THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

ELECTIONS AS A HUMAN RIGHT

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A dissertation submitted to the School of Law at the University of Zambia in partial fulfillment of the requirements for the award of the Bachelors Degree of Law (LLB).

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DECLARATION

I, CHILESHE M. CHILESHE, do hereby declare that this dissertation is my authentic work and that to the best of my knowledge, information and belief, no similar piece of work has been previously produced at the University of Zambia or any other institution for the award of a Bachelor of Laws Degree. All other works referred to in this dissertation have been duly acknowledged. I therefore take full responsibility for the content, errors, defects and omissions herein.

Date: 29.01.2008

Signature: Chileshe
ABSTRACT

Elections are a human rights concern emanating from a persons right to vote. All over the world elections have become an organised method of peaceful democratic transition and indeed represents the principal institutionalized channel of peaceful participation in forming and changing governments. Even at the International level elections are seen as a human rights concern and the right to vote is well entrenched in International human rights law. However, the Bill of Rights in the Constitution of Zambia does not expressly provide for the right to vote. The meaning of this failure to expressly provide for elections in the Constitution of Zambia could be that they are not perceived as an inalienable human right in Zambia. Therefore it is necessary to ascertain the hypothesis of elections as a human right. Doing so will also lead to the assessment of what can be done so as to ensure that the right to vote is considered an inalienable human right in the Zambian context.

Furthermore in addressing this omission it is also imperative to identify the factors that lead to the hindrance of elections and how this in turn affects the enjoyment of other fundamental rights, which are of additional importance for election purposes and at the same time are also enshrined in the Constitution of Zambia. Worthy of individual mention in this regard are the freedoms of conscience, expression, assembly and association.
DEDICATION

To my precious daughter Nkisu Kalemba, having had you in my fourth and final year has meant that at times I have had to dedicate more time to school rather than be with you, indeed it has been a great sacrifice. I want you to know that I love you very much and I am just trying to give you a better future. Thank you for being an angel.
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GLOSSARY OF ABBREVIATIONS

ECZ - Electoral Commission of Zambia

FPTP - First Past the Post system

MMP - Mixed Member Proportional system

PR - Proportional Representation system.

SMM - Single Member Majoritarian system

ICCPR - International Covenant on Civil and Political Rights

UDHR - Universal Declaration of Human Rights.

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CHAPTER ONE

BACKGROUND TO THE STUDY OF ELECTIONS AS A HUMAN RIGHT

1.1 INTRODUCTION

In many African countries elections have become organized methods of peaceful democratic transition and represent indeed the principal institutionalized channel of peaceful participation in forming and changing governments.¹ Democracy comes from the Greek word, "demos," meaning people. The Greek ‘democracy’ which provided for mass participation in political affairs, contained elements of human rights in it. In democracies, it is the people who hold sovereign power over legislator and government.² To this effect, many democracies perceive elections to form the basis for efficient governance and administration of public affairs thus they must be periodic, genuine, free and fair, failure to which this foundation of democracy becomes a fallacy.

Elections are a human rights concern emanating from a persons right to vote. Although the Bill of Rights in the Constitution of Zambia³ does not expressly provide for the right to vote, article 75 of the Constitution enunciates the right to register as a voter; it may be argued by some that this article ultimately postulates the Constitution’s intention to guarantee and protect the right to vote. Even at the International level elections are still

² http://www.hrw.org/press/index
⁴ http://www.sokowanele.com/articles
seen as a human rights concern and the right to vote is well entrenched in International human rights law. In order to afford people a chance to exercise their right to vote in a free and fair manner, government must put in place laws for this cause and there must also be a safeguard of the human and civil liberties of all citizens including the protection of their fundamental rights such as those that relate to movement, association, assembly and expression.\(^4\) However the International community and the civil society have observed governments lack of commitment to implement the recommended means to ensure equity in the electoral process.

The Electoral Commission is the body vested with authority to govern the conduct of elections\(^5\) but regrettably the events of the past 2001 and 2006 Zambian tripartite elections demonstrate the Electoral Commission’s failure to discharge its duties. Additionally, the suppression of certain fundamental rights, as well as the inadequate electoral dispute resolution mechanisms negatively impacts the exercise of elections as a human right.

This paper aims to illustrate that even though they are not clearly seen in this light in Zambia, elections are a human right. It is from this background that this research is focused on reinforcing the hypothesis of elections as a human right. In doing so, it also establishes the factors that lead to the suppression of one’s right to vote and how this in turn affects the enjoyment of other fundamental rights.

\(^5\)Article 76 of the Constitution, Chapter 1 of the Laws of Zambia.
1.2 STATEMENT OF THE PROBLEM

Many countries in both the developed and undeveloped worlds attempt to conduct periodical elections as a means to choosing their leadership. Regular free and fair elections are considered to be the primary manifestation of the citizen’s voice. It is a well known principle that free and fair elections are a crucial point on the continuum of democratization. However it must be observed that democracy involves more than periodic elections. Elections in and of themselves do not constitute democracy, they are not an end but a step on the path towards the democratization of societies and the realization of the right to vote as enunciated in major international human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The United Nations Centre for Human Rights (UNCHR) has further stated that, today taking part in government is recognized as a basic human right in almost every region of the world. In addition to being a human right in itself, the right of citizens to take part in the conduct of public affairs, particularly through elections, requires to be exercised meaningfully so as to guarantee the enjoyment of a number of other internationally protected rights.

Human rights jurists such as Professor C. Anyangwe have stated that, the holding of free and fair elections means that elections must be held under conditions which ensure that the electoral playing field is leveled and the entire electoral process and climate makes the whole electoral

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7 Ibid at pp 1.
8 Ibid at pp 1.
package and environment free, fair and safe for elections. However reports of the past 1996, 2001 and 2006 Multiparty Presidential and Parliamentary elections in Zambia indicate that elections have not been free and fair but have instead been marred by political interference, electoral fraud and other election mal-practices. In fact the European Union Election Observation Mission long term observers deployed into every province during the 2001 election period observed that there were various breaches in the Electoral code of conduct. A significant number of the election monitoring and observation organisations reported lack of adherence to equity in political competition during the 2001 elections. In fact their general observations were that the 2001 elections occurred in a manner that undermined the legitimacy and probity of individuals so elected, and that the integrity of the electoral process and respect of the right of people to freely make political choices was not upheld.

Although elections are a basic human right emanating from a persons right to vote, it has not been strictly observed in Zambia, despite the fact that it is well-entrenched in international human rights law, the right to vote has not been expressly and directly entrenched in our constitution thus this has led to the failure of strict adherence to the human rights aspect of elections. Therefore with regards to elections, this means that the problem that the country is currently being faced with is that elections are not perceived as an inalienable human right in Zambia. Much of this problem is attributable to the weakness of the Electoral laws establishing and strengthening the necessary legal and technical aspects of elections.


The Bill of Rights of the Zambian Constitution does not expressly provide for the right to vote.
1.3 OBJECTIVES OF THE STUDY

Main Objective

The main objective is to examine the thesis that elections are an inalienable human right.

Specific Objectives

The specific objectives are to:

1. Explain what is meant by the phrase ‘Elections as a Human Right.’

2. Identify the factors that lead to the suppression of one’s right to vote and how this in turn affects the enjoyment of other fundamental rights enshrined in the Constitution.

3. Find reasons why the right to vote is not expressly and directly enshrined in the Zambian Constitution despite the fact that it is well-entrenched in international human rights law.

4. State the governments’ obligation in ensuring that the right to vote and other human rights incidental to it are not violated.

1.4 SIGNIFICANCE OF THE STUDY

As already established, past Presidential and Parliamentary elections in Zambia have not been free and fair. In order to know the way forward, it is imperative to assess the current electoral law and its efficacy in ensuring that elections are seen as a human rights concern. If the weak electoral laws are not reinforced then this nation will forever have elections that are not free and fair and marred by political interference, electoral fraud and other election mal-practices. Thus the end result will always be numerous discontent voters as seen in the 2001 and 2006 Presidential and Parliamentary elections and the courts will always be clogged by petitions.
Therefore, this study is necessary and important to the development of the Zambian jurisprudence with regards to the provision of genuine, periodic, free and fair elections. The significance of this study is to illustrate that elections are the means by which people exercise their right to vote, which right must be expressly enshrined in the Constitution of Zambia which is the supreme law of the country. The justification for this research lies in the fact that Zambia like many other emergent democracies does not acknowledge elections as an inalienable human right. In essence, this research endeavors to discuss why elections are not regarded as a human right and how in the future elections may be so regarded.

1.5 RESEARCH QUESTIONS

1. What is meant by free and fair elections?

2. Why are elections not regarded as a human right?

3. How has the failure to protect one’s right to vote affected the enjoyment of other fundamental rights?

4. How has the law addressed governments’ failure to expressly enshrine the right to vote in the Laws of Zambia?

5. What measures can be taken by government in order to prevent human rights abuses and other state failures likely to hinder the exercise of the right to vote?

1.6 METHODOLOGY

Data collection will mostly be by way of desk research of both published and unpublished work and will where deemed necessary be supplemented by direct interviews with lecturers and personnel from the Human Rights Commission and the Electoral Commission. Case law and
relevant pieces of legislation will also be extensively consulted. Internet sources will also be employed.

