

THE STATE OF ACCESS TO INFORMATION AND ELECTIONS IN ZAMBIA

An Analysis of the
Existing Legal Framework
and Practice Against the ACHPR
Guidelines on Access to Information
and Elections in Africa

2021



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Acronyms

AAZ	Action AID Zambia
ACC	Anti-Corruption Commission Act;
ACDEG	African Charter on Democracy, Elections, and Governance
ACHPR	African Charter on Human and Peoples' Rights
AFIC	Africa Freedom of Information Centre
APRM	African Peer Review Mechanism
ATI	Access To Information
AU	African Union
CSO	Civil Society Organisation
ECZ	Electoral Commission of Zambia
EMB	Electoral Management Body
FPTP	The First Past The Post
GEP	Group of Eminent Persons
GPU	The Gambia Press Union
NCMC	National Conflict Management Committee
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
NVEC	National Voter Education Committee
POA	Public Order Act
PPLC	Political Party Liaison Committee
PSAf	Panos Institute Zambia
REA	Rural Electrification Authority
R-SNDP	Revised Seventh National Development Plan
SADC	Southern Africa Development Community
SDGs	United Nations Sustainable Development Goals
SMS	Short Message Services
ZamStats	Zambia Statistics Agency
ZICTA	Zambia Information and Communication Technology Authority

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The contents of this assessment are purely based on research findings and do not in any way reflect the views of AFIC, the NED and other entities mentioned herein.

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Executive Summary

The Analysis findings opine that much of the literature reviewed agreed that the existing legal framework in Zambia is to a larger extent in line with the provisions of the ACHPR Guidelines on Access to information and Elections in Africa in as far as access to information in the electoral process by majority stakeholders and citizens are concerned. The Analysis further establishes that Access to information is key to promoting transparency and accountability and further that the electoral process's transparency and accountability in promoting credible electoral democracy is dependent on the unrestricted access to electoral information. The analysis suggests that though existing laws and policy frameworks promote some level of access to information, to a larger extent, in line with the ACHPR Guidelines on Access to Information and Elections in Africa, there are some areas of contestation that still remain and room for improvement still yearns. Access to information through social media and internet has also been established as a key component of the electoral process and in ensuring easy access to information as it has helped citizens to access information in real-time and become well-informed. Armed with the right information and in real-time, citizens have the courage to question electoral decisions made by electoral, political and state authorities. The Analysis also identified areas of improvement such as the need to amend and enact Access to Information (ATI) related laws, reviews principal legal frameworks to accommodate and legalise the use of online information services such as online registration, voting among others which, at the moment, are not legalised in the electoral law. This may assist meet the increasing demand for online information services in the provision of electoral services in the country and further, the Analysis recommends areas for further analysis/interrogation to improve access to information which will consequently improve transparency and accountability in the electoral process and reduce electoral disputes.

Chapter 1: Introduction

The purpose of this Chapter is to discuss the background, country context and the electoral demography of the Assessment. It serves to state the objectives and signal how the Assessment is to progress. In its background, the Chapter appreciates the fact that electoral democracy is “still work in progress” which still lacks serious avenues for access to information leading to challenges for public scrutiny. Bams (2015:64) puts it aptly “electoral democracy is always work in progress and never a finished perfect product and is not achieved or upheld without sacrifice, setbacks and navigation of ethically grey waters. A country does not have to be deemed fit for electoral democracy rather, it has to become fit through electoral democracy,” (Bams, 2015:20). In Bams’ opinion, transparency and accountability of the electoral process means that “decisions and actions of elected officials are being opened up to public scrutiny and that citizenry and stakeholders have a right to access information when the need arises” (Bams, 2015:64).

1.1 Background Information

The spread of electoral democracy across the globe has been one of the most dramatic changes of our time and people have risked their lives to call for free, fair, credible, transparent and accountable elections, democratic accountability, the rule of law and respect for human rights and freedoms¹. Annan further noted that “elections are the indispensable root of democracy and are now universal, but for them to be credible, we need to see high standards before, during and after votes are cast”.² In this regard, electoral stakeholders such as opposition political parties must be free to organise and campaign without fear; there must be a levelled playing field among candidates and equal access to electoral information. And on the voting day, voters must feel safe and trust the secrecy and integrity of the ballot and when the votes have been counted, the result must be accepted no matter how disappointed the defeated candidates feel. When stakeholders and the electorate believe that “the elections have been free and fair, they can be a powerful catalyst for better governance, greater security and human development and in the absence of credible elections, citizens have no recourse to peaceful political change. The risk of conflict increases when citizens lack genuine and credible electoral information while corruption, intimidation and fraud go unchecked, rotting the entire political system slowly from within”³ (Annan, 2012; Lopes & Gettu, 2012).

This analysis interrogates how access to election-related information is critical to the integrity of electoral processes in any democratic country like Zambia. Access to information is not very much

¹ Annan, K.A (2012) ‘Deepening Democracy’: A strategy for improving the Integrity of Elections Worldwide. Report of the Global Commission on Elections, Democracy and Security, September, 2012, Kofi Annan Foundation

² *ibid*

³ Lopes & Gettu (2013) African Governance Report II

endeared by many countries and institutions of state, resulting in their reluctance to support the enactment of laws to do with access to information. The criticality of the access to electoral-related information, just like civic and voter education, is anchored on the fact that it empowers the electorate to be well-informed about political, civic and electoral processes that affect their best interest and make decisions in an informed manner such as when electing political office holders, participating in decision-making processes on the implementation of the laws and policies, and in holding public officials accountable for their acts or omissions in the execution of their duties. Further, the analysis is being conducted on the understanding that at regional level, the right of access to information is guaranteed in various instruments such as Article 9 of the African Charter on Human and Peoples' Rights (the African Charter). This Article treats access to information as an invaluable component of democracy which right goes a long way in facilitating effective citizens' participation in public affairs. Another instrument that guarantees access to information is the African Charter on Democracy and Elections (ACDEG) which recognizes the significance of access to information. One of the core objectives of the ACDEG is to promote the establishment of the necessary conditions to "foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs."

The OAU Declaration on the Principles Governing Democratic Elections in Africa (2002) and the New Partnership for Africa's Development (NEPAD), 2001 member states recognised that:

"transparent and credible elections play a crucial role in ensuring the fundamental and universal rights to democratic and participatory government." The African Union (AU) Guidelines for Elections Observations and Monitoring Missions envisages that member states commit their governments to "safeguard the human and civil liberties of all citizens, including the freedom of movement, assembly, association, expression and campaigning as well as access to the media on the part of all stakeholders during electoral process; promote civic and voter education on the democratic principles and values..."

The significance of the right of access to information is underpinned by the fact that it is a cross-cutting right. It is a right that is necessary for the realization of other human rights, including the right to participate in government directly or through freely chosen representatives, as guaranteed by Article 13 of the African Charter. The right to vote is further guaranteed in various international human rights instruments. These instruments consistently recognise the integral role of transparent and open elections in ensuring that the fundamental right of citizens to participatory government is achieved. However, for elections to be free, fair and credible prior, during and after, the electorate must have access to information at all stages of the electoral process, and there should be freedom of the press and other media. Media freedom goes hand in hand with freedom of expression and access to information. Without freedom of expression and access to information, the media cannot function properly. Governments are obliged to organize genuine elections which are free from discrimination and unreasonable restrictions. This will enable citizens to participate and readily appreciate the outcome of the electoral process.

Recognising the significance of access to information in elections, the African Commission on Human and Peoples' Rights adopted Guidelines on Access to Information and Elections in Africa during its 61st Ordinary session on 10th November 2017 which took place in Banjul, The Gambia. The Guidelines provide direction to the relevant electoral stakeholders who have a duty to proactively disclose information in their possession or control that are necessary for safeguarding the integrity and legitimacy of the electoral process. Guidance is provided in relation to the following relevant stakeholders: (a) Authorities responsible for appointing the Election Management Bodies; (b) Election Management Bodies; (c) Political Parties and Candidates; (d) Law Enforcement Agencies; (e) Election Observers and Monitors; (f) Media and Online Media Platform Providers; (g) Media Regulatory Bodies; and (h) Civil Society Organisations.

1.1.2 Problem Statement

The subject of access to information in promoting improved transparency and accountability in the electoral process as alluded in the background is of public and international interest in the present-day world in which elections have become an integral and regular feature for every country. The elections and its associated processes have also become brands of contested events in the most electoral democratic world. The limited knowledge of the provision of the ACHPR Guidelines on Access to Information and Election in Africa by majority citizens has seen low-level activities around this issue among electoral stakeholders. With the dawn of multiparty politics which have been characterised by competitive elections, there has been a strong desire to demand greater transparency and accountability of the electoral process through unlimited access to and use of electoral information to validate the electoral outcomes and consider them credible. Although many stakeholders have many misgivings on the transparency and accountability of the electoral processes due to propaganda, suspicions and speculations that have blighted the electoral processes in the past and present, the electoral bodies have vehemently purported to pursue the principles of transparency and accountability in the management and administration of the electoral processes. The continued contests and disputes associated with elections trigger the need to examine the adequacy of the existing legal frameworks and practices in as far as access to information in the electoral processes is concerned.

To enhance transparency and accountability in electoral processes in Zambia, therefore, the Africa Freedom of Information Centre (AFIC) and its partners Panos Institute Zambia (PSAf) and The Gambia Press Union (GPU) are implementing a project aimed at improving transparency and accountability in electoral processes in Africa especially in The Gambia, Uganda and Zambia. It is from the foregoing that, to understand the landscape of the status of access to information in elections, AFIC and its partners engaged in-country independent consultants to conduct analyses of each country's existing legal framework on access to electoral information in order to identify likely inconsistencies and make recommendations for reforms and implementation. Results of these analyses are expected to inform the relevant stakeholders on actions to be undertaken to enhance citizens' access to and use of public information in elections in the context of the African Union treaties and standards.

The analyses also examine current practices on access to information and elections in the project countries.

1.1.3 Objectives of the analysis:

- a) Establish the legal framework for access to information and elections in the context of the ACHPR Guidelines on access to information and elections in Africa
- b) Examine current practices on access to information and elections in Zambia
- c) Provide a framework for engaging stakeholders on promoting access to information in elections in line with ACHPR Guidelines on Access to Information and Elections in Africa.

1.2. Zambia's Democratic Progression

Zambia's democratisation process remains fragile and contestable due to alleged lack of credibility and integrity in the electoral process though elections have become a more regular phenomenon despite these elections deferring in 'form, content and quality'.⁴ Elections have become central to the country's electoral democracy and a mechanism for popular expression, leadership selection and change and political accountability as they have facilitated citizens' participation resulting in fulfilling some local needs and aspirations.⁵ To this end, for effective citizens' participation in the electoral process to be achieved, access to information must be guaranteed by law and respect to international protocols on access to information which the country has ratified and signed is cardinal to the growth of democracy in the country. However, Zambia has had an evolving electoral policy, legal and constitutional frameworks in her electoral history, which dates back to independence in 1964 aimed at perfecting the management and administration of elections in the country. This is because elections are 'law confined' meaning that elections must be held within the prescribed laws, rules, codes and regulations. The rule of law in the electoral process is paramount to achieving credibility in the process.

After the waves of political and democratic reforms swept in many countries, Zambia inclusive, in the late 1980s and 1990s, multiparty elections were organised in these countries for the first time which was characterised by a lot of challenges, ranging from lack of experience and a knowledge gap to limited access to information about the resultant set of elections. Though the strong commitment to making sure that electoral administration and management acted independently was there, many newly established Electoral Management Bodies (EMBs) were largely unprepared, inexperienced, lacked knowledge and resources to deliver and guarantee credible elections with integrity, legitimacy and public confidence. There was no common methodology available for

⁴ Lopes & Gettu (2012) African Governance Report III: Elections & the Management of Diversity. United Nations Economic Commission for Africa, Oxford University Press, Oxford.

⁵ Constitution & Reform Education Consortium (CRECO), (2014) Model Policy Framework for Public Participation in Country Government. Myner Logistics, Nairobi

designing or financing election administration and management in many emerging countries and issues of limited transparency and accountability due to limited access to and disclosure of electoral information continued to haunt the electoral process. Electoral institutions and practitioners lacked access to information on best practices, practical experience and comparative lessons. Electoral events also passed largely unnoticed, except by those directly affected or involved due to limited information while losing political parties often challenged the election conduct and results arguing lack of transparency and accountability. It is often said, 'experience is the best teacher', with the passage of time and the holding of successive competitive elections by various countries, managers and administrators accumulated valuable experience and laws have evolved to try and resolve issues of transparency and accountability in the electoral process through increased access to and disclosure of electoral information to the public and stakeholders.

