



INNOVATIONS FOR SUCCESSFUL SOCIETIES

CREATING AVENUES TO RESOLVE ELECTION DISPUTES: CONFLICT MANAGEMENT COMMITTEES IN ZAMBIA, 2001 – 2011

SYNOPSIS

In 2001, the Electoral Commission of Zambia faced a tense presidential and parliamentary election. The commission needed a new mechanism to stave off conflict, clarify responsibilities for dispute resolution, and provide complainants with an effective outlet for their concerns. Inspired by the use of a similar system in South Africa, the commission leaders developed conflict management committees at both the national and district levels. The committees—comprising representatives from political parties, law enforcement, civil society, and faith-based organizations—mediated conflicts related to violations of the electoral code of conduct. The electoral commission piloted the committees in the 2001 elections, before fully implementing and strengthening the committees at the national level and in the 74 electoral districts for the 2006 elections. The mediation system helped Zambia navigate an unexpected by-election following the death of President Levy Mwanawasa in 2008 and an opposition victory over the ruling party in 2011. Though some challenges remained, the electoral commission staff and committee members credited the committees with helping the country navigate competitive elections and reduce tensions between competing parties.

Rachel Jackson drafted this case study based on interviews conducted in Lusaka, Zambia, in November 2012. Case published April 2013.

INTRODUCTION

In 2001, Zambia faced a contentious and potentially explosive election. Constitutional term limits prevented incumbent president Frederick Chiluba from seeking reelection. Chiluba had attempted to circumvent those term limits, creating disaffection among voters and weakening support for the Movement for Multiparty Democracy (MMD), which had governed Zambia since the country's return to multiparty democracy in 1991. Internal factionalism fractured the party, with several

prominent members splintering off to form new contesting parties. Witnessing citizen dissatisfaction and a power struggle within the MMD over Chiluba's successor, 11 candidates entered the presidential race. The MMD ultimately chose Levy Mwanawasa as its candidate, but Mwanawasa's victory was by no means ensured. Heading into the campaign period, none of the 11 candidates had a clear plurality of citizen support.

The parties were not strongly divided along ethnic lines, largely because Zambia had at least

72 distinct ethnolinguistic groups, the largest of which accounted for only 11% of the population. However, politicians did work to win the votes of one or more of Zambia's eight broad language groupings. The MMD had worked especially hard to become the party closely associated with the Bemba linguistic group, which represented roughly 30% of Zambia's estimated 10.8 million people in 2000.¹ Though the Bemba-speaking group did not represent a majority of the population, Zambia's simple-plurality electoral system increased the importance of each group's vote in deciding the next president, an office with constitutionally broad executive power. Between the heavily divided field of candidates and Zambia's first-past-the-post system, a candidate could win with well under 50% of the vote. The same plurality system applied to the 150-seat unicameral National Assembly.

Within that context, the Electoral Commission of Zambia anticipated difficulties in the 2001 elections. "There was a general feeling that there was a likelihood of violence and conflicts in the coming election," said Eric Kamwi, a lawyer with the commission in 2001 who later rose to head the legal department and serve as commission secretary. "The stakes were so high for the opposition and the ruling party."

Observing tension that could escalate to violence, the commission looked to create a way "for people who were actually involved in these disputes to actually sit down and sort out these disputes amongst themselves," Priscilla Isaac, then deputy director of elections, said. Implementing that vision would require the commission to coordinate wide-scale change among competing factions, a task fraught with a number of difficulties.

THE CHALLENGE

The commission leadership had at its disposal few existing methods to prevent and defuse electoral conflict. Since 1996, Zambians had used an electoral code of conduct that

governed the election-period activities of political parties, the electoral commission, law enforcement personnel, civil society organizations, and the media from the beginning of the campaign period through the announcement of results. The National Assembly had enacted the code with the aim of regulating elections and addressing the root causes of many disputes by laying out acceptable and unacceptable behaviors. But the code itself neither spelled out the penalties for violations nor designated who was in charge of administering those penalties.

Prior to 2001, no clear enforcement mechanisms or paths to resolution were in place for when election participants accused each other of violations of the code or disagreed over interpretation of the code. The electoral commission had a stated responsibility to enforce the code of conduct, but it did not have the legal authority to investigate or sanction offenders. That power technically belonged to the police and other law enforcement officers, who often turned away complainants under the rationale that the issues were not in their jurisdiction. "The different institutions would hide behind the idea that an election was the responsibility of the electoral commission," Isaac said.

The political parties, the candidates, and other participants in an election publicly affirmed the code of conduct in principle before the start of the campaign, but in the absence of real consequences, the parties quickly broke their promises once the race began. Isaac said she believed that abiding by the code of conduct was the key to peaceful elections and that political party representatives' signatures on the document were not enough. "You still had the same people who'd been part of bringing about the code of conduct breaking the law," she said.

The only power to adjudicate violations of electoral law belonged to the courts. Moreover, under Zambia's laws, the courts could rule—

only after the election had finished—on potential violations of electoral laws or challenges to procedure, such as whether a candidate campaigning outside the permitted time period had gained an unfair advantage. Petitioners could file challenges only if the alleged violation would have affected the outcome of the election—and even then had to wait to file a case in court until 30 days after the conclusion of a race.

Few complainants were satisfied with that timeline. And although the electoral commission lacked a legal mandate to address complaints, candidates and political party leaders still expected the commission to fulfill that role. Such an expectation interfered with the commission's ability to run elections and left its staff fielding complaints without the infrastructure or manpower to deal with them. The volume of complaints was significant. "During an election you're busy worrying about logistics, and then you're constantly getting phone calls or fax messages or visitors coming through for us to sort out conflicts," Isaac recalled.