1.7 SCOPE AND LIMITATION OF THE STUDY

It is evident that neither the previous nor the current Zambian Constitutions have expressly and directly enshrined the right to vote and this has warranted the nation’s failure to regard elections as an inalienable human right. For this reason the scope of the study shall be limited to elections in the Multi-party era of Zambia. In order to afford readers a broader understanding, from time to time a comparison will be made between our Electoral laws and those of other Countries so as to see whether or not elections are seen as an inalienable human right in such countries.

1.8 STRUCTURE OF THE DISSERTATION

CHAPTER ONE – this is the chapter that lays out the background to the study; it contains an introduction, statement of the problem, objectives, significance and limitations of the study.

CHAPTER TWO – here the nature and definition of elections is reviewed together with the concept of free and fair elections. Attention is also given to electoral systems, specifically the Zambian electoral system. It further goes on to analyse the legal basis for elections.
CHAPTER THREE – this chapter discusses the concept of elections as a human right. It further looks at the elections and the human rights dimension and seeks to establish how it is that elections are a human rights concern.

CHAPTER FOUR – here the factors that affect ones right to vote are analyzed in detail and it shows that these factors are as a result of weak electoral laws, additionally suggestions of how these factors maybe curbed so as to ensure non derogation of ones right to vote are also given.

CHAPTER FIVE – here focus is given to the other rights that are negatively affected by the suppression of one’s right to vote. These rights include freedom of concise, freedom of expression, freedom of association and assembly and freedom of movement. A ‘free’ electoral process is one where fundamental human rights and freedoms are respected.

CHAPTER SIX – This chapter contains the conclusions drawn from the issues raised throughout the research and the recommendations made thereto.
CHAPTER TWO
ELECTIONS

2.1 INTRODUCTION

It is important to establish the theoretical context of elections from the onset by asking the question: ‘Why study elections?’ This is an important inquiry because political skeptics and others often question whether elections really matter. There are a number of substantive reasons why elections should be studied one of which is that, the opportunity to choose through periodic elections who will govern is widely held as hallmark of a representative democracy. However despite this orthodoxy, some social scientists maintain that elections do not matter at all, others assert the opposite. The former argue that popular choice and consent can be achieved equally, if not better through such methods as acclamation, rotation, elite bargaining, seniority or revolutionary proxies. Committed democrats scoff at such methods and counter-argue that popular elections are the principal means through which citizens can influence their leaders, selecting and deposing them routinely.12

2.2 ELECTIONS DEFINED

The dictionary definition of election is that it is, ‘the process of choosing a person or a group of people for a position, especially a political position, by voting.’13

Peter H. Aranson in his book entitled American Government: Strategy and Choice14, defines the term election as, ‘a means by which people exercise their right to vote.’

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He further goes on to state that an election has four elements, namely **Voters, The vote, Election candidates and Election rules**.\(^{15}\)

(i) Voters – a voter is a citizen who votes and is considered as the most fundamental persons in an election.

(ii) The vote – this is the citizens (voters) fundamental political resource. The citizen in a collective choice must decide to use his resource or not to use it.

(iii) Election candidates – this is the object of the citizen’s vote, the thing for or against which he or she might vote.

(iv) Election rules – the election decision rule takes the votes that have been cast and combines them to declare the winning candidate if there is one.

Stefan Melnik\(^{16}\) defines an election as, ‘**a process where people choose their leaders by voting.**’

Elections are indispensable in a democracy as the governors must derive their power to govern through the votes of the governed. Ideally, elections are a means of overcoming authoritarian forms of government and also represent the principal channel of peaceful participation in forming and changing governments.

Ginsberg and Stone offered four illustrations on the importance of elections by distinguishing them from other mechanisms of popular influence over political leaders.\(^{17}\)

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15 Ibid, at 125.
Firstly, elections formalize the character of popular participation in and influence over government, thereby enabling and rendering independent, at least in theory, the citizen’s capacity to influence the conduct of politicians. Secondly, popular elections compensate for private inequalities in political resources by introducing a formal public mechanism for influencing official political conduct. Thirdly, they provide a new and subtle way in which powerful forces in society can manipulate popular influence through institutionalized mechanisms. Fourthly, popular elections substitute participation in the selection of leaders for direct intervention in, or resistance to, public policy making and implementation. While rioters may force a government to adopt or abandon a particular public policy, the electorate can exert its influence only at periodic intervals by voting.

2.3 CONCEPT OF FREE AND FAIR ELECTIONS

Professor CarlsonAnyangwe in his article, ‘Elections and Electoral Codes of Conduct’, observes that elections are said to be free and fair if they are held in and under conditions which ensure that the electoral playing field is leveled and the entire electoral process and climate makes the whole electoral package and environment free, fair and safe for elections.18

From this assertion stems the question ‘What Constitutes a Free and Fair Election?’

A 'FREE' electoral process is one where fundamental human rights and freedoms are respected including19:

Freedom of speech and expression by electors, parties, candidates and the media; freedom of association; that is, freedom to form organizations such as political parties and Non

Governmental Organisations; freedom of assembly, to hold political rallies and to campaign; freedom of access to and by electors to transmit and receive political and electoral information messages; freedom to register as an elector, a party or a candidate; freedom from violence, intimidation or coercion; freedom of access to the polls by electors, party agents and accredited observers; freedom to exercise the franchise in secret and freedom to question, challenge and register complaints or objections without negative repercussions.

A 'FAIR' electoral process is one where the 'playing field' is reasonably level and accessible to all electors, parties and candidates and includes:\(^{20}\):

An independent, non-partisan electoral organization to administer the process; guaranteed rights and protection through the constitution and electoral legislation and regulations; equitable representation of electors provided through the legislation; clearly defined universal suffrage and secrecy of the vote; equitable and balanced reporting by the media; equitable access to financial and material resources for party and candidate campaigning; equitable opportunities for the electorate to receive political and voter information; accessible polling places; equitable treatment of electors, candidates and parties by elections officials, the government, the police, the military and the judiciary; an open and transparent ballot counting process and an election process not disrupted by violence, intimidations or coercion.

2.4 TYPES OF ELECTORAL SYSTEMS

There are four main types of electoral systems, these are:

(i) First Past the Post (FPTP) system.

\(^{20}\)http://www.commonborders.org/free and fair elections.htm.
(ii) Proportional Representation (PR) system.

(iii) Single Member Majoritarian (SMM) system.

(iv) Mixed Member Proportional (MMP) system.

First Past the Post System – under this type of electoral system the country is delimited into geographical areas known as constituencies and voters in each constituency return one Member of Parliament (MP), who has either received more votes than the other candidates contesting that particular seat or who is an unopposed candidate for that particular seat and the most common major refinement to First Past the Post systems is the requirement, that a candidate receives an absolute majority of the votes cast in a constituency.21

Zambia like most other former British colonies such as Kenya, Malawi and Botswana uses the FPTP system. The first past the post system used in Zambia was inherited from Britain and has been in existence since independence in 1964 till date. At independence the Zambian Independence Constitution put in place by the outgoing British colonialists provided for a Westminster type of government with an executive president. The Westminster type of parliamentary democracy also makes a provision for opposition parties as is evident from the Zambian 2006 presidential, parliamentary and local elections where president Levy Mwanawasa of the Movement for Multiparty Democracy (MMD) stood in a simple majority system against four other presidential candidates: Michael Sata of the Patriotic Front (PF), Hikainde Hichilema of the United Democracy Alliance (UDA), Godfrey Miyanda of the Heritage Party (HP) and Ken Ngondo of the All Peoples Congress Party (APC). In the National Assembly elections, 13 parties participated and a total of 709 candidates contested the 150

parliamentary constituency elections. A total of 4,509 candidates registered to compete in the local elections.\textsuperscript{22} 

In normal circumstances under the first past the post system practiced in Zambia, reviews of the boundaries of constituencies takes place whenever a census of population has been done. The Census and Statistics Act provides for the conduction of a census on such day in any year as the Minister may fix by gazette notice.\textsuperscript{23} The last delimitation of constituencies was done in 1991. It was expected that after the 2000 census a new delimitation would be done prior to the 2001 and 2006 elections but this was not the case.\textsuperscript{24} When asked on the failure to delimit more constituencies some of the reasons advanced by Mr. Kamwi, Legal counsel for the Electoral Commission of Zambia are that there is limited sitting capacity in the National assembly and the financial constraints of paying more Members of Parliament. The Constitution of Zambia demands that the country should be divided into constituencies equal in number to the seats of elected members of the National Assembly. Article 77 of the Constitution of Zambia governs the conduct of the delimitation exercise. When reviewing the constituency boundaries, the Electoral Commission has discretion to alter them as it deems fit.

The merits of this system are that it is easy to operate, it ensures accountability of Members of Parliament (MP’s) to their constituencies’, it allows independent candidates to stand and it usually provides for the formation of stable governments.\textsuperscript{25} The demerits of the system are that it often produces winners with minority votes and this leads to the all-pervasive problem of ‘wasted votes’ whereby a considerable proportion of the votes do not form part of the


\footnote{Section 6(1) of Chapter 127 of the Laws of Zambia.}

\footnote{Zambian Human Rights Report 2001 pp 47.}

\footnote{Smith, T.E.(1960), Elections in Developing Countries: A study of electoral procedures used in tropical Africa, South – East Asia and British Caribbean, , Macmillan & Co. Ltd, London.}

14
calculation for the election outcome, an example of this is the 2001 elections in Zambia where the MMD, despite getting 44% of the vote got 62 seats out of the 150 seats, UPND got 33% of the vote but 47 seats in Parliament. This system also tends to unduly advantage dominant parties leading to a one party/dominant party system (monopoly) or a two-party system (duopoly). The First-past-the-post-system exacerbates regional and ethnic polarization as was seen in the 2006 tripartite elections, it marginalizes small parties and it does not facilitate gender equality and women’s participation in the political process.

