ELECTIONS AND THE ELECTORAL PROCESS IN ZAMBIA

AN APPRAISAL

BY

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AN APPRAISAL

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DEDICATION

I dedicate this paper to my father (Mr. D. Mwansa Besa) and mother (Mrs. E Bwali Besa) without whose encouragement and inspiration I would never have made it to the University of Zambia, and later on, to the Law School.

One thing I will never forget about you mum and dad is that, whenever things became difficult for me in life, you stood with me and told me everything was within me to succeed because I was able to. When I faced frustrations in life, you told me never to be frustrated. Out of your humble status, you have finally produced a son destined to be great in life. For this, I say thank you.

This dedication would be incomplete if I consciously and deliberately omitted to thank God for the unmerited grace, favour and mercy, which strongly surrounded my life during the period of stay on campus. I ask you heavenly father never to let your glory depart from my life.
ACKNOWLEDGMENT

I would like to extend my special thanks to my supervisor, Dr. A. Chanda, for the guidance and encouragement rendered. You helped me push the limits I though I could never reach.

Further acknowledgment goes to Florence M. Nsofwa for the love, support and care you gave me. I was made by you to do the extraordinary and carefully look after my life during my stay at the University so as not to disappoint you.

Special acknowledgment goes to my friends who made my stay on Campus a memorable event. These are Major G. Simumba, F. Sichone, P. Chanda, F. Songolo and my roommate K. Sikazwe. I further thank my sisters and brothers for the unity and concern portrayed to one another. Even when resources were not adequate we unanimously agreed to share. I, therefore, thank Lewis, Emmanuel, Gabriel, Catherine, Jestina, Shadrick, Friday, Alice, Nkweto and Katongo.

The acknowledgment would not be complete if I consciously omitted Ms Maria Kafwariman of COMESA, who made this work a reality.

All the faults and shortcomings are to be borne entirely by myself.

Besa Mutale Christopher
PREFACE

The importance of elections in a democratic nation can not be over emphasized. Elections provide the means through which the democratic management of the public affairs in all representative institutions can be attained. In this case, the condition for and under which elections are held is vital.

Favourable conditions promote massive participation, instilling confidence and enthusiasm not only in voters, but also in candidates.

If, however, the conditions are bad, the will of the people is hijacked and this may consequently lead to tension, conflicts, violence and coup d'état in a country.

It is these evils of unfree and unfair elections that need to be avoided. This study is an attempt to review the status of elections in Zambia, the problems and shortfalls and to provide suggestions of how these may be minimised so as to achieve free and fair elections in Zambia.
INTRODUCTION

In a contemporary liberal democratic nation, elections form the heart which propels the blood fueling the democratic management of public affairs in all representative institutions. No country may claim to be democratic in the absence of elections. In conducting elections, therefore, it must be ensured that free and fair elections are promoted. Elections must be free and fair both on the part of the candidates as well as the electorate. Elections therefore have developed from and within democracy.

"Democracy is a derivative of two Greek words, namely, "Demos" which means people and "Krata" meaning government."\(^1\) Combining the two, "democracy literally means "rule or government by the people."\(^2\) Democracy developed from ancient Greece, where the city State of Athens practiced it by holding periodic meetings with citizens to discuss the problems being faced and decide on solutions by voting on alternatives offered. The more the population increased, the more it became difficult for all the citizens to participate in deliberations on matters of national interest. The only solution was for the people to select competent people to carry out these debates on behalf of the rest. Under these circumstances it became incumbent upon all the citizens at least to participate in selecting who to represent them. They were free to either contest for selection or take part in selecting. The process by which these representatives are

\(^1\) Aran Zain, Democracy and Human Rights in Developing Countries. (Lynne Rienner Publishers Incoprated. London 1991) p.17
chosen for the purpose aforesaid is what I call elections. Elections are supposed to be held periodically and can only serve the very purpose of their holding if they are free and fair. To periodically hold unfree and unfair elections is a mockery and amounts to hijacking the will of the people.

This may often lead to tension, conflicts, violence and coup d'etat in serious circumstances. These consequences of unfree and unfair elections are undemocratic.

Elections in Zambia currently hold the centre of controversy. This study attempts to highlight the areas of controversy. This will be best done by looking at the history of Zambian elections dating back to 1958 through 1991. It will equally become important to expose the events in Zambia preceding the 1991 general elections in an analytical way and then consider the 1996 elections. These elections will be looked at in order to establish whether they are in fact free and fair. This will be arrived at by considering the operations of public institutions like the media, prior and during elections. The paper will finally merit a conclusion after exposing future prospects of elections and recommendations of how elections should be conducted in Zambia to promote democracy and avoid any upheaval which every reasonable, prudent and peace loving citizen would foresee and work out measures to avoid. To achieve free and fair elections, there is need for a deliberate effort on the part of the leaders to aspire to achieve the same.
To this end, this study aims at showing that free and fair elections is a reality yet to be achieved in Zambia.
CHAPTER ONE

BACKGROUND OF ELECTIONS IN ZAMBIA

INTRODUCTION

The politics of Northern Rhodesia can be traced as far back as 1890 when the British South African Company (BSA) took control of the territory under the Barotse Treaty of 1890. This Treaty was concluded between the BSA Company and Lewnika, Paramount Chief of Barotseland. These politics continued running through 1924 when the British Government took over effective control of the territory from the company ending with the beginning of Zambia. This Chapter is an attempt to make a quick synopsis of elections in Zambia. The BSA Company assumed control over the general area of Northern Rhodesia. In those years, the Company established separate administrations in the Western and Eastern portions of the Territory of Northern Rhodesia, which the Company continued to administer until 1924.

Northern Rhodesia was placed under the direct administration of the British Government in 1924. Even then, an African house did not stand alone in the bush, it stood with other houses and together they made a village. Many villages a made Chief's Country. If the house stood by itself, it would be weak and could easily be destroyed by robbers or attacked by wild beasts. Northern Rhodesia itself was part of the Great British Empire at the head of which stood his Majesty, the King.
"The arrangement of the administration was that the village headman looked to the Chief, the Chief looked to the District Commissioner, the District Commissioner in turn looked to the Provincial Commissioner who looked to the Governor and the Governor finally looked to the King. The Governor who was appointed by the King on the advice of the Secretary of State for the colonies ruled over everybody and everything in Northern Rhodesia."\(^3\)

To help him with his other works, the Governor had two Councils, namely the Legislative Council and the Executive Council. The function of the Legislative Council was primarily to make laws. ‘The Government was initially helped by sixteen councillors making up the Legislative Council. Of the sixteen, eight were Civil Servants, seven were elected by the Europeans in Northern Rhodesia for which each one spoke for his own part of the Country. The other Councillor was appointed by the Governor to speak specifically for the Africans. By 1954, the Legislative Council’s elected unofficial members had increased to twelve. The number of Africans appointed had increased to four in addition to the two nominated.’\(^4\)

1.1 FRANCHISE

From 1925 to 1958, the franchise laws in Northern Rhodesia remain virtually unchanged. "All British subjects of 21 years or over were able to

\(^3\) Kenneth Bradley. *Native Courts and Authorities in Northern Rhodesia*. (The African Literature Committee of N.R., 1942 p 32

\(^4\) Ibid pp 32-33
qualify for the franchise subject to fulfillment of one of the following qualifications:

i. Occupation of a house or building in the territory valued at GBP 250.00

ii. Possession of a winning claim

iii. Annual income of GBP 200.00

In addition, "the applicant must have resided for a continuous period of two years in the territory and for three months in the electoral district in which he applied for registration."\(^5\)

While no racial reservation applied to the elected seats in the Legislative Council, the practical effect of franchise system was to ensure that the elected seats were filled by Europeans. Since all Africans in Northern Rhodesia had the status of British protected persons, the vast majority were disqualified by the requirement that voters must be British subjects.

In addition, "Africans had great difficulty satisfying any one of the qualifications listed above with the result that in 1957 there were only 11 Africans on a common roll of approximately 20,000 voters."\(^6\) The fact that candidates for election had themselves to be registered voters further reinforced the system of European representation.

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5 David C. Mulford, *The Northern Rhodesia General Elections*, (Oxford University Press, Britain, 1964) p.2-4
6 Ibid p4
2. POLITICAL BACKGROUND

Politics in Northern Rhodesia were dominated completely by Europeans. It was, however, generally assumed by both sides that in a few years, Northern Rhodesia would be granted a Constitution similar to the one which conferred the status of a self-governing colony on Southern Rhodesia in 1923. In 1930, however, the political aspirations of the settlers received a temporary setback when Lord Passfield, Secretary of the State for the colonies, issued a white paper setting out the principle of paramountcy. The Memorandum stated that:

"the interests of the African Natives must be paramount, and that, if and when, those interests and the interests of the immigrant races should conflict, the former should prevail... His Majesty's government regarded themselves as exercising a trust on behalf of the African population, and they are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races".

To the settlers, the Passfield memorandum appeared to remove all hope of achieving self-government on the Southern Rhodesia model, and a series of angry protests were raised against the British government. The doctrine of Paramountcy was later replaced by that of Partnership, which ostensibly stipulated that the interests of one section (race) of the community could not be subordinate to those of any other section. The period between 1958 and 1964 is commonly known for its great constitution activity which culminated in the
attainment of independence on 24th October 1964. This constitutional activity was premised on the law regulating elections. It is vital to appreciate that it was the Benson Constitution of 1958 that set in motion events that put the Nationalists on a collision course with the colonial government.
3. ELECTIONS UNDER THE BENSON CONSTITUTION (1958-1964)

Sir Arthur Benson, then Governor of Northern Rhodesia, begun putting a new constitution in place, in 1957. "The noticeable feature of the Benson Constitution was its complicated electoral system."\(^9\) The aim of the drafters of the Constitution was to control the political changes in Northern Rhodesia to suit the pace at which the white settlers felt comfortable. The complexity of the electoral system under this Constitution started by the provision of two kinds of voters, namely, ordinary and special. Certain qualifications had to be satisfied before one could qualify under any one of the two categories. One of the qualifications applicable to both categories was that a voter had to be able to complete the claim form in English and unassisted.

The criteria for qualifying as a voter for both special and ordinary voters was premised on education, income and property. To be able to vote, one had to attain a specified level of education or be in possession of property that could be converted to a stated minimum amount of money or at least have a stipulated minimum income. The consequences of such requirements were felt by the blacks. The leader of the Zambia African National Congress (ZANC), Kenneth Kaunda, called this Constitution "the queerest Constitution that the world had ever produced."\(^10\)

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One would be quick to point out that elections held under such Constitution were and are incapable of being free and fair. What made elections not to be free and fair during this period was the insecurity felt by the European Settlers.

The whites had the desire to dominate and continue ruling whereas the blacks also wanted to rule. Since the blacks were in majority, free and fair elections would help them achieve their goal. The controversy began to be sharp.

This can be seen from the verbal exchange between Kaunda and Benson, at which in response to the demand by the African National Congress (ANC) for a franchise based on Universal Suffrage, Benson stated that “……to accept the proposal of congress …..would invite whites to paralyse the government…” to which Kaunda responded by asking whether the Africans could be met.11

The repercussions of unfree and unfair elections were soon to manifest. ZANC, under the leadership of Kenneth Kaunda, came up with an agenda of how to address this problem. Top on ZANC’s plan of action was the task of campaigning for Africans to boycott the elections under the Benson constitution contending that they were undemocratic and fell far short of what could be considered for negotiations. In most places this campaign erupted into violent protest and ZANC was in consequence declared an illegal association under the Safe Guard of Elections and Public Safety Regulations (1959).

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The impact of this campaign was that “out of the estimated 24, 648 voters, only 6,846 actually registered and some among those who registered did not vote.”\(^{12}\)

The results were as follows:\(^{13}\)

<table>
<thead>
<tr>
<th>Party</th>
<th>No. of Members</th>
<th>Africans</th>
<th>Europeans</th>
</tr>
</thead>
<tbody>
<tr>
<td>UFP</td>
<td>13</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>CAP</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>ANC</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>DP</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>INDEPENDENTS</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL</td>
<td>20</td>
<td>6</td>
<td>14</td>
</tr>
</tbody>
</table>

These prevailing circumstances in Northern Rhodesia invited the intervention of the British Government, which responded to the crisis by appointing an Advisory Commission (Monkton Commission) in 1959. Although the Commission was shunned by both the blacks and the whites, its report was the stepping stone on which negotiations for the 1962 Northern Rhodesia Constitution were based\(^{14}\).

In response to the proposals by the Monkton Commission, a Constitutional conference was held in December 1960 in London. On 12\(^{th}\) December the nationalists and the Northern Rhodesia chiefs walked out of the meeting because

they felt that the federation review was being used as a delaying tactic and that the British Government was not prepared to grant Africans sufficient representation. In an effort to strengthen the federal government’s position, Welensky demanded two concessions from the British Government:

(a) An undertaking from the Colonial Secretary that Britain would not give majority rule to Africans in Northern Rhodesia at the time; and

(b) That the Federal Government be granted direct representation at the Northern Rhodesia talks.

