup>19</sup>

Recommendations:

- Enact special measures to fully implement the requirements under Article 259 of the constitution concerning the equitable representation of youth and people with disabilities for appointment to public office, including allocating special seats for these underrepresented constituencies.
- Undertake a review of relevant legislation to expunge derogatory language used against people with disabilities, such as the Mental Disorders Act, Wills and Administration of Testate Estates, the Criminal Procedure Code, and the Prisons Act.

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Zambia, with the use of derogatory words such as “idiots,” “imbecile,” and “lunatics” to describe people with disabilities

<sup>19</sup> ZAFOD Preliminary Statement – Aug. 12, 2021, Election Day Observation for Accessibility for Persons with Disabilities