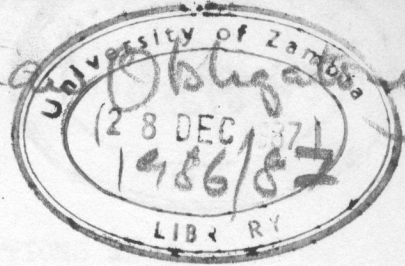


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



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HOW FAIR AND FREE ARE ELECTIONS IN A ONE-PARTY STATE
(ZAMBIA EXPERIENCE)

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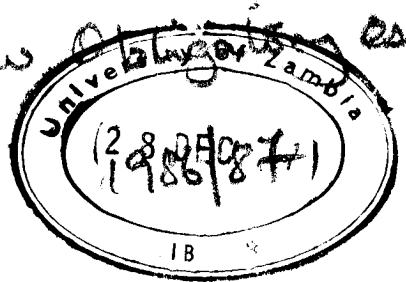
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HOW FAIR AND FREE ARE ELECTIONS IN A
ONE-PARTY STATE (ZAMBIA EXPERIENCE)

BY

OSCAR KWIBISA SIBETTA

L411: ORDINARY ESSAY

SUBMITTED IN PARTIAL FULFILLMENT OF THE
LL.B DEGREE

SUPERVISOR: PROFESSOR H. S. SHIMBA

UNIVERSITY OF ZAMBIA
FACULTY OF LAW

DEDICATION

I dedicate this Essay to my late beloved
daughter Akufuna who died in her infancy;
and to my beloved mother Akufuna who died
in the middle of my mid-year exams on
23rd June, 1987. "MAY THEIR SOULS
REST IN PEACE".

ACKNOWLEDGMENT

This essay comes out of my own wide reading from thoughts of various constitutional and political writers on One-Party States.

However, I would like to thank Professor Shimba, the Dean of the School of Law for all the hours he devoted to guide and correct my thinking as well as his excellent ideas he contributed. Whatever errors remain here should be taken as my weakness.

Secondly I would like to thank Miss Charity Malumo for her encouraging words that I should study hard.

Thanks to my father Chief Mooka Mbuyu Sibeta for his words of wisdom that have helped me to be what I am. And lastly but not the least to Miss Felicitas Moyo who handled the extensive labour of typing this research. I am also indebted to the following lecturers of the School of Law, Dr. Ng'andu, Dr. Lakula, Dr. Kanganja, Dr. Mulwila, Mr. Mwansa, Ms Kaye Turner, Dr. Kamuwanga and to the most loving and dedicated youngest lecturers Mr. Beyani and Mr. Chanda.

May God grant all these people what they pray for in life.

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INTRODUCTION

This essay examines the question as to How Fair and Free are elections in One-Party State. The question is to be examined in the light of experiences drawn from Zambia.

The elections to be discussed are elections that have been held from the time Zambia became a One-Party State, .i.e. from 1972. The elections referred to are the Presidential and Parliamentary elections. That's to say, the essay will examine how the President of the Republic of Zambia is elected by the General Conference of the Party (UNIP) at Mulungushi Rock, and whether in his election as a Presidential Party candidate there is an element of fairness in the conduct of these elections. If there is fairness and Freedom in these elections how does someone go about it to become a Party Presidential Candidate?

Both the Party Presidential elections, and the General Elections are carried out under the auspices of the Party, that's the United National Independence Party (UNIP) and under the Party's Philosophy of One-Party Participatory Democracy.

Of course, there is no Government without a political theory or philosophy upon which its policies

~~is~~^{at} founded or based. This is because the governed would like to know the system under which they are governed. The governors also have to impose their formula of Governments by imposing their wishes on the masses. In short the Government policy have to be clear and definite.

There are political theories of democracy mostly enjoyed by the United Kingdom and its ceremonial monarch. There is also American Democracy the Russian Communism, the Ujama Socialism of Tanzania, and of course the notorious theory of Apartheid of South Africa.

The Zambian Government through its United National Independence Party which is the only political party in the country has various political theories or philosophies. There is a philosophy of, "Humanism". There is also a philosophy of, "One-Party Participatory Democracy". There are also less pronounced philosophies in the Zambian politics like Socialism and Communacracry.

However, this topic is centred on how much Fairness and Freedom is there in "One-Party Participatory Democracy during the Presidential and Parliamentary elections.

Political Scientists argue that Africa's One-Party states are not practicing democracy because democracy is achieved through two principles.

- (a) The first principle is that, a democratic state ought to have or should allow a multi-party politics.
- (b) The second principle is that, a democratic state should have Parliamentary system that gives power to the people.

However, what is said to be democracy through a multi-party politics and elections is merely what could be termed as Party competition. That's in a multi-party politics; "Parties compete for votes by offering and issuing different messages to the electorate

In Zambia, we are not talking of competition of political parties, but of One-Party ~~and~~ Participatory Democracy which demands that all Parliamentary Candidates should stand in elections on one party ticket, the United National Independence Party ticket only.

It is this One-Way of politics and One-Way of elections that calls for a question for Fairness and Freedom in the Zambia's One-Party Participatory Democracy.

This essay shall also discuss; How members of the Central Committee are elected at the Mulungushi General Conference.

These members of the Central Committee although are elected only by Party officials at Mulungushi

General Conference, they play a big role in the General Elections because it is this body that have the powers to decide which parliamentary Candidate in every constituency should be ^{vatted}~~vatted~~.

It is in this process of electing the Party President at Mulungushi, the electing of MCCs and finally the Parliamentary Elections in which the ordinary citizens offer themselves as candidates to be elected to Parliament by their fellow ordinary citizens, that it shall be determined as to whether, there are Fair and Free Elections in Zambia's One-Party State.

CHAPTER I

THE ORIGINS OF ONE-PARTY STATES IN AFRICA

There are various schools as to why many African states after attaining Independence deemed it necessary to change from multi-party system of government to the system of One-party states.

One of the major reasons is that multi-party systems of governments in Africa tend to breed divisiveness based on regionalism. This regionalism usually results into the formation of ethnic political pressure groups. And these pressure groups may end up in undermining the major policies of the government and of the direction it adopts.

In other words, it is believed that, multi-party systems of governmental organisation is unsuitable for any society still tied to its traditional mode of life. One-party system of politics is seen as the only way of uniting the different ethnic groups because they will have a common political platform.

Professor Nwabueze argues that;

" A constitution, however carefully constructed cannot function among people fundamentally at odds with one another. There must be some binding element of unity outlook which constitute the real constitution".¹

Whether One-Party politics in Africa eliminates tribalism, provincialism or ethnic groupings it is a view not to be discussed only but to be experienced as politics of Africa have now remained in the hands of its black nationals. One obvious fact is that many African states have copied the One-Party Pattern of politics from the Soviet Union. The Russians adopted the One-Party system as a way or means of moulding a classless society.

The Soviet's grounds of adopting a One-Party system of politics could be a misfit in an African situation. The Soviet Union advocates for the elimination of capitalism, and raising of standard for peasants. These are currently not Africa's political problems. Following the trend of political upsets in Ghana, Uganda and Zaire to mention just a few; it is unlikely that, the upsets were caused by divisionalism arising from class status.