When both demands were rejected, Welensky with his political party announced the intention to boycott the Northern Rhodesia talks in an effort to disrupt the conference. "The importance of an African majority in Northern Rhodesia was further undermined in that Joshua Nkhomo, as a leader of Southern Rhodesia’s opposition agreed to a highly restrictive franchise in Southern Rhodesia which gave Africans only 15 seats out of 65."\(^{15}\) When the conference was held, it ended in a complete deadlock after Kaunda warned the British Government that if they continued to frustrate the legitimate aspirations of the people of Northern Rhodesia, the result might be a mass rising that would make the Mau Mau in Kenya look like child’s play; Welensiky responded by calling up territorial troops in Northern Rhodesia.

\(^{13}\) Supra note 5 p. 16
\(^{14}\) Supra not 8 p. 10
The 1958 constitution failed to satisfy political parties in as far as elections were concerned. Apart from this failure, the most outspoken critics of this constitution attacked it on the grounds that, "it was unnecessarily complex, unintelligible to the common man and a nightmare to the administrator."\footnote{Supra note 8 p.11; Supra note 5 p.24}
4. ELECTIONS UNDER THE 1962 CONSTITUTION

When the London Conference proved a failure, Secretary of State for the Colonies, Ian Macleod, made a set of proposals in February whose key features with respect to elections were:

(a) "A Legislative Council of 45 elected members, up to six official members and such nominated members as the Governor might appoint on instructions from the British Government;

(b) Of the elected 45, 15 were to be retained from Single Member Constituencies by lower poll voters and 15 from National Constituencies by both polls voting together;

(c) A requirement that candidates in the National Constituencies obtained the same prescribed minimum percentage of the votes on each roll, and percentage figure by averaging together their respective proportion of votes on the upper and lower polls;

(d) A rejection of the Monkton Commission recommendations for a clear African majority on the ground that they were based on a purely racial approach to Northern Rhodesia's development;
Domination of the Upper Roll seats by Europeans and reservation of the lower rule seats exclusively for Africans.\textsuperscript{17}

The whites and the Africans agreed that the Macleod proposals were ambiguous in respect to National Seats. When Welensiky saw that the proposals would lead to the possibility of an African majority, he rejected the Macleod’s proposals and claimed the Federal Government had not been consulted.

In June 1961, the Governor of Northern Rhodesia, Sir Evelyn Hone, announced another set of proposals that showed a significant change from the February proposals. These proposals were intended to reduce the risk of Africans gaining an outright majority in the Council. This resulted in an outcry by the Africans who accused the British Government of altering the broad principles of Macleod’s February plan to “placate the Federal and Southern Rhodesia’s Governments”\textsuperscript{18}

When the efforts of Africans to achieve free and fair elections proved to be an impossibility, the fruits of unfree and unfair elections were soon to be seen. Africans, especially in UNIP, resorted to incidents of arson, boycotts and destruction of infrastructure such as bridges and roads. “by September 1962, 901 incidents and 1400 arrests had been reported. 38 Schools had been burnt, more than 150 roads blocked and 27 Africans killed. The government reported

\textsuperscript{17} Supra note 8 p. 10 - 11
\textsuperscript{18} D.C. Maford, The Northern Rhodesia General Elections, 1962 (Nairobi, Ford University Press, 1964) p. 27
that 650 persons had been convicted for various offences."\textsuperscript{10} This violent background culminated in Reginald Maulding replacing Macleod as Colonial Secretary. On 1\textsuperscript{st} March 1962 Maulding announced the British Government's final plan. Elections were held finally in October 1962 under the Macleod franchise.

The biggest complaint was the complexity of the voting procedure that led to a lot of ballots being rejected. As regards the results, UFP failed by one to secure an absolute majority on the Upper Roll, while the Lower roll seats were shared between UNIP and ANC with UNIP getting 12 of the 15 seats available. "The final results were as follows."\textsuperscript{20}

<table>
<thead>
<tr>
<th></th>
<th>UNIP</th>
<th>UFP</th>
<th>ANC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europeans</td>
<td>-</td>
<td>15</td>
<td>2</td>
</tr>
<tr>
<td>Africans</td>
<td>12</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Asians</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Coloureds</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL</td>
<td>14</td>
<td>16</td>
<td>7</td>
</tr>
</tbody>
</table>

The question as to who formed the majority was solved by UNIP and ANC forming a Coalition Government. The first issue to tackle was of putting a new Constitution in place. A delegation led by UNIP President Kenneth Kaunda went

\textsuperscript{10} Ibid p. 28
\textsuperscript{20} Supra note 18 p.19
to a conference in London and this conference successfully came up with a constitution for Zambia which was passed as a schedule to the Zambia Independence Order in Council of 1964 which further gave rise to the independent Republic of Zambia on 24th October 1964 and provided that its first President would be Kenneth Kaunda. The salient features of the 1964 constitution, which was known as the Independence Constitution, vis-à-vis election law was as follows:

4.1 FRANCHISE

The Franchise was premised on the principle of Universal Suffrage. This meant that every citizen of Zambia who had attained the age of 21 years was now eligible to vote. Article 66 of the constitution provided that “every citizen of Zambia who has attained the age of twenty-one years shall ... be entitled to be registered as such a voter ...”\(^{21}\)

4.2 TERMS OF OFFICE

The Constitution provided for a five-year term after which elections had to be held for both the President and Members of Parliament.

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\(^{21}\) Constitution of Zambia (1964)
4.3 VOTING PROCEDURE

The voting procedure was such that, general elections for the National Assembly also served as Presidential elections. The National Assembly candidates had to announce support for a particular Presidential candidate and both names would then appear on the same ballot. "The Presidential candidate with the most individual votes nation-wide was the winner of the election."\(^{22}\)

4.4 ELECTION PETITIONS

Section 69 of the Independence Constitution gave the High Court jurisdiction to hear and determine any question whether:

(a) Any person has been validly elected or approved as a member of the National Assembly.

(b) Any person has been validly elected as Speaker of the National Assembly from among persons who are not members of the National Assembly. The Constitution also granted powers to Parliament to make provisions as to who had the locus standi to apply to the High Court and powers of the High Court in relation to any such application.
4.5 COMPOSITION OF THE NATIONAL ASSEMBLY

Section 58 of the Independence Constitution stated that the National Assembly would consist of seventy-five elected members and not more than five nominated members, bringing the maximum to eighty.

4.6 QUALIFICATIONS FOR ELECTION TO THE NATIONAL ASSEMBLY

The applications for election as member of the National Assembly were provided for under Sections 61 and 62. Section 62 provided, inter ale, that a person could not qualify for elections if he:

(a) was under declaration of allegiance to some country other than Zambia;
(b) was insane;
(c) was under death sentence;
(d) was bankrupt;
(e) held the Office of the President.

The 1968 General Elections were held under universal suffrage. The voting age had, at that material time, been reduced to eighteen years. The number of seats was further increased from 80 to 105 in May 1968. The results were as follows: "UNIP – 81, ANC - 23 and one independent presidential elections, Kenneth Kaunda retained the national presidency by beating Nkumbula of the ANC to the

22 Supra note 8 p. 20
tune of 68.01% to 15.11%.”23 The unfair practices started to suffice. One of the examples of such was the winning of the seat by Nalumo Munda of the ANC in Libonda constituency (Western Province) even though during election period he was under detention by the government under emergency laws. This embarrassment was actually addressed by UNIP enacting a Constitutional Amendment (No. 5) Act 1969 whose effect was basically to disqualify anyone whose freedom of movement was restricted or who was detained under the emergency laws from standing as a member of the National Assembly.

In 1969, UNIP suffered a set back. The electorate were called to vote in a referendum whose aim was to cancel the need to hold a referendum any time part III of the Constitution was to be altered. The referendum went through by a large majority. This resulted in a number of defections the most important being that of its Vice-President Simon Kapwepwe who formed a new party called the United Progressive Party. The defections led to a need to conduct 10 by-elections in December 1971. Although UNIP managed to get back 7 of these seats, it was one seat won by Kapwepwe himself which caused great apprehension to UNIP, reason being that Kapwepwe won the seat without even addressing a single rally in the Mfulira West constituency. Dr. Kaunda reacted by changing the political set up. This was done by the Constitutional Amendment of 1972 by which Zambia become a one party State on 13th December 1972.

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23 Supra note 8 p. 22
It must be emphasised here that insecurity on the part of leaders has throughout the history of Zambian Politics have been the source of the trouble that threatens the development of free and fair elections in Zambia. This being the case, there is need to inculcate a spirit of security in leaders so that they learn that the tenure of office on their parts is dependent on the people who gave them the mandate and that will of the people should, at no time, be frustrated. The biggest method of acquiring such security is to perform to the expectation of these people possessing the mandate to elect or remove through the ballot box.
5. ELECTIONS UNDER THE ONE PARTY PARTICIPATORY DEMOCRACY

A new political framework came in Zambia with the dawning of "One Party Participatory Democracy". It must be stated here that the referendum of 1969 meant that the Constitution could be altered without calling for a referendum and that the people of Zambia were not requested to express their opinion regarding the introduction of One-Party politics. The people were instead called upon to suggest on the best method of implementing the new system.

To achieve the above end, the President appointed the Chona Commission under Statutory Instrument No. 46 of 1972. The primary function of this Commission was to examine the possible ways of implementing a One-Party State under the philosophy of Participatory Democracy.\(^\text{24}\)

The introduction of One-Party politics in Zambia was objected to by the President of ANC Mr. H.M. Nkumbula in the case of *Nkumbula v Attorney General* \(^\text{25}\) in which Nkumbual challenged the constitutionality of the presidential declarations that Zambia would turn to One-Party politics and further, he sought a declaration that the Chona Commission was, inter alia:

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\(^{24}\) Report on the National Commission on the Establishment of a one-party participatory democracy in Zambia, p. 48

\(^{25}\) [1972] ZR
(a) bound to hear evidence in opposition to the introduction of a One-Party system; and

(b) in the Court of Appeal that the appointment by the President of the Chona Commission was ultra vires his powers and therefore null and void.

Mr. Nkumbula lost the case, as both declarations were not granted.

5.1 THE NEW CONSTITUTION

In this new Constitution, the most important Article was Article 4 which, provided that:-

"4(1) There shall be only one political party or organisation in Zambia, namely, the United National Independence Party (in the constitution referred to as “the Party")

4(2) Nothing contained in this Constitution shall be construed as to entitle any person lawfully to form or attempt to form any political party or organisation other than the Party”

The effect of this provision was to ban all political parties already in existence and to prohibit the formation of any new ones. One justification advanced for the new system was that candidates would be chosen on their individual merits and not according to which political party they belonged to.
ELECTIONS UNDER THE ONE PARTY STATE

The 1973 elections were the first under the One-Party system and have been considered the turning point as far as voter participation is concerned since they witnessed the lowest percentage poll in Zambian election history. Among the reasons presented for this state of affairs include, inter alia, that it was a symbol that the people had not fully embraced the new state of affairs. Guy Hermet puts it thus:

“... when the government gives no opportunity to express an opposing view, with-holding one’s vote may be a challenge to those in power. This is especially true when abstentious are on a very large scale...”

26

It is worth stating that this apathy did not stop Kenneth Kaunda getting the required percentage (over 50%) to win the election.

In the 1978 elections, three candidates expressed their desire to challenge Kenneth Kaunda for party presidency. This led UNIP to hold a meeting of their National Conference on which they proposed amendments to the procedure for the election in which Nkumbula challenged the Constitutionality of the Presidential declarations that Zambia would turn to one-party politics. He contended that;
(a) The introduction of one-party state violates his freedom of expression.

(b) The introduction of one-party state will be contrary to the spirit of the constitution.

Nkumbula lost this case with the court stating that the introduction of the one-party state did not violate the petitioner's freedom of expression of the Presidential candidate and this proposed amendment was accepted by way of general acclamation and not by way of vote.

The amendment to the UNIP Constitution had two controversial points, namely:

(a) The presidential candidate must have been a member of UNIP for at least five years standing; and

(b) That a candidate for the Office of the President must lodge nomination papers with the returning Officer supported by twenty delegates from each of the provinces of Zambia attending the conference.

The effect of the amendment was to exclude three presidential aspirants like Kapwepwe and Nkumbula from the race and Kaunda was again unopposed. An attempt by Nkumbula and to seek the Court's intervention proved futile. This was in the case of *Nkumbula V Attorney General*.\(^27\)

Both the 1983 and 1988 elections were not as eventful as those of 1973 and 1978. President Kenneth Kaunda registered a landslide victory. During this period, the vetting adoption process was a nightmare for all aspiring candidates. Voting became a mere academic exercise and hence, voter participation was low during this period.

