

# **Uncertainty as a Strategy: Electoral Processes in Zambia 1991-2001**

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**WP 2003: 13**

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# INTRODUCTION

Sliding from an early optimism regarding what multiparty democracy could accomplish for sub-Saharan Africa, current perceptions within the academic community and international development aid circles have become increasingly mixed as goals for political accountability, economic development, and peace remain unfulfilled. To a large extent, these changing perceptions relate to concerns about the role of the electoral institutions and the impact of multiparty elections on decision-making in sub-Saharan Africa.

On the one hand, for the region as a whole, the political changes witnessed since the early 1990s appear enduring. Legislative multiparty elections have been convened in forty-two of Sub-Saharan Africa's forty-eight countries since 1990. Many nations have recently convened their third election within the framework of a multiparty constitution suggesting that regular elections have become institutionalised. As argued by van de Walle (2001: 243), this routinisation of elections contrasts sharply with previous periods. On the other hand, despite 'democratic maturity' in the form of consecutive multiparty elections, the quality of the electoral process has not improved everywhere. Bratton and Posner (1999) noted a distinct decline in quality from the first to the second elections conducted in a number of Africa's new democracies. With some exceptions<sup>1</sup>, despite regular competitive elections, most African regimes fail to meet more substantive tests of democracy – the possibility of government turnover through free and fair elections. Electoral democracy exists but pluralist constitutional democracy has not challenged the hegemony of authoritarian leaders (Adejumobi 2000; Diamond, 2002; Walle 2001). While elections have become a 'must' for gaining international recognition and economic assistance for impoverished African nations, these political openings have so far stopped short of actual democratisation.

This *mélange* has led scholars like Carothers (2002) to conclude that most of Africa's new democracies have not yet consolidated as democracies, but have entered a 'grey zone' in which the line between the state and the ruling party has blurred. Such regimes are 'stuck in transition'; a form of democratic rule is maintained through the conduct of regular elections without blatant electoral fraud, yet they feature electoral processes influenced long in advance of the formal campaign (Elklit 1999; Burnell 2002). This phenomenon has been called partial reform equilibrium - the tendency of political elites to avoid widening their sphere of accountability in order to protect their positions - and has also been observed in the transition regimes of Eastern Europe (Stoner-Weis 2001, Hellman 1998).<sup>2</sup> In this article, we argue that Zambia's democratic developments manifest the partial reform equilibrium. Since its restoration of multiparty democracy Zambia has held three multiparty contests in 1991, 1996 and 2001. The expectation was that the first election under multi-party rule would be surrounded by controversies while later

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<sup>1</sup> The electoral process in Ghana since 1996 (Boadi 2001) in Mali and Lesotho in 2002 (Landsberg 2002) and Kenya 2002 (Songstad 2003) largely met the contestants and the domestic and international observers' expectations of a democratic process.

<sup>2</sup> For instance, describing the failure of national Russian parties to penetrate the regional political institutions in most of Russia's provinces, Stoner-Weiss suggests that the underdevelopment of such political institutions is preferable for regional political elites as their weakness enables the elites to keep control of political and economic capital.

elections would be less controversial as the voters, candidates, and administrators gained experience with multi-party contests. Unfortunately, although Zambia did indeed make a promising start in 1991, its subsequent elections have not progressed as hoped. A number of parties boycotted the 1996 elections due to disagreement over electoral rules and processes. The parties that contested the 1996 elections later challenged the election results in the Zambian courts. While there was no boycott of the 2001 general elections, the uncertainty of the rules and regulations affected the quality of the 2001 electoral process. After the election three of the unsuccessful presidential candidates brought lawsuits against the state.<sup>3</sup> The contestants claimed that the courts should annul the election due to irregularities prior to and during the elections themselves. In other words, Zambia falls short of both international and local expectations of a democratic process. Echoing experiences from other African countries, the Zambian democratic process has remained ‘stuck in transition’ between actual democracy and authoritarian systems.

Our findings are that this failure to achieve electoral progress is primarily due to the continued instability of election rules and regulations and the weakness of the organisation in charge of electoral administration – the Electoral Commission of Zambia (ECZ). The ability of Zambia’s political elites to take advantage of the instability of the rules and regulations guiding elections and electoral administration has maintained the same party in power through three consecutive elections, despite its alarming economic record. The Zambian case illustrates how uncertainty and poor quality elections enable leaders to control the pace and scope of political inclusion in order to preserve their own positions.

This article is organised in five sections. Following this introduction, section two presents the outcome of three Zambian elections from 1991-2001. In section three Zambia’s electoral experiences are analysed along two central dimensions of the electoral process: the way the electorate has been defined and the way the competition between candidates and political parties has been regulated. Section four explains the limited advances of the Zambian electoral process due to the continued institutional uncertainties surrounding the electoral process and the role of the Zambian Electoral Commission. A final section summarises the argument and findings.

## **ASSESSING THE QUALITY OF ELECTORAL PROCESSES: ZAMBIA 1991-2001**

Zambia experienced a change of leadership in the founding elections of 1991. The incumbent president, Kenneth Kaunda who was representing the UNIP (United National Independence Party), lost to Frederick Chiluba, a trade-union leader, who was running as the candidate for the MMD (Movement for Multi-party Democracy). This success was confirmed when Chiluba was re-elected in 1996. The MMD also secured a vast majority of the seats in the 1991 and 1996 parliamentary elections. The outcome of the 2001 parliamentary and presidential elections confirmed the MMD as the leading party, but the margin of victory was narrow. Patrick Levy Mwanawasa of the MMD was sworn in as Zambia’s new president on January 2<sup>nd</sup>

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<sup>3</sup> The electoral victory of Mwanawasa was challenged by three opposition parties (UPND, HP and FDD) in the Supreme Court and 37 parliamentary elections were petitioned in the High Courts. (UN Integrated Regional Information Networks, Feb.5, 2002). (<http://alllfrica.com/stories/printable/200202050147.html>)

2002, after the most closely contested elections witnessed in the country. According to the official results Mwanawasa beat his main rival, Anderson Mazoka of the United Party for National Development (UPND) by just under 34,000 votes, or by 1.9% of the votes cast (Table 1). Only 19.5 % of the registered voters voted for Mwanawasa, or about 10 % of those eligible to vote. Of the votes cast, 71.3% were in favour of the other ten candidates, leaving Mwanawasa with the weakest electoral mandate of any previous president since he had only 29 % of the total vote. The parliamentary elections also reduced the MMD dominance as the MMD now controlled only about 50 % of the seats (including the eight seats selected by the presidency) whereas after the 1996 elections the MMD controlled 87 % of the seats (Table 2). By September 2002, however, the MMD had regained a parliamentary majority due to defections from opposition parties and MMD victories in subsequent by-elections.

