



Zambia Electoral Analysis Project (ZEAP) Briefing paper series

Briefing Paper 7: Institutional “Collusion” in the Electoral Process: The Electoral Commission Of Zambia, The Zambia Police and The Department Of National Registration

Findings

- Effective local government remains an aspiration for many in Zambia, but decentralisation reforms have failed to deliver, due to the centralising tendencies of the national government, an unsupportive economic environment, and inconsistent donor policies.
- The Electoral Commission of Zambia, Department of National Registration and the Zambia Police play an important role in the electoral process.
- These key institutions have favoured the ruling party, both in terms of actual decisions and in terms of implementation.
- Each of these decisions has had a significant effect in critical areas such as the electoral register and the campaign environment - but what is really important to understand is their cumulative impact.

Policy implications

- The “multiplier” effect of these decisions creates a significant advantage for the ruling party that is not immediately obvious if one only looks at each institution on its own.
- The deployment of the military may yet represent an important fourth institution reinforcing this uneven playing field.

1. Introduction

The holding of democratic elections depends on key public institutions. In relation to the outcome of the electoral process, public institutions should play a non-partisan role and be seen as impartial umpires. This contributes to a flattening of the playing field and legitimacy of the electoral process. As Muna Ndulo and Sara Lulo have argued, “If the referee of a contest is perceived to be biased, the result will not be readily accepted, and the losing side feels cheated.”¹

Institutions may degenerate and depart from their non-partisan role and instead, play the role of interested participants in the electoral process. This can be seen from the decisions they make, their execution and their impact on the electoral process. This briefing paper highlights clear cases of institutional collusion involving key electoral institutions, which have the consequence of eroding the fairness of the electoral process. The institutions discussed are the Electoral Commission of Zambia, the Zambia Police and the Department of National Registration.

The word “collusion” in this briefing paper is used denote a purposeful alignment of institutional actions by their leadership which is clearly perceived to be guided by partisan political actors. In this case, the three institutions have been acting in synchronicity with one another, with the consequence of creating an environment that tends to favour the ruling Patriotic Front (PF) and disadvantage the opposition. Overall, their actions are incompatible with the tenets of a free and fair electoral process. This effectively leads to the situation, according to Okoth-Ogendo, where constitutional institutions exist on paper but in reality are inadequate institutions that do not enforce constitutional norms but actually cooperate with the ruling regime to undermine them.²

“Collusion” of Zambian institutions ahead of the 2021 General Elections

1. Electoral Commission of Zambia

The Electoral Commission of Zambia is established as an autonomous institution under the Constitution.³ It has a wide mandate to conduct elections. Its specific functions include implementing the electoral process; conducting elections and referenda; registering voters; settling minor electoral disputes; regulating the conduct of voters and candidates; accrediting observers and election agents; and delimiting electoral boundaries.⁴ Due to this broad mandate, ECZ is the single most important public institution in managing the electoral process. In the run-up to the 2021 general election, the ECZ does not appear to have played the role of an impartial umpire in the electoral process, but seems to be an institution inordinately tilting the playing field in favour of the ruling Patriotic Front (PF). A few examples of this are highlighted below.

a) Contentious annulment of voters' roll

In September 2020, the ECZ made a highly contested decision to annul a long-standing valid and lawful voters' roll and to replace it with freshly registered voters to be captured in 38 days. This decision resulted in a series of challenges in courts of law by human rights organisations, activists, and opposition political parties. Many argued that this decision was the single most important decision made by the ECZ to skew the political landscape in favour of the ruling PF and was potentially inflammatory.⁵ The decision had no basis in law as the law simply requires the ECZ to conduct continuous registration of voters.⁶ ECZ has no legal authority to abolish an established voter register. It can only add new entrants to the existing register.

The registration process was beset by several challenges. For example, the days allocated for registration were inadequate. This caused unnecessary congestion and long lines at registration centres. Invariably, the kits deployed at the registration centres turned out to be inadequate.⁷

Because the registration process lacked transparency, several allegations were made against the integrity of the register, the major one being that the new register has more voters in perceived ruling PF strongholds while numbers of voters have generally reduced in perceived opposition strongholds. There were also concerns about the registration of foreigners from neighbouring countries.

