



## Foundation for Democratic Process

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# REPORT ON THE KANYAMA CONSTITUENCY BY-ELECTION

21<sup>ST</sup> FEBRUARY, 2008

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## **ACKNOWLEDGMENTS:**

FODEP's ability to assess the electoral environment in Kanyama constituency was made possible through the perceptions study on "*perceptions of the electorate towards Zambia's electoral process.*" It was through the pre-testing of the study instrument that provided an opportunity for FODEP to capture some of the electoral process issues of the campaign period and factors affecting voter participation in the electoral process. FODEP therefore wishes to express its gratitude to GTZ and Irish Aid for the support.

FODEP wishes to express its appreciation to Paula Walsh, from the British High Commission, for sparing her time off her busy schedule to accompany the FODEP Mobile team in the field.

We would also like to extend our profound gratitude to the different individuals who contributed to this effort by gathering the necessary information in different capacities. We will always remain thankful for their valuable input.

## 1 INTRODUCTION

The Kanyama constituency parliamentary seat fell vacant after the incumbent PF Member of Parliament, Mr. Henry Mtonga died in South Africa on 30<sup>th</sup> November 2007 after an illness.

The 2006 Electoral Act, under section 108 (1) provides that “...*Subject to other provisions of this Act, a by-election to fill a casual vacancy in the National Assembly shall be held on such date as the Commission may, by statutory order, prescribe, being a date not later than ninety days after the date when notification of the vacancy was communicated by the Speaker and received by the Commission...*”

In compliance with the Electoral Act, the Electoral Commission of Zambia (ECZ) set January 31<sup>st</sup> 2008 and February 21<sup>st</sup> 2008 as the dates for the nominations and for the by-election respectively.

FODEP undertook to monitor the main events leading up to the by-elections in Kanyama, covering the three main stages: Nominations of candidates; Campaign process; and By-election days and the results process.

During the 2006 tripartite elections, the Kanyama constituency seat was won by the Patriotic Front’s candidate Mr. Henry Mtonga who beat four other candidates after polling 17,731 votes against the closest rival, *Mr. Mukupa Harrison* then representing the United Democratic Alliance (UDA) who had 14,467 votes. Others were Princess Nakatindi Wina who stood on MMD ticket and got 9,658; Mwale Godfrey of the All Peoples Congress Party (APC) who had 1,048 and in the last position was *Mr. Mwewa Chushi* of the New Generation Party (NGP) who had 684 votes.

It worth noting that two of the 2006 losing candidates (Mr. Mukupa and Mr. Chushi) again re-contested the same seat.

The Kanyama by-election was unique in many aspects: It was yet another by-election in an urban setting which was a stronghold of the opposition where the ruling party held no single seat, and occurring barely two months after another urban constituency by-election in Chingola on 8<sup>th</sup> November 2007. The importance of this by-election was further highlighted by the remarks by the republican president when he expressed disappointment as to why the ruling party was failing to claim even one parliamentary seat in Lusaka, and directed the party leadership to work hard win the seat as this was an opportunity for MMD to gain one seat in the city.

It was also at the midst of the floods that had submerged most parts of the constituency, and saw frantic efforts by the authorities in removing the waters, and even prompted the ECZ to contemplate deferring the by-election day to another date fearing lack of access to polling stations by voters.

The by-election was also held at the midst of a stand-off and internal rifts within the party that held the seat over the controversial issue of participating in the national constitutional

conference (NCC) over which 27 members of parliament had defied their party's directive not to participate. The outcomes of the by-elections would therefore potentially entail different implications both within and outside the opposition party and to the 'rebel' MPs, as well as the ruling party and other stakeholders.

## 2 FODEP MONITORING STRATEGY

FODEP mobilized its locally-based members resident in Kanyama constituency and constituted two teams of mobile monitors to observe the nominations process, the political campaigns and a sampled number of polling stations on the polling day.

One monitoring team concentrated on the southern part of the constituency in Linda area, while the larger team focused on the densely populated area around central and northern part of the constituency. All the monitors, save for some provincial members who were serving a coordinating role, were residents of Kanyama.

FODEP mobilized a total number of 22 monitors and secured accreditation from the ECZ. FODEP adopted this 'sampled monitoring' approach of covering the by-election as a cost-effective strategy in view of the non-availability of funding to undertake a full-scale monitoring coverage of the by-elections as per *normal monitoring operation*.<sup>2</sup>

FODEP managed to undertake the following:-

- Held a half-day orientation meeting for the monitors at its national secretariat on February 14<sup>th</sup> 2008;
- Place two monitors to observe the nominations process;
- Deployed mobile monitoring teams to sampled number of polling districts;
- Deployed monitors at the Count Collation (Totalling) Centre at Chibolya Middle-Basic School;

In addition, FODEP, with support from GTZ under the Activity Line item of carrying out a "*study on voter perceptions of the electoral process*"<sup>3</sup> managed to take advantage of the by-election to undertake a pre-test of the Questionnaire among the electorate. This proved useful as it helped gauge the perceptions of the electorate and reasons for the likely poor turnout as was later observed.

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<sup>2</sup> FODEP's normal monitoring operation involves: (1) *Conducting Voter Education to mobilize and educate the electorate as well as advise on how to avoid malpractices*; (2) *Nominations monitoring to ascertain the validity of candidates & compliance to qualifications requirements*; (3) *Campaign monitoring to detect and expose malpractices as a way to discourage their occurrence*; (4) *Orientation of Monitors to update their monitoring skills*; (5) *Deployment of Monitors in all Polling stations to observe the entire voting process*; (6) *Count observation, to ascertain the accuracy of the count*; (7) *Count Collation and Results declaration to ensure that there is correlation between the results at polling station level and those declared as final results*; (8) *Post election to take account of the aftermath of the elections as well as the conduct of the losing candidates*.