However, the challenges now have taken a new dimension: that of how to ensure that stakeholders have confidence and trust in the shared information about the electoral process and perceive electoral administrations as credible institutions. Stakeholders' confidence, trust of the public institutions in the electoral process and the way elections are administered is crucial, not only for the electoral exercise itself but for the credibility of a government that is born out of such a process. It is from this standpoint that presently management and administration of multiparty democratic elections attract global attention hence the need to administer and manage them properly and this can only be done when there is access to election-related information.

1.3 About the Assessment and its Objectives

PSAf, with support from AFIC through funding from NED, is implementing the a project entitled 'Improving Transparency and Accountability in Electoral Processes project (ITAEP)'. The project's overarching objective is 'to improve transparency and accountability in electoral processes in Africa through the implementation of access to information', with the following specific objectives:

- i. To promote citizens Access to information in electoral processes in Zambia by 2022;
- ii. To increase citizens participation in electoral processes in Zambia by 2022;
- iii. To enhance disclosure and responsiveness of election management bodies and political parties of Zambia.

1.3.1 Current Legal Regime in Zambia

Zambia has tried to make efforts to review her Constitution and other laws related to elections. Among the recent efforts were the 2016 Constitutional amendments which gave birth to the current Constitution in force, the Constitution (Amendment) Bill No.10 of 2019 which flopped on the floor of the National Assembly during the 3rd reading stage, Electoral Process Act and its Electoral Code of Conduct (2016) which provides for a comprehensive process for conducting General Elections and the Do's and don't's during elections respectively. Others are the Public Order Act (1955) which

regulates public assemblies, processions, and demonstrations, and the Penal Code Act (1938) which contains felonies; the Electoral Commission of Zambia Act No. 25 as amended by Act No.5 of 2019 which provides for the functions, financial management of the Electoral Commission of Zambia (ECZ) and its operations among other laws.

Unfortunately, there are still some grey areas within the electoral laws that have been reviewed that contain sections inimical to access to information on election. Most of these sections allude to the fact that access to and release of electoral related information by the electoral body is discretionary and not mandatory. Instead and to a greater extent, these laws have been an impediment, not only to freedoms of expression, association, assembly, but also to access to electoral information both in physical and online electoral spaces. Ironically, Zambia lacks the access to information law⁶ though debate has been raging on and drafting of this law continues for the past 18 years now. Some of these laws are being reformed to meet the changing democratic dispensation the country is undergoing as they are as old as the Rhodesian and Nyasaland Federation. The laws, in the current form, have been prone to abuse by authorities on citizens with divergent views from that of Government to enjoy their freedom of association, assembly, expression and access to information.

1.4. Country Context

In Zambia, for instance, it is clear that the electoral process has been riddled with pre, during and post-election controversies (Mwanakatwe, 1994; Mbita, 2011; Sakala, 2016) due to perceived lack of transparency and accountability buttressed by perceived limitation of access to information. As such, the election monitoring and observation business with the purpose of collecting independent election-related information and providing an independent and alternative opinion to that of political players, media and electoral body on the conduct and management of elections (Mwanakatwe, 1994) has boomed. The interest by stakeholders to take part in the management and administration of the electoral process has helped instil public confidence in the process and further increased the levels of electoral acceptability of electoral outcomes by majority losing contestants (FODEP, 2015). Despite this positive electoral development, electoral stakeholders like monitors and political players have consistently reported electoral violations, abuses, malpractices and other irregularities as a result of what they term lack of transparency and accountability of the electoral process. Such conclusions have undermined public confidence in the process since 1996 to date (EUEOM, 2001, 2016).

From the foregoing, it is clear that numerous controversies and petitions have characterised electoral outcomes due to dissatisfaction by political players, stakeholders and citizens in the management of the electoral process and these have been partly blamed on limited information churned out to the stakeholders by the electoral body. If nothing is done over the need to improve access to and use of credible electoral information and these electoral violations, irregularities and malpractices

⁶ Nkhowani B.T & Mulonga R (2020) *Digital Rights in Zambia: The Good, the Bad and the Ugly*. Paradigm Initiative, Johannesburg

will continue to undermine the credibility of electoral democracy in Zambia. This may consequently result in political instability and reduced donor aid to the country.

Since the extent to which citizens have access to and use electoral information to improve transparency and accountability in the electoral process is unclear and unknown as available studies have focused more on national elections, it is the desire of this analysis to investigate the extent to which the existing legal and policy framework in Zambia resonate with the ACHPR Guidelines on Access to Information and Elections in Africa. It is envisaged that the findings of the analysis, apart from establishing the legal framework for access to information and elections in the context of the ACHPR Guidelines, particularly Zambia; examination of the current practices on access to information and elections in Zambia; and provision of a framework for engaging stakeholders on promoting access to information in elections in line with ACHPR Guidelines on Access to Information and Elections, may also help in contributing to achieving the objectives of the country's Revised Seventh National Development Plan (R-SNDP) and Vision 2030 whose goals are a politically stable Zambia anchored on democratic principles. The Analysis Findings may further contribute to meeting the UN Sustainable Development Goal (SDG) #16 which is on "promoting peaceful and inclusive societies for sustainable development and building effective, accountable and inclusive institutions at all levels."

Research done by the Action Aid Zambia (AAZ) in 2019 dubbed *"Impact of Shrinking Civic and Political Space on operations of Human Rights Activists in Zambia"* revealed that both spaces (physical and online) in the electoral process have been used and abused by the state authorities to instil fear and intimidation. The state authorities have also exploited the provisions of the Public Order Act and the Penal Code Act to slap charges against suspected offenders. The main charges actively used by the Zambia Police include; Unlawful Assembly (POA), Aggravated Robbery, Defamation of the President (Penal Code Act) and Conduct Likely to Breach Public Peace, and Seditious practices (POA & Penal Code Act) and distribution and circulation of prohibited materials.

Due to closing and shrinking spaces for civic and democratic engagement, accessing information in the physical and online platforms has been big a challenge, especially electoral information which is considered sensitive. This is evidenced in the rapid decline and speedily shrinking engagement space as demonstrated by the consistent denial of notification of assembly from applicants by the Zambia Police Service and by implication, violating these applicants their rights to associate, express themselves and access information. It is imperative, now more than ever, that public and private sector stakeholders step up efforts in analysing and identifying gaps, reviewing, reforming and challenging legal and policy frameworks that have and or may potentially hinder effective civic and political participation of citizens. There is limited access to platforms that should provide citizens with information that will enable them to make informed decisions. The current electoral governance landscape in Zambia needs urgent intervention. This analysis may be the starting point to advocate for laws that provide access to information in the electoral process. The need to have a vibrant civil society, free media and active citizenry backed by evidenced-based advocacy in the election process

is key to achieve access to information and thrive in an information restrictive electoral environment. The 2017 African Media Barometer Report does allude to instances which impede citizens' right to access vital information, participate in governance and hold their leaders accountable. It states that freedom of expression is hindered by archaic laws, intolerance towards divergent views which is usually displayed through actions of threats, violence and intimidation and utter denial of electoral-related information. These threats occur when citizens demand accountability from political leaders and prominent persons and demand their rights since the old legal and policy regime does not seem to protect citizens but more the leaders. This has increasingly created a fearful, disempowered and ill-informed citizenry. The current legal, constitutional and policy frameworks entail that the need for a strong critical voice and mass movement of civil society that will consistently call for their reform/review is needed so that policies and pieces of legislation conform to the current democratic dispensation.

This analysis seeks to identify gaps in and analysed the apparently limited enjoyment of citizens' ability to express themselves, associate, assemble, access public information and participate in governance due to an unfavourable legal, constitutional and policy frameworks and further make recommendations for evidenced advocacy on legal, rules, codes, regulations reforms for better access to electoral information which is key to effective citizens participation in the electoral process. This may consequently lead to deepened electoral democracy and observance of the rule of law in the electoral process and effective citizen participation individually and or severally in national affairs through enhanced access to information.

1.5. Electoral Demographic Data

Zambia goes to the polls every five years to elect her leaders for the positions of president, Member of parliament, council chairperson and councilors. The Election Day is enshrined in the republican constitution which states in Article 56 that: "A general election shall be held, every five years after the last general election, on the second Thursday of August... The day on which a general election is held shall be a public holiday".

The Councils and national Assembly stand dissolved 90 days to the election day. The next General Election is to be held on 12th August 2021 with interesting demographic trends. This is a departure from the previous practice before the 2016 Constitutional Amendments which empowered a sitting President to decide on the election date and also dissolve Parliament and Councils which triggered uncertainty, suspicions and speculation in the electoral process. The election date then was not a holiday. This change has contributed to transparency and accountability by removing uncertainty, suspicions and speculations in the holding of elections in Zambia. In terms of voting population growth, Zambia has seen an increase in its voting population over the years. The 2020 Zambia Statistics Agency (ZamStats) estimates the country's population at 17.9 million an increase from 9.8

million in 2000 and 13 million in 2010. Out of the 17.9 million people⁷ with the majority being women, an estimated 8.4 million⁸ are eligible to register as voters and vote in the 2021 General Election contrary to the Electoral Commission of Zambia's estimated figure of 9 million.⁹ The electoral body has indicated that it aims to register 9 million voters ahead of the polls. According to the current projections by the Zambia Statistics Agency (Zamstats), the Agency projected a total population of 17,885,422 people in 2020; and based on the 2010 Census of Population and Housing the age structures were, forty-seven (47) per cent of the total population was aged 18 years and above, Fifty-three (53) per cent were aged below 18 years.¹⁰ Eligibility for voting in terms of the age is 18 years and above in Zambia. In estimating the voting eligibility population, the Agency carried forward the eligibility population of 47 per cent from the 2010 Census results. This was on the assumption that the age structure does not change much between two Census periods which in the case of Zambia spans over 10 years. This was after, the Census of Population and Housing which was supposed to be held in 2020 was pushed to 2021 due to scarcity of resources.

In respect of the above, the 47 per centage structure was applied to all projected district populations and aggregated to come up with an estimate of 8,414,839 eligible voters. In disputing the ECZ estimated figures, the Zamstats emphasised that any statistics issued by any persons or organisation other than the Agency are not official and have no legal basis. According to law, the Statistics Act no. 13 of 2018, Part II, Section 7(1) it guides that "the Agency is the sole designated entity responsible for the publication of official statistics". These statistics include population statistics by age, sex, geographical location such as rural or urban as well as voter eligibility in any year. ECZ made an ambitious programme to register the 8.4 million eligibles in 30 days and discarded the 2016 voter's Register. This met a lot of resistance including legal suits against the ECZ from political and civic stakeholders as the reasons for allocating registration of 30 days and discarding the old register when the law still talks about continuous registration so are not convincing. Another issue that has triggered contestation and public debate has been the desire to implement the prison vote ensuing the Constitutional Court ruling awarding voting rights to persons in lawful custody. The prison population is estimated to be at 23, 000 inmates, but only 16, 000 were eligible though only 11, 000 were registered. Zambia is an urbanized country with a majority population residing in urban areas. It is divided into 10 provinces, 116 districts, 154 constituencies, 1,624 wards, 7,700 polling stations.¹¹ The internet penetration rate leapt to 58.9% (10.2 million internet users) in the first quarter of 2019 from 41.2 % (7.2 million) in 2017. Interestingly, the 2nd quarter of 2020 saw a drop in internet penetration in the country to 53% (9.5 million users)¹²

7 Nkowani B.T & Mulonga. R (2020) Digital Rights in Zambia: The Good, the Bad and the Ugly. Paradigm Initiative, Johannesburg

8 NewsDiggers Newspapers Limited, 'Zambia has 8.4m eligible voters – ZamStats', 14 December, 2021 <https://diggers.news/local/2020/12/14/zambia-has-8-4m-eligible-voters-zamstats/>

9 Zambia Daily Mail, 'Harmonise voters' figures', 14 December, 2020, <http://www.daily-mail.co.zm/harmonise-voters-figures/>

10 Statement By Mr. Mulenga JJ Musepa, Interim Statistician General, Zambia Statistics Agency on the Eligible Voting Population During The 2021 Presidential And Parliamentary Elections, 13th December, 2020

11 ECZ (2016) voter's roll, Lusaka.

12 Nkowani B.T & Mulonga. R (2020) Digital Rights in Zambia: The Good, the Bad and the Ugly. Paradigm Initiative, Johannesburg

Chapter 2: Analysis Methodology

This Chapter discusses the research methodology applied in order to arrive at the analysis findings, which are presented herein. It highlights that the analysis relied heavily on qualitative research methods and compiled using secondary sources of information obtained through an in-depth desk review of the literature. The reviewed include the existing but relevant electoral laws, policy briefs, research reports, online and offline articles, news items and websites. The Chapter further justifies why this methodology was used in that it helped to collect factual information and hard data about the subject matter. This entailed extracting information from Acts of Parliament, international instruments, textbooks, journals among other relevant sources. This Chapter is organised under the following sections, namely; research design, sampling techniques, data collection procedures, data analysis and limitations.

