

JCTR Policy Brief

Promotion of Social Justice and Concern for the Poor

First Quarter 2011

Free and Fair Elections: Essentials of the Democratic Process

By

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Introduction

This year, 2011, Zambia will be holding its fourth general elections and fifth presidential election since the country's return to multi-party democracy in 1991. Although there have been contrasting assessments with regard to the freeness and fairness of these past elections, there has been general consensus that the elections have generally been peaceful. Nonetheless, this has not prevented the apprehension among people that usually characterises the period of elections. One seemingly banal question is always asked every time there is or there will be elections: will the elections be free and fair?

The fate of most clichés such as the expression “free and fair elections” is that their significance tends to get weakened. People end up saying these expressions casually without consciously reflecting on their actual meaning. This may lead to a failure to fully appreciate that which the expression represents. Free and fair elections are a democratic imperative and an aspect of procedural justice, thus making the understanding of the concept of free and fair elections a necessity for a successful democratic process.

This Policy Brief reflects on what is really meant by free and fair elections. The Brief will discuss the relationship between elections and democracy, between elections and human rights and between elections and development. It will also briefly examine Zambia's past electoral experiences as a means of drawing some lessons from these, as well as assess the conduciveness of the current political situation for free and fair elections to be held later this year. The Brief will then offer policy recommendations that the Jesuit Centre for Theological Reflection (JCTR) hopes will be instrumental in the formulation of a just legal framework for elections by the Government and in the facilitation of genuinely free and fair elections.

1.0 Elections and the Electoral Process

The simple question that we should start by asking and attempting to answer is the question of what elections are. To elect, in the political sense of the word, is to choose someone by vote for an office or position, and to determine in favour of a particular law, proposition or course of action. An election, therefore, as practised in multi-party democracies, is an act and process by the public of choosing officials among contesting candidates for public office by way of voting. An election regarding the determination of an official proposition such as a law, constitution or policy is usually referred to as a referendum.

A “free” election refers to an election and electoral process that is characterised by the enjoyment of civil and political rights such as the freedoms of expression, assembly, association and movement by people, especially the electorate, in an environment that is peaceful and without intimidation, coercion and violence. A “fair” election is an election and electoral process where electoral conditions such as the law and access to the media are the same for all the participants in the electoral process.

Elections are a process and not just an instantaneous event. This process begins way before the actual day of elections and continues after the election day. It includes the following important aspects and processes:

Legal Framework: Before an election takes place, legal provisions that dictate the nature of the electoral process are put in place: how the elections will be managed, who is entitled to vote, conduct during campaigns, voting procedures, etc. These electoral regulations are usually found in the country’s constitution and in the electoral code of conduct that may be established by the electoral commission and approved by parliament.

Electoral Commission: An electoral commission is usually established to manage the electoral process. In Zambia, the Electoral Commission of Zambia has this responsibility. Its mandate is to administer and oversee the electoral process to ensure that it is free and fair.

Voter Registration: Voter registration ensures that citizens who qualify to vote are registered and included in the electoral register so that they may be able to vote on the election day.

Political Parties: In most cases, candidates participating in an election come from and represent a particular political party. A political party is an organisation established with the purpose of attaining political power by gaining control of government so that it can carry out its programmes and policies.

Electoral Campaigns: Contesting parties hold rallies and disseminate information stating their manifestos as a means of inviting people to vote for them.

Media and Information: The media (television, radio, press) are a means of providing the electorate with the information they need about the electoral process and about the contesting parties.

Security: This deals with the conduciveness of the political environment. It concerns the safety of the electorate and that of the contestants from different political parties. Questions that can be formulated around security are: Are people free to express their political views in public without fear of violence? Are they free to vote for their preferred candidate? In cases of intimidation and violence, do people get protection from the police? Are the police and the armed forces neutral and offering their protection to everyone equally?

Election Monitors: Election monitors come both from within and outside the country and are drawn from state and non-state actors. They monitor the electoral process to ensure that electoral codes of conduct are adhered to, and give their evaluation with regard to the credibility of the elections.