**Proportional Representation System** – under this system political parties obtain seats based on the percentage of the total votes obtained in an election. The rationale of the Proportional Representation system is that the demand for the reduction of disparity between a party’s share of the national vote and a party’s share of the parliamentary or local government seats. Proportionality is most likely to be attained where political parties present lists of candidates to the voters. The **PR** system is more likely to produce a reasonable close relationship between votes and the basis for representation in parliament. This system is conducive for enhancing gender equality in politics and increased participation of women. The **PR** system has been known to be used in Namibia, South Africa and Germany. The shortcomings of this system are that there is no effective link between the electorate and the Members of Parliament thus the latter are not accountable to the former but rather to their respective parties. Additionally under this mode of electoral system there is no room for independent candidates.

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27 Joint Interim Report on the 2006 Tripartite Elections prepared by FODEP.
Single Member Majoritarian System - in this system MP's are also elected in constituencies and the MP who receives more than fifty percent of the total number of votes cast for all the candidates is retained in that particular constituency. The SMM system tries to ensure that the winning candidate receives an absolute majority of votes cast (i.e. fifty plus one vote).\textsuperscript{30} The merits of this system are that it establishes stable governments and ensures accountability of Members of Parliament to their constituencies. The demerits of this system are that it often produces winners with minority votes and exacerbates ethnic and regional polarization.

Mixed Member Proportional System - this system combines the first past the post system and the proportional representation system. Under this system some MP's are elected through first past the post while others are elected through the proportional representation system from lists submitted at nomination time. Under MMP system the proportional representation list seats compensate for any imbalance and unfairness in the distribution of constituency based legislature seats.\textsuperscript{31} The merit of this system is that it combines the positive attributes of both the first past the post and proportional representation systems.

2.5 LEGAL BASIS FOR ELECTIONS

THE CONSTITUTION OF ZAMBIA

The Zambian Constitution which is the highest law in the land provides an essential element of the legal foundations of elections. First and foremost even though the preamble may not be legally binding, it is the first part of the constitution that professes the legal bases for election.

\textsuperscript{30} Ibid at 173.
\textsuperscript{31} Ibid at 180.
The second paragraph of the preamble states that, ‘Determined to uphold and exercise our inherent and inviolable right as a people to decide, appoint and proclaim the means and style to govern ourselves’, and the third paragraph of the preamble states that, ‘Recognise the equal worth of men and women in their rights to participate, and freely determine and build a political.... system of their own choice.’

It is evident from both of these extracts that the only way this right that is mentioned in both of them may be exercised is through elections. Therefore this is illustrative of the intention of the constitution to formulate a legal basis for elections.

Additionally, Article 1 of the Constitution of Zambia\(^{32}\) stipulates that:

(1) ‘Zambia is a unitary, indivisible, multiparty and democratic sovereign state.’

and

(2) ‘All power resides in the people who shall exercise their sovereignty through the democratic institutions of the State in accordance with the Constitution.’

It is evident from the provisions of this article that democracy is of paramount importance in Zambia’s political governance. This democratic polity or political governance system necessitates that, the people (shall) have controlling influence on the decisions and affairs of government and also that the people are supreme to government\(^{33}\). In recognition of this\(^{34}\), government should institute responsive mechanisms that ensure that the people are treated with equal respect and as of equal worth in the exercise of their controlling influence.

\(^{32}\) Chapter 1 of the Laws of Zambia

\(^{33}\) Government here in this context is defined as an institutional entity constituting a group of individuals tasked with the management of the common affairs of the country.

\(^{34}\) The tenet of the supremacy of the people is informed by the assumption of the constitution (the assumed embodiment of the people's choice and will) being the supreme law
Ultimately the appropriate responsive mechanisms that will ensure this are periodic free and fair elections.

The right to register as a voter is enunciated in article 75(1) of the constitution, which stipulates that, “Every citizen of Zambia who has attained the age of eighteen years shall unless he is disqualified by parliament from registration as a voter for the purpose of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other so person may be so registered.”

The author is of the view that this express provision of the right to register as a voter is only an attempt by government to manifest the right to vote. This contention shall be further elaborated and commented on in Chapter three.

In further establishing the legal basis for elections it is imperative to also look at article 76(1) states that: “there is hereby established an autonomous Electoral Commission to supervise the registration of voters: to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections.”

Furthermore the constitution lays down the legal foundation of election of the President and Members of Parliament. Article 34(3) stipulates the qualifications for office of the President whereas article 64 gives the qualifications of anyone who intends to stand for election to the National Assembly.

All these listed provisions of the Constitution are part of the formulation of the legal basis for elections in Zambia.
THE ELECTORAL ACT

The new Electoral Act\(^{35}\) of 2006 provides an adequate framework and effective basis for the conduct of democratic elections. The preamble for the electoral act makes provisions for a comprehensive process for elections to the office of President and to the National Assembly. Empowerment of the Electoral Commission to make regulations providing for the registration of voters and for the manner of conducting elections, for offences and penalties in connection with elections, with respect to election petitions and hearing and determination of applications relating to elections to Parliament and to provide for matters connected with or incidental to the foregoing. Section 5 of the Electoral Act stipulates that, every person shall be qualified for registration as a voter in direct elections who-

a) Is a citizen of Zambia.

b) Has attained the age of eighteen years.

c) Is in possession of a national registration card.

The Electoral Act\(^{36}\) offers yet another insight into the legal framework of elections. The Act makes provision for Presidential and Parliamentary elections and it empowers the Electoral Commission of Zambia to make regulations providing for the registration of voters and the manner in which elections are conducted.\(^{37}\)

ELECTORAL CODE OF CONDUCT

Statutory Instrument No. 90 of 2006 – The Electoral (Code of Conduct) Regulations 2006 further enunciates the legal basis for elections under regulation 6 which is on the Rights of

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\(^{35}\) Act No. 12 of 2006.

\(^{36}\) Act No. 12 of 2006.

\(^{37}\) Section 129 of Act No. 12 of 2006.
every person with regards to elections. Regulation 6 (a) stipulates that, “every person shall subject to regulation 7 have the right to express political opinions.”

Conclusively it can therefore be said that elections are the bedrock of democracy and are the only sure means of ensuring that the decision-makers derive their mandate to rule from the people. Thus in order to be acceptable, elections must be democratic. In order to be democratic elections must be free and fair. For elections to be quoted as being free and fair they must be held in and under conditions which ensure that the electoral playing field is leveled, ultimately both ruling party and opposition party candidates must enjoy the same freedom of expression, assembly, association and movement necessary to voice their policies.

Zambia derives an adequate framework and effective basis for the conduct of democratic elections from a number of legal documents inclusive of which are the Constitution of Zambia, the Electoral Act, the Electoral Commission Act and the Electoral (Code of Conduct) Regulations 2006 - Statutory Instrument No. 90 of 2006.
CHAPTER THREE

ELECTIONS AS A HUMAN RIGHT

3.1 INTRODUCTION

The protection of human rights is a fundamental objective of any democracy. When elections are being held it is important to ensure that the human rights of the electorate and the election candidates are not infringed upon so that both parties have faith and integrity in the process. The concept of democracy requires profound reflection on the methods that can be set in place so as to ensure the protection of human rights during election periods at both international and domestic levels. To this effect a number of questions are raised, among them are issues such as, “How can a balance be struck between candidates from the ruling party and those from the opposition parties with regards to their individual rights and freedoms during election time?”, “How can the human rights of both the electorate and the election candidates be protected during elections?” This chapter endeavors to answer the above questions by looking at elections and the human rights dimension and also the right to vote. It must however be observed that the multifarious challenge of ensuring the protection of human rights faces everyone who is a stakeholder of any particular election process.

3.2 HUMAN RIGHTS DEFINED

Human rights are by definition, the rights one has simply because one is a human being. This definition identifies human rights as the rights in the strict and strong sense of the term and it
establishes that they are held simply by virtue of being human.\textsuperscript{38}

The International human rights Covenants\textsuperscript{39} note that human rights ‘\textit{derive from the inherent dignity of the human person.’} Professor C. Anyangwe states that human rights are, ‘rights inherent in mankind’s nature and without them mankind cannot live like human beings; they are the foundations of existence and co-existence.’\textsuperscript{40}

Furthermore, the area of human rights has been defined in quite broad terms so as to include \textbf{civil liberties, political rights and economic and social rights.}\textsuperscript{41}

Civil liberties consist primarily of the ‘\textit{free space}’ that every government must guarantee the individual by not interfering in a certain private sphere; the right to life and security, the right to private property; the possibility of expressing one’s opinion freely, of practicing a religion, of peaceful assembly.\textsuperscript{42}

Political rights consist of the right to associate with others, the right to form political parties and the right to take part in elections as a voter and/or a candidate.

