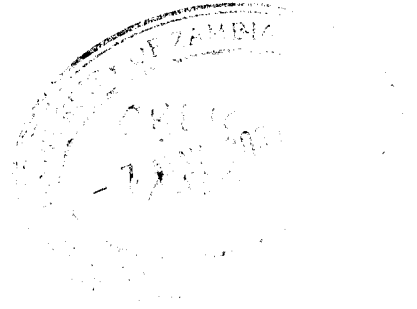


**THE EFFECTIVENESS OF ZAMBIA'S ELECTORAL SYSTEM IN  
CURBING ELECTORAL CORRUPTION**

**UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**



**THE EFFECTIVENESS OF THE ZAMBIAN ELECTORAL SYSTEM IN CURBING  
ELECTORAL CORRUPTION**

**BY**

**LUKE CHENJELANI MBEWE**

**UNIVERSITY OF ZAMBIA – SCHOOL OF LAW, LUSAKA, ZAMBIA**

Copyright © Luke Chenjelani Mbewe, 2009

All rights reserved. No part of this work may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, known today or to be invented in future, including photocopying and recording, or in any information storage or retrieval system without permission in writing from the copyright holders.

Telephone / Fax 260 1 271166, Email: [mbewelc@yahoo.com](mailto:mbewelc@yahoo.com)



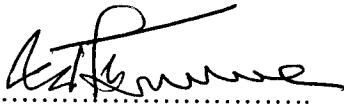
**The Effectiveness of the Zambian Electoral System in Curbing Electoral Corruption**

**DECLARATION**

I, Luke Chenjelani Mbewe, Identity No. 25094611, do declare that I am the author of this Dissertation entitled "The Effectiveness of the Zambian Electoral System in Curbing Electoral Corruption." I further declare that this Dissertation represents my own work and that due acknowledgement has been made where other people's work has been used. I truly believe that this dissertation has not been previously presented for a degree at the University of Zambia or any other University.

I, therefore bear the full responsibility for the contents, errors, defects and any omissions therein.

Signed:



.....

Luke Chenjelani Mbewe

Date: 30 January, 2009

**CERTIFICATION**

**UNIVERSITY OF ZAMBIA**  
**SCHOOL OF LAW**

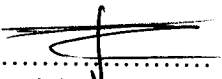
I recommend that this Obligatory Essay prepared under my supervision by:

Luke Chenjelani Mbewe  
Identity Number - 25094611

Entitled

**“The Effectiveness of the Zambia Legal System in Curbing Electoral Corruption”**

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to the format as laid down in the regulations governing Directed Research Essay.

Signed:   
.....  
Dr. Patrick Matibini  
(Supervisor)

Date: 13<sup>th</sup> FEB, 2009

**LIST OF CASES**

1. Mazoka and Ors v Mwanawasa and Ors, (2005) Z.R. 138
2. Lewanika and Ors v Chiluba, (1998) Z.R. 79
3. Mlewa v Wightman, SCZ Judgment No. 1 of 1996, SCZ Appeal No. 99 of 1995 (Unreported)
4. Mubanga v Chitonge SCZ Appeal No. 66 of 2008
5. Mulundika and Ors v The People (1995 – 1997) Z.R. 20
6. Resident Doctors Association of Zambia v The Attorney-General, SCZ No. 12, 2003
7. Wina and Ors v Mabenga, SCZ Judgment No. 15 of 2003
8. Attorney-General and Ors v Law Association, SCZ No. 3 of 2008

## **LIST OF STATUTES**

1. Constitution of Zambia, Chapter 1 of the Laws of Zambia
2. Public Order Act, Chapter 113 of the Laws of Zambia
3. Electoral Act, No.12 of 2006 of the Laws of Zambia
4. Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia
5. Referendum Act, Chapter 14 of the Laws of Zambia
6. Anti Corruption Commission Act, Chapter No. 42 of 1996 of the Laws of Zambia
7. National Constitutional Conference Act, No. 19 of 2007 of the Laws of Zambia
8. Local Government Elections Act, Chapter 282 of the Laws of Zambia

## **LIST OF STATUTORY INSTRUMENTS**

1. Statutory Instrument No. 90 of 2006 (The Electoral Code of Conduct)
2. Electoral General Regulations 2006 – Statutory Instrument No. 92 of 2006
3. Electoral (Code of Conduct) Regulations, 2006

**LIST OF INTERNATIONAL INSTRUMENTS**

1. Universal Declaration of Human Rights (1948)
2. International Covenant on Civil and Political Rights (ICCPR)
3. International Convention on the Elimination of Racial Discrimination (ICERD)
4. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
5. Convention on the Political Rights of Women (CPRW)

## **ACKNOWLEDGEMENTS**

This Dissertation has been prepared in partial fulfilment to obtain a Bachelor of Laws Degree from the University of Zambia. In the first place, I would not have entered Law School at the mature age of 52 years, had it not been for the encouragement and inspiration that I received from my dear wife, Rosemary. In 2006, Rosemary graduated from Law School and her achievement inspired me to join the learned group! Although I enjoyed my time as a student, I must confess that I found the learning process and timetable challenging given the heavy work schedule. For this, I am profoundly indebted to my employers for allowing me time to pursue my search for knowledge even when at times, there was a clear conflict with my office work.

Needless to say, that this work would not have been satisfactorily completed without the counsel and supervision of Dr. Patrick Matibini, an eminent Legal Practitioner and Senior Lecturer in the School of Law, University of Zambia. I shall forever remain profoundly grateful to my Living God for having assigned Dr Matibini, to be my mentor and guide in this endeavour.

The four year law programme denied me of valuable time to attend to family matters. I developed a sense of guilt having realised that I devoted less time to the family's well-being. For this oversight, I ask for forgiveness from my family and I offer my unreserved apology. I would therefore, like to thank my wife Rosemary, my children Melanie, Janet, Chimwemwe, Dalitso and Emelia for their loving support, patience and understanding. I wholly dedicate this work to them and to my late father, Abraham Mathias Mbewe, who with mum, Elizabeth Chiwazhuka Mbewe, graciously ensured that all the children received decent education despite the slave wages of the time.

**Luke Chenjelani Mbewe**  
**Lusaka, Zambia**

**30 January, 2009**

**ABBREVIATIONS AND ACRONYMS**

ACC	-	Anti - Corruption Commission
AU	-	African Union
AVAP	-	Anti-Voter Apathy Project
CCZ	-	Council of Churches in Zambia
COG	-	Commonwealth Observer Group
CRC	-	Constitutional Review Commission
CCC	-	Committee for Clean Campaign
CIPEV	-	Commission of Enquiry Report into Post-Election Violence, Kenya
EU EOM	-	European Union Observer Mission
ECZ	-	Electoral Commission of Zambia
EISA	-	Electoral Institute of Southern Africa
ERTC	-	Electoral Reform Technical Committee
FPTP	-	First Past the Post
FODEP	-	Forum for Democratic Process
IREC	-	Independent Review Commission into 2007 Kenyan Elections
LAZ	-	Law Association of Zambia
MMD	-	Movement for Multi-Party Democracy
MMP	-	Mixed Member Proportional
MP	-	Member of Parliament
NCC	-	National Constitutional Conference
NGO	-	Non-Governmental Organisation
NRC	-	National Registration Card
PF	-	Patriotic Front
POA	-	Public Order Act
PR	-	Proportional Representation
SADC	-	South African Development Community
SACCORD	-	Southern African Centre for Constructive Resolution of Disputes
SMM	-	Single Member Majoritarian
SMP	-	Single Member Plurality
TIZ	-	Transparency International - Zambia

TOR	-	Terms of Reference
UNIP	-	United National Independence Party
UNDP	-	United Nations Development Programme
ZEC	-	Zambia Episcopal Conference
ZIMT	-	Zambia Independent Management Team

## TABLE OF CONTENTS

	Page
Declaration.....	i
Certification.....	ii
List of Cases.....	iii
List of Statutes.....	iv
List of Statutory Instruments.....	iv
List of International Instruments.....	v
Acknowledgements .....	vi
List of Acronyms and Abbreviations.....	vii
Table of Contents.....	ix

### CHAPTER ONE

Introduction.....	1
Statement of the Problem.....	1
Research Questions.....	2
Research Objectives.....	2
Methodology.....	2
The Electoral Process and Electoral System in Zambia .....	2
The Concept of ‘Free and Fair’ Elections .....	4
The Zambian Experience: 1991 – 2008 Multiparty Elections .....	9

### CHAPTER TWO

Legal Framework of the Electoral System in Zambia .....	12
Introduction.....	12
Constitutional Provisions and the Electoral Process .....	12
Elections to the National Assembly .....	13
The Electoral Act .....	15
The Electoral (Code of Conduct) Regulations .....	19
Allied Legislation that Impact on the Electoral System .....	20
The Referendum Act .....	20
The Media Laws.....	21
The Public Order Act.....	22
The Anti-Corruption Commission Act.....	22
Conclusion.....	23

### CHAPTER THREE

Institutional Framework Relating to Administration of the Electoral System	24
Introduction.....	24
Powers of the Electoral Commission of Zambia.....	24

Composition of the Electoral Commission of Zambia.....	25
Financing of the Electoral Commission of Zambia.....	26
Performance and Effectiveness of Electoral Commission of Zambia.....	27
Conclusion.....	33

#### **CHAPTER FOUR**

Electoral Corruption and Malpractices in the Electoral System.....	35
Introduction.....	35
Extent and Consequences of Electoral Corruption.....	35
The Forms of Electoral Corruption.....	36
Offences During Registration of Voters.....	37
Offences During Nomination.....	37
Election Offences.....	38
Offences by Printers and Publishers.....	38
Reforming the Electoral (Code of Conduct) Regulations.....	39
Enforcement Mechanism of Electoral Laws.....	40
Conclusion.....	41

#### **CHAPTER FIVE**

Conclusions and Recommendations.....	43
Introduction.....	43
Conclusions.....	44
The Electoral System.....	44
Electoral Commission of Zambia and Electoral Process.....	44
Strengthening of Political Parties.....	45
Recommendations.....	45
Improving the Electoral System.....	45
Strengthening ECZ and Improving the Electoral Process.....	48
State Financing of Political Parties.....	49
Prospects for Future Electoral Reforms.....	50
Bibliography.....	51

# CHAPTER ONE

## 1.0 Introduction

Elections refer to a process by which the citizens or electorate, periodically choose their national and local leaders to manage public affairs on their behalf.<sup>1</sup> Elections are the central pillar of democracy and a means of affording citizens an opportunity to elect leaders of their choice. It is widely accepted that elections are a crucial, albeit not the only ingredient of democratic transformation. In Zambia, like in many other democracies, elections are a vehicle through which leaders are chosen. Invariably, not all elections are democratic, legitimate, free and fair.

Since the re-introduction of multi-party democracy in 1991, Zambia has held four Presidential and Parliamentary elections at regular intervals, under varying electoral processes. During these elections, there have been a number of challenges to fulfill the benchmarks of democratic, free and fair elections. It has been claimed by some observers that elections in Zambia have been characterized by controversy, election petitions, frequent and costly by-elections including election boycotts as was the case during the 1996 Presidential and Parliamentary elections.<sup>2</sup>

## 1.1 Statement of the Problem

The subject of elections, the electoral system and electoral process is of great public interest in present day Zambia. There is active debate on the subject between and among stakeholders and differences of opinion has the potential to explode into violence. The subject is so topical that the media and election monitors have consistently reported on allegations of electoral corruption and malpractices each time elections are held in Zambia. The fact that there exists numerous election petitions lodged with the Zambian courts after elections does suggest weaknesses in Zambia's electoral system to guarantee a democratic electoral process in the management of elections. The study will identify the weaknesses in the electoral system and process and then suggest remedial measures which should be instituted to improve the electoral system in order to meet the benchmarks of democratic governance and the holding of legitimate, free and fair elections.

---

<sup>1</sup> Matlosa Khabele, Paper on the 'Review of Electoral Systems and Democratisation in Southern Africa', Konrad-Adenauer-Stiftung, 2003, Johannesburg, P. 51

<sup>2</sup> Final Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia, August 2005. P.144

## **1.2 Research Questions**

The basic research questions to be considered for this study are:

- a) How effective is Zambia's electoral system in ensuring legitimate, free and fair elections?
- b) Does Zambia's legal framework contain the necessary provisions to guarantee the holding of legitimate, free and fair elections?
- c) What needs to be done in order to improve Zambia's electoral system and process?

## **1.3 Research Objectives**

This study is intended to make a critical review of the existing electoral system and legal framework relating to elections and make an assessment as to whether the systems are effective in promoting democratic principles of holding legitimate, free and fair elections. A further objective of the study is to make recommendations intended to provide the means of curbing electoral corruption and malpractices, thus improving the credibility and legitimacy of Zambia's electoral system and process.

## **1.4 Methodology**

The material relating to the study was obtained from various sources within Zambia and from the internet. The study methodology was based on desk study and interviews focusing on the review of literature, election monitoring reports, legislation, court judgments on electoral petitions and studies prepared by various scholars and organizations.

## **1.5 The Electoral Process and Electoral System in Zambia**

In an election, the electoral process refers to the procedures and regulations for holding an election. The rules and regulations specify what both contestants and voters are required to do during elections. The objective is to enable voters to effectively participate in the electoral process by meeting set requirements and conducting themselves according to the set rules. The electoral process commences with the registration of voters and proceeds to nomination of

candidates, campaigning, actual voting, vote counting, announcement of results, and the resolution of election disputes. The electoral process in Zambia is set out in the Electoral Act.<sup>3</sup>

Whereas an election is basically a process of choosing leaders, an electoral system refers to the method that a given country adopts for choosing national leaders. It encompasses procedures, rules and regulations for the electorate to exercise their right to vote, and determines how elected parliamentarians occupy their seats in the legislature. In short, electoral systems determine the nature of representation and governance anchored upon the principle of ‘One Man, One Vote’.<sup>4</sup> The value of an election to a democracy is either enhanced or diminished depending on the nature of the electoral system being used.

There are many electoral systems throughout the world but there is little consensus as to which is best for democratic governance and political stability. Each country tries to adopt an electoral system that best suits its own political traditions, culture, history and party system. Globally, there are four main types of electoral systems and these are: First-Past-the-Post (FPTP) also known as the Single-Member-Plurality (SMP); the Single-Member-Majoritarian (SMM); the Proportional-Representation (PR); and the Mixed Member Proportional (MMP).<sup>5</sup> The FPTP system is applied in the United Kingdom and those countries historically influenced by Britain including Zambia.<sup>6</sup> Under the FPTP system, the country is divided into electoral constituencies, each of which chooses only one candidate as its representative in Parliament. In this system, the winner in each constituency is the candidate who receives the highest number of votes whether or not those votes are less than fifty per cent. The distinguishing feature of the FPTP system, is that it almost uses single-member constituencies.<sup>7</sup>

All electoral systems or combination of electoral systems have advantages and disadvantages depending on the political culture of the society concerned. The type of system selected by any country, has an impact on participation, especially that of women and other disadvantaged groups. For instance, the evidence in the Southern African Development Community (SADC)

---

<sup>3</sup> Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>4</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P.167

<sup>5</sup> Matlosa Khabele, Paper on the ‘Review of Electoral Systems and Democratisation in Southern Africa’, Konrad-Adenauer-Stiftung, 2003, Johannesburg, P. 52

<sup>6</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P.169

<sup>7</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P.169

region, shows that those countries that use the PR system have more women in parliament and local government than those that use the FPTP system.<sup>8</sup> Mozambique, South Africa and Namibia, all use the PR electoral system and female Members of Parliament representation in 2000 was 30%, 29.8% and 25% respectively, of the total number of lawmakers.<sup>9</sup>

In 1991, Zambia reverted to multi-party elections after almost two decades of *de jure* one-party rule. Under one-party rule, eligibility to contest for the Presidency and a Parliamentary seat was confined to card carrying members of the only legal party, the United National Independence Party (UNIP) and the contest was intra party. UNIP received government grants and was also funded by the government for purposes of conducting election campaigns. The elections were conducted by the Election Commission chaired by a Supreme Court Judge. However, the Party was in charge of the election campaign for all candidates.<sup>10</sup> The electoral system adopted after the demise of one-party rule in 1991, was the FPTP. This electoral system was part of a political and constitutional legacy bequeathed by the departing British colonialists upon independence in 1964. It is generally accepted that the selection of an electoral system must be based on that system which incorporates the elements of fairness, inclusiveness, ballot simplicity and accountability.<sup>11</sup> It is part of the remit of this paper to make an assessment and determine whether Zambia's electoral system fulfills the benchmarks of the desired electoral system.