<sup>3</sup> FODEP, during its current funding from GTZ and Irish Aid, has a component of undertaking a study on the Electorate's perceptions about Zambia's electoral process and system, with a view to identify issues that compound Voter Apathy and undertake sensitization and/or lobbying work to address the problems. The study is to be carried out in 10 sampled districts of Zambia.

### **Voter Education**

FODEP did not manage to undertake voter education in the constituency due to lack of funds.

This report recounts FODEP's findings and observations of the entire electoral process leading up to the by-elections in the constituency. It outlines the main events of the election process and presents FODEP's opinion of the conduct of all the stakeholders in the by-elections.

### **3 OBSERVATIONS:**

Some of the main issues noted are outlined in brief in line with the main stages of the electoral process below:

#### **3.1 Nominations Process**

The Electoral Act provides, in section 32 and 33 that *"... the Commission shall prescribe the date, and time and place for submission and acceptance of nominations in an election and the manner and procedures for such nomination..."* and that *"...Every person who desires to be candidate for election in any constituency shall lodge with the returning officer for that constituency that person's nomination paper in the manner and form prescribed."*

Nominations of candidates for the parliamentary by-elections were held on 31<sup>st</sup> January 2008 at Chibolya Middle Basic School.

The nominations process proceeded well and in accordance with the Electoral laws. There were eight (8) aspiring candidates representing eight political parties who turned up to file their nominations, and all the eight (8) met all the necessary qualifications to stand as MP and they all managed to file in their nominations without hindrance.

The ECZ, in an apparent attempt to ensure orderliness, only allowed the candidates and their supporters inside the nominations centre, and FODEP observed that this aspect greatly helped in controlling the situation. In the absence of this, it is likely that there could have been serious clashes.

The successful candidates were as follows:-

<b>NO.</b>	<b>CANDIDATE'S FULL NAMES</b>	<b>POLITICAL PARTY</b>
1	Col. Gerry Chanda	Patriotic Front (PF)
2	Mr. Mwalimu Simfukwe	Movement for Multiparty Democracy (MMD)
3	Mr. Harrison Mukupa	United Party for National Development (UPND)
4	Ms. Elizabeth Phiri	United Liberal Party (ULP)
5	Mr. Mwachilele Husty	United National Independence party (UNIP)
6	Mr. David Kasanga	Forum for Democracy and Development (FDD)
7	Mr. Ng'ondo Winright K	All Peoples Congress Party (APC)
8	Mr. Mwewa Chushi	New Generation Party (NGP)

One major incident of violent clashes among political party cadres from the ruling MMD and UPND was witnessed during nominations. The incident was sparked by a UPND van which accidentally and unintentionally splashed muddy waters on-to the MMD cadres as it was passing-by, and the MMD cadres retaliated by pouring the same dirty waters on any UPND cadre in sight. However, the Police acted quickly by arresting two MMD cadres and whisked them away, and this helped calm the situation. The MMD cadres immediately turned their attack on the Police vehicle by throwing stones on the vehicle, but the Police drove away.

### **3.2 Campaign Process**

The important legislation governing the campaign period includes the 2006 Electoral Act and the 2006 Electoral Code of Conduct.

It was generally acknowledged that the campaign process was conducted in a relatively uncondusive atmosphere characterized by sporadic incidents of violent clashes among political party cadres. Other cases of malpractices were noted to varying degrees. In general, the campaigns were not “issue-based”, but largely bent on personality-attacks among the contesting parties.

#### ***Clashes among political parties***

The campaign period was characterized by sporadic violence mainly involving the main political parties – the MMD, the UPND and the PF. This was in contravention to both the Electoral Act and the Electoral Code of Conduct. The 2006 Electoral Code of Conduct, under Regulation 7(1) provides that:

“...A person ***shall*** not —

(a) Cause violence or use any language or engage in a course of conduct which leads or is likely to lead to violence or intimidation during election campaigns or elections;

On Saturday 16<sup>th</sup> February 2008, there was a clash between the MMD and UPND in Munkolo Ward after the truck carrying the UPND campaign team blocked the vehicle carrying the MMD campaign team that was proceeding to Linda on the main Blue Boar road, resulting in a fight that ended in the windscreen of a Toyota Landcruiser for the UPND team being broken by stone throwing MMD cadres. The cadre that broke the wind screen was apprehended and severely beaten.

Around 11:20hrs the same day, 16<sup>th</sup> February 2008, the campaign team for the UPND was passing near Los Angeles Police Station with their vehicle laden with stones on their way to their camp in Chibolya compound when they ran into slogan-chanting MMD cadres. UPND reacted by stoning the MMD team and inflicted some damage to the MMD vehicle, whose windscreen was also shattered. The Police arrested three UPND cadres. The suspects were released the same day on Police bond.

On Sunday 17<sup>th</sup> February 2008, some suspected UPND cadres went to the home of a Mr. Somile, a leader in MMD who had recently defected from the UPND, with the motive of brutalizing their former member for having caused the arrest of their colleagues. They broke

into Mr. Somile's house who, fortunately was not at home. Some monitors who witnessed the breaking say they identified some cadres that were involved in the previous stoning incident.

### **Treating**

The Electoral Act, under Section 79 and 81, prohibits bribery, corruption and "treating".

Section 81 provides that "...any person who corruptly by oneself or by any other person either before during or after an election, gives or provides or pays, wholly or in part the expenses of any food, drink, entertainment ... for any person for the purpose of corruptly influencing that person... to give or refrain from giving that person's vote at an election shall be guilty of an offence of treating..."