In conclusion, it is worth stating that what people lamentably failed to distinguish was the difference between elections and ratification. In elections, voters choose between alternatives and their decision is final. On the contrary, a choice is already done in ratification and those called upon to ratify do not have other alternatives. The consequence is that their responsibility is merely to affirm that which is already in place. It is for this reason that throughout the One-Party system in Zambia there were no elections but ratification of the Presidential Candidate by the Zambian electorate. Although the General Conference of the party could be convened to elect a party leader, everything possible used to be done to eliminate others from contesting so as to pave way for Kaunda. If people refused to ratify the party's choice of president, it was not clear as to what would happen next. There was equally a danger of such a situation resulting to

\(^{27}\) [1972] ZR 111
violence and confusion in the country, as many UNIP members were not prepared to dishonour their leader (Kenneth Kaunda). These were the retrogressive type of elections and incapable of bringing about a debate as to whether they were free and fair. This is so because they fell to far below the standard expected of elections in any civilised society.
6. THE THIRD REPUBLIC

After the purported elections of 1988, the next elections were scheduled for 1993. This vision was hardly realised as politics in Zambia underwent sudden change. The change in the course of politics in Zambia was attributable to both internal and external factors. The external “winds of change” had swept all over Eastern Europe and had, in fact, resulted in, inter alia, the toppling of the Romanian Government and the unification of German. One-Party regimes were world wide labelled as undemocratic. In Zambia, a Movement for multi-party politics was formed to pressurise the UNIP Government into re-introducing multi-party politics.

The Movement for Multi-Party Democracy (hereinafter “MMD”) began to call for a referendum for determination of the people’s opinion regarding multi-partism. It is a notorious fact that when a leader is so established that there is no threat whatsoever of a genuine challenge in elections, allegiance to the people ceases to exist. Economic performance of a country is affected and dictatorial tendencies begin to slowly suffice. This became a reality in Zambia. The discontent amongst the people could not be hidden any longer. The bitter fruits of unfree and unfair elections were soon to manifest. It all started like a joke in Zambia. “Several students at the University of Zambia, Great East Road Campus in Lusaka staged a demonstration which could have caused the collapse of the Zambian government of President Kaunda.”28 The student's

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protests were as a result of the general state of affairs in the country especially the increment of mealie meal prices.

The student's protests were joined by other people who rushed to state shops in their respective areas, ransacked them and looted all the goods. The town shops were equally not spared. This trend spread to other provinces of the country, especially the Copperbelt.

On 26th June 1990, the fifth battalion of the Zambia Regiment at Luena barracks in Kaoma were brought to Lusaka to subdue the riots. Lt. Christopher Mwamba Luchembe was among the task force of eighty-eight soldiers who were flown from Kaoma to Lusaka for the purpose aforesaid. On 28th June, Lt. Luchembe was detailed to take his platoon to the University of Zambia to cordon off the area. On arrival there around 04.00 hours, they found banners displayed by students bearing slogans critical of the Zambian government, and on 29th June, the University of Zambia was prematurely closed. On 29th June, the President flew to Ndola where he was expected to officiate at the Zambia International Trade Fair the following day. On arrival at Ndola Airport, he announced that there "would be a referendum on 17th October, 1990 to decide whether the country should revert to Multi-Party politics or retain the One-Party system".29

Five hundred suspected looters were expected to appear in Court. Three Magistrate Courts were set for the hearing of their cases and were to be presided over by the Principal Magistrates Peter Chitengi, Nigel Mofya and Mary Kasinga.

29 Supra note 24 p. 52
At 01.30 hours on 30th June 1990 a Mitsubishi Truck loaded with Lt. Luchembe’s platoon rolled out of Arakan barracks on a coup expedition. By 02.00 hours, Lt. Luchembe had dashed to the town centre and stormed the Posts and Telecommunications Corporation (PTC) telephone main exchange and instructed soldiers guarding the installations to be on full alert because the Zambian Army had taken over the government. He then proceeded to Lusaka International Airport, east of Lusaka and gave similar orders to soldiers there. “He also instructed them not to authorise any aircraft, neither commercial nor civilian to take off after 03.15 hours the same morning. He returned to town and invaded the ZNBC.”

Lt. Lechmere and his twenty-eight soldiers forced their way into ZNBC and at 03.15 hours, Lt. Luchembe made an initial radio announcement of the coup. Part of the statement blared. “Due to the escalating cost of living followed by food riots, the Zambia Army has decided to take over the government.” It is vital to state here that among the reasons presented for the taking over of the government included, inter alia, “failure by the government to legalise opposition parties as this tended to instal in power a dictatorial type of government in Zambia.” The announcement of the coup continued until when Lt. Luchembe and his men were arrested in the morning.

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30 Ibid p. 52
31 Beatwell S. Chisala, Coup Attempt – Lt Luchembe Multimedia Zambia 1991 Lusaka p. 54
32 Ibid p. 55
7. **THE CONSTITUTION CHANGES**

When pressure for change had mounted on President Kaunda he, at the 25th UNIP National Council, announced that the Republican Constitution was to be amended to allow for the re-introduction of multi-party politics without holding a referendum. The President then proceeded to appoint a Commission for the same purpose, which was chaired by the Solicitor General, Professor Patrick Mvunga. The Commission’s terms of reference included, inter alia:

1. To examine and determine a system of political pluralism...

2. Make such recommendations with regard to the matters covered by the first term of reference as the Commission may deem appropriate.”

The MMD, which was offered two of twenty-three seats on the Mvunga Commission, refused to participate in this process. The Commission’s draft of the new Constitution was nevertheless introduced in Parliament. The draft Constitution made specific provisions for the transition to a Multi-Party system through free and fair elections. The MMD rejected some provisions contending that the system consolidated too much power in the Office of the President.

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In response to the MMD's criticism and threats to boycott the election process, President Kaunda invited the MMD and other parties to State House to discuss their concerns and recommendations. The MMD objected to the venue.

In an effort to promote compromise during debate over the proposed Constitution, University students organised a one-day convention in Lusaka on July 19, 1991. Representatives of nine political parties, including President Kaunda and MMD President Chiluba attended the Convention. Although the atmosphere was strained, the meeting resulted in Kaunda's agreement to meet with opponents of the proposed Constitution during the following weekend before Parliament reconvened.

On Tuesday, July 23, Kaunda and Chiluba met one-on-one, to discuss the constitutional issues. In the meeting which was held at the Anglican Cathedral and chaired by Bishop Stephen Mumba, the participants agreed on more time for consultation. Notable features of the final new Constitution included, inter alia,

(a) Franchise based on Universal suffrage;

(b) Parliament to consist of One hundred and fifty elected members, not more than eight nominated members and the Speaker, bringing the total number to One hundred and fifty nine;
(c) If the Presidential candidate is unopposed then there is no need to hold a Presidential election; and

(d) The Constitution also provided that a Presidential candidate must be sponsored by a Political-Party.\textsuperscript{35}

It must be stated that this was the Constitution under which the 1991 elections were held. Before the elections, however, the Courts were called upon to state the law regarding MPs who resigned from UNIP to join MMD before the dissolution of Parliament. In \textit{Joshua Lumina and Bennie Mwiinga vs The Attorney General},\textsuperscript{36} the two MPs were duly elected as members of the National Assembly for Chikankata and Mazabuka respectively during the 1988 elections. Article 4 of the 1973 Constitution recognised only UNIP as the political party of the Republic. On December 17\textsuperscript{th} 1990 Act No. 20 was signed by the President ushering in Constitutional changes, the most important being the re-introduction of Multi-Party system of government. This repealed Article 4 of the old Constitution. On the 20\textsuperscript{th} December the MMD was formed and the two petitioners joined the new party. The Petitioners sought a declaration, inter alia, that notwithstanding their resignation from UNIP, they will not be required to vacate their respective seats in the National Assembly. The Supreme Court allowed them to continue to sit in the National Assembly as independents for the duration of the existing Parliament. This case seemed to suggest that it was

\textsuperscript{34} Constitution of Zambia Act p. 91

\textsuperscript{35} Constitution of Zambia Act p. 91
allowed for MPs who were members of one political party to quit their party and remain in Parliament as independent members. This misconception was however cleared in the case of Fabian Kasonde and Others vs The Attorney General.37

In this case, some members of MMD resigned from their party and did not officially join any other political party. They sought to remain in the National Assembly as independent members, arguing that they could rely on Article 71(2) of the Constitution, which provides, inter alia, “A member of the National Assembly shall vacate his seat in the Assembly:-

(c) In the case of an elected member, if he becomes a member of a Political party other than the party, of which he was an authorised candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party”

The contention of the MPs was that the Constitution did not bar Members of the political party on whose ticket they were elected to Parliament from continuing to be members of the House if they did not join any political party. The Supreme Court felt obliged to fill the vacuum in the Constitution in that the Constitution would be discriminatory if it did not allow MPs who went to Parliament or independents to join another party, but on the other hand allowed MPs who quit their party to remain as independents. The Supreme Court proceeded to add the

36 SCZ Judgement No. 5 of 1991
37 SCZ Judgement No.36, 1994
words "or vice versa" to the end of Article 71(2) of the Constitution and declared that the MPs should lose their seats in the National Assembly.

Judicially supported though the Kasonde case may have been, the basis upon which the decision was premised was that Article 72 (c) was in contravention of Article 3 of the same Constitution. The critique here regards the issue as to whether a provision in the Constitution can be said to be unconstitutional where the provision violated is not a fundamental human right.
CONCLUSION

A quick overview of elections in Zambia reveals that the Constitutional amendments and repeals have centred on elections, and election laws have been the centre of controversy in the political arena in Zambia. Although little attention is paid by the majority to the election laws and the manner in which elections are held the pain experienced by those in opposition is too great to bury. This is so because even if we purport to bury the anguish, pain and frustration, where this is genuine, the same may continue to raise the voices from the grave.

Throughout the period considered so far, the worst elections were those held under One-Party politics because strictly speaking, they were not elections. Elections call upon people to chose between alternatives. Under the One-Party system, there were no alternatives and hence people were called for ratification. The 1991 elections cannot form the subject matter as to whether or not they were free and fair. This is so because people wanted change regardless of the means. If elections failed, other means would have still been devised and people would have been ready to pursue the same. The 1991 elections acted as a foundation upon which the Zambian democratic pillars were to be constructed. The elections capable of being analysed in terms of their being free and fair are those now conducted upon the pillars built after 1991. It is, therefore, important to consider how the Zambian community has nurtured the new baby of
democracy in the area of elections in the Third Republic to ensure it grows and walks to the level of maturity.
CHAPTER TWO

8. EVENTS IN ZAMBIA PRECEDING THE 1996 GENERAL AND PRESIDENTIAL ELECTIONS

In this chapter, focus is deliberately cast on the events that took place before the General and Presidential elections. It is worth stating that some of these events may appear to have happened independent of the elections; however, their exposition hinges on the impact the same may have had on the elections. The events to be considered include, inter alia, the Constitutional Amendments, the introduction of the NIKUV Voter's Register and the sale of Council houses.

It is always necessary that before elections are held, certain mechanisms are put in place to ensure that they are free and fair. Such mechanisms included the emergence in Zambia of many civic groups, the establishment of the Electoral Commission and such other NGO's as were deemed necessary to monitor the elections.

Before considering the major events, it must be succinctly stated that, in order to nurture our new democracy in Zambia, the Courts have a very big responsibility to perform. Since Courts are the fountains of justice, complaints and controversies are better solved by the Courts, where every aggrieved party can freely complain and expect a fair, just and objective decision. After the 1991
General Elections, the Court’s position regarding elections was soon to be
tempted. In its temptation, the Court flexed its muscles to show that the Courts
did not favour unclean elections. This was demonstrated in the case of

Mlewa v Wightman\textsuperscript{38}

This was an appeal against the judgment of the High Court sitting as a division
Court in an election petition holding that the Respondent Josephant Mlewa was
not duly elected and ordering nullification of his election and making a further
Order that a fresh poll be held in accordance with the provisions of the
Constitution.

The facts were that both parties were candidates in the Parliamentary General
Elections held on 31\textsuperscript{st} October 1991 for Mkaika Constituency. The Petitioner
stood on the ticket of the MMD while the Respondent stood on the ticket of the
UNIP. At the close of the voting and the counting of the votes, the Respondent
was declared winner of the elections by the returning officer. The Petitioner
petitioned the High Court praying for an Order that the election results for Mkaika
Constituency be declared null and void on account that the elections had been
characterised by rampant corruption and bribery and that there had been several
instances of illegal practises. The Petitioner also alleged that there had been
violence, threat to life and property in the Constituency in general and against
members of the MMD in particular. It was further alleged by the Petitioner that
the elections had not been fair because the UNIP candidate had at his disposal a
GRZ Land Rover which he used for campaign purposes. The Respondent filed an answer in which he denied the allegations of illegal and corrupt practices and counter alleged that the illegal practices had been committed by the Petitioner.

The Court found that UNIP mounted a very dirty campaign in the area and that the elections were held in an atmosphere which was not free and fair because of the rampant acts of intimidation and violence. The Court agreed with the Petitioner that the election result was affected, and therefore, that the Respondent was not duly elected. The election was, therefore, nullified and the Court proceeded to order that a fresh poll be held in accordance with the provisions of the Constitution. The appeal was dismissed.

This position taken by Courts was vital in setting a standard as well as a signal in the political realm regarding elections. The importance of the Court's intervention in bringing an end to unfree and unfair elections started on a very good note in the Zambian new democracy. Before a medal is actually given to the Courts, it is worth stating that the courage portrayed by the Courts should first be looked at with suspicion. This is so because the candidate in whose favour the decision was made belonged to the ruling party at the material time and UNIP had become very unpopular in Zambia. The conclusion as to whether the Courts have maintained this position or have consciously closed their eyes resulting in them walking in a thorny and dark path will be established after considering the

38 (1995-1997) ZR 171
major events that have taken place in Zambia whose effects have been to hamper on the elections and the electoral process in Zambia.

