



# OBSERVATION OF THE 2015 ZAMBIAN PRESIDENTIAL BY- ELECTIONS



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## 1.0 Introduction

Zambia held its second presidential by-elections on 20<sup>th</sup> January 2015 this after the death of the incumbent President Michael Sata who had been elected in the 20<sup>th</sup> September 2011 tri-partite elections. This was the second presidential by-election as it was unfortunately the second time a sitting president had died in office. It was the seventh multi-party election since 1991. Before the country was a single-party state (from 1973-1991).

The presidential by-election in Zambia is held under the constitutional and legal framework in place. Zambians aged 18 and over and who have registered as voters are entitled to vote. The main legal instruments governing the presidential by-elections were: The Constitution of Zambia, adopted in 1991 and last amended in 1996; The Electoral Act, adopted on 19 May 2006; The Electoral Commission Act 1996; The Electoral Code of Conduct Regulations of 4 August 2006 and Various ECZ Regulations.

According to Article 34 of the Constitution the president of the Republic of Zambia is elected by direct universal suffrage and by secret ballot. Presidential elections must be held whenever the National Assembly is dissolved or within 90 days of the president vacating office by resignation, death or ceasing to hold office (Article 38). This article was amended after the unpredictable presidential elections of 2008 after the demise of President Mwanawasa.

The body responsible for the managing and administering elections in Zambia is the **Electoral Commission<sup>2</sup> of Zambia (ECZ)**. **Article 76<sup>3</sup>** of the constitution lays out the major functions of the body which is to perform the main functions of election management, such as registration of voters, review of voters' roll, delimitation of constituencies, management of election disputes through Conflict Management Committees, conduct of national and local elections, and conduct of referenda.

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<sup>1</sup> The Constitution includes chapters on the Bill of Rights, co-operative government, parliament, the President and National Executive, provinces, local government, courts and justice, state institutions (including the Electoral Commission), public administration, security services, traditional leaders, finance and more general topics. See

<http://www.parliament.gov.zm/downloads/The%20Constitution%20of%20Zambia%20III%203.doc>

<sup>2</sup> [http://www.elections.org.zm/about\\_ecz.php](http://www.elections.org.zm/about_ecz.php)

<sup>3</sup> [http://www.elections.org.zm/about\\_ecz.php](http://www.elections.org.zm/about_ecz.php)

The electoral commission ensures that before every election, its personnel are adequately trained on all aspects of the electoral process so as to demonstrate high levels of professionalism, competence and understanding of their roles and responsibilities when conducting the elections.

Zambia uses the First-Past-the-Post (FPTP) electoral system. Under this system, the president and the MPs are elected to a one-chamber National Assembly. Legislative power is vested in the National Assembly and the president. Zambians have since challenged this electoral system as it seems to marginalise the special interest group particularly women, youth and persons living with disabilities. In a bid to curb the same the

In its quest to reform the electoral law and constitution as a whole, in 2001 after winning the elections President Mwanawasa appointed a constitutional reform committee as well as an electoral reform technical committee. The two recommended that the president be elected with an absolute majority (50 per cent + 1 of the votes cast) among other changes into the electoral laws. It is unfortunate that by the time presidential by-elections were carried out in 2008 the proposed amendments had not been put into consideration.

The ECZ recognises observers as people who keep an eye on voting procedures, the counting of votes, and the determination and declaration of results. It prepared a checklist on their website so as to provide any willing person(s) who wanted to take part in the election as observer(s)<sup>4</sup> with a chance to participate<sup>5</sup>. However upon accreditation by the same, the KHRC EOM had trouble accessing the totalling centre at Mulungushi Centre as the officers at the scene advised the team that they had not been accredited to observe the same. The accreditation done initially was very clear to the team that they would be able to access both the constituencies tallying centre as well as the tallying centre. It is however recommended that the ECZ ensure thorough accreditation is done so that person(s) cannot miss out on the tallying process which is a crucial part of the democracy and electoral progress.