Civil Society: Various civil society organisations participate in the electoral process in different ways, but especially in voter education and election monitoring. They attempt to give an independent assessment of the electoral process.

Voting and Election Management: This concerns the actual day of voting and the logistics associated with it such as the accessibility of polling stations, the convenience of the voting procedure, its confidentiality and the efficiency of the officials.

After-election Management: This comprises the counting of votes, the announcement of results and their acceptance by the contending political parties.

Hence, when we consider the question of what conditions are necessary for free and fair elections, we should not confine ourselves only to the day that voting takes place, but should be cognizant of the entire process.

2.0 Elections and Democracy

There is a close correlation between elections and democracy. Democracy is popularly understood as a system of governance where power and civic responsibility are exercised by the majority of citizens of a country. This exercise can be done either directly or (and mostly) through representatives elected by the people. Of course, there is more to democratic governance than just majority rule, such as respect for minority rights, rule of law or separation of powers. The principle here, however, is that the authority of the government derives from the people and is based on their consent. This is commonly expressed in the dictum: “government of the people, by the people and for the people”.

In a democracy, therefore, it is the people who choose the leaders that govern them. Sovereignty rests with the people and not with the government since the government derives its legitimacy from the people. And since the people are the ultimate authority, they have the right to criticize and replace their leaders and representatives if they are not satisfied with their performance. It is also through elections that an incumbent government gauges its popularity or lack of it. Hence among the elements of democracy is the element of periodic free, fair and credible elections. Elections are important for safeguarding democracy, although elections alone are not sufficient to assure democracy.

3.0 Elections and Development

Free and fair elections in a functional democracy should offer candidates from different parties the opportunity to compete for the support of the people. This enticement for support should not be based on promises that the candidates know they have neither the possibility nor the intention of fulfilling, but should rather be grounded on well-articulated and achievable policy schemes and development objectives. These will become the important part of the

criteria by which the people judge the suitability of candidates and ultimately their choice of candidate.

The JCTR, inspired by the faith values that undergird its work, understands development as the movement from less human conditions to more human conditions. Less human conditions are characterised by lack of basic necessities essential for a dignified life, such as food, clean water, shelter, education, etc. In a developed state, people are free from misery and poverty. Development thus denotes a state of affairs where the prevailing living conditions promote and preserve the dignity of the human person. It is the people, through reflecting on their lived experiences, who set the agenda for development by outlining what they need for a decent livelihood. As such, they are interested in voting for those candidates who share the same developmental agenda with them.

4.0 Elections and Human Rights

The rationale for periodic free and fair elections also finds its basis on human rights. Human rights are inherent, inalienable, indivisible and universal entitlements due to each human being for the protection of their fundamental freedoms and the promotion of their dignity. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) establish that the authority of any government to govern shall be based on the will of the people as expressed in periodic and genuine elections. The International Bill of Rights contains articles that are related to the subject of elections and to that of democratic governance in general. It endorses rights such as the right to self-determination, freedom of political participation and affiliation, and the right to vote. The UDHR states the following:

Article 19

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

And the ICCPR states the following:

Article 1

- (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 21

- The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 25

- Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

The observance of these human rights is essential for a free and fair electoral process that respects people's freedoms and dignity. This observance, in addition, should also go to the country's own Constitution and electoral code of conduct. The Constitution of the Zambia has the following clauses related to elections:

Article 20

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

Article 21

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

The Zambia Electoral Code of Conduct (2006) outlines the following rights that each citizen has:

Article 6

Every person shall ... have the right to:

- (a) Express political opinion;

- (b) Debate the policies and programmes of political parties;
- (c) Canvas freely for membership and support voters;
- (d) Distribute election literature and campaign material;
- (e) Publish and distribute notices and advertisements;
- (f) Erect banners, placards and posters;
- (g) Campaign freely;
- (h) Participate freely in political activities;
- (i) Seek protection of the law from harm as a result of that person's political opinion or affiliation.

Human Rights are:

Inherent and Inalienable: They are a natural part of every person's existence and are not established or granted by any authority. Hence, the right to vote is a natural constituent of every human as a social being and cannot be taken away or waived. The law can only justly establish conditions under which this right can be exercised.