Considering that there were many questions raised about the registration process, one would have thought that ECZ would gladly subject the register to an independent audit to enhance transparency and public confidence in the process. The ECZ, however, on 5 January 2021 announced that they will not subject the new register to any audit process as the new register had addressed most concerns stakeholders had.⁸

Attempts by the Christian Churches Monitoring Group (CCMG) to verify the integrity of the register through alternative mechanisms were frustrated by ECZ. CCMG had announced its plans to conduct a “people-to-list” test whereby CCMG could have directly checked the details of a representative sample of actual registered or purportedly registered persons and reconciled the information with what was in the register. This route was blocked by ECZ on the pretext that it was a crime to do so.⁹ Considering the challenges that surrounded the registration process and ECZ's unwillingness to subject the voter register to an independent audit process, questions about the integrity of the voter register and allegations that it is skewed in favour of the ruling party are given credence.

b) Weaponising the COVID-19 situation to shrink political space.

Zambia was hit by a third and more aggressive wave of COVID-19 from about May 2021. The country was recording between 20 and 50 deaths, and a prevalence rate in excess of 20% of the population, per day. This coincided with the opening of the official campaign season. It was, therefore, clear that there would be a need for adjustments to political campaigns to reduce the possibility of the spread of the disease. However, whatever measures were to be adopted needed to be applied equally to all parties and candidates. Without that, the COVID-19 pandemic could be seen as a tool to limit political space for those negatively affected. ECZ appears to have played its role improperly through selective application of COVID-19 protocols to hamper opposition meetings while allowing the ruling party to freely mobilise. The ECZ cited the COVID-19 situation in order to limit the exercise of freedoms by political parties and the electorate's access to political messages. Most interestingly, the ECZ's timing of these restrictions raised concerns that it was reacting in adherence to the PF's pronouncements regarding its own campaign approaches. On 26 May 2021, at the official opening of the campaign period for the 2021 general elections, President Edgar Lungu, who was also the presidential candidate for the ruling PF party announced that his party would not hold large political gatherings and rallies because of the COVID-19 situation. He also "encouraged" the opposition to emulate his examples, and in the same breath, instructed the police to arrest those who held large gatherings. As though instructed by him, the ECZ, in unison with an ad hoc advisory task force constituted mainly by government agencies, followed suit to "discourage" all political parties from holding rallies. The main opposition alliance, led by the UPND, continued

to hold rallies and roadshows and was met by a subsequent outright ban on rallies by the ECZ. Despite his public pronouncement not to hold rallies, Lungu continued pulling large crowds and campaigning under the pretext of "commissioning development projects" or "sensitising" the public to COVID-19. When his opponent Hakainde Hichilema did the same, ECZ quickly denounced him and police moved to issue arrest threats, citing ECZ prohibitions.

It must be noted that this development is part of a pattern that emerged even before the campaign season was in sight, whereby COVID-19 regulations were used to limit and hamper the capacity for the opposition to mobilise, while leaving the ruling party free to monopolise political space. In fact, the government was criticised for paying very little attention to fighting the disease compared with fighting the opposition. A newspaper editorial lamented the chaotic approach the government took in fighting the virus and considered its approach to be negligence:

So why is the government acting as if [the] surge in Covid mortality rate has come as a surprise? Why are they behaving like they didn't expect anything of this sort to happen? What is now happening in Zambia is a consequence of negligence. This is incompetence, and our government is guilty as charged.¹⁰

The approach the government took suggests that it had little interest in staving off the spread of the coronavirus, as ruling Patriotic Front (PF) members continued to mobilise and hold meetings unhindered. For example, in July 2020, police arrested members of the opposition UPND who were holding intra-party elections in the Copperbelt province, despite holding the meeting outdoors on a farm in order to keep social distance.¹¹ This was on the pretext that the police were not given any

notice of the meeting. Similarly, police blocked youths who wanted to hold a procession in protest against government corruption in June 2020.¹²

The police, usually under the control of ruling party supporters (popularly referred to as “carders” in Zambian parlance) have generally been agents of enforcing the closure of the political space in favour of the ruling party, under the guise of enforcing government coronavirus measures. An editorial in a national tabloid succinctly summarised this situation as follows:

