



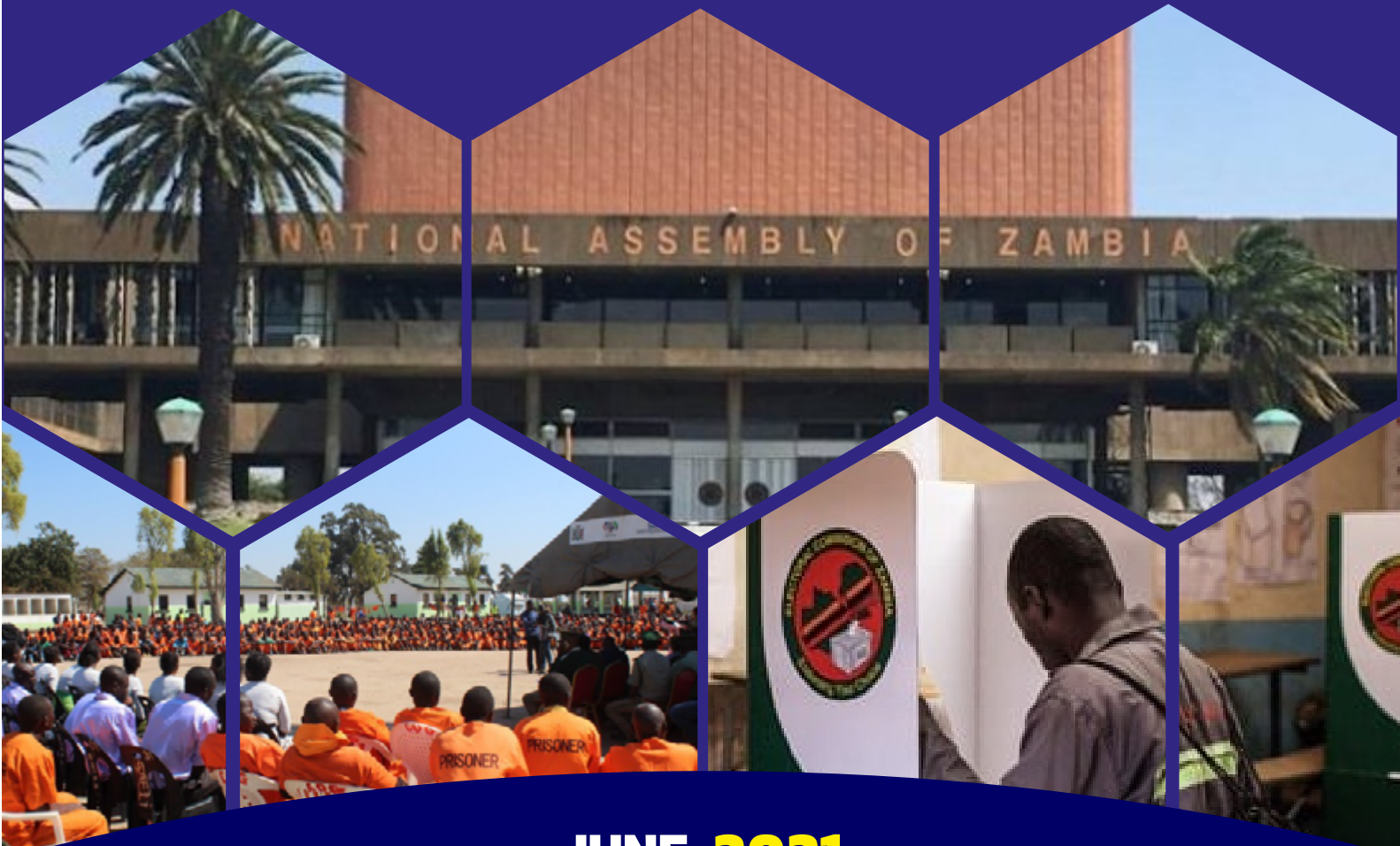
**TRANSPARENCY  
INTERNATIONAL  
ZAMBIA**

# **AN ANALYSIS OF THE ELECTORAL PROCESS**

**(AMENDMENTS) ACT NUMBER.32 OF 2021:**

**LOOKING INTO THE TRANSPARENCY AND INTEGRITY OF THE PRISON VOTE**

**POLICY BRIEF**



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## EXECUTIVE SUMMARY

The Electoral Process (Amendment) Act no 32 of 2021 provides for voting among persons in prisons and makes it illegal for any entity, other than the ECZ, to announce and declare election results. Although, the prison vote was largely expected, following the ruling by the constitutional court in the case of Godfrey Malembeka versus The Attorney-General and Electoral Commission of Zambia, the implementation has however been lacking in terms of wider stakeholder consultation. Consequently, the Amendment Act which is meant to address the modalities for prisoners to vote is limited in terms of scope. Many issues around how to have access and to campaign in prisons have not been adequately addressed. These limitations have reduced the integrity and transparency of the prison vote and thus creating scepticism among political parties.