**Table 1. Votes in Zambian Presidential Elections 1991-2001 (in percent)**

	1991	1996	2001
Frederick Chiluba (MMD)	75.8	72.6	29.2*
Kenneth Kaunda (UNIP)	24.2	-	10.2**
Dean Mung'omba (ZDC)	-	12.7	-
Chama Chakomboka (MDP)	-	3.3	-
Humphrey Mulemba (NP)	-	6.7	
Akashambatwa Mbikusita Lewanika (AZ)	-	4.7	0.6***
Anderson Mazoka (UPND)	-	-	27.2
Christon Tembo (FDD)	-	-	13.2
Godfrey Miyanda (HP)	-	-	8.1
Benjamin Y. Mwila (ZRP)	-	-	4.9
Micahel Sata (PF)	-	-	3.4
Nevers S. Mumba (NCC)	-	-	2.2
Yobert Shamapande (NLD)	-	-	0.6
Gwendoline C. Konnie (SDP)	-	-	0.6

\*In 2001, the MMD candidate was Levy Mwanawasa.

\*\* In 2001, the UNIP candidate was Tilyenji Kaunda (son of Kenneth Kaunda).

\*\*\* In 2001, the AZ candidate was Inonge Mbikusita-Lewanika.

Sources: 1991, 1996: Krennerich (1999); 2001: Electoral Commission of Zambia: <http://www.elections.org.zm/results>

**Table 2. Zambian Parliamentary Elections 1991-2001: Votes and Seats for the Three Largest Parties (in percent)**

	1991		1996		2001	
	Votes	Seats	Votes	Seats	Votes	Seats
MMD	74.3	83.3	61.0	87.3	28.0	48.9
Second party *	24.7	16.7	13.8	1.3	23.8	31.1
Third party **	-	-	7.1	3.3	10.6	8.7

\*The second party in 1991 was the UNIP; in 1996 was the ZDC, in 2001 was the UPND.

\*\* The third party in 1996 was the NP, in 2001 the UNIP.

Sources: 1991, 1996: Krennerich (1999), 2001: Electoral Commission of Zambia (<http://www.elections.org.zm/results/seatswonout.php>)

## **DEMOCRATIC ELECTORAL PROCESSES – IN THEORY, IN PRACTISE AND IN ZAMBIA**

We argue that all three multiparty elections since 1991 have been characterised by uncertainty of the rules and regulations of the electoral process and problems of electoral administration. To understand why this uncertainty and these problems have resulted in a failure of the electoral process to advance considerably since 1991, we need to identify the characteristics of a democratic electoral process to measure the Zambian elections against.

An electoral system entails “institutionalized procedures for the choosing of officeholders by some or all of the recognized members of an organization” (Rokkan 1970: 147). The legitimacy of the electoral process hinges on the electorates’ and candidates’ perception that the process has been conducted in a way that does not in advance ensure a certain outcome: In a democracy there should be certainty about the process, but uncertainty about the results (Przeworski 1991: 40-41). To ensure legitimacy, the electoral process must be regulated by constitutional rules and special legislation as well as by cultural norms developed to govern the behaviour of the actors. The electoral process necessitates rules for electoral formulae, constituency demarcation, electorate definition, candidate nomination, political party registration, and electoral campaign conduct.<sup>4</sup> The legal and administrative framework of the elections should provide predictability to the process and ensure an even playing field between those competing for votes. In this paper we will deal with two central aspects of the electoral system: The way the electorate has been defined and the way the competition between candidates and political parties has been regulated.

The expectation of most is that the electoral process should ensure that all members of the electorate are provided with an equal opportunity to participate and that those competing for votes – the candidates and the political parties - do so on a

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<sup>4</sup> Elklit (1999) identifies twelve steps: 1. Establishment of the legal framework for the electoral process, 2. Establishment of adequate organizational management structures, 3. Demarcations of constituencies and polling districts, 4. Voter education and voter information, 5. Voter registration, 6. Nomination and registration of political parties and candidates, 7. Regulation of electoral campaign, 8. Polling, 9. Counting and tabulating the vote, 10. Resolving electoral disputes and complaints, 11. Election result implementation, 12. Post-election handling of election material.

level playing field (Dahl 1991: 109-120). However, as we shall see, in practise it has proven difficult to fulfil these democratic expectations.

### **Defining the electorate**

No country is able to fully ensure that all members of the electorate are given equal opportunity to participate and deviations from this ideal occur regularly. The distinction between *qualified* and *registered* voters is one of the most problematic issues in this regard. A multitude of different arrangements exist, from automatic voter registration as in European countries, to self-initiative to become registered as in the United States and in many newly democratised African states. These procedures inevitably create a discrepancy between the ‘potential’ and the ‘actual’ electorate. Similarly, having the right to vote is not synonymous with freedom to exercise the voting right. A wide range of factors impact on this exercise, from deliberate attempts to prevent groups of voters from participating to administrative problems involved in the location of polling stations, opening hours, and the availability of ballot papers. The organisation of the voting itself, such as ensuring secrecy of voting and the counting of votes according to democratic standards can create additional imperfections in the electoral process. In Figure 1 we list the main criteria for ensuring that all members of the electorate are given an equal opportunity to participate in the electoral process.

#### **Figure 1: Defining the electorate**

- a) all adults are qualified voters
- b) each voter has only one vote
- c) each voter has an equal opportunity to participate in the elections
- d) when casting their votes the electorate should be free to choose among the alternatives (parties, candidates) without fear for picking a particular choice, or without being compensated for choosing a particular alternative
- e) each vote is counted only once and for the alternative chosen by the voter
- f) only ballots cast by the voters are included in counting

For the electoral process to operate according to expectations all citizens that fulfil the voter qualification requirements should have the right to vote and secondly, no one who does not fulfil the requirements should be allowed to vote. Most African democracies do not have a permanent and continually updated roll of voters; instead they have to create the roll before every election. A permanent and automatically updated registry of voters requires a national citizen registry that continually takes into account changes in the composition of the population as people pass away, new ones qualify for voting, others relocate, and immigrants acquire citizen status<sup>5</sup>. Inadequate registration leads to a gap between the number of voters and the number of citizen fulfilling the requirements for registration of the electoral process. The 1991, 1996, and 2001 general elections in Zambia display major differences between the numbers of eligible voters and the number of registered voters.

