

**THE FREEDOMS OF EXPRESSION, ASSOCIATION AND
ASSEMBLY DURING ELECTIONS**

BY

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A dissertation submitted to the University of Zambia in partial fulfilment of the requirements of the Degree in Bachelor of Laws.

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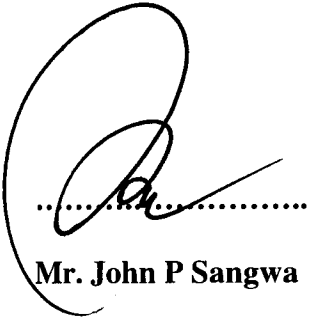
I, **Lindiwe Suzanna Maboshe**, do hereby declare that this directed research paper is my own work and that to the best of my knowledge, no similar piece of work has previously been submitted for a degree at this or any other university. All other people's work consulted has been duly acknowledged.

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APPROVAL

This directed research of Lindiwe Suzanna Maboshe is approved as partial fulfilment of the requirements for the award of the Bachelor of Laws (LL.B) by the University of Zambia.



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ABSTRACT

Zambia, by virtue of being a democratic state, has certain characteristics and obligations. One such characteristic is the holding of regular elections. As such, Zambia holds elections every five years. Elections play a very important role in a democratic state because it is through elections that the people choose who they would like to rule the state. In a democracy, it is the people who rule through these representatives. Thus the phrase, 'rule by the people'.

Since the people play such an important role and have such an important responsibility, in a democratic society, it is important that they are given an opportunity to analyse each candidate for the election. This is only possible where the candidates are given a platform from which they can disseminate information necessary to entice the electorate to vote for them. In such circumstances, the freedom of expression and the freedom of assembly and association play an important role. It is only through these freedoms that the candidates can disseminate information to large numbers of people. In exercising these freedoms, the election candidates can hold rallies which masses of people can attend and participate in. Similarly, television and radio programmes can be broadcast hosting the candidates.

It is therefore important to enable that the electorate have an equal opportunity to the information that candidates have to disseminate. Consequently, it is important that each party candidate is treated equally in enabling them enjoy these freedoms. Where there is bias therefore it would affect the way that the people vote and overall the election results.

DEDICATION

This obligatory essay is dedicated to Dr. and Mrs. Maboshe, my wonderful parents, to whom I am forever indebted.

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CHAPTER ONE

1.0 THE FREEDOMS OF EXPRESSION AND ASSEMBLY AND ASSOCIATION, AND THEIR ENJOYMENT DURING THE 1991 ELECTIONS.

Introduction

Since Zambia gained independence in 1964, she has gone through a multi party democracy (which existed at the time of independence up until 1972), a One Party system of governance from 1972 up until 1990 when multi party democracy was re-introduced. Currently, therefore, Zambia is a democratic state.

One characteristic feature of a democratic state is that elections are held on a regular basis (periodically). In Zambia, presidential elections are held every five years. Elections are a very important feature in a democracy. They are said to be a more civilized form of changing the incumbent than through a revolution or a *coup d'etat*¹.

The period of preparation of elections therefore is very important. Two important freedoms that come to mind in relation to elections are the freedom of expression, and the freedom of association and assembly. These freedoms are very important during election times because it is through them that the candidates of the elections are able to sell their ideas to the electorate. This is important because it is the people that vote the leader into power and therefore, for them to make wise and informed decisions on the day of voting they must have had an opportunity to analyse each candidate. Such analysis is only possible by the electorate being provided with information on what the candidates have to say. Therefore in preparation for elections, it is common place that rallies are organised by political party leaders as an

¹ Jeremy Gould, 'Contesting Democracy the 1996 Elections in Zambia' in Michael Cowen, Multi party elections in Africa (Oxford: James Currey Ltd, 2002)

exercise of the freedom of association and assembly. These form a platform on which the candidates can give the electorate such information. Similarly, there are some radio and television programmes that are broadcast on which the candidates discuss their intentions for the nation once elected into power. This is an exercise of the freedom of expression and it too enables the electorate to receive information pertaining to the political party candidates.

Every democratic state should guarantee the human rights of its citizens. Human rights are the basic rights and freedoms which all humans are entitled to. They are divided into two broad categories: civil and political rights; and economic, social, and cultural rights. The exercise of civil and political rights is said not to require any state intervention, that is, the state must keep its hands off and not interfere². Examples of civil and political rights include the right to life, the right to liberty, the freedom from discrimination, and so on. The freedom of assembly and association and the freedom of expression are also civic and political rights. They are guaranteed in the Constitution in Articles 20 and 21 respectively. In Zambia the civil and political rights are guaranteed in the Constitution and are found in the Bill of Rights-Part III. Economic, social and cultural rights are found in Part XI of the Constitution of Zambia, the Directive Principles of State Policy. These rights require that the government intervenes to ensure their enjoyment. This may be the reason that they are not guaranteed in the Constitution. Examples include the right to work, the right to education, the right to clean water, and so on.

This chapter will begin by looking at the statement of the problem, the purpose of the study, the objectives of the study, the significance of the study and the methodology. As this research will look at how the freedoms of expression, association and assembly are enjoyed

² Carlson Anyangwe, *Introduction to Human Rights and International Humanitarian Law*. (Lusaka: UNZA Press, 2004).

during elections it is essential to understand what they entail. This chapter will therefore also discuss what is meant by 'freedom of expression' and 'freedom of assembly and association'. Thereafter, it will briefly look at the enjoyment of these freedoms during the One Party State before looking at their enjoyment in the 1991 elections.

1.1 Statement of the problem

The Constitution of Zambia guarantees civil and political rights in Part III, the Bill of Rights. The freedom of expression and the freedom of assembly and association are such rights guaranteed in this part of Constitution.

These freedoms as has already been alluded to are vital in an election period. It is therefore important that all the political parties are treated equally in relation to these freedoms with no form of bias. Equal treatment means that the people will be awarded equal opportunity to obtain information about each party. The question however is, *has this been, and is this the case in Zambia?*

1.2 Purpose of study

This research seeks to investigate the extent of enjoyment of the freedom of association and assembly as well as the freedom of expression during the electoral process in Zambia. This will be done for example, by looking at the allocation of air time by broadcasting stations to political parties, as well as the holding of rallies and other public meetings by political parties. The research will also provide measures that can be put into place to help ensure that there is equality if there is found to be none.

1.3 Objectives of the Study

- i) To find out what is actually meant by freedom of expression.
- ii) To find out what is meant by freedom of association and assembly.
- ii) To find out what measures have been put into place by either the government or the private sector to try and ensure the guarantee of the freedoms of expression, association and assembly during elections.

1.4 Research questions to be answered

- 1) To what extent are the freedom of expression, association and assembly enjoyed during elections?
- 2) What laws ensure the protection of the freedom of expression and the freedom of association and assembly during the electoral process?
- 3) Does the presence of elections invariably mean that the freedoms as guaranteed by Articles 20 and 21 of the Constitution will be abused?

1.5 Significance of the study

By looking at some ways that the freedom of assembly and association and the freedom of expression have been abused in the past this paper seeks to suggest some solutions to the problem of the abuse of these rights to try and enable that there is a reduction in the abuse of these rights in future.

1.6 Methodology

This research will be qualitative. Data and information relied on will be secondary in nature. The data will be obtained from the Foundation for Democratic Process (FODEP), Electoral Commission of Zambia (ECZ), and the Human Rights Commission, newspapers and so on.

1.7 THE FREEDOM OF EXPRESSION.

The freedom of expression entails to some extent that any person is entitled to hold whatever view or opinion that he or she wishes. The freedom of expression is only a human idea and is incapable of exact expression.³ It is an innate, instinctive desire of man for the right of self-expression and for the right to commune freely with his fellow men. This desire is a natural one and therefore this freedom is a natural right.⁴ Furthermore, the freedom of expression has been described to be the life blood of a democracy.⁵ Its existence is therefore necessary in a democratic state.

This freedom is so important that it is guaranteed in the Bill of Rights, Part III of the Constitution. The Constitution provides as follows:

Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and the freedom from interference with his correspondence.⁶

Therefore according to this provision, in Zambia the freedom of expression involves:

- a) the freedom to hold opinions;

³ Thomas Jones, *Human Rights; Group Defamation, Freedom of Expression, and the Law of Nations* (London: Martinus Publishers, 1998), 31.

⁴ Thomas Jones. *Human Rights; Group Defamation, Freedom of Expression, and the Law of Nations*, (London: At Martinus Publishers, 1998), 31.

⁵ A. W Chanda. 'Freedom of Expression and the Law in Zambia,' *Zambia Law Journal* 30 (1998), 123-144.