On 10<sup>th</sup> February 2008, the PF President visited the Catholic Church in Kanyama and donated some mealie meal and cooking oil to the youth. While this gesture may have been a genuinely meant gift to the youth, it is alleged that the timing was deliberately linked to the by-election, considering the fact that the party President has never had any prior visit to the church before the election period.

### **Voters Cards**

A number of ruling MMD party agents were seen by our monitors in Chibolya compound collecting particulars off the NRCs and Voters' cards from the electorate and assuring them that 'if they voted for the MMD their plots in Garden House Motel area will not be demolished after the elections'. UNIP is also noted to have been undertaking a similar activity in Chibolya compound and in Kanyama. While it was not concretely established as to what exact use such details are put to by each of the parties involved, unconfirmed reports reaching FODEP indicate that such information was used to get back to the people affected, for them to get to some 'secret' place where they would be given some goods, foodstuffs and even money as appeasement if they voted for them.

FODEP notes with deep concern that such acts have become widespread during by-elections, and the great concern is that the mere act of collecting details and particulars of voters has an effect of instilling some psychological fear on some electorate who may be made to believe that their votes would not be secret. We implore the Electoral Commission and the authorities to prohibit such acts and make them punishable under the electoral laws.

## **3.3 Election Day**

### **Voting Process/Election Period**

In general, FODEP noted that voting in most polling stations started on time at 06:00 hours, with the exception of a few polling stations, particularly those which had temporary shelters as they got damaged by the early-morning downpour on the elections day due to rains.

At Mulilo-'B', Mulilo-'C' and Zambezi polling stations, voting commenced at 08:50hrs because the gazebo tent that was erected for use as polling station had collapsed. Also at Kilimanjaro (Dorian centre), voting started at 08:55hrs, and the voting time was extended. Voters that arrived at the station at 06:00hrs with the intention of quickly casting their vote and proceed for work expressed disappointment at the inconvenience and stated that they would not make



it to cast their votes any other time that day. Some stated that by the time they returned back home from work, the polling stations would have been closed. Though the two hours that were lost in putting up the tent was recovered after the normal voting hours, many people did not know there was such an arrangement and did not vote.

#### ***Posters and Campaigning within restricted range:***

According to the 2006 Electoral Act, no active political campaigns are allowed on Election Day within a radius of 400 metres from the polling station, and no political campaign poster is allowed within 100 metres radius from the polling station.

Our monitors reported having witnessed some violations of this provision on Election Day. Some visible level of political campaigning by some political party cadres within the restricted 100 meters was witnessed at Mulilo 'B' and 'C' Polling stations, in Mutandabantu, Nakatindi, Twashuka, and Mwapona polling stations and at Chibolya Basic School. There were also reported cases of some campaign materials pasted within the 100 meters radius of polling stations – notable cases being Nakatindi and Sikota Wina polling stations and in Linda compound where a poster for a PF candidate was spotted around 17:20 hours less than 30 metres from the polling station.

#### ***Voter Information***

FODEP also noted that there was very little voter education conducted in the area. People were coming to vote at wrong polling stations while others came to vote with either the voter's card or NRC only. This was witnessed in a significant number of the polling stations. Upon being redirected to go to their correct polling stations to cast their vote, or requested to go back and either collect their NRC or Voter's card, some voters clearly indicated that they could not afford to go and come back again and would rather stay away from voting.

The locations of some polling stations left much to be desired in the sense that the bars and taverns were just too close and when the counting began, there was too much noise and confusion by the drunken crowds. Notable cases were at Mutandabantu, Nakatindi and Sikota Wina polling stations.

#### ***Competence of some Electoral Officers***

It was noted during the by-election that some electoral and counting officers lacked the necessary knack for accuracy and detail. The ECZ should step up efforts of using knowledgeable and competent electoral officers. In one incident at Buntungwa polling Station at New Kanyama Basic School, a presiding officer picked the ballot boxes after counting and wanted to single handedly deliver them to the counting centre in own vehicle, but was restrained by party agents. In several incidents, as noted during the count collation, some figures reported by presiding officers were wrong and it had to take the agents to correct some of the figures attributed to the candidates as valid votes obtained, or proposed for rejection.

#### ***Voting Streams***

FODEP noted with concern that the innovative practice employed by ECZ during the 2006 elections, of using voting streams where registered voters exceeded 650 voters was done away with during the Kanyama by-elections. This had notable repercussions on the pace of voting in

nearly all polling stations monitored. Voting at some centres like Chibolya, New Kanyama Basic School and Twashuka was extremely slow due to the abandonment of voting streams. At Linda's Push-Hall polling station there were long queues of voters even as late as 17:20 hours!

With voting streams, the voting process and counting would have been much quicker and smoother than the case was.

### ***Errors on Voter Register***

There was evidence of some errors on the voters register. The errors pertained to minor misprints, and even misspellings of particulars, while others were major errors that prevented voters from participating in the elections.

Some instances of errors on the Voters Roll were noted in a number of polling stations. For instance, at Nakatindi, Mulilo C, Kwame Nkurumah, Twashuka, Mwapona and Chibolya basic school, there were cases whereby some voters had Voters Cards but their names were missing from the register.

Other instances were, as in one polling station at Buntungwa Polling District, where one voter's name, a Mr. "Mumbi" was mis-spelt as "Mumba", while on his NRC and Voter's card the name was written "Mumbi", and he was allowed by the Presiding officer to vote. However, in another instance on the same polling district, one voter was denied the opportunity to vote on account of an error in the year of birth, which on the Voter's Register was printed as "1989" while on Voter's Card it was indicated as "1986" and also on the NRC it was "1986".