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<sup>5</sup>For example, it is unclear what the total voting age population of Ghana is due to lack of updated census figures, according to Nugent (2001).

## Defining the electorate in Zambian elections 1991-2001

Zambian citizens above the age of eighteen are, with some exceptions, eligible to vote. This number has increased by almost 25%, from 3.8 to almost 4.7 million during the past decade. The total Zambian population is estimated to be above 11 million (2001). A precise calculation of the increase in voters would require accurate knowledge of the relevant age cohort entering into voting age minus deaths in the previous voting age population. Thus, the basis for assessing the size of the demos is a census that keeps track of the shifting composition of the population. The Central Statistic Office (CSO) carries out a census of the population and households every 10 years.

To be registered as voters, qualified citizens must first obtain a national registration card (NRC), which Zambian citizens need for a variety of administrative purposes. The registration process is conducted by the ECZ, organising registration offices throughout the country where the qualified citizens bring their NRC and report for voter registration. The registration is then carried out at a national centre that produces a voting card. When this process is finalised, the voters are required to go back to the registration centres and pick up their voter registration cards. Voting in the election itself is the fourth step in the process. As can be expected, this four-step process leads to a gap between the voting age population and the actual electorate.<sup>6</sup> Table 3 displays the figures for eligible voters, registered voters and participating voters in the three multiparty contests in Zambia, 1991-2001. The figures illustrate both the considerable gap between eligible and registered voters, and the gap between those that have the right to vote vs. those that actually take part in the elections.

**Table 3. Voter registration and actual votes in Zambian elections 1991-200**

Year	Eligible voters	Registered voters	Reg./ eligible	Total vote	Vote/Reg	Vote/Elig. vote
<b>1991</b>	3,8 mill	2,9 mill	77 %	1,3 mill	45 %	35 %
<b>1996</b>	4,4 mill	2,7 mill	51%	1,3 mill	56 %	29 %
<b>2001</b>	4,7 mill	2,6 mill	55 %	1,7 mill	65 %	36 %

Sources: Zambia Elections Monitoring Co-ordination Committee (1991), 1996 and 2001: Electoral Commission Zambia (ECZ).

In the 1991 elections in Zambia, registration of voters became highly controversial. On Election Day, thousands of voters were reported missing from the voters' rolls (Andreassen et al. 1992: 29). The voter registers used had been compiled in 1988 and revised in 1990, when a supplementary voter registration had been compiled for the planned referendum on multiparty democracy, which was later cancelled (Lodge et al. 2002). The delimitation of constituencies also resulted in thousands of voters being turned away at the polling stations to look for their names on the voting lists of other polling stations. As a result of the uncertainty of the process, administrative

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<sup>6</sup> In the aftermath of the 2001 elections it has been decided to conduct continuous voter registration. However, the cost for this operation has been estimated at K twelve billion, whereas only K four billion was made available in the 2002 budget. The process has therefore not yet been implemented. Times of Zambia, March 23 2003 (<http://allafrica.com/stories/printable/200303240354.html>)

problems, and cumbersome procedures the election turn-out was low, at 45 per cent (of registered voters). About 1.3 million people cast a vote in the 1991 presidential and parliamentary elections, approximately 35 per cent of the estimated eligible electorate. Election monitoring reports, however, dismissed allegations of manipulation and claimed that the irregularities witnessed were caused by inadequate election preparations (*ibid.*).

Before the 1996 Presidential and Parliamentary elections, the voter registration exercise was computerised for the first time. However, the controversies around the government's handling of the contract to the Israeli NIKUV-company led to widespread allegations of corruption and rigging of the elections. The opposition claimed that the government had handed NIKUV the contract without proper tender procedures and it was alleged that the office of the vice-president played a central role (Bratton and Posner 1999, Gould 2002). Fewer voters registered in the 1996 voting exercise than in 1991 – a reduction from 2.9 million in the 1991 exercise to 2.27 million registered in 1996 - from an estimated population of 4.6 million eligible voters. The registration process was irregular; numerous incidents of omission of voters, incorrect coding and blank voter cards in circulation were reported (FODEP 1996). As will be discussed further below, the decline in registration before the 1996 elections should also be linked to two related political events, the constitutional amendment that denied Kenneth Kaunda the right to run in the 1996 presidential elections, which in turn led the UNIP and five smaller opposition parties to boycott the elections.

Prior to the 2001 Presidential, Parliamentary and Local Government elections the MMD government decided to create a whole new voter registry and issue new voters cards. The specific date for the election remained unknown until October 2001.<sup>7</sup> The registration process started very late (June 2001) due to the late release of funds from the Zambian government to ECZ (FODEP 2002). A second change introduced before the 2001 election exercise was that all potential voters were free to register anywhere in the country. This information was only released to the public in the third week of the registration period when the electoral commission observed that it was going to be difficult to reach their target of registering 75 % of the eligible voters. Initially, the registration period was set from June 21<sup>st</sup> to July 15. After a fourth extension, the registration process ended July 31<sup>st</sup>. The 2001 voter registration exercise was based on the 2000 census, and the preliminary figures released by the Central Statistical Office (CSO) before the registration process began indicated that the voting age population was about 3.8 million. In late July 2001 the CSO released new figures indicating that the voting age population was 4.68 million.<sup>8</sup> With this information released well into the registration process, the ECZ underestimated the magnitude of the task. By the time ECZ had the voter's roll finalised in October, it was reported that 2.4 million voters were registered, but when the official period for obtaining the new voters cards closed on October 12, it was reported that in some areas only 50 per cent of the registered voters had picked up their voter's cards. ECZ then decided to issue a new regulation making it possible to obtain the new voter's card on the actual polling day. In 2001, the political

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<sup>7</sup> It is the prerogative of the president to call the new election by dissolving parliament. This has to be done at the end of the five-year electoral term. However, it remains unclear whether this means five years from the previous election or five years from when the parliament first convened.

