

**ELECTIONS AND THE PROHIBITION
OF
CORRUPTION
AND
CORRUPT PRACTICES:**

CONSTITUTIONAL FRAMEWORK

By

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**UNIVERSITY OF ZAMBIA
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ON

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PRACTICES: CONSTITUTIONAL FRAMEWORK**

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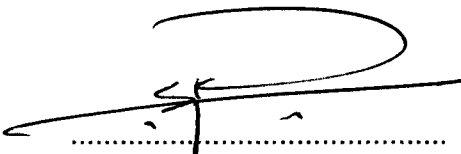
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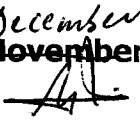


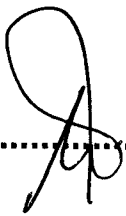
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DECLARATION

I, KALUMBA RAPHAEL KONSOLO, do hereby declare that this dissertation is my authentic work and that to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other institution for the award of a Bachelor of Laws degree. All other works referred to in this dissertation have been duly acknowledged.

Made on this ^{1st}.....day of ^{December} ~~November~~, 2004 by the said KALUMBA RAPHAEL KONSOLO at Lusaka. 

Signed:..... 

DEDICATION

This piece of intellectual legal work is dedicated with deepest love and affection to Esther.

Though on a wheelchair her love, vulnerability, wisdom and strength have inspired me to be the best I can be and to share what we have learned together during hard and difficult times.

PREFACE

This piece of work will be devoted to discuss the electoral framework, the voters education, registration of voters, compilation of voters roll, streamlining of registration process, electoral code of conduct, monitoring, nominations, powers of presiding officers, ballot boxes, inspection of ballot papers, provisional polling stations, result compilation and transmission of results, recount and verification of results and then announcement and publication of results. This work shall deal with Zambia's constitutional framework and fight against corruption and corrupt practices.

Finally, I wish to point out that a research in this area has been fueled by the urgency of the topic and as a quest for possible solutions to problems faced in our constitutional framework and fight against corruption and corrupt practices.

Lusaka

KRK

ACKNOWLEDGEMENT

I thank my wife Esther for sharing the journey of developing this work with me. I thank her for allowing me to share our stories and especially for expanding my understanding and ability to know the female point of view.

I thank our two daughters and sons Mwamba, Mushingi, Mwewa and Chola for their continued love and appreciations. The challenge of being a parent and an elderly law student has allowed me to understand the struggles my parents had and love them even more. Being a father has especially assisted me in understanding and loving father.

I thank all the thousands who participated in my legal relationship discussions shared legal stories and encouraged me to study law. Their positive and loving feedback has supported in developing this simple presentation in such a complex legal subject.

As a general point, there are many other people I could thank perhaps one category that should be mentioned is "Mature Law Students". Over the years it is the Mature Law Students who have taught me a lot about studying law and coping with the young law students. Every mature law student should always remember that he is at the law school to serve and encourage young trainee lawyers and not to be discouraged.

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Without the good will of all these good people I never could have finished this piece of work.

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CHAPTER ONE

1.0. INTRODUCTION

Elections, it goes without saying are the sole lawful, constitutional and legitimate method of peaceful and legal acquisition of political power. They are the culmination of exercise of the most basic fundamental rights such as rights of free association, free assembly of which is vital in order to sustain free political discussion and free choice. Those in power should govern with the consent and by the will of the governed expressed in period genuine open free and fair elections where the results reflect the exercise of free choice. This will shall be expressed in periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret ballot vote or equivalent free voting procedures.

It is therefore, usual or common to associate election with democracy. There is no doubt though that elections form an important ingredient for democratic rule in societies. However, on their own election do not amount to democracy nor are they sufficient to sustain democratic governance.

The significance of elections though is that they encourage popular participation in the political process, which is crucial for both stability and legitimacy of rule. The Southern African experience demonstrates that the relative political stability enjoyed by majority of states since the ending of the cold war and the demise of Apartheid has been nurtured and consolidated through elections, which have essentially replaced bullets with ballots as key instruments for contestation of political power . For election to add value to democratic governance, stability and peace, clear rules, procedures and systems that bind all the contesting parties are required.

Zambia in 2001 witnessed tripartite election for the Presidency, Parliament and Local Government. The Electoral Act and Regulations made thereunder are the major legislation that pertain to the conduct of elections. There is no doubt that the 2001 elections were flawed in a number of significant ways. All the major

international and local election Monitoring Organisations have, in their reports exposed various flaws and corruption that characterized the electoral process. The Research considers the extent to which the constitutional legal framework and the Electoral Act are effective in creating a conducive climate for the conduct of free and fair elections.

Accordingly, this essay will be divided in the following manner. Chapter one will study the Electoral Commission of Zambia (ECZ) that has been established by the Constitution of Zambia. An autonomous Electoral Commission. This Chapter will also look at the functions and composition of the Electoral Commission of Zambia as outlined in the Constitution and the Electoral Commission Act Number 24 of 1996.

1.1. **ELECTORAL COMMISSION OF ZAMBIA**

In Zambia the starting point for consideration of rules, procedures and the systems is the Constitution itself. The Zambian Constitution provides that there shall be established an autonomous Electoral Commission to supervise the registration of voters; to conduct presidential and parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly¹.

1.2. **FUNCTIONS AND COMPOSITION OF THE COMMISSION**

The Commission which established by the Constitution performs the functions outlined above².

The Commission comprises of a Chairperson and not more than four (4) other Members³. The members are appointed by the President and are subject to ratification by the National Assembly⁴. The Chairperson of the Commission is required to be a person who has held or is qualified to hold high Judicial offices or

¹ Article 76 of the Constitution of Zambia

² Ibid Article 76

³ Section 4 of the Electoral Commission Act No. 24 of 1996

⁴ Section 4 (2) of the Electoral Commission Act No. 24 of 1996

any other suitably qualified person⁵. According to Electoral Act, the public, political parties and civil society have a role to play in the election and appointment of the Commissioners. A question that may be raised is whether or not the public and civil society, political parties should have a role to play in the selection process.

1.3. TENURE OF OFFICE

Members of the Commission are appointed for a term not exceeding seven (7D) years⁶. The appointments are subject to renewals and ratification by the National Assembly⁷. However, the first members are appointed for period ranging from two to five years in order to facilitate retirement rotation⁸. A member of the Commission may resign upon giving one month's notice in writing to the President⁹. The President is empowered to remove a member if he or she is insane or is declared bankrupt¹⁰. Whenever, the office of a member becomes vacant, before the expiry of the term of office, the President may appoint another person to be a member in place of a member who vacates the office for the unexpired term of office.

It is noteworthy that a member of the Commission is entitled to be paid such remuneration or allowances as the Commission may, with the approval of the President¹¹. In effect the law given Commissioners blank cheques to be signed by the President, who may be, at any rate, a candidate in an election¹². It may be wondered whether it would be advisable to limit the terms of office for the Commissioners. Further, the prudence of making Commissioners full time may equally be called in question. It is interesting to note that apart from the Chairperson the other Commissioners are not required to possess any academic or professional qualifications. Is this state of affairs desirable, or alternatively, the

⁵ Section 4 (3) of the Electoral Commission Act No. 24 of 1996

⁶ Section 14 (3) of the Electoral Commission Act No. 24 of 1996

⁷ Section 4 (4) of the Electoral Commission Act No. 24 of 1996

⁸ Section 5 (1) of the Electoral Commission Act No. 24 of 1996

⁹ Proviso to Section 5 (1) of the Electoral Commission Act No. 24 of 1996

¹⁰ Section 5 (2) of the Electoral Commission Act No. 24 of 1996

¹¹ Section 5 (3) (11) of the Electoral Commission Act No. 24 of 1996

¹² Section 6 of the Electoral Commission Act No. 24 of 1996

law should prescribe some minimum qualifications¹³. Equally important, it may be wondered whether Commissioners should enjoy a tenure of office which is renewable indefinitely or some limitation or restriction should be placed on the tenure.

1.4. **FUNDING OF COMMISSION**

The funds for the Commission consists of such money as may be appropriated by Parliament for the purpose of the Commission; be paid to the Commission by way of grants or donations; and vest in or accrues to Commission¹⁴.

The Commission may also subject to the approval of the President accept moneys by way of grants or donations from any sources¹⁵ as well as with the approval of the President raise moneys by way of loans for the discharge of its functions¹⁶. The funds of the Commission are required to meet salaries, allowances and loans of the staff of the Commission. Transport and subsistence allowances for the members of the Commission are also met from the funds of the Commission. In practice, the Commission submits its budgetary requirements to the Executive branch of Government for funding. It may be wondered whether the Commission should continue to receive its funding through the executive branch of government or the subventions could be made directly by Parliament.

The next chapter shall discuss and examine the Presidential and Parliamentary elections; the qualifications for Presidential and Parliamentary candidates; election date; participation of traditional rulers and the rate of the youth in the political system of the country.

¹³ Patrick Matibini: The Constitutional Framework and Legal Issues Relating to Elections in Zambia. Paper presented to FODEP Conference 25 – 26 July, 2002

¹⁴ Ibid at 13

¹⁵ Section 13 (2) (a) of the Electoral Commission Act No. 24 of 1996

¹⁶ Section 13 (2) (a) of the Electoral Commission Act No. 24 of 1996

1.5 PRESIDENTIAL AND PARLIAMENTARY ELECTIONS

The election of President is both by universal suffrage and secret ballot¹⁷. Elections to the office of President are held whenever the National Assembly is dissolved¹⁸. The National Assembly unless dissolved sooner, continues for a period of five years from the date of its sitting¹⁹. Similarly, election of members of the National Assembly is by universal suffrage and by secret ballot²⁰.