This was clearly a "data-capture" error by the ECZ since on the Voters Card which was bearing the same voter's portrait, and issued by the ECZ, the correct date of birth was 1986. FODEP notes with concern that such an error could cause an intending voter to fail to vote even when the circumstances are very clear. ECZ should have dealt with such cases ahead of the Election Day by designating some period for those who had been classified as ineligible during the registration period ahead of the 2006 elections, but had just turned 18 years to have their classification updated and allowed to vote. We recall that during the voter registration period, the reason why some youths aged 17 years were included was to facilitate ease of updating the register once they turned 18 years, but it was disheartening to note that there was no such opportunity provided by ECZ to perform such vital updates since the 2006 elections.

## **4 RESULTS PROCESS**

The 2006 Electoral Act allows for the counting to be conducted in the polling station and outlines the general procedure to be followed to ensure an open and transparent counting process:

*Section 66 (1) of the Act provides that "...Votes shall be counted at the polling station at which those votes were cast, except when in the interest of ensuring a free and fair election, the Commission, after consultation with the contesting parties or their agents, determines that those votes be counted at another counting venue.*

*(2) A counting assistant shall ensure that the procedures set out in this Part relating to the counting of votes commences as soon as practicable after the polling station is closed for voting and continue uninterrupted until they are completed."*

FODEP noted that in general, the process of results management at polling station level was in line with the provisions of the 2006 Electoral Act. All the polling stations conducted the count at polling station immediately after the close of the poll. Most of them started soon after 18:00hrs, with the exception of about six (6) polling stations which had opened the stations an hour or two later on account of their temporary shelters having been destroyed by the early-morning rains.

### **4.1 Counting at Polling Stations**

FODEP noted that most of the polling stations had adopted the meticulous and tediously slow method of scrutinizing the ballots before counting. This process took too long and delayed the conclusion of the count. While this may have been to allow for thoroughness to the satisfaction of all, the process proved to be just too cumbersome, and we feel that ECZ would do well to improve on this especially when counting has to start no earlier than 18:20hours when most stations are dark.

Notwithstanding the above, the counting went on well without incidents in all polling stations. However, in terms of delivery and post-poll procedures, ECZ needs to do much more to train their personnel to avoid situations where, as in one instance, a presiding officer was seen attempting to deliver election materials and ballot boxes to the Count Collation centre in own vehicle and without police escort.

### **4.2 Count Collation & Declaration of Results**

The Count Collation (totalling) centre was established at Chibolya Basic School. The centre seemed over-crowded and there appeared to have been no proper order at times as some party cadres kept making noise even to disruptive levels. In accordance to the Electoral laws, only authorized and accredited persons are allowed to be in the count collation centre.

Collation of results from polling stations at the Results Collation (totaling) Centre started very late, after 22:00 hours. This was due to the fact that most ballot boxes had not yet been delivered from the various polling stations as a result of having stopped voting at 18:00hrs and that most polling stations took so long to complete the count using the thorough process. Count collation of results at totalling centre only started after 22:00 hours and ended about 03:40 hours in the morning on February 22<sup>nd</sup> 2008.

The Returning Officer attested and declared the results around 03:45 hours as follows:-

NO.	CANDIDATE'S FULL NAMES	POLITICAL PARTY	Votes
1	Col. Gerry Chanda	Patriotic Front (PF)	<b>3,834</b>
2	Mr. Mwalimu Simfukwe	Movement for Multiparty Democracy (MMD)	<b>3,393</b>
3	Mr. Harrison Mukupa	United Party for National Development (UPND)	<b>2,807</b>
4	Ms. Elizabeth Phiri	United Liberal Party (ULP)	<b>535</b>
5	Mr. Mwachilele Husty	United National Independence party (UNIP)	<b>373</b>
6	Mr. Ng'ondo Winright K	All Peoples Congress Party (APC)	<b>128</b>
7	Mr. David Kasanga	Forum for Democracy and Development (FDD)	<b>122</b>
8	Mr. Mwewa Chushi	New Generation Party (NGP)	<b>32</b>
	Rejected Votes:		<b>178</b>

The Returning officer further announced that there were a total of 12,552 total votes cast and 178 ballots were rejected.

### **Observation**

Ballot papers which had been 'Proposed for Rejection' at the polling counting centres should have been scrutinized by the Returning Officer, so as to confirm or overrule on some of the decisions by the Counting officers and use the opportunity to adjust the tally for some candidates before announcing the results. This aspect was ignored during the collation.

### **4.3 Comparative Analysis of the Results (2006 Elections & By-election)**

The table below presents a comparative analysis of the election results for the previous elections held in Kanyama against the just ended by-elections.

Electoral variable	2008 By-election	2006 Tripartite Elections	Change
Registered Voters	66,983	66,983	<b>0</b>
Votes Cast	11,624	45,131	<b>-33,507</b>
Candidates:	8	5	<b>3</b>
Voter Turnout	17.1%	67.9%	<b>-50.8%</b>
Winner's percentage of Cast	33.0%	39.3%	<b>-6.3%</b>
Winner's percentage of Regd.	5.8%	26.7%	<b>-20.9%</b>
Spoiled/Rejected:	178	516	<b>-338</b>
	<b>1.5%</b>	<b>1.1%</b>	<b>-0.4%</b>

### ***Voter Turnout***

Some of the notable factors that may have led to Voter Apathy include the following:

- a) Some voters had hoped to vote early en-route to their places of work. As this was not a holiday as the case was during the 2006 elections, many who had found long queues at their respective polling stations opted to not risk being late for work and left without voting. It is unlikely that such voters had time to come back and vote before the polling stations closed at 18:00 hours;
- b) The early morning heavy rains that destroyed some of the temporary polling stations delayed the start of voting and also entailed that those who had planned to vote early before getting to work were denied of the opportunity to participate in the by-election;
- c) Further, a good number of youths resident in the constituency who may have become eligible voters are not on the voters' register as the law requiring the ECZ to undertake continuous voter registration has not been implemented. Hundreds of youths who have turned 18 years and above still remained disenfranchised by not being included on the voters register;
- d) Further, there were cases whereby those who had registered ahead of the 2006 tripartite elections and had been ineligible on account of being under-age that time, were still not allowed to vote as the register still classified them as 'underage' (not eligible);
- e) Some voters were turned away for not having NRC, and even those who presented other identity documents (i.e. drivers licence, passport, etc) were denied the opportunity to vote. In many cases, such voters would not bother collecting their NRCs and coming back to vote;
- f) Some voters had moved out of the constituency for various reasons ranging from the floods situation in the constituency, employment and relocation to other areas;
- g) Others deliberately chose not to participate in the elections based on their own conscious decision for various reasons ranging from the feeling that whether they voted or not, nothing would change; or that they were not interested; and that they would rather stay away than take part in enriching the politicians at the expense of attending to their own livelihoods.

### ***Rejected/Spoilt Ballots***

Rejected and spoilt ballots are an indicator of the level of voter literacy in an election. It shows to what extent the electorates understand the voting process and other procedural matters pertaining to making their choice during an election.

Despite the low number of voters who took part in the by-election, FODEP noted that there was a relative per-centum increase in the number of spoilt ballot papers during the by-election than the figure noted during the 2006 tripartite elections.

The correlation between the high number of the rejected ballots and the poor turnout were important indication of that there was need for comprehensive voter education campaign by the ECZ and stakeholders ahead of the by-election.

The Electoral Act under section 77 and 78 provides for Voter education to be provided ahead of an election: *“...the Commission shall provide voter education for an election... Any natural or juristic organization or person may provide voter education for an election...”*

*“(2) Any natural or juristic person providing voter education shall do so in a manner—*

*(a) that is impartial and independent of any registered party or candidate contesting an election; and  
(b) that shall promote conditions conducive to free and fair elections.”*

### ***Geographical ‘strengths’ of major political parties:***

From the polling station-level results analysis, it is possible to see an evident pattern of each of the three main political parties that emerged top. The Patriotic Front (PF) performed better in 24 out of the 39 polling districts in the constituency. A further close look at the results shows that most of these polling stations are around schools (New Kanyama, John Laing, and Munkolo). It is also worth to note that the Catholic Church where the Patriotic Front leader is reported to have donated foodstuffs to a youth group is also located in New Kanyama area.

Most of the polling stations in which the ruling MMD performed better than the other parties (9 out of the 39 stations), are around the markets in the constituency (near Soweto and Sikota Wina Markets). What might be worth noting is that in most markets, the ruling MMD enjoys control of most leadership structures of Market Committees/Boards. These could have a critical role when it comes to influencing and mobilizing especially among electorate who are marketers.

The UPND enjoyed its lead in 5 polling districts around the central part of Kanyama (Mutandabantu area). It is notable that this is the area where the ruling MMD had its main camp for its campaign team, around Twashuka school. It has been cited above that most of the violent clashes noted were mainly between the UPND and MMD cadres.

A detailed presentation of the polling station-level results are in the appendix of the report.

## **5 SUMMARY OF MAIN OBSERVATIONS:**

The specific observations and areas of concern noted during the by-election are as spelt out below:-

### **5.1 POSITIVE ASPECTS**

#### **5.1.1 Security personnel**

- The deployment of adequate security personnel in the constituency by the Zambia Police was commendable as this helped pacify the rather volatile environment. The police managed to take charge and ensure peace in the area. Many more incidents of clashes than was noted would have occurred if the police officers were not in the large numbers that they were;

### 5.1.2 Transparent Results Process

- The results management process at polling station level, was thorough, and the polling officials ensured that each ballot paper was confirmed by the observers and party agents present. This helped the stakeholders to satisfy themselves with the results, a situation which is critical in avoiding suspicions, disputes and tension over results. However, to a large extent, this process entailed too much time being required resulting in significant delays in the count collation.

### 5.1.3 Abuse of Public Transport

- FODEP notes that, in contrast with the previous by-elections held in other parts of the country, there were no reported cases of abuse of public resources such as government transport during the campaign. The Lusaka City Council and the Zambia National Service worked tirelessly to pump out the stagnant waters posed by the floods. There were also no reports of any attempts by political contestants to take advantage and claim credit from such emergency efforts, and this was commendable.

## 5.2 MAIN CONCERNS:

The following were the main concerns noted during the Kanyama by-election:-

### 5.2.1 Lengthy Counting process:

FODEP observed with considerable concern that the counting process was quite lengthy:

Taking for instance, the counting process for Munkolo Polling District at Munkolo School, which closed at exactly 18:00h hours.

- The station has 863 total registered voters, and recorded 28% voter turnout, with 242 votes having been cast. Upon closing at 18:00 hours, the procedures for closing of ballot box, filling out the ballot accounting forms, determining total used ballots and other closing-off procedures took up to 12 minutes to complete.
- The cutting of seals and counting of the total ballots in the box to verify whether the ballot box contained the 242 ballots as determined was completed at 18:28 hours.
- Sorting out of the ballot papers in respect of each of the 8 candidates commenced at 18:31 hours. This process was so slow and took close to 1 hour and only ended at 19:26 hours.
- Then the counting officers started binding the ballots for each candidate in batches of 20 each, and thereafter counting the actual votes that each candidate had obtained which lasted up to 19:48 hours.
- Recording and making duplicate copies of the results was to take another 20 minutes, making the whole process of dealing with ONLY 242 votes take more than 2 hours! Many stations that had more than 400 voters took more than 3 hours to deal with the count.