Economic and social rights are entitlements that the individual has vis-à-vis the state, in order to obviate social inequalities and economic imbalances and also to limit disadvantages caused by nature, age and so on.\textsuperscript{43}

It must be emphasized that the term ‘right’ has a variety of meanings but two of them are of special importance. On one hand ‘right’ may refer to something that is (morally) correct or


\textsuperscript{39}The International Bill of Human rights includes the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural rights (1966), the International Covenant on Civil and Political Rights (1966) and the optional protocol to the latter covenant.

\textsuperscript{40}Professor Anyangwe, C. (2004), \textit{Introduction to Human Rights and International Humanitarian law}, UNZA Press, pp xi.


\textsuperscript{42}Ibid at pp 2.

\textsuperscript{43}Ibid at pp 2.
demanded, the fact of something being right; in this sense right refers to conformity with moral standards. On the other hand ‘right’ may refer to the entitlement of a person, the special title one has to a good or property; as Ronald Dworkin\textsuperscript{44} puts it, ‘rights in ordinary circumstances “trump” other moral and political considerations. It is in this sense that one has a right. Incidentally it is in this sense that one has a human right. The very inclusion of political rights in the definition of human rights is a manifestation of elections being a fundamental human right.

3.3 ELECTIONS AND THE HUMAN RIGHTS DIMENSION

The Bill of Rights\textsuperscript{45} in the Zambian Constitution does not expressly provide for the right to vote \textit{per se}, however article 19(1) provides for the freedom of conscience which denotes among other things a person’s freedom of thought. Incidental to this freedom is the right to register as a voter which is enunciated in article 75 of the Constitution.\textsuperscript{46} The right to register as a voter is an undeniable manifestation of the right to vote in the Constitution of Zambia. However, the submission of the author is that the electorate should not be left to read in between the lines, article 75 should not be used as a gateway to the right to vote which has not been expressly provided for under the Constitution of Zambia. In fact the contention of the author is that failure to expressly provide for the right to vote under the bill of rights of the Constitution is a clear illustration of government’s disregard of the right to vote as an inalienable human right. Therefore in order to correct this human rights oversight, the government can borrow from various international human rights instruments which it supports that have gone a step further and expressly incorporated the right to vote.

\textsuperscript{44} Dworkin, R. (1977), \textit{Taking Rights Seriously}, Cambridge: Harvard University Press, Pg xi, 90.
\textsuperscript{45} Part III of Chapter One of the Laws of Zambia.
\textsuperscript{46} Zambia Human Rights Report 2001, Lusaka Afronet Secretariat.
At International level elections are seen as a human rights concern and the right to vote is well entrenched in International human rights law. For instance, Article 21 of the Universal Declaration of Human Rights\(^\text{47}\) (UDHR) illustrates this express provision of the right to vote and thereby states that:

1. **Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.**

2. **Everyone has the right to equal access to public service in his country.**

3. **The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.**

Therefore to this effect the Universal Declaration of Human Rights is a clear manifestation that the will of the people shall be the basis of authority of government. This will of the people can only be realized through transparent and open elections which play an integral role in ensuring the fundamental right to participatory government.

Additionally Article 25 of the International Covenant on Civil and Political Rights \(^\text{48}\) (ICCPR) also expressly provides for the right of participation, it states that:

**Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:**


(a) To take part in the conduct of public affairs, directly or through freely chosen representatives.

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

(c) To have access, on general terms of equality, to public service in his country.

From these provisions of the UDHR and ICCPR it can be seen that International standards on elections involve three central rights, these are the right to take part in government; the right to vote and be elected; and the right to equal access to public service. The first two of these rights are self explanatory but it is the right to equal access to public service that requires some further elaboration. This right simply entails that all citizens have a right to be served by the government of their country without any discrimination of any kind such as political affiliation, sex, language, etc.

Therefore in line with these two instruments the contention of the author is that they are illustrative of the human rights dimension of elections and so the government can borrow from such international instruments and expressly provide for the right to vote under the Bill of Rights in the Constitution of Zambia, as elections are a human rights concern.

Furthermore in order to fully appreciate the extent of elections as a human rights concern, it is imperative to examine how the right to vote is entrenched in the laws of international organizations in regions such as Africa, Europe and America. Although the
right to vote is not expressed in as much detail as it is in the UDHR and ICCPR, the following instruments still illustrate the need for the entrenchment of the right to vote.

Article 13 of the African Charter on Human and People’s Rights states that:

‘Every citizen shall have the right to freely participate in the government of his (or her) country, either directly or through freely chosen representatives in accordance with the provisions of the law.’

The European Convention for the Protection of Human Rights and Fundamental Freedoms is enforced by the European Court of Human Rights and pursuant to Article 3 of Protocol I of the Convention parties undertake to hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Additionally, article 23 of the American Convention on Human Rights and article 20 of the American Declaration of the Rights and Duties of Man guarantee the right of citizens to vote and be elected in genuine periodic elections. The Charter of the Organization of American States (OAS) establishes in its preamble, "representative democracy is an indispensable condition for the stability, peace and development of the region," and establishes that one of its purposes is "to promote and consolidate representative democracy, with due respect for the principle of non-intervention."

The various provisions outlined in the above international human rights instruments are illustrative of how elections are a human rights concern. Incidental to these provisions, the
institution vested with the authority to govern the conduct of elections in any country must act independently and with integrity so as to uphold these accepted international standards for democratic elections and facilitate the exercise of the right to vote.\textsuperscript{49}

3.4 THE RIGHT TO VOTE

The right to vote which is often referred to as the right to political choice or the franchise, is the entitlement of a person to freely make political choices by casting a vote either in favour of a political candidate or a political matter at hand. The right to vote is therefore a human right. In a democracy there is nothing more fundamental than having the right to vote. One of the most critical ways that individuals can influence governmental decision-making is through voting. Voting is a formal expression of preference for a candidate for office or for a proposed resolution of an issue\textsuperscript{50}

The foundation of a democratic mode of government is that people freely make political choices by exercising their right to vote, which is embodied in constitutions and international laws. Ideally, the right to vote is provided through periodic elections thus rules and institutions of government should always be such that they smoothly provide for elections that reflect the will of the people.\textsuperscript{51} The importance of periodicity should not be undermined, once-only elections (for instance, at the time of independence or of its transition from one mode of governance to another) will not be reflective of the human rights dimension of elections. Of late a number of African leaders have sought to increase the number of years of a presidential term


\textsuperscript{50} https://www/unr.edu/humanrts/instree/bludhr.htm

from five years to seven years, thereby adversely affecting the periodicity of elections in their respective areas. The reason in many cases has been that the five year term is not enough for one to achieve a leadership plan. On this matter the author strongly disagrees and submits that no matter how much time one is given, it is never enough, if anything most governments should emulate the United States of America’s election tradition where a leader is only in power for four years. This period is indeed a very democratic one as it is not too long to overly suppress the wants of the electorate. In fact it is highly illustrative of the human rights dimension of elections.

The key fundament of the right to vote is that individuals' have the right to be represented by an individual of their own choice, and that such choice should be implemented without neither direct nor perceived interference from individuals tasked with the management of government, or from a collective group of individuals either in government or of a particular political interest group. Whatever form of constitution or government is in force, states are required to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the right to vote, which it recognizes and protects.\textsuperscript{52} However here in Zambia it must be observed that in 2001 and 2006, elections as a means of realizing the right to vote were fraught with conflicts between political players which resulted in numerous elections petitions. This is not to say that they may never be any election petitions but where these petitions go so far as to undermine the confidence of the electorate and raise suspicions of the election having been rigged this totally defeats the whole purpose of democracy aimed at being achieved through genuine elections.

\textsuperscript{52} Ibid at pp 42.
It is also very important to note that while the right to vote is widely recognized as a fundamental human right, this right is not fully enforced for millions of individuals around the world. As a matter of fact in the early 20th century women were not allowed to vote\textsuperscript{53}. Today the concept of universal adult franchise has displaced a system of voting restricted to ones status in society and ones sex. However this universal adult franchise is still subject to some limitations. Consistently disenfranchised groups include non-citizens, young people, minorities, those who commit crimes, the homeless, disabled persons, and many others who lack access to the vote for a variety of reasons including poverty, illiteracy, intimidation, or unfair election processes. Certainly these reasons are not justifiable because just because one is homeless, disabled or illiterate they do not cease to be citizens. In fact, government’s failure to encourage the exercise of the franchise among these groups of persons is one way of them indirectly rigging the election outcome.

Similarly in Zambia the right to vote is not without qualifications; the qualifications for the franchise include Zambian citizenship and an age of eighteen years and above\textsuperscript{54} and the disqualifications include convicted criminals serving a prison sentence, persons of unsound mind and persons under an acknowledgement of foreign allegiance. Although, the reasons for the disenfranchisement of persons in these categories are almost self explanatory, it is still not clear why those serving prison sentences should not be allowed to vote. In developed nations such as the United States of America even prisoners are afforded a chance to exercise their right to vote. The reasoning behind this is that the right to vote is a fundamental human right thus those serving prison sentences especially short ones will come out and rejoin the outside

\textsuperscript{53} Women in China were enfranchised in 1946 some twenty years after their counterparts were enfranchised in America and Britain.

\textsuperscript{54} Article 75 (1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.
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53 Women in China were enfranchised in 1946 some twenty years after their counterparts were enfranchised in America and Britain.
54 Article 75 (1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.
world therefore they too must have a say on who leads them. However just like any other right the right to vote is not absolute. This would be the justification for denying this right to those prisoners serving long term sentences and also those on death row.

