

## Chapter 3

# THE ELECTORAL FRAMEWORK AND ELECTION ADMINISTRATION

### Background

Executive power in Zambia rests with the President, who is the Head of State, Head of Government and Commander-in-Chief of the armed forces. The President is elected for a five-year term and can serve a maximum of two terms in office. The President appoints the Vice-President, ministers, deputy ministers and provincial ministers. In addition the President also appoints the Attorney-General, the Solicitor-General and the Director of Public Prosecutions and the permanent secretaries in the ministries.

The President is elected in a single national constituency under the first past the post system.

Legislative powers are vested in the unicameral parliament, which is known as the National Assembly. The National Assembly consists of 150 elected members, the Speaker of the National Assembly and not more than eight members nominated by the President.

The 150 members are elected for a five-year term using the first-past-the-post system from 150 single member constituencies.

### International and Regional Commitments and National Legal Framework

Zambia has signed or agreed to a wide range of regional and international commitments and instruments relating to human rights and the conduct of elections. These include:

- Port of Spain Affirmation of Commonwealth Values and Principles (2009)
- SADC Principles and Guidelines Governing Democratic Elections (2004)
- International Convention on the Elimination of All Forms of Racial Discrimination (1996)
- African Charter on Human and Peoples' Rights (1986)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- International Covenant on Civil and Political Rights (1966)
- Universal Declaration of Human Rights (1948)

The Zambian Constitution guarantees fundamental rights and freedoms, including freedom of expression, assembly, association and participation in elections.

The key documents providing the legal and regulatory framework for the conduct of the elections are:

- The Electoral (Code of Conduct) Regulations (2011)
- The Electoral Act (2006)
- The Electoral (General) Regulations (2006)
- The Constitution of Zambia (1996, as amended)
- The Electoral Commission Act (1996)
- The Local Government Elections Act (1991)

## **The Electoral Commission of Zambia (ECZ)**

The Electoral Commission of Zambia (ECZ) is established in accordance with Article 76 of the Constitution and the Electoral Commission Act.

The Constitution provides that the ECZ shall be autonomous and with responsibility for the registration of voters, the conduct of presidential, parliamentary and local government elections and to review the boundaries of the constituencies for the purposes of the National Assembly elections.

The ECZ consists of a Chair and up to four Commissioners. The Chair must have held, or be qualified to hold, high judicial office. The current Chair is Justice Irene Mambilima. Members are appointed by the President, subject to ratification by the National Assembly, for a term not exceeding seven years. There is a Director of Elections, who heads the ECZ's executive arm. The Director and staff are appointed by the ECZ and their role is to support the ECZ in its work and implement its policies.

The ECZ does not have a permanent structure at either provincial or district level. For the purpose of elections Provincial Local Government Officers are temporarily appointed as Provincial Electoral Officers and Town Clerks or District Council Secretaries are temporarily appointed as District Electoral Officers (DEO) in all 74 Districts of the country with responsibility for coordination of electoral preparations in each District and Province respectively. In addition, ECZ recruited some 55,000 ad hoc staff as polling officials.

DEOs, on behalf of the ECZ, appoint a Returning Officer, Assistant Returning Officer and an IT officer in each constituency. Returning Officers announce results for the National Assembly and local elections and the Chief Justice is the Returning Officer for the presidential elections.

### **Voter Eligibility and Voter Registration**

To be eligible as a voter a person must be a citizen of Zambia, at least 18 years of age and registered to vote.

In preparation for the 2011 elections the ECZ decided to conduct an update of the voter register, which had previously been done in 2005. The intention was to capture new registrants, persons who had lost their Voter Card and persons who had since changed residence. In addition, the ECZ undertook a cleaning of the list to identify persons who had died as well as erroneous and double entries.

The updated registration used a digital registration kit to capture thumbprints and photos and which also enabled cross checking with the old register. The exercise was conducted in two phases, with mobile registration units deployed from 21 June to 18 September 2010 and then from 19 September to 30 November 2010. Based on existing data, the ECZ had set itself a target number of 2.5 million new registrants, but it did not meet this target. Thus, a third phase was undertaken between 10-31 March 2011. Following this there was a public verification exercise between 30 May and 12 June 2011, during which registered persons could confirm their details.