In most cases, African states, suffer from politics of disunity. Thus the so called bigger tribes in terms of national statistics tend to be selfish by occupying almost the ^{most} ~~best~~ powerful positions in the government and parastatal organisations. This tribal greedness have been the cause of the Nigeria Civil War. The Hausas were of the opinion

that, the Ibos had taken a lion's share in the affairs of the government. The Nigeria Civil War situation illustrates the fact that the Hausas and Ibos were not only ethnically divided but were even religiously divided. Some were christians, some were moslems. Professor Nwabueze observes that, the British were in Nigeria for half of a century and did not unit the Nigerians. However, he admits that; "half a century is too short a period to permit the development of a really strong and binding sense of unity"².

Whether unity can be achieved by One-Party formular or not it is a matter of opinion and how that One-Party State is introduced. Every nation has freedom to design the pattern of its approaches to the introduction of a One-Party State. Take for example , Malawi, Tanzania, and Ghana they achieved a One-Party de jure i.e. through a Constitution. Kenya became a One-Party State by banning the opposition, thus achieving a One-Party state de facto. These One-Party states normally have a problem of distribution of functions or powers. On the whole it normally ends up with power being in the hands of one man. Thus the President of the party ends up being the head of the State. This means that there is too much of personalisation in One-Party State system.

However, there are good arguments in favour of One-Party politics in that, in a multi-party system, voters cast their votes for the sake of seeing their candidates' political parties go through so as to make a meaningful representation. And if an opposition party can't make a meaningful representation, then there is, no need to have an opposition party which can not make alternative government. It is also argued that voters usually tend to support the winning side . It is only proper to have one strong party.

Constitutional writers are of the opinion that Africa's One-Party States are born from love for power.

Professor Nwabueze observed that, "One-Party States in Africa are becoming pauper because; there is in Africa politics of power , sheer naked power to rule for the benefit of one's self aggrandisement and one's group"⁴

Dr. Kwame Nkrumah was regarded as a man who enjoyed political power with his Convention Peoples' Party. But Nkrumah argued that the Introduction of One-Party State in Ghana was purely on a political realisation that, there are what are called Invisible Governments. These Invisible governments operate actively in opposition parties of Africa by funding those parties. The Invisible governments referred to by Kwame Nkrumah are the Central Intelligence Agency (C.I.A), the Federal Bureau of Investigation, Army Intelligency and the Defence Intelligency Agency.

"By 1964, the Intelligency Neo-Colonialism had a network of 200,000 persons and spending billions of dollars a year"⁴.

Comperatively, there are strong grounds as well as weak ones for Africa's One Party system. It is argued from the historical point of view by Ndabaningi Sithole that;

"political party system is new to Africa. There is no historical trace for political parties in the early Africa"⁵

In support of Ndabaningi Sithole's argument, one would add that, because early Africa had no political parties, African States find it easier to handle political problems existing from one-party rather than handling political problems from many parties. It is a fact that, Africa's traditional governments were not based on party politics or party organisation.

Professor Shimba acknowledges the African traditional way of no party politics when he states that;

"the former Tanzanian President had expressed a view that; "In the African traditional society there were no strong issues, nor were there in existence private interests which would have formed basis upon which parties could emerge to defend one or the other of those interests" ⁶

In summarising the origins of One-Party States in Africa; it can be said that, one of the paramount reasons is the fear of neo-colonialism which may come through the doors of the opposition parties. The fears of the Invisible Governments that may finance

the opposition parties. The second reason being that, African states are experiencing a new type of administration based on party politics which were not operating in the early traditional Africa, neither were they operating in the early colonolisation of Africa.

A third reason could be also that a One-Party State affords the government time to devote to serious national issues without meeting the obstructions from the opposition parties. Opposition Parties sometimes oppose for mere purpose of opposing without giving constructive solution.

The fourth reason is that, prior to attaining independence, African States had based their political demands on equality. Equality between the whites and blacks in the sharing of natural resources of the country as well, as in the affairs of government. Those were the main political issues prior to independence.

On attaining Independence, the main issues involved on leadership, i.e. which tribe or region should the President be elected from. What tribe is the Prime Minister, what tribe is the Governor of the Central Bank? These issues although spoken in dark corners and by small groups could result into

divisionalism. Hence, a solution is to have a one-party which should act like a political transformer. Hyden Dingiswayo Banda says;

"At that time, there was no tribal balancing for there was no spoils to share except death and imprisonment. There was no room for opportunities or honey tongued sycophants in those days".⁷

The fifth reason for Africa's One-Party politics is that in view of the wide ethnic groups in the new Independent States, a constitution which allows for a multi-party system risks the disunity in the nation. One-Party system does not actually eliminate opposition or disunity but to some extent it controls those who initiate disunity or those who instigate, for disunity. Peace is vital. And Peace is the only commodity which no country can import. The nationals of each country must restore it for their comfort and stability. That being the case, African States believe that, national peace and security is more important than the opposition parties.

FOOTNOTES

1. Nwabueze B. O; Constitutionalism in Emergent States;
C. Hurt & Company, London, 1st ed, 1973, P.
2. Ibid, P. 85
3. Ibid, P. 161
4. Kwame Nkrumah, Neo-Colonialism, Heinmann
Educational Books, London
2nd ed, 1971, P. 241.
5. Ndabaningi Sithole, African Nationalism,
Oxford University Press,
London, P. 169, 1968.
6. Professor L. Shimba, Article, The origins and
Spread of One-Party States in
Commonwealth Africa - Their Importance
on Personal Liberties - A case of
Zambia Model, edited by Muna Ndulo,
East Africa Publishing House, 1984, P. 113.
7. Nephas Tembo, The Lilian Burton Killing,
Apple Books, Lusaka, 1986, P. VIII.

CHAPTER II

BACKGROUND TO THE ESTABLISHMENT OF A ONE-PARTY STATE
IN ZAMBIA

Unlike in many African States, Zambia achieved its One-Party system of politics by three political mechanisms. The first approach was, first to amend the Zambia Constitution i.e. Constitution (Amendment) No. 5 Act, 1972.

This Act declared Zambia to be a One-Party state, and that the only political party to be recognised was the United National Independence Party (UNIP). However, this amendment gave also qualifications as to how the Zambia citizens could qualify as members of this party, UNIP. It stated that;

"Every citizen who complies with the requirements laid down, from time to time shall be entitled to become member of the party"¹

This party membership appear to have no restriction to age or capacity associated with state of mind or any physical handcape. The Act states only qualifications, but not disqualifications.

The second method used by the Government to make Zambia a One-Party State was the establishment of the Chona Commission. This Commission was established by the President 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. The membership of the Commission was drawn by the President from various walks of Zambian life, including University lecturers, judges and traditional chiefs. Members of the Opposition Party, the ANC, were also appointed to sit on the Commission - but those who were appointed (Mr. Harry Nkumbula and Mr. Nalumino Mundia) declined to accept the appointment.