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<sup>4</sup> [http://www.elections.org.zm/media/ecc2\\_form.pdf](http://www.elections.org.zm/media/ecc2_form.pdf)

<sup>5</sup> <http://www.elections.org.zm/monitor.php>

## 2.0 Methodology

The Kenya Human Rights Commission (KHRC) upon invitation from the Zambia Electoral Commission (ECZ) sent four representatives as observers from 15<sup>th</sup> to 22<sup>th</sup> January, 2015 to observe the presidential by- Elections. The observation exercise entailed collecting information based on an Electoral governance assessment framework developed by KHRC to collect information on the pre-polling, polling and post-polling stages of an election. The framework identifies these stages to entail the following key processes (though not exclusively exhaustive):

PRE-POLLING STAGE	POLLING STAGE	POST-POLLING STAGE
1) Civic and voter education	1) Opening of polling	1) Ballot counting and verification
2) Distribution of electoral boundaries	2) Verification of the integrity of polling material	2) Tally announcement and results transmission
3) Registration of voters	3) Voter identification	3) Vote tabulation
4) Political formations and nominations (parties, coalitions or independent candidacy)	4) Ballot casting	4) Dispute resolution
5) Campaigns	5) Closure of polling	5) Transition and handover

In the pre-polling stage, KHRC undertook initial visits to Zambia from 15<sup>th</sup> and 16<sup>th</sup> to 21<sup>st</sup> January, 2015 and held strategic partnership meetings with 6 organizations/institutions namely: the Electoral commission of Zambia, the Zambia Governance Foundation, Southern African Centre for the Constructive Resolution of Disputes, Caritas Zambia, Zambia Women's Lobby, Operation Young Vote, an expert in PWDS from Ellis and Co. Advocates.

With regard to the polling phase, KHRC's observers visited the IEC results operation centre in Lusaka unfortunately the officers did not allow the team in despite proper accreditation. Further the observers were also able to monitor the general electoral environment before the polling day. On Election Day the observers visited over 20 polling stations<sup>6</sup> in Lusaka distributed along Lusaka Province namely Rufunsa, Shibuyunji, Lusaka and Chongwe constituency. In the polling stations the observers were able to collect information on the opening, voting and closing procedures.

In the post-polling stage, KHRC observers visited 2 polling stations and observed vote counting procedures and the transmission of the result. Due to heavy rainfall on the poll day some polling stations did not manage to have the elections on 20<sup>th</sup> January, instead they were extended to do the same the following day. This greatly influenced the ECZ decision to tally the votes at the national tallying centre in one day. With regards to other post polling procedures such as dispute resolution and transition and handover, KHRC closely monitored authoritative online media as well collected information from other election observer groups that observed the Zambia presidential by- Elections.

### **3.0 Observation Findings**

#### **3.1 Pre-polling stage**

During the pre-polling stage KHRC observers collected information on the boundaries delimitation, voter education, political campaigns, party nomination and voter registration and noted the following:

##### **3.1.1 Boundaries Delimitation**

The review of boundaries is carried out after every 5 years. The ECZ is mandated to conduct delimitation of constituency, ward and polling district boundaries. Article 77.4 states that “the boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable”. This however is not casting stone for the ECZ as they are expected to consider some flexibility in the means of communication, geographical features and the difference between urban and rural areas in respect to the density and population. Prior to the 2016 general elections, the Electoral Commission of Zambia (ECZ) did not conduct fresh delimitation. The commission that the last boundaries used in the 2011 general elections would be used.

##### **3.1.2 Party Nomination**

The legal framework for elections in Zambia meets in the minimum standards for a free and fair election. The main requirement for one to contest in any position is that they are required to belong in a political party. The conditions for one to qualify as a contestant as a presidential candidate as per Article 34(3) of the Constitution of Zambia includes: A candidate must:

- be a Zambian citizen;
- have parents who are Zambians by birth or descent;
- be 35 years old;
- be a member or be sponsored by a political party (produce a sponsorship letter from the party);
- be qualified for election as a member of the National Assembly;
- be domiciled in Zambia for a period of at least 20 years;
- submit a declaration of assets and liabilities;
- have his or her nomination supported by a minimum of 200 registered voters; and
- pay a nomination fee of K10,000 (ten million Kwacha), which is non-refundable

The former vice-president of Zambia could not be elected in as a president. The Zambian Constitution prevents Scott from qualifying as a candidate for President. Article 34 states that a person shall be qualified to be a presidential candidate if both “his parents are Zambians by birth or descent.” Whilst these provisions above are in line with international obligations there are a number of restrictions that are not. For instance the requirements of Zambian parentage this is also overly prescriptive in breach of international obligations. This provision barred the acting president Guy Scott from contesting because his parents were not from Zambia. In interviews, Scott himself seems to endorse this interpretation by declaring that he is ineligible to run for the President’s seat.