TI-Z also noted that the Amendment has extensively focused on the polling day while neglecting to make adequate provision for the campaign period. It is not enough for “a” candidate to deliver or distribute campaign materials in prisons, there is need to allow candidates and their teams to explain their manifestos to the prisoners. Finally, TI-Z also notes the provisions in the Electoral Process (Amendment) Act with regards the announcing or declaration of results by other entities such as the media and Civil Society Organizations is a direct attack on Parallel Vote Tabulation (PVT).

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## BACKGROUND

As Zambia draws closer to the 2021 general elections, there have been significant changes in electoral and electoral related legislation. After the failure to pass the Constitutional Amendment Bill No 10 due to nation-wide repeals from members of the opposition, Civil society Organizations and the general public, the PF government has pushed for other legislative changes which have significantly altered the political and electoral landscape. These include The Cyber Security and Cyber Crimes Act No 2 of 2021 which provides for the interception of private communication through ordering service providers [1] and the Electoral Process Amendment Act No 32 of 2021 which provides for the prison vote [2].

The Electoral Process Act number 35 of 2016 is perhaps the single most important electoral law. It provides for a comprehensive process for general elections; provides for the conduct of elections by the Electoral Commission of Zambia and empowers the Commission to make regulations in matters relating to elections [3]. Therefore, any amendment to this Act has serious implications on the electoral process in general, and on the 2021 general election in particular.

This policy brief focuses on assessing the implications of the Electoral Process Amendment Act No. 32 of 2021 on the 2021 general elections. Transparency International Zambia (TI-Z) is greatly concerned about the impact of the newly enacted law, especially that it has received limited stakeholder input. This analysis therefore considers the key provisions of the Act and provides corresponding implications. The Policy Brief seeks to inform evidence-based advocacy and provides a basis for wider stakeholder engagements as part of the 2021 elections project.

## OBJECTIVE OF THE ELECTORAL PROCESS (AMENDMENT) BILL NO 30 OF 2021

The objective of the Electoral Process Amendment Bill No 30 of 2021 which led to the enactment of the Electoral Process (Amendment) Act No 32 of 2021 was to amend the Electoral Process Act No 35 of 2016, so as to-(a) provide for voting by persons in prisons; (b) provide for distribution of campaign material in prisons by candidates in an election; (c) provide for access to prisons by monitors, observers and polling agents on election day; (d) provide access to the community to vote in polling stations established in prisons; (e) prohibit the announcement and declaration of results by unauthorised persons; and (f) provide for matters connected with, or incidental to, the foregoing [4].

THE AMENDMENT THEREFORE FOCUSED ON TWO KEY ISSUES:

- (1) Provide for Voting of Persons in Prisons-The genesis of the provision to allow persons in prisons or persons in lawful custody to vote can be linked to the Constitutional Court Ruling in the case of Godfrey Malembeka versus The Attorney-General and Electoral Commission of Zambia selected Judgment No. 34 of 2017, in which the Court held that “sections 9 (1) (e) and 47 of the Electoral Process Act, No. 35 of 2016 contravene Article 46 of the Constitution as amended and are, void, and should be expunged from the statute books”. The Court subsequently held that persons in lawful custody and those whose freedom of movement is restricted under a written law are entitled to vote in future elections [5]. The Electoral Commission of Zambia was therefore expected to take actions in order to make it possible for persons in lawful custody to vote, in line with this Constitutional Court ruling.
- (2) Prohibit the announcement and declaration of results: The Bill also sought to make it illegal for any entity or person to announce or declare election results. The Oxford Advanced Learner’s Dictionary 6th Ed. p. 43 and 325 defines “announce” as to mean “to tell people something officially or to give information about something in a public place” and further defines “declare” to mean “to say, state something officially or publicly or firmly and clearly”. This amendment is therefore aimed at limiting the dissemination of independently collected results.

## PROVISIONS OF THE ELECTORAL PROCESS (AMENDMENT) ACT NO. 32 OF 2021

THE TABLE BELOW PROVIDES AN ANALYSIS OF THE KEY PROVISIONS OF THE ACT:

**Table 1: Analysis of the Electoral Process (Amendment) Act No. 32 of 2021)**

PROVISION	COMMENT
<p>1. Allowing Prisoners to Vote</p> <p><b>Repelled Provision:</b> “The Commission shall not register a person as a voter if that person (a) is not a citizen of Zambia; (b) is not in possession of a national registration card; (c) suffers from a mental disability which makes the person unable to exercise their right to vote; (d) is detained under the Criminal Procedure Code during the pleasure of the President; (e) is disqualified from voting under section forty-seven; (f) is under a sentence of death imposed by a competent court, or a sentence of imprisonment imposed by a court or substituted by a competent authority for some other sentence imposed by that court; or (g) does not qualify to be registered as a voter as may be prescribed;”</p> <p><b>New Provision:</b> The Commission shall not register a person as a voter if that person is— (a) not a citizen; (b) not in possession of a national registration card; or (c) legally disqualified.”</p>	<p>The Act is not clear as to the meaning of provision (c) legally disqualified: since inmates were considered legally disqualified to vote before the enactment of this Law, so what does this provision refer to since the Bill was passed?</p>
<p>2. Establishment of Polling Stations in Prisons</p> <p><b>New Provision:</b> “(1) Where the Commission establishes a polling station at a prison under section 24, that polling station shall be used by a prisoner, prison officer and member of the public as the Commission may determine. (2) A prison officer may, as far as is practicable, facilitate the transfer of a prisoner to a polling station designated by the Commission.”</p>	<p>This provision does not only establish polling stations in prisons but also allows for members of the public in close proximity to these polling stations to vote and for inmates to vote from other designated polling stations outside prisons.</p>

<p>3. Access to Prisons</p> <p><b>New Provision:</b> “ An officer-in-charge of a prison shall grant access to a prison to the following: (a) the Commission for the purposes of conducting electoral processes; (b) a candidate in an election for the purposes of distributing campaign material in a prescribed manner; (c) an accredited polling agent, observer and monitor for the purpose of observing or monitoring an election; and (d) a member of the public for the purposes of voting”</p>	<p>Whereas the provision provides for access to prisons or correctional facilities, the procedure for accessing these facilities, is subject to the approval of the Officer in Charge.</p> <p>In (b) The amendment provides for a candidate’s access and not his team members.</p> <p>Provision (d) is also problematic in that it allows members of the public to vote through polling stations in prisons. How will the Commission guarantee security?</p>
<p>4. Access to Public Media</p> <p><b>Repelled Provision:</b> “(1) A public officer and public entity shall give equal treatment to candidates. (2) A candidate and political party has the right to have the content of the candidate’s or political party’s campaign message reported in public media in a fair and balanced manner.</p> <p><b>New Provision</b> “(1) A public officer or state institution shall give equal treatment to candidates. (2) A candidate or political party has the right to have the content of the candidate’s or political party’s campaign message reported in public media in a fair and balanced manner.</p>	<p>The change from public entity to state institution narrows the scope of the provision while the replacing of “and political party” with “or political party” though broadening, sounds like there is a condition to be satisfied on the part of political parties.</p>
<p>5. Removal of Limitation to Prison Vote</p> <p><b>Repealed Provision:</b> “A person shall not be entitled to vote at an election if, at the date of the election, that person is in lawful custody or the person’s freedom of movement is restricted under any written law.”</p>	<p>This is consistent with the objectives of the Bill.</p>



6. Restriction on Announcing and Declaration of results

**New Provision:** Section 89(1) of the principal Act is amended by the insertion of the following new paragraph immediately after paragraph (n): (o) without lawful authority announce and declare the results of an election.

This provision makes it illegal for other entities such as CSOs, NGOs, media, political parties and individual citizens to announce or declare election results.

Only the officially announced and declared election results by Presiding Officers are to be broadcasted by the media.

The amendment therefore seeks to limit Parallel Vote Tabulation (PVT) and will reduce the transparency

## CONCLUSION AND RECOMMENDATIONS

The electoral Commission of Zambia (ECZ) has been obligated by Law, in line with the constitutional court judgement to take actions in order to make it possible for persons in lawful custody to vote. Amending the Electoral Process Act is therefore a logical step towards this end. However, it is clear, from this analysis, that the Electoral Process (Amendment) Act number 32 of 2021 does not adequately provide for a transparent and accountable prison vote. The Act has limited provisions and does not adequately cover concerns regarding access to prisons, campaigning and integrity of the electoral process.

The Amendment has extensively focused on the polling day while neglecting to make adequate provision for the campaign period. It is not enough for “a” candidate to deliver or distribute campaign materials in prisons, there is need to allow candidates and their teams to explain their manifestos to the prisoners through campaigns. Finally, TI-Z also note that the Electoral Process (Amendment) Act has prohibited the announcing or declaration of results by other entities such as the media and Civil Society Organizations. This provision will reduce the transparency and integrity of the electoral process through limiting Parallel Vote Tabulation (PVT).

## REFERENCES

- [1] Government of the Republic of Zambia (2021) The Cyber Security and Cyber Crimes Act, 2021, Retrieved from [ <https://www.parliament.gov.zm/node/8832> ]
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- [4] Government of the Republic of Zambia (2021) The Electoral Process (Amendment) Act No 3 of 2021, Retrieved from [ <https://www.parliament.gov.zm/node/8823> ]
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