Having examined a number of international instruments in this chapter, the conclusion that can be drawn is that elections are a human rights concern. It has also been observed that even though the government does not expressly deny that the right to vote is an inalienable right, the fact that the Constitution of Zambia does not provide for the right to vote *per se*, is a manifestation of their disregard of this fundamental right. Therefore in order to correct this human rights oversight, the government can borrow from these international instruments that have gone a step further and expressly incorporated the right to vote. The government must ensure that the right to vote is seen as a human right and not as a privilege limited to certain persons, by enshrining it under the Bill of Rights in the Constitution.
CHAPTER FOUR

FACTORS AFFECTING THE FRANCHISE

4.1 INTRODUCTION

In many parts of the world elections are fraught with confusion and ineptitude thereby leading to the prevention of many people from exercising their right to vote. This chapter looks at some of the factors that lead to the suppression of the right to vote in Zambia which include the delimitation process, voter registration and verification, the issuance of national registration cards during the election period and mere voter apathy.

4.2 THE DELIMITATION PROCESS

Delimitation which is also known as electoral geography is the process by which the country is divided into constituencies. Members of Parliament are elected by the voters of individual constituencies. A constituency may return one or more members; it is a single-member constituency if it returns one member, a double-member constituency if it returns two members and so on. In Zambia we have a single-member constituency system, which means that only one member is returned in each of the hundred and fifty constituencies that we have. It is clear that the delimitation of constituencies is a matter of crucial political importance particularly in countries with a single member constituency system – as a given political party may stand to gain or lose representation according to the way in which the precise boundaries of constituencies are drawn.

55 With proportional representation, it is possible for the entire area of a general election to be treated as one constituency for the purpose of counting the votes, though for the purpose of electoral administration, the country would be divided into small units.
Because of the obvious political implications of constituency delimitation, the task of recommending the boundaries of constituencies is frequently entrusted to an impartial commission; in Zambia the body so entrusted is the Electoral Commission of Zambia. In Zambia, reviews of the boundaries of constituencies take place whenever a census of population has been done. The Census and Statistics Act\textsuperscript{56} provides for the conduction of a census every ten years. The last delimitation of constituencies was done in 1991. It was expected that after the 2000 census a new delimitation would be done prior to the 2001 elections but this was not the case\textsuperscript{57}. The Constitution of Zambia demands that the country should be divided into constituencies equal in number to the seats of elected members of the National Assembly. Article 77 of the Constitution\textsuperscript{58} of Zambia governs the conduct of the delimitation exercise. However it is clear from the European Union Election Observation report on the 2006 Tripartite Elections that no new delimitation process was conducted. Instead only a review of the constituency boundaries as opposed to the real delimitation process was undertaken. The exercise only resulted in an increment of polling stations. When reviewing the constituency boundaries, the Electoral Commission have discretion to alter them as deemed fit.

In reality there are however a number of problems that arise when delimiting individual constituencies which include those of balancing a variety of rival considerations such as the near equality of population between constituencies, the inclusion of administrative units in constituencies, the inclusion of administrative units in constituencies and local community

\textsuperscript{56} Chapter 127 of the Laws of Zambia. \\
\textsuperscript{57} Zambian Human Rights Report 2001 Pg 47. \\
\textsuperscript{58} Chapter 1 of the Laws of Zambia.
interests based on social or economic factors, physical features and communication. As a result of this, to a certain extent the delimitation process does ensure that boundaries are drawn in such a way as to take account of local feelings based on community set-ups, economic interdependence and some other common interest.

Having established the importance of the delimitation process it can therefore be said that it affects ones exercise of the franchise, if the Electoral Commission fails to take into account the number of eligible voters in a particular constituency when conducting the delimitation exercise, it may cause a serious flaw in the sense that places where there are more eligible voter will have fewer constituencies thereby causing geographical obstacles that hinder the exercise of the right to vote. In South Africa unlike Zambia the electoral laws there direct the Independent Electoral Commission of that country to take into account the number and distribution of eligible voters when conducting the delimitation exercise. This guards against any attempt by the ruling party to influence the electoral commission to create more constituencies in areas where such party is popular. Additionally the delimitation exercise should aim at creating more polling districts that are within reasonable distances so that the electorate does not have to travel long distances to the polling stations as this will cause many eligible voters to shun the electoral process thereby adversely affecting their right to vote.

4.3 REGISTRATION AND VERIFICATION OF VOTERS

In Zambia, article 75 of the Constitution somewhat guarantees the right to vote of every

60 South African Electoral Laws and Regulations: 1999
61 During the 2001 Zambian tripartite elections the European Union pointed out that the exceptionally wide variations in constituency sizes – from 5028 to 61 328 – indicated the need for fresh delimitation exercise.
citizen but in order for one to exercise this right, one must be registered as a voter in a constituency. It must however be established that in Zambia certain categories of persons are prevented from registering as voters, these include persons without National registration cards, convicted criminals serving a prison sentence, persons of unsound mind and persons under an acknowledgement of foreign allegiance. The registration of voters entails the appending of names of those who are eligible to vote in an election, in a register. The registration of voters is essential in an election because:

a) It enables voters to know before elections where they have to cast their votes from.

b) Political parties and candidates use the register as a basis for organizing their electoral campaigns.

c) It helps adjudicate who qualifies as an elector during election time.

From the past voter registration exercises, records indicate that the process does not capture a large number of people who qualify to register as voters. This is illustrated in the table below.

**FIGURE 1.**

**TABLE OF VOTER REGISTRATION FIGURES 1990 - 2006**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>ELIGIBLE VOTERS</th>
<th>REGISTERED VOTERS</th>
<th>% REGISTERED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>3.5 million</td>
<td>2.9 million</td>
<td>83</td>
</tr>
<tr>
<td>1995/96</td>
<td>4.2 million</td>
<td>2.2 million</td>
<td>53</td>
</tr>
<tr>
<td>1998</td>
<td>4.4 million</td>
<td>2.4 million</td>
<td>56</td>
</tr>
<tr>
<td>2001</td>
<td>3.6 million</td>
<td>2.6 million</td>
<td>69</td>
</tr>
<tr>
<td>2006</td>
<td>5.5 million</td>
<td>3.9 million</td>
<td>71</td>
</tr>
</tbody>
</table>

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62 For further information see Appendix 1 on pp 63.
In as much as the voter registration process is a vital part of an election, at times it may negatively affect the franchise. Where the Electoral Commission fails to deliver registration materials on time or where it is inadequately staffed, it will mean that the voter registration process will be delayed thereby putting off potential electors from registering and qualifying to vote. Poor publicity of the voter registration exercise will also cause the process to negatively affect the right to vote in that potential electors will not be aware of the importance of the exercise thus they will not register as voters and ultimately no qualify to vote at election time. Additionally, the period allocated to the voter registration process must be sufficient or else only a fragment of the eligible population will register and consequently qualify to participate in the elections. It is evident that in order to produce the best results the periods for the voter registration process for the 2001 and 2006 tripartite elections were both extended.

The verification process is intended for all those who registered as voters to verify and ensure that the details in the voters register are correct. However, I am of the view that although this process is intended for the good of elections, at times it can negatively affect the exercise of the franchise. There are instances where there a numerous errors in the register even after voters have verified their particulars or where voters were omitted from the final voters list. The effect of this is that, come Election Day, registered voters with incorrect particulars, shall not be allowed to exercise their right to vote, regardless of the fact that all this is an error on the part of the Electoral Commission. This way, the verification process greatly undermines the right to vote rather than enhancing it. Therefore there must be clear provisions in the law for the

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63 Although the 2001 voter registration exercise was scheduled to commence on 25th June 2001, by the 24th of June 2001 both town clerks of Kitwe and Mufulira were reported to still be awaiting the arrival of the voter registration materials required for the exercise.
64 From 16th to 22nd, 23rd to 26th, and finally, from 27th to 31st July in 2001. From 31st October to 31st December in 2006.
verification of the voters register. Preferably, a voter must be allowed to exercise their vote even if there is an error in their particulars provided the serial number on their voters card and that in the voters register are identical. Furthermore the inadequate period allocated to the verification process and also the inadequate publicity caused the verification process to greatly undermine the right to vote.65

4.4 ISSUANCE OF NATIONAL REGISTRATION CARDS

In order to qualify for registration as a voter, a citizen must first be registered in the national civil register and therefore be a holder of a national registration card. The Department of National Registration which is supposed to issue national registration card on a continuous basis fails to do so because it does not receive adequate funding. It has been observed that during election years the situation is worse as even the little funds it receives normally are mostly diverged towards the elections and where some funds are eventually released this is done late and haphazardly. This greatly affects the exercise of the franchise as eligible voters who do not possess a national registration card are impeded from registering as voters and consequently voting.

In preparation of the 2001 elections, the Department of National Registration introduced mobile registration aimed at complementing the existing system and was also used during the 2006 election period. However one of the observations of the mobile registration process was that due to inadequate resources, the system could only be used in one province at a time. At the time the registration of voters started, the mobile registration teams had not yet covered all the provinces thus eligible voters were not in possession of national registration cards which in

65 Joint interim report on the 2006 Tripartite election prepared by FODEP, AVAP and SACCORD, pg 3.
Zambia are a pre – requisite for voter registration. It has also been observed that the desperation by the public to get national registration cards, coupled with the inadequate capacity of the National Registration Department creates loop – holes for corruption and political interference. For example, in Ndola during the 2001 voter registration process it was reported that the District Administrator had prepared a list of Movement for Multi – party Democracy (MMD) members to be issued with national registration cards, a move that was considered to be calculated so as to influence the outcome of the elections in favour of the ruling Movement for Multi – party Democracy.