## 1.6 The Concept of 'Free and Fair' Elections

The term 'free and fair' election has been widely used in the assessment and judgment of elections by many organizations and eminent individuals without fully understanding the meaning of the term and what really constitutes 'freeness and fairness' in an election. It is therefore, necessary to define the concept of 'free and fair elections.'

The Anti-Voter Apathy Project (AVAP) in its 2006 Election Report,<sup>12</sup> states that the term "free and fair" broadly implies that an election has been conducted in a conducive environment that is acceptable to all stakeholders and in accordance with the full requirements of democratic

---

<sup>8</sup> Electoral Handbook No. 13, Principles for Election Management, Monitoring and Observation in the SADC Region, Electoral Institute of Southern Africa, November, 2003, P. 8

<sup>9</sup> SADC Parliamentary Forum: Election Observation Mission Report – Lesotho 2002 National Assembly Elections, P.12.

<sup>10</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P.161

<sup>11</sup> James W and Hadland A, Paper on 'Shared Aspirations: The Imperative of Accountability in South Africa's Electoral System.', Konrad-Adenauer-Stiftung, 2003, Johannesburg, P. 18

<sup>12</sup> AVAP, Zambia's 2006 Tripartite Elections Report, National Secretariat, Lusaka, P.55

electoral laws. Further, the term implies that all contestants are able to compete on a level playing field and are accorded equal facilities and opportunities. Under this concept, it should be possible for the contestants to effectively canvass for votes within the acceptable provisions of the rules and without the system according undue privileges to one contestant. This means that free and fair elections are assumed to provide the true reflection of the free will of the voters.

In examining the matter further, the Electoral Reform Technical Committee (ERTC) appointed to review the Electoral System in Zambia, has also offered a comprehensive definition of the concept of “free and fair” elections in the following terms:

*“A ‘free’ election is an election which allows for freedom of movement, freedom of expression for candidates, the media, the electorate and other interested and concerned parties before, during and after polling day. It is an election where there is freedom of assembly, freedom of association and freedom from intimidation and violence in connection with the election and the campaign. A free election further implies an absence of impediments to standing for election for both political parties and individuals. Such an election provides for equal and universal suffrage and legal redress for aggrieved parties.*

*A ‘fair’ election is one which affords all candidates an equal opportunity to win. It offers a transparent electoral process before, during and after polling day. There should be in place, before polling day, an electoral system and electoral laws for the conduct of the elections. There should be no impediments to inclusion in the electoral register and there should be impartial treatment of candidates by the police and the courts of law. A fair election provides for equal opportunities for political parties and candidates to stand for election. .... For an election to qualify as ‘fair’ there should be equal access to public media and where this is provided for, an impartial allotment of public funds to political parties and a ban on misuse of government facilities for campaign purposes. Further on polling day, a fair election provides access to all polling stations for representatives of political parties, election observers and the media. It ensures the secrecy of the ballot and absence of any form of intimidation of voters. After polling day, a fair election provides for an official, transparent and expeditious announcement of election results as well as impartial coverage by the media of all election complaints and election results.”<sup>13</sup>*

The regional body SADC, to which Zambia is a State Party, has also developed principles and guidelines governing the conduct of democratic elections.<sup>14</sup> These principles as adopted by member states have become the standard or benchmark outlining the conditions to be met in order to adhere to the requirements of a free and fair election. An efficacious electoral process is necessary to the legitimization of the electoral outcome. This can forestall political instability as

---

<sup>13</sup> Final Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia, August 2005. P. 144-145

<sup>14</sup> Matlosa khabele Managing Democracy: A Review of SADC Principles and Guidelines Governing Democratic Elections, October 2004, Johannesburg, South Africa, 2004, P.15

has been proved in some in a number of countries for which violence following disputed election results in Kenya and Zimbabwe bear testimony. It is a matter of considerable progress in the constitutional making-process, to note that the Committee on Democratic Governance of the National Constitutional Commission (NCC),<sup>15</sup> has resolved to adopt the SADC Election Principles on the conduct of free and fair elections in Zambia.<sup>16</sup> These Principles as adopted are expressed in the following terms:<sup>17</sup>

- *“That measures shall be put in place to allow the full participation of all eligible citizens in the electoral process;*
- *That the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression and campaigning, as well as political tolerance and equal opportunity to exercise the right to vote and be voted for shall be safeguarded;*
- *That all participating parties and other stakeholders in the electoral processes shall be allowed equal opportunity to access the state owned media and be covered adequately;*
- *That necessary measures and precautions shall be taken to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security;*
- *That there shall exist transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers and monitors;*
- *That all political parties shall accept and respect the election results proclaimed to have been free and fair by the ECZ in accordance with the law of the land and any aggrieved party shall have the opportunity to challenge the election results as provided for in the law of the land;*
- *That we shall cherish the impartiality of the ECZ and the independence of the Judiciary as well as other law enforcement agencies during the electoral processes;*
- *That adequate logistics and resources for carrying out democratic elections shall be provided to, and also include adequate security to all parties participating in the elections.”*

The adoption of the SADC Principles and Guidelines Governing Democratic Elections by the SADC Heads of State in 2004 is therefore, an effort to address the defects in the electoral process. It is also an instrument designed to develop norms, standards, guidelines and/or principles for the effective management of elections in the SADC region from which Zambia can benefit.

---

<sup>15</sup> As established by the National Constitutional Commission Act, No. 19 of 2007 of the Laws of Zambia, for the purpose of making proposals to alter the present Zambian Constitution.

<sup>16</sup> The Sunday Mail, 20<sup>th</sup> June, 2008

<sup>17</sup> The Zambia Daily Mail, Tuesday, October 14, 2008

A renowned Southern African political scientist, Dr. Khabele Matlosa argues that multiparty elections serve a variety of functions of which the two most important are the enhancement of political participation in the governance process for the citizens and the legitimate formation of a Parliament that is truly representative of the key political stakeholders.<sup>18</sup> In evaluating the quality of the elections in the SADC region, Matlosa observes that this differs from country to country. Matlosa has identified Zimbabwe, Tanzania and Zambia, as SADC countries whose transition to democracy has been fraught with election-related conflict. This conflict brings about contested legitimacy and credibility of the electoral process. He maintains that there is a difference between holding periodic multiparty elections on one hand and ensuring that the electoral process is satisfactory to all political contestants, on the other hand.

From the above analysis and characteristics of what constitutes democratic governance, it is quite clear that elections are one of the fundamental tenets of any democratic order to accord citizens the opportunity to exercise their constitutional right to vote for those they believe best represent their interests and ideals. Fairness, it has been asserted, confers legitimacy on an election and forms the basis of the electorate's acceptance of the outcome.<sup>19</sup> For this right to be effectively applied, elections must be conducted in a free and fair manner and must be held periodically. Jeane Kirkpatrick,<sup>20</sup> a scholar and former U.S. ambassador to the United Nations has also offered the necessary benchmarks of democratic elections. These benchmarks have been adopted by the Foundation for Democratic Process (FODEP), a Zambian Non-Governmental Organisation (NGO) involved in the promotion of democracy. In its Manual for 2001 General Elections, and based on the democratic election principles developed by Jeane Kirkpatrick, FODEP has adopted the same definition and states that to be free and fair elections must be:<sup>21</sup>

---

<sup>18</sup> Matlosa Khabele, Paper on the 'Review of Electoral Systems and Democratisation in Southern Africa', Konrad-Adenauer-Stiftung, 2003, Johannesburg, P. 50

<sup>19</sup> Seminar Report on Election Models for South Africa: Reflections and Options, Konrad Adenauer Foundation, 2003, P. 19

<sup>20</sup> United States Information Agency Publication, What Is Democracy?, (What are Democratic elections? October, 1991), P. 16

<sup>21</sup> Foundation for Democratic Process, Monitor's Manual for 2001 General Elections, Lusaka, 2001, P.5

- **Competitive:** All political parties and candidates must enjoy the freedom of speech, assembly and movement necessary to voice their criticisms of the government openly, and to bring alternative policies and candidates to the voters.
- **Periodic:** Elected leaders are accountable to the people and they must return to the voters at prescribed intervals to seek their mandate to continue in office. This means that in a democracy leaders are not elected for life.
- **Inclusive:** The voters register should comprise a large population of eligible voters while the Constitution should not impose unreasonable restrictions on the eligibility of citizens to contest elections.
- **Definitive:** democratic elections determine the leaders of government who, subject to the laws and Constitution of the country hold the reigns of power. They are not simply figureheads or symbolic leaders.

One of the critical components of the democratic ideals is the right of every person to participate in the government of his or her country. This principle is recognized in the International Bill of Rights, to which Zambia is a signatory, and in many national Constitutions across the globe.<sup>22</sup> Thus, for example, Article 21(3) of the United Nations Charter<sup>23</sup> provides:

*“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 procedure.”*

There are a number of observer and monitoring groups from the civil society that monitor the freeness and fairness of the electoral process and election results. The main objectives of these groups include the assessment as to whether elections are conducted under conditions prescribed by the constitutional and legal framework of the country. The observer groups are also required to determine whether the final results of the electoral process reflect the will of the people and whether elections meet the benchmarks set out, for example, in the SADC Principles for Election Management, Monitoring and Observation.<sup>24</sup>

<sup>22</sup> Kumado Kofi, ed., Funding Political Parties in West Africa, Friedrich Ebert Foundation, Gold Type Press, Accra 1996, P.8

<sup>23</sup> Universal Declaration of Human Rights (1948)

<sup>24</sup> Electoral Handbook No. 13, Principles for Election Management, Monitoring and Observation in the SADC Region, Electoral Institute of Southern Africa, November, 2003, P. 8

## 1.7 The Zambian Experience: 1991-2008 Multiparty Elections

In a democracy, elections provide the mechanism for distilling the will of the people and thereby giving meaning to their sovereignty. Lack of balance in the resources of political parties will affect the extent to which the election result truly represents the expression of the will of the people.<sup>25</sup> Free and fair elections require a 'level playing field' for all the contestants and competing groups. A level playing field is less likely to be maintained in a situation where government denies its opponents access to public financial resources, while exploiting these to its own advantage. Particularly in Africa where governments are known to be unscrupulous in exploiting their incumbency, some measure of public financing of political parties is indispensable to the realization of free and fair elections.

It is quite clear from judicial proceedings on election petitions that in Zambia, apart from the 1991 multi-party elections, which the incumbent President lost, the 1996, 2001, 2006 and 2008 elections were contentious and controversial. In the election petitions that followed, the losing parties, especially the opposition, alleged electoral fraud, vote rigging, abuse of Government resources among other things.<sup>26</sup> This is not to say that the 1991 elections were free from electoral malpractices. In that election, the Supreme Court, for instance, had occasion to nullify the election of *Josephat Mlewa*,<sup>27</sup> as Member of Parliament for Mkaika Constituency on grounds that his election was characterised by corruption, bribery, use of government facilities, undue influence, threats and violence to life and property in contravention of the electoral regulations.

Of all the elections held so far, the 1996 Presidential and Parliamentary general elections were the most controversial as the electoral process was not acceptable to all political stakeholders. This resulted in the boycott of elections by several opposition parties, including the former ruling party.<sup>28</sup> A number of civil society groups which monitored the 1996 general elections made various conclusions on the electoral process and election results. The Committee for Clean Campaign (CCC), a coalition of Zambian civic groups which monitored the election process, declared that although the election on the polling day was largely peaceful, except in isolated

---

<sup>25</sup> Kumado Kofi, ed., Funding Political Parties in West Africa, Friedrich Ebert Foundation, Gold Type Press, Accra 1996, P.10

<sup>26</sup> Detail confirmed by E. Kamwi, Legal Counsel of ECZ during interview with the author on 13<sup>th</sup> June, 2008

<sup>27</sup> *Mlewa v Wightman*, SCZ Judgment No. 1 of 1996, SCZ Appeal No. 99 of 1995 (Unreported)

<sup>28</sup> Human Rights Watch, *Zambia: Elections and Human Rights in the Third Republic*, Vol. 8, No. 4(A), December, 1996, P.1

incidents, their analysis of the whole electoral process concluded that the 1996 presidential and general elections were not free and fair.<sup>29</sup> In agreement with this finding, two other independent monitoring groups, FODEP and the Zambian Independent Monitoring Team (ZIMT) declared that they too had concluded that the elections were not free and fair.<sup>30</sup>

A review of past election petitions resulting from electoral corruption and malpractices, shows an increasing number of petitions lodged with the Courts of law. In the 2001 and 2006 general elections, a total of 41 and 47 election petitions, respectively were registered in the High Court for Zambia.<sup>31</sup> The grounds of petitioning ranged from illegal and corrupt practices to lack of compliance with the electoral laws and regulations in the conduct of elections.<sup>32</sup> Then FODEP President, the late Professor Alfred Chanda, writing the preface of the FODEP Report on 2001 elections had this to say about the elections:

*“The 2001 electoral process was found wanting in terms of guaranteeing the free expression of the will of the electorate for various reasons stipulated in this report. However, there was a ray of hope produced from the 2001 elections, and many lessons that could be useful in the quest for a more improved electoral process in future.”*

In contrast, foreign and local election monitors, comprising SADC Electoral Observer Mission, Electoral Institute of Southern Africa (EISA), FODEP, Southern African Centre for Constructive Resolution of Disputes (SACCORD), the Council of Churches in Zambia (CCZ) and the Law Association of Zambia (LAZ) declared the 2008 Presidential By-Election, free and fair.<sup>33</sup> The European Union Observer Mission (EU OM) came to the same conclusion that the 2008 election was conducted in accordance with the SADC principles governing democratic elections, namely a multiparty system, freedom of expression and transparency.<sup>34</sup> However, the two main opposition parties in the election, including Transparency International of Zambia (TIZ),<sup>35</sup> disagreed with the conclusion of election monitors. They claimed that there was vote rigging as the election was characterised by fraud and manipulations, rendering the election not to be free

---

<sup>29</sup> Human Rights Watch, Zambia: Elections and Human Rights in the Third Republic, Vol. 8, No. 4(A), December, 1996, P.10.

<sup>30</sup> Human Rights Watch, Zambia: Elections and Human Rights in the Third Republic, Vol. 8, No. 4(A), December, 1996, P.10.