The Commission was charged with a duty of finding out from the public on; How One-Party State can operate in Zambia? The Commission was instructed not to discuss as to whether One-Party system politics was good or not . Of course the Commission had to look also on matters related to the Constitution of Zambia, as well as the Constitution of the United National Independence Party. But for the material of this essay, the issue is the One-Party State.

The President having appointed the Chona Commission, the leader of the African National Congress, Mr. Harry Mwaanga Nkumbula initiated a civil court action against the Attorney-General on the establishment of the Chona Commission and the intended introduction of One-Party State. In this case, *Nkumbula v Attorney General*, the main contentions of Mr. Nkumbula were that, the establishment of Chona Commission to bring about a One-Party State in Zambia was a violation

of Zambia Constitution attaching Articles 13, 22, and 23. And those referred to sections contravened his fundamental rights as set in Cap III of the Constitution².

Inter alia, in his petition Mr. Nkumbula stated that; on the 25th of February, 1972, His Excellency the President announced that the Cabinet had taken a decision that the future Constitution of Zambia should provide for a One-Party State Democracy. And also that a Commission would be set up which its function would not be to consider whether or not there should be a One-Party State Democracy, but determine the form which that One-Party Democracy should take.

Mr.. Nkumbula petitioned the court also on the grounds that, as a leader of the other existing political party the African National Congress, his freedom to assemble and to associate with other persons, as guaranteed under SS. 13 and 23(1) Cap III of the Constitution of Zambia is likely to be infringed in that;

- (a) The introduction of One-Party State violets his freedom of expression.
- (b) The introduction of One-Party State will be contrary to the spirit of the Constitution.

In evidence the petitioner put to the Court that on or about 30th March, 1972; the District Governor for Lusaka, Mr. Justin Kabwe, said at a public rally that UNIP was ready to crush anyone who opposed the formation of a One-Party State and whether people liked it or not the One-Party Democracy had come to stay in Zambia.

In considering the grounds advanced by Mr. Nkumbula, the court formed an opinion that the fact that Mr. Nkumbula had been given time on the State television to express his views on the introduction of One-Party State is an indication, that he still enjoys this freedom of expression. And also that there is nothing wrong in altering a constitution by lawful means. And also that the fact that the petitioner was on 18th March, 1972; addressed a large rally in Lusaka expressing his views on the introduction of One-Party State and no attempt was made by anyone to prevent him from expressing his opinion was enough evidence that his freedom of expression was not violated. After considering all the grounds put by the petitioner, the court, held that; the fact that petitioner cannot put his views forward before a particular commission set up to deal with other matters is no restriction upon his freedom

of expression. And also that S. 28(5) of the Constitution does not prohibit the advocacy of charges in the Constitution³.

However, one important fact on Courts decision on Mr. Nkumbula's petition was that, it strengthened UNIP's intentions on the introduction of One-Party State.

It can be said that the introduction of One-Party had been discussed at various levels within UNIP and was also opposed at various levels by the opposition Party, the African National Congress. However, lastly the leaders of the African National Congress agreed to dissolve their party and join UNIP under the agreement termed; the Choma Declaration, 1973. The merging of these two parties made a real foundation of a One-Party System of politics. This Choma Declaration could be said to be a political compromise together with S. 12(3) of the Constitution of Zambia (Amendment) No. 5 Act, which prohibits the formation of any party in Zambia enabled every citizen to accept a One-Party system without a hope of forming another party. It can therefore be said that, the back ground of One-Party System was more of a Constitutional Construction and not of forcing the opposition into submission. President K. D. Kaunda

At a Press Conference on 25th February, 1972, announced the intention of the government to introduce the One-Party State in Zambia. It was at this Press Conference where a National Commission to establish a One-Party System was formed. And earlier than that, on 3rd October, 1971; the National Council of UNIP sitting in Mulungushi Hall requested that the Central Committee of UNIP should work towards the achievement of One-Party State in Zambia .

It can be said that, Zambia's One-Party System of politics was introduced constitutionally as well as through tactiful political diplomacy that enticed the ANC to unite with UNIP amicably during the Choma Declaration.

FOOTNOTES

1. Zambia Constitution (Amendment) No. 5 Act, 1972
2. Constitution of Zambia Cap III, SS 13, 22, 23(1)
S28(5)
3. (1972) ZLR, P III

CHAPTER III

THE PRINCIPLE OF "PARTY SUPREMACY" IN ZAMBIA

Having examined the procedure applied in making Zambia a One-Party State, it is vital to examine also the theory and implementation of Party Supremacy.

By Party Supremacy, we mean that, the party is above every institution in the country. That being the case, in Zambia when we talk of Supremacy of the Party; we are actually saying that, the United National Independence Party is the highest political organ in the country. In other countries like British, the highest institution is Parliament, and the British are proud to say that, the British Parliament can do anything, the only thing it can't do is to change a man into a woman. The supremacy of the Party in Zambia therefore could mean, that the Party can do anything. Having achieved a One-Party State in Zambia, there is nothing to obstruct the UNIP Party from carrying out national policies it intends to implement.

Professor Shimba, says; "It was perhaps logical that, having legally established a single party in the country, the next step was to attribute to the only party a paramount status and to secure

to it Supreme Power over and above those of other institutions in the land¹.

The Supremacy of the Party (UNIP) was announced by President Kaunda in his "Watershed" Speech delivered at the National Council of UNIP on 1975. Inter alia, the President stated that;

"the United National Independence Party is Supreme over all institutions in our land. Its Supremacy must not be theoretical nor is it enough to merely reduce to constitutional provision. More than ever before our task now is to translate Party Supremacy into something much more meaningful in life of our beloved nation"²

The pronouncement of the Supremacy of the party during the National Council Conference in 1975, was actually a confirmation and recognition of what was demanded at the Seventh (Extra-Ordinary) General Conference of the UNIP between 25th-27th August, 1975; at Mulungushi Hall

This Supremacy of the Party meant also that; Constitutionally UNIP is the only party in the country. And that being the case, the National leaders can only be drawn from UNIP. This meant that, the President of the Party (UNIP) should be from UNIP. The President of the Republic should be a member of UNIP. Central Committee members must be UNIP members.

Members of Parliament should go into parliamentary elections after being approved by the Central Committee of the Party and are Party members.

The United National Independence Party being a Supreme organ, held a General Conference at Mulungushi Rock on 8th September, 1978. In exercise of its Supremacy, the UNIP officials and delegates to that General Conference, without a proper party procedure of amending the UNIP constitution, went ahead to elect the Party President. This Party President automatically was to be the only Presidential candidate at a Parliamentary elections. The elections were done without voting either by show of hands or secret ballot. One can assume that such unconstitutional procedures were taken because UNIP enjoys that Party Supremacy over all institutions including an institution like the Party Constitution.