1.6 QUALIFICATION FOR PRESIDENTIAL AND PARLIAMENTARY CANDIDATES

Thus, in *LEWANIKA AND OTHERS vs CHILUBA*²¹, the petitioners claimed amongst other matters that Article 34(3)(a)(b) and (e) of the Constitution were not satisfied by the former President Chiluba and accordingly he did not qualify to contest the election and to elected President of the Republic of Zambia. It was the petitioners' position by their pleading that the identity of the respondent and the identity of his parents have been and still are subject of controversy and public contradictory records, public concern and public concern has never been ascertained²².

The Supreme Court after analyzing the constitutional history of this country and various statutory enactments relating to citizenship come to the conclusion the respondent belonged to Northern Rhodesia and was clearly a British protected person whichever biography out of the several proposed is or were to be adopted²³. The reasoning and law which set out by the Supreme Court, it was held, applied with equal force to one Kafupi the person alleged to be the former President Chiluba's father. That is to say he belonged to Northern Rhodesia and was a British protected person. The point to note is that every British protected person whether born in or outside the protectorate of Northern Rhodesia was

¹⁷ Article 34 (1) of the Constitution of Zambia

¹⁸ Article 34 (2) of the Constitution of Zambia

¹⁹ Article 88(b)(a) of the Constitution of Zambia

²⁰ Article 63 (2) of the Constitution of Zambia

²¹ Supreme Court of Zambia Judgment No. 14 of 1998.

²² Supreme Court of Zambia Judgment No. 14 of 1998 at 6.

²³ Supreme Court of Zambia Judgment No. 14 at 40

entitled to Zambian Citizenship on 24th October 1964²⁴. The Supreme Court noted that the parentage qualification introduced into the Constitution a number of apparently solutionless problems and difficulties²⁵.

Strikingly, though, the Supreme Court observed that if the aim was to provide for indigenous Presidents only, the quite clearly, the language of the amendment actually employed did not and could not achieve this²⁶. Had explicit language to that effect been employed, such language might conceivably have run the risk of infringing the non-discrimination provisions in the part of the Constitution which is entrenched²⁷. This was not an issue in the petition and therefore, the Supreme Court did not make a finding. However, the question that may be posed is whether or not this clause should continue to be retained in the Constitution. Finally, should the age of the Presidential candidates be reduced from 35 years to 30 years.

1.7 **FIRST PAST THE POST SYSTEM**

The First Past the Post (FPTP) or single member plural systems is the simplest of the electoral system in the world²⁸. It is also the commonly used electoral model drawing from the traditions of liberal democracy in the United Kingdom, the United States of America and Canada²⁹. In the Southern African region, this system is used in Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Tanzania, Swaziland, Zambia and Zimbabwe³⁰. The principal tenets of this system are many and varied³¹.

First, a country is divided into relatively equal constituencies from which only representative is chosen to occupy a parliamentary seat on behalf of that

²⁴Section 3 of the Constitution of Zambia (1994)

²⁵Supreme Court of Zambia Judgment No. 14 of 1998 at 48

²⁶Patrick Matibini: The Constitutional Framework and Legal issues related to Elections in Zambia. Paper presented to Foundation for Democratic Process. 25 – 26 July, 2002 Lusaka. P5

²⁷Supreme Court Judgment No. 14 of 1998 at 48

²⁸Patrick Matibini. The Constitutional Framework and Legal Issues Related to Elections in Zambia. Paper prepared for FODEP Seminar, Mulungushi International Conference Centre, Lusaka, 25 – 26 July, 2002.

²⁹Idem at 6

³⁰Idem at 6

³¹Idem at 6

constituency³². It is as a result of this tenet that the FPTP is reputed for ensuring accountability of the member of Parliament to his/her constituency³³. Secondly, candidates contesting election in constituencies stand in their own right as individuals and not as political parties, even if their candidature is endorsed by parties³⁴. Thirdly this electoral system allows for independent candidates to contest election in their own right³⁵. Fourth, the winner of an election contest in any constituency may secure a simple plurality of votes and not necessarily the majority of votes and this leads to winners by minority votes both at constituency level as well as the national level³⁶. Under the Zambian Constitution, the returning officer shall declare the candidate who receives the highest number of the total votes cast to have been duly elected as President³⁷. The question that may be raised in this contest is whether or not, the simple majority system should be retained or alternatively, a Presidential candidate should be declared only after receiving a minimum of 51% of the total votes cast.

1.8 ELECTION DATE

As previously noted, the Constitution provides that an election to the office of the President shall be held whenever the National Assembly is dissolved³⁸, and the first session of the new parliament shall commence within three months from the date of the dissolution³⁹. It is, therefore, presumed that elections are required to be held within three months from the date of dissolution⁴⁰. However, it is also arguable that the word “whenever” imports immediacy. According to the Oxford Dictionary of Current English, the word “whenever” means:-

- (a) at whatever time;
- (b) on whatever occasion;
- (c) every time that; or

³² Idem at 6

³³ Idem at 6

³⁴ Idem at 6

³⁵ Idem at 6

³⁶ idem at 6

³⁷ Article 34 (8) of the Constitution of Zambia

³⁸ Article 34 (3) of the Constitution of Zambia

³⁹ Article 88 (7) of the Constitution of Zambia

(d) at any similar time.

However, the Electoral Act stipulates that the Electoral Commission may by statutory instrument issue regulations fixing a date for an election following dissolution of National Assembly⁴¹. Although the Electoral Act empowers the Commission to fix the date for elections, the exercise of the power is dependent upon dissolution of the National Assembly. Consequently, it is suggested that the date of elections should be prescribed by the Constitution.

For instance, the Oasis Forum⁴² has proposed that the date for Presidential election should be during the last Friday of September every five years at which day shall be declared a Public Holiday⁴³. In 2001 tripartite elections the petty bickering about when fever, the date would be announced and the destabilizing speculations that it might even be announced as far ahead as April, 2002, finally gave way to a date two days after Christmas and in the midst of the heavy rain season – hardly a contribution to a good electoral process⁴⁴. The question, therefore, is should the Constitution prescribe the date of elections?

1.9 ROLE OF THE YOUTHS IN PROMOTING FREE AND FAIR ELECTIONS

In Zambia, a youth is defined as any person above the age of 15 years and below 35 years old. The youth participation is a recognition throughout society that each person has the potential of judging and deciding matters that concern him/her and is aware of his opportunity, has access to the means necessary for utilizing and feels satisfied that his or her contribution has been effective and recognised⁴⁵.

⁴⁰ Article 88 (7) of the Constitution of Zambia

⁴¹ Section 17 (2) of the Electoral Act. Cap. 13 of the Laws of Zambia

⁴² A strategic alliance of the Law Association of Zambia (LAZ), the Zambia Episcopal Conference fellowships of Zambia (EFZ)

⁴³ The question of timing of the general election was addressed by Oasis Forum during the National Convention to review the nation on 11th and 12th September, 2001. The proposal was contained in the Peoples Declaration – the Declaration that ensued from the Convention.

⁴⁴ Dr. P.J. Henriot “Electoral Process Issues: Zambia 201 Tripartite Election. A paper presented to the Law Association of Zambia. 6th December, 2001. Mulungushi International Conference Centre.

Zambia today is in need of transforming itself into that kind of a dynamic society, and the impetus can only come from Zambian youth regardless of their political affiliation. That development will come about through democratic and popular participation of every one in national offices, and the beginning for that should be through holding of free and fair elections. It is important for youths to be aware of their following potential⁴⁶:-

- (i) Youths have the ability and power to initiate action, eg, voter registration, election campaign;
- (ii) Youths are skillful and energetic for action, they are industrious and capable of exploring new avenues of getting this accomplished;
- (iii) Youths are more willing learn and therefore, have the ability to impart new knowledge to others, thereby influencing democratic and informed change.
- (iv) Youths at least in Zambia, constitute the majority of the population. According to central statistics, the percentage for the age group between 0-14 years is 49.6%, 15-34 years 30.3% and 35-38.

⁴⁵ Mwelwa Muleya – Standards for Free and Fair Elections – Youth Inter-Party Workshop, Garden House Motel, Lusaka, October 20 – 21, 2000

⁴⁶ Idem at 8

CHAPTER TWO

2. ELECTORAL LEGISLATIVE FRAMEWORK

2.1 VOTER EDUCATION

Prior to the December 27th. 2001 tripartite elections various and non governmental organizations (NGOs) undertook civic and voter education programmes through community participation programmes. For instance, the Foundation for Democratic Process (FODEP)⁴⁷ conducted programmes and activities aimed at urging all eligible voters to register as voters⁴⁸. The information disseminated stressed the importance of registering as voters and voting in the elections. The voter registration awareness programmes were conducted through public discussions in various communities and popular theatre groups in public places and institutions⁴⁹. The same methodology of public awareness was used to urge registered voters to inspect the provisional voters cards and to collect their voter's cards to enable them to vote⁵⁰. Though civic voter education was an on going exercise, it was intensified a month before a polling day. A comprehensive and sustained voter education campaign was not possible because of lack of transparent electoral calendar from Electoral Commission.

Coalition 2001⁵¹ is an alliance of Civil Society organisations in Zambia established for the purpose of contributing to the achievement of genuine, free and fair democratic process⁵². Coalition 2001 undertook on a nationwide civic education and voter mobilisation exercise to sensitise voters on the importance

⁴⁷ FODEP is a Zambian Non-Governmental Organisation (NGO) registered under the Societies Act Chapter 119 of the Laws of Zambia in 1992.

⁴⁸ FODEP report; "Zambia's 2001 Tripartite Elections"

⁴⁹ Id. at 2

⁵⁰ Id at 2

⁵¹ Coalition 2001 is an alliance of the following NGOs: Southern African Centre for Conflict Resolution (SACCORD); Anti-Voter Apathy Project (AVAP); Civil Servants Union of Zambia (CSUZ); Inter African Network for Human Rights and Development (AFRONET); Resident Doctors Association of Zambia (RAAZ); Matambazi Peasant Farmers Association (MPFA) and Zambia Council for Social Development (SCSD).