FRAMING A RESPONSE

With the growing tensions surrounding the 2001 elections, Isaac and her colleagues recognized that they needed a new mechanism that would stave off mounting conflict, clarify responsibilities for dispute resolution, and provide complainants with an effective outlet for their concerns before, during, and after an election.

The commissioners turned to the idea of conflict management committees—groups that would mediate disputes between different political parties, election commission staff, police, civil society organizations, and the media to come to mutually acceptable resolutions. The committees could avoid lengthy recourse to the country's existing legal structure because they were advisory rather than punitive in nature and

did not impose binding sanctions. Even though the settlement agreements the committees negotiated would not have the force of law, they would have the advantage of timeliness. "These committees are first-aid instruments of relief," Kamwi said, underscoring the difference. "When you are observing bribery, vote buying, violence, [the committees] offer on-the-spot solutions. You are aggrieved, and immediately you rush to them. You deliberate, and a solution is found. You don't have to wait for the results [of the election] to petition."

Isaac first learned about the concept of conflict management mediation mechanisms in 2000 at a meeting of the Electoral Commissions' Forum of Southern African Development Community (SADC) countries. Established in 1998, the forum brought together election practitioners in SADC countries to share best practices. The Electoral Institute for Sustainable Democracy in Africa (EISA, then known as the Electoral Institute of Southern Africa) had developed the conflict management committee model, which they first deployed in 1999 in South Africa. EISA credited the conflict management committees with helping reduce tension and violence in South Africa's elections by providing quick and localized resolution of disputes.

Before formally announcing their intention to use the conflict management committee model, the commissioners and senior staff began meeting with political parties to ensure that political party members understood and supported the idea. "You must have the buy-in of those who are going to participate," said Isaac, who described the meetings as a key part of the process. "[If you don't,] people will file complaints, and the person who is being complained about or the party that is being complained about won't even bother to pitch [show] up."

To win political parties over to the idea, the meetings focused on the potential role of the

committees in preempting violence and other types of serious conflict. “It was important to emphasize that the establishment of these committees was not a witch hunt or to penalize anybody unnecessarily but was to ensure that in fact they should be looking at conflict prevention,” Isaac said.

Reverend Mwape Chilekwa, electoral commissioner from 2001 to 2005 who later served as a member of the national conflict management committee, described the argument used to sell the idea to the political parties: “The commission decided to set up the conflict management committee to help resolve small conflicts before they degenerated into something big.”

The commission leadership decided to pilot the conflict management committees during the campaign period of the 2001 elections to assess their value to Zambia’s electoral process. The leadership’s first step was to design the committee structures.

The code of conduct formed the basis of the committees’ mandate and defined the conflicts the committees were to handle. Isaac saw electoral-code-of-conduct violations as both the biggest source of electoral conflict and the key to resolving it. “The code of conduct [is] a good piece of legislation,” Isaac said. “It’s not so restrictive that it can’t be followed. If people didn’t break the rules, then we wouldn’t be having the conflicts.... I always say to politicians, ‘All of you break the code of conduct. Those who have more resources will do more, will be more extravagant than those who have fewer resources. And of course if you see others being more extravagant, you feel disadvantaged. But you all do it at different levels.’”

The legal department, which first drafted the structure, decided on a tiered model consisting of committees in each of Zambia’s then 72 electoral districts to handle local disputes before they could spread. If those district committees were unable to handle

conflicts or if a conflict involved high-level individuals, the issue would be referred to the national committee. The national committee would consist of representatives of the leadership of Zambia’s registered political parties. Three law enforcement agencies with responsibility for investigating breaches of the electoral code of conduct—the police, the anti-corruption commission, and the drug enforcement commission (which in Zambia also handles fraud and money laundering)—also would send representatives, as would the ministry of justice and the human rights commission. Major nonpartisan civil society organizations that worked on election-related governance issues or spoke on behalf of segments of society—including women’s groups and youth groups and faith-based organizations—also received invitations to sit on the committees. The districts would mimic that structure, with variations based on which parties or organizations were active in a given area. At the district level, local magistrates took the place of the ministry of justice representative.

The commission viewed the district committees in particular as critical to the success of the initiative. They would allow the commission to monitor remote areas of the country, which it had previously struggled to do. “There were a lot of challenges in the field, people having heated exchanges. We thought a quick way [to deal with them] would be to have a committee locally based,” Chilekwa recalled. “The commission [previously] would receive these complaints, and it wasn’t easy to deal with everything from Lusaka.”

The legal department designed the committees to be formal and stationary in nature. The committees had to wait for an individual to submit a formal written complaint outlining an alleged violation of the electoral code of conduct before intervening in a conflict. Once a committee received an official complaint, it had to hold a mediation session

within 24 hours to attempt to bring the two parties to a mutually acceptable resolution. If the district committee were unable to handle the case, it would forward the matter to the national conflict management committee—or to the police if it involved an alleged crime. National-level complaints against political party leadership or presidential candidates would go directly to the national committee. If complainants were dissatisfied with the outcome of the mediation, they could appeal to the courts after the election. To process the anticipated volume of requests, electoral commission staff tapped local government structures, such as town clerks, as secretariats at the district level. At the national level, the legal department would serve that role on a part-time basis.

The Zambian structure deviated in a number of ways from the South African model that had inspired it. First, in South Africa, the conflict management panels consisted primarily of individuals from civil society organizations with mediation backgrounds; political parties had final veto power over membership to avoid bias. That separation stemmed largely from South Africa's use of a parallel political party liaison committee system at the national, provincial, and municipal levels that could approve mediators. In Zambia, however, committees included *direct representatives* from political parties because the commission leadership believed the committees would be more effective with direct political party involvement. Additionally, Zambia did not have a separate political party liaison committee system at the national or local level and wanted to provide a forum so that party representatives could regularly meet their counterparts face-to-face.