However, following the Mulungushi Rock Conference of 9th September, 1978; Mr Harry Mwaanga Nkumbula and Mr. Simon Mwansa Kapwepwe jointly sued the United National Independence Party. The grounds of their joint action were that;

1. There was a violation of the Party Constitution at the Conference because, the purpose of the

meeting was to amend procedures related to the Party Presidential Candidate and the Members of the Central Committee as per Article 8 of the Party Constitution. Therefore the manner or method applied at the General Conference to elect the Party President was unconstitutional and unprocedural.

Article 8 of the Party Constitution stipulates qualifications of those who could stand for Presidential Party elections. The eligibility to Presidential Candidate required that;

- (i) A candidate to Party Presidential elections must satisfy the requirement provided in the Republican Constitution, in that such a candidate is qualified to be a President of the Republic
- (ii) He must be supported by at least ten supporters.
- (iii) Article 8(5) required that candidates to Party Presidency should be submitted through the Central Committee. And that the Central Committee shall agree which candidate to support. Having determined that, the Central Committee shall submit the name of the Party

candidate, together with any names of other candidates to the National Council of the Party for considerations and approval.

- (iv) The supposed members to attend the Mulungushi National Conference were entitled to receive notification of the proposed amendment within a reasonable time of at least thirty days, before the meeting. That notification was not communicated to the petitioners, including some heads of the Zambian Missions abroad.

In this case, Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe v United National Independence Party raised three controversial issues. The first issue was to;

- (a) whether unincorporated political Party (UNIP) could be sued in its name.
- (b) And whether in the civil procedure, parties or Representatives in their capacity could sue an unincorporated body.
- (c) The third issue involved the validity of the elections held at Mulungushi National Conference.

In the first place in the proceedings before the High Court, the United National Independence Party was the Respondent. The Attorney-General appearing on behalf of the Party (UNIP) objected that, UNIP as an

unincorporated body was not a legal identity and therefore could not be sued in its name. The Attorney-General proceeding in his objections contented also that, UNIP could be referred to as merely a club formed for promoting politics in this case it had no legal existence apart from the members it composed of.

Counsel for the applicants relied on Section 36 of the Societies Act, that UNIP could be named as a party. An amendment was made and the Attorney-General appeared on behalf of the Party (UNIP).

In this first case, the court ruled that, An unincorporated body is not a legal identity and it is therefore not capable of suing or being sued in its own name. It could only sue or be sued in a representative capacity. The court also held that, the Attorney-General who is also a Minister of Legal Affairs is a member of UNIP and could be made a Respondent in a representative capacity.

The Court having ruled that UNIP as an unincorporated body could not sue or be sued; and that the Attorney-General as a member of UNIP and as Minister of Legal Affairs could Represent

UNIP. The applicants filed a second case. In their second petition, the applicants argued that; the

Attorney-General being a constitutional Appointee could not represent a political party. The other objection from the Applicants was as to whether, a political party can engage the Attorney-General of the Republic to represent it in civil proceedings.

On this issue after all arguments were put by both parties the court arrived at three rulings that; the fact that Zambia is a One-Party State, the services of the Attorney-General in certain cases have to be extended to the party.

The second ruling was that there was paramount consideration of the Attorney-General's representation of the Party in any proceedings in State interest . The Attorney-General can represent the Party whenever, the interest of the state might be affected by the outcome of the proceedings.

The third ruling was that; the Government had interest in the proceedings and the Attorney-General of the Republic can properly represent the party. The court also added that, it would not hold the elections void because it could not give uneffectual decision.

The petitioners, Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe were not happy with the judgement and proceed to appeal to the Supreme Court. The grounds of their appeal were:

- (i) The Constitution of the United National Independence Party purported to have been amended by a General Conference of the Party on or about 9th September, 1978; was not validly amended and was not therefore constitution of the Party.
- (ii) The elections of the President of the Party who ultimately become a sole candidate for the Parliamentary elections be nullified because the amendment was not made by secret ballot but by mere acclamation.
- (iii) The two appellants were aspiring candidate for Presidency of both the Party and the Republic and as such they intended to put forward their candidatures at the meeting of the General Conference of the Party which was held at Mulungushi Rock between 8th and 12th September, 1978.

It was the contention of the Appellants that, prior to the meeting on 8th September, 1978; at Mulungushi Rock, members of the Central Committee proposed amendments to the Party Constitution restricting the qualifications of prospective candidates for the Presidency of the Party. Notice of such amendment was required under Section 38(1) of the 1973, Party Constitution, that the notice of amending the

constitution to be circulated to the members of the National Council not less than one month before the meeting of the National Council. And the proposed amendment to be approved by two thirds majority at the General Conference of the Party³. The appellants proceeded to inform the Supreme Court that the stated procedure as set by the Party Constitution was not followed. And the amendment was approved not by secret ballot but by mere acclamation. That being the case, the Appellants prayed to the Supreme Court for nullification of the Mulungushi General Conference resolutions on election of the Party President.

The Supreme Court, held that the National Council and delegates to the General Conference had notice, albeit inadequate notice of the proposed amended constitution, and subsequently, both the National Council and the General Conference unanimously adopted the new proposals. Nothing in the evidence indicates that, if a further Conference were to be held followed by further elections after due and proper notice of the new constitution, there would be any change in its unanimous adoption and consequent elections⁴. On those grounds the Supreme Court dismissed the appeal.

The two rulings or court decisions explain one thing that's the influence of the philosophy

of Supremacy of the Party. If Zambia was a multi-party state the court might have come out with a different decision but Zambia being a One-Party State and the Constitution of the Republic having endorsed UNIP as the only political party the court had no choice but to give judgement in favour of the ruling party. The pronouncement of the Supreme Court in part reads:

"Nothing in the evidence indicates that, if a further Conference were to be held followed by further elections after due and proper notice of the new constitution, there would be any change in its unanimous adoption and consequent elections".

This ruling indirectly refers to Party Supremacy power and influence. The High Court ruled that it could not give ineffectual decision.

High Court's ruling as well as the Supreme Court come very close to what Kwame Nkrumah said that;

"Once the majority decision is taken we expect such a decision to be loyally executed, even by those who might have opposed that decision" 5

This actually means that, in a One-Party State decisions which are arrived at Party Conference are carried out by government ministries. The Supremacy of the Party actually means that, the Party is the government. This follows therefore that, at

high level or top party officials are paid by the state. In Zambia members of the Central Committee are Party Officials, District Governors are Party Officials but are paid by the state. The Members of the Central Committee formulate the Party and Government policies. The Cabinet Ministers who are members of Parliament and elected by the general public are junior to the members of the Central Committee of the party. It can be said that all African States that declared One-Party State, that ruling party has claimed Party Supremacy. Kwame Nkrumah advocated the Supremacy of the Party and he said that;

"The Convention Peoples Party is Ghana. The Convention Peoples Party makes the Government not the government making Convention Peoples Party"⁶

In Zambia the Supremacy of the Party (UNIP) was constitutionally enacted under the Constitution (Amendment) No. 5 Act, 1972. And Article 12A(1) provides that there shall be one and only political party in Zambia namely the United National Independence Party⁷. This being the case there is nothing that can stop UNIP being Supreme. It is said that there is no need to give power to an institution which can not exercise that power. But too much power in one institution

if unchecked tends to lead to dictatorship because power intoxicates. However, under the philosophy of One-Party Participatory Democracy, it is hoped that UNIP, shall guide the nation within the theory of Supremacy of the Party to the advantage of the nation and not to the advantage of the party officials only.