⁶ The Constitution of Zambia Chapter 1 of the Laws of Zambia, Article 20(1).

- b) the freedom to impart and receive ideas and information;
- c) the freedom to impart and communicate ideas and information to another person or a group of people; and,
- d) Freedom from interference with one's correspondence.

1.8 THE FREEDOM OF ASSEMBLY AND ASSOCIATION

The freedoms of assembly and association, like the freedom of expression are essential elements of democracy. They too are guaranteed in the Bill of Rights. Relating to the freedom of association and assembly, the Constitution provides as follows:

Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests⁷.

The freedoms of association and assembly are two separate freedoms. On the one hand, the freedom of association enables people to form associations, political parties, trade unions, churches, and so on, for the protection of their interests. On the other hand, through the exercise of freedom of assembly, people can hold meetings, political rallies demonstrations or protests in order to articulate their views on particular matters. These freedoms go hand in hand and are therefore deemed as one freedom.

⁷ The Constitution of Zambia, Chapter 1 of the Laws of Zambia, Article 21.

It must be noted however that the freedoms of expression and assembly and association are not absolute. The enjoyment of these freedoms should be such that they do not infringe on the enjoyment of the rights of others. The rights should also be reasonably required in the interest of public safety, defence, public order, public morality, etc.

1.9 THE FREEDOMS OF EXPRESSION AND ASSEMBLY AND ASSOCIATION BEFORE THE 1991 ELECTIONS.

1.9 (a) Zambia at independence

At independence in 1964, Zambia had a multi party system of governance. In fact, Zambia was a multi party state even before independence in 1964.⁸ Parties that existed before independence included the African National Congress (ANC) led by Harry Nkumbula, from which a group broke away to form Zambia African National Congress (ZANC). ZANC was banned in 1964 and afterwards UNIP was formed from the members of the former ZANC⁹. There was also the white settler political party - the United Federal Party (UFP) which changed its name to the National Progressive Party (NPP) after independence.¹⁰ At independence therefore, the parties that took part in the elections were ANC, UNIP and NPP.¹¹ In the next elections that were held in 1968, only UNIP and ANC contested. NPP did not participate because it was dissolved earlier in the same year.¹²

⁸ William Tordoff, *Politics in Zambia*, (Manchester: At Manchester University Press, 1974), 107.

⁹ William Tordoff, *Politics in Zambia*, (Manchester: At Manchester University Press, 1974), 107.

¹⁰ Lawrence Zimba, 'The Origins and Spread of One Party States in Commonwealth Africa, their Impact on Personal Liberties: A Case Study of the Zambian Model,' in Muna Ndulo (Ed), *Law in Zambia*, (Nairobi: East African Publishing House, 1984), 115.

¹¹ Lawrence Zimba, 'The Origins and Spread of One Party States in Commonwealth Africa, their Impact on Personal Liberties: A Case Study of the Zambian Model,' in Muna Ndulo (Ed), *Law in Zambia*, (Nairobi: East African Publishing House, 1984), 115.

¹² Lawrence Zimba, 'The Origins and Spread of One Party States in Commonwealth Africa, their Impact on Personal Liberties: A Case Study of the Zambian Model,' in Muna Ndulo, *Law in Zambia*, (Nairobi: East African Publishing House, 1984), 116.

1.9 (b) the One Party State

The one party system only came into play in 1972 and lasted until 1990. It entailed that only one political party, namely the United National Independence Party (UNIP) existed. All other political parties were banned by virtue of section 12A (1) of the 1972 Constitution, which provided that ‘there shall be one and only one political party in Zambia, namely the United National Independence Party’.¹³ This was an infringement on the people’s freedom of assembly and association to the extent that it was illegal to form and/or belong to any political party other than UNIP.

Furthermore, in 1972, the media was integrated into the government. The integration of the media into the government had an official objective (to promote national development and unity), and a private objective (to silence any political criticism or dissent that would necessarily arise from unfettered media).¹⁴ The silencing of political criticism was a hindrance on the freedom of expression as the media was not free to criticize the one political party in existence. This was at a time when there was no distinction between government and the party (UNIP). In fact, the Constitution of UNIP was annexed to the Constitution of Zambia.¹⁵

1.9 (c) The Re-introduction of multi-party politics

By 1990, UNIP was increasingly under pressure for political change. Some of the pressures included:

- a) the March National Convention;
- b) food riots in Lusaka and the Copperbelt;

¹³ Constitution (Amendment) (No 5) Act 29 of 1972.

¹⁴ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka: ZIMA, 1997), 9.

¹⁵ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee.

- c) the foiled *coup d'etat* attempt in July;¹⁶
- d) the breakup of the Communist Soviet Union;
- e) pressure from the IMF and the World Bank on the Kaunda government to reduce subsidies on essential goods and services;
- f) the economy which was continuously deteriorating;
- g) an emergent independent press;
- h) an aggressive opposition movement (the Movement for Multi Party Democracy-MMD), and
- i) A fed up civil society.¹⁷

As a result of a combination of these factors (as well as political change agitated by the MMD) Kenneth Kaunda's One Party State finally yielded to the demands for change in 1990 when, as a response, government decided to hold a referendum on whether Zambia should re-introduce a multi party state or not. This idea however was abandoned opting instead for the amendment of Article 4 of the Constitution in December 1990. The amended article provided as follows:

'except with his own consent, no person shall be hindered in the enjoyment of his freedom of association and assembly, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests'

The effect of this provision was that once again Zambia was a multi party state.

¹⁶ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee.

¹⁷ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka: ZIMA, 1997),

1.10 THE 1991 PRESIDENTIAL ELECTIONS

1.10 (a) Enjoyment of the freedom of assembly and association during the 1991 Presidential elections.

As a result of the amendment of Article 4 of the Constitution in 1990, people were allowed to form and belong to any association or political party of their choice. People were no longer forced to belong only to UNIP. Due to the said Article, the following political parties were formed and registered in 1990:

- a) Christian Alliance for the Kingdom of Africa (CHAKA);
- b) JAC Democratic Party (JADEPA);
- c) Movement for Multi Party Democracy (MMD);
- d) Movement for Democratic Process (MDP);
- e) Multi Racial Party (MRP);
- f) National Party for Democracy (NDP);
- g) People's Party (PO);
- h) Social Democratic Party (SDP);
- i) Theocracy Spiritual Party (TSP);
- j) United National Independence Party (UNIP);¹⁸

Despite the large number of political parties that were formed, only UNIP and MMD took part in the 1991 presidential elections. The other parties only took part in the parliamentary elections.¹⁹ The holding of the elections on 31st October 1990 was made possible by the enactment of the new constitution on 24th August 1991.

¹⁸ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee.

¹⁹ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee.

Even though only two political parties took part in the presidential elections, the people at least had a choice of voting for either UNIP or MMD and for the parliamentary seats there was a wide range of candidates to choose from.

1.10 (b) the Freedom of Expression during the 1991 Elections

At the time of the 1991 election, the two most prominent government-owned newspapers were the *Times of Zambia* and the *Daily Mail*.²⁰ *The Times of Zambia* at independence was called the *Northern News*. It was established by the London Rhodesia Corporation (Lonrho). The *Daily Mail* on the other hand (previously called the *African Mail*) was purchased from David Astor and Richard Hall in 1966.²¹

Furthermore, prior to the 1991 elections, also in existence was the Zambia National Broadcasting Corporation (ZNBC) as the sole broadcasting corporation in Zambia. ZNBC was established by the enactment of the ZNBC Act of 1987. Before this enactment it was called the Zambia Broadcasting Services.²²

Apart from the government owned media, there was also private owned media, namely the *Daily Express* which was an independent daily newspaper, the *National Mirror* which was a church sponsored weekly paper and the *Weekly Post* which at the time was a new independent weekly.²³ There were also four radio stations that broadcast in both English and

²⁰ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

²¹ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka: ZIMA, 1997), 9.

²² Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka: ZIMA, 1997), 9.

²³ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

vernacular.²⁴ All these radio stations fell under ZNBC which was the main radio and television station in Zambia.²⁵

During the campaign period the MMD complained that the electronic media ignored it and was engaged in bias reporting.²⁶ The MMD alleged that ZNBC totally ignored the MMD but only reported on the UNIP activities. As a result, the MMD singled out the Director General of ZNBC, Stephen Moyo for particular criticism, claiming that he was a member of the UNIP campaign committee.²⁷ Consequently, on October 10, the Press Association of Zambia (PAZA) obtained an injunction banning Mr. Moyo and the editor of a newspaper from supervising ZNBC until after the elections.²⁸

After this, in order that ZNBC conducted an independent review of the news at midday on the radio, as well as on the night news on television, the Zambia Election Observation Project, Z-Vote (a pre-election mission which visited Zambia led by the former United States President Jimmy Carter alongside many other dignitaries) during the week of 30th September to 6th October analysed both the content and amount of coverage to determine whether it was balanced. According to Z-Vote, during this week, the news coverage was relatively balanced.²⁹

²⁴ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

²⁵ Alfred Chanda & Mufalo Liswaniso, *Handbook of Media Laws in Zambia*. (Lusaka: ZIMA, 1999), 25.