⁵² Coalition 2001 Activity Report

of registering and voting in the 2001 tripartite elections⁵³. The following activities were undertaken⁵⁴:-

- (i) Circulation of educational materials such as posters, leaflets, voter and education manuals;
- (ii) Public meetings with local community leaders, church and traditional leaders, on issues related to election and mobilization of voters;
- (iii) Dissemination of information on voter registration exercise through community radios; and
- (iv) Conducting civic education in schools and communities.

At the end of the first registration period, only 500,000 people out of an estimated 3.6 million had registered⁵⁵. Due to poor voter turnout, voter mobilization was intensified countrywide for a period of two weeks from 15th July, 2001. Coalition 2001, also held television and radio programmes from July to September, 2001. These programmes were undertaken on Zambia National Broadcasting Corporation (ZNBC), Radio 2 and television, Radio Ichengelo, Radio Phoenix, Community Radio Chikuni, Community Radio Mazabuta, Radio Lyambai and Radio Maria⁵⁶.

As the elections date for the most contested elections in Zambian history approached, it was quite evident that most of the political parties had done very little to encourage the people to vote for them by appealing directly to them to register⁵⁷. Apart from the ruling Movement for Multi-Party Democracy (MMD), the United Party for National Development (UPND), Forum for Democracy and Development (FDD) and the Zambia Republican Party (ZRP) many political

⁵³ id at 1

⁵⁴ id at 10

⁵⁵ id at 10

⁵⁶ id at 12

⁵⁷ Matibini P Constitutional Framework and Legal issues relating to Elections in Zambia – paper presented to FODEP conference 25 – 26th July 2002, Mulungushi International Conference Centre, Lusaka.

parties do not seem to have done much in canvassing for political support primarily because of lack of resources⁵⁸.

The question that is raised in this context is whether or not the Electoral Commission of Zambia should be mandated and obliged to conduct voters education.

2.2 REGISTRATION OF VOTERS

The Constitution of Zambia provides that every citizen of Zambia who has attained the age of eighteen years is entitled to register as a voter⁵⁹. This provision of the constitution is augmented by the electoral Act⁶⁰ where it provides that every person shall be qualified for registration as voter in direct elections (an election to the office of President or an election for a member of the National Assembly) if one is a citizen of Zambia and has attained the age of eighteen years. However, no person shall be qualified for registration as a voter in direct elections and no person shall be registered such as a voter⁶¹:-

- (b) is under a declaration of allegiance to some country other than Zambia;
- (c) under any law in force in Zambia, is adjudged or otherwise declared to be unsound mind, or is detained under the criminal procedure code during the pleasure of the President;
- (d) is under sentence of death imposed on him by any court in Zambia or a sentence or imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or
- (e) is not in possession of a National Registration Card issued to him under the National Registration Act.

⁵⁸ Bwalya E. The electorate's view on the 2001 Zambian Presidential/Parliamentary and Local government elections – before, during and after elections. Preliminary report produced under the auspices of University of Zambia Institute of Economic and Social Research. March 2001 at 6.

⁵⁹ Article 75 of the Constitution of Zambia 1996

⁶⁰ Section 3 of the Electoral Act Chapter 13 of the laws of Zambia

⁶¹ Section 4 of the Electoral Act Chapter 13 of the laws of Zambia

A critical point about the disqualification from registration of voters is that every Zambian citizen is required to hold a green National Registration Card (NRC) to be eligible to vote⁶². It is interesting to note though that every citizen is eligible to obtain a green national registration card at the age of 16 years. As previously noted the voting age is 18 years and above.

The National Registration Department under the Ministry of Home Affairs is charged with the responsibility of issuing NRCs. Ideally, the issuing of NRCs is required to be undertaken on a continuous basis in all the 72 districts of Zambia⁶³. To this end, the Commission is now obliged to compile, maintain and update on continuing basis a register of voters which include the names of all persons entitled to vote in any direct election or local government election. However, the practice or reality is different. The Department is moribund, without the necessary materials to issue NRCs to deserving eligible citizens⁶⁴. The only time the department seems to get reasonable supply of requisite resources is when elections are in sight as was the case in 2001 tripartite elections⁶⁵. However, in the 2001 tripartite elections the exercise of issuing NRCs was however, characterized by insufficient publicity, disorganization, inept and arrogant, rude and demoralized and inefficient officers and a general disregard for an exercise that is most critical to one's eligibility to vote⁶⁶.

The issuance of NRCs is supposed to precede the voter registration exercise. During the 2001 tripartite elections, the issuance of NRCs in Southern, Eastern and Western Provinces began a few weeks or days prior to the commencement of the voter registration exercise. Granted the inefficiencies associated with the issuing of NRCs requiring Zambians to obtain NRCs as a pre-requisite for receiving a voter registration card (VRC) is a legal barrier that tends to constantly disenfranchise a sizeable proportion of the Zambian population. A question that may be posed is whether or not NRCs should continue to be the documents

⁶² Section 4 (d) of the Electoral Act Chapter 13 of the Laws of Zambia

⁶³ Electoral (Amendment) Act No. 4 of 2001 dated 22nd March, 2001

⁶⁴ Ibid at 18

⁶⁵ Ibid at 8

⁶⁶ Report by Coalition 2001 "December 28 2001 Tripartite Election Preliminary Report".

recognized by law on applying for a VRC or additional forms of identification such as passports, birth certificates or affidavits should also be permitted⁶⁷.

2.3. COMPILATION OF VOTERS ROLL

The registration of voters is regulated by the Electoral (Registration of Voters) Regulations⁶⁸. These regulations which were issued pursuant to the Electoral Act of 1973,⁶⁹ have been acquired by the Electoral (Registration of Voters Amendment) Regulations 2001⁷⁰. As previously observed, registration of voters is required to be carried out by the Commission in all polling districts on a continuing basis⁷¹.

Thus any person who considers that he/she is qualified for registration as a voter, may make an application to be registered as a voter to the registration office or to the assistant registration office for the polling district in which the applicant ordinarily resides and any such application shall be made within the registration period specified in respect of that polling district⁷².

However, the right to be registered as a voter is now subject to an order to suspend the registration⁷³. It is important to note that prior to the amendment effected by the Electoral (Regulation of Voters) (Amendment) Regulations, 2001 voters were entitled to register within the registration period specified in respect of polling district⁷⁴.

Previously, at the close of the registration period specified in respect of any polling district, the registration officer of that polling district was required to forward to the Director of Elections all voters registration records completed to

⁶⁷ Matibini P at 10

⁶⁸ Statutory Instrument No. 238 of 1973 dated 12th October 1973

⁶⁹ Act No. 44 of 1973

⁷⁰ Statutory Instrument No. 55 of 2001 dated 24th May, 2001

⁷¹ Regulation 9 of the Electoral (Regulation of Voters Amendment) Regulation 2001 Statutory Instrument No. 55 dated 24th May 2002.

⁷² Regulation 11 of the Electoral (Regulation of Voters) Regulations of 1973 Statutory Instrument No. 238 of 1973

⁷³ Electoral (Registration of Voters) Amendment Regulations 2001 Statutory Instrument No, 55 of 2002

⁷⁴ Regulations 2 of Electoral Registration of voters, Regulation 1973 Statutory Instrument No.283 of 1973

him⁷⁵. This provision has been amended⁷⁶ by removing the requirement that voters registration records should be submitted to the Director of Elections at the close of registration period. It is a little wonder what prompted these various amendments contained in the Electoral (Registration of Voters) (Amendment) Regulation 2001.

During the 2001 tripartite elections, the process of compilation of the voters roll was encumbered by inadequate materials, late commencement of the exercise in some registration centers, irregular opening and closure of registration centers, inadequate and inaccuracies in recording of voters' details. A question, therefore, that may be posed is whether or not the Electoral Commission should be legally mandated and obliged to develop and implement a comprehensive electoral calendar to outline all election activities, such as delimitations, registration of voters, nominations to mention but a few several months in advance of the first activity taking place⁷⁷.

The process of registration as a voter can be long and winding⁷⁸. First, if the applicant is not in possession of a national registration card, he/she is required to obtain a green national registration card. Second, after obtaining a national registration card, one is required to register as a voter upon production of the national registration card (NRC). The voters registration card is not issued immediately after the application is made. Third, an applicant is required to collect the voters registration card. Assuming the particulars are correctly entered, the registration process ends with the collection of the voters registration card. In the even, that there are errors committed in the process of registration, an applicant is required to issue instructions to effect the corrections and wait for the corrections to be made before the voters registration card is finally issued⁷⁹. The question which may be posed in this connection, is whether or not this process should be streamlined, and thereby reduce a number of journeys that are made to and from the registration centers. In the same vein, it may be

⁷⁵ Regulation 14 of Electoral (Regulation of Voters) Regulations 1973

⁷⁶ Regulation 14 of the Electoral (Regulation of Voters) Regulations 2001

⁷⁷ Matibini Pl at p.11

⁷⁸ Ibid at 12

necessary to consider the maximum distance to be allowed between registration of polling stations. Mention must not be forgotten that applicants for both national registration cards and voters registration cards walk long distances in order to get to registration centers.

2.4. **ELECTORAL CODE OF CONDUCT**

Election campaign are indispensable in any democratic, free and fair elections more so, unhindered election campaigns taking place in a free and level playing environment⁸⁰. There are certain fundamental rights and freedoms that must be protected and promoted during election campaigns, if the outcome of elections are to be accepted as an expression of free will of the electorate⁸¹. Prominent among these are freedoms of association, assembly, expression and press freedom and other civil and political rights of political contestation⁸². The Zambia constitution guarantees the freedoms of association and assembly⁸³, freedom of expression and press freedom⁸⁴. The Public Order Act,⁸⁵ regulates the freedom of assembly and has a direct effect on the enjoyment of the freedoms of association, as these freedoms are independent. Freedom of association is regulated by the Societies Act⁸⁶.