Party Supremacy actually could mean that the ruling party has power to impose demands on the members of the society, government departments, ministries co-operate bodies as well as private enterprises. It goes without saying therefore that whenever, there is a public rally, shops and markets are made to close. The Supremacy of the Party could be said to be a forerunner of the government. Political theories change as a nation grows mature. What is a political theory to-day may not be a political theory to morrow. Kwame Nkrumah a founder of Organisation for African Unity and the first black Prime Minister of Ghana had strong views in favour of Supremacy on the party. He believed that the Convention Peoples Party was Ghana, and Ghana was the Convention Peoples Party.

However, every political system must have a political philosophy upon which it can frame its administration. That being the case, it can be said that President Kaunda was right by saying that "the world is guided by competing philosophies"⁸

FOOTNOTES

1. Professor L. S. Shimba, Zambia Law Journal, Vol. 12, 1980 P. 67
2. The "Watershed" Speech by President Kaunda, to the National Council of UNIP, 30th June to 3rd July, 1975.
3. United National Independence Constitution, Section 38, 1975.
4. Harry Mwanga Nkumbula and Simon Mwansa Kapwepwe
v
The Attorney General (1979) ZLR. 267
5. Axioms of Kwame Nkrumah , Thomas Nelson & Sons Ltd., P. 28
6. Ibid. P. 29
7. Constitution (Amendment) No. 5. Act, 1972.
8. President K. Kaunda, Humanism Part 1. P. 1

CHAPTER IV

THE DELIMITATION COMMISSION

Delimitation Commission is an electoral body charged with the duty of reviewing Parliamentary Constituencies boundaries.

In Zambia, Article 73(1) and (2) of the Zambia Constitution empowers the President of the Republic to appoint an Electoral Commission for the purpose of reviewing the boundaries of the Constituencies into which Zambia is divided by Article 74.

This electoral Commission is very important body because it is the body that prepares and supervise Parliamentary elections. This body is headed by the Chairman who usually is nominated by the President.

The office of the Chairman of an Electoral Commission calls for high judicial qualification and the nominee should be a person who has held a high judiciary office.

It is necessary to state that, review of Constituents is normally done between eight and not more than ten years from the last review of constituencies, and as the President may from time to time appoint. In determining constitutents the Delimitation Commission puts into considerations such things like:

- (a) Availability of means of Communication
- (b) the geographical feature of the area to be divided into constituencies.

The Constituents are divided into number of Parliamentary Seats, of course excluding the seats for the nominated members of Parliament which are normally ten. Thus Part IV of the Zambia Constitution, Article 64 provides that,

"the National Assembly shall consist of hundred and twenty-five elected members and the Speaker of National Assembly"1

Article 66, empowers the President to nominate members of the National Assembly such persons not exceeding ten in number.

QUALIFICATIONS FOR ELECTION OR NOMINATION TO NATIONAL ASSEMBLY

The Zambia Constitution under Article, 67 stipulates qualifications for nomination to National Assembly as well as how one can be elected to National Assembly. Thus a person to be nominated to National Assembly must certify the following requirements.

- (a) He is a citizen of Zambia.
- (b) He has attained the age of twenty-one years.
- (c) He is a member of the Party (UNIP).
- (d) He is literate and conversant with the official language.

The words; "conversant with the official language" could be assumed to mean; official language that is spoken in Parliament which is of course English.

- (e) A person who aspires to stand in the Parliamentary general elections must have gone through the Primary elections.

In the Primary elections, all aspiring candidates have to go through a Primary elections. Primary elections are meant to control the number of candidates to three only if possible.

And secondly, Zambia being a One-Party State, the Party keeps a jealousy eye over the candidates in seeing that only those approved by the party (Central Committee) are allowed to go into the Primary elections. The reason being the Party controls elections. Primary elections also helps the Party to eliminate possible rivals within the Party. In a multi-party state each party screens its candidates as well as matching each candidate according to his calibre to the opposing party or candidate. During the federal elections of 1962, the constituents were designed on the lower and Upper Rolls System. To-day the constituents once decided and drawn by the Delimitation Commission they are placed at the same level.

ELECTIONS AND PRIMARY ELECTIONS

Primary elections are intended to produce the popular three candidates. All candidates at a primary elections have to be members of UNIP and should have paid a deposit for their candidature to National Assembly elections.

Not all registered voters may vote at the primary elections. The primary elections is left to some party officials only.

Article 75(3) provides;

"At a primary election a poll shall be held at which the following persons resident within the Constituency of the National Assembly shall be entitled to vote:

- (a) The Regional Secretaries, the Regional Women Secretaries, Regional Youth and Publicity Secretaries and two Trustees of the Party.
- (b) The Chairmen, the Vice-Chairmen, the Secretaries, the Vice Secretaries, the Treasurers, the Vice Treasurers, the Publicity Secretaries and Vice Publicity Secretaries of every branch of the party"²

At the conclusion of the poll, the Electoral Commission shall declare the number of votes received by each candidate and shall thereafter submit the names of all the candidates to the Central Committee

together with the number of votes received. The Central Committee has the right to disapprove any candidate without giving any explanation or reasons.

When the vetting of parliamentary candidates is over the election campaigns starts. But prior to that, Parliamentary candidates are given election symbols they have to use as their identity to the general voters. These election symbols are to be associated with the candidates.

There are twenty-one election symbols used in the Parliamentary elections and these are given to the candidates by order of their alphabetical names. Thus symbol number 1 is a chicken and therefore a candidate by the name of Daniel Akatama would automatically receive the symbol of a chicken. And the other candidate, Mr. Banda would have an axe and the third man would have a hut as his symbol. These symbols are meant to assist the illiterates in exercising their right to vote in the Parliamentary elections.

WHO MAY VOTE IN PARLIAMENTARY ELECTIONS?

The Parliamentary Elections in Zambia, provides for adult suffrage voting rights. Thus CAP 19, Electoral Act, Article 3; states that,

every person shall be qualified for registration as a voter who³

- (i) Is a citizen of Zambia
- (ii) has attained the age of eighteen

WHO MAY NOT VOTE?

However, Article 4 of CAP 19, stipulates who can't vote at Parliamentary Elections. Thus,

- (a) Any person under declaration of allegiance to some country other than Zambia.
- (b) A person of unsound mind
- (c) detained under the Criminal Procedure Code during the pleasure of the President
- (d) Under sentence of death imposed on him by any court in Zambia
- (e) He is not in possession of a Registration card issued to him under the National Registration Act, Cap 234.

So far in this Chapter the discussion or illustrations have been directed to qualifications to be a candidate in Parliamentary Elections, as well as procedures on how primary elections are held, and the powers of the members of the Central Committee to disapprove a candidate or candidates.

I have touched the method and procedures related to the issuing of candidates symbols through

alphabetical order system. Qualifications and disqualifications of the parliamentary candidate and their voters have been briefly discussed.