<sup>8</sup> CSO had projected the eligible voting population to be 4.7 million before the 1998 local government elections. The projected number of eligible voters before the 1996 general elections had been 4.5 million. As a result, the first projections in 2001 were questioned by local election monitoring groups as well as the donor community (FODEP 2002).

context was almost the exact opposite of that in 1996. The high turnout of registered voters is likely to be connected to the intensity of the political competition, reflected in the evenly balanced parliament and the close race for the presidency (Rakner and Svåsand 2004).<sup>9</sup>

According to studies carried out by Bratton, institutional factors are the main determinant explaining political participation. In particular, he notes that "...voter registration was revealed as the single most important determinant not only of a citizen's behavior but also of overall participation, outweighing any other institutional, cultural, or social consideration" (Bratton 1999: 570). In the case of Zambia, while the number of eligible voters has increased substantially, the number of registered voters declined from 1991 to 1996, increased again in 2001, but remained below the 1991 level (Table 3). This fluctuation has led to a lower number of registered voters in 2001 than ten years earlier, from more than three-quarter to just above half of the voting age population.

In summary, across three elections, despite measures like extensions of the registration period, significant problems remain in incorporating the citizens into the electoral process. According to Bratton institutional weaknesses may serve political goals because potentially "[i]nsecure governments manipulate the rules for registration to restrict the size of the electorate" (Bratton 1999: 574). The continued problems of securing a level playing field between contesting parties and candidates are further indications of the incumbent government's limited political willingness to improve the electoral process.

### **Securing a level playing field**

The regulation of the electoral campaign requires establishing and implementing neutral rules for establishing political parties, for these to nominate candidates, and, for individuals to aspire to office on their own, independent of parties. In all political systems there are thresholds for creating new parties and rules for nominating candidates and there is no consensus about what constitute too high a threshold. The way these criteria are decided may be as important as the criteria themselves (Winger 2001). Second, the political system should guarantee freedom of candidates and parties to communicate with the voters. Deviations from the principle of neutral rules and a level playing field occur when the authorities, or the competing parties, try to prevent a candidate/party from participating freely, for instance by denying a candidate the right to hold meetings, by intimidating voters from attending meetings, and by preventing the distribution of election material. Third, access to resources is either supposed to be equally available or not available at all. An example of the problems of ensuring equality is the use of public subsidies for parties and candidates. Where such subsidies exist, there is not necessarily agreement about what constitutes 'fair and equal distribution'<sup>10</sup>. In addition, state controlled media, radio, TV, and newspapers should be neutral between the political alternatives.

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<sup>9</sup> In addition to registration procedures, turnout figures are affected by how accessible the voting stations are for the electorate. On this score, the number of polling stations in 2001 was almost 60% higher than in 1991, increasing from 3.489 to 5.509, a significant improvement (Bjornlund et al. 1992: 414; FODEP 2002).

<sup>10</sup>The case of Zimbabwe illustrates how formally neutral rules have specific political outcomes. There, only parties that win at least 15 seats in parliament qualify for party subsidies; only the ruling ZANU-PF fits the qualification criteria.

**Figure 2: Securing a level playing field**

- a) the criteria for registering parties and nominating candidates should be politically neutral
- b) each contestant (party or candidate) should have an equal opportunity to present to the voters their arguments, both arguing for their own case as well as to formulate a critique against the incumbent government
- c) none of the contestants should have access to resources that are supposed to be neutral between the contestants

**The regulation of the competition between candidates and political parties in Zambia 1991-2001**

The electoral process is regulated by the Constitution of Zambia which specifies who has the right to vote, how parties are registered, who can run as candidates and how these candidates may be nominated.<sup>11</sup> Political parties are registered through the Registrar of Societies and regulated by the Societies Act.<sup>12</sup> With more than thirty political parties, of which eleven parties contested the 2001 general elections, the criteria for registering parties appear to be politically neutral (Rakner and Svåsand 2004). With some exceptions, Zambian citizens above the age of eighteen are eligible to vote and citizens above twenty-one may run for parliamentary office, provided he/she is literate and conversant in English. Every citizen above the age of thirty-five who is qualified to be a member of the Zambian National Assembly is qualified to be a candidate for election as president if a) he/she is a member of a political party, b) his/her parents are Zambians by birth or descent, and c) has been domiciled in Zambia for at least 20 years. The last two clauses and the clause that a presidential candidate must not already have been elected twice to office were introduced by the Constitutional Amendment Act (1996) prior to the 1996 general elections. Both local and international observers saw the clause limiting the candidates to those with parents who were Zambian citizens by birth as designed specifically to exclude former president Kaunda from running. The so called 'Kaunda clause' was therefore considered as a blatant example of institutional manipulation of the electoral process (Bratton and Posner 1999, FODEP 1996).

Nominations are filed with the returning officer of the Electoral Commission of Zambia (ECZ). The date for filing nomination is set by the ECZ once the date for the presidential and parliamentary elections has been announced by the incumbent president. Nomination of parliamentary and presidential candidates must be signed by 200 registered voters or more.<sup>13</sup> It is not possible to run for the presidency and for parliamentary office at the same time. Thus, with the exception of the 1996 'Kaunda clause'; the formal rules do not create any significant barriers against candidates or parties. Zambian elections thereby fulfill the first criteria of creating a level playing field. However, the rules are not neutrally applied between parties as their ability to present arguments and access resources is unequal.

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<sup>11</sup> Articles 34, 41, 65,76,77,79, 88. Elections are further regulated in the Electoral Act (1996) and the Electoral (Amendment ) Act No. 04 (2001). The electoral Code of Conduct is regulated by Statutory Instrument No 176 (1996).

<sup>12</sup> Chapter 119 of Zambian Law (Chanda 2003).

<sup>13</sup> Electoral Act No 2 (1991) Section 9.

The conduct of public meetings and freedom of assembly is regulated by the Public Order Act and this act has proved to be a hindrance for the freedom of canvassing for voters in all three general elections since 1991. Before the act was amended in 1996, a police permit was required for convening an assembly. In 1996 the permit requirement was replaced by notice given to the police.<sup>14</sup> However, the selective manner by which police officers enforce the Public Order act remains a problem (Ngandu and Chanda 2002). Among other things, assurance must be obtained by the police that the event will be policed and not in conflict with the venue of other candidates. The act favours the ruling party because government officials are exempted from the notice requirement.