The events to be considered are important in the area of elections in Zambia in that the same have formed the basis of controversy in the political arena in Zambia. These events, therefore, formed the basis of the inter-party talks that started as "early as 29th April 1996. The opposition parties sought some consensus on some of the most contentious issues related to the electoral process".39

Among the opposition parties concerns included, inter alia:

1. "The need to ensure that there was an independent Electoral Commission to supervise the national elections;

2. The need to repeal the 1996 Public Order Act which provided for a 14-day police notice before holding a public campaign meeting, gathering or procession;

3. The need to revisit the voter' register prepared by the Israel firm NIKUV;

4. The need for the state-owned media to accord equal electoral coverage to all the contenders in the election race; and

5. The need to hold the election on the basis of the 1991 constitution"^40

^40 AFRONET Report, 1996
8.1 MEDIA COVERAGE

The importance of the media in politics cannot be over emphasised. The media provide the structure and processes through which the political alternatives can be articulated. Politicians therefore, both of the ruling and opposing camps, fight out most of their battles in and through the media. If this battle is to be properly levelled down for both, then the media has to be independent and neutral.

In an attempt to understand the media in Zambia before elections, it is important to relate its operations to the two theories. "The first is the political economy approach. This theory explains that control over production and the distribution of ideas is concentrated in the capitalist owners of the means of production"41

This explanation sets to show the relationship between ownership and control. If then the MMD government ‘owns’ the Times of Zambia and the Zambia Daily Mail, can it be said that it controls the news output of these institutions? The effect where this is the case is terrible on the election results. This is so because the views of the ruling party in question receive constant publicity and come to dominate the thinking of subordinate groups. The consequence is that the process brings about the dominant ideology which eventually is translated into cultural commodities that can be consumed by the reading public.

41 Murdock, G. and Golding P., Capitalism, Communication and Class Relations (Mass Communication and Society 1977)
The second theory is the “liberal pluralist approach. This sees political communication as a process in which informational and persuasive messages are transmitted from the political institutions of society through the mass media to the citizenry to whom they are ultimately accountable”\(^{42}\). Applying this theory, ownership does not necessarily entail control. It implies that some enterprising journalists in the state-owned media are able to break out of line and do their own thing.

Regard must however be had to the fact that the application of the second theory might depend on how far the state is able to permit journalists operate independently without the fear of sanctions. The situation seen in Zambia is that the media serve the interests of the state, framing their reporting and analysis in a manner supportive of established privilege and limiting debate and discussion accordingly.

The measure of the relevance and effectiveness of the media to the public is whether, “by thorough examination and reporting, they increase understanding of important realities, and whether, through presentation of the widest spectrum of thought analysis, they create an adequate reservoir of insights into the social processes.”\(^{43}\)

\(^{42}\) Blumber J. and Gurevitch, M. *The Political effects of Mass Communication* (Cultural Society and the Media 1982)

\(^{43}\) Bagdikian, B. The US Medial Journal of Communications (1985)
Having thus attempted to theoretically rationalise the relationship between politics and the media, the study proceeds to consider the media's coverage of the 1996 election campaign.

Newspapers are not so massive in "Zambia as to permeate almost all the individual's life. This is so because, firstly, the main media are concentrated along the line of rail, leaving the majority of potential voters informationally starved. Secondly, incomes are so low that not many can afford a newspaper every day. This is partly reflected by the average actual circulation estimates of the newspapers below: -

"NEWSPAPER CIRCULATION FIGURES"

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<td>Zambia Daily Mail</td>
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<td>Total</td>
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Roughly, then, this table shows that only about 92,000 people out of the national population of close to 10 million heads are reached by these mass media. A large number of the Zambian population therefore is impacted by Zambia Broadcasting Corporation (ZNBC) radio and Television.

It is worth considering, briefly, the level of reporting the activities of political parties in Times of Zambia, Daily Mail and the Post before the 1996 General and Presidential Elections. The nature of reporting showed that the Times and Daily, unlike the Post, leaned more in favour of the ruling MMD. The Post on the other hand sided with the opposition and reported the MMD on the front page if the context was critical of the government.

"SPACE DISTRIBUTION COMPARISON"

"ZAMBIA DAILY MAIL"

Space Distribution

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MMD ZDC Others (Political Party)

"TIMES OF ZAMBIA"
Space Distribution

Table two

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MMD       ZDC       Others (Political Party)

"THE POST"
Space Distribution

Table three

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MMD       ZDC       Others (Political Party)
Other newspapers included the Chronicle, the Tabloid and the Sun. The 
Chronicle was apparently anti-MMD and carried advertisements and news stories 
that suggested a pro-ZDC stance. The Tabloid showed to a certain extent some 
independence while the Sun was owned by MMD members and was therefore 
clearly pro-MMD and anti-opposition.

ZNBC ADVERTISEMENTS DISTRIBUTION

If there is one thing more than another, which separates the television from radio, 
it is its ability to combine sound with picture. This distinction makes television a 
more effective medium in the communication process.

The amount of airtime allocated to each presidential candidate and his political 
party depends on the amount of importance attached to that candidate and his 
party. The ruling party has most of the state machinery, including the state 
owned media, at its disposal. This does not, however, give the ruling party a 
right to control the state machinery in a democratic country.

The observation regarding the time allocated to political parties on radio and 
television showed great disparity. Most of the MMD’s advertisements where 
shown on the television within the 19.00 hours news bulletin. This is the ZNBC’s 
prime time. The conclusion as seen reveals that the media was greatly
monopolised by the ruling MMD in such a way that their activities and aspirations were able to reach the people when the contrary was the case with the opposition parties. Mostly, only the negative activities of most opposition parties were reported.

_Zambia Democratic Congress (ZDC) V. ZNBC, Times of Zambia, Zambia Daily Mail & The Attorney General⁴⁴_

In this case ZDC complained that they had been denied coverage by the ZNBC, Times of Zambia and Zambia Daily Mail. The Cooperation (ZNBC) had been invited to cover a number of their activities, but on several occasions they had not attended. Similar activities by the ruling party had been covered. Where ZNBC had attended, the events covered had not been shown. The petitioners established that there was such a directive from the state; and the petitioners challenged the directive as being discriminatory and that it violated their right to freedom of expression.

The High Court found and held that the directives were unconstitutional. Regarding Newspapers the Court held that they were supposed run on the basis of Journalistic Principles, free from any outside influence. Those principles dictate the coverage of all newsworthy events regardless of the source of such news. Anything less than this... is not acceptable from a public news media.

⁴⁴ (1995/HP/3251)
This monopolisation of the communication process in the country is not synonymous with democracy. In a democratic nation, people reserve the right to receive different opinions regarding matters of national interest. It is this knowledge that makes people vote wisely. The voting process therefore in the 1996 election was done, with a certain degree of ignorance on the part of the people regarding what the opposition parties had to offer in alternative to what is offered by the MMD.

8.2 SALE OF COUNCIL HOUSES

"On March 31, 1996, President Chiluba made a directive to all local authorities to sell their housing stock to sitting tenants before the end of June, 1996. The President went further to state that houses which were built in 1959 and beyond should be considered as having been paid for by the tenants and therefore would only be required to pay legal fees"45

"On 16th April, 1996, Mr. Amusa Mwanamwambwa, being the Government Spokesman then made an announcement that Cabinet had approved a new housing policy in which 8,789 out of the 15,798 government houses were to be sold to sitting tenants with effect from October, 1"46

45 Zambia Daily Mail, April 1 1996 p1
46 Times of Zambia, 17th April, 1996, p1
The announcement on the sale of houses and housing loans to Civil Servants was well received by the workers, retirees and those who were retrenched.

Although it was on principle and initially agreed that full Council meetings would determine the prices at which individual Councils would sell the houses, Mr. Chiluba personally went round the country during his elections campaigns and directed the Councils to sell the houses at certain prices. For instance, on 18th March 1996, “he directed Chililabombwe Municipal Council to actually give free of charge some houses, saying that they had lost value because they were built a long ago. The President further directed that some of the houses be sold at not more than K250, 000.00.”47 This was the trend throughout Zambia.

Generous though the President may have been in dishing out the houses, it is important to understand that the time at which the President did this was cardinal to the elections. The very fact that the sale processes had not been completed at the material time of voting made people to reasonably believe if they voted for a different person as President, he would have changed the issue of house buying. Clean and smart though the President appeared to have been, such events have serious impact on the outcome of elections.

47 Times of Zambia, 19th April, 1996, p1
8.3 SLUSH FUNDS

The introduction of the Presidential "slush" funds culminated in the President going round donating money to churches, schools and some charitable organisations. The President was accused of corrupting the electorate. Although this may have been considered as the charitable work of the President, such churches that received the money went in a full swing to campaign for the President. This was a deliberate act of the President to get votes from the people.

8.4 PUBLIC ORDER ACT

To promote divergent viewpoints from various sections of society in a democracy, the freedoms of expression, associations, assembly and the press are very vital. The necessity of these freedoms becomes imperative during campaigns in the run up to elections. This is so because during this time various political parties and candidates try to put across their competing political and economic opinions to the electorate. In an effort to canvass for political support, all the political participants need to be accorded an equal opportunity to reach out to the electorate.

Article 20(1) of the Zambian Constitution provides that, "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of
expression.... whether the communication be to the public generally or to any person or class of persons ....”

Article 21(1) provides that “Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association .....”

Notwithstanding the foregoing, it should be noted that public meetings and processions had, since colonial times, been regulated by the Public Order Act. In this Act, section 5(4) provided that:

“Any person who wishes to convene an assembly, public meeting or to form a procession in any public place shall first make application in that behalf to the regulating officer of the area concerned, and, if such officer is satisfied that such assembly, public meeting or procession is unlikely to cause or lead to a breach of the peace, he shall issue a permit.......”

In addition, a notice of a week had to be given and the said officer had the power to either reject the application or to grant it. This meant that the holding of all political meetings was subjected to the sole and exclusive decision of the officer who had this undeserving discretionary powers. The trend observed was that this provision of the law was effectively used to bar rallies organised by the opposition parties while the ruling MMD used to hold political rallies without obtaining the said permits.

48 Constitution of Zambia Cap 1.
49 Supra Note 47
50 Public Order Act
In 1995, UNIP President Dr. Kaunda held a political rally in Chongwe without a permit. The consequence was the arrest of UNIP members including Kaunda, who were charged with unlawful assembly. UNIP Defence Counsel, brought in the issue of constitutionality of the section of the law upon which they were arrested. The case was finally settled by the Supreme Court in the celebrated case of:

*Christine Mulundika and 7 others v the People*\(^{51}\)

The Appellants challenged the constitutionality of certain provisions of the Public Order Act, Cap 104, especially section 5(4) which requires any person wishing to hold a peaceful assembly to obtain a permit and contravention of which if criminalised by section 7 of the same Act. A major argument against sections 5(4) was with regard to its effect upon the enjoyment of the freedoms of expression and assembly.

The Court stated that the requirement of prior permission was an obvious hindrance to two very important freedoms under the constitution since the right to organise and participate in a public gathering was inherent in the freedom to express and to receive ideas and information without interference and to communicate ideas and information without interference.
The fact or possibility that permission to assemble and to speak may be refused so that the constitutional freedoms were denied altogether on improper or arbitrary grounds or even on unknown grounds, rendered the subsection objectionable for a variety of reasons.

On the question why the President and Ministers did not obtain the permits, the Court stated that the officers charged with executive and governmental functions and duties need be accorded treatment which facilitates the performance of their governmental functions. Further, on Mr. Kinariwala’s (Principal State Advocate) submission that the politicians in this country are immature and irresponsible and that those in Zimbabwe are more responsible and mature, the Court stated that people in Zambia are responsible and mature and may not allow to be caged or oppressed by any other individual or group of individuals. The Court proceeded to hold that section 5(4) of the Public Order Act contravened Articles 20 and 21 of the Constitution was null and void, and therefore invalid for unconstitutionality.

This Supreme Court Ruling did not go scot-free. The Judiciary came under attack from the MMD leaders who described the decision as a “recipe for chaos.”52

As a reaction to the Court’s decision the government swiftly passed the Public Order (Amendment) Act, 1996 (Act No.1 of 1996) which in effect reversed the

51 SCZ Judgement No. 25 of 1995 p.156
52 FODEP, Final Election Monitoring Report, FODEP, National Secretariat, p16
landmark decision of the Supreme Court. The Amendment now provides that any person intending to assemble or convene a public meeting, procession or demonstration shall notify the police in writing of such intent Seven (7) days before the meeting. This requirement is retrogressive in a democratic country in that, the freedoms of expression, assembly and association cannot be disassociated from elections.

Once these freedoms are taken away, the voters are denied the chance to know about what other opposition parties have to offer. Their voting is then based on inadequate information. Similarly, the opposition leaders cannot sell their manifestos, alternatives and opinions to the electorate. This situation therefore adversely affected the 1996 elections.