## 5.2.2 Some Discrepancies in the Announced Results:

A close analysis of the results between the figures announced at polling station level and the results collated at the totalling centre reveal some variances. Normally, where accuracy has been exercised by the counting officers, such variances are expected to only affect the valid votes and the rejected ballots, and not affect the total votes cast. In other words, the tallying of the total number of ballot papers used as summed up from all polling stations (valid + spoilt/rejected) should always remain the same, and only vary in terms of the difference necessitated by the scrutiny of the ballot papers 'Proposed for Rejection' by Polling Stations. At the Count Collation Centre, the change in the number of Valid Votes should be inversely equal to the change in the number of the Total ballots "Proposed for Rejection", without affecting net total of the votes cast.

For the Kanyama by-elections, there were discrepancies noted that puts the accuracy of the counting and the totalling officers into question.

A tabulation of the results compiled by FODEP directly from the polling stations results presents the following results:

PF	FDD	UPND	UNIP	NGP	APC	ULP	MMD	REJCTD	CAST
3,834	119	2,805	372	34	127	535	3,393	215	11,434

However, the official results announced by the returning officer after adding up the same polling station results (and where necessary, altering some polling station votes based on the ballots "proposed for rejection"), were as follows:

PF	FDD	UPND	UNIP	NGP	APC	ULP	MMD	REJCTD	CAST
3,834	122	2,807	373	32	128	535	3,393	178	12,552
Actual total of above votes as declared =									11,402

Although the returning officer at the Count Collation Centre where the winner was declared announced that 12,552 were the total votes cast, the correct sum of all the votes as announced does not go beyond 11,402.

However, on 29<sup>th</sup> February 2008, the Electoral Commission of Zambia published the final results for the Kanyama by-elections in the Zambia Daily Mail as follows:

PF	FDD	UPND	UNIP	NGP	APC	ULP	MMD	REJCTD	CAST
3,834	122	2,807	373	32	123	535	3,393	178	11,397

It is interesting to note that the above figures show some variation even between the two official figures presented (i.e. in the total votes cast that were declared as 12,552 and the latter published figure of 11,397; and in the total votes received by APC candidate).<sup>4</sup>

<sup>4</sup> The significance of paying attention to such variations under our current electoral laws is that it may present a situation where a candidate with less votes may wrongly be declared a winner, and such an occurrence may result in serious problems. In Zambia, we have an experience in the case of one MP for Malole Constituency, whom during the 2006 elections was wrongly declared winner despite having less votes. The petition of that case has not yielded



The table below presents the discrepancies between the results obtained at polling station level and the results published by ECZ. The variations in the figures present a significant case of inaccuracy on the part of the counting officers as the variances are not minor.

	PF	FDD	UPND	UNIP	NGP	APC	ULP	MMD	REJCTD	CAST
<i>Pol. Stn:</i>	<b>3,834</b>	119	2,805	372	34	127	535	<b>3,393</b>	215	11,434
<i>Published:</i>	3,834	122	2,807	373	32	123	535	3,393	178	11,397
<i>Variance:</i>	0	3	2	1	-2	-5	0	0	-37	-37

Such discrepancies were strange considering the apparent meticulous manner and the amount of time it took for the counting to complete, which was no less than 2 hours for each polling station, and from about 22:00 hours to 03:40 hours at the Collation Centre.

If such can be the case for an urban constituency like Kanyama which is relatively small (geographically), with relatively superior terrain and logistics than most constituencies in rural areas, then it points to a serious need for the ECZ and authorities to explore means of improving results management process, and invest in increasing the quality and accuracy of the results to avoid possible unnecessary electoral tensions and suspicions over results that such discrepancies may entail, especially where the electoral contest would be very close.

### 5.2.3 Campaigns:

- Some public officials such as the Minister of Local Government were seen among the campaign teams and, along with other senior government officials (including the Vice President, the President, etc) made some pronouncements to the effect that *'the opposition had failed to develop the constituency'* and *"there would be no development in Kanyama unless the electorate voted for the ruling party"*.
- Some polling stations opened late due to the heavy rains that destroyed some temporary shelters.

### 5.2.4 Voting Day

- Abandonment of voting Streams by the ECZ had an effect on the number of voters, especially in view of the day having been a working day and those who wanted to vote early failed to do so due to long queues;
- There were a few reported cases of campaigning by party cadres within the restricted limits of 400 metres from the polling station on polling day, contrary to the Electoral Act provisions;
- There was at least one case where a political party poster was left stuck close to the polling station within the restricted radius of 100metres from the polling station. This was noted at one Polling station in Linda.

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any redress as the laws do not have any provision relating to such a case, and the wrong MP still serves to date on a legal technicality that he was "declared" winner.

## 6 FODEP OPINION

In view of the foregoing, and having evaluated and weighed both the positive and negative aspects noted during the entire by-election period, FODEP hereby states its opinion on the election outcome:

*“It is FODEP’s conclusion that the incidents that characterized the pre-election period, the low turnout and violent clashes among political actors had a limited but negative effect on the cleanliness and conducive atmosphere necessary for engendering a significantly free electoral contest. Ultimately the environment in which the elections were conducted fell short of some of the basic requirements of the 2006 Electoral Act and Code of Conduct. It is FODEP’s view however, that the electoral results were largely a true reflection of the will of the electorate in Kanyama constituency, and are acceptable...”*

## 7 CONCLUSION

FODEP's assessment of the Kanyama by-election outcome was based on observation and reports as noted by its District and constituency mobile monitors, the events of the campaign period, the information received in consultation with stakeholders and the comparison of the situation on the ground with the requirements as contained in the Electoral Laws and Regulations.