Prior to the 1996 general elections, an Electoral Code of Conduct was established to cover the conduct of political parties, media organisations, and election monitors.<sup>15</sup> However, the laws were not enforced in either the 1996 elections or the 2001 elections. Prior to the 2001 elections, the biased access to the public was most evident during the third term debate. Rallies to support President Chiluba's third term bid were allowed, but opposition rallies were often denied permits. (FODEP 2002; Ngandu and Chanda 2002). Similarly, as the period of voter registration coincided with the OAU summit held in Lusaka and the police banned political rallies for the duration of the summit, opposition parties were deprived of an opportunity to sensitise or mobilise their voters to register to vote.

A continuing unbalanced playing field is also apparent with regard to media access. Following the introduction of multiparty democracy, independent newspapers and radio-stations have been established in increasing numbers. In theory, therefore, the playing field should be much more open than under the one-party regime. However, the state owned television, radio, and newspapers continue to be regarded as the mouthpiece of the incumbent. In the 1991, 1996, and 2001 elections, ZNBC applied the practise of blocking the airing of items it deemed unfavourable to the incumbent party. In the 1991 election the Zambian National Broadcasting Corporation (ZNBC) refused to air MMD campaign slots as they were seen to attack the governing party and thereby violated advertising ethics (Bjornlund et al.1992: 420). An interesting parallel was exposed in the 2001 general elections when the chairman of the ECZ, Bobby Bwalya, stopped opposition parties from appearing in televised debates, despite funding provided by the EU. Bwalya presented the argument that the participants might use derogatory language (Mwalonga 2002).<sup>16</sup> The two government newspapers, Times of Zambia and Daily Mail are by far the largest newspapers in terms of circulation and the only ones with a national distribution. The editors of these papers are appointed by the President.

Since the 1996 elections several independent radio and TV stations have been established but the government also intervened here. Before the 2001 elections, Trinity Broadcasting Network was ordered to stop running presidential debates<sup>17</sup>. As the election date got closer and the campaigns heated up, the objectivity and balanced coverage by the media became more compromised. Content analyses

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<sup>14</sup> The Public Order (Amendment) Act (1996), which followed a decision by the Supreme Court stating the requirement for a permit was in violation of the constitution (Lodge et al. 2002).

<sup>15</sup> The Electoral Code of Conduct Regulations, Statutory Instrument Number 179 (1996).

<sup>16</sup> The ongoing court case contesting Mwanawasa's electoral victory suggests that MMD used state resources to pay for MMD television campaigns. See "MMD Paid for Live Broadcasts – ZNBC" <http://allafrica.com/stories/200309300010.html>

<sup>17</sup> Trinity later secured a court order to continue with the debates. The Monitor, December 12, 2001.

conducted during the 2001 general elections indicate that contenders were not provided an equal platform from which to campaign (Mwalongo 2002). In the 2001 elections, the news coverage by the state owned media was biased in favour of MMD, to the extent that local monitoring groups claimed that the state owned media boycotted the opposition (FODEP 2002).<sup>18</sup>

### *Using state resources*

Three consecutive elections in Zambia have been skewed in favour of the incumbent through the governing party's blatant misuse of state funds for election campaigning. During the UNIP-one party system there was no separation between party and state and this continued into the initial multiparty contest.<sup>19</sup> The UNIP received grants from the state and party officials and cabinet ministers used government vehicles for campaign purposes. During the campaign, the UNIP took over the state welfare function of issuing mealie meal coupons, which is the main welfare service; the party issued them to their own supporters only (Andreassen et al. 1992: 36). The misuse of state funds was considered by the election monitors to contravene the concept of fair elections (ibid).

Following the MMD victory, a similar blurring of the line between party and the state has taken place. According to local election monitoring groups, the level of vote buying actually increased markedly from the 1991 to the 1996 elections (FODEP 1996). MMD used government vehicles as well as the Zambia Information Services for campaigning purposes. Fertiliser, maize and development funds were distributed to rural areas. In the urban areas, MMD's decision to sell council houses to the sitting tenants was interpreted as an attempt to increase the urban vote for MMD (Bratton and Posner 1999, FODEP 1996).

The 2001 elections represented no progress in this respect. A recent report on Zambia from Transparency International (TI) provides a damning verdict on the incumbent party arguing that the abuse of public resources by the ruling MMD in its election campaigns has been common (Chanda 2003). According to the report, besides the use of state vehicles and other related public resources, government leaders always begin a ritual of donations to schools, community projects, charitable organisations, and other causes in areas where elections are scheduled to take place.<sup>20</sup> In the 2001 elections, the Presidential discretionary fund, introduced in the 1999 budget, became an additional source of political corruption (Burnell 2002). Local and international observers found that the President used it to buy political support and fund his campaign for an unconstitutional third term of office, and to finance operations of the ruling party (Chanda 2003; FODEP 2002; EU 2002). State-party boundaries were further blurred prior to the 2001 elections with the creation of the positions of District Administrators (DAs) in the 2000 budget. The DAs were considered civil servants but were provided with vehicles and offices outside the formal local government structures and reported directly to the Office of

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<sup>18</sup> Community radios proved to be an exception to this rule as in many instances local radio stations gave free airtime to members of parliament and local government councillors with support from local non-governmental organisations in that part of the country (Mwalongo 2002).

<sup>19</sup> The 1990 Act that amended the constitution to allow for the formation of opposition parties also guaranteed the continued role in government of existing party structures, until the next dissolution of Parliament

<sup>20</sup> For example, during the 26<sup>th</sup> September 2000 Chifubu by-election Chiluba made donations amounting to K160 million to various churches in the constituency (Chanda 2003).

the President. The DAs intervened in the electoral process to the advantage of the MMD by campaigning for the MMD candidates in the district and they continued to be active campaigners for MMD despite a High Court ruling of December 4, 2001 declaring that, as civil servants, they were not permitted to engage in political activity.

In terms of the securing of a level playing field, the quality of the Zambian electoral process is still low. The proliferation of parties before the 2001 elections indicates that there are low barriers against party formation and the number of independent candidates suggests that there are no insurmountable barriers preventing political aspirants from running.<sup>21</sup> The liberalisation of the media, with the establishment of private newspapers, radio, and television stations goes some way towards a more level playing field. But whereas the basis for conducting free and fair elections exists in terms of formal rules and regulations, the enforcement and application of the rules are tilted to the benefit of the incumbent. The incumbent party still has an overwhelming advantage because of its control of the two largest daily newspapers, its ability to intervene in state radio and television coverage of the elections, and its ability establish hurdles for the independent media.