8.5 CONSTITUTIONAL AMENDMENT

The Constitution, as seen from the historical development of elections in Zambia, is cardinal as it sets out the legal framework, which undoubtedly has a strong bearing on the entire electoral process. The provisions of the constitution regarding elections set the foundation upon which the pillars of elections are built. If the provisions are not democratic, the fruits will be the same. At times, however, the provisions may be promotive of free and fair elections but the practice on the ground may render the elections unfree and unfair.
President F.T.J. Chiluba did, on October 22\textsuperscript{nd}, 1993, in exercise of his powers under the Inquiries Act, Chapter 181 of the Laws of Zambia appoint a Commission chaired by a prominent Lawyer, Mr. John Mwanakatwe. Among the terms of references given to the “Mwanakatwe Constitutional Review Commission included, inter alia, to recommend a system of government that would ensure that Zambia is governed in a manner that will promote the democratic principles of regular and fair elections, transparency and accountability, and that would guard against the re-emergence of a dictatorial form of government”. This premise was good as it acted as evidence to show that the government was dedicated to the promotion, improvement and strengthening of the electoral process in Zambia.

This highly celebrated commitment was however, soon to prove a failure. This was so because the Constitution making process sparked off two major controversies, namely, the mode of adoption and the qualification to the Office of the President.

8.6 THE MODE OF ADOPTION OF THE CONSTITUTION

The ninth term of reference of the Mwanakatwe Constitutional Review Commission provided that the Commission should “recommend on whether the Constitution should be adopted by the National Assembly or by a Constituent Assembly, by a National Referendum or by any other method”. After collecting
the views from the public, the Commissioners unanimously resolved and recommended that the 1996 Constitution should be adopted through a Constituent Assembly and Referendum before being enacted into Law by Parliament.

The government, in its white paper No. 1 of 1995, rejected the above recommendation contending that that the 1991 Constitution recognised Parliament as the only legally empowered body to enact the Constitution. The government’s reason for refusing the Constituent Assembly was that to do so would amount to abdication of Parliament’s powers to an inferior body. The members of various interest groups however unanimously resolved that the Constituent Assembly was not to USURP Parliament’s Supreme Legislative powers to enact the Constitution. Efforts by the church, the opposition parties, the donors and the civil society to persuade the government to abide by the Commission’s recommendations proved futile. There was held, then, a national convention dubbed as “The Citizen’s Convention” at Mulungushi Conference Centre in Lusaka from March 1 to 10, 1996 to discuss the said Mwanakatwe draft Constitution. It was unfortunate, however, that the recommendations which were made and submitted to the government in the “Citizen’s Green Paper” were ignored.

When all efforts to make the government change proved impossible, the Court was then involved. This came by way of Judicial Review in the case of: -
Derrick Chitala (Secretary of the Zambia Democratic Congress) and The Attorney General

This was an appeal against the decision of a High Court Judge refusing to grant leave to bring Judicial Review proceedings. The relief sought by the Appellant included, inter alia:

1. An Order of Certiorari to remove into the High Court for the purpose of quashing the decision by the President and his Cabinet to have the next Constitution enacted by the present National Assembly.

2. An Order of Mandamus directed to and compelling the President and his Cabinet to take such measures as may be necessary to ensure that the Constitution is debated by and finally determined by a Constituent Assembly or any other broad based group and subjected to a referendum.

The grounds on which relief was sought were:

1. The decision to have the Constitution enacted by the current National Assembly has been made in bad faith, it is calculated and designed to enable the present government to single handedly
determine the Constitution, which will favour it and disadvantage other interested parties.

2. The decision has been made in bad faith in that it is contrary to the recommendations made by the Mwanakatwe Constitution Commission after touring the country and receiving submissions from the people.

3. By virtue of this decision the President and his Cabinet have acted unfairly and unreasonably in that they have totally ignored the recommendations ...."

The Supreme Court refused to grant leave to bring Judicial Review proceedings stating that although the application was neither frivolous nor vexatious, it was legally an untenable application on the face of it. The consequence was that the 1996 Constitution (Amendment) Act No. 18 was finally adopted by Parliament made up of mostly MMD members of Parliament though UNIP MPs walked out of the Chamber. One fact, however, which most politicians seem not to understand is that a political party is an interest group. This being the case, a political party may not always reflect the wishes of the people. A Constitution is the Supreme Law in the land. It is an expression of how the people want to rule and be ruled. It is for this reason that the sovereignty of Zambia does not rest in Parliament but in the people. This sovereignty is in turn expressed, not by Parliament, but by

53 SCZ Judgment No. 14 of 1995, Appeal No. 92
the people, in the Constitution. It follows naturally that any law, therefore, made by Parliament which is incompatible or repugnant with this sovereignty of the people in the Constitution is, to the extent of its inconsistency null and void. The Constitution we have today in Zambia is not considered as a Zambian document but rather, an MMD document, Chiluba's in particular. There is no compatibility whatsoever between the Preamble of the Constitution and the reality. The Preamble starts thus "We the people...." If this Constitution was to stand the test of time, it should have been adopted by the Constituent Assembly. The MMD's interest appeared in this Constitution under Article 35, which provides for the Presidential qualifications. This was the second area of contention.

Article 35(1) of the 1996 Constitution (Amendment) Act requires a Presidential aspirant to be a Zambian citizen, whose parents must both be Zambians by birth or descent. Article 35(2) further provides that "... no person who has twice been elected as President shall be eligible for re-election to that office". The Third amendment effectively barred traditional rulers from contesting. The most affected political party was UNIP which could neither field in its President Dr. K.D. Kaunda nor the Vice President Chief Inyambo Yeta because both were bared by these clauses. "These clauses limited the choice of candidates available to the voters and contributed to UNIP and other opposition
parties boycotting the elections. This political skirmish in the electoral process severely strained the relationship between the Zambian Government and the international donor community.

The sour relationship between the Zambian government and the donor community started manifesting. Britain for instance withheld 10 million British Pounds sterling in balance of payments support while the United States of America cut 2.5 million U.S. Dollars in aid.

This donor country disenchantment with the Zambian government was gradually beginning to find its way on the agendas of such multilateral institutions as the World Bank and the International Monetary Fund. For instance, at a Consultative Meeting for Zambia in London, Kathreen Marshall, World Bank’s Director for Southern Africa, noted that her Organisation’s Western partners were concerned about Zambia’s political and governance issues. The Southern African Development Community (SADC) also expressed concern at the lack of dialogue between the MMD and the opposition. Taking a rather cautious approach, SADC urged the ruling MMD and the opposition to iron out their differences so as to promote wider political participation in the election. The diplomatic skills of SADC Chairman, Nelson Mandela also proved futile.

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54 The Post, Friday 29th March, 1996, No. 440, p7 “Reaping what one has sown”
56 Banda F. The Zambia Media Coverage of the 1996 Election Campaign. A report Lasaka, November
57 ZNBC Television 19.00 hours news on 24th February 1997

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It came to be settled that the MMD had proved to be adamant in the face of all this pressure and argued that the 1996 Constitution (Amendment) Act was an expression of the Zambian people’s will. They further argued that withdrawing aid from Zambia would affect, not the MMD leadership, but the ordinary people for whom the World Bank/IMF Structural Adjustment Programme was designed. The government further argued that it had vigorously met all the economic benchmarks of SAP at the risk of internal social unrest. The exchange rate had been freed, the civil service had been cut to a cost-effective size, the wage increase freeze had been effected, subsidies had been removed and so on. All this, the government argued, was against the backdrop of 6.5 million Zambians being described as ‘extremely poor.’

Having explained what happened during the Constitutional (Amendment) Act process, the reader is reminded of the fact that even Chiefs aired their sentiments. For instance, Chief Mpezeni, the Paramount Chief of the Ngoni people of Eastern Province, stated that President Chiluba had betrayed the trust of Zambians by enacting a bad Constitution and that he was totally against it because it was not meant to promote the aspirations of the Zambian people. He further stated that there was no way President Chiluba could stop traditional rulers from participating in politics since they have always been involved in running the affairs of the nation

58 Supra note 54 pp 3-4
Regardless of the cry of the Zambians from different corners of the country, President Chiluba assented to the amendment of the Constitution and, on 21\textsuperscript{st} May 1996, a week later, it became Law. The assent was done amid celebrations from MMD Members of Parliament and cadres who shouted “Kaunda alala, Kaunda alala,” meaning Kaunda has lost or literally that Kaunda has been silenced. This was evidence enough to show that the Constitutional amendment was targeted at individuals.

When the United States government took a stance and announced that it would review the bilateral and multilateral relationship with Zambia, the then Vice President Brigadier General Godfrey Miyanda attacked the United States government saying, “once a President of a country assents a Bill, it is unheard of or it is undesirable for another government to literally order that sovereign state to reverse its decision... perhaps the international community is setting new democratic standards”\textsuperscript{60}

The point to note here is that, although the Derrick Chitala case was in Court, the government went ahead with the debate on the Constitution amendment. The debate was not suspended pending the outcome of the decision of the Court. When the application for leave to apply for Judicial Review and for the Stay of the decision was renewed before the Supreme Court, the President went onstitutional Amendment Bill. The ruling of the Court on whether to grant a stay

\textsuperscript{59} The Post, Saturday 8\textsuperscript{th} June 1996, Letter to the Editory, p6
\textsuperscript{60} ZNBC Television, 19.00 hours news, 24\textsuperscript{th} February 1997
or not pursuant to Order 53(3)(10) was set for 09.00 hours, on the same day the Bill was set for assent by the President at 13.00 hours.

In a ruling which took a very short time to deliver the Supreme Court refused to Stay the decision to amend the Constitution until after the determination of the substantive matter and offered to give reasons latter.

8.7 THE NIKUV VOTERS REGISTRATION EXERCISE

It must be stated from the outset that the voter's register was partially updated in 1991 and the number of eligible voters had increased by 1991. There was, therefore, need to revise the voter's register so as to include those people who had become eligible to vote in 1996. The Republican Constitution provides under Article 76(1) that there shall be an Electoral Commission charged with the responsibility, inter alia, of updating and compiling the voter's register.

In May 1995, the government announced that it was to engage a private Firm to conduct the voter registration exercise. "The government invited, through the National Tender Board of Zambia (NTBZ), all the interested companies, local and foreign, interested in conducting the voter registration exercise to submit their bids. Ten companies did so among which were the Swedish Tax Administration, Denel Informatics (S.A.), Q-data Consulting (S.A.), VWL International (S.A.), Polaroid Corporation (S.A.), Big Bang Trades Services (U.S.A), De La Rue
Identity (France), Zambia Postal Services (Zam-Post), Ernest and Young and NIKUV Computers (Israel). The contract was awarded to NIKUV and was formerly signed on November 1, 1995.\textsuperscript{61}

The total cost of the voter registration exercise came to K18billion. It was however, reported that other companies had offered to carry out the voter registration exercise at a much lower price than what NIKUV had charged.\textsuperscript{62}

The selection of NIKUV computers sent a wave of controversy in the electoral process. The opposition parties and non-governmental organisations demanded an explanation from the MMD government as to why it had opted for a more expensive company. Others charged that the NIKUV was an extension of an Israel Secret Intelligence Operation group Mossad, and alleged that it was engaged so that it could rig elections in favour of the MMD. FOZEP and ZIMT claimed that it was impossible to hold free and fair elections under the NIKUV computers limited voter’s poll.\textsuperscript{63}

The fear expressed by the opposition that NIKUV would rig the 1996 elections through the registration process was increased by the reports that NIKUV had carried out a voter registration exercise in Zimbabwe and allegedly ensured that the ruling party, ZANU-PF, had an in-built majority voters.\textsuperscript{64}

\textsuperscript{61} Supra note 50 p 16
\textsuperscript{62} Supra Note 50 p 16
\textsuperscript{63} The Post. 26\textsuperscript{th} March, 1996 p 3. Polls rigged.
\textsuperscript{64} Supra note 50 p 16
An attempt to challenge the government over the NIKUV prepared register was in the High Court, this however proved futile.\textsuperscript{65}

The non-settled controversy over the NIKUV voter’s register, proved that the MMD government had interest in the same. It also suggested that the government was not a listening government. This led some opposition political parties to declare that they were not going to recognise the voter’s cards prepared by the NIKUV and appealed to their members to boycott the registration exercise. The strategy was for these political parties to exert pressure on the government to use the National Registration Cards for voting but the government remained adamant and the NIKUV prepared voters cards were used.

It must not be lost sight of that the NIKUV voters register had a lot of irregularities. There were countrywide reports of some people who had registered as voters missing from the provisional voter’s register when it was finally compiled. In Northern Province, 60,000 people who registered were reported to have been left out of the provisional voter’s register; in Luangwa District, the provisional voter’s register had 3,758 extra names. At Nalituwe polling station in Livingstone, 250 people who registered were missing from the provisional register. Similarly, at the University of Zambia polling station, a total of 251 people were missing on the register. As though this was not enough, over 350

\textsuperscript{65} Akashambatwa M. Lewanika, Evaristo Kambaila, Sebastian Zulu, Jenaiifer Mwaba Phiri V A.G Electoral Commission and Frederick Chiluba (SC. Z/8/235/95

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duly registered voters could not cast their votes because they possessed only voters application forms." The anomalies persisted, until and even on election day.