For purposes of elections there is a code of conduct promulgated pursuant to the Electoral Act⁸⁷. Some of the salient features of the electoral code of conduct will be considered. The primary objective of Electoral Code of Conduct is to promote during election campaigns, conditions conducive to the conduct of a free and fair elections⁸⁸, by granting every person the right to campaign freely⁸⁹, express political opinions⁹⁰, hold public meetings,⁹¹ and debate and contest the policies and programmes of other parties⁹².

⁷⁹ Ibid at 12

⁸⁰ FODEP Report Supra 61, 19

⁸¹ Ibid at 19

⁸² Ibid at 19

⁸³ Article 21 of the Constitution of Zambia 1996

⁸⁴ Article 20 of the Constitution of Zambia 1996

⁸⁵ Chapter 113 of the Laws of Zambia

⁸⁶ Chapter 119 of the Laws of Zambia

⁸⁷ Electoral (Conduct) Regulations 1996. Statutory Instrument No. 179 of 1996 dated 5th November, 1996

⁸⁸ Regulation 3 of the Electoral (Conduct) Regulations 1996

⁸⁹ Regulation 4 (h) of the Electoral (Conduct) Regulations 1996

⁹⁰ Regulation 4 (a) of the Electoral (Conduct) Regulations 1996

Conversely the electoral code of conduct prescribes amongst many matters, the practice of voiceless⁹³, display of weapons or arms at public meetings⁹⁴, and the use of inflammatory or defamatory allegations.⁹⁵

All electronic media is urged by the electoral code of conduct to provide a fair and balanced reporting of campaigns, policies, meetings, rallies and press conferences of all registered political parties during the period of campaigning⁹⁶. Television and radio broadcasters are also required to allocate equal air time to political broadcasts⁹⁷. Any person who contravenes the electoral code of Conduct Regulations, shall be guilty of an offence not exceeding three hundred thousand Kwacha or imprisonment for a term not exceeding three months or both⁹⁸.

In spite of the elaborate and laudable provisions of the Electoral Code of Conduct, the code is violated with impunity. To make matters worse, there is no law enforcement agent that feels obliged to enforce this particular electoral law⁹⁹. For instance throughout the 2001 election period, the ruling party the Movement for Multi-Party Democracy (MMD) received higher medial coverage than other political parties¹⁰⁰. A comparison of the stories and interviews carried on government electronic media and private media such as Radio Phoenix raised questions about it as the same country that was being reported on¹⁰¹. Any one with minimum analytical skills could do a simple study of headlines. Photographs, news stories, editorials and reasonably conclude that the public owned newspapers had been instructed to support the candidate of the ruling party¹⁰².

⁹¹ Regulation 4 (d) of the Electoral (Conduct) Regulations 1996

⁹² Regulation 4 (b) of the Electoral (Conduct) Regulations 1996

⁹³ Regulation 7 (1) (a) of the Electoral (Conduct) Regulations 1996

⁹⁴ Regulation 7 (1) (b) of the Electoral (Conduct) Regulations 1996

⁹⁵ Regulation 7 (1) (c) of the Electoral (Conduct) Regulations 1996

⁹⁶ Regulation 8 (1) of the Electoral (Conduct) Regulations 1996

⁹⁷ Regulation 9 (1) of the Electoral (Conduct) Regulations 1996

⁹⁸ Regulation 12 of the Electoral (Conduct) Regulations 1996

⁹⁹ FODEP Report Supra Note 61

¹⁰⁰ Coalition 2001 Report Supra 64

¹⁰¹ Dr. P. J. Henriot note 55 at 6

¹⁰² Dr. P. J. Henriot Supra note 55 at 6

During the 2001 tripartite elections the Constitutional right to freedom of assembly construed to be undermined by the selective manner in which the Public Order Act was being implemented by the police Officers during election campaigns¹⁰³. This, there must be more honest use of police force and more just implementation of the Public Order Act¹⁰⁴. There is an unfortunate perception of political use of the police by incumbent governments¹⁰⁵.

It is noteworthy that the electoral code of conduct also prescribes to the use of government transport or facilities for election campaign purposes¹⁰⁶. However, the preceding prohibition does not apply to the President and the Vice President of the Republic¹⁰⁷. It is equally important to note that where any form of government transport or property is available for hire. It shall be made accessible to all political parties at a free on a first come first serve basis¹⁰⁸. These provisions are aimed at leveling political playing field in a multi-party democracy by separating the activities and resources of a ruling party from state resources¹⁰⁹. It will be recalled that the delinkage of a ruling party from the government was one of the campaign promises of the MMD when the country reverted to Multi-party democracy during the 1991 Presidential and Parliamentary elections.

During the 2001 tripartite elections, it was noted that MMD continued to use government resources during elections in breach of the Electoral Code of Conduct¹¹⁰. The government seemed to be more fused with the ruling party after the creation of the office of the District Administrator who in spite of their terms of reference¹¹¹ and High Court Order¹¹² operated as political functionaries of the ruling party.

¹⁰³ FODEP Report at 21

¹⁰⁴ Dr. P. J. Henriot Supra note at 5

¹⁰⁵ Id at p.5

¹⁰⁶ Regulation 7 (1) (c) of the Electoral (Conduct) Regulations 1996

¹⁰⁷ Proviso to Regulation 7 (1) (l) of the Electoral (Conduct) Regulations 1996

¹⁰⁸ Regulation 7 (2) of the Electoral (Conduct) Regulations 1996

¹⁰⁹ FODEP Report Supra Note 6 at p.25

¹¹⁰ FODEP Report Supra Note 6 at p.25

¹¹¹ Cabinet Circular No. 4 of 2000

¹¹² Law Association of Zambia and others vs. Attorney-General 2001/HP/0444 (Unreported)

Questions that may be raised therefore, is whether the Electoral Code of Conduct should continue to allow the President and the Vice President of the country to continue having access to government transport for election campaign purposes. Further, questions that may be posed are, whether the Electoral Code of Conduct should be legally enforceable code or an administrative tool that is not legally enforceable¹¹³. In relation to the Public Order Act, the following issues or questions may be raised, how much latitude or discretion should the Police Service be given in the maintenance of law and order. Should an appeal be to a Minister and are the penalties prescribed under the public Order Act insufficient or excessive?

2.5. **MONITORING**

The principal function of an independent monitoring process in a democratic governance system is to ensure the integrity of the election process and to protect individual's rights to make appropriate political choices¹¹⁴. Election's integrity is an inalienable principle of democratic governance and as such, constitutes an integral part of free and fair elections¹¹⁵. Free and fair elections are the basis for a representative form of government. Without integrity, there is no guarantee that the peoples political choices are exercised in their right to vote will be reflected in the election results and consequent and consequent government structure¹¹⁶. Election integrity can be undermined when procedures and practices, governing an election are disregarded and/or seemingly biased towards individuals of similar political affiliations¹¹⁷. The role of monitors and their presence during an election aims at minimizing incidences of disregard of procedures, practices or minimize unforeseen administrative mistakes¹¹⁸. However, the Electoral Code of Conduct stipulates that a person shall not act as local or foreign monitor during elections unless he/she is duly organized and authorized by the Electoral Commission.

¹¹³ Matibini P Page 14

¹¹⁴ Coalition 2001 Report at 4

¹¹⁵ Idem at 4

¹¹⁶ Id at 4

¹¹⁷ Id at 4

¹¹⁸ Idem at 4

During the 2001 tripartite elections, FODEP had intended to deploy at least 6,500 monitors in polling stations and collation centers, while others were supposed to be roving or mobile monitors¹¹⁹. However, the last minute decision by the Electoral Commission of Zambia to charge each domestic monitor ten thousand (K10,000.00) kwacha and to change the accreditation procedure, almost threw the monitoring exercise in disarray¹²⁰. International observers were required to pay the sum of one hundred and fifty thousand (K150,000.00) kwacha each. This was the first time ever in the history of Zambian elections that monitors and international observers were charged¹²¹. The new procedure of accrediting monitors proved to be logistically cumbersome and financially expensive¹²². A question that may be raised is whether or not the Electoral Commission should continue encumbering the monitoring functions by imposing charges and administering cumbersome accreditation procedures.

2.6. **NOMINATIONS**

A candidate for election as President is required to deliver his nomination papers together with the prescribed election fee and statutory declaration referred to in article thirty-four (a) of the Constitution to the Returning Officer for such election on such a day at such time and at such a place as may be determined by the Commission¹²³. A similar procedure applied for nominations to the National Assembly¹²⁴. A question that may be asked is whether the Electoral Act should outline the periods and durations of the nomination process, instead of leaving the matter in the absolute discretion of the Electoral Commission.

2.7. **POWERS OF PRESIDING OFFICERS**

There is required to be appointed in each constituency, a returning officer, such approved number of assistant returning officers and counting assistants¹²⁵. In case of polling districts, there is required to be appointed presiding officers and

¹¹⁹ Idem at 4

¹²⁰ Regulation 11 (1) of Electoral (Conduct) Regulations 1996

¹²¹ FODEP Report at page 4

¹²² Idem at 4

¹²³ Id p.4

¹²⁴ Id p.4

¹²⁵ Section 9 (1) of the Electoral Act 1996

polling assistants¹²⁶. Ordinarily, the Electoral Commission engages civil servants to conduct elections. The electoral law does not albeit specify the functions and powers of the election officers. A question that may be posed is whether or not presiding officers should be endowed with specific powers and functions including powers to reject spoilt ballot papers.

2.8. **BALLOT BOXES**

Immediately before commencement of the poll, the presiding officer at each polling station is required to show every ballot box open and empty, to any person whose presence for the purpose is permitted, so that such person may see that it is empty and then lock and seal with official seal every such ballot box¹²⁷. The presiding officer is obliged to permit any candidate, Election agent or polling agent who may be present to affix their seals and such seals shall not be tampered with or broken until the ballot box is opened in accordance with the law¹²⁸. The preceding regulation is predicated on the use of opaque metal boxes. The question that is posed is whether or not the Electoral Commission should continue using the metal boxes or alternatives, introduce transparent ballot boxes.