## **STUCK IN TRANSITION THROUGH INSTITUTIONAL AND ADMINISTRATIVE AMBIGUITIES**

The above discussion has shown that along two central dimensions of the electoral process - the definition of the electorate and the creation of a level playing field - the Zambian electoral processes from 1991 to 2001 has not met the standards of democratic elections. The administrative weaknesses of the current electoral processes in Zambia provide an important explanatory factor for the persistent problems identified by both local and international observers. Below, we show that the continued democratic deficiencies are explained by the continued uncertainty of the rules and procedures guiding the electoral process. As a result of this uncertainty and lack of political will to provide the Electoral Commission of Zambia with financial and political autonomy, the administration of the electoral process has remained problematic through three general elections in Zambia.

### **Uncertainty of rules: 1991, 1996, 2001**

The preparation for the 1991 elections took place during a heated constitutional debate. Until December 1990, the UNIP government insisted on a referendum over the multiparty issue and, as a result, the preparation for the transition to multiparty rule only began in 1991 (Andreassen et al. 1992). The new Zambian constitution was passed by an Act of Parliament in August 1991, replacing the 1973 Constitution. The 1991 Constitution was a compromise between the UNIP and President Kaunda and the opposition organised under the umbrella group the Movement for Multiparty Democracy (MMD). The MMD campaigned to limit presidential powers and to reinstate parliamentary rule.<sup>22</sup> Due to time limitations,

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<sup>21</sup> Low barrier against new party formation may actually work to the advantage of a ruling party if it leads to further fragmentation of the opposition. We thank Peter Burnell for pointing this out.

<sup>22</sup>Under the 1964 Independence Constitution, the Zambian Republican President was elected as the leader of the political party in government. Direct Presidential elections were introduced with the 1972 Mainza Chona Constitutional Review Commission. (Mutukwa, 1998).

and the UNIP and Kaunda being reluctant to limit presidential powers and enhance the position of the legislatures, very little institutional change actually occurred in Zambia in 1991. Zambia maintained a centralised system of government and the powerful position of the Republican President was left intact (Bratton and van de Walle 1997).<sup>23</sup>

Despite its sweeping electoral mandate and potential scope for institutional change, MMD did little in terms of constitutional reforms *after* it attained power. A constitutional review process only began in earnest in 1994, after considerable donor pressure. By this time, it was evident that the MMD was no longer interested in curtailing the powers of the executive or strengthening the parliament (Donge 1998). The 1996 *Mwanakatwe Constitutional Review Commission* left all the powers of the Republican President intact. Thus, throughout the third Republic, Zambia has maintained a Presidential system of government. As in 1991, the preparations for the 1996 general elections were overshadowed by constitutional debates and the uncertainty of the rules and procedures guiding elections.<sup>24</sup> The Constitutional Amendment Act 33 (3) signed by President Chiluba in May 1996 stated that a presidential candidate's parents should be Zambian by birth. Because this political action effectively barred former President Kaunda from contesting the 1996 presidential elections, vocal NGOs, opposition parties, and the donor community saw this amendment as a violation of democratic principles as it was interpreted as a move to rid Chiluba of his main opponent.

As in 1991 and 1996, constitutional debates and controversies overshadowed electoral preparation and campaigns before the 2001 Presidential, Parliamentary, and Local Government elections. The 1996 (and 1991) constitution limits the presidency to a maximum of two five-year terms and President Chiluba could therefore not contest the presidential elections for a third term without changing the Constitution. In December 2000 the so-called 'third term campaign' was initiated by Chiluba's supporters. This time, the attempt by President Chiluba and the MMD to gain yet another term in office was met with a massive, and well co-ordinated, response from Zambian civil society. In May 2001, President Chiluba announced that he had no intention of running as the MMD's presidential candidate, thereby ending the third term debate. But, the third term issue drained the Zambian state of considerable resources, split the ruling party, and suggested to the Zambian public and international observers that the ruling party's regard for the democratic process was, at best, shallow. Considerable state resources were spent on the aborted campaign at the expense of funding for voter registration, among other things. According to Burnell, by ensuring that a highly controversial issue was thrust into public debate the incumbent distracted the opposition and placed electoral preparations in limbo (2002:1111). A common element is witnessed through the three general election campaigns since 1991: Uncertainty of the rules and regulations guiding the electoral process has overshadowed substantive political issues and electoral preparations. As the discussion below will indicate, the continued weak performance of the Electoral Commission of Zambia further underscores the seeming unwillingness of the Zambian government to improve the quality of the electoral process.

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<sup>23</sup> The 1991 Mvunga Constitutional Review Commission limited the Presidential term of office to two five-year terms; it reduced the number of nominated members of Parliament from 10 to 8, and affirmed the re-introduction of multiparty democracy that came into force with the abolition of Article 4 that had forbidden the formation of political parties.

<sup>24</sup> The uncertainty on the status of the constitution has persisted into the Mwanawasa presidential period with controversies over how constitutional reform should be pursued, by a commission or a constitutional assembly.

## **Administrative weaknesses 1991-2001**

The primary instrument for overseeing the implementation of the process rests with the administrative structure of the state. An electoral commission is often charged with this responsibility (Elklit and Reynolds 2000; Mozaffar 2002), but other state institutions, such as the courts, are also involved in the regulation of the electoral process. Two aspects of the electoral administrative arrangements are particularly significant: The autonomy of the agency from political institutions, and the agency's capacity, particularly the size and control of its budget. Article 79, (1996) of the Zambian Constitution establishes the Electoral Commission of Zambia (ECZ) as the institution charged with the responsibility of implementing the provisions of the Electoral Act (ch. 13). This is the body mandated to supervise the registration of voters and review the voters' roll, conduct presidential, parliamentary, and local government elections, and review the boundaries of constituencies. However, as we will demonstrate in this section the Zambian management of the elections does not live up to these expectations.