Besides its broader membership, the Zambian committee structure deviated from the South African model in a second way: In South Africa, mediators moved about the country to help identify and resolve emerging conflicts. In

Zambia, district committees were stationary and more reactive. Such restrictions meant the committees could not serve as a type of early warning system as used in South Africa to prevent electoral conflicts by seeking out brewing tensions before conflicts started. The Zambian electoral commission legal department staff said that that limited jurisdiction and that the deviation from the original model was important because of concerns that committees would be tempted to insert themselves into specific electoral conflicts without those involved asking them to do so, thereby causing further electoral problems.

GETTING DOWN TO WORK

By September 2001, with only three months before voting day, the commission was ready to roll out the conflict management committee program.

Rolling out the program

Training new committee members was the first priority. The commission invited two EISA staff members from South Africa to train national committee members as well as electoral commission staff, who in turn trained district committee members. EISA developed the training program and materials with financial support from the government of Norway and the Carter Center, a US-based human rights organization.

Inadequate training at the district level meant that the district committees were unable to handle many of the conflicts reported to them during the campaign period, and they were forced to rely heavily on referrals to the national committee. The Carter Center, which sent a team of international monitors to observe the 2001 elections, found the district committees ill prepared and ineffective at handling preelection conflicts. The center's report concluded that "the majority of the reported disputes were beyond the capacity of CMCs [Conflict

Management Committees] to resolve.” Pointing to corruption, bribery, and disputed election results, the report argued that “these problems could only be addressed through reforms of regulatory and legal systems and proper enforcement mechanisms” and questioned the capacity and resolve of the electoral commission to effectively administer the program.²

Zambians went to the polls on December 27, 2001, and elected Mwanawasa with only 28.7% of the vote. The second-place finisher, of the United Party for National Development (UPND), trailed by less than two percentage points. Though all of the contesting parties ultimately accepted the result, international observers reported that the elections were fraught with technical issues and potential manipulation, raising questions about the legitimacy of Mwanawasa’s presidency. Election observers also reported several incidents of violent intimidation by ruling-party supporters against opposition politicians and their supporters at campaign events. In one instance, the Carter Center observed MMD cadres’ breaking into a radio station to disrupt the broadcast of an opposition presidential candidate.³

The conflict management committees had little or no measurable impact on the 2001 election campaigns. Assessing the committees’ performance in 2001, Kamwi, who at the time of the elections was legal counsel for the commission, reasoned, “They were still in their infancy, so they didn’t work so well.” Kamwi cited lack of communication as the committees’ primary shortcoming: “These were new structures. They were not known and they were introduced just about three months before the general elections, so the stakeholders didn’t appreciate them.” Because of the limited time frame, the electoral commission was not able to fully train mediators in each district. Additionally, due to insufficient funding and

lack of time, the commission staff failed to implement a planned information campaign. Because the committees could only *respond* to complainants rather than *seek out* problems, their low profile was a major hindrance.

Kamwi also said, however, that the committees’ lack of authority undermined their effectiveness. He contended that the political parties generally saw the committees as a waste of time, based on “gentleman’s agreements” to appear and to consent to mediation.

Pushing for legal authority

In 2003, largely in response to the backlash over his narrow margin of victory, Mwanawasa announced a review and overhaul of both the Zambian constitution and the laws governing elections. The process gave the electoral commission an opening to add conflict management to its mandate. Despite the lack of measurable success in 2001, Isaac and her colleagues saw enough promise to push for a legal framework—ahead of the 2006 elections—that would formally establish the commission’s ability to mediate complaints during the electoral process and legitimize for the political parties the conflict management committees.

It took several years for the National Assembly to draft the new legislation. The Electoral Act made significant revisions to the electoral code of conduct, affecting the conflict management committees. The act addressed previous enforcement confusion by specifying the responsibilities of the electoral commission, the anti-corruption commission, and the police in dealing with breaches. But despite those clarifications to enforcement responsibilities, the electoral commission still lacked the punitive enforcement authority its staff thought necessary to enforce the code of conduct. The act also gave the electoral commission broad powers to constitute the conflict management committees “for the purpose of resolving electoral disputes.” The legislation stated it was the commission’s

responsibility to appoint committee members and each committee's chair; vice chairs were to be elected internally. The act also gave the commission approval to use part of its budget to compensate committee members for their time per sitting, whereas it had previously relied on donor funding to pay committee members.

The National Assembly passed the revised Electoral Act in May 2006, two months before the beginning of the campaign period. Even though that legislation legitimized the conflict management committees, the extremely tight time frame once again compromised the effectiveness of the committees, which had to make appointments and conduct training throughout each of the now 74 districts. As a result, committees in many of the districts were not fully operational until campaigning was well under way.

Despite their newfound legislative legitimacy, conflict management committees continued to arouse skepticism in some politicians, who doubted the committees' ability to resolve disputes without having punitive powers. Chilekwa said, "There are those who believe that the conflict management committees must have teeth to bite, not just advise and help people along but [to] be able to say, 'This one is wrong and this one is right.' They must also have authority to suspend people from participating." No institution had the power to suspend a candidate during an election, though the courts could still nullify the results after an election concluded if they found that any candidates or political party had violated the laws.

Refining committee composition

The electoral commission learned from the experiences of 2001 that it needed to stipulate formal terms of reference and make adjustments to the structure of the committees.

Under the new terms, the conflict management committees had a three pronged

role: to first "prevent and manage electoral conflicts, 2) resolve electoral disputes that have arisen through mediation, and 3) ensure that stakeholders adhere to the electoral code of conduct." Though the system was geared toward conflicts between political parties, citizens could bring disputes based on alleged violations of the code to their district conflict management committees.