The main topic in this Essay is to determine or find out;

"HOW FAIR AND FREE ARE ELECTIONS IN ONE PARTY STATE"

This being the main topic it brings us to Chapter V which examines;

- (i) How much Freedom of Movement is given to candidates in their constituents?
- (ii) What amount of Freedom is given to each candidate to communicate with his prospective voters?
- (iii) What is the role of the Party in these elections.
- (iv) What is the relationship of the Returning Officer towards some candidates
- (v) Any conflicts during the Parliamentary Elections.
- (vi) Before the summary, this Chapter shall illustrate Election petitions which arose from Parliamentary Elections after the declaration of One-Party State.

The Constitution of Zambia, provides for the recognition of:-

- (a) Article 22(1) Protection of Freedom of expression

(b) Article 23(1) Protection of Freedom of
Assembly and Association

(c) Article 24(1) Protection of Freedom of Movement

These three Freedoms are extremely important in any democratic state having parliamentary elections. However, the Electoral Act, Cap 19 do not mention these freedoms in favour of the parliamentary candidates. It can therefore be said that, it is a practice in Zambia during parliamentary elections to withdraw temporarily the aforesaid freedoms during the election campaigns, thus a parliamentary candidate cannot address a public meeting intended to entice his voters except per the permission of the Returning Officer, and that that permission shall also be extended to other candidates at a particular time and particular place to be arranged and approved by the Returning Officer.

Since the introduction of One-Party State, candidates who are contesting for a parliamentary seat in one constituency are not allowed to address the public individually nor are they allowed to communicate with their prospective voters by press, radio or any method of communication serve by word of mouth at an arranged public meeting authorised by the Returning Officers. This means that, there are no election manifestos allowed. All candidates








are given one topic or subject on which they have to talk about. No political slogans are allowed except those approved by the Party.

One major problem arising from Parliamentary elections is the relation between the election symbol given to a candidate, and the candidate himself. Naturally voters tend to associate the symbol with the candidate. For example, prior to independence, during the 1963; elections, UNIP used a symbol of a hoe. The ANC used a symbol of a cob of maize. During the election campaigns, UNIP organisers spread a damaging joke against ANC, that, the cob of maize used by ANC was a stolen maize from UNIP maize field, because UNIP had a hoe. "How can one have maize just from nowhere? No maize field! and no hoe!" These were questions which UNIP organisers used to ask the voters.

A lot of questions are still being asked by voters as to the meaning of the election symbols and how these symbols are associated with the candidates. Mostly, candidates fail to defend their symbols or explain why they have to use such a symbol or what relationship is there between the symbol and the people's problems in a particular constituency.

CHIPATA CONSTITUENCY

INSTRUCTIONS: Vote for **ONE** candidate **ONLY** by marking **ONE** cross in the blank box opposite the name and symbol of the candidate of your choice. **DO NOT** make any other mark. Do not make any other mark by which you can be identified such as a signature.

Name of Candidate	Symbol	Mark with X in Box next to Symbol of Candidate of your choice
BANDA, Chiwala John Andrew		
BANDA, Exander		
CHIKWA, Emmanuel		
NGOMA, Jackson Peter		
PHIRI, Levy		
PHIRI, Reuben Mtolo		
SAKALA, Jabes Abel		

REPUBLIC OF ZAMBIA
 ELECTORAL OFFICE
 30 SEP 1987
 BOX 5074 LUSAKA

[Handwritten signature and scribbles across the ballot paper]

For example; symbol number one is a chicken which looks like a hen. Symbol number three is a round hut and symbol number four is a bare right foot of a human being. Symbol number six is a table chair. Symbol number sixteen is a tree without fruits and symbol number eighteen is a book. These are very difficulty symbols to relate to people's problems. There are however, symbols which are meaningful like, symbol number seventeen which is a bus, number twelve is a shoe, and number 19 is a tractor, and twenty is a plough.

In all fairness, the party should have designed symbols that have something to do with the economy of the nation like, cotton growing, rice, maize, sunflower, timber production, wheat growing etc.

I have stated earlier that there are twenty-one Symbols used in the Parliamentary General elections. The Presidential Election Symbol is not included among these symbols. Election symbols should portray the Party and Governments interests in that constituency. We are talking of a "Green Revolution". Let the Election symbols be of green revolution products. However, if we have to arrive at the right decision as to whether Zambia Parliamentary elections are fair, we have to look at some petitions that were received by the High Court.

One of these petitions was raised by Rupiah Bwezani Banda v Simon Chambabulele Kampata. This was a petition arising from Munali Constituency Parliamentary Elections. The results were as follows:-

1. Declarations of the results of the poll.

According to the declaration of the polls, the Petitioner polled 14,988 votes and the Respondents polled 16,362 votes.

2. A Statement of rejected ballot papers.

According to the results 2,967 votes were rejected as follows:-

- (a) votes showed for more than one candidate - 224
- (b) ballot papers signed by voters - 76
- (c) unmarked or incorrectly marked -2667

3. Report of verification of ballot paper with candidates showed the total number of ballot

papers issued	- 52,800
used	- 34,317
balanced unused	- 18,483
spoiled	- 104

Following these election results the Petitioner was of the opinion that he deserved or was entitled to win the elections.

He contented that, he lost the elections because he was victimised. And his grounds of petitioning the High Court were as follows:

- (i) That there has been non-compliance with the provisions of the Electoral Act relating to the conduct of the election.
- (ii) Some Election Officers and other unauthorised persons did without the request of the voters *Assisted some voters to vote;* And that there was evidence that some voters in about 18 polling districts were assisted by Presiding and Returning Officers without the voter's permission. Section 43(1)(a) states who is incapacitated by blindness or other physical cause from voting may be assisted as per S43(1).
- (iii) The majority of the voters in the constituency were or may have been prevented from electing the candidate whom they preferred in that constituency.
- (iv) And supporters of the petitioner, a Presidential Agent Charles Tembo was arrested when he questioned a police officer on duty why he

was openly canvassing or soliciting for voters for the respondent within 400 metres from the entrance to the polling station contrary to Regulation 71(1)(e) of the Electoral Regulations.

The petitioner prayed that the election of the Respondent be declared void.

According to section 17(2) of the Electoral Act Cap. 19, the election of a candidate as a member shall be void on any of the following:-

- (a) By reason of any corrupt practice
- (b) Any illegal practice committed in connection with the election or by any reason of misconduct.
- (c) If the majority of voters in a constituency were prevented from voting or electing the candidates in that constituency whom they preferred.
- (d) Inter alia, if the candidate was at the time of his election a person not qualified or a person disqualified for election as a member.

However, where the High Court is of opinion that there was no corrupt or misconduct in the elections it shall not hold the elections null and void.

After all arguments were put by the Petitioner's lawyers and Respondent's; the High Court arrived at a ruling that,

"there was no evidence of corrupt practices in the elections. And that the assistance that was given to some voters didn't interfere with the true exercise of voting or the result of the elections"⁴.