The voter register was certified by the ECZ on 31 July 2011 and contained 5,167,174 voters, 50.14% of whom were women and 49.86% were men. Some 1.2 million of the total are new registrants and approximately 54% of the total number of registered voters in Zambia are aged between 18-35.

## **Candidate Eligibility and Nomination**

To be eligible as a candidate for the Presidential election a person has to be a citizen of Zambia, at least 35 years of age and domiciled in Zambia for at least 20 years. In addition, both parents must be Zambians by "birth or descent" and the proposed candidate must be a member of, or sponsored by, a political party. The nomination process for presidential candidates was conducted between 7-10 August 2011 and nomination papers were filed with the Chief Justice.

There were ten registered candidates for the Presidential election, of which one was a woman. The ten contestants were (in alphabetic order):

- Rupiah B Banda                      Movement for Multiparty Democracy
- Elias C Chipimo                      National Restoration Party
- Hakainde S Hichilema              United Party for National Development
- Tilyenji C Kaunda                    United National Independence Party
- Ng'andu P Magande                   National Movement for Progress
- Charles L Milupi                      Alliance for Development and Democracy
- Godfrey K Miyanda                   Heritage Party
- Fredrick Mutesa                      Zambia for Empowerment and Development
- Edith Z Nawakwi                      Forum for Democracy and Development
- Michael C Sata                        Patriotic Front

To be eligible as a parliamentary candidate a person has to be a citizen of Zambia, at least 21 years of age, literate and conversant with the official language of Zambia. For the parliamentary elections a person can be nominated by a political party or stand as an independent. Chiefs may not stand for parliament unless they abdicate their chieftaincy and the law also excludes persons serving in the Zambian defence force, police, public service and teachers from standing as a candidate. Parliamentary candidates had to register on 14 August 2011 with the Returning Officer in the respective constituency.

A total of 769 candidates registered for the parliamentary elections, of which 140 were standing as independents. Of the 769 candidates, 111 were women, representing some 14%. The 769 candidates were from 20 political parties across the 150 parliamentary constituencies. Only the ruling MMD was able to field parliamentary candidates in all constituencies. The PF fielded 148 candidates, and the UPND fielded 136 candidates.

## **Complaints and Appeals and Election Petitions**

Election-related disputes (including infringements of the Code of Conduct) are referred to Conflict Management Committees (CMCs), which are established by the ECZ at national and district levels and seek to address disputes through mediation. Decisions of CMCs are to be reached by majority vote within 24 hours, but are not legally binding and not made public. Failure to resolve disputes can lead to cases being taken to the courts.

CMCs comprise representatives of the Electoral Commission, political parties, civil society organisations, the police, the Ministry of Justice and the Anti-Corruption Commission.

Appeals against decisions of the Voter Registration Officers could be lodged with the ECZ.

The Electoral Act defines a series of election offences, which are stated to be: bribery and treating; impersonation; undue influence; publishing false statements about candidates; inciting disorderly conduct at an election meeting; misuse of a ballot paper.

Petitions against the results of the Presidential election must be filed with the Supreme Court within 14 days after a candidate is sworn in as a President. There is no time limit for the Supreme Court to reach its decision.

Petitions regarding individual parliamentary constituency results must be filed at the High Court within 30 days of the election day. The High Court has 180 days within which to deal with the petition.

## **Youth Representation**

There were 1.2 million new voters registered which represents 23% of the overall voting population. 54% of registered voters were between the ages of 18 and 35. These figures suggested that the youth voters would have a considerable influence on the outcome of this election.

Despite what appeared to be the mobilisation of the youth to be involved in the electoral process, the overall voters' turnout remained quite low (around 50%). Some of the key youth stakeholders indicated that some of the reasons for the low involvement by the youth as electoral candidates or voters were because the youth feel marginalised and have lost confidence in the electoral system. They claim that youth also perceive a "recycled political landscape" of persons who have been affiliated with politics for decades. In addition, it was reported that youth believe that there are currently limited opportunities for young people to be a part of the national development of the country as there exists few opportunities for youth representation on key decision-making bodies in government.