2.9. **PROVISIONAL POLLING STATION RESULTS**

When the counting of votes has been completed and the results of the poll ascertained, the returning officer is required¹²⁹:-

- (a) complete a declaration of result of the poll.
- (b) Declare to be elected the candidate to whom the majority of votes was cast by reading aloud in public at the place where such counting was conducted; and
- (c) Cause to be delivered to the Electoral Commission without delay the results.

¹²⁶ Article 66 of the Constitution of Zambia 1996

¹²⁷ Section 4 (1) The Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

¹²⁸ Section 4 (2) The Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

¹²⁹ Regulation 40 of the Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

Clearly, the law does not provide for a party agents to sign and receive copies of polling stations result forms nor indeed for the results to be posted for public review at the polling station. As a result, the polling station results are vulnerable to manipulation¹³⁰. The question asked in this regard is whether or not provisional polling station results signed by the election officer and party agents to verify the results should be provided for by the law and distributed to interested parties at the polling station for ongoing verification exercises.

2.10. COMPILATION AND TRANSMISSION OF RESULTS

The tabulation of votes from all the polling centers in a constituency is done at a central place called a collation centre¹³¹. The aggregated election results from collation centers are sent to the Electoral Commission of Zambia by fax and are subsequently entered into the computer. In the 2001 tripartite elections, the collation and declaration of results was under taken in a fallible and haphazard manner¹³². It was therefore suggested that the result sent by returning officers to the Electoral Commission of Zambia must be counter signed by polling party agents to avoid suspicion of alteration of election results after they have been counted and aggregated at the collation centre.

The Electoral Commission is required in respect of each candidate declared elected to give notice in the Gazette of the full names of such persons and the constituency in which such person was elected¹³³. However, a person declared elected is deemed to have been elected with effect from the date appointed for the taking of the poll at the election in the constituency concerned¹³⁴.

During the 2001 tripartite elections, although the election results could be obtained from the Electoral Commission, Mulungushi International Conference Centre, the Zambia National Broadcasting Corporation, the results were only

¹³⁰ The Carter Centre Final Statement of the Zambia 2001 Elections dated 7th March 2002 at 4

¹³¹ FODEP Report Supra No. 61 at 46

¹³² Coalition 2001 Report Supra Note 64 at 19

¹³³ Regulation 50 (1) of the Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

¹³⁴ Regulation 50 (2) of the Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

announced after being released by the Electoral Commission¹³⁵. FODEP observed that the Electoral Commission was extremely slow in entering the results and the dissemination of the results was not on the first come and first delivery basis¹³⁶. The question that is raised in this context is whether or not the Electoral Commission should be mandated to publish the results, polling station by polling station?

A candidate, his election agent or polling agent may if present when the counting or any recounting of the votes is completed, require the returning officer to have the votes recounted or again recounted, or the returning officer may on his own initiative have the votes recounted or again recounted¹³⁷, provided that the returning officer may refuse the request, if in his opinion, it is unreasonable¹³⁸.

In addition the returning officer of a constituency in which a poll is taken is required to appoint a time and place at which the verification of the ballot paper accounts is to take place and the returning officer is required to give notice in writing to the candidates in which such election of such time and place. Clearly, returning officers are responsible for determining when and where verification should take place¹³⁹. Thus, the process is uncoordinated and random and therefore, almost impossible to monitor¹⁴⁰. The system of verification is not uniform. However, a recount of votes is available as a matter of right and on motion by returning officers.

¹³⁵ FODEP Report Supra Note 61 at 48

¹³⁶ *Idem* at 48

¹³⁷ Regulation 44 (1) of the Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

¹³⁸ *Privo* to Regulation 44 (1) of the Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

¹³⁹ Regulation 47 (1) of the Electoral (General) Regulations 1991 Statutory Instrument No. 108 of 1991

¹⁴⁰ The Carter Centre Final Statement Supra Note 143 at 5.

RESOLUTION OF ELECTORAL CONFLICT AND ROLE OF THE COURTS

2.11 The chief Justice is the Returning Officer for the purpose of election to the office of the President.¹ However any question, which may arise as to whether any provision of the constitution or any law relating to the election of a President has been complied with, or any person has been validly elected as President, shall be referred to and determined by the full bench of the Supreme Court.² When determining Presidential election petitions the Supreme Court, which is essentially an appellate Court, sits in a trial Court of first and second instance under very special jurisdiction given by the Constitution for the trial of the Presidential election petition.³ In case of election petition The National Assembly may present Assembly on election petition may be presented to the High Court by one or more of the following:

- (a) A person who lawfully voted or has a right to vote at the election to which an election petition relates.
- (b) A person claiming to have a right to be nominated as a candidate.
- (c) A person claiming to have been a candidate at the election to which the petition relates and
- (d) The Attorney – General.

In the decided case *Miyanda and other vs. The Attorney General*.⁴ The applicants sought an order by the way of Judicial Review from the High Court to verify and recount the votes in the Copperbelt Northern Luapula and Lusaka Provinces. It was further pleased that the Returning Officer the Chief Justice – should be restrained from announcing the Presidential election results prior to said recount and verification. The High Court further held that once the results of Presidential polls are communicated to him the returning Officer has under the Constitution no choice but to declare the winner and swear him as the President. In view of the High Court, it

¹ Article 41 (1) of the Constitution of Zambia 1996

² Article 41 (2) of the Constitution of Zambia 1996

³ *Lewanika and others vs. Chiluba* selected Judgement No 14 of 1998 at P2

⁴ 200/HP/174 (unreported)

has never been the intention of Parliament and the frames of the Constitution that a Presidential election process can be arrested before the President is sworn in.

Further more, the electoral law⁵ under Constitution, the Returning Officer shall refer to the information notified to him by the Electoral Commission and ascertain the total number of votes cast in favour of each candidate in accordance with such information.

In *Miyanda and others Vs Attorney General and others*⁶ the High Court held that it could not arrest the inauguration because that was tantamount to ordering the returning officer to stop to do what he/she is required by the constitution to do. The High Court also observed that the applicants spoke too soon and their action was premature.⁷ It must be noted that the Presidential and Parliamentary Candidates are required to settle election fees in the sum of Five Million (K5m) kwacha and One Million (K1m) respectively. Several questions may be posed in connection with the resolution of electoral conflict and the roles of the Courts in the electoral process.⁸

- (i) Should the inauguration of the President precede the final announcement of Election result?
- (ii) Should Presidential and Parliamentary election petition be entertained prior to Inauguration of the President?
- (iii) Should the High Court process original judiciary for Presidential election?
- (iv) Should the Chief Justice continue to be a returning officer and
- (v) Should the Courts continue levying election levying election petition fees?

⁵ Regulation 13 of the Electoral (Presidential Election Regulations) s1 No 109 of 1991

⁶ 200/HP/ 1174

⁷ *Idem*

⁸ FODEP Repute Zambia's Tripartite Election @ P4

CHAPTER THREE

CORRUPTION AND CORRUPT PRACTICES

3.0 Corruption is a cancer that eats away the fabric of society that corruption has become endemic in Zambia it uncontrovated.

According to transparency International corruption perception index for the year 2001, Zambia was rated the 9th most corrupt country in Africa⁹. The Zambian media is awash with stories of corruption in various sectors of Zambian Society¹⁰. Successive reports from the Auditor General invisibly disclose gross cases of misappropriation and misuse of funds in the Government Ministries and Parastatal organizations and in the electoral system. This chapter will focus on aspects of corruption and corrupt practices in the electoral system. The 27th December 2001 Tripartite election were characterized by massive bribery of voters abuse of public resources for the functioning purposes, abuse of office by the District Administrators and the office of the President (OP) to aids the campaign of the movement of multi-party Democracy. (MMD).

SATA EXPLAINS HIS ROLE IN RIGGING 2001 POLLS

3.01 In order to explain the acts of corrupt practices and corruption, there is a need to Lay bare the roles that were played by various individuals, who were architects, planners, strategists and executors of the plots in rigging of 2001 polls

There is also a great need to look at the role of Michael Sata, a former MMD National Secretary and Minister without Portfolio in the Chiluba Administration. He said that he played a key role as Chief Executive of the Party in making preparations for the Presidential and General Elections¹¹. He

⁹ Afronet Publication vol 1 issue No 2 February 2003. P iii

¹⁰ Idem iii

¹¹ Sata explains his role in rigging 2001 polls. The Post Wednesday November 12 2002 No 2219 at P1

told the Supreme that court Levy Mwanawasa had received from the Government sum of six hundred million (K600m) kwacha as entertainment allowance per month during the run – up to 2001 December elections¹²

He said that he had to propose to the Party's National Executive Committee (NEC) strategies and logistics required for them to win election because the Party had no money, especially with an overdraft of 124 million with the Standard Chartered Bank and there was a debt of K973 million via suppliers after MMD Convention in April at Kabwe and besides legal debt of K75 million to Chifumu Banda and Associates and K96 million to Simeza and Sangwa Associates and K2 billion from Ben Mwila¹³

Sata said MMD needed 5000 bicycles, 350 assorted motor vehicles, T/shirts and Chitenge materials. He said that all those arrangements were being done in advance from January 2001 up to September 2001 when he resigned from the MMD after Mwanawasa's fictitious and bogus election or appointment as Party Presidential candidate.¹⁴ He expected Chiluba to appoint him as Party Presidential candidate but Chiluba outwitted and dribbled him.

Sata recalled that being directed by former President Fredrick Chiluba to go to Financial services Consultants, a Company owned by Seedat to receive and distribute 3000 bicycles. He was given K54 million to go to Tata Zambia and buy bicycles for the MMD Party.