To reform the committee structure, the commission's legal department staff set forth that neither the chair nor the vice chair of a committee could be a political party representative. The staff also decided to remove local magistrates from the district conflict management committees. "Before, we had magistrates being part of the committees, and—due to their experience in dispute resolution—most committees invariably elected magistrates to be chairpersons," Kamwi said. "That presented a conflict of interest because some of the disputes before the committees may eventually end up in the courts presided over by the same magistrates."

Establishing leadership

The commissioners and senior staff knew they needed a chair for the national conflict management committee who could bring competing political parties together. They chose Miles Banda, who had a long record of public service in a number of government ministries—at one time serving as permanent secretary of the ministry of education and finally, as deputy secretary to the president's cabinet in the one-party United National Independence Party (UNIP) government. (Then president Kenneth Kaunda was Banda's brother-in-law.) Banda had retired in 1991, when Zambia transitioned to multiparty politics. By 2006, UNIP was a minor player in Zambian politics.

At the district level, leadership presented its own challenges. Lusaka district committee chair Abdul Phiri, who began serving on the

committee in 2001 based on his position as secretary-general of the Islamic Council of Zambia, said that strict maintenance of impartiality was key to his own success. “Since I was coming from the neutral ground, it was easier for me to deliberate,” Phiri said, explaining that he had worked hard since his appointment to preserve his reputation for impartiality. Phiri added that he went out of his way to avoid any public political event, lest he be linked with a specific party.

Banda and the district chairs had a number of personalities and interests to manage. At the national level, the committee had more than 30 members. Not every registered political party was active in the election and joined the committee, though at least 11 parties sent representatives at any given point in time. At least 18 civil society and faith-based organizations also sent members to the national committee, as did major branches of law enforcement, though the numbers fluctuated during electoral cycles. At the local levels, committees ranged from 8 to 15 members because of the smaller number of active political parties and nongovernmental organizations. Banda said he had to work constantly to remind the members that their purpose as a committee was to mediate conflicts, not serve as a political platform to advance party interests.

Training mediators

The electoral commission conducted training in two stages: The commission’s legal department first trained members of the national committee using the EISA curriculum for five days, drawing from the training they themselves had received in 2001. National committee members then split up into pairs and conducted district-level training for three days. To speed up the process, they often trained several districts’ committee members at the same time.

In explaining the goals to trainees, national committee members emphasized the preventive nature of conflict management committees. Chilekwa underscored the point by saying, “We try and emphasize to them that they are there to manage conflicts, because if they don’t manage conflicts, then they will have to manage uglier things. They should take off their partisan hat and begin to look at the need of the community to have peace as they engage in elections.”

Kamwi used the training sessions to define the district committees’ jurisdiction. “They don’t handle every electoral dispute,” he said. “They just handle those disputes which have a bearing on violence, which can bring about violence, those disputes relating to destruction of campaign posters, destruction of political rallies, use of abusive language during the campaign, abuse of government resources, [and] such things [as] bribery and vote buying.” Kamwi cautioned the districts that more-serious crimes such as assault with bodily harm, serious destruction of property, and sabotage would be the purviews of law enforcement officials. Committee members didn’t always understand that lesson. For example, when a district committee wrongly attempted to nullify results in 2006 after detecting a counting error, the electoral commission was quick to clarify the breach in jurisdiction, because only the courts had the legal right to nullify election results. Mulemba Ngombo Mulenga, legal counsel for the electoral commission, recalled, “We had to advise [the district committee] that, ‘No, you operated outside your mandate.’”

The electoral commission found that the use of training materials developed outside Zambia caused problems for district training. Created by EISA for South Africa, the manuals contained scenarios that did not apply in a Zambian context, which confused new committee members. The manuals illustrated the more mobile conflict management structure

used in South Africa, which required the trainers to spend extra time explaining the differences between the two models.

Encouraging reporting and resolving disputes

In August 2006, less than two months before voting day, the electoral commission launched an information campaign to encourage political parties and other groups to bring their election disputes to the committees. “We made conflict management part of the voter education syllabus,” Kamwi said, “so when the voter education facilitators go out ... they encourage voters and political parties to bring forward their disputes to the committees.” Kamwi credited the information campaign with an observed increase in complaints to the committees from 2001 to 2006. Several national committee members, however, said they believed that the public relations effort was inadequate, particularly in the districts.

During the 2006 campaign, the district-level committees mediated 56 conflicts involving vote buying, misuse of government resources for campaigning, and destruction of campaign posters and other materials. They also received complaints about potential bias on the parts of poll workers and electoral commission district officers. In the bias cases, if after mediation the complaining party still felt the individual was biased, the district committee recommended to the electoral commission that it remove the person. Isaac said the commission immediately followed committee recommendations related to biases of its district staff.

Even though the district committees did resolve some of the complaints, they continued to rely heavily on referrals to the national committee to field complex disputes. Banda attributed the districts’ dependence on the national committee to the condensed district training curriculum and to certain inadequacies of the training materials. Despite the challenges,

Kamwi was generally pleased with the conflict management committees’ operations in 2006. “They operated very well because the new legal framework gave them confidence,” he said. “They could summon parties to the mediation process. They could compel the attendance of parties to meetings.” In 2006, the district committees received 56 complaints across the country.

National elections took place on September 28, with Mwanawasa winning the presidency with 43.0% of the vote. The second-place finisher, Michael Sata of the Patriotic Front, took 29.4%. Election observers reported that the campaign period and voting day were largely peaceful, though there were some violent protests in urban areas as the commission released results.