Indivisible, interrelated and Interdependent: All rights are equal in value. Fulfilling or taking away some rights involves fulfilling or affecting the enjoyment of others. The right to vote should be given equal importance, especially by the Government. One way to do this is to make available sufficient funds and resources for the electoral process.

Universal: They are the same for everyone; all people have the same equal rights. Every person who meets the just conditions for voting should have the right and opportunity to vote, regardless of their status in society (universal suffrage).

5.0 Concerns Raised in Past Elections

Various concerns have been raised for each of the recent elections that have been conducted in Zambia. These range from the electoral legal framework, voter registration, security, independence of the media, etc. However, before some of these can be highlighted, it is only just to state that from the advent of multiparty democracy in Zambia, elections have generally been free, fair and peaceful. The country, its citizens, the successive governments and political parties have generally and commendably shown political maturity and tolerance. As such, Zambia is one of the few African countries that have experienced relative tranquility during election times. Nonetheless, various instances of anomaly do sometimes threaten the credibility of the electoral process. The following are some of the concerns that have been raised by citizens and civil society organisations.

5.1 Legal Framework

Following allegations of vote rigging and irregularities in the 2001 elections and the election of Levy Mwanawasa as President by only 29% of the popular vote, there were calls for electoral and constitutional reforms from various sectors of the country. The 2001 elections had led to an erosion of public confidence in Zambia's electoral system. President Mwanawasa heeded to the call and established the Electoral Reform Technical Committee (ERTC) and the Constitutional Review Commission (CRC) to begin work on electoral and constitutional reforms.

The work of the ERTC culminated to the Electoral Act No. 12 of 2006, which introduced a number of positive electoral regulations. It detailed the rights and duties of the electorate, the candidates, political parties, the media, electoral prohibitions and various other regulations. It guaranteed an equal political space for competing parties and an environment conducive for people to vote freely without being intimidated. The Code managed to strengthen the 2006 electoral process which was largely regarded as free and fair.

However, it has been noted that most changes were of an administrative nature and did not adequately address pertinent issues, most of which were considered to be constitutional matters. Since consideration of the submissions of the CRC was to be deferred until after the 2006 elections, it meant that no significant changes were made to the electoral system, such that the 2006 elections, although largely free and fair, were held under a still inadequate electoral system.

5.2 Voter Registration

Some concerns relate to the voter registration process. It has been observed that the recurrent problem with regard to the voter registration is that not all people who are eligible voters are able to register as voters due to various logistical problems. Among those is that some people have faced difficulties in acquiring national registration cards during the period of voter registration (NRC), which is one of the prerequisites for registration as stipulated in the Constitution Article 75.

Some election monitors such as the Southern African Centre for the Constructive Resolution of Disputes (SACCORD) and the European Union Election Observation Mission also reported cases where some voters came with both their NRCs and their valid voter's cards on election day, only to find their names missing on the voter's roll, hence their disenfranchisement. Apart from the people's own apathy to go and verify, this problem is partly attributed to the rather short voter-verification period (of only two weeks in the 2006 elections) and the fact the some anomalies that some people pointed out were not corrected.

5.3 The Media

Zambia has a fairly good and liberal media legislation and practices that allow the operation of private media, both television and print. However, the national media, especially television (ZNBC), has often been accused of being biased towards the interests of the Government. This bias is also extended to the election period where there is a notable disproportion in airtime allocated to various political parties, which tends to be tilted more towards the ruling party. This disadvantages other political parties and deprives the voters of the information they need to vote wisely.

5.4 Election Management

Various logistical problems have been noted with regard to the administration of the elections. These include the lateness of election officers to their polling stations, the late delivery of election material and shortage of election material in some polling stations (EU Observation Mission Report, pg 25). The counting process and the announcement of results have also been slow at times, causing anxiety among voters. In certain constituencies, such as the Munali constituency in Lusaka in the 2006 elections, the final results announced were not harmonious with the votes cast due to a 20 000 votes difference in the parliamentary results which did not tally with the presidential results (SACCORD Report, pg 27).