Sata said he was also directed to call a special NEC meeting to report the progress so far made. After the break during the NEC meeting Chiluba showed them four of five different makes of motor vehicles.¹⁵

¹² Id,cet 1

¹³ Id P6

¹⁴ Id P6

¹⁵ Id P6

He (Sata) demanded for 150 motor vehicles for all the Constituencies, throughout the country four for each district and for the Secretariat and a number of vehicles for whoever would be a Presidential Candidate.

Sata as a National Secretary of the Party, proposed to NEC that each Parliamentary Candidate was to receive K30 million, and the Vice – President K250 million and the Presidential Candidate K150 million per week.¹⁶

The proposal was accepted and endorsed. Chiluba was asked to look for money since the Party Coffers were empty.¹⁷ This K150 million which the Presidential Candidate Levy Mwanawasa was receiving was not for Campaigns but for entertainment of the people because the Party was doing the Campaign for them. The Presidential Candidate's wife was also entitled to some money, drugs and second hand clothes (Salaula). She should begin to show the people that she would be a good caring mother of the Nation. The drugs were donated to Liteta, Leprosorium and Salaula was donated to Ndola rural by Moreen Mwanawasa.

Sata said that as early as January 2001, there were proposals of making available mealie meal and maize¹⁸ to each member of Parliament. (Further discussion would be done in Mwanga's and Chungu's submissions) later during the continued hearings.) In this Presidential and Parliamentary Elections each Ward Chairman was directed to be an agent for Presidential Candidate.

Sata said that mealie meal bags and maize were supplied through Moses Katumbi and Chani Fisheries and Paul Steel. The commodities were handed over to the Provincial Party Chairmen or Provincial Ministers depending on who was most trusted by Chiluba. When it came to money Chiluba himself

¹⁶ Id P6

¹⁷ Id at P6

¹⁸ Id P6

distributed and signed for it. Sata told the Supreme Court that the source of money used to purchase motor vehicles came from the government through the office of the president (OP) special Division and he (Sata) also confirmed that the bulky of money that went into Zamtrop account was from three of the four main controls.¹⁹

Control 78 was of special division what fed money into Zamtrop account. Sata pointed out that when control 78 got exhausted money started flowing from control 63 which was Loan and Investment account. When control 63 was shaken, the Ministry of Finance started feeding the Zamtrop Account through control 99 and through the Bank of Zambia. Control 99 was the Major Control.²⁰ Sata continued to give an account that Control 32 was the smallest account, which was/is at Cabinet Office and was/is controlled by the Secretary to the Cabinet Mr. Leslie Mbula. This control had a very big loophole which was very difficult to detect. The loophole was that it was a Presidential fund, it was State House who ordered, who to be funded by control 32 and control 32 ordered payment without questioning²¹

Control 8 that was Presidential travels, and was used by Levy Mwanawasa's although he was not entitled to it because he was not the President of the Nation

“Control Number 1 at State House was used for entertainment of Levy Mwanawasa and others. At that time he was just an MMD Presidential Candidate and LEGALLY he was not entitled to get money from control 1 not even control 8 or any government controls like other Presidential Candidates never

¹⁹ Idem at P6

²⁰ Ibid 6

²¹ Idem 6

benefited from government money ²². Even the MMD as a Party was not supposed to benefit from the government money” Sata told the Supreme Court during the Presidential Petition hearing.

As strategist he (Sata) said that one of the main strategies was to entice the Church and traditional rulers and leaders because they realised that having transport and covedness was not enough. The chiefs were easy to penetrate and other churches apart from the Roman Catholics who did not entertain the idea of bribery corruption and corrupt practices. The Catholics are moralists and are not corrupted and bribed. The idea was to bring all the chiefs to Lusaka and accommodate them in very expensive posh hotels and lodges like Lilayi Lodge where most chiefs were kept before they met President Chiluba at State House.

“When Chiefs were to go back to their respectful areas, they were appreciated with finger prints²³”) Sata said “This meant giving them transport, good cash, most of the chiefs complained of dilapidated Palaces so money was arranged and sent to them. A few chiefs received Mazda Motor Vehicles from Pilatus. Some chiefs were sent to Johannesburg for medical treatment and Medical check ups. All the nice things were done to them just to bring them closer to MMD so that they could assist to campaign for the MMD during elections.²⁴

Sata strategist in rigging 2001 December polls ended up telling the Supreme Court that as regards the churches the community request was to build, repair, complete buildings and have medical instruments bought for them. And this

²²

²³ Id 6

²⁴ Id 6

was to induce chiefs and churches²⁵”. They were bribed and corrupted with money, gifts of motor vehicles and repair of their palaces.

Sata said that Chiluba was so much in love with MMD and wanted to win elections at whatever cost for Mwanawasa. After Mwanawasa was appointed Presidential Candidate, things changed and was given State Security, and he was guarded 24 hours by 25 State Policemen at his resid

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Sata said that Chiluba was so much in love with MMD and wanted to win elections at whatever cost for Mwanawasa. After Mwanawasa was appointed Presidential Candidate, things changed and was given State Security, and he was guarded 24 hours by 25 State Policemen at his residence and his wife had also a chain of officers alone with government motor vehicles.²⁶

The system was to be involved, this meant that the Office of the President (Special Division) was to participate in election fully and unlike in previous elections where they first behaved as observers for their interests.

Another corrupt strategy, which was orchestrated was covering the issue of mealie mea., The MMD had involved the Ministry of Finance, Zambia National Commercial Bank, and Katumbi and Steel Companies.

In February 2001 a 25 kg bag of mealie meal was going at K17,000 but was sold at K15,000 and somebody somewhere was going to settle the difference (guess who) of course the government of the Republic of Zambia because MMD had no money in the coffers.

Sata told the Supreme Court that in August 2001, the reports were that the MMD was becoming more and more unpopular day in and day out, so they asked the Ministry of Finance through a Mr Mphande and the Zanaco Managing Director Samuel Musonda to be committed and buy more than 3000 metric tones of mealie meal through Chani Fisheries Ltd and to be sold at K14,000 below the cost of mealie meal bag. Then submit the full costs to

²⁵ Id 10

²⁶ Idem P8

the Ministry of Finance. The mealie meal was to be sold selectively only to partisans – MMD cadres by Party officials through out the country²⁷.

The government later on received a bill of K11 billion of which K5 billion has been paid to Chani by the current administration out of which K100 million was given for Derick Mbita Chitala who in turn gave it to President Mwanawasa. Lastly Sata as the main strategist and promoter of corruption and corrupt practices in his strategy in the 2001 December 27 Tripartite Election he focused to win 135 Parliamentary seats by which ever means, and he vowed to achieve that number if things did not go sour. As a good Secretary of the Party he was expected to deliver goods because the politics is about numbers. He reflected that though he was a good strategist he did a lot of harm to himself because the entire strategy worked against him and the entire democratic process. Who can not blame Sata for the political mess quagmire, political instability uncertainty in which the Zambia has found herself? The pointing finger obviously at Michael Chilufya Sata. who was the planner, and strategist. He planned the corrupt ways and means of obtaining money to influence the elections. He strategized the corrupt methods of wooing the church, in some hospitals Sata sent party MMD cadres to hoist MMD placards in the wards.

God forbids, to day Sata the President of Patriotic Front becomes a champion of free and fair election, free from corruption and corrupt practices. Those following him should learn from his previous behaviour. Sata was the last to ditch UNIP to join the MMD and he was the last to resign from MMD, after he made sure that General Tembo, General Miyanda and Ben Mwila who were potential rivals were fired from MMD. What is his dream is to strategize and become the President of Zambia by clean means. “Is it possible” look at the way the strategize the 2001 Tripartite Election

²⁷ Idem P8

V.J. ELUDES TASK FORCE

3.02 There is need once again to lay bare the role that another strategist, executor played in rigging of 2001 polls. This time the focus and the attention would be at the veteran politician and former Permanent Representative. At the United Nations

Vernon J. Mwaanga former information and Broadcasting Minister and former General Secretary of the Ruling Party MMD in the former Chiluba Administration. He told the Supreme Court that the distribution of mealie meal during the campaigning assisted MMD to win election.

Mwaanga said that through the Ministry of Finance, the MMD entered into an agreement with the Southern Pacific of South Africa to supply maize and mealie meal²⁸ through their agents in Zambia – Chani Fisheries and Cols investment. This was to ensure that the prices of mealie meal, which were skyrocketing at the time, was brought down and controlled. This was with an understanding that Chani Fisheries and Cols investment would Resale the mealie meal at K15,000 instead of K41,000 to their agents – MMD Parliamentary Candidates in order to arrest the high cost of living in the country.

Mwaanga told the Supreme Court that the government told him (Mwaanga) that the government had decided to intervene to stabilize the prices of mealie meal and the government thought him as a chief government spokesman announced to intervene directly to bring down the prices of mealie meal²⁹. Chani Fisheries and CLS Investment to that effect, were even given duty relief through, the Ministry of Finance. Mwaanga told the Supreme Court that there

²⁸ Mwaanga eludes Taskforce Post Newspaper at P4

²⁹ Idem at P4

was a clause in the contract stating that mealie meal supplies would cease on December 31 2001 just three days after Tripartite elections.³⁰

Government was also to incur costs to deliver the mealie meal from Lusaka to Kitwe. Mealie meal did actually arrive in the country. Chani Fisheries and COLS investments worked closely with MMD Parliamentary Candidates in distributing the same on the Copperbelt, in Lusaka Northern and part of Central Province.³¹ The MMD fared very well in these areas where mealie meal was distributed by Chan Fisheries and COLS investment. An observer would see that there was a lot of bribery, corruption and corrupt practices in the areas where mealie meal and maize were distributed. More will be said when the discussion will focus on corruption and abuse of office in Zambia's 2001 General Election. This was where MMD won election. ³² Mwaanga told the Supreme Court that the contractual agreement with Chani Fisheries and COLS Investment was only up to 31st December 2001 because that was when Chiluba's Mandate ended. He said they did that because they did not want to commit the new government to that agreement because priorities differed. They therefore felt that the incoming government would determine its priorities so that Chiluba's government could not decide for them what to do.