While FODEP recognizes the efforts by ECZ for conducting the elections successfully, the widespread incidents of electoral-related clashes, the many subtle incidents of undue practices by named political parties remains a real cause for concern. The voter turnout at 17.1% was very low by any standard and its FODEP's view that more intensive voter mobilization would have improved the situation through joint efforts of the civil society and the ECZ. Further, the level of spoilt and rejected ballots at 1.5% appears to be significant and a reflection of need for improved voter literacy among the electorate.

Presiding Officers and electoral officials need to pay serious attention to the need for accuracy in handling results, both at polling station level and at Count Collation. Elections are about a contest for numbers, and any laxity in paying serious attention to the management and tallying of the results can be a potential source of electoral tension, especially in situation where the election is highly contested and the results emerge with a narrow margin. FODEP noted that there were a number of discrepancies even during the tallying process at the count collation centre, and what was even more serious is the fact that even the results that were announced by the returning officer had some basic arithmetic inaccuracies: - (For instance, the returning officer, in declaring the results, announced that there were 12,552 total votes cast, when the actual tallying of the results assigned to the candidates and the rejected ballots added up to no more than 11,402).

It was noted that during the count collation process, the electoral officials (returning Officer particularly) ignored paying attention to the disputed ballots that had been 'proposed for rejection' at polling station level as per requirement of the counting procedure as spelt out in the 2006 Electoral Act.

While the above issues of concern were noted during the process leading up to the by-elections, and also the fact that there was not as much enthusiasm about the by-elections among the electorate, it is FODEP's view, however, that broadly, the many incidents that occurred may not have had an overbearing effect on the electorate's choice, and the outcomes do reflect broadly a true reflection of the will of the electorate in Kanyama.

## 8 RECOMMENDATIONS

In view of the above FODEP would like to suggest the following recommendations as a way to improve on future by-elections to avert the shortcomings noted:

- 1) Political parties must refrain from violence, intimidation and malpractices during campaigns and invest in educating their cadres on the consequences of engaging in the vices. In this vein, there must be stiffer penalties on perpetrators of violence during electoral campaigns;
- 2) There is need for ECZ to provide voter education ahead of every by-election to both encourage and mobilize voters as well as dissuade them from engaging in electoral malpractices. Voters can also be empowered during voter education with the means to report cases of malpractices such as voters cards grabbing; abuse of public resources, instigation of violence; electoral corruption and other electoral vices. If voter education had been conducted on a visible scale by ECZ, District Voter Education Committees (DVECs) and civil society, perhaps the participation of voters would have been better than the 17% noted.
- 3) The ECZ should reinstate the Voting Streams even during the By-elections as these help to ease the flow of the voting process;
- 4) The ECZ should consider reducing the voting period from ending at 18:00 hours to end at 17:00 hours as the case was prior to the 2006 elections. This would allow for ample time for the counting process to be concluded at polling station level while there is enough natural light. To allow for this, the Voting Streams would help ensure all voters manage to vote within the stipulated voting timeframe of up to 17:00 hours.
- 5) ECZ should implement the continuous voter registration process to allow youths who turn 18 years to participate in the elections, and the new comers into the constituency.
- 6) ECZ should, ahead of each by-election, designate time periods for those who reported errors on their voting details on the register to have an opportunity to verify and satisfy themselves that the errors are corrected. Some errors noted during the by-election were reported soon after the 2006 elections, but remained uncorrected.
- 7) ECZ should invest more effort in ensuring accuracy of results tabulation process to avoid tensions over electoral results;
- 8) The authorities must reconsider the insistence of NRC as the only acceptable identity for one to cast their votes. Other positive identities such as Passports and Drivers Licences must be allowed as valid documents for voting purposes, provided the voter has an authentic Voters Card that clearly bears one's portrait.