<sup>31</sup> Information provided by E. Kamwi, Legal Counsel of ECZ during interview with the author on 13<sup>th</sup> June, 2008

<sup>32</sup> Report by FODEP, Zambia's 2001 Tripartite Election, P. 60

<sup>33</sup> The Sunday Mail, Vol. 14 No. 42, November 2, 2008, P.1

<sup>34</sup> Zambia Daily Mail, Saturday, November 15, 2008, P.4

<sup>35</sup> Sunday Post, November, 9, 2008, P.2

and fair.<sup>36</sup> The opposition Patriotic Front (PF) went a step further and petitioned the election result in the Supreme Court demanding a recount of all votes cast in the 150 constituencies.<sup>37</sup>

It must be stated that a successful election does not depend solely on what happens on the ballot day, but rather the entire election process must be examined. This includes preliminary issues such as the electoral system, voter entitlement, voter registration, access to media, and the campaign environment. Specifically, election monitors need to know whether freedom of movement, assembly, association and expression have been guaranteed throughout the election period; whether all parties have conducted their political activities within the law; whether any political party or candidate has been subjected to arbitrary and unnecessary restrictions with regard to media; whether parties, candidates and supporters enjoyed equal security; whether voters have been able to cast their votes freely without intimidation or fear; and whether the overall conduct of the ballot has been such as to avoid fraud and illegality.<sup>38</sup>

Interestingly, and in contrast to Zambia, Ghana has adopted the 50 percent plus One vote system for presidential elections (SMM), while the parliamentary election is won by simple majority (FPTP) in single seat constituencies. Ghana's electoral system has since its adoption in 1996, produced largely peaceful, transparent and credible elections including the 2008 Presidential Election which was judged by political observers as 'a rare example of a model of functioning democracy in Africa.'<sup>39</sup>

The short-comings in the electoral system and process in Zambia, is of great concern to political parties and the citizens. The subject is presently one of the topics of discussion and debate at the on-going National Constitutional Conference (NCC). A viable solution to the problem needs to be found after establishing the missing links in the electoral system and process.

---

<sup>36</sup> The Post, Wednesday, November, 5, 2008, P.5

<sup>37</sup> Zambia Daily Mail, Saturday, November 15, 2008, P.2

<sup>38</sup> Committee for Clean Campaign (CCC), Report on the Presidential and Parliamentary Elections in Zambia, 18 November, 1996, P.55

<sup>39</sup> Prime Minister of Kenya, Railla Odinga gave a Press Statement to this effect after presidential candidate John Atta Mills of the opposition NDC Party won the election with 50.23% of the vote - The Post, January 6, 2009, P.17

## CHAPTER TWO

### LEGAL FRAMEWORK OF THE ELECTORAL SYSTEM IN ZAMBIA

#### 2.0 Introduction

The electoral system and process in Zambia is directly based on the Constitution and which Constitution has from time to time been amended to suit the interests of the political leadership and the prevailing social and economic environment.<sup>40</sup> The electoral framework of Zambia is established under a number of statutes being the Constitution of Zambia<sup>41</sup>; the Electoral Act<sup>42</sup>; the Electoral Code of Conduct<sup>43</sup>; the Electoral Commission Act<sup>44</sup>; the Local Government Elections Act<sup>45</sup>; the Local Government (Amendment) Act<sup>46</sup>; and the Electoral General Regulations.<sup>47</sup>

#### 2.1 Constitutional Provisions and the Electoral Process

A number of provisions in the Zambian Constitution deal with elections, the electoral process, the management and administration of the elections and the dissolution of Parliament. As a start, it is important to highlight the salient constitutional provisions beginning with the election of the President which must be by direct universal adult suffrage and by secret ballot.<sup>48</sup> In accordance with the Constitution, Presidential elections are held whenever the National Assembly is dissolved<sup>49</sup> and when the office of the President falls vacant by his removal on the grounds of incapacity,<sup>50</sup> death or resignation,<sup>51</sup> or by impeachment.<sup>52</sup> To qualify as a Presidential candidate, a person must be a Zambian citizen, both his parents must be Zambians by birth or descent, he has attained the age of thirty-five years, is a member of or is sponsored by a political party. An

---

<sup>40</sup> Annual Report of the Electoral Commission of Zambia, Lusaka, 2000, P.1

<sup>41</sup> The Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>42</sup> Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>43</sup> Statutory Instrument No. 90 of 2006 (The Electoral Code of Conduct)

<sup>44</sup> Electoral Commission Act, No. 24 of 2006 of the Laws of Zambia

<sup>45</sup> Local Government Elections Act, Chapter 282 of the Laws of Zambia

<sup>46</sup> Local Government (Amendment) Act No. 17 of 1997 of the Laws of Zambia

<sup>47</sup> Electoral General Regulations 2006 – Statutory Instrument No. 92 of 2006

<sup>48</sup> Article 34(1) of the Constitution of Zambia, Chapter 1 of 1991 of the Laws of Zambia

<sup>49</sup> Articles 34(2) and 88 of the Constitution of Zambia, Chapter 1 of 1991 of the Laws of Zambia

<sup>50</sup> Article 39 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>51</sup> Article 38 (1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>52</sup> Article 37 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

independent candidate cannot stand for office of President. A Presidential candidate must be qualified to be elected as a member of the National Assembly and must have been domiciled in Zambia for a period of at least twenty years.<sup>53</sup> A Presidential candidate must pay election fees fixed by the Electoral Commission.

A candidate must declare his assets and his candidature must be supported by two hundred registered voters.<sup>54</sup> The electors are all persons registered in Zambia as voters, for the purposes of elections to the National Assembly. The Returning Officer declares the candidate who has received the highest number of the total votes cast to have been duly elected as President. This provision introduced 'simple majority' for the Presidential elections in 1996, while under the 1991 Constitution it was 'absolute majority'. If there is only one qualified Presidential candidate nominated, that candidate shall be declared as elected without an election taking place.<sup>55</sup> A person elected as President shall be sworn in and assume office not later than twenty-four hours from the time of declaring the election result.<sup>56</sup>

The Returning Officer in presidential elections is the Chief Justice,<sup>57</sup> who paradoxically presides over the presidential election petitions. He presides over the impeachment of the process in which he participated as Returning Officer. Petitions challenging the results of the Presidential elections on any question relating to the legitimacy of the election including corruption, bribery and non compliance with the relevant law are determined by the full bench of the Supreme Court.<sup>58</sup> Presidential petitions must be lodged within fourteen days of an elected President being sworn into office. The Constitutional and statutory provisions relating to the election of the President have been matters of serious contention and debate by the Zambian citizens.

## **2.2 Elections to the National Assembly**

The legislative power of the Republic vests in Parliament which consists of the President and the National Assembly.<sup>59</sup> The Constitution provides for a National Assembly of one hundred and fifty elected members, not more than eight members nominated by the President, and the Speaker

---

<sup>53</sup> Article 34(3) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>54</sup> Article 34(5) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>55</sup> Article 34(7) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>56</sup> Article 34(9) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>57</sup> Article 41(1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>58</sup> Article 41(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>59</sup> Article 62 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

of the National Assembly.<sup>60</sup> The election to the National Assembly is by direct universal adult suffrage and is also by secret ballot.<sup>61</sup> The National Assembly has a term of five years but can be dissolved at any time by the President or by a two-thirds majority of its members.<sup>62</sup> A candidate for election to the National Assembly must be a Zambian citizen, has attained the age of twenty-one years, is literate and conversant with the official language of Zambia.<sup>63</sup> However, a parliamentary candidate, who owes allegiance to some country other than Zambia, is of unsound mind, is under the sentence of death or imprisonment imposed on him by a court of law, or he is an un-discharged bankrupt or is a detainee under the authority of the law or a person who is five years prior to becoming a candidate has served a sentence of imprisonment for a criminal offence, shall not stand for National Assembly elections.<sup>64</sup>

A Presidential candidate cannot stand as a candidate of the National Assembly,<sup>65</sup> nor can a chief stand as a candidate unless he abdicates.<sup>66</sup> A person whose functions involve National Assembly elections may be excluded to stand as a candidate by Parliament. Where a person has been convicted by any court of any offence prescribed by Parliament, that is connected with the election of members of the National Assembly or who has been found guilty of such an offence by the court trying an election petition shall not be qualified to be elected as a member of the National Assembly for a period not exceeding five years. Those disqualified from election to the National Assembly include members of the Defence Forces, Zambia Security Intelligence Service (ZSIS), the Anti-Corruption Commission (ACC), Drug Enforcement Commission (DEG), the Zambia Prisons Services, any statutory body or any company or institution in which the government has any interest or any office prescribed by any Act of Parliament.<sup>67</sup> A candidate must pay election fees and the nominations should be supported by nine persons registered as voters in the constituency.<sup>68</sup> These ineligibility criteria run contrary to international agreements to which Zambia is party<sup>69</sup> and they deprive significant numbers of Zambians from exercising their political rights.

---

<sup>60</sup> Article 63 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>61</sup> Article 63(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>62</sup> Article 88 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>63</sup> Article 64 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>64</sup> Article 65(1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>65</sup> Article 65(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>66</sup> Article 65(4) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>67</sup> Article 65(7) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>68</sup> Article 66(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>69</sup> International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of Racial Discrimination (ICERD), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Political Rights of Women (CPRW)

Elections to the National Assembly are held every five years and whenever the National Assembly is dissolved either by the President or the National Assembly itself resolving to do so by a two thirds majority of the members.<sup>70</sup> A Member of Parliament (MP) vacates his seat in the Assembly if the MP ceases to be a Zambian citizen; if the MP acts contrary to the Parliamentary and Ministerial Code of Conduct; if the MP ‘crosses the floor’; if the MP assumes the office of President; if the MP is sentenced to death or to imprisonment for a term exceeding six months and if any circumstances arise that, if the MP was not a member of the National Assembly, would cause the person to be disqualified for election.<sup>71</sup>

The Constitution establishes the Electoral Commission of Zambia (ECZ) and prescribes its functions.<sup>72</sup> However, the Constitution does not provide for its composition, powers and operations. These provisions are found in the Electoral Commission Act<sup>73</sup> and the Electoral Act.<sup>74</sup> Petitions challenging the results of Parliamentary elections are dealt with by the High Court for Zambia.<sup>75</sup>

### **2.3 The Electoral Act**

In the aftermath of the controversial elections of 2001 in which the winning Presidential candidate secured his election victory with only 29 percent of the popular vote, there was loss of confidence in the electoral system by the Zambian stakeholders. Consequently, and under pressure from stakeholders, the late President Levy Mwanawasa appointed an Electoral Reform Technical Committee (ERTC) to review the electoral process and to make recommendations aimed at instilling public confidence in the electoral system and ensuring that the electoral process is acceptable to the stakeholders.<sup>76</sup> As a result of the work and recommendations of the ERTC, a new Electoral Act<sup>77</sup> was enacted in May 2006.

---

<sup>70</sup> Article 88(6) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>71</sup> Article 71(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>72</sup> Article 76 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>73</sup> Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

<sup>74</sup> Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>75</sup> Article 72 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>76</sup> Final Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia, August 2005. P. 144

<sup>77</sup> Electoral Act, No. 12 of 2006 of the Laws of Zambia

The new Electoral Act, together with other election-specific legislation provide a process for the conduct of Presidential and Parliamentary elections. The Act contains rules and regulations relating to the election of the Republican President and Members of Parliament; the powers of the Electoral Commission to make rules and regulations; the manner of conducting elections; offences and penalties due to the violation of electoral regulations; and the conduct and hearing of election petitions. The Act empowers the ECZ to administer and enforce the provisions of the Act.<sup>78</sup> The Act also mandates the ACC to investigate and prosecute any corrupt practice committed under the Act,<sup>79</sup> while the Zambia Police Force (ZPF) has the mandate to enforce law and order at polling stations and to undertake any criminal proceedings for election-related election offences.<sup>80</sup> The duties of the ZPF in enforcing law and order are prescribed under the Electoral Code of Conduct.<sup>81</sup>

Although the new Act which repealed and replaced the Electoral Act, 1991, introduced some changes to the legal framework for elections, it did not incorporate most of the progressive recommendations reflected in both the reports of the ERTC and the CRC. The framers of the new Electoral Act avoided all constitutional matters and only concentrated on strengthening the administrative aspects of the electoral process. This oversight has continued to undermine the effectiveness of the Electoral Act and the electoral playing field. For example, the framers did not incorporate the proposed constitutional reforms that the citizens had craved for such as the adoption of the 50% plus 1 vote electoral system, the power of the ECZ to choose the date of an election,<sup>82</sup> campaign financing and affirmative action for the representation of women. Despite this setback, the new Electoral Act introduced some important changes. For the first time, it became a legal requirement for the ECZ to organize voter education.<sup>83</sup> There is also provision under the Act for civil society organisations to provide voter education for an election in an impartial and independent manner with the objective of promoting conditions which are conducive to free and fair elections. The Act also confers an obligation on the ECZ to register voters on a continuous basis<sup>84</sup> and in compliance with the Constitution which entitles every

---

<sup>78</sup> Section 3(1) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>79</sup> Section 3(5) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>80</sup> Section 3(6) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>81</sup> Regulation 11 of the Electoral (Code of Conduct) Regulations, 2006

<sup>82</sup> Section 25(1) of the Electoral Act, No. 12 of 2006 empowers the President to set the polling day for a general election in contradiction of Articles 76(1) and 77 of the Constitution which mandate the ECZ to conduct Presidential and Parliamentary elections.

<sup>83</sup> Section 77 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>84</sup> Section 4 of Electoral Act, No. 12 of 2006 of the Laws of Zambia

eligible Zambian citizen to register as a voter for purposes of elections.<sup>85</sup> The Act further provides for the establishment of Conflict Management Committees at national and district levels for the purpose of resolving election-related disputes.<sup>86</sup> The Committees are established to monitor adherence to the Electoral Code of Conduct by all stakeholders; to receive and investigate all reports of suspected violation of the Electoral laws; and to mediate and resolve disputes.

In response to the call by many stakeholders for transparent ballot boxes, the Electoral Act has provision which mandates the ECZ to introduce transparent ballot boxes in elections with security features.<sup>87</sup> The Act also provides for the design of ballot papers in a way that prevents fraudulent voting.<sup>88</sup> The Act sets out various offences that may be committed during the electoral process arising from bribery, impersonation, treating, exerting undue influence, and illegal practices.<sup>89</sup> The Act provides for the penalties to be meted out when such offences are committed. These offences fall under different headings such as: Offences committed during Registration of Voters<sup>90</sup>; Offences during Nomination; Election Offences<sup>91</sup> and Offences by printers and publishers.<sup>92</sup> In addition, political parties are not allowed to arrange public meetings, demonstrations, rallies or matches at the same time and venue as another similar event organized by another political party. The disfiguring or destruction of campaign materials of rival parties is prohibited as well as the ferrying of voters to polling stations using government resources and facilities. The observance of the non-use of Government resources has often been breached with impunity by the ruling party. For example, the Auditor General's Report for 2006, revealed that K10 billion was spent by the Vice-President unconstitutionally on campaigning for President Levy Mwanawasa in the 2006 Presidential elections. This disclosure by the Auditor General points to the fact that, public funds were used for an illegal purpose.<sup>93</sup>

Additionally, the Act provides for the presentation of election petitions to the High Court by reason of any corrupt practice or illegal practice committed in connection with the election or by

---

<sup>85</sup> Article 75 of Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>86</sup> Section 111 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>87</sup> Section 44 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>88</sup> Section 43 of the Electoral Act, No. 12 of the Laws of Zambia

<sup>89</sup> Sections 79 to 86 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>90</sup> Regulations 60 to 69 of the Electoral (Registration of Voters) Regulations, S.I No. 238 of 1973

<sup>91</sup> These Offences are found in Part VII, s 79- 92 of the Electoral Act No. 12 of 2006 of the Laws of Zambia

<sup>92</sup> Section 92 of the Electoral Act No. 12 of 2006 of the Laws of Zambia

<sup>93</sup> The POST, 12 August, 2008

reason of misconduct.<sup>94</sup> The presentation, hearing and determination of election petitions for elections to Parliament is in the High Court for Zambia.<sup>95</sup> Equally important, the Act has provision which empowers the ECZ to issue Electoral Codes of Conduct for the promotion of free, fair and orderly elections.<sup>96</sup> Prior to the enactment of the new Electoral Act, there were debates including litigation as to who has the mandate, between the President and ECZ, to set the date of the polling day for general elections. The new Act mandates the President to prescribe the date of the polling day for a general election.<sup>97</sup> The Act further provides that the polling day shall not be a date later than ninety days from the date of dissolution of Parliament.<sup>98</sup> The mandate, which empowers the President to announce the polling day was challenged in the High Court by the Law Association of Zambia (LAZ)<sup>99</sup>. LAZ contended that the President's mandate was contradictory to the Constitution but the Court dismissed the application citing provisions of the Electoral Act. This ruling means that as long as the polling day is not enshrined in the Constitution, the President will always have tactical advantage and influence on the elections.