Patriotic Front cadres have been the main enforcers of the Public Order Act. They have been stopping the opposition structures from holding even the smallest of meetings saying the campaign period has not started. And they would order the police to arrest them. But any other meetings or gatherings they would tolerate. And today the COVID-19 regulations are being enforced by them in the same way. Anybody else can gather for a meeting but not opposition members. But they themselves are holding meetings to organise and mobilise for next year’s elections.¹³

Given this trajectory, when ECZ came on board to regulate the campaign period and limit meetings without enforcing the ban on the ruling party, they were effectively leaving the political space to be monopolised by the ruling party. It should be mentioned, however, that towards the end of the campaign period, the opposition defied the ban by claiming, as did President Lungu, to be distributing face masks to prevent COVID-19.

2. The Department of National Registration

The Department of National Registration (DNR) is one of the nine departments under the Ministry of Home Affairs.¹⁴ As the name entails, one of its core functions is the registration of citizens. While the ECZ has the statutory obligation to conduct voter registration, the issuance of a voter’s card depends on one proving Zambian citizenship through a national registration card (NRC) issued by the DNR. Therefore, in order to be registered as a voter, one must be in possession of an NRC. Because it issues the fundamental prerequisite for voter registration, the DNR plays a huge role in determining successful voter registration in the country. In the run up to the 2021 elections, DNR played a controversial role in reducing numbers of registered voters in the opposition areas. Before the official NRC issuance exercise commenced, the DNR carried out a secret registration process in ruling PF strongholds. A report by the Christian Churches Monitoring Group (CCMG) established the following:

CCMG’s observers have reported 54 instances of unannounced mobile NRC issuance activities since November 2019. These include 13 instances in Eastern, 16 instances in Luapula, one instance in Lusaka, 5 instances in Muchinga, 13 instances in Northern, and 6 instances in North-Western. After a lull in April and May when the COVID-19 mitigation measures were more restrictive, instances of unannounced mobile NRC issuance activities increased in June and are at their highest level thus far in July, with a total of 10 instances taking place in Eastern, Luapula, Muchinga and Northern provinces. CCMG remains concerned that the lack of public information on unannounced mobile NRC issuance activities creates the

perception of an unfair process and so could damage public confidence in the electoral process (CCMG, 2020).¹⁵

The Ministry of Home Affairs did not provide any public explanation for the varying NRC issuance rates against the targets.

The total number of people who were registered as voters per province, as measured against the eligible voters, is shown in the table below.

Table 1: Number of registered voters against eligible population per province

Province	ECZ Registered Voters	ZamStats VAP Estimate	% Registered
Luapula	562,230	601,058	93.5%
Eastern	896,213	973,790	92.0%
Western	447,143	507,184	88.2%
North-Western	384,452	447,661	85.9%
Northern	600,859	706,495	85.0%
Total Zambia	7,002,393	8,414,839	83.2%
Copperbelt	1,023,223	1,257,460	81.4%
Province	ECZ Registered Voters	ZamStats VAP Estimate	% Registered
Lusaka	1,241,992	1,545,892	80.3%
Muchinga	401,542	507,366	79.1%
Southern	778,099	1,005,816	77.4%
Central	666,640	862,117	77.3%

(Source: CCMG16)

3. The Zambia Police Service (ZPS) and the Deployment of the Military

The Zambia Police Service is established under the constitution as the primary law enforcement organ of the state, with a broad mandate to enforce the law in order to keep peace and protect property. The Police Service has, like the ECZ and DNR, applied tools at its disposal to skew the electoral process in favour of the ruling party. In relation to the police, this has been done mainly through the following ways:

a) Biased application of the Public Order Act:

The Police Service has been heavily relying on colonial statutes, principally the Public Order Act, to disrupt opposition and critical civil society meetings. The law has largely been enforced against the opposition and not the ruling party. The period between 2016 and 2021 was particularly difficult for opposition and civil society mobilization, as ZPS armed itself to the teeth and increased crackdowns on them with a conspicuous absence of equivalent attention to the PF mobilisation. Detailed instances of these crackdowns are documented in a recent report by Amnesty international.¹⁷