Election observers and analysts have claimed that the 1991, 1996, and 2001 elections have been characterised by poor electoral administration (Bjornlund et al. 1992, Donge 1998; FODEP 1996, EU 2002, FODEP 2002). Despite considerable experience, both local and international election observers found the efforts of the ECZ in voter registration and voter education to be desultory in the 2001 general elections. Polling day was also managed poorly.<sup>25</sup> Constituency level tabulation was further administered badly and the dispatch of constituency results to the ECZ Lusaka was subject to inexplicable delays.<sup>26</sup> Local and international monitoring reports concluded that the results should be questioned, based on the preparation, conduct, and post-election handling (EU 2002; Carter Center 2002; Afronet 2002). As the 2001 elections were closely contested it is probable that the uneven playing field may have tilted the results towards the incumbent.

The poor conduct of the 2001 elections is partly linked to administrative deficiencies beyond the control of ECZ. The registration process was hampered by the fact that the Central Statistics Office only released the census figures after the registration process had commenced. Furthermore, the uncertainties around the third term issue induced a number of donors to withhold funds they had agreed to allocate to ECZ for electoral administration. Nevertheless, the poor quality of the electoral process is also linked to the limited autonomy of the Electoral Commission of Zambia and its weak capacity to manage the electoral process.

### *The Electoral Commission of Zambia*

In August 1991, the National Assembly approved a new election law that established an Electoral Commission with the responsibility of conducting the elections. The members were appointed by the State President and the

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<sup>25</sup> Local election observers and opposition parties claimed that the election materials were delivered late in areas where the ruling party was not popular. It has also been pointed out that "whether there were 500 or 5000 registered voters, the ECZ allocated every polling station with the same clearly inadequate staff. Lodge et al. 2002; Afronet 2002; EU 2002.

<sup>26</sup> Transparency of the process was hindered by the fact that the law does not require party agents to sign and receive copies of polling station results. As a result, polling station results were vulnerable to manipulation. Carter Center 2002; Mulwanda 2002.

implementation was by an election directorate, a body of civil servants in Lusaka. For the most part, the Electoral Commission relied on electoral regulations derived from previous practise in Zambia (Bjornlund et al. 1992: 414). Due to the perceived favouring of UNIP, the Electoral Commission was heavily criticised by the opposition, as well as local and international election observers. The alleged lack of independence and impartiality stemmed partly from lack of security of tenure of the commission's members, as the President could remove them.<sup>27</sup> Criticism was also raised against the Chairman of the Electoral Commission for being biased in favour of the UNIP (Andreassen et al. 1992).

The current administrative arrangements date from the 1996 elections. In October 1996, in the 11th hour before the 1996 elections and after considerable donor pressure, the Electoral Commission of Zambia (ECZ) was established<sup>28</sup>. Opposition parties, civic associations and international observers, however, persistently argue that the commission is not representative of diverse organisations in the country and that it is not independent from the government (Lodge et al. 2002: 384; Bratton and Posner 1999: 396).

Unlike its predecessors, the ECZ is a permanent institution and the commissioners are employed in full time positions. A total of five commissioners (including the chairman) are appointed by the President (and later ratified by Parliament)<sup>29</sup>. The commissioners are appointed for a period of seven years, which are renewable. When commissioners resign the president “may appoint another person for the unexpired term of that office”.<sup>30</sup> The ECZ reports directly to the President, which in turn reports to Parliament. The commissioners appoint the ECZ administrative staff. But while the ECZ has a permanent administrative staff at the headquarter in Lusaka, these structures are missing at the local level, hindering more direct contact between the ECZ and the Zambian voters. Although the President cannot (except in very special circumstances) fire the commissioners, he can exert influence over the effectiveness of the commission. First, although his nominations must be approved by parliament, this amounts to a weak check-and-balance mechanism as long as the president’s party has a majority of MPs.<sup>31</sup> Second, the president can renew the mandates for commissioners he approves of and appoint new ones for those he disproves of. Third, he can keep seats vacant as long as the quorum of three is met. Table 4 shows who the commissioners have been since the ECZ’s creation, the period for which the members have served, and the expiration of their term.

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<sup>27</sup> When the third member of the commission resigned and was not replaced, the opposition's trust and confidence in the electoral commission decreased even further.

<sup>28</sup> Amendment 18 (1996). The composition and operations of the Electoral Commission of Zambia (ECZ) are found in the Electoral Commissions Act 24 (1996). The creation of an independent, permanent electoral commission was put forth by the Mwanakatwe Constitutional Review Commission but the MMD government had previously rejected this recommendation.

<sup>29</sup> Electoral Commission Act No 24 specifies the composition as consisting of “a Chairperson and not more than four other members”.

<sup>30</sup> Electoral Commission Act No. 24 Part II.6.

<sup>31</sup> Parliament’s ability to block a presidential nomination is in any case limited to doing so only twice; the third time a person is nominated the appointment takes effect no matter what parliament says.

**Table 4: Composition of the Electoral Commission of Zambia 1996**

<b>Member</b>	<b>Appointed</b>	<b>Resigned/Expiry of Term</b>
Bwalya	Oct 96	Oct 03
Kabamba	Oct 96	Feb 00
Kalima	Oct 96	Feb 97
Kasanga	Oct 96	Oct 02
Temb	Oct 96	Mar 02 (deceased)
Chilekwa	June 01	July 04
Simachela	June 01	July 04
Kalala	Aug 03	Aug 06

\*\* Source: Communication from the ECZ: "Office of the Electoral Commission", fax no. EO/1010/1/11, September 11, 2003.

Table 5 gives the number of ECZ commission members by time periods. After the establishment of the ECZ in October 1996 it had five members for only half a year, when Kalima resigned. Kalima was not replaced and for the next three years the ECZ had four members. In February 2000 yet another member left the commission. The ECZ was reduced to three members, the minimum for a quorum, until June 2001. Then, two new members were appointed. Nine months later one of the originally appointed members passed away and in October 2002 another of the original commissioners left.

**Table 5: Rolling composition of the Electoral Commission of Zambia**

<b>No. of members</b>	<b>No. of months</b>
Oct 1996 – Feb 1997: 5	5
Mar 1997 – Feb 2000: 4	36
Mar 2000 – May 2001: 3	15
June 2001-Mar 2002: 5	10
April 2002 – Oct 2002: 4	7
Nov 2002- July 2003: 3	9
Aug 2003 – Oct 2003: 4	3

As illustrated by Table 6, full membership on the commission has been the exception. The commission has been in existence for a total of 85 months by October 2003, but there have been five members for only 15 months of the total time. For two years, the commission has had the minimum number of members required for it to function.