Prior to the 2006 elections, attempts were made to review the Constitution through the CRC which was instituted in 2004. The final report of the CRC was submitted to the Government in August, 2005. However, the adoption of the recommendations and implementation of the report was postponed until after the 2006 elections. Against massive pressure by the political parties and civil society to implement the CRC recommendations, the Government argued that it would be costly to finance both the 2006 tripartite elections and the work of the Constituent Assembly.<sup>100</sup> This therefore, resulted in holding the 2006 elections under the old Constitution which had been criticised for not guaranteeing free and fair elections. It should be noted that Presidential candidates in the 2001, 2006 and 2008 elections were elected on minority votes of 29 per cent, 43 per cent and 38 per cent, respectively. Based on this trend of results, it is clear that Zambia has, over the years developed a pattern of minority electoral victories in Presidential elections and this scenario has brought about questions of credibility and legitimacy of the electoral process.

---

<sup>94</sup> Section 93 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>95</sup> Section 96(2) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>96</sup> Section 109 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>97</sup> Section 25(1) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>98</sup> Section 25(2) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>99</sup> This was in the case of Attorney General and Ors v Law Association of Zambia, SCZ No. 3 of 2008

<sup>100</sup> SACCORD, *Zambian 2006 Presidential, Parliamentary & Local Government Elections Report*, P. 3

## 2.4 The Electoral (Code of Conduct) Regulations.

The present Electoral Code of Conduct<sup>101</sup> was issued by ECZ as a replacement of the Code of Conduct of 1996, which was revoked in 2006 after consultations with political parties and civil society organisations. The Regulations under the Code among other matters, were formulated to regulate the conduct of all stakeholders before, during and after elections. The formulation of regulations followed concerns by various stakeholders that the political playing field did not provide a fair environment for opposition political parties during elections with the desired objective of having free and fair elections.<sup>102</sup>

The Regulations under the Code of Conduct set out rules of behavior for political parties and their supporters relating to their participation in an election campaign.<sup>103</sup> Some of the duties and obligations imposed on political parties, are declaratory in character and not enforceable. For example, under the Code,<sup>104</sup> every person is required to promote conditions conducive to the conduct of free and fair elections and be bound by the Code. It is evident that such a provision is difficult to enforce by the relevant enforcement.

The duties of the ECZ during elections are further specified under the Code of Conduct.<sup>105</sup> The Code also specifies the duties of the media which include the duty to provide fair and balanced reporting of the election campaigns and to be bound by the provisions of the Code during elections.<sup>106</sup> The accreditation and duties of election monitors and observers are also specified under the Code.<sup>107</sup> The Code of Conduct also provides for the electoral dispute resolution by the Conflict Management Committees.<sup>108</sup> The Regulations under the Code set out certain prohibitions, for instance, the coercion or intimidation of persons during election campaigns or elections is prohibited.

As a result of the new Electoral Act and its accompanying Code of Conduct, stakeholders agree that the present legal framework for holding elections is an improvement on that of 2001, but that

---

<sup>101</sup> Electoral (Code of Conduct) Regulations, 2006

<sup>102</sup> Final Report of the Electoral Reform Technical Committee: The Electoral System in Zambia, August, 2005, P.405

<sup>103</sup> Regulation 8 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>104</sup> Regulation 4 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>105</sup> Regulation 10 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>106</sup> Regulation 12 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>107</sup> Regulation 15 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>108</sup> Regulation 16 of the Electoral (Code of Conduct) Regulations, 2006.

further reforms to the legal framework are necessary for the conduct of democratic elections. The controversy and violent protests that followed the election results, in Lusaka and Kitwe,<sup>109</sup> in the aftermath of the 2006 and 2008 elections bear testimony to the need to implement widely accepted legal reforms as recommended by the CRC and ERTC.

## **2.5 Allied Legislation that Impact on the Electoral System**

There are a number of additional legislative provisions that impact on the electoral system, and the most important of the allied laws are discussed below:

### **2.5.1 The Referendum Act**

A referendum can now only be held, if there is a desire to alter Part III or Article 79 itself of the Constitution. A referendum is held, if the President in his opinion deems it necessary or desirable so to do. The President is then required to issue a statutory instrument directing that a referendum be held on any questions specified in the Order. The questions are framed in such a way that they require only a “Yes” or “No” answer.<sup>110</sup> All those qualified to vote in National Assembly elections vote in the Referendum.<sup>111</sup> The referendum is conducted by a “Referendum Commission” constituted by a chairman, who shall be qualified to hold high judicial office and two other members appointed by the president. The Commission may by statutory instrument, make regulations providing for the procedure and manner of conducting any referendum. The power of the Commission in making regulations for the procedure and manner of conducting a referendum is similar to the regulatory powers of the Electoral Commission.<sup>112</sup>

The referendum result may be petitioned on the ground of extensive corruption, on the ground of error or on ground of misconduct on the part of the Referendum Officer. The other ground that may be petitioned is the erroneous declaration of the result by the Commission.<sup>113</sup> In the absence of a petition, the referendum is effective from the date on which the result is declared. The result is final and is not capable of being questioned in any court of law and stands as conclusive evidence of the voting at the referendum.

---

<sup>109</sup> Police arrested 38 people in Kitwe in connection with riots: The Times of Zambia, November, 4, 2006, P.1

<sup>110</sup> Section 2(1), the Referendum Act, Chapter 14 of the Laws of Zambia.

<sup>111</sup> Section 4, the Referendum Act, Chapter 14 of the Laws of Zambia.

<sup>112</sup> Electoral Commission Act, 1996, of the Laws of Zambia

<sup>113</sup> The Referendum Act, Chapter 14 of the Laws of Zambia.

## 2.5.2 The Media Laws

The media has an important role to play in facilitating the citizens' enjoyment of the right to vote. This is achieved through their reporting of issues and events before, during and after the elections. Democratic Governments the world over, have an obligation to ensure that the public receive adequate information during an election. Such information should be made available by the media who should ensure that such election coverage is fair, equitable, and non-discriminatory.<sup>114</sup> In Zambia, the role of the media during elections is specified under the Electoral Code of Conduct<sup>115</sup>. The regulations provide among other things, the obligation of the media to promote balanced coverage of all electoral activities, the equal allocation of air time to all political parties, and the accurate disclosure of election activities, and results. From past experience, it is to be observed that the public media has failed to comply with the provisions of the law and the ECZ has also failed to take appropriate action where complaints have been substantiated. In fact, the Mung'omba CRC observed that the practice by the public media of biased coverage in favour of the ruling party has led to persistent complaints that elections are not free and fair.<sup>116</sup>

It is on record that the 2001 elections in Zambia were criticized as there was no equitable and balanced reporting by the public media which media was clearly pro-government.<sup>117</sup> With regard to media coverage during the 2006 elections, FODEP came to the conclusion that the private and public media seemed polarized in their coverage of election activities.<sup>118</sup> In agreement with the observations made by FODEP, other Zambian election monitoring organizations, AVAP<sup>119</sup> and SACCORD made similar observations on the need to have balanced media coverage for all political parties during elections.<sup>120</sup> The biased media coverage of the 2008 presidential election has also come under public criticism as both the public and private media aligned themselves to political parties.

---

<sup>114</sup> Dr. P. Matibini, *The Struggle for Media Law Reforms in Zambia*, MISA Zambia 2006, P.42

<sup>115</sup> Regulations 12, 13 and 14 of the Electoral (Code of Conduct) Regulations, 2006

<sup>116</sup> Report of the Constitutional Review Commission, December 2005, P. 279

<sup>117</sup> What are the media preconditions for an election to qualify as being "free and fair". Discussion document compiled for South Africa National Editors Forum (SANEF), [Guvberder.ru.ac.za/Research/Democracy/election.htm](http://Guvberder.ru.ac.za/Research/Democracy/election.htm)

<sup>118</sup> FODEP, Report on Zambia's 2006 Tripartite Elections, FODEP National Secretariat, Lusaka, P. 26

<sup>119</sup> AVAP, Zambia's 2006 Tripartite Elections Report, National Secretariat, Lusaka, P. 61

<sup>120</sup> SACCORD, Zambian 2006 Presidential, Parliamentary & Local Government Election Report, P.11

### 2.5.3 The Public Order Act

In Zambia, the right to freedom of speech, association and peaceful assembly is guaranteed under Part III of the Constitution<sup>121</sup> and regulated by the Public Order Act (POA)<sup>122</sup>. Guarantees to these freedoms have been in place since the 1964 Independence Constitution.<sup>123</sup> Despite these guarantees, these freedoms have, in practice, experienced limitations arising from provisions of the POA. Under the Act, the exercise of freedoms was conditional upon obtaining a police permit prior to the exercise of the rights.<sup>124</sup> The requirement to obtain a police permit in order to hold an assembly (contravention of which was criminalized) was challenged for unconstitutionality in the *Mulundika Case*.<sup>125</sup> The Supreme Court delivered its landmark judgment in 1996, holding that the provision requiring a police permit was null and void and therefore, invalid for unconstitutionality. Subsequent to the Supreme Court decision, the POA was amended by repealing the provision which required obtaining a police permit. The Act now merely requires conveners of public gatherings to notify the police before any such gathering can take place. Despite the landmark decision of the Supreme Court in the *Mulundika case*, it is regrettable that police officers have continued to act as if they have authority to grant permits for assemblies, public meetings and processions.<sup>126</sup> The role of the police during elections is clearly specified under the Electoral Code of Conduct and there is no longer the requirement to obtain a police permit for any gathering to take place.<sup>127</sup>

### 2.5.4 The Anti-Corruption Commission Act

The Anti-Corruption Act (ACC), provides for the prosecution of corruption related offences. Corruption in the political system may take the form of buying off political opponents, rewarding political supporters or ensuring the backing of key groups through bribery or simply accumulating resources to contest elections. In order to obtain these resources, some political leaders may form alliances with business or even criminal elements.<sup>128</sup> There can only be a free,

---

<sup>121</sup> Article 21 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>122</sup> Public Order Act, Chapter 113 of the Laws of Zambia

<sup>123</sup> Report of the Constitutional Review Commission, December 2005, P. 121

<sup>124</sup> Report of the Constitutional Review Commission, December 2005, P. 122

<sup>125</sup> *Mulundika and Others v The People*, (1995 – 1997) ZR. 20

<sup>126</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P. 368

<sup>127</sup> Regulation 11 of the Electoral (Code of Conduct) Regulations, 2006

<sup>128</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P. 383

fair, credible and legitimate electoral process in a climate that is free from political violence, intimidation and bribery. From the many election petitions and court proceedings that have been recorded in previous elections, there is evidence that political violence, intimidation and bribery have been proved. In all the proved cases, the ECZ has remained powerless to deal with the violations as the mandate to do so rests with other agencies such as the Zambia Police Force, and the ACC.<sup>129</sup> There is evidence that both the Police and ACC avoid taking the responsibility of enforcing regulations under the Electoral Code of Conduct despite having statutory mandates to deal with violations where conduct borders on corruption and bribery.<sup>130</sup>

## 2.6 Conclusion

The electoral legal framework of Zambia is established under the Constitution as well as under a number of statutes. Zambia's constitutional and legal framework contains a number of weaknesses and inconsistencies that weaken its effectiveness. In terms of the electoral process, the current Constitution has a number of flaws that have negatively impacted on the electoral process and election results. Since the re-introduction of multi-party politics in 1991, there have been attempts, through Constitutional Review Commissions to review and enact a new Constitution for Zambia but these efforts have not yet yielded positive results. It is clearly evident that, Zambia will continue to face future elections under a defective and much criticized Constitution until such time that a new Constitution is enacted and the various recommendations of the ERTC are addressed. The evaluation and challenges of working with a defective legal framework of the electoral system in Zambia, is the subject matter of Chapter III.

---

<sup>129</sup> Section 3(5) of the Electoral Act, No. 12 of 2006 empowers the ACC to investigate and prosecute any corrupt practice committed under the Electoral Act.

<sup>130</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, August, 2005, P. 316

## CHAPTER III

### **INSTITUTIONAL FRAMEWORK RELATING TO THE ADMINISTRATION OF THE ELECTORAL SYSTEM**

#### **3.0 Introduction**

The Zambian Constitution provides for the establishment of an autonomous Electoral Commission responsible for the administration of elections.<sup>131</sup> The Constitution, the Electoral Commission Act,<sup>132</sup> and other relevant statutory instruments set out the mandate of Electoral Commission of Zambia (ECZ) to provide for the conduct of Presidential, Parliamentary and Local Government elections. In Chapter 2, we discussed Zambia's constitutional and legal frameworks to provide the context and legal environment in which elections take place. The Constitution should both provide the legal framework for the country and at the same time, serve as a basis for the conduct and delivery of free, fair, credible and legitimate elections. This Chapter will discuss the effectiveness of the institutional framework relating to the administration of the electoral system and process.

#### **3.1 Powers of the Electoral Commission of Zambia**

The Electoral Commission of Zambia (ECZ) is established as an autonomous body under the Zambian Constitution.<sup>133</sup> Its constitutional functions are to supervise the registration of voters and review the voters register, to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly. In addition to the functions mandated by the Constitution to the ECZ, the Commission has statutory functions which are, to supervise a Referendum<sup>134</sup>, to conduct and supervise the Local Government Elections<sup>135</sup>, to conduct voter education<sup>136</sup>, to formulate and review Electoral General Regulations, to resolve election disputes through the establishment of Conflict Management Committees; and to perform any other statutory functions that the National

---

<sup>131</sup> Article 76 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>132</sup> Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia.

<sup>133</sup> Article 76(1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>134</sup> Referendum Act, Chapter 14 of the Laws of Zambia

<sup>135</sup> Local Government Elections Act, Chapter 282 of the Laws of Zambia

<sup>136</sup> Electoral Act No. 12 of 2006 of the Laws of Zambia

Assembly may call upon it.<sup>137</sup> In line with the constitutional requirement, *vis-à-vis* the execution of the constitutional and statutory functions, the ECZ has set itself the following mission statement:

*“To develop and maintain an effective and responsive electoral process in order to ensure the conduct of transparent, free and fair elections for the benefit of the people of Zambia”*<sup>138</sup>

Further, the Constitution<sup>139</sup> provides for the promulgation of legislation to determine the composition and operations of the Electoral Commission in accordance with the Electoral Commission Act.<sup>140</sup> In accordance with the provision in the Electoral Act, the Commission is not subject to the direction or control of any other person or authority in the exercise of its functions under the Constitution.<sup>141</sup> It is quite clear that this provision is intended to guarantee the independence of ECZ, but whether this objective has been realised is a subject of further debate.