There was a sum of K11 billion which was owed to Chani Fisheries and COLS Investment in respect of local maize supplied and was a part of continuous process on which duty was not paid³³.

In this election government vehicles were used during the election campaign,. The case in print is where Mitsubishi colt double cab registration number AAV 9159³⁴ At the time Hon Levison Mumba was Minister of Health, he gave the above mentioned vehicle to Presidential Candidate Mr Levy

³⁰ Idem P4

³¹ Idem P4

³² Idem P4

³³ Idem P4

³⁴ Idem P4

Mwanawasa, to be used in the presidential campaign. The vehicle was a government vehicle and Mwanawasa was no entitled to it. The giving out of GRZ vehicle to Mwanawasa was day light corrupt practice.

The planners and strategists established two main campaign centers during the 2001 campaign elections. One at State House directed by Chiluba and Eric Silwamba and the other one at (his) Mwaanga's office at the Ministry of Information and Broadcasting Services. It was at these two places where money transactions were taking place³⁵ The total sum of K2, 000,000,000 cash was distributed to MMD various officials and K100 million in legal costs. There was a programme set for the Presidential Candidate Mwanawasa who endorsed by Chiluba. His role in this campaign was to ensure that Mwanawasa and his parliamentary Candidate won elections.

Despite the fact that Mwanawasa's political platform was to tight against corruption and corrupt practices, he endorsed the dishing out titled deeds at the political rally in Kafue by Chiluba in the Mwanawasa's presence and Mwanawasa did not object to corrupt practices. One wonders whether Mwanawasa did not become part and parcel of the corrupt system and corrupt practices.

The MMD had still owed government media some money over some advertisements placed in the media in 2001 during campaign. The campaign committee never made a follow up on how Mwanawasa spent the money given to him for campaign as this was left to him to prepare a record of expenditure³⁶. He (Mwaanga) further revealed to the court that more money in the National Campaign Committee was used on travel expenses, accommodation and food while the bulk of it was spent on payments to

³⁵ Idem P6

³⁶ Idem P6

Constituencies and District Officials through out the country. This was in the range of between K200, 000 and K500,000 per Constituency or District³⁷

He (Mwaanga) also said that a small portion of money was used to Jack Kalala Mwanawasa's personal assistant at that time. He said Mwanawasa requested him and Chiluba to pay Kalala something of substance.

So Mr Kalala despite the fact he was not a government employee received K700,000 from Mwaanga during the duration of the campaign³⁸

Mwaanga told the Supreme court that Mwanawasa knew that MMD had no money in the party coffers and he as a reasonable man and a reputable, reknown intelligent and distiquished lawyer the question of source of money that was flooding in his pocket because He (Mwanawasa) could not associate himself with corrupt money and corrupt practices. After all he resigned as a Republican Vice President on account of morality he despised corruption and corrupt practices. Mwanawasa's ascent to political power as the President of Zambia was because of corruption and corrupt practices as described by the two planners and strategists in the name of Michael Chilufya Sata and Vernon Mwaanga during the Presidential Petition.

³⁷ Idem P6

³⁸ Idem P6

4 00 **THE CONDUCT OF JUDICIARY IN THE 27 DECEMBER 2001 GENERAL ELECTION**

4.1 **INTRODUCTION**

In all modern political system be they democratic, socialist or other models the holding of general elections to elect Managers of public affairs for specified period of time is one of the cardinal ingredients of State practices.

There are however some differences between systems. One of the major distinctions is that in some states the elections are conducted in a meticulous transparent and honest manner ensuring that the general will of citizenry that is expressed in the polls is respected whereas in other States Zambia included only a semblance of elections is conducted and done in a deliberately disorganized style flouting all the internationally accepted electoral rules and shamelessly applying the most unorthodox practices such as swamping ballot boxes with illegal ones and bribing election officers and voters at the polling stations,³⁹ with the sole objective of subverting the people's will.

It is trite and hackneyed political practices that the majority of electorate and the general population must respect the results of an election. It is only such kind of results produce legitimate governments. In an election aftermath where the majority of the electorate and citizens at large cry foul and can produce tangible evidence of dishonesty against the supposed winning party as was the situation in Zambia after the 27 December 2001 elections then the government formed out of such sham exercise is illegitimate⁴⁰

4.2 **THE TRADITIONAL PROEXECUTIVE STANCE OF THE ZAMBIAN JUDICIARY VIS – AVIS THE OTHER TWO ORGANS OF STATE.**

³⁹ Justice Kabazo Chanda. Conduct of judiciary in the 27 December 2001 General Elections. Human Rights Review Issue 9 February 2002

⁴⁰ Idem at P4

The position of the judiciary in the colonial and immediate post independence. From the pre independence era up to this very day the Zambian judiciary has generally leaned towards the executive wing of the government. In the colonial era the judges who were all white supported the colonial authorities in order to defeat or weaken African Nationalism, which was agitating for independence and a government of indigenous authority, in order to keep their jobs and to speak the local language.

After independence the few newly appointed black judges also tightly attached themselves to the African strings of the executive for three reasons,

Firstly they did so in order to display their patriotism with their Kin and Kim political leaders against subversive action of agents of the former colonial authority. Secondly, they did that in order to fight perceived neo - colonialism by former colonial rulers and thirdly they did that to preserve their jobs. Zambia judiciary therefore has never been independent of the executive.

A vivid instance of cases unfairly decided by the Zambian Court of Appeal (renamed the Supreme Court of Zambia in 1973), which lends credence to the assertion that post – independence judges were pro government in their stance is the case of *Harry Mwaanga Nkumbula v Attorney General*.⁴¹ In this case Mr. Nkumbula applied to stop Dr Kenneth Kaunda from introducing a dictatorial One party state system. The law, section 28 of 1964 constitution provided that any citizen of Zambia who felt that his right or freedom was violated or threatened with violation was at liberty to bring action before the high court to stop violation before the High court to stop violation or remove the threat⁴²

Using the above stated Constitutional provision Mr. Nkumbula went to court to stop the fraction of Dr Kaunda's projected One Party dictatorship. The people,

⁴¹ HC/1973

⁴² Section 28 of the Constitution of Zambia 1964 Cap I

whole country was behind Mr. Nkumbula's action because the proposed One Party State was not chosen by the Zambian people but imposed on them.

The unreliable and timid High Court and Supreme Court judges delivered clearly partisan judgment dismissing Mr. Nkumbula's action as premature because the law creating the One Party State had not yet been enacted.⁴³ The judges deliberately misinterpreted the phrase threatened on existing law. There are many high profile political cases in which Zambian judiciary achieves that were inequitably decided in favour of the State for reason that have already been given above

4.3 **POSTION OF THE JUDICIARY IN THE 1996 GENERAL ELECTIONS.**

The conduct of judges during the elections in Zambia should be understood against the forgoing backdrop. In the 1996 general elections their traditional pro – state position. In 1997, following an attempted coup d'etat Dean Mung'omba and Princess Nakatindi Wina were arrested, detained and Charged with trumped – up offences connecting them to the failed coup. They both separated applied for writs of habeas corpus asking the High Court to order their release. The attempted coup followed the 1996 fraudulent elections.⁴⁴

The timid judges refused to set these innocent daughter and son of Zambia free. It was the state itself, which subsequently released them from detention without conducting that, by entering Nolle pro Sequi⁴⁵

A number of other cases in the 1996 elections were undeservedly decided in favour of the State. Space does not permit their enumeration here. These decisions

⁴³ Bide 3 Supra

⁴⁴ Vide justice Kabazo C. Chanda Southern Africa Human Rights Renew at P5

⁴⁵ Idem at P5

confirm the people of Zambia complaint that their judiciary has compromised its noble function of being their sentinel.

4.4 **JUDICIAL BETRAYED OF PEOPLE'S CONFIDENCE IN THE 27 DECEMBER 2001 GENERAL ELECTION**

True to its traditional timid stance, the Zambian judiciary once again abandoned the people when they needed its help them most in the 27th December 2001 elections. The people were to fight to remove the government of the MMD from power, one of the most heartless corrupt⁴⁶ regimes in Africa. The people across the nation overwhelmingly voted against the Party in power. The courts decided to work together with the government officials secret police (Bashushushu Office of the President Division) and electoral commission to reverse by fraudulent means, the people's decision. The courts are the sanctuary of any citizen who has a grievance against the state or against his fellow citizens. Their conduct in the December 27 2001 elections was therefore, a betrayal of the people's confidence in them.

Owing to the lack of space, only three cases will be cited to indicate the assertion that the conduct of the judiciary in the 2001 General Elections was against the general will and political aspirations of the largest majority of the citizenry. They wanted change from the self – seeking MMD corrupt government.

The first case was the one where the twenty two (22) members of parliament were expelled from the MMD during their conversion early in 2001.⁴⁷ The expellees went to the High Court to seek rediness against the fragrant violation of the Party's rule of conduct a conversion. The law is that any member of club, an association, a political party, a trade union or any other organization can go to the High Court which was unlimited jurisdiction to seek a declaratory judgment regarding the particular interpretation of the provision of the constitution of the

⁴⁶ Vide Sata's submission to Presidential petition Chapter 3 Above

⁴⁷ 22 members expelled from MMD Conversion – Times of Zambia 2002

given organization.⁴⁸ In this case, the timid judge dismissed the application on false ground of lack of jurisdiction

The other case is the one where the High Court granted an injunction to the PANOS Institute of Southern Africa and the Zambia Institute of Mass Communication (ZAMCOM) against the government controlled Zambia National Broadcasting Corporation (ZNBC) restrain the ZNBC from continuing to refuse the airing of the Presidential debate. When five Presidential Candidates went to ZNBC the state broadcaster defied the court order and turned the presidential candidates away. The ZNBC behaved in cheeky way towards a validly obtained court order because it knew that even if PANOS and other applicants went back to seek contempt of court order the judge would not issue it against them⁴⁹

Another vivid illustration of the Zambian judiciary showing cold feet in its performance is where the Supreme Court of Zambia convicted Mabenga on charges of corruption and corrupt practice during the 2001 December General election. Mabenga was sent to prison by the Supreme but refused to serve prison sentence. In the meantime Mwanawasa promoted him to the post of Vice Chairman of the MMD. The Supreme Court just watched the corrupt decision of Mwanawasa.