## **9 APPENDICES**

### **9.1 *Election Results by Polling Station***

### **9.2 *List of Mobile Monitors***

**FOUNDATION FOR DEMOCRATIC PROCESS (FODEP)**

**POLLING STATION-LEVEL RESULTS FOR THE KANYAMA CONSTITUENCY BY-ELECTION HELD ON 21 FEBRUARY 2008**

Poll Station	No.	Poll District	PF	FDD	UPND	UNIP	NGP	APC	ULP	MMD	REJCTD	CAST	REG. VOTERS	TURNOUT	
TWASHUKA SCHOOL	2	Kalumba	90	1	84	-	1	2	20	86	3	287	1,553	18%	
TWASHUKA SCHOOL	4	Yeta	127	-	113	3	2	2	46	110	6	409	2,195	19%	
SIKOTA WINA MARKET	5	Muchinga (A)	70	4	47	13	-	1	18	43	1	197	1,211	16%	
SIKOTA WINA MARKET	6	Tione (A)	50	3	33	10	-	1	15	48	-	160	984	16%	
SIKOTA WINA MARKET	7	Tione (B)	73	3	51	22	-	-	22	69	-	240	1,498	16%	
SIKOTA WINA MARKET	10	Muleya	55	5	35	20	2	5	16	43	23	204	1,201	17%	
SIKOTA WINA MARKET	12	Bwerani (B)	55	2	54	11	-	3	17	47	10	199	1,085	18%	
BAYUNI SCHOOL	19	New Nkana (A)	119	-	50	2	1	-	3	76	42	293	1,980	15%	
RUTH KALUMA	20	New Nkana (B)	57	2	38	4	-	1	5	51	2	160	1,051	15%	
MUNKOLO SCHOOL	23	Munkolo (B)	163	-	28	-	1	3	-	46	1	242	863	28%	
NEW KANYAMA SCHOOL	24	Konzekani	85	3	43	9	-	5	7	53	1	206	1,241	17%	
NEW KANYAMA SCHOOL	25	Serenje	131	6	48	14	4	2	10	74	1	290	1,579	18%	
NEW KANYAMA SCHOOL	26	Kasama	75	1	31	7	-	-	4	41	1	160	960	17%	
NEW KANYAMA SCHOOL	27	Buntungwa	99	1	46	1	2	5	4	70	1	229	1,238	18%	
NEW KANYAMA SCHOOL	28	Chenjerani	114	2	48	3	-	5	4	70	3	249	1,388	18%	
NEW KANYAMA SCHOOL	29	Luapula	118	2	54	11	1	7	8	76	2	279	1,505	19%	
NEW KANYAMA SCHOOL	30	Kafue	101	5	36	9	1	6	8	53	3	222	1,277	17%	
NEW KANYAMA SCHOOL	31	Kapata	89	3	46	8	-	5	4	41	3	199	1,228	16%	
NEW KANYAMA SCHOOL	32	Chinyama (A)	85	-	47	2	-	6	8	58	1	207	1,042	20%	
NEW KANYAMA SCHOOL	33	Chinyama (B)	119	6	61	8	-	4	5	75	2	280	1,486	19%	
JOHN LAING SCHOOL	34	John-Laing (A)	197	3	96	7	2	5	20	80	2	412	3,204	13%	
JOHN LAING SCHOOL	35	John-Laing (B)	226	3	133	11	1	7	16	88	4	489	3,385	14%	
CHINIKA SCHOOL	38	Chinika School	126	1	100	4	-	2	4	82	6	325	1,672	19%	
INDUSTRIAL FIRE BRIGADE	39	Kwame Nkruma	14	-	4	1	1	-	3	12	-	35	609	6%	
TWASHUKA SCHOOL	1	Bwerani (A)	86	-	76	-	2	2	25	97	8	296	1,720	17%	
SIKOTA WINA MARKET	8	Tione (C)	45	2	29	17	-	3	18	50	4	168	991	17%	
SIKOTA WINA MARKET	9	Chitukuko	60	4	55	19	-	3	15	73	4	233	1,513	15%	
SIKOTA WINA MARKET	11	Muchinga (B)	54	2	45	22	1	4	14	60	6	208	1,188	18%	
NAKATINDI MARKET	17	Twapenga	53	5	144	4	-	-	23	162	11	402	2,174	18%	
HILLVIEW HOTEL	21	Buckley	124	5	78	34	-	9	9	134	12	405	1,686	24%	
LINDA 'PUSH' HALL	22	Munkolo (A)	161	10	123	34	1	8	17	270	18	642	3,087	21%	
CHIBOLYA SCHOOL	36	Mwapona (A)	138	1	86	6	1	3	3	172	4	414	2,633	16%	
CHIBOLYA SCHOOL	37	Mwapona (B)	153	2	108	5	1	5	3	231	4	512	3,533	14%	
DORIAN SHOPPING CENTR	18	Kilimanjalo	111	-	63	2	3	-	9	111	5	304	2,547	12%	
MUTANDABANTU	13	Mulilo (B)	53	3	101	12	2	2	23	73	7	276	1,614	17%	
MUTANDABANTU	14	Mulilo (C)	74	9	110	11	-	4	19	75	-	302	1,876	16%	
MUTANDABANTU	15	Zambezi (B)	90	13	153	20	-	3	27	96	8	410	2,507	16%	
NAKATINDI MARKET	16	Mulilo (A)	76	5	182	2	-	1	29	181	6	482	2,306	21%	
TWASHUKA SCHOOL	3	Emm. Mulemena	118	2	126	4	4	3	34	116		407	2,173	19%	
<b>Total Polling Station-level Results by FODEP:</b>				<b>3,834</b>	<b>119</b>	<b>2,805</b>	<b>372</b>	<b>34</b>	<b>127</b>	<b>535</b>	<b>3,393</b>	<b>215</b>	<b>11,434</b>	<b>66,983</b>	<b>17.1%</b>

<b>Results Officially Declared at Collation Centre:</b>	<b>3,834</b>	<b>122</b>	<b>2,807</b>	<b>373</b>	<b>32</b>	<b>128</b>	<b>535</b>	<b>3,393</b>	<b>178</b>	<b>11,402</b>
<b>Results Published in Press (ZDM - 29/02/2008):</b>	3,834	122	2,807	373	32	123	535	3,393	178	11,397
<b>Variances btn Poll Stn &amp; Official Results:</b>	-	3	2	1	(2)	1	-	-	(37)	37

## FOUNDATION FOR DEMOCRATIC PROCESS (FODEP)

### List of Accredited Monitors for the Kanyama By-election - Feb. 21, 2008

No.	Full Names	NRC No.	Gender
1	CLEMENT ZULU	341516/11/1	Male
2	JACOB GOMA	223756/51/1	Male
3	WHITESON BANDA	407757/52/1	Male
4	ELIZABETH CHITALA	385195/11/1	Female
5	CHRISTINE NANTUFYA	385196/11/1	Female
6	RAYMOND MAKUTANO	616250/11/1	Male
7	JOHN MUKANGE	221842/33/1	Male
8	MEYA NYIRENDA	281604/16/1	Female
9	LEVY KAFULI	169514/15/1	Male
10	BETTY BANDA	625330/11/1	Female
11	RACHEL DAKA	627243/11/1	Female
12	GRACE MUSIWA	584757/11/1	Female
13	BENJAMIN PHIRI	869669/11/1	Male
14	JOSEPH SINYINZA	338698/11/1	Male
15	EVANS LUPIYA	498726/11/1	Male
16	STANLEY MHANGO	253421/66/1	Male
17	DERRICK ELEMU	217867/66/1	Male
18	ELIJAH RUBVUTA	192261/62/1	Male
19	CHOWA KASHITU	503949/11/1	Male
20	JANE PHIRI	382394/11/1	Female

Signed: \_\_\_\_\_