Given the above scenario, it is therefore submitted that in order to curb such irregularities and thereby enhance the exercise of the franchise, those without national registration cards must be issued with temporally national registration cards on the spot as they are registering to vote. These temporally national registration cards can be produced in the same manner that voters’ cards were produced during the 2005 voter registration process. Thereafter once elections have passed, the temporally national registration cards may be handed into the National Registration Department in exchange for a permanent one.

4.5 VOTER APATHY

The greatest threat to democracy in Zambia is voter apathy. A close look at voter apathy points to a bigger problem. A quick analysis of answers given by people who have declined to vote in the past shows a variety of reasons for apathy. Some reasons as to why people do not vote are related to the conduct of elected leaders, the issue of governance,
the electoral process, socio-cultural factors, and also personal reasons\textsuperscript{66}. Ironically, the group that seems to be mostly affected by the voter apathy crisis are young people aged between 18 to 25 years. The chief reason that young eligible voters give for not voting is that they think nobody is listening to them. Other reasons that young people cite for not voting are lack of knowledge and that they don't yet feel a permanent obligation to the community so they do not feel obligated to vote.

Voting is tied to age, education, social status and income thus in most societies you find that older people, educated people and those who are financially stable are more likely to vote, but this is not to say that voting is still tied to other factors. Age does however make the biggest difference.

Having established the reasons as to why people do not vote it can therefore be said that voter apathy affects ones exercise of the franchise in that election results that are obtained are not always a true reflection of the will of the people as not all of them have expressed their preference for a candidate for office. Literally speaking a persons vote is there voice when it comes to matters of governance. Government is the group of people who have been given mandate to govern, thus Governance entails the powers given to this group of people to determine the allocation of power and resources and it also entails the systems of decision making and of representation. Therefore where one chooses not to use their voice (through the voting exercise), this greatly undermines the right to vote.

In order to curb voter apathy, voter education must be intensified. Preferably Non-governmental organizations, government bodies and individuals must start the voter education

\textsuperscript{66} Interim report on the 2006 Tripartite election prepared by AVAP.
process well in advance and must not wait until it is election year, so as to cover vast areas of
the country. During the 2006 Tripartite elections voter education was conducted under the
National Voter Education Committee (NVEC) which was established under the Electoral
Commission of Zambia. The media through radio and television should also take an active
role in informing the public about candidates. Making the educated decision is the voter's
responsibility but this decision can only be made if one is enlightened on the candidates, their
parties and their goals.

Having taken note of the fact that the highest levels of voter apathy are amongst the youth it is
submitted that voter education of the youth must be conducted through dance, song and any
other activities that are of interest to this target group. For instance in the United States of
America there have been efforts by MTV (Music Television) to increase youth voter turnout.
"Rock the Vote" through a procession of music and media stars, which was introduced to help
make the younger portion of the population more aware of what is going on in American
politics.

Conclusively, it can therefore be said that in order to curb suppression of the right to vote by
the delimitation process, voter registration and verification, the issuance of national registration
cards during the election period, the law with regards to all these processes must be reviewed
so as to accommodate the above given suggestions and as for the voter apathy crisis, current
voter education must be upgraded and intensified.

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68 http://www.mtv.com
CHAPTER FIVE

ELECTIONS AND THEIR IMPACT ON ASSOCIATED RIGHTS

5.1 INTRODUCTION

It has been observed that in many parts of the world there are grave human rights violations during election periods, particularly with regard to freedoms of conscience, expression, assembly and association. During the Electoral process each of these rights must operate without unreasonable interference so as to ensure that the conduct of elections is free and fair. To this effect, the aim of this chapter is to discuss these rights and how they relate to the Electoral process

5.2 ELECTIONS AND FREEDOM OF CONSCIENCE

Article 19(1) of the Constitution\(^6^9\) provides for the freedom of conscience which denotes among other things a person’s freedom of thought. Incidental to this freedom with regards to elections is the right to vote. One of the most critical ways that individuals can influence governmental decision-making is through voting. Voting is a formal expression of preference for a candidate for office or for a proposed resolution of an issue. Voting generally takes place in the context of an election. The Electoral (Code of Conduct) Regulations\(^7^0\) of 2006 contain provisions that give effect to the freedom of conscience. Regulation 6 (1) (a) provides that every person shall have the right to express political opinion. Freedom of conscience is of great importance as it is a means of discovering and spreading political truth.

\(^6^9\) Chapter 1 of the Laws of Zambia
\(^7^0\) Statutory Instrument No. 90 of 2006, The Electoral Act (Act No. 12 of 2006)
Article 19 (1) of the International Covenant on Civil and Political Rights guarantees the freedom of conscience:

"Everyone shall have the right to hold opinions without interference."

From the above provision it can be seen that this right is absolute and cannot be restricted or interfered with in any manner. The unconditional freedom to hold a political opinion is imperative in the context of elections, since the authentic assertion of popular will is impossible in an environment where such freedom is absent or restricted in any way.

In Zambia there have been reports by the Anti-corruption Commission of the buying off of political opponents, rewarding political supporters and ensuring the backing of key groups through bribery. All these corrupt acts will serve as a hindrance to the protection of the freedom of conscience expressed through political choice. The people, who cast a vote influenced by a bribe, do so under a misguided conception as they do not exercise any choice as envisioned by the freedom of conscience but merely elect the candidate who has paid them regardless of what they have to offer.

5.3 ELECTIONS AND FREEDOM OF EXPRESSION

Citizens in a democracy not only have rights, they have the responsibility to participate in the political system that, in turn, protects their rights and freedoms. In the Handyside v UK case, the European Court of Human Rights issued an obiter dictum which has become the foundation for law with regards to the freedom of expression. The court stipulated that, 'Freedom of

73 Judgment of 7 December 1976, Series A No.24, 23, para. 49
expression constitutes one of the essential foundations of such a [democratic] society, one of the basic conditions for its progress and for the development of every man...it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.’

Article 19 (2) of the International Covenant on Civil and Political Rights\(^74\) states that:

> Everyone shall have the right to freedom of expression; this right shall include freedom to seek receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or any other media of his choice.

Under the freedom of expression, the covenant permits no exception or restriction.

At national level the freedom of expression is enshrined in Article 20 (1) of the Constitution\(^75\).

1 Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

Like most rights that are protected under the Zambian Constitution, the freedom of expression is not absolute. The Constitution unlike the International Covenant on Civil and Political

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\(^75\) Chapter 1 of the Laws of Zambia
Rights, allows for laws that make provisions for derogations so long as it can be shown that the law in question is reasonably required in the interests of defence, public safety, public order, public morality or public health. Further, these derogations are allowed subject to their being reasonably justifiable in a democratic state.

Freedom of expression falls under civil and political rights and like any other rights of this nature it only requires negative obligations on the part of the state in order to enforce it. In other words, the state only has an obligation to refrain from interfering with these rights.

The Centre Against Censorship\textsuperscript{76}, the foremost non-governmental organization concerned exclusively with the freedom of expression, asserts that ‘\textit{both international and national courts are increasingly recognizing positive obligations on the state to take steps to guarantee various aspects of freedom of expression.}’

The freedom of expression is a prerequisite for democracy and thereby also essential in the conduct of genuine free and fair elections. The media plays a crucial role in giving effect to freedom of expression in the electoral process. The media disseminates information about the process and educates and informs the voting public about the alternatives offered to them.

The Electoral (Code of Conduct) Regulations, 2006\textsuperscript{77} contains provisions that give effect to the freedom of expression and the media. Section 6 provides that every person shall have the right to, \textit{inter alia}, express political opinions, debate the policies and programmes of political parties, canvas freely for membership and support from voters, distribute electoral literature and campaign materials, erect banners, placards and posters and campaign freely. All these electoral rights hinge on the freedom of expression and in fact rely heavily on independent reportage by the media.

\textsuperscript{77} Statutory Instrument No. 90 of 2006, Act No. 12 of 2006.
Section 12 of the Electoral (Code of Conduct) Regulations further goes on to state that, 'All 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 period of campaigning.' The media is also directed to provide news of the electoral process up to polling day. The regulations also impose a duty on the media to report fairly and accurately and to refrain from encouraging racism, religious intolerance or hatred. Section 13 makes it a legal requirement for all television and radio broadcasts to allocate equal air-time to all parties for their political broadcasts.

Given this framework, it has been observed that during election periods the freedom of expression has not been as respected as it ought to be across the country. From what was monitored by FODEP, AVAP and SACCORD\(^7\) during the 2006 tripartite elections, it was evident that coverage by the media left much to be desired. Firstly, the private and public media appeared to have been polarized: the public media – the Times of Zambia and the Zambia Daily Mail newspapers were decidedly in favour of the party in government in the way they covered stories about the ruling party, MMD. The favour was evident in the angling of stories and the prominence given to the so – called wondrous works by MMD. In sharp contrast privately owned newspapers such as the Post Newspaper provided perhaps the only alternative channel through which other political parties could expose their stories and market themselves to the people of Zambia.