### **3.2 Composition of the Electoral Commission of Zambia**

The Electoral Commission Act provides for the composition of ECZ and its operations. The Commission consists of a Chairperson and not more than four other members appointed by the President, subject to ratification by the National Assembly,<sup>142</sup> for a term not exceeding seven years. The Chairperson of the ECZ must be a person who has held, or has qualifications to hold high judicial office or any other suitably qualified person.<sup>143</sup> In addition, the Act sets out the circumstances under which the President may remove a member of the Commission. Accordingly, a member may be removed on grounds of insanity and when declared bankrupt.<sup>144</sup> The Chairperson and members of ECZ serve on full time basis and constitute the policy making body of the Commission. The Electoral Commission Act<sup>145</sup> empowers the Commission to appoint a Director who is the Chief Executive Officer of the Commission and is responsible for the management and administration of the Commission and for the implementation of the decisions of the Commission. ECZ has regulatory powers to determine how all the elections

---

<sup>137</sup> Electoral Act No. 12 of 2006 of the Laws of Zambia

<sup>138</sup> Annual Report of the Electoral commission of Zambia, Lusaka, 2000, P.1

<sup>139</sup> Article 76(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>140</sup> Electoral Commission Act No. 24 of 1996 of the Laws of Zambia

<sup>141</sup> Section 3(1) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>142</sup> Section 4 of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

<sup>143</sup> Section 4(4) of the Electoral Commission Act, No. 24 of 1996, of the Laws of Zambia

<sup>144</sup> Section 5(3) of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

<sup>145</sup> Section 12 of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

Assembly may call upon it.<sup>137</sup> In line with the constitutional requirement, *vis-à-vis* the execution of the constitutional and statutory functions, the ECZ has set itself the following mission statement:

*“To develop and maintain an effective and responsive electoral process in order to ensure the conduct of transparent, free and fair elections for the benefit of the people of Zambia”*<sup>138</sup>

Further, the Constitution<sup>139</sup> provides for the promulgation of legislation to determine the composition and operations of the Electoral Commission in accordance with the Electoral Commission Act.<sup>140</sup> In accordance with the provision in the Electoral Act, the Commission is not subject to the direction or control of any other person or authority in the exercise of its functions under the Constitution.<sup>141</sup> It is quite clear that this provision is intended to guarantee the independence of ECZ, but whether this objective has been realised is a subject of further debate.

### **3.2 Composition of the Electoral Commission of Zambia**

The Electoral Commission Act provides for the composition of ECZ and its operations. The Commission consists of a Chairperson and not more than four other members appointed by the President, subject to ratification by the National Assembly,<sup>142</sup> for a term not exceeding seven years. The Chairperson of the ECZ must be a person who has held, or has qualifications to hold high judicial office or any other suitably qualified person.<sup>143</sup> In addition, the Act sets out the circumstances under which the President may remove a member of the Commission. Accordingly, a member may be removed on grounds of insanity and when declared bankrupt.<sup>144</sup> The Chairperson and members of ECZ serve on full time basis and constitute the policy making body of the Commission. The Electoral Commission Act<sup>145</sup> empowers the Commission to appoint a Director who is the Chief Executive Officer of the Commission and is responsible for the management and administration of the Commission and for the implementation of the decisions of the Commission. ECZ has regulatory powers to determine how all the elections

---

<sup>137</sup> Electoral Act No. 12 of 2006 of the Laws of Zambia

<sup>138</sup> Annual Report of the Electoral commission of Zambia, Lusaka, 2000, P.1

<sup>139</sup> Article 76(2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>140</sup> Electoral Commission Act No. 24 of 1996 of the Laws of Zambia

<sup>141</sup> Section 3(1) of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>142</sup> Section 4 of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

<sup>143</sup> Section 4(4) of the Electoral Commission Act, No. 24 of 1996, of the Laws of Zambia

<sup>144</sup> Section 5(3) of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

<sup>145</sup> Section 12 of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

activities are run. The Electoral Commission sits at the pinnacle of a tiered management structure. Below the Commission are the District Electoral Officers, who in turn appoint the Returning Officers on behalf of ECZ. Returning Officers are responsible for the election arrangements in each constituency. Presiding Officers, who manage at polling station level, are at the final tier of this management structure. They are responsible for polling and counting assistants in each polling station.

The Electoral Act empowers ECZ, in matters relating to elections, to make regulations *vis-à-vis* the registration of voters; to provide for election petitions and the hearing and determination of applications relating to National Assembly elections and to provide for election offences and resultant penalties. Further, the Commission is mandated to provide for the appointment of conflict management officers. In theory, it appears that the Commission has powers to administer and enforce election laws and regulations. On the contrary, it is important to note that the Electoral Code of Conduct is enforceable by the Police and the Anti-Corruption Commission (ACC) and the Electoral Commission itself.<sup>146</sup>

Besides, the existing Electoral Act that gives details of the electoral process in Zambia, the ECZ prepares and issues guidelines on the proper and methodical conduct of elections. The guidelines are in form of statutory instruments such as the Electoral Code of Conduct, administrative instructions and election manuals. These are useful documents for the candidates, political parties and interest groups such as NGOs, election monitors and the media. In this regard, it will be seen that the prime objective of ECZ is to ensure that all the elections are free and fair to all contesting candidates, political parties and the electorate. It is only in an environment of free and fair elections that a government gets its legitimacy, credibility and the support from the citizens.

### **3.3 Financing of Electoral Commission of Zambia**

Funding of the ECZ may be generated from a number of sources of revenue. Pursuant to the Electoral Commission Act,<sup>147</sup> funds for the Commission may be derived from the Government Budget and subject to the approval of the President, the Commission may accept moneys by way

---

<sup>146</sup> Report of the Commonwealth Observer Group: Zambia Presidential, National Assembly and Local Government Elections 2006, Commonwealth Secretariat, P.122

<sup>147</sup> Section 13(1) of the Electoral Commission Act, No. 24 of 1996 of the Laws of Zambia

ECZ is generally perceived to lack transparency as it is easily manipulated by the Executive. The performance of ECZ was tested in the 1996 Presidential election petition.<sup>153</sup> ECZ came under the scrutiny of electoral petitioners who, among other allegations, questioned the electoral process and the manner the process was handled by the Electoral Commission. In this case, the petitioners asked for the avoidance of the election for the reason that it was rigged and not free and fair. The petitioners accused ECZ of neglecting its statutory duty to superintend the Presidential election process thereby allowing a fraudulent election favouring former President Frederick Chiluba. The Supreme Court, in dismissing the petition, agreed that the election process had flaws and irregularities, but that the election was substantially in conformity with the law and practice which govern such elections. This case revealed serious weaknesses by ECZ to resolve issues of bribery and corruption, irregularities and flaws in the electoral process.

For the 2001 tripartite elections, both the international and local election monitors and observers did not have kind words on the performance of ECZ. The EU Election Observation Mission (EU EOM) had the following conclusion on the performance of ECZ and of the election results:

*“...taking its performance into account in relation to the low – 55 per cent- rate of voter registration, its failure to enforce its Code of Conduct, its maladministration on polling day, and its failure to address serious concerns relating to the accuracy of the announced results, we conclude that ECZ has failed to fulfill its mandate on behalf of the electors of Zambia”.*<sup>154</sup>

Based on the poor performance of ECZ and coupled with the close outcome of the elections, EU EOM concluded that the declared election results were not representative of the wishes of the Zambian electorate. The strongest indictment proving the weaknesses and incapacity of ECZ in managing the electoral process is found in the Presidential election petition case of *Mazoka and Ors v Mwanawasa and Ors*.<sup>155</sup> In this case, the late President Levy Mwanawasa was declared winner of the 2001 Presidential elections. The losing opposition political parties petitioned the Supreme Court challenging the election results. The petitioners demanded that the Supreme Court declares the 2001 election results null and void and that the winning candidate,<sup>156</sup> be declared not duly elected because the elections were allegedly fraudulent. The petitioners claimed, among several other allegations, that ECZ was negligent and failed to supervise or superintend the

---

<sup>153</sup> This was in the case of *Lewanika and Others v Chiluba*, (1998) Z.R. 79

<sup>154</sup> European Union Election Observation Mission: Zambia Elections 2001 – Final Statement, P.4.

<sup>155</sup> *Mazoka and Ors v Mwanawasa and Ors*, 2005, Z.L.R. P. 138

<sup>156</sup> The Late President Mwanawasa went on to win the 2006 presidential elections and died on 19 August, 2008 before the expiry of his second term of office.

election in accordance with the Electoral Act and its Regulations. The petitioners further alleged that ECZ facilitated the illegal and fraudulent conduct by allowing the opening of ballot boxes in the absence of interested parties and deliberately transporting ballot boxes without seals. There were also claims that the election was fraught with general and notorious bribery, corruption, illegal practices and misconduct. The petitioners contended that the malpractices affected the election results thereby denying the electorate a free and fair election. In its judgment, the Supreme Court accepted that there were flaws, incompetence and dereliction of duty on the part of ECZ. The Court found that in total, there were 36 allegations and that 6 of the 36 allegations were partially proved, while the remaining 30 were not proved. Surprisingly, and notwithstanding these findings, the Supreme Court dismissed the petition and held that:

*“On the evidence presented, there is no basis upon which to find that the election was rigged and that it was not free and fair. The elections while not being totally perfect, were substantially in conformity with the law and practice.”*

It is to be noted that the 2006 and 2008 elections benefited from the increased management capacity and independence of ECZ supported by a new Electoral Act<sup>157</sup> and appointments of more credible Chairpersons to head the Commission. Although the situation had improved to some extent, the final stages of the 2006 tripartite elections and 2008 Presidential By-Election left the public with a perception that there is still a great deal of inefficiency, lack of transparency and corruption at the institution.<sup>158</sup> The final report of EU EOM summarized the performance of ECZ in the 2006 tripartite elections in the following terms:

*“Overall, the elections were marked by increased transparency and confidence in the ECZ throughout most of the electoral process. However, the counting, tabulation and transmission of results processes encountered numerous problems. Complex documentation, inadequate guidelines and inefficient training meant that the processes were slow and that procedures were not always followed. The subsequent abandonment of the system of electronic transmission of results, as well as the delay in the announcement of the presidential election results, contributed to a decline in confidence among stakeholders during the final stages of the elections.”<sup>159</sup>*

This observation by the EU EOM implied that there are still serious problems of transparency in the election process. In its overall observations and concluding remarks on the 2006 elections, the Anti Voter Apathy Project (AVAP) also had serious reservations on the performance of ECZ in the election process and had this to say:

---

<sup>157</sup> Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>158</sup> Transparency International Country Study Report, National Integrity Systems, 2006/7, P.2

<sup>159</sup> EU Election Observation Mission, Zambia Tripartite Election 28 September 2006, Final Report, P.1

*"In particular, the ECZ showed serious weaknesses in collating election results which was characterized by serious anomalies, discrepancies and omissions. This caused serious damage to the credibility of the outcome of the results as well as to the legitimacy of the elected leaders. The extent of questionable legitimacy and acceptability of the election results was demonstrated by several election petitions that followed the declaration of the results. In fact, in some cases the results were reversed at the collation centre but discrepancies created at the collation centres were not reversed by the ECZ, leading to petitions in the courts. ...It is with this background and many other challenges that affected the conduct of 2006 elections that AVAP found it difficult to declare the elections free and fair."*<sup>160</sup>

In order to enhance transparency and build stakeholder confidence in the electoral process, ECZ succumbed to pressure from stakeholders and permitted the pasting of election results at the respective polling stations as demanded by the stakeholders during the 2008 elections.<sup>161</sup> It is a known fact that ECZ has also allowed political parties and other stakeholders the opportunity to witness the printing of election ballot papers in South Africa for both the 2006 and 2008 elections. However, although the decision was well received as an improvement on stakeholder participation in the electoral process, the same stakeholders expressed serious concerns at the ECZ's decision to transport presidential ballot papers for the 2008 elections in two batches from South Africa. The stakeholders viewed this act as being susceptible to ballot tempering and therefore, vote-rigging.

These are serious indictments on the efficiency and effectiveness of the ECZ and the electoral process to produce results that may be termed to be free, fair and legitimate. The performance of ECZ towards preparations for the 2008 Presidential By-Election also invited criticism from various stakeholders with accusations of lack of transparency on the part of ECZ and the electoral process. The run-up to the 2008 Presidential elections, for example, saw the registration of an NGO calling itself the Anti Rigging Zambia Limited (AZL) which was established with the purpose, among others, of criminalising electoral fraud.

Subsequent to its establishment, AZL petitioned ECZ in the High Court for Zambia and sought a declaration that the decision by ECZ to rely on the 2006 voters' register for the 2008 Presidential election was *ultra vires* and therefore, null and void.<sup>162</sup> AZL contended that the failure by ECZ to register voters before the 30 October, 2008 Presidential election was a violation of the

---

<sup>160</sup> AVAP, Zambia's 2006 Tripartite Election Report, National Secretariat, Lusaka, P.59

<sup>161</sup> The POST, Wednesday, October 8, 2008, P.3 Home News

<sup>162</sup> The Zambia Daily Mail, Tuesday, October 14, 2008, P.1 and P. 2.

Constitution<sup>163</sup> as ECZ has an obligation under the Electoral Act<sup>164</sup> to continuously register voters. The High Court held that there had not been any willful neglect or serious failing on the part of ECZ as it risked violating the Constitution<sup>165</sup> which mandates ECZ to hold Presidential elections within ninety days when a vacancy occurs in the office of the President. Further, the Court came to the aid of ECZ when it held that it was impracticable for ECZ to prepare a fresh voters' roll because it never anticipated a Presidential election in 2008.<sup>166</sup>

In its 2008 Presidential election post-mortem, Transparency International – Zambia (TIZ) observed that the elections were marred by several violations of the law mostly by the ruling party.<sup>167</sup> TIZ stated that it received a total of 133 reports of electoral malpractices against the Movement for Multi-Party Democracy (MMD), 13 reports against Patriotic Front (PF), 4 reports against United Party for National Development (UPND) and none against Heritage Party (HP). TIZ stated that voter turn-out was only 47.5 per cent and accused ECZ for disenfranchising voters due to the absence of continuous voter registration and the prohibition of citizens from voting who had lost their 2006 voters cards. Other malpractices concerned the abuse of government resources by the MMD, buying of voters cards by the political parties, abuse of traditional rulers through corruption and bribery and the inability of law enforcement agencies to act against malpractices or to prosecute the culprits. Accordingly, TIZ came to the conclusion that although the 2008 elections were peaceful, they fell short of being free, fair and credible.<sup>168</sup>

Despite the existence of rampant electoral malpractices reported by stakeholders, ECZ has lamentably failed to take action and to enforce the Electoral Code of Conduct. The Conflict Management Committees set up by ECZ have underperformed in their task to ensure adherence to the Electoral Code of Conduct. There have been several reported discrepancies between the results declared at the polling stations and those announced at the collation centres but ECZ has continued to 'bury its head in the sand.'<sup>169</sup> One of the opposition parties, the Patriotic Front (PF),

---

<sup>163</sup> Article 75 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>164</sup> Section 4 of the Electoral Act No. 12 of 2006 of the Laws of Zambia

<sup>165</sup> Article 38 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>166</sup> The October 30, 2008 Presidential Election became necessary in terms of Article 38(1) of the Constitution of Zambia, after the death of the incumbent President, Dr. Levy Patrick Mwanawasa, SC who died on 19 August, 2008.