In the stated case, there appear to have no conflict between the petitioner and the party (UNIP). But there has been some differences between Returning Officers and the police. The Presiding or Returning Officers were not acting as party officials. They were drawn from government ministries and companies. To determine fairness in a One-Party State, interest must be directed to how the Party uses its influence to make one candidate win the elections or how a party does interfere in the conduct of elections.

One interesting case on Parliamentary election was that of:

Dr. Elemelech Hanakumbo Bulowa Mwanangonze v Amon Rex Natala. In this case, the material facts were that, the petitioner filled his petition under Section 17 of the Electoral Act, Cap 19 of the Laws of Zambia. The petition was initiated by Dr. Mwanangonze against the election of Mr. Natala as the member of Parliament for Bweengwe constituency in the Parliamentary election held on the 27th day of October, 1983. In these elections, Natale pulled 2,782 votes, and

Dr. Mwanangonze got 2,771 votes. The results caused a difference of 11 votes only. Dr. Mwanangonze challenged the elections and petitioned the High Court to hold them null and void on the following grounds.

- (i) Natala practised corrupt and illegal acts and other misconduct
 - (ii) That on election day he gave K5 to Benson Katazyne and his wife through Peter Malangwa.
 - (iii) That on 7th October, 1983; Natala gave Tee-shirts to three people.
-
- 1. (c) That one voter, Sherry Moomba Mbwebelo cast her vote without a voter's registration card.
 - 1 (d) That Natala gave a pair of shoes to Kellyson Chibanje a supporter of Dr. Mwanangonze.
 - 1 (e) That Natala, through some headmen and other people spread false information that, only people with UNIP cards would be allowed to vote. This resulted in those who didn't have UNIP cards staying away from voting and that out of 786 registered voters only 290 voted.

Ten witnesses including Dr. Mwanangonze himself testified in support of these allegations. Having called

the witnesses it was proved that, the court could not hold the elections null and void. The court held;

The facts I found do not warrant application to these rules as far as Mr. Natala is concerned. They do merit application to Dr. Mwanangonze so far as his purchase and distribution of the bicycles are concerned. The petition therefore fails. I will however order that the petitioner pays $\frac{3}{4}$ of the costs and Mr. Natala $\frac{1}{4}$ having failed to prove a substantial portion of the answer he failed.

The courts raised as an opinion or a view as to why Dr. Mwanangonze's distributing bicycles to some of his organisers or supporters could not be reported to the Director of Public Prosecutions? However, during the case hearing it was revealed by one witness that Dr. Mwanangonze had bought bicycles which he distributed to some people to organise and vote for him in the elections.

One interesting case arose from the Elections for Katete South Parliamentary Constituency held on 24th October, 1983. This was the case between:

Teddy Ndandalika Sakala v Joseph Garata Chikuta Mbewe

The case came before the Honourable Mr. Justice M. S. Chaila in open court at Lusaka on the 9th Day of August, 1984.

Material facts of the case are that, on the 28th October, 1983; the Returning Officer, Mr. Paul Killian Mwale declared the Respondent Joseph Garata Chikuto Mbewe to have been duly elected as member of National Assembly for Kateta South Constituency.

The results of the poll were as follows:-

- | | | | | |
|-------|--------------------------|------|-------|-------|
| (i) | Teddy Sakala | 4875 | | votes |
| (ii) | Joseph G. C. Mbewe | 6841 | | votes |
| (iii) | Tenford Esaya Ben Zulu | 604 | | votes |
| (iv) | Rejected papers | 604 | | |

The petitioner prayed to the Court that, the election should be held void, and that the petitioner was duly elected or ought to be returned.

The grounds upon which the petitioner based his petition were that;

- (i) There has been non-compliance with the provisions of Act Cap 19
- (ii) Petitioner's agents were placed at distant failing them to see or distinguish whose candidate the ballot papers were being placed and they could not see the symbols on the ballot paper.
- (iii) The Returning Officer refused to recount the votes.
- (iv) That Sylvester Zulu, the Presiding Officer,

at one stage during the voting, entered the voting booth and remained therein for considerable period wrongfully assisted voters on the 27th October, 1983.

Grounds of Appeal were based on the Provisions of S. 17(2)(b) of the Election Act Cap 19 and also on its relevant regulations S. 17 (2)(a)(b).

Court ordered scrutiny of the votes on 15th day of June, 1984, in the presence of the parties and the respondents advocates. The re-counting by the High Court, still retained the Respondent as a duly elected member of Parliament for Katete South Parliamentary Constituency. The other allegations were not proved by the petitioner. That being the case the High Court held the elections in the Katete South Parliamentary Constituency as valid⁶.

The third petition was received from

Michael Derreck Chileshe v Remie Kalulu Chikonkolo

The above case came before the Honourable Mr. Justice A. Sivanandan in Open Court at Lusaka on the 20th day of March, 1985.

The Petitioner gave his grounds upon which he relied to declare the elections void. The grounds were as follows:

- (i) There were corrupt practices by the Presiding Officer which placed the petitioner and other candidates to their disadvantage like failing to provide transport to the voters as they were promised.
- (ii) The Presiding Officers, acted contrary to the provisions of Regulation 43 of the Electoral (General) Regulations 1983 by casting mass votes for the Respondent under the Umbrella of the said provisions.
- (iii) Petitioner's agents were not allowed to enter the precincts of their respective polling stations without any reasonable cause.
- (iv) The counting of votes by the Presiding Officer and his counting agents were irregularly done.
- (v) That 400 ballot papers were not delivered to Malole North Policy Station.
- (vi) That the voters at Ndakala and Malamba and Mutale-Malamba village were wrongly informed by the Presiding Officer that ballot boxes were to be brought to Ndakale Primary School and were to vote there on 24th and 26th October, 1983; such information was actually false thereby

disadvantaging the petitioner.

- (vi) The Respondent during and shortly after elections provided money to a number of (people) voters to buy food and drinks to the disadvantage of other candidates.
- (vii) And that the Respondent had actually did send some money to the Ward Chairman in Malole Constituency on 9th January, 1984.

During the hearing it was established by the court that, the Respondent did actually send some money to the Ward Chairman. The wording of the said letter was technically well drafted and in part it read;

Dear Comrade,

RECEPTION MONEY

I have to inform you that I have dispatched to you the above cheques in order for you to arrange receptions at Centres you may feel are central to accommodate receptions.

The idea is that I felt this would be best way constituents would come together and rejoice over their mature and bold decision to give His Excellency the President a "YES MASSIVE VOTE", and

also to elect me to represent them in Parliament...."

In this case, although it was proved that, some Party Officials did receive some money by cheques for the purpose of treating the voters after elections, to some receptions; the High Court ruled that;

"Upon a totality of the evidence, I find that the petitioner has not established any of the grounds to the satisfaction of this court. There are bound to be some breaches of the Regulations but they by themselves cannot upset an election unless it can be shown that the breaches or the non compliance affected the breakdown of the conduct of the election...."7

In this case the petitioner lost the case with costs

However, having referred to four petitions that came to the High Court, it is important here to discuss the subject of whether; "Elections are Fair and Free in One-Party State". In the four cases the petitions were raised on misconduct corruption and victimisation. Almost all the arguments were centred on Section 17(2) of the Electoral Act, Cap 19; which states;

"The election of a candidate as a member shall be void on any of the following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition".