Furthermore, the monitoring of the coverage of news by the Zambia National Broadcasting Corporation (ZNBC) radio and television stations revealed that the station went to great lengths to ensure that it gave maximum coverage to the MMD, this was a disadvantage and near-

\(^{7}\) Joint Interim Report on the 2006 Tripartite Elections prepared by FODEP, AVAP and SACCORD, pg 5.
exclusion of other political parties in Zambia. In general, the tone of the coverage of elections across all media was dominated by the ruling party in all state owned newspapers, television and radio stations. The only media outlets to critically engage in a balanced coverage of the electoral process were Radio Phoenix and The Post Newspaper.

5.3.1 PURPOSES SERVED BY FREEDOM OF EXPRESSION DURING THE ELECTORAL PROCESS

a) It helps an individual to attain self-fulfillment. The rational individual requires information and an opportunity to express his/her own ideas if he/she is to grow. Therefore in order to make an informed decision and cast a vote, an individual needs to know about the various political parties and what they have to offer, this can only be achieved were the freedom of expression of both the election candidates and the electorate is protected.

b) It assists in the discovery of truth. In the case of Abrams v. U.S, Justice Holmes stated that, ‘the best test of truth is the power of the thought to get itself accepted in the competition of the market.’ Therefore in view of elections, the government must not interfere with dialogue and campaigns of the opposition parties no matter how unpleasant it is may seem to them. Only when the social order is drastically threatened is government allowed to punish a speaker.

In the case of Whitney v California the importance of free expression was outlined in the following words: “Those who won (the) independence (of the United States) ...

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80 250 US, 616.
81 274 US 357 (71 Law ed).
believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; (and) that the greatest menace to freedom is an inert people .. Only an emergency justifies repression of the freedom of expression.”

Alexander Meiklejohn⁸², a renowned jurist, argues that free expression is essential not only to individual choice and development of a person’s rational faculties, but also to effective government, the proclaimed ideal of democracy. Freedom of expression enhances the capacity of an individual to participate in a democratic society and it also provides a mechanism by which to establish a reasonable balance between stability and social change.

5.4 ELECTIONS AND FREEDOM OF ASSEMBLY AND ASSOCIATION

Like the above mentioned rights, the freedom of assembly and association are also critical during election time. It is only by free exercise of these freedoms that political parties and candidates can freely hold meetings or rallies and articulate their policies and views.

Articles 21 and 22 of the International Covenant on Civil and Political Rights⁸³ states that:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the

⁶ Chapter 1 of the Laws of Zambia.
exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 11 of the African (Banjul) Charter on Human and People’s Rights also guarantees this right, and indicates that:

The exercise of the freedom of assembly and association shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Under the Constitution of Zambia\textsuperscript{84}, this right is enshrined in Article 21, which declares that:

Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

In addition to the above stated law, section 6 (g) and (h) of the of the Electoral (Code of Conduct) Regulations, 2006\textsuperscript{85} provide that every person shall have the right to campaign freely and participate freely in political activities.

The law has recognised that, in the absence of these freedoms, political activities such as

\textsuperscript{84} Statutory Instrument No. 90 of 2006, Act No. 12 of 2006.
meetings and campaigns. The major instrument the State uses to constrain and hinder the enjoyment of this freedom to Zambians generally and political players in particular is the Public Order Act, which requires that any person or organization wishing to hold a public meeting or procession must give the police at least seven days' notice before the event. This requirement, however, has often times been abused by the authorities during election time so as to prevent opposition leaders from convening meetings and campaign rallies. Some memorable occasions when the State has denied the opposition parties the right to assemble and associate were in 2001 during the OAU and Solar Eclipse, the Police banned all political meetings. This was completely unrealistic especially in light of the on going voter registration exercise process at the time. A number of opposition party leaders expressed concern at this ban, citing the need for them to meet their members so as to encourage them to register as voters. Such outrageous act of government are evident of the great lengths that the State is willing to go to all in the hope of preventing the opposition from disseminating their political agendas and policies through meeting and rallies to the electorate; this is an outright violation of the freedom of assembly and association.

Although the Public Order Act underwent a major Amendment in 1996 in response in the Supreme Court’s decision in Christine Mulundika and 7 Others v. The People, in reality it is still repressive for a number of reasons. The Amendment Act still has unacceptable features which make it difficult for people to enjoy freedom of assembly and association. The requirement of seven days advance notice in every situation is a prior restraint on the exercise of the fundamental rights to expression, assembly and association. What it means is that one cannot participate in a public meeting, procession or demonstration unless one first notifies the

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86 Chapter 104 of the Laws of Zambia
87 Zambia Human Rights Report 2001
88 (1995) ZR
police. There is no reasonable justification for requiring seven days advance notice in every case. In the case of a public meeting at a fixed place why do the police need seven days advance notice? This may be contrasted with the provisions of the Public Order Act 1986 of England. Section 11 provides that:

Written notice shall be given in accordance with this section of any proposal to hold a public procession intended (a) to demonstrate support for or opposition to the views or actions of any person or body of persons (b) to publicise a cause or campaign (c) to mark or commemorate an event, unless it is not reasonably practicable to give any advance notice of the procession. Six days advance notice is required for processions but only three days notice is required for public meetings or assemblies.89

It is therefore submitted that the seven days advance notification period required by the police is unrealistic because in terms of election campaigns and rallies there are some issues of urgency that political leaders need to communicate to the electorate and subjecting it to a seven day waiting period will cause it to lose its desired impact on the electorate as it becomes stale.

Furthermore under the amended Act, conveners of public meetings are only required to notify the police of the date and time the meeting is to take place seven days before as opposed to the previous Act were such conveners had to obtain a police permit. In the Resident Doctors’ Association case, Judge Chitengi ruled that those holding meetings were not constrained to obtain a permit from the police; all the law required was seven days’ notification of the planned meeting or procession. However, even under the amended Act police are given broad and uncontrolled powers to stop a meeting from taking place. They can simply say, as they often

85 (2001) ZR
do, that they do not have adequate manpower to police the event. There is no way of ascertaining whether such a reason is valid or not. On numerous occasions in Zambia police have stopped opposition parties from holding rallies and meetings on the spurious grounds they do not have adequate manpower. Yet, if the rally or meeting goes ahead the police are able to mobilise hundreds of officers to disperse the rally or meeting at short notice.

The Electoral Commission does not intervene to prevent the blatant suppression by the police of the right to assembly and association. No effort is ever made by the Commission to enforce this right which is guaranteed under the Constitution as well as the Electoral (Code of Conduct) Regulations 2006.

It can therefore be said that given the gross violations, especially during election periods when the freedom of assembly and association assume even greater significance, there is a greater need for the Electoral Commission to adopt a more stringent approach towards enforcement of the freedom of assembly and association by revisiting the application of the Public Order (Amendment) Act and also depoliticising the police.

Conclusively, it can be stated that while each of the rights enunciated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and part three (The Bill of Rights) of the Constitution of Zambia, all contribute to the required atmosphere, the above discussed rights (freedom of conscience, freedom of expression and freedom of assembly and association) take an additional importance for election purposes. Worthy of mention is the fact that these rights are directly tied to the achievement of free and fair elections, thus they must be protected from State interference at all costs.

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CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

Chapter one is an introduction to the study. It gives a statement of the problem which is that despite the fact that the right to vote is well-entrenched in international human rights law, it has not been expressly and directly entrenched in our constitution. This in turn has led to the failure of strict adherence to the human rights aspect of elections. The significance of this study is that it demonstrates that elections are the means by which people exercise their right to vote, which right must be expressly enshrined in the Constitution of Zambia, the supreme law of the country. The study was limited to elections in the Multi-party era of Zambia and the justification for the study lies in the fact that Zambia like many other emergent democracies does not acknowledge elections as an inalienable human right.

Chapter Two reviewed elections generally; it firstly begins by defining them as the process of choosing a person or a group of people for a position, especially a political position, by voting. The four elements of elections namely Voters, The vote, Election candidates and Election rules are also analyzed before centering on the concept of free and fair elections; a free electoral process is one where fundamental human rights and freedoms are respected and a fair electoral process is one where the playing field is reasonably level and accessible to all electors, parties and candidates. There are four main types of electoral systems, namely the first past the post system, the proportional representation system, the single member majoritarian system and the mixed member proportional system are examined in detail together with their merits and
demerits. Finally the legal basis for elections is established using the Constitution of Zambia, the Electoral Act and the Electoral (Code of Conduct) Regulations 2006.

Chapter Three examined the concept of elections as a human right. It firstly began by defining Human rights as the rights one has simply because one is a human being, they are inherent in mankind’s nature and without them mankind cannot live like human beings. Elections are a human rights concern, in fact the franchise is expressly proclaimed and guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and People’s Rights and many other treaties and declarations. The right to vote which is often referred to as the right to political choice or the franchise, is the entitlement of a person to freely make political choices by casting a vote it is therefore a human right. Voting is a formal expression of preference and the foundation of an ideal democratic mode of government.