Zambia has about 36 registered political parties. Only 11 political parties were participating in the presidential by-elections having fielded eleven candidates to represent them however the race was strongly contested by the ruling party PF and opposition UPND.

### **3.1.3 Voter Registration**

The Elections Act of 2006 was a key legislation that guided the voter registration exercise. The Electoral Commission of Zambia (ECZ) is mandated to conduct continuous voter registration as provided by electoral laws but the same is not being implemented. An eligible voter in the Zambian elections is one who has attained the age of 18. They must

also be Zambian citizens in possession of a green National Registration Card and be a resident in the polling district in which they apply to be registered<sup>7</sup>.

The ECZ was still using the 2011 Voters Register whose data was collected in 2010. On November 30th, 2014 the ECZ certified that the total number of registered voters was 5,166,088. 50.1 per cent of the registered voters are women (2,590,338) and 49.9 per cent are men (2,575,750)<sup>8</sup>. Importantly 53.8 per cent of the voters were aged between 18-35 years old. However, the voter register was last updated before the 2011 general elections. According to reports during the 2011 elections, the voter register which was capturing facial portrait data was a success<sup>9</sup>. This means some of the 5,100,000 registered may have died shifted to other constituencies or countries and some may have lost their voters cards and are hesitant to replace them.

The KHRC observer mission was informed that the Electoral Commission of Zambia (ECZ) chose not to carry out a voter registration exercise ahead of the presidential by-election due to the limited time available. For the 2015 presidential by-election the ECZ only provided for an avenue for voters to confirm their voter registration details at designated voter registration centres for a week from 28<sup>th</sup> December 2014. Most voters who were barred from voting come the polling day and major civil societies indicated that the time issued by the ECZ to confirm voter details. It is through this avenue that citizens of Zambia also got a chance to replace their lost National Registration Card<sup>10</sup> which was needed for one to be able to vote. The Commission was not able to register new voters or re-issue cards to people who have relocated. The ECZ has publically stated that it plans to carry out a fresh voter registration drive ahead of the 2016 tripartite election.

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<sup>7</sup> Voter Registration. Electoral Commission of Zambia. Retrieved from [http://www.elections.org.zm/register\\_vote.php](http://www.elections.org.zm/register_vote.php).

<sup>8</sup> See, Electoral Commission of Zambia, 2014 Register of Voters, available at [http://www.elections.org.zm/media/20141130\\_total\\_counts\\_-\\_constituency.pdf](http://www.elections.org.zm/media/20141130_total_counts_-_constituency.pdf) (accessed on 28/01/2015)

<sup>9</sup> European Union Election Observation Mission Final Report 2011 available at [http://www.eods.eu/library/FR%20ZAMBIA%202011\\_en.pdf](http://www.eods.eu/library/FR%20ZAMBIA%202011_en.pdf) (accessed on 28/01/2015)

<sup>10</sup> ECZ to replace lost voters' cards for the forthcoming presidential by-election. (2014, November 16). *Lusaka Times*. Retrieved from <http://www.lusakatimes.com/2014/11/16/ecz-replace-lost-voters-cards-forthcoming-presidential-election/>.



### **3.1.5 Electoral/Political Campaigns and Finance.**

Zambia is among the few African countries that provide public funding for political parties which is regulated and closely monitored<sup>11</sup>. However both public and private funding is allowed<sup>12</sup>. It is unfortunate that the legal framework for campaign finance is quite limited. This means that there is no regulation of expenditure ceilings nor does the non-existent law provide for mandatory disclosure of funds use by the candidates. This presents an unfair battle field for the contestants as the mightier parties in most situations succeeds.

The Observer Mission noted that there are no significant campaign finance rules or regulations in Zambia's electoral process. Candidates are free to receive money from any donor anywhere in the world. Few entities like the local civil society groups were responsible for the overseeing any misuses of government resources as well as other campaign finance malpractices. They called for a greater transparency and accountability from the candidates as well as citizens in the presidential by-election.