²⁶ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

²⁷ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

²⁸ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

²⁹ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

However, immediately after that week, things returned to the way they were before with more media coverage leaning towards UNIP than MMD.

The MMD also had complaints in relation to political advertisements. The MMD submitted adverts for both television and radio to ZNBC. However, ZNBC refused to air them stating that they had violated the advertising ethics because the advertisements criticized the governing party rather than building it up and that ZNBC was at risk of being sued for libel.³⁰

The MMD took the matter to court and the High Court judge issued an injunction compelling ZNBC to air the advertisements. ZNBC aired the advertisements with a disclaimer explaining that the commercials were broadcast only because of the court order. Several days later, the court revoked the injunction.³¹

This is a clear illustration of the limitation of the freedom of expression even when multi party politics were introduced. For as long as UNIP was still in power it still had a stronghold on ZNBC which is a government institution. The stronghold that UNIP had on governmental institutions is also illustrated in the case of **Arthur Lubinda Wina & 6 others v the Attorney General**.³² In this case, the Republican President, Kenneth Kaunda held a news conference on 1st November 1990 where he issued a directive that the *Times of Zambia* (which he said was a UNIP or Party paper) and the *Daily Mail* (which he referred to as a government paper) should not provide coverage or accept advertisements from the MMD. The court held that the directive was unconstitutional as it was an infringement on the petitioners freedom of expression as guaranteed by the Constitution (because it meant that the petitioners were unable to publish their views on political matters to the public thereby not

³⁰ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

³¹ The Carter Centre of Emory University & National Democratic Institute for International Affairs (1991) *Pre-election: Report on October 31 1991 Zambian Elections* Lusaka: CCEU & NDIIA.

³² (1990-1992) ZR 95 (HC)

enabling them to impart their ideas to the people of Zambia), and it was therefore quashed. In discussing this case it was also found by the court that ZNBC also did not provide favourable coverage to the MMD. The example was given of the Convention that set up the MMD on 20th July 1990 which was held at Garden Hotel. When it was televised, it did not have sound and it did not even show pictures of Frederick Chiluba, the party president.

Important to note is the fact that all these issues were faced soon after Zambia became a multi party state. Despite these problems MMD emerged victorious winning seventy percent more of the votes in eight of Zambia's nine provinces³³ and emerged the winner of the elections making Frederick Chiluba the Second Republican President.

1.11 Conclusion

This chapter has discussed the freedoms of expression, assembly and association generally and also during the one party period as well as during the 1991 elections. It has been seen that during the one party state, only UNIP was allowed to exist as a political party, seriously undermining the right of people to form and/or belong to other political parties. The re-introduction of multi party politics in 1991 however enabled that people be allowed to form and /or belong to whatever political party they wished. However, the re-introduction of multi partism did not stop UNIP from exercising power in its favour over the government media institutions. Thus some of the challenges that the MMD faced during the 1991 elections as a result of the power that UNIP had over the media institutions have been shown. Despite these challenges however, MMD still emerged victorious.

³³Jeremy Gould, '*Contesting Democracy the 1996 Elections in Zambia*' in Michael Cowen, *Multi party elections in Africa* (Oxford: James Currey Ltd, 2002), 309.

CHAPTER TWO

2.0 THE FREEDOMS OF EXPRESSION, AND ASSEMBLY AND ASSOCIATION IN THE 1996 AND 2001 ELECTIONS

Introduction

The 1996 presidential elections were the second round of multi party elections that were held in Zambia. To theoreticians of democratization, the 1996 elections were perceived to be a yardstick for measuring whether the democracy in Zambia could either slip or be consolidated. As a result of the numerous electoral malpractices that clouded the elections many monitors considered the elections to show a slip. This chapter will look at the enjoyment of the freedom of expression and assembly and association during the 1996 presidential elections. Thereafter the enjoyment of these rights in the third round of multi party presidential elections in Zambia (the 2001 elections) will be looked at.

2.1 THE FREEDOM OF ASSEMBLY AND ASSOCIATION DURING THE 1996 ELECTIONS.

A multi party system still existed in Zambia and once again the people could form or belong to any party they wished. They also had a choice of who to choose for a president since there were a number of political parties. A number of new political parties were formed between 1991 and 1996 whilst others such as UNIP and MMD were still in existence. The parties that took part in the 1996 presidential and parliamentary elections were:

- a) Agenda for Zambia (AZ) led by Akashambatwa Mbikusita Lewanika;
- b) Liberal Progressive Front (LPF) established by Rodger Chongwe;
- c) Movement for Democratic Process (MDP) led by Chama Chakomboka;

- d) Movement for Multi Party Democracy (MMD) led by Fredrick Chiluba;
- e) National Lima Party (NLP) which did not field any presidential candidate, but whose main figurehead was Guy Scott;³⁴
- f) National Party (NP) whose founding members were Humphrey Mulemba and Arthur Wina;³⁵
- g) United National Independence Party (UNIP) led by Kenneth Kaunda, and
- h) Zambia Democratic Congress (ZDC) led by Dean Mung'omba.³⁶

The 8 parties that took part was a great increase from the two that took part in the 1991 elections.

2.1 (a) the Constitution (Amendment) Act 1996

The Constitution (Amendment) Act cannot go without mention in discussing the 1996 elections. The Chiluba government amended the Constitution which had the effect of disqualifying UNIP president Kenneth Kaunda as well as his vice, Chief Inyambo Yeta from contesting the elections. Article 34(3) (b) was amended to provide that a person would be qualified to stand for presidency if both his parents were Zambian by birth or dissent³⁷. This appeared to be directed at the former president as it disqualified Kaunda whose parents were from Malawi. Further, Article 129 was amended to provide that if a person is a chief, he cannot participate in partisan politics³⁸. This directly disqualified Chief Inyambo Yeta who was the UNIP Vice President. This amendment, it is important to note, did not go through the

³⁴ Jeremy Gould, 'Contesting Democracy the 1996 Elections in Zambia' in Michael Cowen, Multi party elections in Africa (Oxford: James Currey Ltd, 2002), 311.

³⁵ Jeremy Gould, 'Contesting Democracy the 1996 Elections in Zambia' in Michael Cowen, Multi party elections in Africa (Oxford: James Currey Ltd, 2002), 311.

³⁶ Jeremy Gould, 'Contesting Democracy the 1996 Elections in Zambia' in Michael Cowen, Multi party elections in Africa (Oxford: James Currey Ltd, 2002), 312.

³⁷ Constitution of Zambia (Amendment) Act of 1996.

³⁸ Constitution of Zambia (Amendment) Act of 1996.

procedure that was recommended in the Mwanakatwe Commission, namely that it should be publicly debated in a Constituent Assembly and the holding of a national referendum. Instead, the government offered Zambians sixty days to fully discuss, contribute, react and challenge the proposed amendments before the new constitution was submitted for approval by the National Assembly, where MMD held an eighty per cent majority³⁹ so that the chances of the Constitution being adopted were extremely high. The legitimacy of the adoption of this Constitution was largely contested by civic and political groups and in the same vein the matter was brought to court in the case of **Derrick Chitala (Secretary of the Zambia Democratic Congress) v the Attorney General**.⁴⁰ The court held however that the Constitution was correctly amended by the National Assembly. On 28th May 1996, Parliament approved the Constitution, President Chiluba signed it and it became law.

As a result of these amendments, the reaction of UNIP was boycotting the 1996 elections.⁴¹

2.1 (b) the Public Order Act

The Public Order Act is a very important piece of legislation when it comes to the freedom of assembly and association as it enables peace and order when a public gathering or meeting is held. The provisions of the Public Order Act, particularly s 5(4) were challenged in **Christine Mulundika & Others v The People**.⁴² The said section required that for any persons to hold a peaceful assembly they had to obtain a permit from the police.⁴³ The court held that s 5(4) contravenes Articles 20 and 21 of the Constitution and is therefore null and void. As a result of this case the relevant sections of the Public Order Act were amended. Currently, the Act

³⁹ Jeremy Gould, 'Contesting Democracy the 1996 Elections in Zambia' in Michael Cowen, Multi party elections in Africa (Oxford: James Currey Ltd, 2002), 308.