2.1 Study Design

This section outlines the plan and structure of investigation on the assessment questions. By Assessment design, it means the structure of Assessment and glue that holds all elements in the Assessment adhered to. Kombo and Tromps (2014:71) define a Study/Assessment design as “the scheme, outline or plan that is used to generate answers to research/assessment problems/questions.” For this Assessment, a qualitative methodology was used. It involved collecting, analysing and integrating qualitative data obtained through a desk review of various documents/literature and books relevant to the assessment. The reason for choosing this design was the desire to investigate access to information in the electoral process deeply. The qualitative approach assisted in understanding what other scholars have written on the topic, describing the state of affairs of access to information and identify gaps in the electoral process, if any.

2.2 Data Collection and Analysis

Kombo and Tromp (2014:99) define data collection as the “gathering of information to serve, prove or refute some facts.” The duo emphasises the vitality of data collection in an Assessment as it helps clarify facts. Since such an Assessment involved a systematic process that focused on being objective and gathering information for analysis to come up with logical conclusions, the Assessment made use of data from various secondary sources to arrive at information. Therefore, document/literature analysis was used to collect secondary data for the Assessment. Data collection methods used were desk research which involved the analysis of documents.

2.3 Limitation of the study

When it came to literature availability, the research lacked localised literature and reports on access to information and the Electoral Process but relied more on a few pieces of literature and reports

about Zambia and the SADC region which were used to generalise the electoral information situation in the country. Further, due to limitation of time and resources, the Assessment could not engage key informants on the issue at hand to get what people perceived to have national electoral and political knowledge, experiences and competencies to help give generalised views and track records of participation in the electoral and political processes of the country for some years. These could have included electoral officials, leaders of the NGOs and political parties, veteran politicians and political activists, academia and media practitioners.

Chapter 3: Legal Framework and Practice on Access to Information and Elections in Zambia”

This Chapter gives an overview of the existing legal framework and practice in Zambia and looks at the positives and negatives existing in the current Legal and Policy Frameworks, lists of existing electoral and associated laws and analyses Election Management Administration. It also assesses electronic law on information sharing on elections, possible legal and policy gaps/challenges on access to information and the role of ICTs and social media shortcomings in the electoral process. It further explores the New Opportunities to access to information for Stakeholders in elections.

3.1 Overview of the Current Legal Framework and Practice

Lack of transparency and accountability due to limitations in the provisions of the law has been cited as the cause of electoral disputes in many jurisdictions. This is because there is information obscurity on planning, conduct, management and announcement of election results. This continues to be a major source of concern across Africa, Zambia inclusive. In several unfortunate circumstances, the lack of information and trust characteristic of some electoral processes has led to low voter turn up, suspicions and speculations, innuendos, doubts in the credibility of voter’s registers, the impartiality of Electoral Bodies, widespread violence and rejection of the electoral outcomes.. In the absence of access to credible information, Lopes & Gettu (2013) argues, “elections by themselves will not promote democratic values and practices, nor will they guarantee political stability...rather than unite; elections can divide people, undermine the very essence of elections, which is to peacefully aggregate preferences in the choice of political leadership.” In other situations, ruling parties and electoral management bodies have exploited citizens’ lack of access to information to falsify or otherwise declare losers as winners, states intentionally disrupting internet and telecommunications access during election periods so as to put the citizens in the black box or leave them guessing about the process. In Zambia for example, during the 2016 elections and now ahead of the 2021 General Election, the stakeholders raised and are raising concern on the credibility of the Voter’s Register, the printing of ballot papers and prison voting in the absence of information and mechanism on how they will vote. The underlying issue for most people was the apparent number of deceased people, under-age persons, and alleged foreign nationals obtaining the national IDs and consequently finding themselves on the register.

These election experiences in Zambia illustrate the dangers that lack of information in the electoral processes poses to peace, security and stability of the country. The failure of stakeholders in the electoral process to disclose information inevitably breeds distrust and lack of confidence. At worst, when combined with simmering ethnic, religious and other such tensions, it can easily ignite electoral and political violence. This is when voters express their frustrations and anxieties at real or perceived disenfranchisement and election rigging allegations. Civil tension and conflict resulting

in loss of life, internal displacement and despair have far too often left their mark in the aftermath of contested elections in Zambia. Proactive disclosure of accurate and timely information on the electoral process is thus an imperative aspect. The managers of the electoral process must be or seen to be politically impartial and act effectively to ensure that electoral processes are properly handled and administered. While the government of Zambia prepares for this important step to democratic governance, it should adhere to human rights standards to ensure a free and fair election in 2021 General Election.

3.1.1 Positives and Negatives on the existing legal framework and practice

Although Zambia has no law on Access to Information per se, other laws and the Constitution have provisions that speak to the need for public institutions to be open, transparent and accountable to the citizens in the discharge of their duties, mandates and responsibilities. The Constitution of Zambia under Article 229 establishes the Electoral Commission of Zambia and awards it with the following functions; “a)implement the electoral process;(b) conduct elections and referenda;(c) register voters;(d) settle minor electoral disputes, as prescribed;(e) regulate the conduct of voters and candidates;(f) accredit observers and election agents, as prescribed;(g) delimit electoral boundaries” Further more, Article 238(1) guides that the Commission must be “self-accounting institution which deals directly with the Ministry responsible for Finance in matters relating to its finances and must be adequately funded in a financial year to enable it to effectively perform its functions.” In the same vein, Article 45 of the Constitution establishes and dictates the principles in the electoral process and system of administering elections in the country which are;

Shall ensure—

(a) that elections are free and fair; (b) that elections are free from violence, intimidation and corruption; (c) independence, accountability, efficiency and transparency of the electoral process; (d) a simple and practical system of voting and tabulating votes; and (e) timely resolution of electoral disputes.

Article 11 declares that *“every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual...namely liberty, freedom of expression, assembly and association”* subject to the limitations contained in the Bill of Rights based on defence, health, public order and health, security among other limitations. The above provision is amplified by the subsequent Articles in the Constitution such as Articles 20, 21 and 22 of the Constitution, both Articles enshrined in the Bill of Rights which recognise and guarantee freedom of expression, assembly, opinion, association and movement while Article 50 empowers political parties to have access to the media;

- Article 20 stresses the need for sharing and receiving information without interference, whether public or private;
- Article 21 provides for freedom of assembly and association without hindrance to individual citizens;

- Article 50 mandates that political parties and candidates contesting an election to have access to the media especially during election campaigns;
- Article 60 awards political parties the right to disseminate information on social and economic programmes and its political ideology.

The Electoral Commission of Zambia Act No. 35 of 2016, as amended by Act 5 of 2019 further clearly, provides membership, its qualifications and how they are appointed, tenure and removal, operations and financial management.

The Electoral Process Act No. 35 of 2016 under section 3 demands that the electoral process shall ensure transparent and credible electoral process; impartial voter education programmes, access to polling stations for representative of political parties, accredited local or international election monitors, observers and the media; transparent and secure ballot boxes; transparent, accurate and reliable vote counting procedure; among others. The Act under sections 17 and 18 empowers citizens with the right “to inspect the Voter’s Register as it exists at any time during office hours at the commission’s head office and a person/citizen has the power to object to an error or omission to the exclusion or regarding the registration details of another person”. However, to acquire or extract a copy of the Register of Voters, is only given upon payment of a prescribed fee which currently is at K25/polling station copy while political parties participating in elections are given a free copy each. Further, during delimitation of polling district boundaries, polling station locations, the Commission is expected to consult stakeholders. Section. 24 instructs, “before determining the location of a polling station, the commission may consult on the proposed location with the council for the area in which that polling station shall fall” and once established, published and publicised in the media, citizens are legally empowered to inspect the district boundary maps and polling station location lists containing addresses of the established stations and *“anyone who pays the prescribed fees is provided with a certified copy”*.

The Electoral Code of Conduct (2016) stresses the need for the Commission to meet political parties’ representatives on a regular basis to *“discuss matters of concern related to the election campaigns and election itself; avail political parties with the election timetable and election notices in accordance with the Act.”* This in itself is a platform-Political Party Liaison Committee-for access to and exchange of information on the management and administration of the electoral process.

The Code also mandates political parties to establish and maintain lines of communication with the commission and share contact details with each other while party agents, monitors and observers are allowed to witness the opening, closing of the polls, announcement of results and declarations of results. The media, on the other hand, is allowed to cover, publicise and report campaigns, policies, meetings, rallies and press conferences and statements of all registered political parties and candidates during the campaigns and provide news of the electoral process up to the declaration of results. The media is also given the right to disclose accurate election results and provide updates on

the progress of the vote-counting process and shall not speculate election results but communicate confirmed results as announced and published by presiding officers.

In general terms, the existing law and policy framework in Zambia provides avenues for access to information on elections and demands transparency, openness and accountability in the operations of the electoral body. It is for this reason that recently, the Commission was awarded by the media body, Media Institute for Southern Africa (MISA-Zambia), the “award for being the Most Open Public Institution for 2020 under award category dubbed ‘the 2020 Golden Key Award’ during the launch of the 2020 Transparency Assessment Report on Monday, 28th September, 2020. In the acceptance remarks, ECZ retorted;

“The Golden key award reaffirms our commitment to transparency and openness in all our dealings and core values. As an Electoral Management Body, we have been consistent in upholding transparency; openness and impartiality in the delivery of electoral services which has seen us win similar awards in the past.”¹³

In 2012 following the conduct of the 2011 General Elections, the Commission was awarded for the most open public institution.

The Transparency Assessment research is a study conducted by the MISA Regional Office and it assesses whether public institutions proactively make relevant information available to the public via an online presence in the form of websites or social media accounts. It further evaluates to what degree information is made available to citizens upon request either verbally or in writing. MISA Zambia stated that the ECZ has been the most “open and transparent public institution for the year 2020”. Other organizations which were randomly selected and participated in the research and assessed are the Anti-Corruption Commission, Disaster Management and Mitigation Unit, Ministry of Agriculture, Ministry of General Education, Ministry of Health, Ministry of Mines and Minerals Development, Ministry of Home Affairs, and the Road Transport and Safety Agency.

3.2 List of existing electoral laws

There are so many legal frameworks and institutions that govern the electoral process in Zambia. Some have just been introduced due to changes in the management of elections among that is Examination Council of Zambia (ECZ) Act, Zambia Qualification Authority Act, Penal Code, Prisons Act. However, the following are the main legal framework governing the electoral process in Zambia;

13 Misa Zambia during the word ceremony of a golden key to ECZ as most transparent public institution

3.2.1 Constitution of Zambia (Amendment) No. 2 of 2016 Cap 1 of the Laws of Zambia:

Article 8(c) and (e) of the Constitution talks about democracy and constitutionalism and good governance and integrity. The Constitution establishes the Electoral Commission of Zambia under Articles 229 and 258 and prescribes its role, duties and responsibilities in election management (Art. 229). In Article 45 prescribes the principles of electoral system and process which are independence, efficiency accountability and transparency in the electoral process which can only be achieved through having an independent media while Article 50 demands for access to the media by a political party and a candidate contesting an election, especially during election campaigns. Articles. 47,46, 48, 49 outlines what, when and how elections should be conducted and determines the conduct of other electoral processes such as delimitation as outlined in Article 58. The Constitution further establishes channels of electoral conflict management and determination of franchise as is in Articles. 43(2)(b), 46 and 47. The Constitution also guarantees people's freedoms and rights/freedoms of Expression, Press, Movement, Association, dissemination and Assembly as contained in Articles. 20, 21 and 22.

3.2.2 The Electoral Act No. 35 of 2016;

It is the principal electoral law and prescribes the conduct, management and administration of elections in the country and provides for a comprehensive process for presidential, National Assembly, district and ward elections. It empowers the ECZ to deal with electoral matters and enables it make regulations such as electoral General Regulations, registration of Voter Regulations, presidential elections, Local government elections (District and ward) and the referendum regulations. The Act also provides for offences and penalties in connection with elections. It also contains the Electoral Code of Conduct that prescribes and manage the behaviour of electoral players during elections. The Act further provides for the appointment of conflict management and filing, hearing and determination of election petitions and determines applications related to elections to National Assembly, district and ward. It allows the President and Vice President to use government Resources during electoral campaigns and empowers the Commission to administer and enforce the Act (Sec. 4). The Act, in addition, empowers the Zambia Police Service & Anti-Corruption Commission (ACC) to also enforce the code (Sec. 4(5)). The Commission is empowered under the Act to the postponement of election (sec. 56). The Act, however, insulates the Commission from being subjected to any direction or control (sec. 4(1) and empowers it and other stakeholders to conduct voter education (sec. 77)

3.2.3 Local Government Elections Act (2018);

This Act provides for the conduct of local government elections and establishes local government, the electoral commission and its functions. It further provides for the delimitation of wards and tenure of office of elected councillors, franchise and disfranchises and provides platforms for questioning the validity of the elected officials under the Act-it is through the Court, petitioners, and relief

3.2.4 Referendum Act (1969 as amended 2016);

This Act provides for the manner for holding a referendum & related matters and empowers the President to order a referendum and what questions to be subjected to the referendum. It also sets out the eligibility threshold to participate in referendum and establishment of the Commission, its composition and functions. The Act further provides for Referendum petitions mechanisms.