**Table 6: Summary of number of the ECZ members by months of service**

<b>No of members</b>	<b>No of months</b>
5	15
4	46
3	24

## *The autonomy and capacity of the Electoral Commission of Zambia*

Both in terms of appointments and budget, the ECZ can at best be characterised as a semi-autonomous institution. The commission is funded by the government through the Ministry of Finance and National Planning. In terms of the budget, the presidential office retains certain prerogatives. The Vice President presents a budget for the ECZ in Parliament and thereafter the budget is ratified. According to the chairman of the Electoral Commission, the main impediment to the commission's independence is the mode of funding (Bwalya 2002). The Ministry of Finance and National Planning disburses and monitors the funds allocated to the Commission by Parliament. Even if parliament approves certain appropriations, it is not guaranteed that the sums will be spent as parliament intends. Of sixty-seven billion Kwacha allocated to the commission for the years 1996-2000 only forty-seven billion was actually released by the Ministry of Finance (Ibid.). For the 2001 general elections the ECZ was allocated sixty-four billion Kwacha from government (in addition donors contributed forty-seven billion), but the disbursement of the budgeted amount was erratic, delayed and below the budgeted figures. By July 2001 the ECZ had received only twenty-two billion.<sup>32</sup> Thus, the ECZ's budget seems deficient in two ways. On the one hand, the costs for a more complete registration process exceed the current appropriations. In addition, the Ministry of Finance's control over the release of the appropriations creates uncertainty and impedes on the ECZ operations.

In summary, three mechanisms allow the Presidency considerable power over the ECZ; powers that may be used to restrain its effectiveness. First, the fact that the president appoints the Commission's members limits its autonomy from the incumbent. The authority of the president over parliament limits the effectiveness of parliamentary scrutiny. Second, the legal basis for the ECZ provides the president great leeway in filling – or not filling – seats on the commission. The clause that allows the president to leave seats on the Commission vacant is likely to have a negative impact on the Commission's activity considering that the ECZ also has to organise a series of by-elections whenever MP's resign their seats or pass away. Finally, the lack of autonomy of its budget is likely to impede the independence and quality of the electoral commission and the financial management routines of the Zambian government. ECZ's ability to plan and execute its mandate is directly affected by its inability to control its financial resources. These institutional arrangements allow the political leadership to greatly impact the nature of the ECZ and as a result, in spite of its mandate, the electoral commission is ignored by other, more powerful institutional players.

The continued uncertainty of the rules and the limited capacity and autonomy provided to the ECZ suggest that poor quality elections may be a desired strategy for the incumbent government. The weak administration of the electoral process has enabled the MMD government to control the pace and scope of political inclusion. The closely contested 2001 elections in particular illustrate how uncertainty and weak electoral administration helped the incumbent to preserve their own positions despite a weak support base.

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<sup>32</sup>A parliamentary vote in favour of a budget does not imply that the allocated funds will actually be released. See, Bwalya, 2001.

## CONCLUSION

In the above article we have assessed the electoral process in Zambia across three consecutive elections. We argue that the quality of the elections, in terms of voter participation (registration), a level playing field for campaigning, and certainty about the rules and regulations guiding the electoral exercise has not improved significantly. The lack of improvement of the electoral process continues to undermine the legitimacy of elections and prevent the consolidation of democracy in Zambia.

Aiming for high-quality elections in countries with limited administrative capacity and poor infrastructure implies huge costs. A UNDP study compares election costs between developed and developing nations and while the comparisons do not always correspond, the variances detected are striking: Based on estimates the elections in Mozambique 1994 cost US \$ 10.4 per voter and the 1992 elections in Angola cost US \$22, while the highest estimate for any Western democracy was US \$7.2 per vote (Canada 1997). According to Lopez-Pintor (2000: 73-75), of the nine countries listed as spending more than US \$ 8 per capita on elections, four are found in sub-Saharan Africa. Thus, some of the poorest countries in the world have the most expensive elections. While we acknowledge that financial constraints provide a partial explanation for the poor quality elections witnessed in Zambia, we argue that the Zambian governments' lack of commitment to give priority to a free and unbiased election process is related to their own political interests.

From UNDP, the EU and the Zambian Government, various proposals have been put forward to reform the process. In the Government of Zambia's National Capacity Programme on Good Governance finalised in 1999, it is suggested that the ECZ linkage to the executive should be replaced by a linkage to parliament. This change would increase the legitimacy of the institution. The proposal also suggests introducing clear criteria for appointments to members of the ECZ. The report suggests that the ECZ be given clear statutory powers to enable it to enforce electoral regulations and that the ECZ should be decentralised to all provinces. The report also recommends that the cumbersome voting process - first national registration card, then picking up the voter's card and, finally the voting itself - should be reformed as it is both costly and opens the system to manipulation. Apart from some simplifications to the voter registration process, *none* of these recommendations were adopted before the 2001 elections, indicating that the quality of the electoral process has been given relatively low priority by the Zambian government.

The case of Zambia illustrates the recent global phenomenon that Schedler (2002: 46) calls the long menu of electoral manipulation. As witnessed in transitional democracies in Latin America, Asia, Eastern Europe and Africa, regular elections are conducted; however, the Zambian political actors pursue a range of strategies to secure their desired outcome (Burnell 2002). Through three general elections, the incumbent government in Zambia has ensured that the rules and regulations of the electoral process remain uncertain, thereby removing attention from economic challenges, poor governance and the need to focus on electoral preparations. The continued weaknesses of electoral administration have ensured that the electorate has remained relatively small, thereby limiting the contestation.

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# Summary

Zambia has held three multiparty elections since its restoration of democracy in 1991. This peaceful transition raised expectations of a smooth process towards democratic consolidation. But similar to experiences from other African countries and Eastern Europe, the Zambian democratic process has remained stuck in a ‘transitional zone’ between actual democracy and authoritarian systems. We argue that Zambian elections fall short of the expectations of a democratic process due to the institutional uncertainty surrounding elections and the weakness of the Zambian Electoral Commission. Despite an alarming economic record the continued uncertainty – of the rules and regulations guiding elections and electoral administration – has maintained the same party in power through three consecutive elections.

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