Following the 2006 elections, Zambia’s high court issued a certain ruling that significantly affected the conflict management committees: In hearing an election petition, the court ruled that any violation of the code of conduct or any conflict-related issue should first be reported to the conflict management committees for attempted mediation. If one of the parties were dissatisfied with the outcome of the mediation process, the court would then hear the case. “With that judgment in mind, people now know if we send something that could have been resolved before the election to the high court, the high court is not going to entertain it because the events would have passed and [the parties] would have abandoned the first institution of contact to resolve that conflict,” Mulenga said. That ruling, she noted, “helped a lot” in cementing the legitimacy of the conflict management committees.

In the wake of the 2006 elections, Banda and the legal department staff resolved to make needed improvements to the conflict management committee system. They intended to use the five years before the next, 2011 tripartite elections to revise the training

curriculum by using materials based on actual conflicts the committees had mediated during the 2001 and 2006 elections. They also planned to roll out a more comprehensive public relations campaign, this time focusing more attention on encouraging voters and civil society groups, not just political parties, to bring their election conflicts for resolution. The electoral commission recognized the need to schedule a lengthier time frame for training to make sure that all district-level

committee members fully grasped the materials.

Those plans, however, would be put on hold by an unexpected turn of events.

OVERCOMING OBSTACLES

On August 19, 2008, two years into his second term, Mwanawasa died after complications from a stroke, shocking the country. The Zambian constitution required that within 90 days of his death, the government hold a presidential by-election for a replacement to serve out the remainder of his term. The electoral commission, caught off guard, was forced to make serious compromises in its long-term agenda as well as in its normal operations so as to meet that deadline.

The commission staff set aside plans not only to enhance the conflict management committees but also to register new voters. With no time to conduct voter registration nationwide, the commission was forced to rely on the 2006 voter rolls, thereby disenfranchising both newly eligible voters and those who had failed to register for the previous election.

Improving relations with political parties

Faced with a potentially contentious election and the need to make controversial decisions to meet the deadline, the commission leadership introduced a new, parallel body to dampen election conflicts: the national political party liaison committee. This committee

brought together the leadership of each of the registered political parties to meet with commission leadership in the two months before the 2008 elections. The party liaison committee reviewed proposed operations and gave parties an official forum to air their views and propose changes. Liaison committee members reviewed and reaffirmed the electoral code of conduct and worked together to schedule political rallies so that events would not overlap. The liaison committee was able to address suspicion between the parties and the commission and to head off issues before they reached the stage of formal complaints.

Assessing the liaison committee's operations in preventing conflicts and the conflict management committees' operations in resolving them, Isaac remarked, "We believe it worked very well." Because the liaison committee brought all party representatives together, rather than two parties at odds, it helped "build consensus [and] amicable working relationships amongst them," Isaac said. Following the 2008 elections, the liaison committee continued to meet quarterly, with additional sessions convened as the electoral commission or the parties considered warranted.

Gaining legitimacy

Early in the 2008 campaign period, the national conflict management committee had some high-profile success, which changed the perception of the conflict management committees among political parties. The Patriotic Front's Sata—the leading opposition candidate for the presidency—had lodged a complaint with the commission that MMD candidate and then vice President Rupiah Banda (no relation to Miles Banda) had given out food supplies to potential voters in Eastern Province and then asked them to support him in the upcoming presidential election. Isaac referred the case to the national conflict management committee, but the opposition

political parties balked, wanting the electoral commission to issue a judgment.

After the two candidates eventually agreed to mediation through representatives, Miles Banda brokered an agreement; the vice president would stop distributing food, admitting it was against the electoral code, and his party apologized to the opposition. This high-profile case raised the standing of the national committee, which in turn added to the prestige of the district committees. Mulenga cited the legitimacy of the national committee as essential to the smooth functioning of the district committees: “Once the leaders of the political parties actually understand the role of these committees, then it will get down to the grassroots and it will become more effective in the future,” she said.

Though the mediation of the food distribution disagreement helped legitimize the committees, the national committee continued to have problems getting top party representatives to appear for mediation. Miles Banda recalled that one complainant refused to follow up on his petition, insisting he could appear only after he had finished his campaign. In that case, the national committee held a mediation session after the election, at which point it became “an academic exercise,” Banda observed.

The 2008 campaign period did bring significant progress at the district level, where the committees received 76 complaints. District committees were able to resolve more conflicts on their own, resulting in fewer referrals to the national committee and allowing them to function more independently. Phosile Sichinga, a civil society member of the national conflict management committee representing a women’s advocacy group, reflected: “In 2008, I think disputes lessened because now the district committees were really becoming effective ... They were well received, and they were quite confident.”

Shortly before voting day in the by-election, Sata made public statements that he would not accept defeat, and he accused the electoral commission of rigging the vote. Banda won with 40.6% of the vote, only two percentage points ahead of Sata, who then challenged the result in the high court, asking for a recount. The request was eventually rejected in March 2009.

International election observers credited the conflict management committees with reducing tensions during the campaign cycle, but some of the observers were skeptical about the use of mediation to deal with complaints and conflicts, as opposed to the use of direct legal prosecution of electoral code violations. “[M]ost of the cases were dealt with to the satisfaction of the involved parties in the Conflict Management Committees (CMC),” the European Union monitoring team wrote in its 2008 observer report. “While not mandatory for the complainant, being dealt with at the CMC meant that the cases did not reach the courts and the Electoral Code of Conduct was not applied for these offences . . . While the CMC provide a good instrument to deal with disputes, it somehow derails from bringing offenders to justice and the public is not informed about it as their dealings are confidential. In this sense, the penalties stipulated in the Electoral Act are not applied and further breaches cannot be strongly deterred.”