3.2.5 The Electoral Commission Act No. 5 of 2016;

This Act operationalises the Electoral Commission of Zambia and provides for the compositions, functions, tenure, filling of vacancies, remuneration and proceedings of the Commission. This Act mandates the ECZ in the furtherance of its functions “to collect any information that it considers necessary for the performance of its functions under the constitution and the Act; undertake consultations, public hearings and inquiries for the purpose of performing its functions and receive written or oral statements from any person or organisation under the Constitution and the Act” It empowers the sitting republican President to appoint, remove and fill casual vacancies at the Commission and enables the Commission to appoint committees such as National Voter Education Committee (NVEC), National Conflict Management Committee (NCCM), Political Party Liaison Committee, Group of Eminent Persons, among others. The Act further empowers the President to approve receipt of ECZ annual reports and fundraising activities and approves loans and donations to the ECZ. The act empowers the Commission to appoint a CEO and other staff.

3.2.6 Anti-Corruption Act (2012);

This Act is the principal law in fighting corruption. It empowers the Anti-corruption Commission (ACC) to investigate and prosecute any corrupt practices committed under the Electoral Act provided in sec. 81-84 in accordance with the ACC Act. It criminalises bribery, impersonation, treating, undue influence & any illegal practices and illegal Practices related to publishing false statement in respect to candidates, forging documents for the nomination, public meetings during the campaign period to incite and destruction of ballot papers.

3.2.7 Electoral Code of Conduct (Regulation 2016);

The code contains 16 regulations that regulate the conduct of electoral players in the electoral process such as the media, civil society, political parties, the commission, the police, electorate or citizens at large and provides mechanisms for electoral dispute resolutions. It spells out offences against those who breach the code and empowers the Commission, Zambia Police Service and ACC to enforce the code. It is only enforceable only during the 90 day period of the nominations, campaigns and voting processes. The ECC outlines the electoral rights and dos and don'ts for electoral stakeholders, institutions and individuals in the electoral process. Some of the rights outlined are that a person has, the right to express political opinions; debate the policies and programmes of

political parties; canvas freely for membership and support from voters; distribute election literature, campaign materials and publish and distribute notices and advertisements; erect banners, placards and posters; campaign freely; Participate freely in partisan political activities; and seek the protection of the law from harm as a result of that person's political opinion or affiliation.

3.2.8 Public Order Act (1955);

This is an Act that, among other functions, contains provisions for the preservation of public order; operationalises the Bill of Rights especially Articles 20, 21 and 22 of the Constitution of Zambia which talk about freedom of expression i.e. opinion, press, dissemination; freedom of assembly i.e. freedom to gather, Freedom of Association i.e. freedom to belong to any trade union, political party without hindrance and Freedom of movement to and from any part of Zambia. It regulates assemblies, public meetings, demonstrations, protests, picketing and processions and further defines meetings, public meetings, public place, public procession and provides sanctions for breaches thereof.

3.2.9 Zambia Police Force Handbook on Election policing (1994, 2016);

This Police Handbook is a policy document for the police that aims at assisting police to secure election in an impartial and fair manner and recognises that an election is a process and not an event. It outlines the duties and responsibilities of the police and regulates public assemblies, meetings, processions and rallies. The Handbook also tries to spell out ways of maintaining law and order at public meetings, processions, assemblies, etc by the police. It also helps in the enforcement of the Electoral Code of Conduct and Electoral Act

3.2.10 Persons with Disability Act No. 16 (2012);

The persons with Disabilities Act No 6 of 2012 defines Disability as “a permanent physical, mental, intellectual or sensory impairment that alone, or in combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in society on an equal basis with others”. It uses affirmative action strategies to achieve “equal basis with others” and affirmative action is defined as “any measure designed to overcome or ameliorate an inequity or the systematic denial or infringement of a right or freedom”. The Act awards rights to PWDs to ensure that they effectively and fully participate in political life and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for PWDs to vote and be elected. The Act further demands that the Minister responsible must ensure the maximisation of the participation of PWDs in political life by; a) voting procedures, facilities and materials are appropriate, accessible and easy to understand and use, b) vote by secret vote in elections and referenda without intimidation, and stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies, c) free expression of their will, as electors, by allowing assistance in voting by a person of their own choice, when requested and, d) Promotion of an environment in which PWDs can effectively and

fully participate in the conduct of public affairs, without discrimination and on an equal basis with others and encourage their participation in public affairs.

3.2.11 Independent Broadcasting Authority (IBA) Act

An Act to establish the Independent Broadcasting Authority and to define its functions; to provide for the control and regulation of broadcasting and diffusion services. It empowers the authority to suspend and cancel broadcasting licences for media houses. This has been effectively used to close media platforms perceived to be providing avenues for those critical of government e.g. the case of Prime TV which was first suspended for giving out information of what was obtained during the Sesheke Parliamentary by-election and later forced to close after the cancellation of its operating license on account that it had expired.

3.2.12 Zambia Information and Communication Technology Authority Act

ZICTA is mandated to regulate the provision of electronic communication services and products in Zambia, monitor the performance of the sector, including levels of investment and availability, quality, costs and standards of electronic communication services. The Authority also administers the country code top-level domain (.zm) as well as electronic addresses and disseminate information and promote participation by the public in the provision of electronic communication services. The Authority provides for a national frequency and numbering plan and set standards for the ICT sector and promote competition in the sector and also regulate tariffs charged by operators offering electronic communication services. Further, the Authority protects the rights and interests of consumers, service providers, suppliers and manufacturers;

3.2.12 Prisons Act (1965)

This Act was recently added to the plethora of legal frameworks in the electoral process after the Constitutional Court of Zambia legalised the registration of inmates as voters and voting in an election. This Act triggers the issue of access to Prisons and prisoners' access to electoral information. There is a debate to review the law so as to allow all electoral stakeholders access to these restricted areas to educate the inmates and also inmates to be in possession of their voting documents such as NRCs and Voter's cards. Currently, the law provides that the officer in charge be in the custody of the prisoner's personal effects and warrants and further allows the officer in charge to visit all parts of the prison at an uncertain hour of the night. Others allowed to visit the prisons are politicians in government such as minister responsible for prisons, ministers of religion and President of Zambia;

3.2.13 National Registration Act

This is an Act made to provide for the registration of persons, issuing of national identity cards, commonly known as National Registration Cards (NRCs) which are key determinants of eligibility

to register as a voter and vote in an election and applies to all persons, who at its commencement, had attended or thereafter attain, the age of sixteen (16) years or who at such commencement or thereafter are of an apparent age of sixteen (16) years or more and who are within a specified area;

3.2.14 Statistics Act no. 13 of 2018

This is an Act to establish an integrated National Statistical System and for providing for mechanisms for coordination, collection, management and dissemination of statistics. It further promotes the use of statistical data and information at individual, institutional, national and international levels. Part II, Section 7(1) of that this Act mandates that “the [Zambia Statistical] Agency is the sole designated entity responsible for the publication of official statistics”. These statistics include population statistics by age, sex, geographical location such as rural or urban as well as voter eligibility in any year. From this perspective, only a statistical figure issued by the Agency is admissible in such national matters.

3.3 Analysis of the Election Management and Administration in Zambia

Zambia has remained a relatively stable electoral democracy in the SADC region and in Africa as a whole. It has had no serious ethnic tension and regional disputes since independence in 1964. The country has made landmark strides politically such as a return to the multiparty system of governance in 1991, acceding to and ratifying major international treaties and declarations which among others include; the African Peer Review Mechanism (APRM), the African Charter on Democracy, Elections and Governance (ACDEG), SADC principles and Guidelines Governing Democratic Elections (revised 2015), Gender protocols, International Convention on the Rights of Persons with Disabilities, regional and continental election protocols, etc.

However, some of the notable political challenges facing Zambia today include inadequate and deficiencies in the Constitution and electoral provisions, especially regarding access to electoral information leading to election disputes, suspected corruption, suspicions of vote-rigging and mistrust in the electoral process. Coupled with the electoral system, the country pursues which is the First Past The Post (FPTP) electoral system since independence with minor modification over time, has exacerbated mistrust in the process. The 2016 constitutional amendment prescribed that a winning presidential candidate must garner 50% +1 winning threshold or faces a presidential run-off with the run-up presidential candidate. This electoral system has been deemed as unsuitable for Zambia at the moment due to its principle of winner takes it all rendering all other political participants irrelevant post the vote and that it is suspected to manipulation as figures can be changed to meet the threshold as per allegations in 2016 election outcome which triggered a controversial electoral petition. The government is now attempting to introduce a coalition type of government at Presidential level and mixed-member electoral system for legislative and local government elections.

The management and administration of elections is solely the responsibility of the Electoral Commission of Zambia (ECZ) established under Article 229 of the Constitution of Zambia as an

“independent” body while Electoral Commission of Zambia Act No. 25 as amended by Act No. 5 of 2019 spells out some of the functions of the Commission which among others include; “conducting and provision of information programmes to state organs and promote public awareness of electoral matters; conduct and promote research into electoral matters and establish and maintain liaison and cooperation with political parties”. The country follows the independent model of EMBs. Other laws governing election management and administration include the Electoral Processes Act No. 35 of 2016 which is the principal law governing the conduct of elections in the country and contains rules and regulations related to the election of President, Members of Parliament (MPs), Mayors and council chairpersons, Councilors, empowers the ECZ to make rules and regulations in the manner of conducting elections, empowers the Commission to conduct civic education and voter education and also spells out the offences and penalties due to violation of electoral laws, rules, regulations and codes. The Act also dictates how to conduct, hear and determine an election petition and any such matters related to the conduct of elections. The Act under section 3 further mandates the Commission to “collect any information that it considers necessary for the performance of its functions, undertake consultations, public hearings and inquiries and receive written or oral statements from any person or organisation...” Others include the Local Government Act-for local elections;- Anti-Corruption Commission Act (ACC); Money Laundering Act; Public Order Act; Electoral Code of Conduct; etc.

3.4 Assessment of electronic law on information sharing on elections

In the first place, there is no specific law that governs information access and sharing on an election in the electoral process in Zambia. What is there, however, are a number of other relevant laws and policy provisions that promote access to, use and sharing of information online such as the policy on Information and Technology and Electronic Communication and Transactions Act (2009) which act as the main cyber policy and law in Zambia. Section 41 and 42 assures provision of protection of personal information obtained through electronic transactions and sets out conditions for 3rd parties liabilities. Section 61 of the Act allows citizens to request online information or activity that infringe on recipients’ rights. This law is enforced by another law namely; the Information and Communication technologies Act (2009) which births the regulatory body called Zambia Information and Communication Technology Authority (ZICTA) and speaks to the issues of licensing and regulations of ICT services, networks and computer usage in Zambia. Another key law is the Anti-Terrorism and Non-Proliferation Act (2018) which provides for the detention of persons for allegedly inciting violence. Section 27 of the Act has been used to arrest journalists for online posts seen as having the potential to incite violence and convict and imprison any person, for life on conviction, who incites another person or organisation to commit an act of terrorism or proliferation. In essence, the electoral law and policies governing elections in Zambia emphasise more on the Commission to facilitate effective citizens’ access to electoral related information through consultations, inspections and publicity of the information and gives citizens time to do this ranging from 14 to 90 days and also are blighted with punitive sanctions and penalties.

3.5 Possible legal and policy gaps/challenges on access to information in Zambia

Though the electoral and other laws have incorporated access to information clauses and sections, there is still need for the state and public institutions like the electoral management body to remain and become even more open, accountable and transparent to stakeholders if credible elections are to be achieved in Zambia. The lack of an access to information law and the reluctance by the authorities to enact one, despite having draft Bills already worked but shelved for 18 years, has been a big disservice to the country and citizens' effective enjoyment of their rights to access information on elections. Laws, such as the Public Order Act, remain a challenge in the electoral process that despite its noble purpose of seeking to regulate assemblies, demonstrations and protest and further maintain law and order in the conduct of these assemblies during or outside elections, have been used heavily to oppress, repress and suppress freedom of expression, association, opinion and assembly and has resulted into arrests of people for publishing articles critical of the government of the day. For instance, section 13 penalises any person for "making statements or doing acts intended to promote hostility between sections of the community." The Penal Code Act is another claw-back Act to access information and enjoyment of citizens' rights and freedoms in a democratic society. It is the main legal framework used to prosecute online misdemeanours and cybercrimes related to defamation of the president, sedition and criminal libel and criminalise the importation, publishing, reproduction, sale, distribution or possession of any prohibited publication or extract.