⁴⁰ (1995) ZR (SC)

⁴¹ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee.

⁴² (1995-1997) ZR 20

⁴³ S 5(4) of the Public Order Act Chapter 113, Laws of Zambia.

does not require that people obtain a permit from the police in order to hold a public meeting. Instead the police are given a notice at least seven days before the intended date of the public event. The police only have one ground on which they can rely to refuse to allow the holding of a public meeting and this is where there is an inadequate number of police to police the event because they are policing another event on the same day. In such a situation, the police should give an alternative date. Previously, the Public Order Act discriminated against opposition parties as in some cases it prevented them from organizing public rallies, processions and meetings which could have influenced the political opinions of voters.⁴⁴

2.2 THE FREEDOM OF EXPRESSION DURING THE 1996 ELECTION PERIOD

With the liberalization of the economy and the privatization of numerous state owned enterprises in the Chiluba era, many private enterprises sprung up. The media was not left out. Even though there was still only one broadcasting station (ZNBC), there was a notable increase in the number of newspapers. The private newspapers that existed at the time included *The Post*, *The Monitor*, *The National Mirror*, and *The Chronicle*. The government papers, *The Daily Mail* and *The Times of Zambia* were still in circulation.

2.2(a) Media Coverage

During this crucial period the government owned media gave more space and airtime to the MMD. The media in fact depicted the opposition as irrelevant to the democratic process.⁴⁵ This is interesting because only five years before, the same happened only that at that time UNIP was in power and it therefore used the state machinery to its advantage. MMD complained to that effect and it is thus surprising that it did the exact same thing during the 1996 election period.

⁴⁴ Zambia Independent Monitoring Team (1997) *Presidential and Parliamentary Elections in Zambia 18 November 1996*, Lusaka: ZIMT.

⁴⁵ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka: ZIMA, 1997),

2.2(a) (i) Government- owned Media

In relation to the print media, the government-owned media reported stories in such a way that MMD was favoured. Chiluba announced the election date on 19th October and the very next day *The Times of Zambia* carried an MMD campaign advert.⁴⁶ *The Daily Mail* on the same day carried one ZDC advert and two MMD adverts.⁴⁷ The tables below clearly illustrate the advertisement of political parties in these newspapers.

Table 1: Number of political party adverts in *The Times of Zambia*

Party	Real number	Relative number (%)
MMD	37	97.3
ZDC	1	26.3
MDP	0	0
NP	0	0
AZ	0	0
TOTALS	38	100

Source: Fackson Banda, *Elections and the Press: The case of the 1996 Polls*, (Lusaka; ZIMA, 1997), 32.

Table 2: Number of political party adverts in *The Daily Mail*

Party	Real number	Relative number (%)
MMD	47	92.16
ZDC	3	5.88
MDP	1	1.96

⁴⁶ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka; ZIMA, 1997), 27.

⁴⁷ *Daily Mail*, 20 October 1996.

NP	0	0
AZ	0	0
TOTALS	51	100

Source: Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka; ZIMA, 1997), 37.

2.2(a) (ii) Private Owned Media

The Post Newspaper seemingly gave equal coverage to MMD and ZDC, the two most popular parties. The paper however was biased in terms of its tone often placing a negative picture of the MMD⁴⁸. Its adverts were in favour of ZDC as is seen below.

Table 3: Number of political party adverts in *The Post Newspaper*

Party	Real number	Relative number (%)
ZDC	15	93.8
MMD	1	6.2
MDP	0	0
NP	0	0
AZ	0	0
TOTALS	16	100

Source: Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka; ZIMA, 1997), 45.

From the outset, *The Chronicle* endorsed ZDC's President, Dean Mung'omba. In its reporting also it was biased towards ZDC.⁴⁹ It is not surprising therefore that the other political parties

⁴⁸ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka; ZIMA, 1997), 38.

did not get as much coverage as ZDC did in the newspaper. In fact *The Chronicle* only placed ZDC adverts in its paper. In other words, a hundred per cent of its adverts were those of ZDC⁵⁰.

The Monitor and *The National Mirror* did not carry any political adverts. *The Monitor* depended on donor funding and making money therefore was not within its mandate whilst *The National Mirror* rather than placing adverts in its paper chose only to place public notices from the Electoral Commission of Zambia.⁵¹

2.3 THE 2001 ELECTIONS

2.3 (a) the Freedom of Assembly and Association during the 2001 Period

The year 2001 marked a very important time in the history of Zambia. It was the year of the third general elections in Zambia since the re-introduction of multi party politics in Zambia since 1991.⁵² It was also a year of tripartite elections, namely presidential, parliamentary and local government elections.

2.3 (a) (i) the Third Term Debate

The 2001 elections were made even more interesting with the debate over the intentions of President Frederick Chiluba to run for a third term (popularly called the ‘Third Term Debate or Third Term Factor’). In order to do this there were intentions to amend the MMD and the Republican Constitution⁵³. The Article of interest to be amended was Article 35 of the Constitution which provides that:

⁴⁹ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls* (Lusaka: ZIMA, 1997), 45.

⁵⁰ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls* (Lusaka: ZIMA, 1997), 51.

⁵¹ Fackson Banda, *Elections and the Press: The Case of the 1996 Polls*, (Lusaka: ZIMA, 1997), 56.

⁵² Afronet (2001) *Zambia Human Rights Report*, Lusaka: Afronet, 1.

⁵³ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee (ERTC) Appointed to Review the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee

- (1) *Every president shall hold office for a period of five years.*
- (2) *Notwithstanding anything to the contrary contained in this Constitution or any other law a person who has twice been elected as president shall not be eligible for re-election to that office.*⁵⁴

As a result of the Third Term Factor the country was divided into two camps. One camp was for the Third Term and the other was against it. The group in favour of the Third Term was headed by a group of District Administrators. This group was allowed to air their views at whatever forum without threats or intimidation whilst the groups against the Third Term were victimized.⁵⁵ One such group was a lobby group called the Oasis Forum. Through the state-owned media, the government sought to stifle the operations of the Oasis Forum.⁵⁶

Within the MMD, Chiluba's intention to stand for another term was not favoured by all the members. Consequently, there was a split in the MMD resulting in the formation of the following parties; Forum for Democracy and Development (FDD) led by Lieutenant General Christon Tembo, Heritage Party (HP) led by Brigadier General Godfrey Miyanda, and Patriotic Front (PF), led by Michael Sata.⁵⁷

Due to major uproars and visible discontent of the people, Chiluba decided not to pursue the Third Term issue. As his successor, he chose Levy Patrick Mwanawasa as the next MMD presidential candidate.

⁵⁴ Constitution of Zambia, Chapter 1 of the Laws of Zambia.

⁵⁵ Afronet, (2001) *Zambia Human Rights Report*, Lusaka: Afronet, 10.

⁵⁶ Afronet, (2001) *Zambia Human Rights Report*, Lusaka: Afronet, 10.

⁵⁷ Electoral Reform Technical Committee (2004) *Report of the Electoral Reform Technical Committee Appointed to Review (ETRC) the Electoral System in Zambia*, Lusaka: Electoral Reform Technical Committee, 20.

2.3(a) (ii) the Enjoyment of the Freedoms of Assembly and Association in Relation to the Third Term Factor.

Despite the ruling in the Christine Mulundika case in which the court in effect stated that it is not in the police's power to grant a permit but for people who are wishing to hold a public meeting or assembly to give the police notice, the police still insisted that they give permits. Consequently, the question of whether the police should issue permits or whether they should be given notice was brought to the courts again in the **Resident Doctors Association v the Attorney General**⁵⁸ in which the High Court stated that the police were deliberately making use of old law when the law had been amended. In this case the Resident Doctors Association wanted to stage a peaceful demonstration in protest of the poor conditions of the hospitals but the police denied granting them a permit resulting in the arrest and detention of the demonstrators. The main question in this case was whether the police were empowered to grant a permit and if they were whether they had the discretion in relation to who to grant a permit, and who not to.

As has already been mentioned groups against the Third Term were stifled in their operations. For example, on 15th February 2001, three hundred UPND cadres were arrested for unlawful assembly when they demonstrated against the Third Term bid. The police claimed that these cadres did not have a police permit. The UPND spokesperson Love Mtesa however described the arrest as unfortunate because the police had been given ten days notice but they did not respond to the request.⁵⁹

Furthermore, on 9th March 2001 cadres of UNIP, Zambia Alliance Party (ZAP) and UPND in Solwezi wished to express their discontent over the Third Term issue by way of a

⁵⁸ 1997/HP/817

⁵⁹ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 11.

demonstration. Their demonstration was stopped by the police on the ground that it was illegal and they did not apply for a permit.⁶⁰ The Public Order Act however does not give the police the power to issue permits. They only have to be notified of the intention to hold a meeting.