It is therefore a notorious fact that the NIKUV voter's register was not accepted by all the stakeholders, except the ruling party. Despite all the efforts to reverse the government's decision, the political parties were finally made to contest on the basis of the voter's register as compiled by NIKUV.

8.8 BLACK MAMBA THREATS/BOMBS

The existence of a group calling itself the Black Mamba in Zambia brought fear and uncertainties. This occurred during the time when the amended Constitution was being debated in Parliament. This so called Black Mamba group was accused by the government of being behind the threats and bomb blasts. The threats alleged include the letters anonymously received by some Ministers and MMD Members of Parliament threatening their lives if they supported the Constitutional amendments. At the Lusaka International Airport, a bomb explosion resulted in the death of a Police bomb disposal expert Mr. Ordan Banda on June 6, 1996. His colleague, Mr. Paul Ngoma, was seriously wounded by the explosion. This took place when the offers were trying to diffuse the bomb."\(^{67}\)

\(^{66}\) Supra note 50 p16
\(^{67}\) Supra note 50 p 14

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These occurrences led to the arrest of some opposition UNIP leaders who were accused of being behind the bombings. Among those arrested were, UNIP Vice President, Senior Chief Inyangbo Yeta, Mr. Rabson Chongo, Mr. Muhabi Lungu, retired Generals Joseph Chintomfwa and Nicholas Zulu, retired Zambia Airforce Captain Selemani Mvangula Banda, Mr. Morris Kaulungombe and Mr. Patrick Goma.

The seriousness of the arrest was made known when on June 4, 1996 the accused were charged with treason for allegedly attempting to change the Constitutional amendment by the use of force." Some accused were further charged with the murder of Mr. Orton Banda.

In early September, a nolle prosequi was entered against Mr. Chongo and Mr. Lungu. The matter proceeded with the remaining six accused persons. In the matter of, The People V Senior Chief Inyangbo Yeta and 7 others. Six accused were jointly charged in court now with treason and in court two accused Selemani Banda Mphangula, Nicholas Damaseke Zulu and Patrick Kanandwe Goma were jointly charged with murder on the 16th May, 1996 a letter entitled “Final Warning from the Black Mamba” was addressed to the editor of Newspapers stating that since the government had ignored their demands not to table the Bill in Parliament, they would strike hard if the Bill was not withdrawn by 18:00 hours on Saturday 18th May, 1996. On the 16th May 1996 there were new
developments. Part of the State House Wall Fence was bombed. The State House Wall Fence incident was followed by a bomb explosion at the Lusaka International Airport on 6th June 1996 in which one Superintendent of Police lost his life. The series of bombing were connected to UNIP and thereupon, the accused person were arrested.

Delivering the ruling on the matter, Justice Peter Chitengi stated that, the evidence in this case... is unsatisfactory... because the investigations were not through but superficial. The sum total of the investigation was to collect remains of exploded home made bombs, later threats and record statements from witnesses whose evidence mainly dealt with bombs which, like the letter threats, the police did not connect to the accused. The accused stand a grave charge. If the accused are to hang, it must be on clear and cogent evidence of credible witnesses. All there is, is suspicion. I wonder whether, if the accused were executed they would gladly accept the reward money and use it with a clear conscious and not throw it into the temple as Judas Iscariot did with the thirty pieces of silver. I accordingly dismiss the charges against the accused and aquit them thereof and I now direct that each accused should be set at liberty.”

The above case pointed out that, “it was a plan of the top political leaders in government to victimise, threaten and frustrate the leaders of the major opposition party. This comes in the light of a strong rumour that it was the government who, through its agents, was responsible for planting bombs.”69 This,

69 Supra note 65 p 16
if true of the government, means that the intention was achieved as most of the accused became and have been politically inactive after their acquittal. This is retrogressive in the democratisation process and a set back to achievement of free and fair elections.

8.9 THE ELECTORAL COMMISSION

The call by the opposition parties for the establishment of an independent Electoral Commission was answered on September 10, 1996 when President Chiluba announced that he had conceded to the said demand.” He further stated that the Electoral Commission was to include a person qualified to be a High Court Judge or Supreme Court Judges and that it was going to be self-accounting and regulating.

The President proceeded to appoint the Commission which was to be chaired by the High Court Judge Bobby Bwalya. Parliament ratified the appointment on October 17, 1996”

On October 21, the Commissioners were sworn in at State House by President Frederick Chiluba. There, however, was yet another area of contention on the appointment of the Electoral Commission. The argument presented by the opposition parties was that the appointment of the Electoral Commission’s Chairperson by the President and its subsequent ratification by the MMD
National Assembly would adversely impair the autonomy of the Commission.⁷⁰ FODEP and ZIMT declared that the Electoral Commission’s independence remained an academic exercise seen clearly from the way it was appointed and the way it functioned⁷¹.

In the midst of dissatisfaction regarding the appointment of Justice Bobby Bwalya as the chairman of the Electoral Commission, the Commission attempted to hold meetings with all representatives of political parties. Although these meetings were generally shunned, the Commission compiled the Electoral Code of Conduct that was enacted into law. The Electoral Code of Conduct provided, inter alia, the limitation of newspaper space and airtime for political advertisement so as to prune some wings of the firmly powerful political parties. The Code also prohibited government officers from using their official vehicles for campaign purposes. It, however, provided that they could still use their official vehicles for family affairs. In practice, government officials continued to use government vehicles and resources for campaign purposes.

The operations and efforts of the Commission produced little impact on the electoral process. One reason was that it was appointed rather late and that it lamentably failed to win the confidence of most of the political parties who constantly attacked and accused it of being biased in favour of the MMD.

⁷⁰ The Post, Wednesday 20th November, 1996. Issue No. 604 p1 Polls Rigged
⁷¹ The Post, 24th October, 1996 p.1
8.10 BOYCOTT OF ELECTIONS BY UNIP

When all the efforts to reach a compromise on the 1996 Constitution amendment and the voter registration exercise proved futile, the dark shadow cast on the entire electoral process led UNIP, which was regarded as a major opposition party, to boycott elections. This UNIP election boycott was joined by five other political parties.

The decision to boycott the Presidential and General Elections was announced by UNIP President Dr. Kaunda on 23rd October 1996. In his speech, the former republican President stated that his Central Committee had carefully and thoroughly examined all the events leading to the elections and had resolved that it was not prudent for the party to participate in the elections.”72

CONCLUSION

In accordance with the explanation of the chain of events that took place in Zambia, the year 1996 was crucial in the history of Zambian elections. Although what happened does not fascinate an ordinary Zambian citizen, the coming generation will find it very difficult to understand how the whole Zambian population could have allowed Mr. Chiluba and his disciples to manipulate elections in the manner things were done.
The introduction of the NIKUV Computers Company to handle elections posed more questions than answers regarding the credibility of the company. This made the people lose confidence in the results of the elections.

The sale of Council houses at very low prices determined by the President and not the local governments themselves promoted Mr. Chiluba in the eyes of the people and this made them vote for him for fear of disturbing the sale process which was still going on. This use of government resources for campaign purposes is and can never promote democratic elections.

The appointment of an independent electoral commission by name, which sided with the ruling MMD, was unfortunate for it did not promote free and fair elections in any meaningful way.

Further the amendment of the Constitution in a manner which was only detrimental to the major opposition parties, calculated to eliminate individuals from the race was not only undemocratic but also incompatible with Christian principles. As though this was not enough, the monopolisation of the media and ZNBC by the ruling MMD did not promote the interest of Zambian generally as this tended to transform the thinking of MMD into a commodity that was forcibly made to be consumed by every Zambian. Democracy demands that the media be independent.

72 The Post, 24th October, 1996 p.1
It should also be observed, as a matter of fact, that the passage by the MMD Parliament of the Public Order (Amendment) Act of 1996 after the Court had declared null and void section 5(4) of the Public Order Act, was retrogressive in the democratic way of conducting the elections.

The next chapter therefore considers how free and fair the 1996 General and Presidential elections were.
CHAPTER THREE

9. THE 1996 ELECTIONS – HOW FREE AND FAIR WERE THEY?

The preceding chapter was an exposition of the events that took place just before the 1996 Presidential and General Elections. It is imperative to appreciate that one can only objectively analyse whether or not the elections were free and fair in the light of the occurrences that took place and precipitated the elections. In an effort to answer the above question, it is vital to refer to the events as exposed in the previous chapter.

The question that should, be paused at once is, what is meant by free and fair elections? To be free and fair, elections must be so on the part of both the candidate and the electorate. Elections are said to be free and fair if they are held in and under conditions which ensure that the electoral playing field is leveled and the entire electoral process and climate make the whole electoral package and environment free, fair and safe for the elections.”

Elections are free and fair if it is recognised that, voting is an expression of individual autonomy an act of internal political self-determination; and that elections are the basis of the authority of government, the cornerstone of representative democracy, and an act of legitimation of governments among the Community of States.”


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Since regular and genuine elections are now acknowledged cornerstones of democracy, good conditions for their holding promote voter participation and enthusiasm with the poll commanding confidence among both the voters and candidates. This in turn makes the outcome to be a true and a faithful reflection of the popular will of the people. As long as this is the position, the results are generally accepted by the people. Where, however, this is not the case, the electoral process is subverted and the people’s will is hijacked. The consequence might be political chaos and national polarisation, which may thereby lead a country in violence and uncertainty in the country.

On the basis of the foregoing, it is vital therefore, that when considering whether elections were free and fair, to have regard to what exactly happened before polling day, what happened during the poll and what happened immediately after balloting. It must further be explained that, even where the events that took place during elections are considered, the conclusion of whether elections were free and fair is not arrived at after comparing the elections with the past ones in the same country. The art of finding out whether the elections were free and fair means that there is in existence a standard against which the conditions under which the elections were held can be compared. In arriving at this standard, the reader is reminded of the fact that elections are not wholly an internal affair. They instead have an international dimension. In today’s world, national elections are no longer matters, which are exclusively within the domestic...
jurisdiction of the State. Elections are now the subject matter of international regulation.

The position is that international law places the whole business of elections within the context of the ever expanding field of human rights. It has succinctly been stated that, "in a contemporary international law, on the global as well as regional level European and American, the organisation of free, fair and periodic elections is an international imposed obligation. The issue is no longer a matter within the exclusive domestic jurisdiction of the State"\(^{75}\) reserved domain States". In *Nicaragua v U.S.A*, the International Court of Justice stated that it could not discover within the range of subjects open to international agreement, any obstacle or provision to hinder a State from making a commitment binding it to electoral standards"\(^{76}\).

Reality shows that even in the area of elections indigenous development may expouse different values. It is for this reason that in fulfilling the international obligation of free and fair elections, the means chosen to reach the end are left to the State in its particular political, cultural and historical context. This State discretion has limits within which it should be exercised. It is significantly structured by specific reference to the key human rights instruments aimed at achieving the basic principles of fairness, freedom, periodicity, non-

\(^{75}\) Guy S. Goodwin - Gill, Free and Fair Elections, IPU, Geneva, 1994, p.5

\(^{76}\) International Court of Justice, 1986, p.14
discrimination, universal and equal suffrage and secret ballot. International law still sets certain conditioning parameters.”

It follows that Zambia, being a member of the United Nations, Organisation of African Unity, the Commonwealth and a party to various human rights instruments, has undertaken international commitments binding it to respect international electoral standards.

If elections have to be free and fair and conform to the set international standards, participants in the electoral process need to understand one crucial and important point, namely that the will of the people is the basis of the authority of government. Notwithstanding the internalisation of elections, it should be understood that public elections in each State are still governed by national legislation. Even such legislation is required to conform to international electoral norms.”

In the final analysis, “elections are free if they are conducted in an atmosphere characterised by the absence of corrupt practice and intimidation, by the presence of a wide range of fundamental human rights, and if they truly express the will and wish of the people”. To promote free elections preservation of certain rights is important. Such fundamental human rights needing protection

77 Supra Note 68, p.9
78 (1978) Selected decisions of the Human Rights Committee under the optional Protocol, International Convenant on Civil and Political Rights (Second to Sixth Session) vol 1 p.67
79 Supra Note 68, p.10
include, inter alia, the right to free opinion, information, free expression, assembly and association, independent judicial procedures and protection from discrimination.

If the question regarding how free and fair the 1996 General and Presidential Election were to be answered, it is important to begin by understanding the fact that free and periodic elections are recognised as a fundamental right of the citizen under both the Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Civil and Political Rights (ICCPR) of 1966 to which Zambia is a signatory.

For instance, Article 21(1) of the UDHR provides that:

"1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives

3. The will of the people shall be the basis of authority of government; this will shall be expressed in a periodic and genuine elections which shall be universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedure." 80

Since free, fair and periodic elections are recognised as human rights, it is not too much when people demand for free and fair elections. The State needs to
recognise that in the absence of elections, those in power have no legitimacy to rule. It is necessary at this point to quickly point out that the bulk of rights recognised in legislation and mere good electoral legislation does not in itself make elections free and fair. "The extent to which these choices are free and fair is not only a function of the range and quality of liberties guaranteed to the citizen by the Constitution and how, in their turn, the liberties functionally influence and shape public choices through elections but it is also a function for the overall institutional framework within which the choices are made". The law can be used to destroy free and fair elections. Under no circumstances can the law provide a criteria for appreciating whether elections were free and fair.