<sup>167</sup> The Post, 2 November, 2008, P.1

<sup>168</sup> The Sunday Post, 9 November, 2008, P.4

<sup>169</sup> Transparency International Zambia, Country Study Report 2006/7 National Integrity Systems, P. 3

that participated in the 2008 Presidential By-Election, disputed the election results and petitioned the Supreme Court demanding recounting of the votes in the 150 constituencies.<sup>170</sup>

Adding its concerns over institutional inadequacies, the Zambia Episcopal Conference (ZEC), a respected Zambian Church organization, did not have kind words on the 2008 electoral process and on the performance of ECZ during the elections. President of ZEC, Bishop George Lungu, expressed his frustrations in the electoral process and shared his disappointment with the Zambian stakeholders in the following terms:<sup>171</sup>

*“The just-ended presidential election has left Zambia more divided than ever before. ZEC is getting worried that electoral malpractices that were exposed by the media during the election campaign were increasingly being taken as normal. We have closely observed that the pattern of voting during the past few elections have been along very partisan, regional and on tribal lines. We now appear to be more divided and polarized, as a nation, than we were before multi-partism was introduced in 1991. Our concerns over the years are as valid today as they were in 1996, 2001, 2006 and today. Voter turnout was 70.7 per cent in 2006 with 3.9 million voters and only 45.43 per cent in 2008 with 1.8 million voters. It is regrettable that the progressive legislation that was passed in 2001 providing for continuous voter registration has not been implemented. While voter education was a responsibility of the government, it appeared that this important aspect of the electoral process had become the preserve of NGOs and the Church. Voter apathy is as a result of thinking that ‘my vote does not count.’ It is also partly as a result of the public perception of alleged irregularities in the conduct of elections. This state of affairs should not be allowed to continue.”*

In order to improve the operations of ECZ, ZEC went on to propose that there must be a mechanism that replaces lost voters’ cards continuously and in exceptional cases, those with National Registration Cards (NRCs) should be allowed to vote in places where they registered. Bishop Lungu went on to propose that there must be immediate and far reaching electoral reform that will once again inspire confidence in the electoral process. The era of minority presidential victories should be avoided forthwith because it weakens the mandate of the President.

A regional election observer group, the Electoral Institute of Southern Africa (EISA) also sent an observer team to Zambia’s 2008 Presidential By-Election. EISA came to the conclusion that the constitutional and legal framework in place for these elections was in line with regional and international standards for the conduct of credible elections and allowed Zambian people to vote freely. However, EISA observed that, to be effective, ECZ requires adequate resources to

---

<sup>170</sup> The Post, 14 November, 2008: The matter was still in the Supreme Court at the time of going to print.

<sup>171</sup> The Post, Monday, 10 November, 2008

maintain continuous voter education, voter registration and maintaining communication with the electorate and political parties.<sup>172</sup> This is a clear acknowledgement on the need to adequately fund ECZ and to confer it with financial independence and autonomy.

Based on all the foregoing contradictions and accusations of dereliction of duty by ECZ and other electoral malpractices, one is compelled to ask the questions: 'Does the Electoral Code of Conduct have any sting? Why is it that politicians and other stakeholders, agree on procedures and on the Electoral Code of Conduct that they are only too eager to circumvent? The natural response to these questions seems to suggest that there is need to reform the electoral laws and to *make the electoral process more transparent and establish stakeholder confidence in the electoral process*. Both the CRC and ERTC acknowledge the defects which weaken the effectiveness of ECZ in its operations and agree that the Constitution should establish a truly independent and autonomous Electoral Commission.<sup>173</sup> The Commission should have clearly specified functions and be directly financed by parliamentary appropriations. Further, the CRC recommends that Electoral office should be decentralized to all provinces and districts and that appropriate legislation should be enacted to manage electoral malpractices and disputes.<sup>174</sup>

### **3.5 Conclusion**

The 2006 Presidential, Parliamentary elections were Zambia's fourth elections since the return to multi-party system in 1991. The 2008 Presidential By-Election increased the tally of elections at presidential level to five elections since 1991. Since establishment in 1996, the effectiveness and performance of ECZ has been under strict scrutiny by stakeholders. Firstly, the lack of autonomy and financial independence of the Commission are factors against ECZ's effectiveness. The performance of ECZ during the 1996 and 2001 elections was generally characterized with failure in most of its functions and activities. Its failure to achieve high voter registration, failure to enforce its Code of Conduct, chronic maladministration, inability to address concerns on accuracy of results, lack of transparency are some of the allegations negatively impacting on the credibility of ECZ. Although, the 2006 and 2008 elections were marked by increased

---

<sup>172</sup> The Sunday Post, 2 November, 2008, P.3

<sup>173</sup> Final Report of the Electoral Reform Technical Committee (ERTC): The Electoral System in Zambia, July, 2005, P. 25

<sup>174</sup> Report of the Constitutional Review Commission, Lusaka, 2005, P. 256

transparency and confidence in ECZ, there are still challenges that have to be resolved in order to make ECZ effective in delivering free, fair and credible elections.

This Chapter has discussed the effectiveness of the institutional framework relating to the administration of the electoral system and process. It has become a tradition for ECZ to announce and assure the *Zambian* electorate of its capacity to holding free and fair elections each time that elections are to be held. ECZ's assurances come in the wake of concerns raised by opposition political parties and other stakeholders about ECZ's lack of independence and transparency in the electoral process. In the eyes of many citizens, ECZ is seen as an active player in endorsing electoral fraud and corruption that has characterised the *Zambian* electoral process. The institutional legitimacy of ECZ and public confidence in the professional credibility of its commissioners and staff has increasingly become a source of concern to many stakeholders. Chapter IV will be devoted to discussing 'Electoral Corruption and Malpractices in the Electoral Process.'

transparency and confidence in ECZ, there are still challenges that have to be resolved in order to make ECZ effective in delivering free, fair and credible elections.

This Chapter has discussed the effectiveness of the institutional framework relating to the administration of the electoral system and process. It has become a tradition for ECZ to announce and assure the Zambian electorate of its capacity to holding free and fair elections each time that elections are to be held. ECZ's assurances come in the wake of concerns raised by opposition political parties and other stakeholders about ECZ's lack of independence and transparency in the electoral process. In the eyes of many citizens, ECZ is seen as an active player in endorsing electoral fraud and corruption that has characterised the Zambian electoral process. The institutional legitimacy of ECZ and public confidence in the professional credibility of its commissioners and staff has increasingly become a source of concern to many stakeholders. Chapter IV will be devoted to discussing 'Electoral Corruption and Malpractices in the Electoral Process.'

## CHAPTER IV

### ELECTORAL CORRUPTION AND MALPRACTICES IN THE ELECTORAL SYSTEM

#### 4.0 Introduction

As the practice of regular elections has become widespread and entrenched in emerging democracies, so have the instances of corrupt elections. A wide variety of malpractices relating to elections are commonly denominated as corrupt practices. Such practices include electoral fraud, the alteration of vote counts or fabrication of votes, vote buying, the use of force or the threat to coerce voters, and the intimidation of candidates. Others are the manipulation of the administration of elections, changing the times and places of voting stations, and the alteration of the law to disqualify legitimate political opponents, among other corrupt practices.<sup>175</sup> For the purposes of this paper, any illegal action or practice done directly or indirectly, and targeted at obtaining an electoral advantage is deemed to be an act of electoral corruption.

#### 4.1 Extent and Consequences of Electoral Corruption

Electoral corruption has existed since the advent of elections and varies widely in scale and pervasiveness. The lowest scale of electoral corruption is insipid and could, for example, involve the incumbent government timing to announce the reduction of food prices and prices of other utilities in the election week. The ruling MMD government in Zambia has used this strategy in the past Presidential and Parliamentary elections.<sup>176</sup> The other end of the scale constitutes large scale election fraud that produces grotesque electoral outcomes, such as the elections in Liberia in 1944 in which President William Tubman running alone for another term received more votes than the total population of Liberia at that time, thereby earning Liberia a place in the Guinness World Record.<sup>177</sup> The impact of election rigging and corruption can generate intense electoral and post election conflicts that could degenerate into violence and even result in civil war. For instance, the Kenyan presidential elections of 2007 were characterized by serious acts of corruption and electoral malpractices resulting in serious failures in the electoral process. In the

---

<sup>175</sup> Simpser Alberto, Making Votes Not Count: Strategic Incentives for Electoral Corruption, Sept. 2004, P. 6

<sup>176</sup> For example, the Zambian Government effected reductions in fuel and maize meal prices just prior to the 2008 Presidential Bye- Elections. The Government also announced price reductions in fertiliser prices to the poor.

<sup>177</sup> This remark was made by Professor E. Gyiayam, of the University of Ghana on 27 April, 2004, at the Ghana Integrity Initiative Symposium on Political Corruption in Ghana.

## CHAPTER IV

### ELECTORAL CORRUPTION AND MALPRACTICES IN THE ELECTORAL SYSTEM

#### 4.0 Introduction

As the practice of regular elections has become widespread and entrenched in emerging democracies, so have the instances of corrupt elections. A wide variety of malpractices relating to elections are commonly denominated as corrupt practices. Such practices include electoral fraud, the alteration of vote counts or fabrication of votes, vote buying, the use of force or the threat to coerce voters, and the intimidation of candidates. Others are the manipulation of the administration of elections, changing the times and places of voting stations, and the alteration of the law to disqualify legitimate political opponents, among other corrupt practices.<sup>175</sup> For the purposes of this paper, any illegal action or practice done directly or indirectly, and targeted at obtaining an electoral advantage is deemed to be an act of electoral corruption.

#### 4.1 Extent and Consequences of Electoral Corruption

Electoral corruption has existed since the advent of elections and varies widely in scale and pervasiveness. The lowest scale of electoral corruption is insipid and could, for example, involve the incumbent government timing to announce the reduction of food prices and prices of other utilities in the election week. The ruling MMD government in Zambia has used this strategy in the past Presidential and Parliamentary elections.<sup>176</sup> The other end of the scale constitutes large scale election fraud that produces grotesque electoral outcomes, such as the elections in Liberia in 1944 in which President William Tubman running alone for another term received more votes than the total population of Liberia at that time, thereby earning Liberia a place in the Guinness World Record.<sup>177</sup> The impact of election rigging and corruption can generate intense electoral and post election conflicts that could degenerate into violence and even result in civil war. For instance, the Kenyan presidential elections of 2007 were characterized by serious acts of corruption and electoral malpractices resulting in serious failures in the electoral process. In these

---

<sup>175</sup> Simpser Alberto, Making Votes Not Count: Strategic Incentives for Electoral Corruption, Sept. 2004, P. 6

<sup>176</sup> For example, the Zambian Government effected reductions in fuel and maize meal prices just prior to the 2008 Presidential Bye- Elections. The Government also announced price reductions in fertiliser prices to the poor.

<sup>177</sup> This remark was made by Professor E. Gyiya, of the University of Ghana on 27 April, 2004, at the Ghana Integrity Initiative Symposium on Political Corruption in Ghana.

elections the voters register included the names of some 1.2 million people while at the same time excluding nearly one-third of eligible voters.<sup>178</sup> The post election violence that followed the disputed election outcome in Kenya, resulted in the killing of more than 1,133 people and drove more than 350,000 people from their homes.<sup>179</sup>

Electoral corruption is also known to corrode the credibility of the electoral process and the legitimacy of the party in government. It is public knowledge that electoral corruption and malpractices in the 2008 Zimbabwe presidential elections ‘won’ by the incumbent, President Robert Mugabe, has gravely undermined legitimacy of the governing party leading to serious hemorrhaging of a once thriving economy. This in turn, has shattered the lives of millions of Zimbabweans who are now condemned to a life of destitution and grinding poverty. For Zambia, the existence of electoral corruption in the electoral process and system has cast serious doubts on the effectiveness of ECZ to manage the electoral process and to produce free, fair and credible election results. Since 1996, ECZ stand accused of endorsing electoral fraud and corruption and these blemishes are now considered by some stakeholders to be trademarks of the Zambian electoral process.

## **4.2 The Forms of Electoral Corruption**

Election corruption comes in two main forms. The first involve private entities, such as, individuals, corporate bodies, trade unions, trade associations, special interest groups, NGOs and others, who may provide resources to a party or candidate in return for benefits. It should be noted that both the ruling party and opposition parties may engage in this type of election corruption. The second type of electoral corruption is where incumbent political parties and candidates use state or public resources for partisan electoral purposes. In the Zambian context, manifestations of electoral corruption and illegal practices are specified in the Electoral Act<sup>180</sup> and the Code of Conduct Regulations.<sup>181</sup> It is evident from provisions of the Act that the Zambian electoral laws have also set out various offences that can be committed during the electoral process. The Act has also provided for the penalties to be meted out when such offences are committed. Electoral offences under the Act may be categorized under four separate headings,

---

<sup>178</sup> The Kriegler Independent Review Commission Report to Examine the 2007 Kenyan Elections (IREC), 2008, P.x

<sup>179</sup> The Waki Commission of Enquiry Report into Post-Election Violence in Kenya (CIPEV), 2008, P 345 & P. 351

<sup>180</sup> Sections 79 to 86 of Part VII of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

<sup>181</sup> Electoral (Code of Conduct) Regulations, 2006

namely: offences during registration of voters; offences during nomination; election offences and offences by printers and publishers.

### **4.3 Offences During Registration of Voters**

The offences and penalties during voter registration are outlined in the Electoral (Registration of Voters) Regulations.<sup>182</sup> These offences are applicable to voters, members of the public, and election officers. With respect to offences by voters, the law states that it is an offence for anyone to attempt to register or indeed register as a voter when they know that they are not qualified to do so. Anybody below 18 years or non-Zambian does not qualify for registration. In some cases however, one may be 18 years and above and a Zambian citizen but the law disqualifies such a person from registering, such as, persons who hold dual citizenship, persons of unsound mind or persons serving a jail sentence. Besides, any citizen not in possession of a National Registration Card (NRC) cannot register. The law prohibits double registration by a voter, unlawful retention of a voter's card, being in possession of a forged voters' card, vote buying, fraudulent destruction of a voters' registration record or card and the willful refusal to leave a registration centre when ordered to do so by Registration Officers.

Offences by Registration Officers include the wilful refusal by the officer to perform his duties and the officer should not make fraudulent entries on the registration record or voters' card. The Registration Officer is also prohibited from issuing dubious cards to voters and a further prohibition is one against the unlawful destruction of registration record or card without lawful cause. The penalties for any person found guilty and convicted of any of the offences committed during voter registration is liable to a fine or to imprisonment not exceeding one year, or to both the fine and imprisonment.

### **4.4 Offences during Nomination**

The offences which can be committed during nominations are outlined mainly in the Electoral (General) Regulations.<sup>183</sup> These regulations prohibit misconduct by candidates, political parties, election officers, voters and other election stakeholders. The regulations provide that it is an

---

<sup>182</sup> Regulations 60 to 69 of the Electoral (Registration of Voters) Regulations, Statutory Instrument No. 238 of 1973.

<sup>183</sup> Part IV of the Electoral (General) Regulations, Statutory Instrument No. 108 of 1991

offence for any person to use or threaten to use force in order to compel another person to sign or refuse to sign a nomination paper. Further, it is an offence for any person to fraudulently forge, or destroy a nomination paper or written authority of a candidate. It is also an offence to make a false statement in a statutory declaration filed during nominations. The law provides that any person found guilty of undue influence, illegal practice or loitering shall be liable to a fine or imprisonment not exceeding two years or to both the fine and imprisonment.

#### **4.5 Election Offences**

The majority of this type of election offences are set out in the Electoral Act<sup>184</sup> and the Electoral (General) Regulations.<sup>185</sup> The offences may be categorized into offences during nomination, offences during the campaign period, offences on polling day and offences occurring after the poll. Offences during nomination include, bribery, illegal practices, inducement, publication of false statements and undue influence. Offences during campaign period also include bribery, treating and disruption of public meetings. The list of offences that can be committed on polling day is long and include unlawful canvassing for votes, putting up unlawful notices, destruction of notices, double voting, impersonation, illegal possession of ballot papers, tampering with ballot box, destruction of ballot papers, bribery, negligence of duty and loitering. Offences occurring after the poll are in respect of breach of secrecy by an Election Officer and for any person to attempt or persuade the Returning Officer, to make a false count or to make a false declaration of election results. These Election Offences, are categorized as either corrupt practices or illegal electoral practices and attract a maximum penalty of a fine or five years imprisonment, or to both the fine and imprisonment, upon conviction. Additionally, any person convicted of election offences is disqualified from either voting or being nominated as a candidate for a period of five years. The penalty for breach of secrecy, if convicted is a fine or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

#### **4.6 Offences by Printers and Publishers**

The fourth category of offences deals with printers and publishers. The law provides that it is an offence for a printer or publisher not to show the name and address of the printer or publisher on

---

<sup>184</sup> Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>185</sup> Electoral (General) Regulations, Statutory Instrument No. 108 of 1991

any election material. Similarly, it is an offence for every Printer or Newspaper not to indicate the words “advertisement” on any printed electoral material. Any person convicted of this offence is liable to a fine.