The other challenge is the provision of immunity to electoral management bodies and staff for the omission and commission of electoral violations and abuses by the Electoral Commission of Zambia Act No. 25 of 2016 under Section 13 which stresses,

An action or other proceeding shall not lie or be instituted against a member of the Commission, a member of a committee of the commission or a member of staff of the commission for, or in respect of, an act or thing done or omitted to be done in 'good faith' in the exercise or performance, or purported exercise or performance, of any of the functions conferred under this Act. Further, Section 43 of the Electoral Process Act dictates that;

An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in 'good faith' in the exercise of a power or the performance of a duty under this Act

Unfortunately, 'good faith' is not defined in the law and can mean everything and anything to anyone. Such provisions undermine accountability in the electoral process and must be revisited. In addition to the immunity conferred on staff and members of the Commission, the law further prohibits staff and members against disclosure of information to unauthorised persons [not defined in the law] by electoral members and staff.

In terms of the Electoral Body's accountability, the existing law insulates it from being under the direction of any authority yet, on the one hand, the same law provides that the body will be accountable to the President. This contradiction in the law makes it hard to appreciate which body the Commission is accountable to, the people, the President or the executive? This has a telling effect of accessing information not approved by the supervising authorities. To reinforce the above argument, the Electoral Process Act in section 4 reads, *"this Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Constitution and this Act."* However, the Electoral Commission of Zambia (Amendment) Act No. 5 of 2019 under section 5 prescribes the power and role of the republican President to appoint, receive resignations, remove and replace the members of the Commission and approve grants, contraction of loans by, donations to and investment of the Commission. To crown it all, the law mandates the Commission under Section 17 that;

"as soon as practicable, but not later than ninety days after the end of the financial year (January-December), the Commission shall submit to the President a report concerning its activities during the financial year".

This undermines the independence of the Commission as the President is an interested party in the electoral process and may be privy and edit the information before it is shared with other stakeholders.

For instance, section 11 of the Electoral Commission of Zambia Act prescribes that;

"a person shall not, without the consent, in writing, given by or on behalf of the Commission, publish or disclose to an unauthorized person, otherwise than in the course of duties of that person, the contents of a document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act...a person who having any information which to the knowledge of that person has been published or disclosed...unlawfully published or communicates the information to another person, commits an offence and liable, upon conviction to a fine not exceeding two hundred thousand penalty units [ZMK60, 000] or to imprisonment for a term not exceeding two years, or to both."

This provision undermines access to electoral information by citizens and instils fear in the information sharing chair due to harsh penalties/sanctions likely to be imposed on an officer who shares this information such as arrests and when convicted serving a custodial sentence and/or fined hugely. This provision indirectly annuls the progressive provisions related to access to information provided for in the law currently. In addition, subparagraph 5(f) of the principal Act bars a monitor to "forecast, declare or disclose the result of an election before the declaration by the Commission" especially that official results already are open secret as they get pasted on doors of polling stations. Criminalising such a forecast, declaration and disclosure is testament of the fears of transparency

and accountability as well as access to information in the management and administration of the electoral process by the ECZ and goes against the constitution and principal Act. Let all known results be for public consumption.

3.6 Navigation of access to information on elections in Zambia

With the impediments in the physical space to enjoy one's right and freedom of expression, association, assembly and access to information on real-time, the growing internet penetration and development in ICTs in Zambia has provided an alternative platform for citizens to share information and contribute to increased, essentially, provision of the much-needed access to information platforms. Online platforms have become sources of information and a formal or/and informal engagement platform in the absence of or limited civic education which is usually conducted a few months to the elections. However, there remains a notable digital divide between urban and rural areas, in addition to costs associated with the purchases of bundles, airtime, phones and limited or lack of access to reliable sources of power to charge the phones and computers which has limited the access to and the use of ICTs by citizens in Zambia before, during and after elections and considerably, such services and facilities are concentrated in the urban areas. Realising this digital gap/divide, the use of solar, procurement of petrol or diesel-powered generators and rechargeable batteries and government deliberate policy to electrify rural areas through the Rural Electrification Authority (REA) are all efforts meant to meet the challenge to do with the presence of unreliable sources of power in the country's rural areas. This is also a realisation that ICTs are now a critical development to aid access to and sharing of information in all sectors of human endeavour considering that the government's tight grip on the traditional form of media for accessing and sharing information have been put them under serious self/state censorship despite the right to freedom of expression, opinion and dissemination guaranteed enshrined in Article 11 and 20 of the Constitution.

Digital communication in the electoral process has potentially improved since the advent of ICTs and the use of internet which has been able to improve further transparency and accountability in conducting and managing elections in Zambia as individual actors are now able to access election-related information about the electoral process, violations, malpractices and concerns more easily and quickly, share that information with their audiences. This has enabled the concerned stakeholders to devise methods of countering such violations, abuses in the electoral process and assured access of such exposed to a wide range of audience both local and international. The Journal on Human Rights (2014) observes;

“The most obvious way ICTs have the potential to influence the electoral process and elections is through the ability to share and access information simultaneously and in real-time. The internet has afforded users access to a wealth of knowledge and resources through websites where broadcast, videos, articles of various radio and TVs [stations] can be easily accessed through connection to social media platforms such as Facebook, Twitter, WhatsApp, Instagram and You-tube through which information is disseminated further.”

Therefore, this effectively allows internet users greater access to unbiased and timely information through citizen journalism. Further, the advances in mobile phone sector and other devices and photograph capability have allowed online electoral activities to be documented. It has also enabled the documentation of electoral violations, abuses, malpractices and concerns and share them online. Once this information is out online, it has the potential to go viral and impossible to prevent this occurrence and spread. Access to online videos of incidents of electoral misconduct and misbehaviour, malpractices and violations has increased during elections as ably used during the Lukashya parliament by-election in Kasama District of Northern Province and also in Roan and Sesheke parliamentary by-elections on the Copperbelt and Western Provinces respectively. The use of social media and the ability to record and display these incidents as promptly on the internet as they happen is a phenomenon any nation, management body or person cannot ignore and must have to live with as it is here to stay with us for many years to come.

Though, there is no law currently in the electoral process that allows the use of online services a statutory instrument No. 80 of 2020 was hastily passed, after noise from stakeholders when ECZ tried to embark on the online pre-registration of voters, to allow the ECZ to do pre-registration online, another major way in which the new ICT era has had an effect on elections in Zambia has been its use as an effective 'organising tool' for electoral stakeholders' meetings and consultations through such platforms like zoom. This has been necessitated by the fact that majority Zambians-even in rural areas-possess mobile phones, exploit the use of short message services (SMS) wide-spread as means of communication and have become an indispensable advocacy tool in the electoral process among electoral players. In this regard, effective political and electoral organisation through social media has been witnessed during major elections and in some by-elections in the country, that even with limited resources for political parties to gather, they have been able to mobilise a vast pool of followers to advocate for credible, transparent and accountable elections, voice their concerns in the administration and management of elections by the ECZ through facebook or social media and counter electoral violations, abuses leading to reactions from the concerned authorities.

Another online strategy taking root in the electoral process in Zambia to achieve access to and use of information is blogging. Blogging has been employed by citizens to exercise their freedoms, which were/are ordinarily denied within the convention media and other platforms, affording citizens greater access to information to a wide range of audiences. A common form of online protests/demonstrations, campaign blogging and petitions has become a popular electoral advocacy tool and has helped expose electoral violations, thereby promoting electoral justice in the process. With the advent of social media in the electoral process and its unstoppable nature, Zambia will soon see an eruption of its own 'Electoral Spring' like seen in the MENA region if perceived mismanagement and mal-administration of the electoral process by the ECZ continues, as all necessary ingredients for an Electoral Spring are present such as having a youthful population at about 67% and increased electoral controversies, rapid urbanisation, widespread of cheap smartphones, increased internet penetration and coverage at 53% and more users of Facebook being added daily resulting in many citizens increasingly eager to express themselves in the face of access to floodgates of information provided by these platforms.

It is yet to be seen whether Zambia is quite ready for such an electoral spring because despite the fact that the necessary factors for such an event are present in the electoral environment, points to the huge potential impact of the new ICTs and new media for the country in the future, as access to such technologies continues to increase so is access to information on electoral issues. ICTs have enabled stakeholders to access and share information on electoral violations including best practices and helped devise advocacy for change or a stop to such violations online as it has happened in other countries like Cambodia during the 2013 elections where Facebook and other social media platforms were used by political parties to amass vast crowds and advocated for change in spite of allegation of election irregularities. Therefore, individual stakeholders or institutions can now access information and organise continuously through social media and networks and it is key that they embrace its use. Currently, ECZ is only empowered under section 74 of the Electoral Process Act that it “may use electronic means to transmit results from polling stations”. There are attempts, however, by the Commission to repeal this section and its proposal is to employ and deploy e-systems in the provision of electoral services in Zambia. Therefore, access to information ought to be taken as a whole, there should be no differentiation between traditional and digital form of information access and sharing in the electoral process but must enhance each other rather than making each other redundant.

3.7 ICTs and Social media shortcomings in the electoral process

The speed at which information is now disseminated via SMS and online platforms means that electoral activities conducted, statements and press releases issued by electoral stakeholders are no longer breaking news to traditional media outlets. The speed with which information is shared generates a risk of inaccuracy e.g. fake poll results being disseminated which are re-tweeted or spread several times as people tend to trust the persons or organisation tweeting the information. It is also important to note that information shared online can often be unreliable, sensational, and alarming. There is still a need for more in-depth, detailed, verified reporting and analysis by stakeholders and people. Facebook and other digital media platforms are effective in sharing and disseminating information; they cannot substitute movement building and strategic planning. Digital means of communication and information cannot, sometimes, be relied on to ensure that sensitive electoral information linked to electoral violations and potential penetrators remain private and secure especially when used by stakeholders who may have been targeted for surveillance by the authorities.

In as much as citizens may be considered of their physical security, digital security is key and important. It is worth keeping in mind that the majority of Africans, especially in rural and low-income areas, access the majority of their news through radio and not social media. Social media has improved Access to information (ATI) in many ways, as an unregulated arena for citizens to access information on real time though often than not been a place for the dwellings of misinformation. It should be guaranteed as physical hence need for organisations to provide training and awareness to citizens, stakeholders on how to secure sensitive digital communication and data storage. Along

with increasing use of the internet and social media in the electoral process to access information, comes the potential rapid propagation of threats and offensive discourse. This is especially the case due to the anonymity offered by the internet and social media which has enabled staunch misleaders and sensationalists to relay their misdeeds with alarming speed in reaction leading to smearing campaign against those who post or they disagree with. To this end, the advancement of the ICT, internet, new media, and social media in Zambia's electoral process has had a mobilising effects amongst a largely youth population in an environment blighted by widespread of electoral violations bullying, inaccurate information, propaganda and abuses.

Therefore, the future of online electoral activism armed with insecure information faces several challenges-greatest being the looming cybercrime laws which have potential to severely infringe on citizens' right of access to information, freedom of expression, assembly and association online. These laws have potential to provide government and the electoral management body with a legal basis to deny electoral stakeholders and citizens access to information on elections and to crack down on online electoral activism e.g. shut down of the internet, Facebook and WhatsApp during elections as there are already calls by some politicians to propagate for a law to penalise those who castigate and criticise the electoral body. To this end and moreover, for online electoral activism to move forward, it is of greater importance that the digital divide between urban and rural areas is bridged. This is particularly true and key when one considers that may be of the most serious electoral violations abuses and violation that occur in such rural remote areas. Though it is difficult to measure the tangible impact of the ICTs and internet on the electoral right and regardless of its shortcomings, it may be said that judging by the proliferation of Facebook users, in Zambia, it is undeniable fact that ICTs and social media play an intrinsic role in the lives of any electoral process, management body, players and among young people. As such, the electoral stakeholders and electoral management bodies cannot ignore the huge potential of ICTs and social media as a tool of electoral advocacy and if an electoral stakeholder or body or organisation need to move forward, there is need to ensure adoption of strategies that support and build capacities of online electoral activism.

3.8 New Opportunities for access to information for Stakeholders in elections

ICTs and the internet, in particular, have enabled electoral stakeholders to access, share or disseminate information and highlight electoral violations at an accelerated rate and to a wide audience. Sharing information via social media also allows electoral stakeholders to reach a wider audience. And sharing information online not only ensures that it will reach a wide audience but allows to reduce spending within an organisation or electoral stakeholders, rather than being printed, it can be shared online. Additionally, blogs and social media allow a greater online audience to actively engage with electoral stakeholders as social media users can easily share petitions and contents on posts and allow followers to have an interactive experience with stakeholders who can respond to comments. With the advent of online services and platforms, there is now space for electoral stakeholders to provide capacity building to online users in electoral related matters by creating a platform where they can apply, share and exchange information using ICTs to electoral stakeholders or in elections

that is reliable, accurate and non-sensational. The internet and online platforms such as blogging and online petitions have enabled citizens to actively advocate and educate for change of doing things in the electoral process and empowered citizens to access information, express themselves and participate not only in public life and debates but electoral life effectively than ever before. The net effects of ICTs is the emergency of online electoral activism which can potentially break the traditional barriers in the access to electoral information and reach new frontiers in the pursuit of freedom of expression and greater access to information in elections.