After 2008, the legal department reviewed the session records of the 74 district committees. Although officials found that most of the *urban* districts followed both the mediation rules and the record-keeping requirements, many *rural* districts did not; and training inadequacies originally identified in 2006 appeared to be the problem. The commission still had a lot of work to do before the committees achieved full legitimacy and capacity.

Developing a new curriculum

With the unexpected 2008 elections behind them, Miles Banda and the legal department staff were able to turn their attention to the problems they had intended to fix following the 2006 elections. In preparation for the 2011 elections, the legal department secretariat constituted a technical committee of 15 members of the national conflict management committee—drawn primarily from civil society groups—to review and rewrite the training materials. Funded by a grant through the United Nations Development Programme, the technical committee rewrote the training materials to include examples of conflicts from previous elections—such as distribution of food to buy votes or destruction of another party’s campaign materials—and to refer specifically to Zambian electoral laws and regulations.

Committee mediation for the 2011 elections

International observers hailed the 2011 elections as an important step toward Zambia’s consolidation of democracy. In 2011, the MMD again put forward incumbent president Rupiah Banda as its candidate. But this time, popular sentiment had shifted further away from the MMD and toward Sata and the Patriotic Front. When the results were tallied, Sata won with 42.2% of the vote to Banda’s 35.6%, marking Zambia’s second change of party through an election. Banda did not petition the results or procedures of the election, making it the first presidential race without a legal challenge since the return to multiparty elections two decades earlier.

The training and other preparation by the committees played out in the lead-up to the 2011 elections. As in the 2006 and 2008 elections, the commission was pressed for time in rolling out the training—this time due to a delay in producing the new materials. District committees in Eastern Province in particular failed to resolve a number of conflicts. In its postelection review, the commission found those

failures had stemmed from inadequate training of the committee members. Sichinga said there was room for improvement: “[In some districts,] the capacity to grasp when you are teaching in English is somehow slower, so we’ve been saying that in some of these districts, we need to have the materials translated to local language,” she said. However, she added that this was the exception, not the rule, and that the new materials were “very effective” in other provinces.

In 2011, at the national level, political parties and presidential candidates usually decided to spend their time campaigning rather than pursuing complaints. The national conflict management committee received and mediated only five direct complaints and three referrals from district committees, which members said was a sign the district committees were operating confidently on their own. “In 2011, the committees were able to carry out the processes on their own really, without largely depending on the headquarters,” Lee Habasonda, a civil society representative on the national conflict management committee, said. “Decentralizing it is excellent, because in any case, the local people understand their conflict better than those of us who are here.”

District committees handled 135 complaints in total in 2011, up from 76 in 2008. The majority of the complaints involved vote buying, destruction of another party’s campaign posters, violence, and use of public resources by candidates in government. In one notable case, the Lusaka district committee mediated a complaint that political party cadres were campaigning at bus stops and in marketplaces, thereby hindering business and intimidating other party supporters. Phiri said the problem was compounded in instances when the chair of a market was a supporter of one party and allowed that party only to post materials or campaign.

Mulenga remarked on the effectiveness of committee negotiations: “[Committee members] were able, through that mediation, to get their members out of the markets and the bus stations. Because of the memorandum of understanding, they actually left the markets and the bus stops.”

“What we said was, ‘A business place is a business place,’” Phiri recalled. “It’s just as good as a polling station. There are rules and regulations to follow.”

ASSESSING RESULTS

From 2001 to 2011, the Zambian national and district conflict committees were mixed successes. They created an important avenue for addressing complaints, but they also suffered from short time frames for preparation before elections, incomplete or misaligned training, limited enforcement powers, and limited authority to take proactive measures. Their ability to mediate conflicts were also hindered by lack of publicity in local communities.

Nsama Yamba, assistant secretary-general of the Patriotic Front, said the committees’ mandates were vital to a peaceful future for Zambian politics. “How many resources are we diverting from food, medicine, and other developmental issues into resolving a conflict that would have been resolved from one action?” he said. “If you fail to handle a situation while it’s still at the birth stage, it’s like when you light a matchstick and throw it. If you don’t contain it right there, it will be a bushfire.”

International observers, who in previous years had been skeptical of the committees’ operations and effects, in 2011 generally praised their performance. “[The conflict management committees] were very active in the constituencies that were closely contested and served a valuable role in resolving issues such as disputes over posters, incidents of any insults traded between candidates, and threats of violence,” the 2011 European Union observer

team wrote in its final report. “Some disputes such as aggravated violence went to a CMC but later resulted in criminal prosecution.”⁴ The observer team, however, framed criminal prosecution as the ideal goal for disputes, not mediation.

Creating an avenue for complaints

National committee members Isaac—who became director of elections in 2011—and Kamwi agreed that one of the main advantages of the conflict management committee system was that the system created a formal avenue for complaints both against candidates and against the electoral commission staff themselves. In allegations of electoral staff bias, for example, the district committees could make impartial recommendations to Lusaka headquarters when an individual was unfit. “What the conflict management committee recommends is taken seriously because they are the people on the ground,” Isaac said. “They will be the ones to get the evidence and the facts of what has really transpired.” Before the establishment of the committees, she added, the commission had previously had trouble in remote districts in distinguishing legitimate complaints of bias from attempts to derail the electoral process.

Habasonda highlighted the benefit of creating a listening post, even when individual district committees were unable to mediate the particular conflict. “No matter how weak these committees can be, [they do] help maintain the peaceful atmosphere because then people have an avenue to try and address their concerns,” he said. “Although they may not be happy with the outcome, the very fact that there is a channel does really enhance the peacefulness of the electoral process.”