The run-up to the 1996 elections, the Constitution, as already explained, was used to deliberately bar individuals from the race. There was nothing about the electoral law capable of promoting free and fair elections in the 1996 race.

To help come up with the criteria for measuring whether elections were free and fair, Mackenzie has come up with four conditions for free elections. These are:-

1. An independent judiciary to interpret electoral law.

2. An honest, competent, non-partisan administration to run the elections.

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80 Universal Declaration of Human Rights
81 Moyo J.N., Voting for Democracy. (University of Zimbabwe Publications, Harare) p.43
3. A developed system of political parties, well enough organised to put their policies, traditions and terms of candidates before the electors as alternatives between which to chose.

4. A general acceptance throughout the political community of certain rather vague rules of the game which limit the struggle for power because of some unspoken sentiment that if the rules are not observed more or less faithfully, the game itself will disappear amid the wreckage of the whole system.

There are also internationally recognised principles which should be complied with as regards what constitutes free and fair elections. These are:-

(a) "No unreasonable restrictions imposed on parties or voters;

(b) Participant's respect for the right of free expression, free association and free assembly for a period adequate to allow political organisation and campaigning and to inform citizens about the candidates and the issues.

(c) Adequate guarantees of a secret vote and freedom from intimidation.

(d) The integrity of the balloting and counting process is secured.

(e) Non-discrimination in the treatment of political contestants, voter eligibility and other political rights.

(f) Due process, including legislative, regulatory and judicial procedures that provide notice, hearing and appeals that protect against arbitrary or biased rulings and that provide an effective remedy for abridgement of protected rights.

(g) Good faith efforts to ensure the integrity and credibility of the electoral process, including assurances that there is transparency in the process and that voters understand their rights and the choices being presented to them and the voting procedures.”

INDEPENDENT JUDICIARY

In Zambia, it has been generally said that there is an independent judiciary. It is worth stating, however, that it is one thing to have an independent judiciary and another thing to have the same judiciary give independent decisions in political cases. Our judiciary may be said to be independent only where the

83 Theversman E. Election Monitoring and Electoral Assistance in Peace Building. (A paper presented at a seminar on Election Monitoring and Assistance. Vienna, 16-18 September, 1992), pp.6-8
administration is concerned. When it comes to real cases involving the
government our Judges are openly seen to give weight more to the government
than an individual. The manner of independence portrayed by our Zambian
cases in political Judges cannot go unexposed in this study.

In the case of *Mlewa v Wightman*\(^{84}\) the Court nullified the election results and
ordered fresh elections on the ground that UNIP had mounted a very dirty
campaign in the Mkaika Constituency and the elections were not free and fair
because of the rampant acts of intimidation and violence and that this affected
the results.

In the area of elections, the Court set a standard in this case. A reader is
however reminded that this case took place during the reign of the MMD
government and hence, the nullification of the election results was to the benefit
of the ruling MMD.

The case of *Derrick Chitala v The Attorney General*\(^{85}\) presents one of the
illustrations in which the Court did not act as a fountain of Justice. Although this
case was in Court, as already explained, the government went ahead with the
debate on the Constitution amendment. The debate was not suspended pending
the outcome of the decision of the Court. When the application for leave to apply
for judicial review and for the stay of the decision was renewed before the

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\(^{84}\) Supra Note, p.37  
\(^{85}\) Supra Note, p.43
supreme, the President went ahead to set a date for the assent of the Constitution Bill. The ruling of the Court on whether to grant a Stay or not pursuant to Order 53(3)(10) was set for 09.00 hours, on the same day the Bill was set for assent by the President at 13.00 hours.

In a ruling which took less than five minutes to deliver, the Supreme Court refused to Stay the decision to amend the Constitution until after the determination of the substantive matter, and offered to give the reasons latter, which reasons have never been given. The Bill was given assent. The most shocking pointer to the lack of impartiality and independence of the judiciary was the fact that the Chief Justice who presided over the case was among the people invited to a special function to witness the assent of the Bill into law and he, in fact did attend.⁸⁶

It may be argued that there was nothing wrong in the Chief Justice and other Judges attending such an important occasion. Understandable though this statement may appear, the very fact that the matter was in Court and the Judges viewed as fountains of justice reduced themselves to a level below or at least at par with politicians thereby failing to execute justice at the alter of Presidential satisfaction made their presence at the occasion a betrayal of justice for which they were sworn in their offices.

⁸⁶ Mr. J.P. Sangwa: Paper on Administrative Law (University of Zambia, 1998), p.45. Presented to the Law Students at the University of Zambia
The other case worth the discussion is case commonly known as the Presidential case. The background of this case, the introduction in the Constitution Amendment Act No. 18 of 1996 of Article 34(3)(b). The provision required a Presidential candidate to have both parents Zambians by birth or descent. Although this eliminated Dr. Kaunda from the race, there was a strong rumour in the country that Mr. Chiluba was himself not a Zambian.

The strong fear that the President might be challenged before contesting the elections, was solved by the amendment of the Electoral Act No. 23 of 1996 which provided, among other things, that a Petition related to the nomination of Presidential candidates could only be filed in the Supreme Court within two weeks after the elections. What the legislators failed to appreciate is the fact that once in power, the President controls the State machinery and success of such a Petition may lead to anarchy. Public policy in such case may demand that such Petitions be thrown out. The Petition was tested soon after Mr. Chiluba had won the Presidential elections in the case of Akashambatwa Mbikusita Lewanika and Four Others v Frederick Jacob Titus Chiluba.87

By their Petitions, which were consolidated the Petitioners advanced a number of prayers arising from the several allegations and ... in the Petition. The prayers were in the following terms: -

87 (1998) SCJ No. 14
“1. That it may be determined and declared that the provisions of Article 34(3)(a), (b) and (e) in respect of the Respondent have not been satisfied and accordingly that the Respondent did not qualify to contest the elections and to be elected President of the Republic of Zambia and that his election was void.

2. That it may be determined and declared that the Respondent has falsely sworn as to the citizenship of his parents and is in contravention of section 9 of the Electoral Act 1991 as amended by Act No. 23 of 1996.

3. That it may be determined and declared that the Electoral Commission neglected its statutory duty to superintend the election process thereby allowing fraudulent exercise favouring the Respondent.

4. That it may be determined and declared that the election process was not free and fair and that the election was rigged and therefore null and void.

5. That the Petitioners may have such further or other (relief) as may be just.”
When delivering judgment, Chief Justice Ngulube started by setting the standard of proof to which the Petitioners had to establish their case. He stated that the case had to be proved to a standard higher than on a mere balance of probability, therefore, that issues raised required to be established to a fairly high degree of convincing clarity.

On the Respondent’s qualifications, the Petitioner’s final submission was that the Respondent was the illegitimate son of the witness, PW3, Luka Chabala Kafupi, who it was claimed had an illicit liaison with the mother while she was allegedly married to a Mozambican, Jim Zharare Nkhonde. To this fact more than 16 witnesses appeared to attest to the same. PW3, Mr. Kafupi, stated that the Respondent under the name of Titus Mpundu is his illegitimate son conceived of an adulterous affair between him and the mother in 1943. He said that the Respondent (Mr. Chiluba) was born in 1944 at Chibambo in Zaire by caesarean section.

On this point, the Court found that the various accounts as to the paternal parentage were irreconcilable in consequence of which an affirmative case had not been proved to the necessary degree of convincing clarity.

Regarding the issue of electoral flaws, the detailed particulars in the Petition and the evidence raised issues of bribery and corruption, irregularities and flaws in the electoral system.
The Court concluded that the election process had flaws and irregularities. The Court was satisfied that the elections, while not perfect and in the aspects discussed quite flawed, were substantially in conformity with the law and practice which governs such elections. The few isolated, instances of “rigging” only served to confirm that there were only a few superficial and desultory efforts rather than any large-scale comprehensive and deep-rooted “rigging”. The Petition was unsuccessful and it was dismissed.

It must be pointed out that the Court seems to set different standards regarding the extent to which the electoral Petition needs to be proved. In Miewa v. Wightman, the Court annulled the elections purely on the ground that UNIP had mounted a very dirty campaign in the area. On the contrary, the Court could not annul the elections in the Presidential Petition case even though it was satisfied that the MMD had not only mounted a dirty campaign but also that there were a lot of flaws in the electoral process. The double standards adopted in the two cases show the lack of independence nature of the Courts in Zambia when they are called upon to decide controversial political cases.

It is a notorious fact that Courts do not operate in isolation but as part and parcel of the community. The Judges were mindful of the fact that deciding that Mr. Chiluba was not a Zambian citizen and declaring the elections null and void would easily spark a civil war. The reason is simple. The President may resist
the Court’s decision and order the movement of the state machinery in the
direction of his desire. If many people are sympathetic to the Judges attempts to
reverse the direction taken by the President might lead to very serious crushes
taking into account the fact that very few African Presidents are willing to
relinquish power.

For the given reasons, the amendment of the Electoral Act to provide for a
Petition two weeks after elections is merely political and legally impossible and a
petition premised on the same is academic and practically impossible. To this
end, the judiciary was brought in a predicament and hence were not independent
in deciding the case owing to social and political issues that they might have
taken into consideration.

Secondly, elections can only be free and fair if there is an honest, competent,
non-partisan administration to run the elections. The running of elections was left
in the hands of the Electoral Commission. To start with, it was difficult for the
Commission to be honest and non-partisan in that the same was appointed by
the President. There is a tendency in human beings of owing allegiance to the
appointing authority. “It is for this reason that the opposition and a large section
of Non Governmental Organisations felt that the composition of the Commission
was biased in favour of the ruling MMD”.89 In its report, ZIMT pointed out that
“the Electoral Commission’s independence remained an academic exercise seen

88 Supra Note, p.37
89 Supra Note, p.57
clearly from the way it was appointed and the way it functioned.\textsuperscript{90} Worse still, the Chairman of the Commission Justice Bobby Bwalya was personally seen to sympathise with the MMD government.

On the basis of the foregoing, it can be concluded that there was no competent, honest, non-partisan administration to run the elections. The Electoral Commission was only accepted by the ruling party. The NIKUV computers firm which compiled voter’s register was never accepted. To this end, elections were not free and fair given the lack of competence by the electoral administration.

The third point is that, for elections to be free and fair, there must be a developed system of political parties, traditions and terms of candidates before the electors as alternatives between which to choose. What has disadvantaged our democracy is the culture of strong ruling parties. The country is coming from a tradition of one party system. The political party in power literally controls everything in the country. Most positions can only be occupied by those within the ruling party, though such positions may not be political. There is a tendency of structuring systems within the state in such a way as to benefit those in the ruling party. This has a consequence of inducing most people to join the ruling party. The end result is to weaken the opposition and make it very difficulty to remove the ruling party legitimately. The example, which can be given, is that the liberalisation of the economy and the market makes the government the

\textsuperscript{90} The Post, Wednesday 20th November, 1996, Issue No. 604, p.1
major tender offeror in Zambia. This being the case, only those businessmen sympathetic to the ruling party can get businesses from the government.

Further, it is a notorious fact that opposition parties are not given a platform on which they can air their alternative offers. The consequence, as seen in Zambia is the consumption of what the ruling party has to say. To this end, one is bound to conclude that there is no developed system of political parties, well enough organised to put their policies, traditions and terms of candidates before the electors as alternatives between which to choose.

The fourth requirement for free and fair elections is the need for a general acceptance throughout the political community of certain rules of the game. The rules of the game regarding elections are provided in the Electoral Code of Conduct Act No.2 of 1991. Among the rules stipulated in the Code include, inter alia, the limitation of Newspaper Space and air time for political advertisement so that the financially powerful political parties would not take up all the media space at the expense of their opponents. The Code also prohibits government officers (i.e. Ministers, Civil Servants etc) from using their official vehicles for campaign purposes. It however allows the use of vehicles for family affairs. The President, together with his deputy are allowed to use government vehicles for campaign purposes.
Regarding media coverage, the importance of equitable coverage was emphasized by the Malawi Court in the case of *Dr. Charles Kafumba and Others V the Electoral Commission*,\(^9\) in which three Malawian citizens instituted an action in the High Court against the Malawian Broadcasting Corporation, seeking a determination by the Court that the Electoral Commission had a duty in law to ensure the electoral process was free and fair; that equal access to the media for the competitors in the elections was an integral part of holding free and fair elections; that the Electoral Commission had failed to ensure for all competitors equal and fair access to the media.

Further, that the Malawian Broadcasting Corporation (MBC) had accorded preferential treatment and access to the ruling United Democratic Front and its Presidential candidate, President Bakili Muluzi, and its Parliamentary candidates.

The plaintiffs, therefore, asked the Court to give declarations and directions that the Electoral Commission be ordered to take the necessary steps to ensure that all competitors in the elections received equal and fair access to all State controlled media and, in particular, the MBS.