6.0 2011 Election Outlook

Examining the current political situation prevailing in the country, can we say that the environment is conducive for free, fair and credible elections that will produce leaders who have the development of the nation at heart?

6.1 Violence

Zambia is notable for its generally peaceful political environment. In the second half of the year 2010, however, there was a notable presence of pockets of politically motivated violence. Examples that can be given include the violence leading to the Mufumbwe by-election; the violence that led to the cancellation of one of the ruling party's regional conferences; the violence that erupted in Mongu in January this year and the violence that sometimes ensues when different groups of cadres meet in political settings. There are also some party cadres who have threatened violence against certain people, such as the threats Bishop Duffy received from MMD cadres who vowed to send a "crack squad" to deal with him. If such incidents of violence are taken lightly, a culture of violence and intolerance could easily grow and get entrenched, thus making the situation unfavourable for free and fair elections.

6.2 Media

As it has already been stated above, there are concerns regarding the independence and impartiality of the national broadcaster ZNBC, which the majority of Zambians have more access to than they do to other private television stations. As a national broadcaster sustained by national resources, ZNBC should be accommodative to any sector of society wishing to express its political views to the public. Yet the reality is that ZNBC favours and is the mouthpiece of the ruling party and its interests. It does not give equal opportunity to opposition parties or other dissenting voice. Anything deemed threatening to the ruling party is not aired on ZNBC. The JCTR itself has had this experience when in December last year ZNBC refused to air its programme on economic, social and cultural rights, which was thought to be "disagreeable". The questions this way of proceeding raises are: Will other political parties get a fair amount of airtime in their campaigns? Will their views be represented objectively and truthfully? Are the proceedings of the electoral process going to be reported in an impartial, objective and honest manner?

6.3 Policy-based Electoral Debates

Apart from the need for free and fair elections, there is also the question of the quality of the people seeking to be elected. One feature of Zambian politics that has been noted is that it lacks substance. Political debate is characterised more by character persecution than policy discourse. In public, politicians invest more time and energy in slighting their opponents than in articulating their views on development and on other issues of importance. Hence, when some people vote, they do not even know the policies of the party or the person they are voting for. Their choice of candidates tends to be based on factors and criteria that are of no immediate relevance such as ethnicity, the perceived wealth of the candidate, or the illusionary and dishonest promises of immediate political and economic gratification. Kindergarten politics is detrimental to development.

7.0 Recommendations for Ensuring Free and Fair Elections

7.1 The Legal Framework and the Electoral System

The fact that the electoral code of conduct has had to be amended every after election is a call for a broader political imagination and political honesty that will result in a stable, just and enduring electoral system. Although the nation can take reassurance and have confidence in the current electoral code of conduct of 2006 (ECZ is yet to announce a new amendment to this electoral code), it will be important if the constitutional issues that have a bearing on the credibility of elections are dealt with and finalised before the elections, especially that some of them have been on the discussion table for quite some time.

The two most pertinent issues are the 50%+1 threshold and the period within which a president-elect should be sworn in after the announcement of the results. This policy brief will not reproduce the elaborate arguments that have been advanced for these two, but will merely highlight their underlying principles. The 50%+1 threshold simply guarantees that the person who becomes the president of the country has the endorsement of the majority of the voters. This system also broadens the scope of democratic participation in elections as it gives voters a second chance of choosing their second preferred candidate if their first did not make it to the election run off.

With regard to the period within which a president-elect should be sworn in, it has been argued that the current 24 hours within which the president-elect should be sworn in is too short to allow for verification of ballots if need arises, and for any response to be offered to any grievances that may be brought by other justifiably unsatisfied contenders. This period should be extended so as to offer reasonable satisfaction to challengers of the results, and thus render the process fair and credible.

7.2 The Electoral Commission

An independent and impartial electoral committee is essential for credible free and fair elections. Since the impartiality of the Electoral Commission has in some instances been called into question, especially the fact that it is appointed by the President, other ways of constituting it should be considered, such as creating its membership from an equal number of representatives of contesting parties, some representatives from civil society organisations and ordinary citizens. Credibility is assured by creating trust among the electorate. If the Electoral Commission is perceived to be impartial and engaged in dubious activities intended to confer victory to one political party, then the credibility of the elections will be compromised.