#### **4.7 Reforming the Electoral (Code of Conduct) Regulations**

The need for transparent, free and fair elections has been the cry of citizens in all democratic countries including Zambia. Sad lessons have been learned and documented in countries where flawed elections have led to conflict and violence. In the Zambian case, attempts have been made, but without much success, to reform the rules and procedures regarding the electoral process in order to bring harmony among and between stakeholders, thereby enhancing the quality of democratic governance. A well thought out electoral process conceived through consultations and dialogue is an important prerequisite in the conduct of free and fair elections and the consolidation of democracy. The concerns by various stakeholders that the political playing field in Zambia did not provide a fair environment for opposition political parties during elections was an important factor which resulted in Government to appoint the ERTC. One of the fifteen Terms of Reference (TOR) mandated ERTC to:

*“Examine the Electoral Code of Conduct and recommend necessary modifications in order to establish suitable and efficacious electoral rules”*

As a result of the work of ERTC, the present Electoral Code of Conduct<sup>186</sup> was issued by ECZ as a replacement of the Code of Conduct of 1996, which was revoked in 2006 after consultations with political parties and civil society groups. The Regulations under the current Code of Conduct, were formulated to regulate the conduct of all stakeholders before, during and after elections and to promote free, fair and orderly elections<sup>187</sup>. The regulations specify the rights, duties and obligations of every stakeholder in the electoral process. Some of the duties and obligations imposed on political parties, are declaratory in character and not enforceable. For example, under the Code,<sup>188</sup> every person is required to promote conditions conducive to the conduct of free and fair elections and be bound by the Code. The duties of ECZ during elections are further specified, in a comprehensive manner. In addition, the Code specifies the duties of the media which include the duty to provide fair and balanced reporting of election campaigns and to

---

<sup>186</sup> Electoral (Code of Conduct) Regulations, 2006

<sup>187</sup> Section 108 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>188</sup> Regulation 4 of the Electoral (Code of Conduct) Regulations, 2006.

be bound by the Code.<sup>189</sup> The accreditation and duties of election monitors and observers are also specified under the Code.<sup>190</sup> The Code of Conduct also provides for the electoral dispute resolution by the Conflict Management Committees.<sup>191</sup> Finally, the Regulations set out certain prohibitions, for instance, the coercion or intimidation of persons during election campaigns or elections, is prohibited.

#### **4.8 Enforcement Mechanism of Electoral Laws**

A review of the submissions of petitioners to ERTC, discloses that the concern of petitioners regarding the 1996 Electoral Code of Conduct<sup>192</sup> was not in respect of the substance of the regulations under the Code. On the contrary, the petitioners decried the Code's lack of an effective enforcement mechanism. ERTC petitioners observed that the Regulations do not provide for clear guidelines for the Police or the ECZ to deal with violations of the Regulations and that, the Regulations did not specify which institution is responsible for enforcement of the Code. As a remedy to this apparent defect, the new Electoral Act<sup>193</sup> has mandated ECZ to be responsible for the administration and enforcement of the Act, while the Anti-Corruption Commission and the Zambia Police Force are also mandated to prosecute and enforce the law under their respective jurisdictions. However, the question still has to be asked as to whether there have been improvements in the enforcement mechanism of the present Code of Conduct.

An examination of the conduct of stakeholders in the election process and a review of the election petitions filed during the 2006 general elections and 2008 Presidential Bye-Election, does still suggest a clear and urgent need for strengthening the enforcement mechanism of the Electoral Laws. Presently, enforcement agencies, the Police, ACC and ECZ that have been tasked to enforce electoral laws appear reluctant to do so. It is on record that, Transparency International Zambia (TIZ) monitored the 2008 Presidential Bye-Elections and in their post election statement,<sup>194</sup> TIZ stated that political parties, particularly the ruling party did not adhere to

---

<sup>189</sup> Regulation 12 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>190</sup> Regulation 15 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>191</sup> Regulation 16 of the Electoral (Code of Conduct) Regulations, 2006.

<sup>192</sup> The Petitioners to ERTC made submissions on the revoked Electoral (Conduct) Regulations, S.I. 179 of 1996 and not on the current Electoral (Code of Conduct) Regulations, S.I. No. 90 of 2006

<sup>193</sup> Section 3 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

<sup>194</sup> Transparency International Zambia, Press Statement on the 2008 Presidential Elections, 10 Nov., 2008 P.

electoral laws. Some of the notable electoral malpractices committed by political parties and other stakeholders were reported to be:<sup>195</sup>

- a) Buying of voters cards during the pre-election period, mostly by the ruling MMD Party;
- b) Making donations and treating mostly by MMD Party and opposition to a lesser extent;
- c) Use of traditional leaders in partisan political campaigns by the ruling MMD Party;
- d) Use of Government transport to ferry cadres including the use of three Government planes and helicopters for campaigns by the Acting President and his entourage; and
- e) Bribery of traditional leaders and the electorate by the ruling MMD Party.

TIZ reported over twenty-five alleged electoral malpractices to ECZ, the Police and ACC but did not receive any immediate attention from these law enforcement agencies. It is evident that there was a total failure by these agencies from taking appropriate action against offenders or those who broke the electoral laws. TIZ noted that the failure by ECZ to replace lost voters cards at some polling stations had the effect of disenfranchising a number of eligible voters, and which negatively impacts on voter turnout. With respect to media access and coverage of political parties, TIZ reported that the Zambian public media was clearly biased towards the ruling MMD Party, while the private media was for the opposition parties. TIZ came to the conclusion that the elections, although peaceful, fell short of being declared free, fair and credible.<sup>196</sup> While a number of foreign and local election monitors deemed the 2008 elections free and fair, two of the losing opposition parties also rejected the electoral process and called the election results as fraudulent. The Patriotic Front (PF) has since petitioned the election result in the Supreme Court for Zambia citing electoral fraud and malpractices by the ruling MMD Party.

#### **4.9 Conclusion**

Electoral corruption undercuts the crucial role that elections play in enabling citizens to select, reward and punish rulers. Despite the enactment of the new Electoral Act and the Code of Conduct, rampant electoral corruption and malpractices continue to be reported during both parliamentary and presidential elections. Malpractices such as treating of the electorates, making of donations, sponsoring of social activities, abuse of state resources, biased media coverage,

---

<sup>195</sup> Transparency International Zambia, Press Statement on the 2008 Presidential Elections, 10 Nov., 2008, P. 11

<sup>196</sup> Transparency International Zambia, Press Statement on the 2008 Presidential Elections, 10 Nov., 2008, P. 11

sudden announcements of price reductions of consumer commodities and buying of voters cards continue to be reported by election monitors and the media. It is clear that political parties, particularly the ruling party, the media and other stakeholders have found it beneficial to commit electoral offences with impunity in the knowledge that there is no effective enforcement mechanism that is capable of taking action against them despite the existence of enabling legislation.<sup>197</sup> Except in a few isolated cases, the enforcement agencies seem to be reluctant to do anything in connection with violations of the Electoral Act and the Electoral Code of Conduct. The Police seem more concerned with enforcement of the Penal Code, while ACC seems to be busy with mainstream corruption issues as opposed to electoral corruption. With regret, ECZ claims that it is not an enforcement agency. These agencies often act and conduct themselves in a partisan, if not unprofessional manner, and turn a blind eye where acts of electoral corruption and malpractices are committed by the ruling party. It is therefore, hardly surprising that some observers view enforcement agencies as instruments of oppression serving the interests of the ruling party because of their reluctance to enforce electoral laws.

The failure by enforcement agencies to bring offenders of electoral laws to account for their violations has encouraged more people to break the law with impunity. This has arisen because the obligation of enforcement agencies to investigate, prosecute and punish the perpetrators of violations of electoral laws is rarely exercised resulting in inaction to prevent the recurrence of violations in future. It should be clear that electoral corruption and malpractices for partisan electoral purposes begin long before the election period, and therefore attempts to control the cancer should begin long before the election year. Accordingly, the next and final Chapter, will propose some recommendations in an attempt to address the limitations and constraints to an effective electoral system and process in Zambia which is capable of producing free, fair and credible elections.

---

<sup>197</sup> Section 3 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

## CHAPTER V

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.0 Introduction

The subject of elections, the electoral system and electoral process is enormous and complex. A paper such as this cannot claim to be comprehensive and conclusive. At best what it can do is to simply make a modest contribution to a better understanding of the subject in a limited way. What this paper has attempted to do is to evaluate and highlight the weaknesses in the electoral system and suggest remedial measures which need to be implemented in order to improve the environment for holding elections.

Accordingly, the paper has discussed the legal framework, institutional capacity of ECZ and the effectiveness of Zambia's electoral system and electoral process to deliver free, fair and legitimate elections as desired by the Zambian citizens and the tenets of democratic governance. Chapter One has dealt with Zambia's experience with its adopted electoral system in a multi-party setting which was re-introduced in 1991. The short-comings in the electoral system and process need to be bridged through electoral reform. Chapter Two covered the Legal Framework of the Electoral System and Electoral Process in Zambia. It is quite clear from past election results that Zambia's adopted FPTP electoral system has largely produced minority elected Presidents, election disputes and petitions challenging election results.

Chapter Three dealt with the institutional framework relating to the administration of the electoral process. Largely, it has been found that ECZ and other enforcement agencies have serious weaknesses and lack capacity and institutional machinery to adequately fight electoral corruption and malpractices. This has resulted in under-performance of ECZ in its mandate to manage the electoral process. In turn, this has led to disputed election results both at Presidential and Parliamentary levels. Chapter Four discussed electoral corruption and malpractices and came to the conclusion that despite the existence of defined electoral offences and remedies, there is rampant violation of electoral laws by stakeholders. The present Chapter aims at making Recommendations for implementation in order to make improvements to the electoral system and process.

## CHAPTER V

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.0 Introduction

The subject of elections, the electoral system and electoral process is enormous and complex. A paper such as this cannot claim to be comprehensive and conclusive. At best what it can do is to simply make a modest contribution to a better understanding of the subject in a limited way. What this paper has attempted to do is to evaluate and highlight the weaknesses in the electoral system and suggest remedial measures which need to be implemented in order to improve the environment for holding elections.

Accordingly, the paper has discussed the legal framework, institutional capacity of ECZ and the effectiveness of Zambia's electoral system and electoral process to deliver free, fair and legitimate elections as desired by the Zambian citizens and the tenets of democratic governance. Chapter One has dealt with Zambia's experience with its adopted electoral system in a multi-party setting which was re-introduced in 1991. The short-comings in the electoral system and process need to be bridged through electoral reform. Chapter Two covered the Legal Framework of the Electoral System and Electoral Process in Zambia. It is quite clear from past election results that Zambia's adopted FPTP electoral system has largely produced minority elected Presidents, election disputes and petitions challenging election results.

Chapter Three dealt with the institutional framework relating to the administration of the electoral process. Largely, it has been found that ECZ and other enforcement agencies have serious weaknesses and lack capacity and institutional machinery to adequately fight electoral corruption and malpractices. This has resulted in under-performance of ECZ in its mandate to manage the electoral process. In turn, this has led to disputed election results both at Presidential and Parliamentary levels. Chapter Four discussed electoral corruption and malpractices and came to the conclusion that despite the existence of defined electoral offences and remedies, there is rampant violation of electoral laws by stakeholders. The present Chapter aims at making Recommendations for implementation in order to make improvements to the electoral system and process.

## **5.1 Conclusions**

### **5.1.1 The Electoral System**

Elections are a defining moment in any democracy and the choice of a good electoral system which enhances legitimacy and acceptability of the elected leader is therefore, one of the most important institutional decisions. There are practical difficulties in establishing a perfect electoral system, but this should not deter timely introduction of optimum improvements to the electoral system through electoral reforms. A good electoral system can only be established if it is anchored on firm provisions in the Constitution that serve to entrench democracy. The current Zambian Constitution does not adequately enshrine the electoral system. In Zambia, the FPTP system has resulted in both Presidential and Parliamentary candidates to win with minority votes. This has brought into contention, the acceptability and legitimacy of the winning Presidential candidate and the resulting Government. Zambia's FPTP system has gobbled huge sums of money through the holding of endless by-elections when parliamentary seats are declared vacant. These resources, extracted from overburdened tax payers, should be used for more deserving sectors of the economy.

Similarly, there are unsettled issues concerning the announcement of the date of the polling day for Presidential and Parliamentary elections which presently is unfairly the mandate of the incumbent President to the disadvantage of opposition candidates. Equally, the debate on the mandate of the Chief Justice as Returning Officer in Presidential elections while at the same time the Chief Justice presides over Presidential election petitions, has continued to be a case of conflict of interest. In the same vein, the management of election petitions is fraught with problems. For instance, the *lacunae* in the electoral law has compounded the problem, particularly at Presidential level, where grounds for nullification of presidential elections are not provided for in the law.

### **5.1.2 Electoral Commission of Zambia and the Electoral Process**

The electorate, electoral candidates, political parties, local and international election monitors and observers have persistently criticized ECZ for inefficient management of elections and the

inadequate funding of the institution. This criticism has been further confirmed by the findings of the Supreme Court in the 2002 Presidential election petition<sup>198</sup> that proved electoral flaws, incompetence and dereliction of duty in the conduct of the 2001 Presidential elections on the part of ECZ. The Commission has been accused and questioned over its impartiality, lack of independence and autonomy, being subject to manipulation and control by the President and being unable to stop electoral malpractices and the incapacity to punish offenders. Under the electoral laws, ECZ is not subject to the direction or control of any other person or authority

### **5.1.3 Strengthening of Political Parties**

The importance of political parties in the democratic process need not be over emphasized. In Zambia, it is quite clear that the change from one-party to multi-party democracy in 1991 was part of the process towards democratisation. The Zambian Constitution does not provide for State financing of political parties nor does it prohibit the ruling party from using state resources for partisan electoral interests. There is need to make the Zambian political system more transparent, accountable, equitable and inclusive in order to serve the best interests of the citizens. There is also a desire to create a level playing field in the electoral process and to permit open competition among political parties. There is also need to compel political parties to disclose their sources of funding for reasons of transparency and to deter illegally obtained funds and their donors to influence decision-making. The advantage of incumbency enjoyed by the ruling party, in relation to public resources can be mitigated by legislation permitting state financing of political parties.

## **5.2 Recommendations**

### **5.2.1 Improving the Electoral System**

The defect of the FPTP electoral system can be ameliorated by the adoption of the Proportional Representation (PR) system as practiced in South Africa. The PR System has important advantages, but nevertheless it also has disadvantages, including the undemocratic recalling of its leaders by the Party on account of political divisions within the Party.<sup>199</sup> Considering Zambia's

---

<sup>198</sup> Mazoka and Ors v Mwanawasa and Ors, 2005, Z.L.R. P. 138

<sup>199</sup> For example, in September 2008, Mr. Thabo Mbeki, President of the Republic of South Africa was recalled before the end of his term and forced to resign as President by his Party on account of political divisions and a power struggle within the ruling African National Congress (ANC).

existing political culture and values, there is merit for Zambia to adopt an electoral system which combines both the advantages of the FPTP and PR systems to achieve inclusiveness and direct representation. Under this hybrid system, equitable representation of minority parties and marginalized interest groups, such as women, youths and persons with disabilities, is better assured. Exclusion of political parties and other interest groups from the Legislature can be a recipe for political instability.<sup>200</sup> It should be noted that the Zambian President, in his executive position, is entrusted with the discharge of sovereign functions on behalf of the Zambian people. It is therefore, a universally accepted principle that only a person who enjoys popular support of the electorate should occupy the Office of President. It is therefore, recommended that the new Zambian Constitution under discussion by the National Constitutional Conference (NCC) should provide for the following changes in the Constitution and the resultant Acts of Parliament:

i) Zambia should adopt a Mixed Member Proportional (MMP) electoral system which combines both the positive attributes of the FPTP and PR systems for elections to the National Assembly. The number of Members of Parliament should be increased to 190 comprising 150 members elected from the FPTP System, 10 nominated members and 30 members from the PR system to be drawn from the Party List and to comprise minority groups and women. The PR seats would be allocated to political parties, on the basis of the proportion of votes received in the Constituency Election. The 10 nominated members are needed to provide the necessary skills where such skills may be lacking among elected MPs.