2.3 (a) (iii) the enjoyment of the freedom of association during the 2001 elections.

There were ten political parties that took part in the elections in 2001. This shows that at least the fact that people were able to belong to any of the political parties of their choice. The political parties that took part in the elections were MMD whose presidential candidate was Levy Patrick Mwanawasa; UPND led by Anderson Mazoka; FDD led by Christon Tembo; UNIP whose candidate was Tilyenji Kaunda; HP led by Godfrey Miyanda; PF led by Michael Sata; National Citizens Coalition (NCC) led by Nevers Mumba; Social Democratic Party whose candidate was Gwendoline Konie; AZ led by Inonge Mbikusita Lewanika and NLD led by Yobert Champande.

2.3 (a) (iv) the Enjoyment of the Freedom of Assembly by Political Parties

During this time it was also difficult for political parties to hold public assemblies and rallies. The police still insisted on granting permits to enable the holding of such a public assembly. For instance, the police denied SDP leader Gwendoline Konie permission to hold a public meeting and rally on 21st July 2001. This rally was very important for the party because it was intended to announce the executive committee leaders of the party and to establish itself as a party.⁶¹

⁶⁰ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 12.

⁶¹ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 12.

Another instance was where the Zambia Republican Party (ZRP) President Ben Mwila was arrested on 25th September 2001 after holding a political rally on the ground that he held the rally without permission from the police. He was released later in the day after he insisted that he did not need a permit from them.⁶²

In the same vein, on 7th October 2001, the police cancelled Dean Mung'omba, President of (ZAP) meeting with members of the party in Mpongwe because of the large turnout of people. Later however, Mr. Mung'omba was allowed to address the party members for a short time. The number of people attending a meeting is no ground for the cancellation of a meeting. Rather, that there is an inadequate number of police available to police the event is a ground provided by the Public Order Act.

In February of that year, the police denied the United Party for National Development (UPND) President Anderson Mazoka permission to hold a rally in Itezhi Tezhi on the ground that they were not given the requisite seven days notice. To this effect, Mazoka stated that the Public Order Act was just an instrument designed by the MMD to disadvantage the opposition.⁶³ This may have been true because where the police do not want a meeting to be held, they can easily lie that there will be another such meeting on the same day therefore there are inadequate police to be present at the event.

The above examples are only a few of the instances where the freedom of association and assembly was not guaranteed where it should have been. They are also examples of instances where the police abused their power and deemed themselves as having the power to grant

⁶² Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 13.

⁶³ Afronet. (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 13.

permits for the holding of public meetings when all that is required according to the Public Order Act is that they be notified of the intention to hold such a meeting.

On the other hand however the movements that were for the Third Term were given the opportunity to assemble and hold marches freely with no distractions or hindrances. For example the women's solidarity march for President Chiluba led by Esther Nakawala an MMD official in favour of the Third Term in March of 2001⁶⁴ was uneventful and free.

2.3 (b) the freedom of expression during the 2001 election period

Once again, since MMD was in power, it made use of the state machinery to its advantage and to the detriment of the other political parties. This was a repetition of the scenario of the 1996 elections. Therefore the people were once again disadvantaged because the media is supposed to be a forum for the reception of information from various sources including various political parties. Such acts therefore impair the citizens from making informed decisions on Election Day.

The media in 2001, instead of showing a growth in the political system, especially since this was the third multi party election, was a reflection of the failing political system.

The public media served as a campaign tool for the MMD while the opposition was only given limited access.⁶⁵ An example of this was when ZNBC cancelled a presidential debate programme sponsored by Panos Institute. On this programme, all the political party presidential candidates were supposed to appear. In this regard, Brigadier General Godfrey

⁶⁴ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 14.

⁶⁵ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 31.

Miyanda expressed his frustration on the manner in which the public media censored the opposition.⁶⁶

A report by Coalition 2001 revealed that during the period 2- 26th December 2001, ninety-two per cent of its coverage was aimed at MMD while the remaining eight per cent was shared among FDD, UPND, UNIP, HP, ZRP, NLD and NCC.⁶⁷ This was a crucial period, especially since the elections were held on the 27th of December 2001.

Furthermore, Radio 2 and Radio 4 gave MMD almost a hundred per cent positive coverage.⁶⁸

2.3 (b) (i) Closure of Radio Phoenix

The closure of Radio Phoenix on 19th August raised eyebrows as it was a malicious move by the government to silence the privately owned radio station. Radio Phoenix for many years has conducted a live phone-in programme called '*Let the People Talk*' which allows listeners to participate and air their views as well as ask questions to the guest on the programme. Naturally, during the elections the presidential candidates are the main focus.

On 19th August, the then Minister of Information, Vernon Mwaanga, announced that the radio station's operating licence was suspended for nonpayment of the licence fees. The odd thing about this announcement was that the Communications Authority did not give the radio station notice of default payment as is the usual practice. Instead of the Communications Authority giving the radio station the required notice, the government grabbed the nonpayment of the licence fees by Radio Phoenix as an opportunity to close down the station for a while. The closure of the radio station was detrimental to the political party presidential candidates because they no longer had that particular forum, which was very popular, to

⁶⁶ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 31.

⁶⁷ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 31.

⁶⁸ Afronet, (2001) *Zambia Human Rights Report 2001*. Lusaka: Afronet, 31.

express their political manifestos. It was also detrimental to the listeners as they were not availed the opportunity to receive information from the station.

1.4 Conclusion

In both the 1996 and 2001 elections MMD used state machinery to its advantage to inform the public about its political intentions before the elections. In this regard the government broadcasting station and the government newspapers were used as campaign tools for the party. This chapter has looked at the allocation of adverts in both the government owned and private newspapers and it has been seen that in both cases there was no fair coverage of the political parties. For the privately owned newspapers, they placed more adverts for the political party that it favoured while the government-owned papers favoured the ruling MMD. The third term debate and how the freedom of assembly and association were enjoyed during that period have also been looked at. In the next chapter the 2006 and presidential by-elections of 2008 will be looked at.

CHAPTER THREE

3.0 THE 2006 TRIPARTITE ELECTIONS AND THE 2008 PRESIDENTIAL BY-ELECTIONS

Introduction

The 2006 elections, held on 28th September 2006 were the fourth multi-party elections in Zambia since the reversion to multi-party democracy in 1991. These elections were also the second tripartite elections after the government decided to combine the holding of presidential, parliamentary and local government elections simultaneously in 2001. The peaceful transition from one party to multi-party democracy raised expectations of a smooth process towards democratic consolidation. However, as has been seen from the previous chapters, the democratic process has remained stuck in a transitional zone between actual democracy and authoritarian systems. In this chapter the 2006 presidential elections will be of focus and thereafter the just ended 2008 presidential by-elections in relation to the enjoyment of the freedoms of expression, assembly and association will be looked at briefly.

3.1 THE 2006 ELECTIONS

3.1 (a) the Freedom of Association in the 2006 Elections.

In the 2006 elections there were five political parties that people were free to be members of. This was a reduction from the eight parties that took part in 2001. This reduction of political parties participating in the elections may have been due to the sharp increment of the election fee from two hundred thousand kwacha to twenty million kwacha⁶⁹ for each political party. The revised fees were received with mixed views. Some people condemned this increment

⁶⁹ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 3.

whilst others approved of it saying that with such fees only those who are serious about standing for presidency would contest.⁷⁰

Perhaps it was due to this increment that a number of alliances were formed. One such alliance was the United Democratic Alliance (UDA) which was an alliance comprising of the following political parties: the United Party for National Development (UPND); UNIP; and Forum for Democracy and Development (FDD), whose leaders were Anderson Mazoka, Tilyenji Kaunda and Edith Nawakwi respectively. It was not agreed as to who would be the UDA presidential candidate but Anderson Mazoka was perceived as the most likely candidate. His death on 26th May 2006 brought about a power struggle within the UPND between party Vice President Sakwiba Sikota and Hakainde Hichilema, a young man, new to politics from the corporate world. At the UPND Convention that was held from 13-14th July 2006 at Mulungushi International Conference Centre Hakainde Hichilema was adopted as the UDA presidential candidate. Due to frustration Sakwiba Sikota formed the United Liberal Party (ULP) which pulled along with it other frustrated UPND members as well.