The main legislations that guided the political campaigns include the Public Order Act of 1955 and the Electoral Code of Conduct Regulations of 2011. Article 8 of the Electoral Code of Conduct Regulations of 2011 provides that the ECZ determines the duration of the campaign period. Therefore for the 2015 presidential by-elections, campaign process began on 19<sup>th</sup> November 2014 and ended at 18:00 on 19<sup>th</sup> January 2015.

When the election date was announced, most political parties began their political campaigns from 19<sup>th</sup> November 2014. This was led by PF which unveiled its party leader on Wednesday 30<sup>th</sup> November 2014 as Edgar Lungu. But upon contestation thby other party members who nominated Deputy Minister of Commerce, Trade and Industry, Honourable Miles Sampa the matter was taken to court where the court ruled in favour of Justice minister Edgar Lungu on 3<sup>rd</sup> December 2014 as the rightly nominated candidate for Patriotic Front party.

In another case of unsuccessful interparty democracy, MMD party leader Nevers Mumba approached the court to challenge a decision that was issued against him supporting his suspension from the party with the party adopting former President Rupiah Banda as its

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<sup>11</sup> The Audit of the 2014 General Elections:

<http://www.elections.org.za/content/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=3192>

<sup>12</sup> See more: <http://www.elections.org.za/content/Parties/Party-funding/>

presidential candidate for the 20<sup>th</sup> January 2015 presidential by-election. It is in a Supreme Court ruling on 18 December, 2014, the National Executive Council's (NEC) decision and an appeal brought by Mr Muhabi Lungu, the Party's National Secretary were overturned and Dr. Mumba's candidature upheld.

Media freedom of expression, freedom of expression, freedom of coverage as well as freedom of reporting is guaranteed by the Constitution under Article 11 and 20. The electoral Act establishes the right to coverage of all the candidates and political parties. The KHRC Observer mission noted that the same was lacking why? Because the state owned media Zambia National Broadcasting Corporation (ZNBC) is perceived to be pro-government. This is because they give preference to the ruling party in terms of airing news, and any other campaign activities whilst the private media covers the opposition and other contestants. The presidential debate was held by the state-owned media where the candidates were put to task to ensure they would fulfill their mandates in the remaining presidential term. It is expected in the next elections both the state owned and private owned media will conduct the presidential debate. Print media on the other hand were not left out. Many were leaning towards their preferred political parties or even political aspirants. This overly partisan behavior is highly condemned by KHRC EOM in order to ensure a fair playing ground for all the political aspirants.

Use of technology in campaigning was more evident as political parties used Facebook, Twitter to convey their messages to the masses. Every political party at least had a Facebook page where they used to inform members of the public of their campaign timelines. The ECZ was also very vocal on the social media platform. The ECZ brand was very visible in their campaign on urging voters to vote and 'how-to' mark the ballot papers. This was accompanied by billboard advertisements, stickers among other materials all on both print and electronic media.

Unfortunately the KHRC EOM was informed that people in the remote areas of Zambia were not sufficiently informed of the 2015 presidential by-elections. Case in example was when the team learnt that in the North Western part of Zambia it is very remote and the people do not own even radios to get information most of them were not aware that a presidential by-election was being held just a week to the election. Given the time frame the ECZ had enough time and resources to ensure the people were aware. The political parties

ought to have offered their support during the political campaigns so as to garner the votes in the areas as well.

#### **4.0 Polling stage**

The KHRC's observers noted that the political environment prior the voting day was generally peacefully however the few incidences of clashes between the supporters of the ruling party Patriotic Front (PF) and the opposition UPND. Again the former first lady who had endorsed the UPND survived an attack by members of the public who were supporting the Patriotic Front on January 2<sup>nd</sup> 2015 as she and former deputy speaker of the Zambian parliament Mutale Nalumango. To ensure that the E-day was peaceful, the Electoral Commission deployed adequate security personnel as per the electoral laws.