What moral right and sanction can politicians claim from a victory in an election in which most of their campaign policies were/are not mentioned or, at a minimum, rarely understood by the vast majority of voters and citizens? Without means of accessing information, going into a voting booth is akin to a contract in which the seller has an unlimited right to deceive and defraud the buyer and in an election, the more people know about the electoral violation, abuses, irregularities and malpractices the less confidence they have in the process and so every apathetic voter or non-voter is a victory to the manipulated electoral system and process because much of the system has been built on the ignorance and deception of the citizenry. This is so because political and system dishonesty mixed with voter ignorance is a recipe for manipulation. Since majority voters and citizens always have a cautious view of and distrust the electoral body and politicians, the less they comprehend the system and process and the issues therein, the less vigorous they will oppose the deficit in the body, process or system. Therefore, access to information is good for the citizens but treated with caution by the authorities as it is a threat to their system and process manipulation, violation, and misdeeds.

Chapter 4: Existing Practices on Access to information

This Chapter discusses the existing practices on Access to information and elections in Zambia, identify challenges either in the existing legal frameworks and policy and further examine the best practices. It tries to respond to the research question on existing practices in Zambia's electoral process.

Findings and Discussion

From the analysis based on the in-depth review of the existing electoral legal and policy framework and in line with the objectives of the analysis, it is established that largely the existing electoral laws and policy frameworks in Zambia meet, almost all, the guidelines provided for in the ACHPR Guidelines on access to information and elections in Africa. The question is, to what extent and how has the analysis responded to the three research questions and achieved its objective?

4.1 Legal Framework on Access to Electoral Information in Zambia

Although Zambia has no specific law on access to information or Guidelines on Access to Information and elections, the existing laws have provisions and avenues to allow citizens access information coupled with the use of social media and internet, which despite having legal backing in the electoral process, its use has not been exploited to the maximum. Therefore, the first research question on whether or not the existing legal framework in Zambia provides for citizens' access to electoral information has been responded to in the affirmative. The constitution in Article 45 demands for accountability and transparency in the electoral process which can only be realised through access to information by stakeholders. This means that legally, there are avenues to access electoral information in Zambia but in practice, this has not been possible. For instance, the law in section 4 of the Electoral Commission of Zambia Act No. 25 of 2016 as amended by Act No. 5 of 2019 stresses this point thus;

The commission may, in furtherance of its functions-a) collect any information that it considers necessary...; b) undertake consultations, public hearings and inquiries...; and c) receive written or oral statements from any person or organisations for the performace of its functions under the Constitution and this Act"

This goes without saying that the first objective of the Analysis/Assessment which was to establish whether there is a legal framework for access to electoral information and elections in Zambia that responds to the ACHPR Guidelines on access to information and elections in Africa has also been resolved.

To elucidate this, the reviewed literature, the existing electoral legal and policy frameworks have shown beyond reasonable doubt that legal frameworks on access to information does exist and provided for citizens and majority electoral players to have access to electoral information in Zambia. This is attested to by the existence of the legal and constitutional provisions that mandates the electoral body to provide stakeholders with platforms for consultations, inquiries, public hearings on, collection of any information and receipt of written or oral statements from any person or organisation on the electoral process related issues (Sec. 4 of the Electoral Commission of Zambia Act, 2016).

Further, the Commission is mandated by law to constitute stakeholders Committees such as Political Parties' Liaison, Conflict Management, Voter Education among other as avenues for sharing key electoral information. These platforms act as avenues for citizens/or their representatives to access information on elections and get clarity. Further, the legal and policy framework provides avenues for stakeholders to challenge or and object to any mismanagement and administration of the electoral process and this is done when citizens have access to information. The existing laws also make it, as a principle, for the electoral process and system to promote transparency, efficiency, independence, accountability and timeous resolution of minor disputes (Art. 45 of the Constitution, 2016). Channels and procedures of petitions and appeals on any irregularity and violation in the electoral process are well outlined in the law and are in line with the dictates of the ACHPR Guidelines (Art 100 of the Constitution, 2016; Sec. 96-109 of electoral Process Act, 2016).

For instance, the reviewed literature attests to the fact that the management body is mandated to allow citizens access to electoral information on voter registration and inspect the Register, raised objection if any, demand for a change of details or deletion of the dead on the register, access it and extract its content; election calendar; be consulted during delimitation exercise; campaigns; voting; counting and declaration of electoral results and that all results are posted openly on the doors of the polling stations for all citizens to have access and make use of the information (Secs.7-76 of the Electoral Process Act. To succinctly demonstrate the above findings, Section 117 of the electoral process Act thus stresses;

Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavour to also publicise or make available those documents in electronic form.

Therefore, the electoral principles as opined in the constitution of transparency and accountability demand and imply that subsidiary laws should incorporate issues of access to electoral information by citizens.

4.2 Current Practices on Access to Information and Elections in Zambia

This research question was to 'examine the current practices on Access to Information and elections in Zambia' and was trying to respect the research/analysis object on whether electoral management body and state agencies in Zambia do implement access to information regimes in line with the ACHPR Guidelines on access to information and elections in Africa.

From the reviewed literature and legal frameworks, the examination of the current practices on access to information and elections in Zambia displays a pattern that citizens are largely free to access electoral information such as voter's register, electoral calendars among others with or without a minimum cost. The Electoral body does, to a greater extent, implement access to information regime¹⁴. Citizens are free to write or submit oral statements to the Commission and the Commission is obliged, not only to receive but also collect, undertake consultations, public hearings and inquiries on issues raised by stakeholders. In addition, the electoral body is mandated by law to establish committees whose compositions are members of stakeholders' organisations such as political parties, civil society/faith-based organisations and media (Sec. 7 of the Electoral Commission of Zambia Act, 2016) and currently, there are about four (4) committees namely; National Voter Education Committee (NVEC), National Conflict Management Committee (NCMC), Political Party Liaison Committee (PPLC) and Group of Eminent Persons. These committees are established to enhance the electoral body's performances when carrying out of its functions and improve transparency, accountability, and access to information in the electoral process.

In terms of accessing documents, hard or/and soft copies, the electoral body does have a website and Facebook page which contain all the electoral information about and related to the body's work such as election results, calendar events etc. The practice has always been that some documents are secured free of any cost while others are at a minimal cost as provided for under relevant sections of the law. For instance, Sec. 18 states that;

"A copy of the Register of Voters, as it exists at any time, shall be available for inspection during office hours at the Commission's head office; and that " A person who requires a copy or extract of the Register of Voters may, upon payment of a prescribed fee, obtain the copy or extract which shall be certified by the Chief Electoral Officer. Further, its states that "A document purporting to be a copy or extract of the Register of Voters, which is duly certified by the Chief Electoral Officer, shall be received in evidence in any legal proceedings as to the matters stated in the Register of Voters well established."

The Commission has held consultations with various stakeholders to share with them electoral information such as electoral calendars, Voter Registration process, voting procedures, certification of the register, conflict management, voter education and media engagement among other

¹⁴ See the matrix

consultations using various forms of platforms such as workshops, briefings, seminars etc. Due to its openness and transparency in doing electoral activities in the country and its open relationship with stakeholders, the Commission was awarded the Most Open Public Institution by MISA-Zambia in 2020. However, this does not mean that CSOs/NGOs and other stakeholders cannot openly criticise the Commission on any matter of interest to the NGO/CSO.

However, in practice there are challenges witnessed as access to electoral information is by discretion by the officer-holders and not a mandate by law. Certain information such as financial, audit and activity reports are a preserve of the electoral body and its appointing authority. The public just know about the block figures of how much a particular election might cost. Media engagement is also based on what the electoral body intends to communicate i.e PR based and not vice-versa.

4.3 Provision of a framework for engaging stakeholders on promoting Access to information in elections in line with ACHPR Guidelines on Access to Information and Elections in Zambia

This finding was anchored on a research/analysis/assessment question which sought to investigate whether or not the citizens demand and make use of electoral information. The research question was seeking to respond to the research objective on the provision of a framework for engaging stakeholders on promoting access to information in elections in line with ACHPR Guidelines on Access to Information and Elections in Africa. The already existing Committee system at the Commission forms a basis on which stakeholders' engagement on the promotion of Access to information in elections can be anchored. Further, Regulation 7 of the Electoral Code already appreciate the need, in liaison with the Commission, to "recognise a representative media body authorised to receive complaints and provide advice regarding fair coverage of elections." There will need to cite the location of this issue of access to information in the elections within the existing set of Committees or lobby for the constitution of a special committee to be deliberating on Access to information in Zambia. This is so because the Code mandates "print and electronic media to provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period and provide news of the electoral process up to the declaration of results".

This special committee should be linked to an already existing consortium of CSOs and media on the enactment of the Access to information law. Further, this special committee can also deal with issues of internet and social media and be part of the existing movement deliberating on the proposed cybercrimes laws in the country. With seemingly increased disaffection among electoral players with regard to the access to and flow of information and nature of consultations being conducted by the electoral body, "the growing electoral concern of many stakeholders is to see greater transparency in the counting process" and must be taken on board seriously and further that "issues relating to shortcomings in the electoral law and the Constitution be made a priority by the government and

stakeholders” to achieve greater openness, transparency and accountability through unrestricted access to electoral information.

As established by the research/Analysis, tremendous progress has been made in making and ensuring that the electoral legal framework governing the electoral process pursues the principles of transparency and accountability and access to information has been established as key to improved transparency and accountability in the process. The factors that militate against achieving greater access to information and thereby achieve greater credibility of electoral democracy have also been highlighted in the research/Analysis and confirmation has been made that efficient information flow is a key component in promoting credible electoral democracy devoid of propaganda, fake news, suspicions and speculations. Various authors and experts cited in the Analysis have made it crystal clear that, access to information is cardinal for any election to be considered credible, transparent and accountable and that the practices in the electoral process, as well as the body responsible for managing elections, are required to treat information access and sharing as paramount to achieving greater transparency and accountability and must be treated with the maximum possible attention at every stage in the electoral process. Further, the research/Analysis has revealed that participation of various interest groups in the electoral process and the use of social media and internet is important in achieving greater access to and use of electoral information which is necessary to improved transparency and accountability of the electoral process. Overly, the research/Analysis establishes that access to information and elections are twin sisters in ensuring that the electoral process is transparent and accountable in promoting credible electoral democracy. It has further confirmed that the existing legal framework governing the electoral body and the electoral process among other laws provide a framework for having an electoral process that operate, administered or and managed within the ambit of the provision of the ACHPR Guidelines on access to information and elections. The framework also assures that the electoral body is accountable to its stakeholders in its operations though contrary views have also been expressed that the electoral body is not accountable to stakeholders but to itself, President and ruling political elites due to the way it is appointed and constituted. The experts and authors cited in the Analysis have expressed concern over the electoral body’s accountability and transparency levels, however, converge in acknowledging the progressive improvements that have been made so far in the electoral process.

Chapter 5: Conclusion and Recommendations

The Chapter discusses analysis conclusions and key recommendations such as repeal and replacement, amendment or and enactment of some laws that impede access to information and that can improve access to information respectively to address the low electoral information flows between the electoral body and stakeholders, players and citizens. In its key conclusions, the chapter highlights some of the identified electoral challenges that can be easily addressed through lobbying and advocacy to improve electoral administration and management in Zambia.

5.1 Conclusion

In view of the deep review of the legal frameworks and practices, it is concluded that in as much as the existing legal and policy frameworks on access to electoral information largely is in line with the provision of the ACHPR Guidelines on Access to information and Elections in Africa; the practice has not been inspiring leading to negative speculations and suspicions. The immunities, discretionary powers and the don'ts that are provided in the law for electoral staff have somehow undermined what should have been an enabling legal and policy frameworks Therefore, law reforms must be done by the electoral body and government through the relevant authorities to reduce such discretionaries and incorporate mandatory provisions for the access to information on elections as per the prescription of the ACHPR Guidelines that stakeholders with electoral information must make such available to stakeholders. Areas for further analysis have been suggested such as investigation in the role of social media and the internet in the electoral process, whether or not there are adequate legal and policy measures to enhance its positive role in promoting access to information with minimal misinformation. Access to information is necessary for transparency and accountability in the electoral process. Access to information assists in the identification and addressing of weaknesses in the electoral law, practice, electoral management and administration. However, the enactment of the access to information laws in the country may add and promote credible electoral democracy and electoral body that thrive on practices that satisfy stakeholders in as far as transparency is concerned in line with the ACHPR Guidelines on Access to Information and Elections and other international standards.