Several youth stakeholders stated that some of the key issues that they would like to see addressed are youth unemployment and greater transparency in the electoral process and a reduction in the perceived corruption by government officials

## **Key Issues**

### **1. Appointment of ECZ Commissioners**

Under the Constitution, the Chair and Members of the Electoral Commission are appointed by the President, subject to ratification by the National Assembly. During the course of this election, the Commonwealth team found that the ECZ acted with integrity and professionalism and that its Chair was highly regarded. However, some stakeholders did raise concerns regarding the suitability of such sensitive positions being appointed by the President - who may be a contestant in the election - especially in a scenario where a President's party also has a majority in the National Assembly.

### **2. Constituency Delimitation**

The Constitution mandates the ECZ as responsible for constituency delimitation. Article 77.4 states that "The boundaries of each constituency shall be such that the number of

inhabitants thereof is as nearly equal to the population quota<sup>1</sup> as is reasonably practicable". Article 77.4 also provides for some flexibility to take account of the means of communication, geographical features and the difference between urban and rural areas in respect of density of population.

The last review by the Electoral Commission was conducted prior to the 1991 elections. The ECZ had been undertaking a review of constituency boundaries in early 2011 in preparation for the constitutional review process. However, this was not completed and the process for consideration of the new Constitution was not concluded. Thus the existing constituencies reflect the population figures of 1991 and will therefore be very much out of date, notably for the highly populated urban areas, some of which reportedly have up to ten times the population of sparsely populated rural constituencies. As a consequence equal suffrage in the context of the National Assembly elections is not fully provided for.

To illustrate the point, based on the total number of registered voters and the number of constituencies, the average number of voters per constituency is 34,447. However, Kanyama in Lusaka has 89,777 registered voters, Kabwata also in Lusaka has 72,833 voters and Kwacha in the Copperbelt has 55,819 voters. Conversely in Western Province, Luena constituency has 20,944 voters, Nalikwanda 19,674 voters and Mulobezi 13,665 voters.

### **3. Eligibility Criteria for Presidential Candidates**

During the nomination process the PF brought a case in the High Court challenging the eligibility of the incumbent President to stand as a Presidential candidate, alleging that his parents were not of Zambian nationality. The challenge failed but an appeal is pending.

This particular eligibility clause was inserted in 1996 and at that time prevented the former President Kenneth Kaunda of UNIP from contesting the election against the then-incumbent President Chiluba of MMD.

Previously the Supreme Court had ruled that the nationality clause for eligibility presented difficulties as it lacks clarity as to what is meant by 'parents' (i.e. biological or adoptive) and also due to the lack of sovereign state borders until independence in 1964. Further, this clause has the appearance of being politically motivated, given the origins of its adoption in 1996. However, it remains part of the legislative framework.

### **4. Women's Participation and Representation**

The number of women standing as candidates for the presidential and National Assembly elections was extremely low. Out of the ten Presidential candidates only one was a woman and out of the 769 candidates for the National Assembly a disappointing 111 were women. Women make up more than 50% of the population and registered electorate but the level of women's representation as candidates is discouraging, well below the targets set by both SADC and the Commonwealth.

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<sup>1</sup> Article 77.7 defines the 'population quota' as the number obtained by dividing the number of inhabitants of Zambia by the number of constituencies" Article 77.8 states that the 'number of inhabitants' shall be ascertained with reference to the latest population census.

## **5. Civic Education**

The ECZ is mandated to conduct civic education and for this election deployed teams of civic educators to conduct programmes across the country. However, they were withdrawn after being accused of campaigning for the ruling party. Such a reaction to civic educators is regrettable as they are responsible for a critical activity.

## **6. Enforcement of the Electoral Code of Conduct (2011)**

The Code of Conduct establishes the rights and responsibilities of electoral stakeholders during the course of the election, and applies to the conduct of political parties, candidates, election and polling agents, the Zambia Police Force, media and the Electoral Commission.

Under the Code political parties are obliged, among other things, to issue directives to their members and supporters to observe the Code and carry out campaign meetings and rallies peacefully. Supporters of political parties are prohibited from using language which incites hatred or violence, destroying campaign materials of other parties, or disrupting another party's rally.

In terms of the Code's regulations relating to media, it states that all print and electronic media shall provide fair and balanced reporting of the campaigns of all registered parties and candidates and report election news in an accurate manner and not make any abusive editorial comment.