#### **4.1 ECZ preparedness and management of E-day Procedures**

- The ECZ demonstrated a commendable degree of openness and transparency in the management and conduct of the Zambian Presidential by-election. In all the voting stations that we visited the ECZ officials performed their duties professionally and in accordance with the law. Most of the Officials especially the presiding officers appreciated the work of the observers and party agents and were willing to share information with the observers freely.
- We observed that all polling stations were clearly demarcated and marked with the ECZ posters at the entrance, bearing the polling station name, stream number as well as the names guidelines making it easier for voters and observers to easily identify the their polling stations. We also noted that the ECZ officials were easily identified since they all wore ECZ branded jackets as well as name tags.
- Presence of security officials at every polling station represented by both male and female was a positive sign for provision of adequate security in the elections.
- In Lusaka Girls Basic School we observed that all set up and opening procedures e.g. ensuring that all the ballot boxes are empty before being sealed as well as party agents appending seals on the ballot boxes were carried out excellently by the presiding officer.
- We observed that most of the electoral materials necessary for the exercise (indelible ink, ballot boxes, ballot papers, stamps, voter register, and other

necessary stationery) were adequate and delivered to, and available at the respective voting centres.

- In all the polling stations that we visited, we observed that ECZ officials only allowed eligible voters to vote by ensuring that the details/documents presented by the voters appeared in the voter roll and that voters had valid identification documents.
- We observed that the voting procedures were generally well followed according to the law and the secrecy of the ballot was generally well safeguarded in all stations we visited and in the case of the assisted voters; assistance was provided based on the law.

The main concern which arose from the casting of the ballot is that when the voter was being issued with a ballot paper in the polling stream, the voter's National registration card number was written on the strip which would remain in the ballot booklet. The KHRC EOM came to understand from the communications department of ECZ this was done to curb very many possible elections malpractices which may include: ballot box stuffing among others. KHRC EOM main concern was on the secrecy of ballot. Was this practice promoting the secrecy of ballot?

## **5.0 Post- Polling stage**

During the post polling stage, KHRC collected information on the counting procedures, result transmission, vote tabulation, dispute resolution, and transition and handover.

- The general voter turn-out was very low as compared to any other election. This KHRC EOM would attribute to the heavy rainfall and the social and economic activities like farming: planting season. This may also indicate reduced trust of the citizens in the electoral process.
- For the transmission of results the ECZ had ensured that they were adequately prepared as they acquired satellite phones which would assist in transmission of any electoral related information. The commission had also liaised with country's power supplier<sup>13</sup> to ensure constant power supply through-out the electioneering period.
- Regarding the counting procedures, KHRC observed that the Presiding Officer displayed the ballot papers for the political party agents and observers present

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<sup>13</sup> ZESCO Zambia Electricity Supply Corporation.

during counting to see and verify the ballots and this was the case for all voting stations as reported by other observer groups present such as Carritas Zambia. The political parties present were very keen during counting and made enquiries on any event that they did not clearly understand. The counting of votes was done peacefully without any hitches in the voting stations observed.

The national tallying centre known as the Result Centre was based at the Mulungushi Conference Centre in Lusaka. This was where the ECZ displayed the results as they streamed in from the constituencies. The ECZ also held their briefs and announced the dates they would release the provisional results on the elections results at the centre. It took four days before the final results could be declared as in some areas voting had not taken place due to heavy rainfall on 20<sup>th</sup> January 2015. Infrastructural disadvantages forced some results to come in later in as much as the Commission received assistance from the military helicopters as well as 45 suburban utility vehicles which they had acquired for the same.

## **6.0 Conclusions**

- Based on the aforementioned observations, our conclusion is that the presidential by-elections despite bad weather conditions were held in a fairly stable and peaceful environment which enabled electorate and other stakeholders such as Civil Society, observers and the media to effectively participate in the electoral process.
- The Election Management body was very visible through their branding. It took time to organize and plan for the elections as well as train their officials, who together effectively managed the voting process admirably.
- The Elections were transparent and credible with Human Rights such as the right to vote through secret ballot, the right to vote and the right to freely choose representatives stipulated in article 25 of the International Covenant of Civil and Political Rights (ICCPR) and other international mechanisms being upheld admirably.