5.2 Available Opportunities

1. **Utilisation of Existing Coalitions:** There abound opportunities in this area and among them, the already existing consortium of stakeholders (CSOs, media, faith-based, parliamentarians) advocating and lobbying for the enactment of the Access to Information Bill which has been on shelves for 18 years now. Further, there is also Consortium of Media practitioners and institutions advancing self-regulation of the media in the country and so it is another opportunity to advocate for wide access to information in elections by journalists and media houses. The findings and recommendations of this analysis can be incorporated in this campaign;

2. **Court Judgement/Litigation:** There is heightened debate and advocacy to review the legal framework ensuing the Constitutional Court's judgement on the rights of prisoners vis-à-vis the right to vote on the need to open up the prisons so that stakeholders and inmates may have access to electoral information ahead of the August 12, 2021, General Election. This general elections provides for heightened advocacy on the need for access to information in elections. Litigation can be used to perfect the law where stakeholders feel it infringes on the citizens to access to information against the provisions of the ACHPR Guidelines;
3. **Stakeholders Engagement on the Proposed Bills:** Ongoing proposed reviews of the electoral law. Already, the county has a Draft Electoral Process Bill No. 30 of 2021 and Public Order Bill No. 12 of 2019 which may be tabled before parliament in its last sitting which commenced at the end of January 2021. However, government had at the time of compiling this report refused to retable the Public Order Bill until after the General Election in August, 2021. It had been discussed in government circles that the session will be dominated by electoral related bills.
4. **Effective Participation in the Proposed Cyber and Security Laws:** This is another avenue for launching for constant and consistent advocacy on the online electoral services and greater online access to information in Zambia. This will help engagement on the need to make social media and internet more accessible to citizens during the election for the purpose of information sharing unlike shutting on account of abuse;
5. **ECZ Committee system:** This is another greater avenue to use to share and access information key to the improvement of the electoral process. This committee can be used by stakeholders who represent various CSOs, faith-based, NGOs, political parties and media to express their misgivings on how information is flowing in the electoral process and why there would need to improve the flow to avoid negative public perceptions, suspicions and speculations of the electoral process.

5.3 Key recommendations

- 1) Zambia Electoral Commission (ECZ) should proactively disclose electoral information consistent with the ACHPR Guidelines on Access to Information and Elections in Africa and the Africa Model Law on Access to Information.
- 2) Zambia Electoral Commission should adopt Guidelines on Access to Information and Elections consistent with the ACHPR Guidelines on Access to Information and Elections in Africa.
- 3) Government through the Ministry of Information and Broadcasting Services should conclude consultations on the Access to information Bill and ensure that it is retabled in Parliament while Parliament should pass the Access to Information Bill into law once tabled by the government and the President should not hesitate to assent the enacted Bill into law so as to operationalise it;
- 4) Civil Society and political parties should advocate for the enactment and review of the Access to Information Bill to contain a component on elections before it is enacted into law;
- 5) Parliament should develop or review the existing electoral legislation to take care of the role of and the booming use of social media and internet before, during and post elections;

- 6) Civil Society and government should simplify and publicise the ACHPR Guidelines on Access to Information and Elections in Africa;
- 7) Government , the ECZ and civil society.

5.4 Advocacy issues for different Media, CSOs, Electoral Body etc

- With the approval of the cyber and security policy by Cabinet and the tabling and possible passing of the Cyber Security and Cyber Crimes Bill No. 2 of 2021, it is vital that CSOs, media advocate for the recognition of the key role social media and internet play in citizens' ease access, sharing and consumption of electoral information and in adhering to provisions of the ACHPR Guidelines on Access to information and Elections in Africa;
- Media should continue to call for the enactment of access to information law in Zambia;
- CSOs must engage the Ministry of Justice on law reforms to remove inconsistencies, discretionaries and immunities in the electoral law that make staff immunity to accountability for their omissions and commissions when it comes to access to information by stakeholders;
- CSOs must up their advocacy with the Ministry of Justice and ensure that all electoral related laws are consistent with the ACHPR Guidelines on Access to Information and Elections in Africa;
- Electoral body should enhance its engagement and sharing with CSOs and media on electoral related information

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Appendix:

- Matrix on Existing Legal Framework and Practice v. ACHPR Guidelines

Institutions/Stakeholders		Expectation of EMBs	Existing Legal Framework & Practice
Electoral Management Bodies	Guidelines	<ul style="list-style-type: none"> Create, keep, organise and maintain records in a manner that facilitates access to information, including for vulnerable and marginalised groups 	There is a legal provision and is practiced, eg. Sect 17 and 18 of the Electoral Process Act, 2016
	Facilitate Access to Information	<ul style="list-style-type: none"> Adopt and implement flexible proactive disclosure arrangements that enable access to information without the need for individual applications; Establish clear and effective processes and procedures to deal with requests for information Formulate clear procedures for making requests for information, which must include the required format of requests, costs for reproduction, timeframes and formats for providing requested information Organisational structure; Strategic plan; Decision-making process 	<p>Sect 17 and 18 of the Electoral Law provides that avenue also section 3 of the Electoral Commission of Zambia Act No. 25 of 2016 as amended by Act No. 5 of 2019</p> <p>The law is available</p> <p>Section 18 of the Electoral provides this avenue as it states "a person who requires a copy or extract of the Register of Voters may, upon payment of a prescribed fee, obtain the copy or extract..." Section 17 guides that objections to details in the register can be made within 90 days of the publication of the provisional register in a prescribed manner.</p> <p>Part V of the Electoral law under sections 37, 39, 40, 41 and 42 is instructive on recruitment, conditions of service, duties and powers and it states in part, "the commission shall, after prescribing a date of an election, appoint presiding officers." These are the temporary staff. This is enforced by section 8 and 9 of the Electoral Commission of Zambia Act on permanent staff and conditions. It states, "the commission shall, on such terms and conditions as it may determine, appoint such other staff and officers... and sect 14(3)" there shall be paid from the funds of the commission the emoluments of the members and staff of the commission".</p>
	Cause to be published, on an Annual basis, accurate and updated information	<ul style="list-style-type: none"> Procedure for the recruitment of both permanent and temporary staff and their conditions of service; Training policies; Code of conduct for employees, including declaration of assets; 	

<ul style="list-style-type: none"> Budget and sources of funding, including donor funding, which shall be disaggregated accordingly; 	<p>Electoral Commission of Zambia Act under Sects. 14, 15, 16 and 17 address the funds of the Commission, financial year, accounts and audits and annual reports. sources of funding to the commission are spelt out in the Act under Sect 14 such as monies appropriated by Parliament, grants or donations, loans</p>
<ul style="list-style-type: none"> Mechanisms for voter identification; Procurement policy, processes and award of contracts; and Annual Report, including audited accounts. 	<p>Part VI of the Electoral law stresses that “a voter shall produce identification documents to a presiding officer as may be prescribed.” (Sec 45). In practice, voter’s IDs are voter’s cards and National Registration Cards (NRCs). Sec. 60 puts clearly that “a voter is entitled to vote at a polling station on the production of that voter’s national registration card and voter’s card to the presiding officer...” Annual Report and audited accounts are both provided under sec 16 and 17 of the Electoral Commission of Zambia Act. Procurement policy processes and awards are guided by the Zambia Public Procurement Authority (ZPPA) guidelines being a public body. However, section 114 of the Electoral Act authorise the Commission to authorise printing, manufacturing or supply of any voting or election materials</p>
<p>Proactively Disclose Information relating to its Membership</p>	<ul style="list-style-type: none"> Details of the professional background of its members; Policy on declaration of assets and interests by its members; and Its code of conduct and ethics <p>The Electoral Commission of Zambia Act sec. 3 outlines the professional and academic background for one to be appointed member of the Commission. However, the declaration of assets is not provided for under the law. Disclosure of interest by its member and staff is provided for under sec. 10 of the Act cited above. The code of conduct and ethics is not expressly provided for under the law save for Sec. 11, which prohibit publication or disclosure of information to unauthorized persons.</p>

<p>The Electoral Process Act does compel the Commission to provide election timetable (Calendar) and electoral campaign period. Part II provides all information on registration of voters and Register including criteria, qualifications requirements, registration centers, voter's roll which biometric and contains relevant details such as full names, NRC number, photo, gender, age, ability; Part III provides in detail polling districts and Boundaries and criteria for determining these boundaries. Art 229 of the Constitution empowers the ECZ to delimit electoral boundaries while Art. 58 mandates the ECZ to divide the country in constituencies and wards and determine the names and boundaries of constituencies and wards for the purpose of the elections to the national Assembly and councils. This is supposed to be done in an interval of not more than 10 years and Art. 68 gives the total number of constituency-based constituencies.</p>	<p>Provisions are there for special vote provided under Sec. 48 of the Electoral Process Act on account of physical infirmity or disability, pregnancy, absence from the polling district while serving as an election officer in the election concerned or while on duty as a member of the security services. Diaspora and advance voting is not provided for. However, there attempts to amend the law to allow diaspora and prison voting. The Voter's Roll has all the number of voting stations while the Societies Act outlines the criteria and requirements of registering political parties. The nomination process brings out the details of applications made by political parties for elections. Qualifications for nominations are well articulated in the Constitution Arts. 100, 72 and 153. There is an existing code of conduct applicable to all political parties and candidates during elections (Sec. 107 of the Electoral Process Act. The Constitution also under Art 54 states that "<i>a candidate and a political party shall comply with the prescribed electoral Code of conduct.</i>"</p>
<p>Pre-election period information: Detailed electoral calendar; Criteria, process and results for the delimitation of electoral boundaries in a simplified manner; List of constituencies or voting districts, if applicable; Full details of the voter registration process including criteria, qualifications, requirements and location of voter registration centres; Voters roll containing information allowing the unique identification of each voter, including the full name, identity number, photograph (where it exists), gender and age of each voter, and any subsequent amendments to this information; Information on arrangements for the inspection of the voters roll by the public to allow for any necessary corrections to be made;</p>	<p>Operational plan for special or advance voting and diaspora voting (where applicable) relating to dates, time and method, including storage and security of ballot boxes until the general count; Criteria for identification of the location of voting stations; Location and number of voting stations; Criteria and requirements for registration of political parties; Details of applications made by political parties for registration as participants in the electoral process, specifying the number of applications made, the number of applications granted, the number denied and reason(s) for each denial; details of political parties registered as participants in the electoral process, specifying their number and names;(m) Qualification, rules and procedure for nomination of candidates political parties Code of conduct applicable to political parties and candidates during the electoral campaign period;</p>
<p>Proactive disclosure of information required at all stages of the electoral process prior, during and after the conduct of elections</p>	<p>Electoral Management Bodies</p>

- Election Day and results announcement day information: Location, as well as opening and closing times of voting stations; Support mechanisms for voters and election officials through the provision of episodic and periodic reports of election day activities; Information on the closing of voting and vote reconciliation, counting and results management system starting from vote counts at the voting station up to the announcement of final results; Details of special votes cast including the counting and collation process; Information on the occurrence of any technical glitches and how these have been addressed; Information on all complaints or petitions received and how these have been addressed; and Election results by polling station, which shall be conspicuously posted at each voting station and in publicly accessible electronic and online formats.

- Information on the conclusion of elections; Progress in achieving timelines for the declaration of collated results which shall be within a reasonable time or as stipulated bylaw; Declaration and publication of final election results, down to the polling station level; details of all objections, complaints or petitions received and how they were addressed; calculations or allocations of seats and timeframes and processes for the adjustment of political party lists, where applicable; and Evaluation reports on the elections produced by the Election Management Body as well as by election observers and monitors.

Sec. 50 of the Electoral Process Act provides the hours of voting which are published in the media. It states, “a polling station shall open for voting at the prescribed time...and remain open for voting until the prescribed time”. Voting procedure is clearly outlined in Sec. 60 of the Act above while vote reconciliation, counting and result management systems are prescribed under Secs. 66, 67, 68, 72 and 73. Sec 71 ...presiding officer shall publicly announce the results of the count at the polling station to members of the public; the accredited observers, monitors, election and polling agents present...” after which the results are conspicuously posted on the doors of the polling stations. Election petitions are provided for under Art 72 of the Constitution and Part IX Sec. 96-109 of the Electoral Process Act for members of parliament and councilors and Arts. 101 and 103 for presidential petitions

Regulation 3 of the Electoral Code of Conduct mandates the Commission to “declare election results expeditiously from the Close of the election day” while the Constitution in Art. 45 expects the electoral process and system to be a “simple and practical system of voting and tabulating votes”. Sec. 69 and 70 of the electoral Process Act explain how objections concerning sorting of ballot papers and counting of the votes and announcement of the provisional results are done. Allocation of seats is through the electoral system being used which retains one person per constituency, district and ward as MP, Mayor/Chairperson and councilor. Art 47 of the Constitution guides thus, “a constituency and a ward shall return one member to the National Assembly and council respectively”. Zambia does not practice the list electoral system and evaluation of the observers and monitors’ reports are done months after the elections.