b) Weaponising COVID-19 restrictions against opposition

Following the ECZ's restrictions on political campaign activities due to COVID-19, the ZPS ramped up its heavy-handedness on opposition political party activities, leaving the PF to campaign unimpeded. On numerous occasions, police accosted opposition political leaders during their campaigns to break up their gatherings on account of the Public Order Act and, in early 2021, citing COVID-19 rules. For example, on 9 July 2021, police attempted to prevent Democratic Party Leader Harry Kalaba's door-to-door campaigns in Kabwe.¹⁸ On the same day, President Lungu pulled thousands of crowds in Lusaka's Mutendere and Bauleni compounds with the full escort of the police.¹⁹ Lungu continued to tour the country, pulling large crowds, without following laid down COVID-19 procedures, while his opponents were always trailed and often blocked by police. CCMG, for example, reported the following:

CCMG noted several troubling aspects of police conduct during this election period under review. From the time the campaign period began until the announcement of the suspension of mass rallies, CCMG observers reported seven (7) political party meetings that were prevented or stopped by police citing COVID-19 measures. This action disproportionately affected UPND, with 6 out of 7 instances recorded. Furthermore, since the campaign period began, five (5) party meetings were prevented or stopped by police for reasons that were not given. This action disproportionately affected the UPND, with 4 out of 5 instances recorded. Of particular concern were four (4) incidents where excessive force, that is, either tear gas or bullets were fired by police since our observation began in March. All these incidents involved UPND except one where both PF and UPND were involved.

In Ndola our monitors observed that the police blocked the UPND party president for several hours from attending a funeral. As if this was not enough, on 6th June our monitors reported that police allegedly fired shots at citizens in a bid to disperse the crowd as the UPND party president was trying to attend a church service.²⁰

It should be noted that there have been several police officers who tried to apply the law fairly and acted to discipline violent PF carders (supporters). However, officers who acted professionally in this manner faced dismissal by the president. For example, President Lungu dismissed senior police officers who disciplined violent PF carders in a parliamentary by-election in the Sesheke district.²¹ In December 2020, President Lungu dismissed several senior officers, including the deputy inspector general of police, Bonny Kapeso, who were seen to be relatively more professional and had occasionally acted against PF carders.²² When professional officers are disciplined for doing their work professionally, an air of impunity is created for violent carders to continue acting lawlessly without consequence.

To compound the situation, on 1 August 2021, President Lungu deployed the military to complement the police in keeping law and order. This followed an incident in Lusaka where two persons (reportedly PF carders) were killed, allegedly by opposition UPND carders, in unclear circumstances.²³ Although the deployment took many by surprise, it seems to have been well planned ahead of time. In early July 2021, for example, a PF-aligned organisation had already called upon the president to deploy the army to police elections.²⁴ This was followed a few days later by a statement by army commander, William Sikazwe, who indicated that the army was ready to be deployed.²⁵ Considering that the military has never been deployed to police elections in

Zambia before, Sikazwe could not have been speaking as a result of past experience but as a matter of anticipated implementation of what was planned. The real reason for deployment of the soldiers seems to be to instil fear in citizens, in anticipation that the election will be disputed. This was better captured by the Daily Mail, a government newspaper, perhaps inadvertently, as follows:

The military is ready to handle any violence that may erupt after the announcement of the winner in next month's general election, Zambia Army Commander William Sikazwe has said. Lieutenant General Sikazwe says the security wings will not leave anything to chance by letting the peace that Zambians enjoy be destroyed by disgruntled individuals who may want to discredit the results.²⁶

Considering that the country has never had protracted acts of electoral violence in the past, and has never deployed the military to police elections, the statement by the army commander suggests that the ruling party expects a chaotic election to which people may respond violently. Ultimately, the deployment of soldiers, as US senator Jim Risch recently stated, shows that democracy in Zambia "remains under threat".²⁷

4. Conclusion

Although Zambia has not been a fully developed democracy, the challenges in the electoral process in the run towards the 2021 general elections do not seem to be isolated glitches. Zambia has held elections consistently since independence and its institutions have accumulated a lot of logistical expertise. From this perspective, glaring anomalies such as reported above do not seem to be isolated occasional mistakes but appear to be systematic acts tending to tilt the playing field in favour of the ruling party. When put together, the decisions of these three institutions tend to reinforce each other, leading to a lopsided political environment in favour of the incumbent party.

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(Priva wrote the policy brief before he joined the CIHR)

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