The final illustration of the Zambian judiciary's bad showing in the December 2001 election was the conduct of the head himself the chief Justice, when the election results were being released and the nation clearly concluded that the MMD had rigged the election in Northern, Copperbelt parts of the Central Province and in Luapula Mwanabombwe.⁵⁰ Constituency where the author stood as a parliamentary candidate the MMD Part's members voted for four (4) days. We the aggrieved candidates and some of other opposition parties went to complain to the Chief Justice in his capacity as Returning officer of the elections

⁴⁸ Kabazo Chanda Southern Africa Human Rights Review P5

about the flaws, corruption, corrupt practices and malpractices in the whole electoral process.

The Chief Justice deliberately gave false hopes to complainants by falsely telling them that he would not declare the winner of elections before dealing with the complaints, but he went ahead to declare the supposedly winner of fraudulent elections and crowned Levy Mwanawasa President of the Republic of Zambia

In conclusion, there is no telling when the proexecutive stance of the Zambian Judiciary will change to that of being impartial and independent the organ of state. This will depend on the future Crop of Personnel manning this important institution. As its conduct in both 1996 and 2001 election and its conduct toward the contempt of Supreme Court by Mabenga, it is currently and appear to the Office of the President and it is totally emasculated institution.

⁴⁹ Idem at P5

⁵⁰ Parliamentary Petition Kalumba Konsolo vs Songobele Mungo 2002/hp/052

CHAPTER FIVE

5.1. ZAMBIA'S LEGAL FRAMEWORK AND THE FIGHT AGAINST CORRUPTION

DISCUSSIONS, RECOMMENDATIONS AND CONCLUSIONS

5.2. INTRODUCTION

Zambia had witnessed tripartite elections for the Presidency, Parliament and Local Government. Electoral Act Regulations made thereunder are the major legislation that to the conduct of Elections. There is no doubt that those elections were flawed in a number of significant ways. All the major international and local election monitoring organizations had in their interim statements, exposed the various flaws that characterized the electoral process. This last chapter considers discussion, and conclusions recommendation.

The purpose of Electoral Act 1991 as amended is to regulate, presidential and parliamentary elections; to empower the Electoral Commission to make regulations, providing for the registration of voters and for the manner of conducting elections; to provide for offences and penalties in connection with election; to make provision with respect to election petitions and hearing and determination of applications relating to Parliament and Presidency¹

The Act provides for the unseating of a member of Parliament who was elected as a result of corruption. But the High Court must be satisfied that as a result of the corrupt practices the majority of voters in the constituency were or may have been prevented from electing a candidate of their choice²

An election petition can be prevented by a voter in the constituency concerned, a candidate, a prospective candidate or the Attorney-General³. Votes procured by any corrupt practices or illegal practice may be declared void by the High Court.

Part IV of the Electoral (general) Regulations enumerates conduct which amounts to corrupt and illegal practices and election offences. Among the activities prescribed are bribery, personation, treating and undue influence. The penalty for these offences are a fine of not exceeding K10,000 or imprisonment for a period not exceeding two years or both.

These pieces of legislation are reinforced by the Electoral (conduct Regulations 1996⁴) Regulation 7 (i) (h) of Electoral (conduct) Regulations 1996 provides that a person shall not offer any inducement or reward to any person in consideration of such person:

- (a) joining or not joining any party;
- (b) attending or not attending any political event
- (c) voting or not voting ; or
- (d) accepting, refusing or withdrawing such person's nomination as a candidate in election.

Regulation 7(9) (i) bans the use of government transport or facility for campaign purposes or to carry voters to polling stations. Only the President and the Vice President are exempted from this ban. The penalty for contravening the regulations is a fine not exceeding K300,000 or imprisonment for a term not exceeding three months or both.

5.3. **PRESIDENTIAL PETITIONS**

The Act as amended by No. 23 of 1996 provides for petitions pertaining to Presidential elections. It stipulates that:-

9 (3) Any question by any person which may arise as to whether any provision of the Constitution or any law relating to nomination or election of the President has been complied with shall be referred by the Returning Officer or by such person to the full bench of the Supreme Court within 14 days of the person elected as President being sworn in, in accordance with Clause 9 or Article 34 of the Constitution.

5.4. **SHORT COMINGS**

The legal framework has not been effective in curbing corruption in the electoral process and leveling the political playing field for a number of reasons.

First, the Electoral Commission lacks adequate power and institutional machinery to fight electoral corruption. The legislation does not confer on the Commission powers to deal with disputes arising before or during elections. Thus, it can not prosecute any one for engaging in electoral malpractices, including corruption⁵. In fact in response to criticism that it has failed to enforce the Electoral Code of Conduct 1996. The Commission has repeatedly stated that it has no power to enforce the code, arguing that it is the responsibility of the police and other law enforcement officers to do so. The police have similarly refused to enforce the code, shifting the responsibility back to the Electoral Commission.

The status and powers of the Zambia Electoral Commission can be contrasted with those of the Ugandan Electoral Commission, created under Article 60 of the Constitution. The Ugandan Commission has power inter alia, to hear and determine election complaints arising before and during polling⁶.

Second; there have been few election petitions brought to challenge results of elections marred by corruption. Thus, the courts have not been instrumental in curbing electoral corruption as they can only deal with cases brought before them. Many reasons account for this, among which are:-

- (i) Election petitions take too long to conclude although the law requires that they be concluded within 180 days of the presentation of a petition.
- (II) Election petitions are very expensive, as lawyers invariably have to be hired if the plaintiff is to have any hope of victory.
- (III) Most candidates and political parties engage in corrupt practices anyway; it is just a question of who bribes the most.

The paucity of election petitions, and the failure to prosecute offenders have needlessly created impunity. People will only respect the law if it is enforced.

Third, the penalties provided for those who contravene the law are very mild and cannot deter corruption. For example, fines of K10,000 while they may have made sense in 1991, when the Act was enacted, are a bit of a joke today given the stupendous depreciation of the Kwacha over the years.

Fourth, the electoral law does not prohibit the distribution of relief food, agricultural inputs or implements as well as Presidential donations from the Presidential discretionary fund. The impact of such actions on the fairness of the electoral process cannot be underestimated. As the Supreme Court pointed out in the Presidential Petition case:-

The timing of such philanthropic activity must have had some influence on the affected voters, yet the regulations are silent on such matters and on any possibly improper donations when not directed at individual benefit.

As at the moment public philanthropic activity is not prohibited by the Regulations. We can do no more to urge the authorities concerned to address the lacunas so that these can be closed season after season for any activity suggestive of vote buying, including any public and official charitable activity involving public funds and not related to emergencies or any life-threatening situations¹.

Fifth, at the moment there is no law regulating electoral campaign financing. Neither does the law require candidates and political parties to disclose sources of funding. This **lacuna** in the law poses a grave threat to democracy as powerful forces, including drug barons can easily take over government through the financing of electoral campaigns. Moreover a ruling party can easily finance

its operation from public funds as we painfully learnt recently with the K2 billion scam, when National Assembly funds were illegally directed to the MMD Convention.

In addition, the essence of maximum spending limit threatens the survival of parties that derive their support from the less affluent members of the society as such parties cannot compete effectively against wealthy parties. It is no secret that in the December 27th elections the political parties with the worst performance were the ones with least resources. Perhaps it is time that the state funding was provided for all the serious parties contesting elections as is the case in several countries. Of court strict criteria would have to be worked out to ensure that only serious parties got funding, and that there was no unnecessary proliferation of parties trying to take advantage of state funding.

Sixth, the Electoral Act does not prescribe the date for general elections, leaving it entirely to the discretion of the Republican President. The ruling party has exploited this lacuna in the law to the maximum in the last election, the President kept the nation on tenterhooks for a long time, thereby disadvantaging the opposition and Monitoring Organisations. When the election date was eventually announced in the middle of November, the timing i.e (27th December) turned out to be in opportune, as it was in the middle of the rainy season. It was particularly difficult to hold elections during this period as the rural voters are busy in the fields while many areas become inaccessible owing to impassable roads. In the 2001 elections the Electoral Commission failed to deliver election material on time to several areas because of the impassable roads. In some areas polling continued for four days, in others polling took place after the rest of the country had voted and the results had already been announced, because of late delivery of the requisite materials. Opposition Presidential candidates also had problems campaigning in such areas because unlike MMD candidate, they did not have access to state motor vehicles and helicopters. The importance of having the

electoral date prescribed in the law cannot therefore, be over-emphasized. The proposal of last Tuesday in the month of September in the election year.

Lastly, although the Electoral Act provides for Presidential petitions, in practice it is almost impossible to remove a sitting President. The Supreme Court would have to be extremely brave to rule against the most powerful person in the land. The President has tremendous influence on all organs of government including the Judiciary.

The inclusion of Presidential Petition Clause in 1996 was as with most of 1996 amendments of the Constitution was well calculated to benefit the ruling party at the expense of the opposition parties. There is need therefore to amend the law so that petitions challenging a candidate's election as President can be lodged and determined before he or she is sworn in.

5.5 **CONCLUSION**

This dissertation has shown that the current electoral law leaves a lot to be desired. If Zambia is serious about fair elections, prohibition of corruption and corrupt practices and strengthen the constitutional framework and leveling the political playing field, it is imperative that the electoral Act is amended as soon as possible.

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