Another alliance formed was the National Democratic Focus (NDF) which was made up of the Reform Party (RP) whose leader was Nevers Mumba, Zambia Republican Party (ZRP) led by Benjamin (popularly known as Ben) Mwila; Party for Unity, Democracy and Development (PUDD) led by Isaac Musonda; Zambia Democratic Conference (ZADECO) which was led by Dan Pule, and the All People's Congress Party (APC) led by Ken Ngondo. Later however, APC was later expelled from NDF.⁷¹ PF was also supposed to form part of the NDF but when the proposal that Michael Sata should be the presidential candidate was rejected, PF decided to stand as an independent party.

⁷⁰ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 24.

⁷¹ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 25.

The NDF also experienced a power struggle (relating to who would represent it as its presidential candidate) between Nevers Mumba and Ben Mwila. Ben Mwila was endorsed as the presidential candidate for the NDF at the NDF Convention held in Kabwe at Masiye Hotel.⁷²

ULP decided that because it was still a new party, it would not take part in the elections but would support PF.⁷³ HP was not left out in terms of the formation of alliances, it formed a pact with a party called Agenda for Change.

Therefore, the parties that successfully filed in their nominations with their presidential candidates were as follows: Levy Mwanawasa for MMD, Michael Chilufya Sata standing for PF, Hakainde Hichilema for the United Democratic Alliance (UDA), Godfrey Miyanda for HP, and Ken Ngondo for APC.

The five parties that took part in the elections meant that the votes would not be split among the electorate as much as before when there were more parties contesting the elections. This meant that the chances of rigging the elections were reduced.

3.1 (b) the Freedom of Assembly during the Election Period

Generally, the freedom of assembly was largely respected and provided in compliance with the Public Order Act. The police adopted a flexible approach to the seven day notice period necessary for a rally to take place, at times they accepting very late notice of a planned event.⁷⁴

⁷² The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 25.

⁷³ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 26.

⁷⁴ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka.

However, the campaigns did not go event free. As such there was an incident in Kitwe where it was alleged that the police denied HP from holding a rally at the Freedom Park.⁷⁵ Furthermore, there was an instance where Mwanawasa issued a directive to the police to deny PF permits to hold rallies. This directive was however overturned by the Solicitor General.⁷⁶ This gesture by the Solicitor General was a very positive move for the guarantee of the freedom of assembly.

Despite the general observance of the freedom of assembly, it was to some extent abused by vote buying. There were several allegations of goods such as mealie-meal, sugar, and so on being given to the people at rallies and campaigns as an effort to induce them to vote for them. An example of this was where there was a combination of campaign tours and commissioning of government projects by the president. This may have misled people especially those in the rural areas who would have thought that the projects were being financed by the MMD presidential candidate when in actual fact it was not.⁷⁷

The campaigns were generally peaceful but the content of the campaigns leaves much to be desired. The campaign messages were generally focused on dispelling what other contesting political parties promised instead of focusing on real issues⁷⁸ such as development. Commenting on this, the former United States Ambassador to Zambia, Carmen Martinez noted that a lot of the campaigning in the 2006 elections revolved around name calling and tarnishing other people's reputation. She stated that she hoped that in the next election there would be a look at the real issues.⁷⁹

⁷⁵ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 3.

⁷⁶ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 3.

⁷⁷ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 37.

⁷⁸ The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 37.

⁷⁹ *Sunday Post*, 27th July 2008. Post Lifestyle: *Guard Against Complacency, Martinez Urges Zambians*.

3.2 The Freedom of Expression

According to the European Union Election Observation Mission, there was a general observation and improvement of the freedom of expression during the preparations of the 2006 elections as compared to the previous elections.

3.2 (a) State-owned Media; ZNBC, *The Times of Zambia* and *The Daily Mail*

Through the sponsorship of Zambia Election Fund (ZEF) and the Electoral Commission of Zambia (ECZ) programmes relating to the elections were aired on ZNBC television. Furthermore, there were also ninety minute interviews that were held on the station⁸⁰ such as the *Race to Plot One*. This programme provided an opportunity for all the participating political party presidential candidates to give their ideas to the electorate.

However, bias was seen in the broadcasting of MMD presidential candidate Levy Mwanawasa's rallies that were held in Lusaka and Kitwe which were broadcast live on television and radio whilst the opposition political rallies were only given space on the evening news but even then, they were often blacked out/phased out.⁸¹

In relation to allocation, ZNBC allocated thirty-seven percent of its election related coverage to MMD, twenty-four percent to UDA and thirteen percent to both HP and PF while APC got nine percent. Overall therefore, there was a general improvement in terms of coverage of the contesting political parties.⁸²

⁸⁰European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 3.

⁸¹The Anti- Voter Apathy Project (AVAP), *Zambia's 2006 Tripartite Elections Report*, AVAP: Lusaka, 36.

⁸²European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 3.

However, in terms of news reporting, the ZNBC was more in favour of MMD. MMD received seventy-three percent of the news coverage whilst the only other parties that received any significant form of news coverage were PF with eleven per-cent and UDA with ten percent.⁸³

Except for paid for adverts in the state owned print media, MMD received sixty percent of election related coverage in *The Daily Mail* while PF got sixteen percent and UDA, thirteen percent. The *Times of Zambia* similarly afforded MMD sixty-two percent, PF sixteen percent and UDA twelve percent.⁸⁴

ZNBC radio stations, Radio 1 and Radio 4 also gave MMD the highest percentage of positive coverage, which was seventy-seven percent. On the other hand Radio 2 provided an impressive coverage of the political parties. MMD was allocated forty-two percent; PF and UDA were given twenty percent each and APC twelve percent.⁸⁵

3.2 (b) Privately Owned Media: Radio Phoenix, Muvi Television and the Post

Generally the private media provided a greater degree of access to the presidential hopefuls and provided more balance than the state owned media. The ruling MMD was still however the dominant party. For instance, Radio Phoenix offered MMD sixty-four percent of its time, PF was allocated eighteen percent and UDA thirteen percent. In relation to its news coverage which was much more balanced than the state broadcasters, MMD received forty-four percent; PF twenty-eight percent; UDA fourteen percent and ULP six percent.⁸⁶

⁸³ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 3.

⁸⁴ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 3.

⁸⁵ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 4.

⁸⁶ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 4.

News coverage on Muvi TV, a relatively new television station gave also gave MMD the highest percentage of coverage of fifty-nine percent, while PF was given twenty percent and UDA eight percent.⁸⁷

Similar to the private owned broadcast media, the private print media provided better balance than the state owned print media. PF and MMD received the highest at thirty-eight percent while UDA was given sixteen percent by *The Post*.⁸⁸

3.3 2008 PRESIDENTIAL BY-ELECTIONS

The presidential by election was held on 30th October 2008. These elections were held as a result of the untimely death of the sitting president Levy Patrick Mwanawasa in August 2008. In her end of year statement to the press, the chairperson of the Human Rights Commission, Mrs. Pixie Kasonde Yangailo said that the year 2008 will go down in history as a peculiar year because for the first time since independence, the country lost a sitting president due to death.⁸⁹

3.3 (a) Freedom of Assembly and Association

There were four political parties that took part in the presidential by-elections, namely UPND, led by Hakainde Hichilema; HP, led by Godfrey Miyanda; PF led by Michael Sata, and MMD whose candidate was the former Vice President, Rupiah Banda.

⁸⁷ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 4.

⁸⁸ European Union Election Observation Mission Zambia, *Tripartite Elections-28th September 2006*, EU EOM: Lusaka, 4.

⁸⁹ End of year statement by the chairperson of the Human Rights Commission Mrs. Pixie Kasonde Yangailo delivered to the media at the Human Rights Commission on Wednesday 31st December 2008.

Even in the preparations to these elections there were a few incidentals relating to the freedom of association and assembly. Hakainde Hichilma, for example, complained that during his campaigns there were cases where his campaigns were disrupted by the police. He also complained that when he was in Senanga, the permit that he was issued for holding a rally there was cancelled because Rupiah Banda was holding a rally in the same area.⁹⁰

Last year's campaigns were also saw instances of campaigns being clouded by instances of vote buying. One such instance was where MMD presidential candidate Rupiah Banda distributed sugar at his campaigns in Katete. According to the Anti Voter Apathy Project (AVAP) this was in direct breach of the Electoral Code of Conduct. Rupiah Banda's campaign was widely condemned by the public and stakeholders.

Furthermore, there was a photograph placed on the front page of *The Post* on 3rd October that showed a police vehicle carrying MMD cadres to a rally. The police are supposed to be non-partisan and therefore are not supposed to favour any party. Therefore the police were widely condemned because the picture gave an impression that they were actually affiliated to a party, and the ruling party at that. Such a picture gives the implication that the police support the named party.