However, in this new MMP system, there should be no by-election on account of a seat falling vacant, but rather, the affected political party would fill the vacancy by replacement whether the vacancy arose from an MP who was elected under the FPTP or under the PR System. Effectively, this means that, only the General Parliamentary Elections would require the holding of elections while filling a casual vacancy due to death, resignation or expulsion of an MP would not qualify for a by-election, but instead, the affected political party would fill the vacancy from one of their members. A by-election would only take place in the event where, an independent MP joins a political party as this would make the FPTP based-seat to become vacant and available for contesting by political parties. This electoral system should be provided for in the Constitution while the details of its operation should be in the Electoral Act.

---

<sup>200</sup> Report of the Constitutional Review Commission, Lusaka, 2005, P. 250

ii) The Presidential Elections be conducted on a Majoritarian System (MS), where the winning Presidential candidate is directly elected by the people and will be required to receive an absolute majority of 50 percent plus One vote of the total votes cast. Where no candidate achieves an absolute majority of votes, there should be a re-run within 30 days, by the two Presidential candidates who receive the highest votes in the initial election.

iii) The Returning Officer in Presidential elections should be the Chairperson of ECZ and not the Chief Justice as provided for by the current Constitution.<sup>201</sup> The Chief Justice presides over the Presidential election petition, and to mandate the same Chief Justice to be a Returning Officer in Presidential elections is to unjustly ignore the problem of conflict of interest. In any case, the conduct of elections and the entire electoral process falls within the jurisdiction of ECZ and that mandate should be given statutory effect. However, the Chief Justice should continue to administer the oath of office for the person assuming the Office of President or the Interim President.

iv) The date of holding Presidential and Parliamentary elections should be enshrined in the Constitution in order to enable all Presidential candidates, political parties and other stakeholders to adequately prepare for the elections. The present electoral law provision which mandates the President to announce the date of the polling day<sup>202</sup> should be repealed to permit a Constitutional provision stating the date of the polling day. It is unacceptable to continue to allow the incumbent President to gain electoral advantage by manipulating the election date to the disadvantage of opposition candidates.

v) The day on which Presidential and Parliamentary elections are conducted should be declared a public holiday to give the citizens ample time in which to vote freely. This should enhance the level of participation of the electorate in the elections.

vi) The Constitution should provide for a transitional period or handover period of ninety (90) days following Presidential elections. This period would be used to handover power in an orderly and formal manner from the out-going President to the President-Elect and to allow for the settlement of any election disputes. The present provision which provides for the swearing-in

---

<sup>201</sup> Article 41 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>202</sup> Section 25 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

- ii) The Presidential Elections be conducted on a Majoritarian System (MS), where the winning Presidential candidate is directly elected by the people and will be required to receive an absolute majority of 50 percent plus One vote of the total votes cast. Where no candidate achieves an absolute majority of votes, there should be a re-run within 30 days, by the two Presidential candidates who receive the highest votes in the initial election.
- iii) The Returning Officer in Presidential elections should be the Chairperson of ECZ and not the Chief Justice as provided for by the current Constitution.<sup>201</sup> The Chief Justice presides over the Presidential election petition, and to mandate the same Chief Justice to be a Returning Officer in Presidential elections is to unjustly ignore the problem of conflict of interest. In any case, the conduct of elections and the entire electoral process falls within the jurisdiction of ECZ and that mandate should be given statutory effect. However, the Chief Justice should continue to administer the oath of office for the person assuming the Office of President or the Interim President.
- iv) The date of holding Presidential and Parliamentary elections should be enshrined in the Constitution in order to enable all Presidential candidates, political parties and other stakeholders to adequately prepare for the elections. The present electoral law provision which mandates the President to announce the date of the polling day<sup>202</sup> should be repealed to permit a Constitutional provision stating the date of the polling day. It is unacceptable to continue to allow the incumbent President to gain electoral advantage by manipulating the election date to the disadvantage of opposition candidates.
- v) The day on which Presidential and Parliamentary elections are conducted should be declared a public holiday to give the citizens ample time in which to vote freely. This should enhance the level of participation of the electorate in the elections.
- vi) The Constitution should provide for a transitional period or handover period of ninety (90) days following Presidential elections. This period would be used to handover power in an orderly and formal manner from the out-going President to the President-Elect and to allow for the settlement of any election disputes. The present provision which provides for the swearing-in

---

<sup>201</sup> Article 41 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>202</sup> Section 25 of the Electoral Act, No. 12 of 2006 of the Laws of Zambia

of the President not later than 24 hours from the time of declaring the election result<sup>203</sup> is inadequate to hand over power even assuming the absence of an election petition.

vii) The Constitution and the Electoral Act do not contain express provisions stipulating the grounds upon which an election of the President may be nullified nor do the laws specify the available remedies. This lacuna in the law was demonstrated and proved, in the case of *Mazoka and Ors v Mwanawasa and Ors*.<sup>204</sup> Accordingly, it is recommended that the Electoral Act should provide for nullification of a Presidential candidate and the Act should also grant remedies in the same manner in line with election petitions of candidates to the National Assembly.<sup>205</sup>

viii) In the event of an election petition where the incumbent President is either the petitioner or is being petitioned, the Speaker of the National Assembly should assume office as Interim President for a period of not more than 90 days and within which period the election petition must be resolved. However, in the event of nullification of a presidential election, an election should be held within 90 days from date of nullification to fill the vacancy. In that case, the Speaker would continue to act as Interim President for a further period of 90 days and his function would include the organization of Presidential elections.

ix) Members of Parliament representing constituencies on the FPTP system, should be elected on the basis of simple majority. All parliamentary election petitions should be determined within 90 days by a Special Election Tribunal established by an Act of Parliament.

### **5.2.2 Strengthening ECZ and Improving the Electoral Process**

i) The Constitution should provide for the establishment of an independent and autonomous Electoral Commission. Such independence and autonomy should be manifested in the nature and mode of establishing ECZ, its core functions, its composition, the mode of appointments of Commissioners, security of tenure and funding. The Constitution should accord the Commissioners, security of tenure to ensure that they perform their duties with utmost professionalism.

---

<sup>203</sup> Article 34(9) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia

<sup>204</sup> *Mazoka and Ors v Mwanawasa and Ors*, 2005, Z.L.R. P. 138

<sup>205</sup> The grounds for nullification and the remedies to be granted in respect of election petitions of Members of the National Assembly are expressly provided for under Part VIII of the Electoral Act, No. 12 of 2006 of the Laws of Zambia.

ii) The appointment of Electoral Commissioners must be nominated by a panel of independent experts after public advertising of the positions and approved by Parliament. This will bring the desired independence of ECZ and comply with the statutory provision which provides that in the exercise of its functions under the Constitution and the Electoral Act, ECZ shall not be subject to the direction or control of any other person or authority.<sup>206</sup>

iii) ECZ must be adequately funded to ensure that all required systems, facilities, electoral materials, continuous voter registration and education, etc., are put in place well ahead of the time of an election and in order to enhance voter participation. Adequate funding will enhance the capacity of ECZ to effectively enforce the Electoral Act. The funding of ECZ should be through direct parliamentary appropriation and not through the Executive as is the present *status quo*.

v) The Electoral (Conduct) Regulations and the Electoral Act should be strictly enforced by ECZ, the Zambia Police and ACC as provided for in the electoral laws. In order to enhance the conduct and supervision of elections, appropriate legislation should clearly spell out the system of enforcement, including the powers and functions of the ECZ *vis-a-vis* other law enforcement agencies.

vi) The operations of ECZ should be decentralized to all provinces in order to make it more efficient

### **5.2.3 State Financing of Political Parties**

i) Political parties should receive state financial support as a measure to promote equality between and among parties, to strengthening of political parties, and leveling the playing field. Additionally, this will operate as a measure towards curbing and eradicating abuses associated with illegal and unauthorized state financing of the ruling party. The financial support should initially be limited to Presidential campaigns in the national Presidential elections. This should be implemented through the enactment of a 'Political Parties Financing Act' whose main objective will be to provide for the qualifications, eligibility to access state funds, quantum of state financing, formula for allocation of funds to parties, and so forth. There should be provision to

---

<sup>206</sup> Section 3(1) of the Electoral Act No. 12 of 2006 of the Laws of Zambia.

extend financing to parties for purposes of supporting elections to the National Assembly in future.

ii) The funding of political parties should be provided for in the Constitution, whereas statute should provide for the purpose, mechanism, eligibility and accountability of such funding.

iii) ECZ should be charged with the responsibility of managing the funding of political parties. Only political parties with representation in Parliament should be funded in proportion to the number of seats held by a political party in Parliament.

v) Political parties must be compelled by law to disclose their sources of funding as a way of enhancing transparency in the electoral and political system. Foreign funding to a political party is not recommended in order to preserve the state security and the integrity of political parties.

### **5.3 Prospects for Future Electoral Reforms**

The Government has established the National Constitutional Conference (NCC), which is the forum for the examination, debate and adoption of proposals to alter the present Constitution as contained in the draft Constitution submitted by CRC appointed by the President in 2003.<sup>207</sup> Among the functions of NCC, is to consider and deliberate matters relating to electoral reform. The work of NCC is critical to the constitutional-making process and when completed, this will create prospects for the adoption of a new Constitution and the reform of electoral laws before the next Presidential and Parliamentary elections scheduled to take place in 2011. It is expected that the reformed electoral laws when enacted, will adopt the MMP electoral system as recommended in this Paper. When this is achieved, there will be further improvements in the electoral process and in the institutional framework relating to elections so as to guarantee the holding of free, fair and legitimate elections in Zambia.

---

<sup>207</sup> Section 3 of the National Constitutional Conference Act, No. 19 OF 2007 of the Laws of Zambia.

## **BIBLIOGRAPHY**

### **A. Books**

1. Kumado, K. Funding Political Parties in West Africa, Accra: Friedrich Erbert Foundation, 1996.
2. Matibini, P. The Struggle for Media Law Reforms in Zambia, Media Institute of Southern Africa (MISA) Zambia Chapter, Lusaka, 2006

### **B. Publications and Reports**

1. Commission of Enquiry Report into Post Election Violence in Kenya, 2008
2. Committee for Clean Campaign (CCC), 'Report on the Presidential and Parliamentary Elections in Zambia', 1996.
3. Democratization at the Crossroads: Challenges for the SADC Principles and Guidelines Governing Democratic Elections, 2005.
4. Electoral Commission of Zambia: Annual Report, 1997.
5. Electoral Commission of Zambia: Annual Report, 1999.
6. Electoral Commission of Zambia: Annual Report, 2000.
7. Electoral Offences in Zambia, Electoral Commission of Zambia, Lusaka, 2006.
8. Electoral Commission of Zambia, 'Electoral Code of Conduct', Lusaka, 2006.
9. FODEP, 'Towards Zambia's Free and Fair 2001 Presidential and General Elections', Lusaka, 2001.
10. FODEP, 'Zambia's 2001 Tripartite Elections', Lusaka, 2001.
11. FODEP, 'Monitor's Manual for 2001 General Elections', Lusaka, 2001.
12. FODEP, 'Zambia's 2006 Tripartite Elections Report', Lusaka, 2006. 20. Human Rights Watch, 'Zambia: Elections and Human Rights in the Third Republic, Vol. 8, No. 4 (A)', December, 1996.
13. Gyiyam E, "Ghana Integrity Initiative Symposium on Political Corruption in Ghana. University of Ghana", April 2004.
14. Kanene, O., 'Election Reporting Handbook': A Practical Guide for Journalists, Zambia Independent Media Association, Lusaka, 2000.
15. Konrad Adenauer Foundation, 'Electoral Models for South Africa: Reflections and Options', Johannesburg, 2003.

16. Matlosa K., 'Managing Democracy: A Review of SADC Principles and Guidelines Governing Democratic Elections', EISA, Johannesburg, 2004.
17. SACCORD, 'Conflict Resolution in the Electoral Process: A Training Manual for Political Parties', Lusaka, 2001.
18. SACCORD, 'Zambian 2006 Presidential, Parliamentary & Local Government Elections Report', Lusaka, 2006.
19. SACCORD, 'Monitor's Manual for 2006 Tripartite Elections', Lusaka, 2006.
20. SACCORD, 'Zambia's 2006 Presidential, Parliamentary & Local Government Elections Report', Lusaka, 2006
21. SADC Parliamentary Forum, 'Lesotho 2002 National Assembly Elections: Election Observer Mission Report', Windhoek, 2002.
22. SADC Electoral Commission Forum, 'Principles for Election Management, Monitoring and Observation in the SADC Region, Johannesburg, 2003.
23. SADC Parliamentary Forum, 'Presidential and Legislative Elections 2006: Democratic Republic of Congo', Windhoek, 2006.
24. SADC Parliamentary Forum Presidential and Parliamentary Elections 2004: Namibia, Windhoek, 2004.
25. SADC Principles and Guidelines Governing Democratic Elections, SADC, 2004.
26. Schellschmidt, P., 'African Media Barometer: Intermediate Analysis of First AMB Processes in 16 Countries', Freidrich Erbert Stiftung, Whindhoek, 2006.
27. Simpser Alberto, Making Votes Not Count: Strategic Incentives for Electoral Corruption, Sept. 2004.
28. The Anti-Voter Apathy Project (AVAP), 'Zambia's 2006 Tripartite Elections Report', Africa by Pro Print Limited, Lusaka, 2006.
29. The Role of Whips in a Multi-Party Parliamentary System, National Assembly of Zambia, Lusaka, 2007.
30. The Kriegler Independent Review Commission Report to Examine the 2007 Kenyan Elections (IREC), 2008.
31. The Waki Commission of Enquiry Report into Post-Election Violence in Kenya (CIPEV), 2008.
32. Transparency International Zambia, '2005 Bribe Payers Index', Lusaka, 2006.
33. United States Information Agency Publication, What Is Democracy?, (What are Democratic elections? October,1991).

34. Zambia Elections Monitoring Coordinating Committee, *Setting a Standard for Africa: Free and Fair Elections*, Lusaka, 1991.
35. Zimbabwe Election Support Network, 'Zambia 2006 Tripartite Elections Report', 2006.

**C. Zambian Government Official Reports**

1. Draft Constitution of the Republic of Zambia, Lusaka, 2005.
2. Final Report of the Electoral Reform Technical Committee: *The Electoral System in Zambia*, 2005.
3. Final Report of the Electoral Reform Technical Committee: *The Electoral System in Zambia – Summary of Public/Stakeholder Comments on the Interim Report*, 2005.
5. Interim Report of the Electoral Reform Technical Committee: *The Electoral System in Zambia – Summary of Oral and Written Submissions*, 2004.
6. Report of the Constitutional Review Commission, Lusaka, 2005.

**F. Print and Electronic Media**

1. The Post, Zambia.
2. The Times of Zambia.
3. The Zambia Daily Mail.
4. Voice of America: <http://www.voanews.com/english/2008-10-15-voa26.cfm>