7.3 Voter Registration

The mobile voter registration system introduced by the Government is commendable as it brings the exercise closer to the people. However, the ECZ should consider making the voter registration exercise a continuous process so that citizens can register as voters at anytime of the year, and just verify when an election is close by.

7.4 The Media

The media should take an active part and act as a watchdog that would create fear of publicity for anyone contemplating on cheating. Its role in voter education is indispensable. It

should remain impartial throughout the electoral process and refrain from either showing favour to or discrediting a particular political party. Media organisations should hold training sessions for their members so that they are well informed on the electoral process and the various ethical practices they need to follow when handling information on sensitive subjects such as elections and politics in general, lest they incite confusion and violence.

7.5 Political Parties

Political parties have an important duty to play in the electoral process in order to contribute to making the process free and fair. They should be aware that their role is not just to campaign for votes, but also to educate their supporters on the electoral process itself.

Political parties should introduce their candidates amply before the elections so that they get to be known by the electorate. What is even more advised is that parties organise primary elections to allow their supporters to choose their candidates. Currently the norm is that political parties just impose candidates on people.

7.6 Election Management

- i. Election officers should be well trained so that they can perform their duties efficiently. Transport and accommodation near polling stations should be provided for them so that they can arrive at polling stations before the time for voting is set to begin.
- ii. The Electoral Commission should ensure that all election materials needed are provided for each polling station. They should use the voter's roll to know how much of the material will be required as well as provide extra material for contingency.

7.7 Further Ways of Instilling Confidence

- i. The Electoral Commission should explore the possibility of having votes counted in each polling station, the results published and pasted outside the polling station before they are sent to the collation centre for tallying with others and for official announcements. This ensures transparency as voters themselves will be able to personally verify the truthfulness of the official announcements.
- ii. Parallel voter tabulation should be allowed. Local and international election observers, together with contesting political parties and individual citizens, should be able to independently document the results as they are being counted and announced in the polling station and trace their path until they are officially announced to the nation. It should be noted that this is a crucial part of the election monitoring process as much of the rigging takes place at this stage.
- iii. A definite time-frame should be set within which results should be announced.

7.8 Respect for the Rule of Law

It is one thing to have a good electoral legal framework and another to be faithful to its provisions. It will only be just and noble if the Government, the ECZ, the election officials and all who are directly involved in the facilitation of the electoral process, respect and abide by the Constitution, the Electoral Code of Conduct and the common-sense dictates of justice and morality. This applies to all the voters and monitors as well.

Conclusion

Zambia's endeavour to consolidate democracy and to fulfill its human rights obligations for the integral development of its citizens will not be fully consummated if the credibility of its electoral process is put into question each time there is an election. Despite the commendable strides the country has made in guaranteeing generally free and fair elections, citizens and civil society organisations still call for more reforms as they note various significant weaknesses in the current electoral system that pose a threat to their right to participate in their own governance through electing their representative in government in an enabling electoral environment.

Free and fair elections, in addition to their importance to democracy and development, are essential in ensuring peace in the country. If elections are perceived by citizens as having been unfair, some disgruntled citizens may express their frustration in a manner that may incite violence. The political impasse and violence currently ensuing in Ivory Coast is partly due to the perceived unfairness of the electoral process by one of the contestants, hence the contestant's refusal to accept the results.

It is the hope of the JCTR, in its work of promoting justice and the fullness of human life, that the recommendations given in this Policy Brief will be taken into consideration by all election stakeholders, especially the Government, in their practices during the electoral process and in the formulation and enforcement of electoral laws and guidelines to ensure that the people's will is respected and upheld.

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2011-04

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Moyo, Anold

Jesuit Centre for Theological Reflection

Moyo, A. (2011). Free and Fair Elections: Essentials of the Democratic Process. Lusaka, Zambia; Jesuit Centre for Theological Reflection (JCTR)

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