Election Observers and Monitors	Information from Election observers and monitors	<ul style="list-style-type: none"> Names and details of key office bearers in the observer or monitoring mission; 	<p>Observers and Monitors are accredited by the ECZ. Regulation 10 of the Electoral Code of Conduct guides that “a person shall not act as a monitor or observer, during an election campaign or election unless that person is duly accredited by the commission while Sec. 77 of the Electoral Process Act provide the manner accreditation is supposed to be done the personal information the Commission may require from the applicants.</p>
		<ul style="list-style-type: none"> Code of conduct for observers and monitors; 	<p>Other than the prescribed code of conduct which is sec. 107 of the Electoral process Act, observers and monitors have their own organisational “non-partisan pledges” which they sign before being deployed.</p>
		<ul style="list-style-type: none"> Financial or non-financial assistance received from any donor or any political party or candidate, including the incumbent government; 	<p>Observers and monitors do not received money from political parties for their work. Instead, 100% of the funding for monitors comes from the donors especially foreign embassies.</p>
		<ul style="list-style-type: none"> The Election Observation Mission Report, specifying the methodology, deployment plan as well as the assessment of the conduct and outcome of the elections. This shall be published widely and timeously, with preliminary reports issued within 30 days and final reports issued within 90 days; 	<p>Many if not all observer missions issue assessment, preliminary and final reports which detail the methodology, deployment plans and assessment of the elections e.g. the European Union Election Observer Mission Reports (2016) has all the above including the recommendations.</p>
		<ul style="list-style-type: none"> Conflict of interest or political affiliations of local observers or monitors, if any; and Sources of funding for any organisations conducting opinion and exit polls and parallel voter tabulation 	<p>Conducting of opinion and exit polls is a new phenomenon in Zambia. Organisations such as some private media outlets and Centre for Policy Dialogue (CPD) that tried to conduct such ended up burning their fingers when the results did not tally with their polls. However, parallel Vote Tabulation (PVT) is entrenching in the country’s electoral process. It has become a permanent feature in the electoral process which is conducted by CSOs, faith-based Organisations (FBOs) and political parties and candidates. The funding for this process (PVT) is 100% donors driven, including technical staff are foreign. In terms of conflict of interest or political affiliations, well such happen but are mainly suppressed due to the signed non-partisan pledges by monitors.</p>

<p>Law Enforcement Agencies</p>	<p>Ensure the maintenance of law and order during the course of the electoral cycle share information,</p>	<ul style="list-style-type: none"> • Code of conduct and roles during the electoral period; 	<p>Zambia has an electoral code of conduct though it is weak in terms of enforcement. This code only comes into effect 90 days into the elections or immediately the nomination of candidates has been done.</p>
	<ul style="list-style-type: none"> • Training and operational plan and manuals for the electoral period; • Deployment plans from pre-election through to post-election period; 		<p>The law enforcement Agencies have an electoral handbook on electoral policing in addition to the Electoral Code of Conduct outlining the role, duties and responsibility of these law enforcement agencies during the electoral period. Police Officers involved in electoral policing undergo training and develop operational plans and manuals. The Police Officers are using summoned to help the commission during voter registration and voting for the sake of maintaining law and order and protecting life and property. After election, they are redeployed back to stations until again there is a by-election.</p>
	<ul style="list-style-type: none"> • Budgetary allocations and actual expenditure for the electoral period; • Details of any reported election related crimes, including the number of cases reported ; 		<p>In the 2019 Yellow Book which is the budget estimates, only ZMK135m was allocated to the Commission to conduct voter registration below the required budget of ZMK800m. Government, however, managed to source half of the money required and this impacted negatively to the commencement of the registration process scheduled to have started in May, 2020 but is now pushed to October 28, 2020 for only 30 days. In the 2020 budget estimates, only ZMK598.1m has been allocated. In terms of electoral related crimes, the main ones are violence, voting buying, blackmail and corruption. It is sometimes hard to quantify them.</p>

		<ul style="list-style-type: none"> steps taken to investigate, prosecute or withdraw such cases; 	<p>Very few cases have been dragged to court on account of corruption, vote buying, abuse of government resources and blackmail. A few those have been taken to court as election petition have not been successful due to complication in the law. For instance, Sec. 97 of the Electoral Process Act guides that “the election of a candidate...shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal ...that a corrupt practice, illegal practice or other misconduct has been committed in connection with the election i) by a candidate; or ii) with the knowledge and consent or approval of a candidate or of that candidate’s election agent or polling agent.” However, case withdraw of the election petition is allowed under Sec. 103.</p>
<p>Media and internet regulatory Bodies</p>	<p>Media and internet regulatory bodies shall adopt regulations on media coverage during elections that ensure fair and balanced coverage of the electoral process and transparency about political advertising policy on media and online platforms. Such regulations shall proactively disclose to the public</p>	<ul style="list-style-type: none"> Details of any arrangements whereby any person(s) or group(s) is/ are authorised by law enforcement agencies to perform specific law enforcement related tasks during the electoral period. Complaints procedure against media organisations that violate the regulations; 	<p>This is not practiced in Zambia. This task is purely the duty of the law enforcement agencies. In this regard, the ECZ always work in collaborations with Zambia Police Service which provide security services at polling stations and to ECZ gadgets. This is well put in the Electoral Code and Electoral Act. E.g. Sec 4(6) of the Electoral Process Act expects that the Zambia Police Service shall enforce law and order at polling stations and undertake any criminal proceedings in respect of an offence committed by any person in contravention of this Act</p> <p>This is well articulated in the Independent Broadcasting Authority (IBA) and also the criminal sanctions contained in the Penal Code. However, the electoral code, there is no proper arranged complaints procedure against the media that violate the electoral regulations. Regulation 7 of the Electoral Code of Conduct, it states, “in liaison with the Commission, recognise a representative media body authorised to receive complaints and provide advice regarding fair coverage of elections.</p>

<p>The law provides penalties and enforcement mechanism such as the prosecution of the offenders and suggests maximum penalties to the convicts such as 2,000 penalty units, imprisonment to sentence not exceeding 2 years or to both. E.g. Sec. 4(5) of the Electoral Process Act demands that the Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Act, 2012</p>	<ul style="list-style-type: none"> The enforcement mechanism for ensuring compliance with the decisions taken and sanctions imposed; 	
<p>There is no Code of Conduct for online media. The existing code of conduct applies for the physical space applies to the online media as media is defined as print or and electronic which include online media. Electoral Act defines media thus "publicly or privately operated print and electronic media". For instance, the Regulation 7 of the Code demands that Print and electronic media shall provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period; Provide news of the electoral process up to the declaration of results. This year, 2021, the Cabinet of Zambia has approved the cyber and security national policy which according to Media Institute for Southern Africa (MISA) Zambia will provide policy guidance on how to deal with online crimes as digital rights entailed ability of citizens to enjoy their rights such as access to information without hindrance.</p>	<ul style="list-style-type: none"> The code of conduct for online media; 	
<p>The law in Zambia provides mechanisms for all with complaints with media or elections to either petition or report to structured committees of the ECZ. The law establishes procedures for lodging and dealing with complaints; impartial handling of election complaints; and; timely resolution of electoral disputes. For instance, the Code suggests that "a candidate or political party who alleges that the candidate or any media organisation in the course of the election campaign, may; lodge a complaint against the media organisation, in writing, to the Commission and where</p>	<ul style="list-style-type: none"> Details of all complaints or petitions received during the electoral period and how these were addressed 	

			<p>a complaint made requires any media organisation to rectify an error, the candidate or political party making the complaint shall send the complaint to that media organisation and a copy of the complaint to the Commission;</p>
<p>The body responsible for regulating the broadcast media and any other relevant national security, public or private body involved in the provision of telecommunication services shall refrain from shutting down the internet, or any other form of media, during the electoral process</p>	<ul style="list-style-type: none"> • Be authorised by law; 	<p>The body responsible for regulating the broadcast media is empowered by law to grant, renew, suspend and cancel licences and frequencies for broadcasting and diffusion services in an open and transparent manner; to enforce the compliance of broadcasting and diffusion services with the conditions of the licences issued under this Act; to issue to any or all broadcasters, advisory opinions relating to broadcasting standards and ethical conduct in broadcasting; to oblige broadcasters to develop codes of practice and monitor compliance with those codes; to receive, investigate and decide on complaints concerning broadcasting services including public broadcasting services;</p>	<p>The body responsible for regulating the broadcast media is empowered by law to grant, renew, suspend and cancel licences and frequencies for broadcasting and diffusion services in an open and transparent manner; to enforce the compliance of broadcasting and diffusion services with the conditions of the licences issued under this Act; to issue to any or all broadcasters, advisory opinions relating to broadcasting standards and ethical conduct in broadcasting; to oblige broadcasters to develop codes of practice and monitor compliance with those codes; to receive, investigate and decide on complaints concerning broadcasting services including public broadcasting services;</p>
	<ul style="list-style-type: none"> • Serve a legitimate aim; 		<p>The body's legitimate aim is to promote a pluralistic and diverse broadcasting industry in Zambia for the development of broadcasting industry through a public process which shall determine the needs of citizens and social groups in regard to broadcasting and to develop program standards relating to broadcasting in Zambia and to monitor and enforce compliance with those standards;</p>
	<ul style="list-style-type: none"> • Be necessary and proportional in a democratic society 		<p>Ideally, this Body is supposed to be necessary and proportional; in a democratic society but in practice, it has been used to gag the media and media practitioner providing independent access to information. For instance, the body closed Prime TV, a privately owned media house on account of it having an expired license yet the same body had failed to act on another Online TV station arguing it had no power to regulate online content.</p>

Media and online platform providers	Any decision of the Media or Internet Regulatory Body shall be subject to judicial review, which shall be undertaken on an expedited basis		Yes the law provides for judicial review of any decisions made by the regulatory or licensing body. The IBA Act provides that the Authority may, suspend the licence for a specified period of time or cancel the licence and further that before deciding on a suspension or cancellation of a licence, the Authority shall afford an opportunity to the licensee to be heard. The law prescribes that any decisions of the Authority shall be subject to judicial review.
	Print, broadcast and online media, whether publicly or privately owned, shall proactively disclose	Editorial and ethical codes or guidelines utilised in undertaking election coverage, including provisions prohibiting incitement to discrimination, hostility or violence, if any; Sanctions for transgressions of these codes or guidelines; Complaints procedures for handling breaches of these codes or guidelines; Number of complaints received and how these were addressed; Code of conduct for staff on procedural matters; criteria for the allocation of airtime or news coverage for political campaign advertisements and activities; Polling methodologies and margins of error; Actual allocation of airtime or news coverage for political campaign advertisements and activities; Plan for transparent repository of all political advertisements, including those targeted at individuals or specific groups on online media; Coverage plan for election day; Criteria for the selection of election commentators, political analysts or other experts; Guidelines on responsible use of online media; and Conflict of interest media ownership information, political affiliations or party support arrangements,	Regulatory Law of the media does dictate that any Corporation and every licensed broadcasting service shall develop a code of professional standards which shall comply with minimum requirements such respect for human dignity and human rights and freedoms, and contribution to the tolerance of different opinions and beliefs. The law also provides complaints procedures relating to public broadcasting or broadcasting services and that the regulatory body has powers to investigate and order the Corporation to either retract or apologise to the injured failure to that, the Authority can apply to the High Court for order to compel the Corporation to respect the decision of the authority. In terms of elections, the Electoral Code provides that the below cited persons may lodge a complaint to the Commission in relation to an election: i) a voter or candidate in a constituency where a breach of this Code has been committed; or ii) From a political party participating in an election. The ECZ has power to reprimand, report to law enforcement of any breaches of the code, revoke accreditation, impose sanctions and summon the culprits. Complaints arising during election campaigns and elections may be made to an election officer or to a conflict management committee at the place where the conduct complained against occurred; there are however, no Guidelines on responsible use of online media; and Conflict of interest media ownership information, political affiliations or party support arrangements but the new policy on cyber and security may have such for online media.

Civil Society Organisations	Information from the CSOs/NGOs	<p>Organisational aims and objectives; Membership and composition; details of key staff and office bearers; Sources of funding; Operational plans, methodology, manuals and their implementation for civic and voter education; Possible conflict of interest, which may include the promotion of a particular religious, ethnic or political interest or bias or prejudice in cases where they participate in both voter education and election observation; and Campaign funders.</p>	<p>By law, all CSOs/NGOs are required to have Organisational aims and objectives and their books of accounts does reveal their sources of funding, operational plans, manuals and implementation plan. Their manuals do spell out possible conflict of interest especially when carrying out voter and civic education activities and election monitoring. Actually, they sign non-partisan pledges</p>
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Communication for Empowerment

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Vision: A Southern African community
that drives its own development