Chapter Four analyzed some of the factors that led to the suppression of the right to vote in Zambia and these included the delimitation process, voter registration and verification, the issuance of national registration cards during the election period and mere voter apathy. Delimitation which is also known as electoral geography is the process by which the country is divided into constituencies. The delimitation process may affect the franchise where the Commission fails to take into account the number of eligible voters in a particular constituency, this may cause a serious flaw in that places where there are more eligible voters will have fewer constituencies. Furthermore in order for one to exercise their right, one must be registered as a voter in a constituency, registration of voters is essential in an election because it enables voters to know before elections where they have to cast there votes from and it helps adjudicate who
qualifies as an elector during election time. One of the greatest threats to democracy in Zambia and the world over is voter apathy. Some reasons as to why people do not vote are related to the conduct of elected leaders, the issue of governance, the electoral process, socio-cultural factors, and many more factors. Voter apathy affects one’s exercise of the franchise in that election results that are obtained are not always a true reflection of the will of the people as not all of them have expressed their preference for a candidate for office. In light of the identification of the factors that affect the exercise of the franchise, the author has come to the conclusion that the only way free and fair elections may be experienced in this country is by ensuring that the law is reviewed and the voter education process is intensified.

Chapter Five served as a comparative study between elections and the other associated rights namely the freedom of conscience, the freedom of expression and the freedom of assembly and association. Freedom of conscience denotes among other things a person’s freedom of thought and incidental to this freedom with regards to elections is the right to vote. Where this freedom is suppressed, people who cast a vote do so without any element of thought as envisioned by the freedom of conscience. Additionally the freedom of expression constitutes one of the essential foundations of a democratic society. During the electoral process, the media plays a crucial role in giving effect to this right as it disseminates information about the process to the voting public. However, it has been observed that during election periods the freedom of expression has not been as respected as it ought to be; in fact state-owned electronic and print media is obviously bias towards the ruling party and this has proved to be a great hindrance in the enjoyment of the freedom of expression by opposition parties and their members. Furthermore, the freedom of assembly and association are also critical during election time. It
is only by free exercise of this freedom that political parties and candidates can freely hold meetings or rallies and articulate their policies and views. However, this freedom has often times been abused by the authorities during election time so as to prevent opposition leaders from convening meetings and campaign rallies. The State uses the Public Order Act to constrain and hinder the enjoyment of the freedom of assembly and association by political players and Zambians generally. Therefore the Electoral Commission needs to adopt a more stringent approach towards enforcement of the freedom of assembly and association by revisiting the application of the Public Order (Amendment) Act and also depoliticising the police.

6.2 RECOMMENDATIONS

Taking into consideration the law and writing of other jurists in suggestion, statement or indeed recommendation form, I too would like to make the following recommendations with regards to the subject matter of ‘Elections as a Human Right.’

Firstly, elections are costly, frequent, time-consuming and hardly a reflection of the wishes of the sovereign people. In light of this, the question that comes to mind is, ‘should they be done away with or simply replaced with another mechanism that is more reliable, far less costly and far less contentious and acrimonious? Doing away with elections is not a realistic move because the right to vote is the voice of the people and one of the most critical ways that individuals can influence governmental decision-making.
In a democracy there is nothing more fundamental than having the right to vote as it is a formal expression of preference for a candidate for office or for a proposed resolution of an issue. In fact, removing the franchise would entail devising new ways of choosing leaders and unfortunately since this country is not a monarchy the issue of succession would be out of the question.

Therefore my recommendation is that the method of choosing leaders through voting should be maintained but the first past the post electoral system that is currently in place in Zambia should be replaced by the proportional representation electoral system. One of the reasons for this is that this system is more inclusive, it encourages fair representative mechanisms of governance and it also easily leads to coalition governments. Under this mode of electoral system the problem of wasted votes will be eliminated in that winners will not be produced with minority votes but instead they will be determined by a calculation of total proportion of the votes of each party relative to the overall valid votes cast.

Additionally the PR system unlike the system currently in use in Zambia, is more conducive for enhancing gender equality and increased participation of women in politics. From the 2006 tripartite elections it is evident that women were seriously under-represented as candidates, in fact the number of women who contested the election was far less than in 2001. Instead of an increase in female candidates there was a visible decrease. The low proportion of female candidates is significantly far below the commitments and targets included in various international protocols and agreements.
Secondly, even though it is said that the Constitution gives legal foundation to the right to vote through the right to register as a voter as enunciated in article 75(1) of Constitution, it is still not expressly and directly enshrined in the Bill of Rights of the Zambian Constitution despite the fact that it is well-entrenched in international human rights law. The reason for this could be that the State has taken it for granted that the espousal of the right to vote under article 75(1) is enough or it could be that the State fears the implications of guaranteeing the right to vote as an inalienable human right; such as the costs of ensuring that this right is exercised by all.

In light of this my recommendation is that the, ‘the right to vote or freedom of the franchise’ should be expressly entrenched in part three (Bill of Rights) of the Constitution. First and foremost it is not enough to say that article 75(1) encompasses this right because it does not possess the force required in expressing such a fundamental aspect of democracy. Additionally if other rights that are incidental to the right to vote such as freedom of conscience, freedom of expression and freedom of assembly and association are all well entrenched in the Bill of Rights, then based on the ‘ejusdem generis’ rule, I see no reason why the right to vote or freedom of the franchise should not be entrenched therein as well. The ejusdem generis rule is the rule that covers things of the same genus, species or type; in this case the genus is inalienable human rights. Furthermore if the right to vote is entrenched in the Bill of Rights of our Constitution, it will be given greater legal force due to its element of being inalienable.

Thirdly, factors such as the delimitation process, voter registration and verification, the
issuance of national registration cards during the election period and mere voter apathy, may all lead to the suppression of the right to vote in Zambia. Therefore in order to curb the hindrances caused by these factors the following recommendations are made:

a) The last delimitation of constituencies was done in 1991 which is over seventeen years ago. It was expected that after the 2000 census a new delimitation would be done prior to the 2001 elections but this was not the case and neither was there any delimitation conducted prior to the 2006 tripartite elections. Failure to conduct a new delimitation process means that the Electoral Commission has failed to take into account the number of eligible voters in a particular constituency, in that there are still 150 constituencies regardless of the fact that the Zambian population has tremendously grown since 1991. This has caused a serious flaw in the sense that places where there are more eligible voters still have fewer constituencies thereby causing geographical obstacles that hinder the exercise of the right to vote. It is recommended that Zambia should adopt the PR system because under this system there is no need for the delimitation of election boundaries. In fact under this system the whole country is considered as one single constituency and voter’s choice is not bound by geographically confined electoral zones. Therefore, under this system all that ECZ need worry about is increasing the number of polling stations so as to take the franchise nearer to the people.

b) The voter registration exercise should be conducted on a continuous basis rather than waiting until it election time, this is so as to ensure that all persons over the 18 years of age are registered as voters. It has been observed that periodic registration for short
spaces of time practiced in Zambia at the moment has served to deprive many people the right to vote.

c) In order to reduce the amount of voter apathy currently in existence in the country, it is recommended that the voter education exercise must be intensified and also conducted continuously, in fact in order to achieve consistency in the provision of voter education, the ECZ should supervise and offer overall guidance to all civic groups and non-governmental organizations involved in this exercise.

Finally the author recommendations the following, with regards to the freedoms of expression, assembly and association and how they relate to the electoral process:

a) When it comes to the freedom of expression, the media plays a crucial role in giving effect to this right in the electoral process. The right to express political opinions, debate the policies and programmes of political parties, canvas freely for membership and support from voters, distribute electoral literature and campaign materials, erect banners, placards and posters and campaign freely, all hinge on the freedom of expression and in fact rely heavily on independent reportage by the media. However it has been observed that this freedom is usually infringed on by the obvious bias of state-owed media towards the ruling party (MMD), thus the author recommends that the ECZ should put in place mechanisms to enforce media regulations pertaining to the electoral process so as to ensure equitable access to the state-owed media for all political parties and candidates so that the airtime given to the ruling party is equal to that given to other political parties.
b) As far as the freedom of assembly and association is concerned the instrument that the State uses to constrain and hinder the enjoyment of this freedom to political players and Zambians generally in particular is the Public Order Act, which requires that any person or organization wishing to hold a public meeting or procession must give the police at least seven days' notice before the event. This requirement of seven days advance notice in every situation is a prior restraint on the exercise of the fundamental rights to assembly and association. It is therefore recommended that the seven days advance notification period required by the police should be revised because it is unrealistic in terms of election campaigns and rallies as there are some issues of urgency that political leaders need to communicate to the electorate and subjecting it to a seven day waiting period will cause them to lose their desired impact on the electorate. Furthermore the Electoral Commission is advised to adopt a more stringent approach towards enforcement of the freedom of assembly and association by revisiting the application of the Public Order (Amendment) Act and also depoliticizing the police.

It is the authors view that if all of the above given recommendations are adopted and implemented by the government, they will certainly go a long way in enhancing the electoral process, entrenching a democratic culture and significantly contributing to political stability in Zambia.
BIBLIOGRAPHY

TEXTBOOKS

APPENDIX 1

Figure 1 on page 34 is a table of voter registration statistics 1990 – 2006 from the Electoral Commission of Zambia Voter Registration Statistics Department. Records from this department are indicative to how the percentage of those who are eligible to register and those that actually do register as voters has gone down over the years. The year 1990 has the highest percentage (83%) of registered voters. The reason attributed to this is that this was a crucial period of change from the one party regime to the multiparty era. Thus many people who were keen to enforce this change took a positive step by registering as voters. The 1995/96 registration exercise saw a drastic drop to only 53% of the eligible voters registering. This could be attributed to the complacency of the Zambia people after having achieved their goal in 1991. The 1998 revision of the voters roll only managed to raise the number of registered voters to 56% of the eligible voters. The 2001 and 2006 election registration process saw a raise of 69% and 71% of the eligible voters registering respectively.