Many members of the committees and electoral commission staff said the committees had strived to reduce tension between the political parties during campaign periods—and had succeeded. “These committees are the first

point of call, [and] the mere fact that somebody will have somewhere to report and complain to already that minimizes the tension in that person,” Kamwi said. “These are essentially peace committees. That’s why we don’t even expect them to issue harsh judgment decisions like the courts do: fining, imprisoning. They are peace committees; they are meant to harmonize, to bring parties together so they can appreciate one another. So, without doubt in my mind, they have been effective. They have achieved the purpose.” Isaac said the committees had also reduced the number of disputes the commission staff had to deal with, allowing them to focus on running the elections.

However, lack of data for each district committee made it difficult to assess changes in the committees’ effectiveness over time. The district committees’ record keeping improved in 2011; in late 2012, legal department staff said in interviews they were making data collection a bigger priority for subsequent elections.

Reducing tensions

Outside observers and members of the committees said the 2011 campaigns would have been more violent without the committees to reduce tensions between political parties. “If it were not for them, fights would have been erupting every day,” said McDonald Chipenzi, executive director of the Foundation for Democratic Progress (FODEP) in Zambia, which monitored elections. “I think we have seen an improvement where a number of cases were resolved—there and then—and because of that we saw reduced conflicts in most of these constituencies,” Chipenzi said, explaining FODEP’s election monitors’ observations about the 2011 national elections and subsequent legislative by-elections. “To us, that is an indication that political parties and other stakeholders have a lot of confidence or have developed confidence in the wake of the conflict management committees.”

Not everyone agreed fully. Some participants said that although the committees managed electoral conflicts and resolved disputes through mediation, they had largely failed to prevent conflicts or keep political parties and other groups from violating the electoral code of conduct, another tenet of their original mandate. “The violations of the code of conduct unfortunately do not reduce [because of the conflict management committees],” Kamwi said. “What is important is that the committees have managed to expose most of those [violations] ... Violations of the code of conduct [are] there, but I think the committees are also becoming more visible and more active in addressing that, making sure the code is observed and enforced.” The political party liaison committee partially filled the need for conflict prevention at the national level and continued to meet quarterly between election cycles.

“We are trying to show our Zambian people that we are able to change the [electoral] system without violence,” said Yamba, who represented the Patriotic Front on both the national conflict management and political party liaison committees. But, he argued, the effectiveness of the committees was based largely on whether a conflict was reported before it escalated and on the level of training each district committee received. “If the conflict management committee is ineffective, there are a lot of things that will spill from there. You will see violence, you will see vices, malpractices developing. And unless the CMC understands its formulations, understands its importance, its roles, it’s a waste of time.”

Even though Yamba spoke positively of the Patriotic Front’s experiences with both committees during its years in opposition, Winstone S. Chibwe, secretary-general of the UPND, said that in the absence of sanctions or formal findings of wrongdoing, the committees were simply an “academic” exercise, echoing

Chairman Banda's assessment. He added, however, that he saw the benefits of having a mechanism whereby the electoral commission could remove biased district staff and that he was impressed by the commission's responsiveness to the conflict management committees' recommendations in recent elections.

Alfred A.K. Ndhlovu, MMD information and publicity secretary, said the committees were effective but still too new and underequipped to deal with many of the more serious issues in *Zambian* elections. "The conflict management committees definitely work, but under difficult conditions," he said, citing specifically the lack of adequate training in many districts as a key problem and also pointed to their inability to impose sanctions on erring parties. "We file written reports, but where we are satisfied that it will be useless, we just keep quiet," he added. "Not that the problem is not there, but let's not waste our time."

The success of the conflict management system ultimately hinged on the cooperation and buy-in of the political parties, which was partially hindered by the low profile of the committees themselves during previous elections. The committees' low profile was caused largely by the electoral commission's failure to implement a large-scale media campaign across the country.

Working with law enforcement

Members of the national conflict management committee argued that one of the committee system's major achievements was that the system helped reduce suspicions between opposition parties and law enforcement. "There is a very good working relationship between conflict management committees as established by the commission and also the people who work in the police service for policing elections," Chilekwa said.

"[The police] understand that there may be misdemeanors that need to be handled with a little more tact than the usual type of issues, [where people would be thrown in jail]." Phiri expressed a similar sentiment based on his experiences at the district level, adding that an officer's presence on the Lusaka district committee often meant that cases the committee referred to the police were dispatched quickly and professionally. But Kamwi said several police officers on the district committees had approached him with concerns similar to those of the magistrates after the 2001 elections. The officers were concerned about their inability to treat an admission of wrongdoing made during a mediation session during a mediation session as a confession to a crime.

Habasonda, however, argued that for a different reason, not all police participation was positive. He observed in 2011 that police representatives chaired many of the district committees, which he said compromised the committees' perceived impartiality. "Police are actually part of the conflict because they cancel opposition meetings and so on. Then they no longer become neutral arbiters, and the opposition tend to see these committees as hijacked committees," he said. Additionally, some police representatives saw participation in the conflict management committees as a conflict of interest.

In 2011, partially to address such perceptions, the electoral commission and the *Zambian* police made concerted efforts to improve law enforcement handling of election-related cases. The police commissioner made numerous public statements about the importance of officers' remaining impartial and supporting engagement with the conflict management committees. Isaac also used the national political party liaison committee to try to reduce tensions between the political parties and the police.

In some districts, the committees also helped reduce the onus on the police to deal with lesser or noncriminal offenses during elections. “It has lessened the burden for the police because in those days [prior to the committees’ launch], people used to just rush to the police,” said Patrick Samwimbila, a civil society member of the national conflict management committee who represented a youth movement aimed at promoting interparty dialogue. “But when they come to the conflict management committee, their attention is already defused; and then they are sobered up. ... We’ve made them reflect.”