3.3 (b) Freedom of Expression

Members of the public expressed concern over the coverage of political parties by ZNBC television during the past elections and decided to speak out. In a letter to the editor, in *The Post*, one member of the public pledged ZNBC to give presidential candidates equal

⁹⁰ *Sunday Post*, 12th October 2008. AVAP Accuses MMD of Breaching Electoral Code.

coverage.⁹¹ Former Minister of Information and Broadcasting, Mike Mulongoti, in reference to media coverage, said that government did not give ZNBC directives on which political candidates to cover and which not to. He further said ZNBC should accord sufficient coverage to all without interference and that ZNBC should cover all the presidential candidates in a fair manner.⁹²

As an attempt to achieve this, the programme *Race to Plot One* was televised every Sunday at twelve hours on ZNBC. This programme hosted the presidential candidates and each week a candidate was given the chance to inform the viewers of what his intentions are when voted into power (i.e. a chance to sell himself to the public). These efforts were evidently not enough because members of the public still complained. One such complaint was printed in a newspaper where a member of the public complained that ZNBC allocated approximately ninety-five per cent coverage to Rupiah Banda as though he was the sole presidential candidate.⁹³

The freedom of expression for both the electorate and the presidential candidates was at one point threatened when government through the then Permanent Secretary of Information and Broadcasting, Emmanuel Nyirenda, threatened to ban live phone-in programmes if media bodies did not install special technology used to screen calls before they are broadcast on both radio and television. These phone in programmes are however very popular among the public as the listeners are given the opportunity to ask the guest on the programme questions which are answered on air. In times of elections they are a form of direct interaction between the electorate and the presidential candidates and are of much interest to the public and a

⁹¹ *The Post*, 2nd October, 2008. Letters to the Editor: *Continue Calling a Spade a Spade*.

⁹² *The Times of Zambia*, 6th October 2008. *We'll not interfere in Operations of Media Houses*.

⁹³ *Sunday Post*, 5th October 2008. Letters to the Editor: *News Coverage*.

great source of information. In response to this, Mr. Mulongoti advised that there is need to screen calls because such programmes can be used to either incite or educate the public.⁹⁴

As a result of the directive, radio station Q FM suspended its live phone in programme⁹⁵ thereby disadvantaging the candidates in that they were unable to disseminate information and the electorate in that they were unable to receive the information.

3.4 Conclusion

A look at the last round of elections has shown that even though Zambia has been a multi-party democracy for nearly twenty years, there are some problems that are still experienced as though it just recently changed to a multi-party democracy. Freedom of association and assembly though generally observed there were still some instances where some problems were faced such as the police cancelling permits in favour of other parties. The same is true with the freedom of expression where the state owned media would endorse the ruling party and on the other hand, the private media would endorse an opposition party and report negatively about the ruling party. Fairness in media coverage is still to be attained. The next chapter will look at a few salient Acts of Parliament that are important during elections.

⁹⁴ *The Post*, 6th October 2008. *Post Editor not likely to receive Fair Contempt Trial- Komakoma.*

⁹⁵ *The Post*, 21st September 2008. *QFM Suspends Live Phone-In Programme.*

CHAPTER FOUR

4.0 SOME SALIENT ACTS OF PARLIAMENT RELATING TO THE FREEDOMS OF EXPRESSION AND ASSOCIATION AND ASSEMBLY

Introduction

With regard to the freedoms of expression, assembly and association and their enjoyment during the elections, there are certain Acts of Parliament that come into play to ensure their enjoyment. This chapter will look at the ZNBC Act, the Public Order Act, the Electoral Act, the Electoral Code of Conduct and the Constitution, and to what extent they ensure the enjoyment of these freedoms during elections.

4.1 ZNBC Act

ZNBC is the main radio and television station in Zambia.⁹⁶ Its establishment is by virtue of s3 of the ZNBC Act, which provides;

‘There is hereby established the Zambia National Broadcasting Corporation, which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name.’⁹⁷

The Act makes provision for a Board of Directors in s4 who run the Corporation. The members of the Board are appointed by the Minister of Information and Broadcasting, on the recommendation of the appointments committee which is constituted by the Minister.⁹⁸ Only

⁹⁶ Alfred Chanda & Mufalo Liswaniso, *Handbook of Media Laws in Zambia*, (Lusaka: ZIMA, 1999), 25.

⁹⁷ S3 ZNBC Act, Chapter 154, Laws of Zambia.

⁹⁸ s4A (1) ZNBC Act, Chapter 154, Laws of Zambia

one who is committed to fairness, freedom of expression, accountability and openness can qualify to be on the Board.⁹⁹

Other than the appointment of the members of the Board, the Minister is also given the power to approve the allowances that the directors receive for sitting on the Board.

The functions of ZNBC are set out in s7 (1). Some of its functions include the provision of varied and balanced programming for all sections of the population¹⁰⁰, to serve the public interest¹⁰¹, to contribute to the development of free and informed opinions which are important elements of a democratic process,¹⁰² to defend democratic freedoms¹⁰³ and broadcast news and current affairs which is independent and unbiased.¹⁰⁴

Even though it does not make any specific mention of a time of elections, ZNBC is aimed at broadcasting programmes that promote democracy and that are unbiased and independent. This is in relation to all its programming and election programmes are therefore not an exception. However, because of the numerous powers that the Minister of Information has over the Board of Directors it may be difficult to attain the independence that the Corporation needs for it to broadcast such programmes. The Board may make decisions that will be pleasing to the Minister so that they keep their jobs and get good allowances. This may be the reason that the station during elections has been biased towards the ruling parties, because the appointing power forms the government of the day and the corporation is thus answerable to them.

⁹⁹ s4 (3) ZNBC Act, Chapter 154, Laws of Zambia.

¹⁰⁰ s7 (1) (a) ZNBC Act, Chapter 154, Laws of Zambia.

¹⁰¹ s7 (1) (b) ZNBC Act, Chapter 154, Laws of Zambia.

¹⁰² s7 (1) (e) ZNBC Act, Chapter 154, Laws of Zambia.

¹⁰³ s7(1) (j) ZNBC Act, Chapter 154, Laws of Zambia

¹⁰⁴ s7 (1) (m) ZNBC Act, Chapter 154, Laws of Zambia.

4.2 The Public Order Act

This Act was enacted to enable the maintenance of public order. Among other things therefore, the Act regulates public assemblies, processions and demonstrations.¹⁰⁵ The police have the duty to enforce this Act in order to enable the maintenance of peace and order in society, as they have a mandate among others to maintain peace, law and order in society. The Public Order Act is especially important during elections when candidates hold rallies and gatherings with members of the public.

According to the Act, if anyone wishes to hold a public meeting of any sort, they should notify the police of their intention to hold that meeting at least seven days in advance of the meeting, gathering or demonstration.¹⁰⁶ The requirement for notice is to ensure some kind of order in society so that gatherings are not held randomly and haphazardly thus causing confusion. However, many a time this provision has been abused by the police especially to the detriment of the opposition. Furthermore, it is also important to give notice so that if another gathering is being held on the same day, the police can offer an alternative date so that they are able to assist in the maintenance of order at the gathering.

However, where the President or Vice President wants to hold a public meeting, they do not need to give the police notice.¹⁰⁷ This provision in election times may work against opposition parties. All candidates are supposed to be on a level playing field. If however, the President is contesting elections as has been the case before, the Act gives him unfair advantage.

¹⁰⁵ Alfred Chanda & Mufalo Liswaniso, *Handbook of Media Laws in Zambia*, (Lusaka: ZIMA, 1999), 102.

¹⁰⁶ S5 (4) Public Order Act, Chapter 113, Laws of Zambia.

¹⁰⁷ S5 (6) Public Order Act, Chapter 113, Laws of Zambia.

4.3 ELECTORAL ACT

The Electoral Act was enacted to provide a guide for the electoral process. It gives general guidelines as to the registration of voters, voter education, who applies to be an observer and monitor of the elections, makes provisions for electoral petitions, and so on. It is therefore mainly concerned with the procedural aspect relating to elections. S27 however provides;

(1) Every public officer and public entity shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct that candidate's campaign freely.

(2) Every candidate and political party shall have the right to have the substance of the candidate's or political party's campaign propaganda reported in all public media in a fair and balanced manner.

The Act therefore recognizes the need for equality in terms of matters relating to candidates campaigns but it does not give any consequences that would result from a public officer or public entity not enabling a candidate to campaign freely or where the media does not give equal coverage. As a result the unfairness that has been experienced in terms of media coverage and priority of holding rallies will continue in the elections to come.