The Court dismissed the claim against the Electoral Commission but held against the MBC stating that, if campaign messages are broadcast live at a Presidential function, then equal treatment means that rallies of other political parties or other Presidential candidates be broadcast live. That would give the opposition

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\(^9\) High Court of Malawi, Misc. Case No.35 of 1999
an opportunity to reply to some of the matters raised. This is what equitable
treatment of political parties and elections of candidates would entail. Equal
treatment of all competitors is a component of free and fair elections. The Court
then ordered the MBC to comply with the provisions of the law and awarded
costs to the plaintiff.

Although the provisions of the Electoral Code were partly accepted, the
prohibitions were ignored in practice. For instance, in the Presidential Petition
Case, some Petitioners raised concerns about the use of the Public Media and
the limited access to it by the opposition - that there was grave misuse of public
or government resources and that the Electoral Commission failed to endeavour
to address the same when they were in fact set out in a Code of Conduct (by
Statutory Instrument 179 of 1996) apparently more honoured in breach than in
observance. It is vital to consider what Chief Justice Ngulube pointed out in the
Presidential Petition Case\textsuperscript{92} regarding the complaints presented to Court by the
Opposition parties. The Chief Justice pointed out that:-

\begin{quote}
"It seems to us that resolution of political issues in the political
arena is to be preferred to litigation. For example, some measures
which may be considered offensive, provocative, unjust or unfair in
the political arena so as not to be universally acceptable may yet
strictly speaking be "legal" as a matter of strict law. It seems to us
that in such event where the Court may be unable to pronounce
\end{quote}
upon their validity based on their possibility illegality or unconstitutionality, the politician owe it to the citizens, who are undoubtedly entitled to peace and the quiet enjoyment of life, to resolve the political issues and to underwrite the political well-being of the nation. It is certainly not part of the remit of any Court to start debating the wisdom or desirability or fairness of some of the measures if a legal constitutional challenge is unavailable”

The emphasis of the Court was that issues that may make elections unfree and unfair may not necessarily be legal to be resolved by litigation. To avoid the breach of peace in the nation, which may be the consequence of unfree and unfair elections, it is incumbent upon the Politicians to amicably resolve the disputes.

It can therefore be concluded that, the very fact that the rules of the game were contested in Court is evidence enough to show the rules were not accepted by the opposition parties.

One may therefore be quick to conclude that the four conditions necessary for free elections as expounded by Mackenzie were not satisfied in any way in the 1996 Presidential and Parliamentary elections. It therefore follows, naturally that elections were not free and fair.

92 Supra Note 86, p.91
Regarding the internationally recognised principles of free and fair elections the first requirement that there should be no unreasonable restrictions imposed on parties or voters can best be answered by invoking the 1996 Constitution Amendment. The restrictions imposed the famous citizen clause targeted individuals who at the end of the day were eliminated from the race. Article 34(3) of the 1991 Constitution as amended by Act No. 18 of 1996 provides that:-

"A person shall be qualified to be a candidate for election as President if:

(a) he is a Zambian citizen; and
(b) both his parents are Zambians by birth or descent.

The outcry regarding the same proved futile and some parties were left in a limbo. This led to boycotts of elections by some political parties. This internationally recognised principle in promoting free and fair elections was breached in that there was unreasonable restrictions imposed on parties.

The second requirement that participants should have the right of free expression, free association and free to inform citizens about the candidates and the issues hinges on the provisions of the Public Order Act. The law was used to suppress the freedoms above and, as already explained, attempts by the Supreme Court to strike it for being unconstitutional invited a stiffer law. Political rallies and demonstrations by opposition political parties were suppressed by the
use of this law. It follows that there was no respect for the rights aforesaid and the ruling MMD did not require to get a permit before convening a public gathering, meeting or procession.

In achieving free and fair elections, there is also a need for an adequate guarantees of a secret vote and freedom from intimidation. Although there were complaints of intimidation, especially in the rural areas, the same were not so wide as to vitiate the purpose of elections. A secret vote was also achieved. On this point therefore, this requirement was achieved during the 1996 elections.

The need for transparency in the electoral process was lamentably destroyed by contracting the NIKUV Computers firm. There were a lot of suspicions regarding the firm to such an extent that good faith, integrity and credibility of the electoral process was destroyed. There was no assurance whatsoever that there was a transparency in the electoral administration by the NIKUV.

It is from this background that one can properly understand what transpired before, during and immediately after the elections. Internal laws may be followed during elections but that only makes elections legal but not free and fair. This is so because laws themselves may be used to suppress democratic virtues of free and fair elections. It should equally be pointed out that laws might sometimes be democratic and capable of achieving free and fair elections. This in itself does not make elections free and fair. This is so because law, is not an end but a
means to an end. Where the law is not properly followed in practice rendering opposition parties weak and helpless, elections can never, under such circumstances be free and fair. For elections to be free and fair, laws must create a system strong enough to pave a way wide enough to promote democratic virtues of free and fair elections. Secondly, there must be a commitment on the part of all stakeholders to adhere to the principles set by the law in practice.

CONCLUSION

On the basis of these explained and other factors, “the Committee for Clean Campaign (CCC) analysis of the whole electoral process since 1995 concluded that the 1996 Presidential and General Elections were not free and fair. On a similar note, FODEP and ZIMT declared that they too had concluded that elections were not free and fair.”

In this study, regard must be had to the social, economic and political factors prevalent in the country before a position regarding the 1996 Presidential and General Elections can be promulgated. It has on several occasions been argued that democracy is a culture and as a result, countries like Zambia should be allowed ample time to develop the democratic culture. It is therefore important to judge elections depending on the level of the development of the said democratic culture.
It is further argued that, Africa as a whole is ethnically torn apart and to mend the divisions there is need to consider democracy an ideal which should not be taken as absolute gospel. It can be concluded as argued, that the social, cultural, political and economic position of countries like Zambia should focus so much on the economic and social problems and that people should sacrifice their political rights at an alter aforesaid.

There is need to be quick in pointing out that the explanation given above as justification for undemocratic way of doing things is an inferior expression fostered by those wishing to protect themselves by accepting an inferior position. There is nothing wrong in protecting people’s rights and any gospel to the contrary is not founded on any justification whatsoever.

The 1996 Presidential and General Elections fell too far below what is expected of elections in a civilised nation and did not, in any way possible adhere to the internationally accepted standards. It is for this reason that this study finds compelling reasons and justification to declare, based on the study, that the 1996 Presidential and General Elections were unfree and unfair. History should therefore record that not all the people in Zambia assented to what happened in 1996 and a cross section decided to refuse to be part of those that brought Zambia into the undemocratic, dictatorial and selfish manner of conducting elections.

93 The Post, Wednesday 20th November, 1996. Issue No. 604, Polls rigged, p.1
CHAPTER FOUR

CONCLUSION

10. SUMMARY

The first chapter of this paper attempted to show that politics of Northern Rhodesia can be traced as far back as 1890 when the British South African Company (BSA) took control of the territory. Northern Rhodesia was then placed under the direct administration of the British Government in 1924. The chapter has explained the elections and the election laws from 1925 through to 1958 when the Benson Constitution was put in place. The conflicts in the area of elections which dominated this period have also been exposed. The first chapter further gives an account of the elections under the 1962 Constitution which ushered in a new government at independence. During this period, the study has revealed that what made elections unfree and unfair was the desire by the whites to hang on to power.

The first chapter has equally given a detailed account of the elections of 1968 and finally the change to one party participatory democracy. The first chapter ends with the re-introduction of multipartism and the ushering into power of the MMD government under the leadership of Mr. Frederick Jacob Titus Chiluba.

The second chapter has given an analytical exposition of the events which took place prior to the 1996 Presidential and General elections. The chapter has
highlighted the contentious issues that formed the basis of the inter-party talks. In the same talks, the opposition parties raised their concerns regarding the following:

(a) the need for an independent Electoral Commission;

(b) the need to repeal the 1996 Public Order Act;

(c) the need to revisit the voter’s register prepared by the Israel firm NIKUV;

(d) the need for the media to accord equal electoral coverage to all the contenders in the election race; and

(e) the need to hold the election on the basis of the 1991 Constitution.

The above issues formed the basis of Chapter Two. Apart from the above, other issues considered in Chapter Two were the sale of Council houses, slush funds, Black Mamba threats and the boycott of elections by UNIP and other political parties.
It was laboured to be shown that the inter-party talks to iron out the above contentious issues proved futile and the 1996 elections were held in the midst of all these outcries from the opposition political parties and other stakeholders.

The third chapter of this study was premised on establishing whether or not the 1996 President and General elections were free and fair. It was observed that the standards of elections which a nation must aspire to attain are set by the international community. It was further exposed that elections are no longer matters within the domestic jurisdiction of a nation. It was explained in this chapter that for elections to be free and fair, there must be in existence, an independent judiciary, an honest, competent and non-partisan administration to run the elections, a developed system of political parties and the general acceptance of the rules to govern the elections.

At the end of chapter three, it was concluded that the 1996 General and Presidential elections fell too far below what is expected of elections in a civilised state. There was, therefore, no hesitation in declaring that the 1996 General and Presidential elections were not free and fair.
11. RECOMMENDATIONS

11.1 NON–GOVERNMENTAL ORGANISATIONS

There is need for government to stop considering NGOs as opposition parties. It is, therefore, recommended that government officials should work with NGOs as partners of development. When the two begin to work together, NGOs will become safety valves through which the excess of political tensions can be diffused.

11.2 PUBLIC ORDER ACT

In its current form, the Public Order Act reduces the free exercise of the right to assembly and association. A recommendation is hereby made that, to facilitate free association and assembly, Parliament should amend the Act. A one day notice is enough for a peaceful public procession and where the permit is to be refused, the Act should lay, well in advance the grounds upon which the permit may not be granted.

11.3 POLITICAL PARTIES

The ruling party should expose a high level of tolerance towards the opposition political parties.
Secondly, it is recommended that political parties should learn to conduct free and fair elections within their parties so as to develop the culture of elections.

11.4 SALE OF HOUSES

The time at which the exercise of selling both Council and government houses was sensitive in respect of elections. It is recommended that where such an undertaking is to be carried out, the President and his Cabinet should confine themselves to policy formulation and the implementation should be left to the bureaucracy so as to avoid politicising such issues.

11.5 SLUSH FUNDS

The introduction of Presidential "slush funds" is not legally supported and accounted for. It has no legal foundation and framework within which it is administered. An abolition of the slush funds is recommended and should be followed by the President accounting for the money which has already been disbursed. As it is now, the President will be using the slush funds for campaigning purposes.
11.6 MEDIA COVERAGE

Media coverage in the political arena is very important as it acts as a forum at which political ideas can be sold. The trend in Zambia shows that coverage by ZNBS, Times of Zambia and Zambia Daily Mail should report objectively public meetings held by opposition political parties in the same way they do to the ruling party. This can be achieved. Firstly, the Director General should be elected by an independent board of professional journalists and his tenure of office should be secured so as to promote professionalism in reporting.

The other recommendation is to privatise the public media so that government does not continue to be the major shareholder. Once the media is financially independent, it will be the beginning point of independent reporting. As long as ZNBC is fully funded by the government, the government will continue to exert influence on the media.

11.7 ELECTORAL ADMINISTRATION

Article 17 of the Constitution provides for the appointment of the Electoral Commissioner. There is often a tendency in human beings to owe allegiance to the appointing authority. To promote the independence of the Commission, the
Commissioner must be appointed or elected by an independent Electoral Committee.

From 1996 to date, three measures have been introduced in the electoral administration. These included, inter alia:

(a) Counting of ballot papers at polling stations. Previously all ballot boxes were taken to the central polling station.

(b) A polling booth is now set up in such a way that the back of a voter is seen by the observers.

(c) The Commission has spread the commissioning of statutory forms for nominations to headmasters, or principals. Previously, only Magistrates were allowed. This caused problems in rural areas.

It should be noted that the opaque ballot boxes used currently do not promote transparency. The introduction of transparent ballot boxes is therefore recommended.

The other important issue regards election petitions. Under Section 18(1) of the Electoral Act Cap 13, no election of a candidate can be questioned except by an election petition presented to the High Court. Since the Electoral Commission is
not a quasi-judicial body to deal with election complaints, I recommend that a special court should be constituted every time elections are held. This special court should possess the jurisdiction to hear and determine election petitions and make such orders as may be necessary. This recommendation is necessitate by the length of time the High Court takes to determine an election petition.

The other problem encountered by the electoral administration is that of funding. Under Section 13(1) of the Electoral Commission Act No. 24 of 1996, the funds of the Commission is to be appropriated by Parliament. This means that the Commission is funded by the government. Practice in Zambia shows that an entity cannot be funded by the government and be expected to be independent. Since it is difficult for the Commission to be a self-fund generating entity, there must be a strong moral desire on the part of the leaders in government not to interfere with the Commission on the basis of funding.

In conclusion, the implementation of the recommendations advanced may provide a way towards achieving free and fair elections in Zambia. This can only, however, be possible if there is political will on the part of those in power to genuinely, sincerely and openly give Zambians, at election time, an opportunity to freely choose their leaders. Implementation of these recommendations without a political desire of promoting free elections will still dead to frustrations in the final analysis.
To promote peace, development, accountability and transparency, free and fair elections are the foundation upon which these pillars begin to be built and once established, there will be a spill-over on the economy of the country and general standards of living of the people will improve.
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