REFLECTIONS

In late 2012, Director of Elections Priscilla Isaac and the rest of the leadership of the Electoral Commission of Zambia faced major questions about the structure and powers of the conflict management committees. In particular, they reflected on whether the committees could be more effective with enhanced powers that would give them (1) the mandate to seek out conflicts and violations for mediation and (2) increased enforcement authority.

Members of the national and district committees argued that the committees should have permission to seek out conflicts and code violations to mediate—rather than wait for reports—which would enable them to fulfill the prevention piece of their mandate. Such a structure would more closely mirror the South African model, which had originally inspired Zambia’s electoral commission, and would enable committees to act as an early-warning system in the districts. “If a member of the committee observes a violation, they really should be given powers to summon the erring parties rather than waiting for people to complain, because those committees are interested parties to see if that election is peaceful, so they need to be proactive,” Lee Habasonda, a civil society representative on the

national conflict management committee, argued. “The current arrangement ... is not proactive at all. It is passive, and that is a weakness when you are waiting for somebody to complain.”

Miles Banda, chair of the national conflict management committee, disagreed that the committees should be more proactive. “Our mandate is not to look for conflicts,” he said. “Our mandate and our responsibility are to bring peace between two parties that disagree over a certain electoral issue. That is our responsibility. We don’t police the community so that we look for conflicts ... That particular concept has been very difficult for members at both district and national levels to understand.”

To illustrate why he believed the committees were unable to prevent future violations of the electoral code of conduct—a key component of their original mandate—Banda pointed to the committees’ *reactive* nature and their lack of authority to penalize offenders. “We have not reduced the number of conflicts; we have not reduced the level of misunderstanding between political parties,” Banda said, arguing the committees could only prevent existing conflicts from escalating and deal with tension around violations that had already occurred. “We have no ways of enforcing anything, so I don’t think the existence of the management committee—in my view—is going to reduce conflicts. Conflicts will always be there if there are things to complain about, and the role of the committee will be to resolve those conflicts.”

McDonald Chipenzi, executive director of the Foundation for Democratic Progress in Zambia, argued that this problem went beyond the conflict management committees and to failings within the electoral code of conduct itself. “You have this regulation which in essence is ineffective, which cannot be enforced, so how do we deal with it?” he said, adding that lesser violations of the code of conduct such as

destruction of campaign materials or improper use of government vehicles often go unaddressed. “This code of conduct is based on the goodwill of our politicians. ... At the moment, it is not binding.”

The national political party liaison committee, established in 2008, partially filled the prevention role, allowing high-level political party representatives to meet regularly to work out campaign schedules and other issues. In 2011, the beginning of the campaign period saw clashes between political party supporters, and the liaison committee brought together the leadership of each party to sign a public pledge against election violence. Isaac said that though there were some initial setbacks, the meeting helped dampen conflict during the rest of the campaign. “It was relatively quiet because we went public [with the pledge],” she said. To remove suspicion surrounding a new results tabulation system and other changes, the committee also worked to ensure each party understood the technical logistics of the election.

Frustrations with the limited powers of the conflict management committees remained in late 2012. Members of the national and district committees told electoral commission staff during postelection reviews that the committees would serve as a greater deterrent against violations of the code of conduct and other wrongdoings if they had the authority to render judgments and penalize offenders. The electoral commission itself struggled with its own lack of enforcement options. In 2012 interviews, Isaac and the commission staff said they were pushing the National Assembly to give the electoral commission itself sanctioning powers against violators of the code of conduct regardless of whether those powers were extended to the conflict management committees. “The Zambian constitution is currently being reviewed, and one of the areas of focus is the powers of the commission,” Eric Kamwi, legal

department head and commission secretary, said. “Stakeholders have repeatedly said they want to see a much stronger electoral commission. ... They want a commission which has ‘teeth to bite,’ as they call it. So they have suggested that [the commission] must have powers to disqualify a candidate. It must have powers to cancel an election. It must have powers to disqualify a political party from taking part in an election.”

Others, such as Reverend Mwape Chilekwa, electoral commissioner from 2001 to 2005 who later served as a member of the national conflict management committee, disagreed with the idea of extending powers to the committees. Chilekwa argued that sanctions would undermine the mediation aspect of the committees. “I think if people are not happy with the verdict of the coming together and reconciling and resolving the particular difference and then moving on, then they have recourse to the courts, where they can go and challenge a particular situation,” he said. “I don’t think that the conflict management committee should have the power to fire or suspend or exclude—or punish, for that matter. Its chief role is to encourage people to exchange views and find a way forward because then we are all investing in the climate of peace, which we want to have if we [are to] have a successful election.”

EPILOGUE

At the time of publication, Zambia still faced election violence, particularly in contentious, parliamentary by-elections. In late February 2013, in such an election, a supporter of the Patriotic Front was killed during an alleged attack on United Party for National Development campaigners, according to Zambian press reports. More than two dozen leaders and supporters of the UPND were arrested. The Law Association of Zambia challenged President Michael Sata to publicly

condemn the violence. As of publication of this case, Sata had not responded; and the electoral commission postponed the by-election and restricted campaigning to media activities.

“I think some of the contentious issues were not so much matters to bring to the conflict management committee,” Isaac said in a March 2013 interview. “Conflict management committees usually deal with things like somebody disrupting a rally, pulling down

posters, things like that. There were some incidents that went beyond what the conflict management committees could deal with, because the levels of tension and violence were high prior to the postponement of the by-election.” As of publication, it was unclear whether the conflict management committees would be able to handle this type of problem in the future or whether the electoral commission would need additional tools.

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