4.4 ELECTORAL CODE OF CONDUCT 2006

The Electoral Code of Conduct provides regulations for how the candidates and the electorate should conduct themselves/ behave before, during and after the elections. The aim of the Code is to enable that the playing field is level. The Electoral (Code) Regulations of 1996 contained some good provisions but were toothless and useless because they did not contain any mechanism for its enforcement. Therefore the Electoral Reform Technical Committee

(ERTC) was appointed to implement the Code. Members of the public and stakeholders were given the task of giving recommendations to the ERTC of what they thought the Code should be and what reforms should be in the Code. The result was the Electoral Code of Conduct 2006 Statutory Instrument No 90 of 2006.

The Code provides that it is a duty of the police to enforce law and order at campaign meetings and processions for the maintenance of public order.¹⁰⁸ This provision in essence allows for the holding of public gatherings such as campaigns during elections but they should be orderly. S12 stipulates the duties of the media during the electoral process. One such duty is to provide fair and balanced reporting of campaigns, rallies, press conferences and so on.¹⁰⁹ The media is also under the duty to report election news accurately.¹¹⁰ Similarly, all interviews that are conducted should be fair in terms of the style of the interview and the amount of time given for the interview.¹¹¹

With reference to the allocation of air time for both radio and television stations, the broadcasters are required to allocate air time equally to all political parties for their political broadcasts.¹¹² The maximum amount of air time that a broadcasting station can allocate to a political party in one language per week cannot exceed thirty minutes.¹¹³ This is to ensure equality in terms of the amount of air time allocated to political parties. The provision takes into account to some extent that there are some parties that may be better financed than others and it therefore seeks to avoid these parties from having an unfair advantage than those not so well financed.

¹⁰⁸ S11 Electoral Code of Conduct 2006 SI No 90, 2006.

¹⁰⁹ S12 (1) Electoral Code of Conduct 2006 SI No 90, 2006.

¹¹⁰ S12 (2) (b) Electoral Code of Conduct 2006 SI No 90, 2006.

¹¹¹ S12 (4) (a) Electoral Code of Conduct 2006 SI No 90, 2006.

¹¹² S13 (1) Electoral Code of Conduct 2006 SI No 90, 2006.

¹¹³ S13 (2) Electoral Code of Conduct 2006 SI No 90, 2006.

Where a candidate feels there has been unfair coverage during the election campaign he is free to make a complaint.¹¹⁴ Such complaint should be made in writing to the Electoral Commission of Zambia (ECZ) which is established by Article 76(1) of the Constitution.

The Code also enlists some duties of the ECZ such as to ensure that equal opportunity is given to all political parties to participate in and conduct their political activities according to the law,¹¹⁵ to ensure that any campaign rally or meeting which is legally organized by any political party is not disrupted or prohibited¹¹⁶, and so on.

4.5 THE CONSTITUTION

The Constitution provides for freedom of the press in Article 20(2), which provides:

'Subject to the provisions of this Constitution a law shall not make any provision that derogates from freedom of the press.'

In one breath the Constitution guarantees the freedom of the press whilst in the very next breath it gives so many derogations that it practically nullifies the freedom of the press.

Article 20(3) allows for derogation that are;

- a) *reasonably required in the interests of defence, public safety, public order, public morality or public health*
- b) *reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons...*
- c) *that imposes restrictions on public officers.*

¹¹⁴ S14 (4) Electoral Code of Conduct 2006 SI No 90, 2006.

¹¹⁵ S10 (1) (j) Electoral Code of Conduct 2006 SI No 90, 2006.

¹¹⁶ S10 (1) (f) Electoral Code of Conduct 2006 SI No 90, 2006.

The freedom of the press is therefore limited and it is thus difficult for the press to exercise independence where the Constitution, the *grund norm*, allows for such derogations. The Constitution does not define what is meant by reasonably required in the interest of public safety, public order, and public defence and so on. The result is that any act would be considered in the interest of public safety, defence, morality, and so on where appropriate.

4.6 CONCLUSION

There is so much legislation that would impact freedom of expression, assembly and association during elections positively. However, as has been shown in this chapter, starting from the Constitution, these freedoms are more curbed than they are guaranteed. The Electoral Code of Conduct is a very good piece of legislation with very good provisions relating to the freedoms of expression and association and assembly but unfortunately it lacks enforceability. The non-enforceability of this instrument is very detrimental not only to the freedoms under analysis but to the whole electoral process. Similarly, the Electoral Act makes provision for fairness in the campaigns but the lack of punitive measures does not motivate the obedience of the provision. Furthermore, government has such a stronghold on ZNBC that it cannot be independent in its reporting and broadcasting. Sadly, if nothing is done to these pieces of legislation, all future elections will have the same general outcome of the ruling party being given priority in terms of television coverage and rallies and other public gatherings.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

Introduction

The exercise of the freedoms of expression and association and assembly are vital during elections. The freedoms enable communication between the candidates standing for the elections, and the electorate who will decide after hearing what plans the candidates have, who they will vote for on the Election Day. These freedoms are pillars of democracy and a nation cannot be said to be a democracy if they are absent. This chapter will give a few recommendations which if put into play will ensure that these freedoms are actually enjoyed during the elections. Thereafter a conclusion will be drawn.

5.1 Recommendations to assist in the guarantee of the freedom of assembly and association

There is a general shortage of police such that even when a political party wishes to hold a rally, sometimes there is not a sufficient number of police available to man the event. The police should put in place a way of recruiting more people to join the police force. Better incentives and conditions of work should be given to attract more people to join the police force. If they are also better paid, it will reduce the chances of them being bribed (i.e. where a political party bribes the police so that a rally can be held on a particular day). Consequently, being a policeman will not be looked down upon by society as is the case presently.

The date for elections should be prescribed in the Republican Constitution like is the case in the United States where the Constitution expressly states that the 4th of November is Election Day. This will enable that all the political parties will know well in advance when the elections will be held. They will therefore be able to begin to prepare well in advance for the

elections by raising funds, notifying the police for the holding of rallies and so on. Such that when campaign period begins all parties are on a level playing field with none being more prepared than another.

The issue of vote buying should seriously be looked into. Politics should be more than coming around and dropping off sacks of mealie-meal, t-shirts and *chitenge* material. Presidency is a service and a service is more than that. Campaigning therefore should be more than that. It should be at a more sophisticated level. Politicians need platforms to talk about what they are going to deliver once elected into office. People should not just be hoping that some politician will bring them a bag of mealie-meal or t-shirt. They should want them to bring a school for their children or irrigation so that they grow their crops and grind their own mealie-meal. Instead of politicians taking advantage of the poverty situation in the country, they should seek ways to alleviate it completely. The Code of Conduct, which makes vote buying illegal should be seriously enforced.

Finally, the Electoral Act should put in place measures that will ensure that the provisions in s27 are adhered to.

5.2 Recommendations to assist in the guarantee of the freedom of expression

The ECZ, Anti Corruption Commission (ACC) and police should find a workable mechanism that would promote effective enforcement of the Electoral Code of Conduct. The Code of Conduct is a very good piece of legislation but its lack of enforceability makes it toothless and therefore irrelevant.

ZNBC should be an independent corporation to ensure that it performs its functions in an independent way. Currently government has a very strong hold over the Corporation making it difficult for it to act independently. ZNBC should therefore be completely disassociated from the government. It should be an autonomous institution.

In order to enable the electorate make informed choices, sponsored media programmes such as the *Race to Plot One* should be recorded live before an audience that should be allowed to ask questions. Even better, a panel of presidential candidates discussing and debating issues on television and radio together could be more exciting than having recorded individual discussions. The programmes can be more effective if they are interactive and recorded live with an audience listening and asking questions.

In order to promote balanced campaign rally coverage, all participating political parties should be given live broadcast of their national rallies on ZNBC TV. The public broadcaster, ZNBC, should be encouraged to give free and balanced media coverage to all political parties and candidates during campaigns in accordance with the Electoral Code of Conduct.

5.3 Conclusion

The freedoms of expression, association and assembly are essential elements in a democratic state. They play an even more important role in times of elections and they should be treated as such. Through these freedoms a medium for communication is created between the electorate and the candidates. They provide for an opportunity for the candidates to give their ideas to the electorate thereby assisting them to make informed choices on the day of elections.

With regard to the media, it is not only the public media that is biased in terms of reporting and advert allocation. As has been discovered by the research, when the private media endorses a political party, it does so completely to the extent that the other political parties are to a larger part neglected, and where they do receive any form of publication, it is usually negative. On the other hand, the public media has in all the past elections endorsed the ruling party that forms the government of the day with little coverage being allocated to the other parties because of the great influence that it has over the corporation.

The freedom of association and assembly has overall seen an improvement over the years, with the greatest being the change from one party to multi party politics, and later the amendment of the Public Order Act to the one in use today. Still however, there are still a lot of measures that can be put into place in order to enable that all the political parties are treated equally thus ensuring free and fair elections.

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