## **6.1 Best Practices and Lessons learnt**

### **6.1.1 Use of technology**

The appropriate role of technology in elections is to serve democratic principles such as to increase transparency, empower voters, candidates as well as the civil society, to promote

the government' of the people for the people by the people' and importantly to improve efficiency. In reference to the 1994 South Africa elections which were conducted without any use of ICT, such was a clear indication that elections are not about technology but about the people. The greater need for Zambia is to ensure the technology it has embraced works best to all the needs. Countries such as Ghana and Kenya have been instrumental in the use of technology during voter registration, voter identification and transmission of results. The challenge however, has been the effective utilization and management of such technology by the election management bodies which has seen Countries Such as Kenya fail miserably. Zambia appreciated the use of ICT by employing satellite phones for use to transmit electoral related information particularly conveying the results to ECZ. This was the case for all the rural parts as they are not yet covered by Global Standard for mobile (GSM) technology.

Technology played a huge and important role in the by-Elections. The commission employed such technology as a way of improving credibility and it was in use mostly for tallying and transmission of results. It is very unfortunate that voters embraced the use of technology to the disadvantage of the ECZ and to themselves as the director Priscilla Isaacs indicated during a question and answer session at the Mulungushi Centre. Some voters took photos of the ballot papers on how they had voted and shared the same on the social media platform. In response she indicated that the commission would have to see how they would deal with the menace come the general elections expected in 2016. This showed that Zambia generally has to progress so as to facilitate for the economical and social needs of all persons. This will make the work of the ECZ a bit hectic as well. It will minimise any man-made disasters in the elections.

### **6.1.2 Participation of Marginalized groups**

The participation of women, persons with disabilities and other marginalized groups and the extent in which the Commission came up with measures to ensure that the elderly and persons with disabilities effectively participated in the presidential by-Elections was very minimal however it provides invaluable lessons where many countries can learn from. The director of the Electoral Commission of Zambia noted that the inclusivity of these persons was wanting. She informed the KHRC EOM that certain quotas of the inclusivity of the

same have been introduced to the parliament many times but the politicians have refused to push them.

In all the polling stations we visited we noted a high number of women engaged as ECZ officials, Party agents. As indicated earlier the voter turn-out was very low. Many women were in the fields planting in preparedness of the rains, there was a very low participation of women as voters. This showed that it is important for ECZ to conduct voter education together with other stakeholders to ensure every person understands the importance of voting to an individual and the society at large.

The principles of equality and non-discrimination are constitutionally protected. Although Zambia has signed key international and regional instruments for equality between women and men, women remain under represented in public life. The national legal framework does not provide for affirmative action for the representation of women. Despite women constituting half of the voting population they account for less than 15 per cent of those participating in the legislative and decision making processes.

Barriers within the political parties, lack of access to resources and opportunities, and an absence of positive measures to encourage the participation of women in public life were reflected in the low percentage of women candidates in these by-elections. There was one female candidate Edith Nawakwi running for presidential by-election.

### **6.1.2 Participation of Minorities and Special Needs Voting**

The constitution provides general guarantees of equal rights and freedoms and prohibits discrimination on grounds of race or religion. The constitution obliges the Electoral Commission to ensure access to voting for all eligible persons on the basis of non-discrimination including voters with disabilities. There were some provisions for assisted voting and unlike in 2011 where 6,500 tactile ballot templates for the presidential election for the visually impaired were distributed to polling stations, in 2015 none were printed. Furthermore, special voting provisions provided for in law to allow housebound and the hospitalized to vote were not implemented largely due to disagreements amongst stakeholders on the procedures to be adopted. Polling stations were also mostly located in schools and were not always adequate to accommodate the physically disabled. The polling

booths were extremely high making it completely inaccessible for persons using wheelchair.

There are some obstacles for people who are deemed to be of unsound mind. This category of people is mostly associated with people suffering mental illness and those of psychosocial disabilities. Unfortunately the Zambian law does make reference as to who amounts to be a person of unsound mind. There have also been some complaints from civil society groups focusing on the rights of persons with disabilities that the Government of Zambia is not doing enough to provide adequate election-related information, such as sign language on television, for this group of individuals<sup>14</sup>.

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<sup>14</sup> 4 Nkonde, H. (2014, December 1). Zambia: Deaf Complain Over Inadequate Presidential Election Info available at <http://allafrica.com/stories/201412010691.html> (accessed on 28/01/2015)





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