Under the Code, the Electoral Commission is empowered to reprimand a political party, candidate or stakeholder for any violation of the Code. The Commission can also report breaches to the police and impose administrative measures on any person, candidate or party for persistent breach. In addition, the Code identifies the "use of Governmental or parastatal transportation or facilities for campaign purposes" as an offence. This prohibition does not apply to the President and Vice-President "in connection with their respective offices".

However, it is clear from the conduct of the election campaign (see Chapter 4) that the Code was neither adequately respected nor enforced. The Electoral Commission lacked the capacity to adequately pursue violations and several interlocutors suggested they appeared to lack the will to do so. While the Commission did rebuke some offenders (such as some media for their coverage and certain parties for failing to control their supporters) such actions did not reverse the trend of media bias, misuse of state resources and clashes between party supporters.

The CMCs established under the Code operated informally and undertook mediation as a conflict management strategy. However, they proved ineffective in reversing some of the more serious negative trends, notably biased media coverage and misuse of state resources.

As a consequence, the Code of Conduct, while in theory providing a good regulatory framework for the conduct of the campaign and for regulating behaviour of stakeholders throughout the electoral period, proved inadequate and a weak deterrent due to a lack of substantive enforcement mechanisms.

## **7. Campaign Financing and Expenditure**

At present there are no provisions, either statutory or under the Code, requiring the disclosure of campaign financing. Nor is there any obligation to account for and report on campaign expenditure. These omissions undermine transparency and accountability. They also facilitate the misuse of state resources for campaign purposes as parties are not obliged to account for the resources utilised in the conduct of their respective campaigns.

Further, there are no campaign spending limits. Such limits can be an effective tool in helping to create a more level playing field in the conduct of the election campaign.

## **8. ECZ Recruitment of Staff**

The ECZ undertook a thorough and inclusive recruitment process for its 55,000 ad hoc polling station staff. It advertised for the positions and suitable applicants were then trained and tested on their suitability. Appointments were made on the basis of the tests. This approach is welcomed and contributed to the high calibre of staff working in the polling stations on the day of the election.

Such a process also helped to prevent, or reduce, allegations of nepotism or politically motivated appointments, ensuring a higher level of confidence in the electoral administration.

## **9. Election Petitions and the Timeframe for Swearing-in the President-Elect**

Under the Constitution, the newly elected President is to be sworn in within 24 hours of the results being announced. However, any election petition against the results is likely to take substantially longer to be resolved. As a result, an election petition is unlikely to provide an effective legal remedy in this regard. Further, such a short timeframe for the swearing-in may, under certain conditions, create mistrust and tension in the event of a serious allegation against the outcome of the election.

## **Recommendations**

- The current mechanism for appointing members of the ECZ provides for members to be appointed by the President subject to ratification by the National Assembly. However, in the event that the party of the President enjoys a majority in the National Assembly, this mechanism does not necessarily ensure political consensus in the appointment of ECZ members. Measures should be put in place to ensure that election commissioners do enjoy broad support and thereby political and public confidence. We note that Sections 192-197 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
- In order to ensure equal suffrage is broadly provided for, constituency boundaries for the National Assembly need to be reviewed in order to take account of variations in population size.

- Consideration could be given to reviewing the current eligibility criteria for presidential candidates, which currently provides that both parents must be Zambian citizens at birth. This clause has created much controversy in the Zambian context and the Supreme Court has also questioned its value. We note that Section 34 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
- Political parties are encouraged to put forward more women candidates in order to improve the level of representation of women as elected representatives.
- The ECZ requires stronger enforcement mechanisms in order to be able to address violations of the Code of Conduct and thereby ensure the Code also acts as an effective deterrent against malpractices.
- In order to increase transparency and accountability, there needs to be a requirement for party and candidate financial disclosures on campaign financing and expenditure. Consideration might also be given to introducing spending limits for election campaigning, thereby ensuring a more level playing field and preventing escalating costs of elections. We note that Sections 203-208 of the Constitution of Zambia (Amendment) Bill 2010 sought to address this matter.
- In order to give sufficient time for the resolution within any established timelines by the courts of any election petition, the period within which the President-elect should be sworn in should be extended accordingly.