The operative words are "proved to the satisfaction of the High Court". In all four

petitions the authorities relied upon were based on authorities from the House of Lords. In the case of (Morgan v Simpson) 1974(1) AER 244, page 241 where Lord Denning M. R. restated the law by the following propositions:-

- "(a) "If the election was conducted as badly that it was not substantially in accordance with the law as to elections, the elections is vitiated irrespective of whether the result was affected or not.
- (b) If the election was so conducted that it was substantially in accordance with the law as to elections it is not vitiated by breach of the rules or a mistake at the polls, provided that it did not affect the results at the elections".⁸

The other authority relied on in all the petitions was based on the case of (Buchnner v Zurrie)(1875 HEG 187, where a Canadian Court held as follows:-

"Before subjecting a candidate to the penalty of dis-qualification, the judge should feel well be assured, beyond all possibility of mistake, that the offence charged is established....."⁹

The Zambia High Court also cited the case of Cameron v Beaton (1915) 48 N.S.R. 353 where it was held that,

"a charge which involves disqualification should be proved beyond reasonable doubt to warrant a finding adverse to the successful candidate" ¹⁰

There is no doubt that, the three cited cases have become authorities in the Zambia Parliamentary election cases. In coming to conclusion the trial judge thanked the counsel for the petitioner who rightly referred him to the authorities which are for and against the counsel's own propositions with regard to the burden of proof in election petition.

In arriving at an opinion as to whether Parliamentary elections are free and fair in a One-Party State, and having studied the grounds on various petitions, we can come to the conclusion that; on the whole there are incidents which could be rated as unfair to some Parliamentary candidates. Take for example a situation where a candidate is vetted out by the Central Committee and he is not furnished with the reasons for being vetted. The vetting system deprives some candidates the right to stand for elections. This refusal violets the fundamental rights of the candidate as stated in Article 13 of the Zambia Constitution and provides for Protection of Fundamental Rights and Freedom of the individual.

However, so far no vetted candidate has challenged his vetting in the Court of Law or at the level of Central Committee. It would appear that those vetted do accept the Central Committee's decision

without a question. If vetted candidates accept the MCC's vetting as a final and unquestionable, it will be in future a political taboo to question the ruling of the Central Committee. One wonders as to whether becoming a Parliamentary candidate is a favour from the Central Committee or is a right of every qualifying individual, neither can it be said to be a privilege? Is it not a responsibility for those who feel they have a duty to represent others in Parliament? There is in human nature what is called, Political Capacity. Under this;

"Some persons seem to be natural politicians That is to say, in Controversial, uncertain situations they seem to have the inner and outward qualities that enable them to assume the burdens of public responsibility. Others turn to them for leadership".¹¹

It can be argued that the system of vetting has sometimes vetted out some people with political capacity, the natural politicians. The problem of elections in a One-Party State rests in that all candidates are from One-Party and it is the Executive of this party which has influence, power, control and final authority. That being the case it can be said that in a Zambia One-Party State there are no Fair and Free elections because of the vetting system by the Central Committee.

This unfairness rests in that the Central Committee has the power to disqualify a candidate without furnishing with reasons. Becoming a Parliamentary Candidate is right of every qualified Zambian citizen. And if one is disqualified he should be advised by the Central Committee so that, the vetted candidate should not mould a cold war between him. and the Central Committee. As to the general voters; the elections are extremely Fair and Free. Parliamentary Elections invite and mould conflicting interests in which others may win or fail justly or unjustly. Laws are made but they are broken.

Electoral law provides essential sections and those deal with qualifications and disqualifications. And these regulations are lawful.

"A very wide equal suffrage loses its value if political bosses are able to gerrymander constituencies, so as to suit their interests; electors are driven in one direction, by a preponderance of bribes and threats. Legal provisions mean nothing if enforcement of law is left wholly in the hands of those who profit by breaking it".

However, the summarisation of How Fair and Free elections are in One-Party State, in Parliamentary and Presidential is fully covered in the next last Chapter V of this essay.

FOOTNOTES


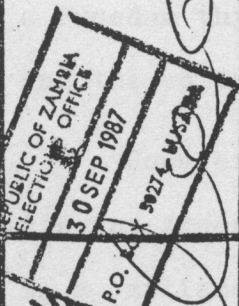

1. Zambia Constitution Cap. 1 Article 64
2. Ibid, Article 75(3)
3. Electoral Act CAP 19, Section 3,4
4. Rupiah Bwezani Banda v Simon Chambabulele 1983/HP/EP.
(unreported case)
5. Dr. Elemelach Hanakumbo Bulowa Mwanangonze
v Amon Rex Natale (1983) HP/EP/14.(unreported case)
6. Teddy Ndandalika Sakala v Joseph Gareta
Chikuta Mbewe (1984)
7. Michael Derreck Chileshe v Rennie Kalulu Chikonkolo
(1985) (unreported)
8. Morgan v Simpson (1974)(1) AER 244
9. Buchner v Currie (1975) NEC 187
10. Cameron v Beaton (1915) HSR 353
11. Avery Leiserson, Parties and Politics,
Alfred A. Knopf Publishers, New York, 1958, P. 3

CHAPTER V

HOW FAIR AND FREE ELECTIONS ARE IN A ONE-PARTY

STATE: (THE ZAMBIAN EXPERIENCE)

INSTRUCTIONS: Mark one cross X only in the blank box against either YES or NO

QUESTION	ANSWER	SYMBOL	MARK X IN THIS COLUMN
DO YOU WISH TO VOTE IN FAVOUR OF THE ELECTION OF THE PRESIDENTIAL CANDIDATE DR. KENNETH DAVID KAUNDA?	YES		
	NO		

This last chapter is some kind of a summary of the election topics covered in this essay and shall end with, the Presidential Elections, at Mulungushi as well as a summary of the Parliamentary elections at general elections.

It is said that; the legitimate power is that government must be based on Free Elections. What then is Free Elections? There are many freedoms that are associated with elections which candidates are expected to enjoy. In every type of elections candidates compete for votes.

"Every promotional group has much in common with every other. The weapons are similar, and the enemy being inevitably human".¹

Thus where human beings begin to identify or recognise each other as enemies and a political arena is set for their fight, there should be rules or regulations

to control that political fight.

The Freedom that is expected in elections is a Freedom that should exist between the candidates and the voters.

However, I would like in the first place, to discuss freedom that a candidate himself should have in a parliamentary elections. There are at least four universally recognised freedoms open to parliamentarian candidates in every democratic state. A democratic state which is either multi-party or One-party State the absence of these four Freedoms puts or places elections not to qualify for free election status.

The most important Freedom in every election is the Freedom of Movement which enables a candidate to move freely in his constituency for the purpose of meeting his voters or campaigning strategies.

The second Freedom is the Freedom to canvas for votes. Canvassing involves a lot of different approaches, as this demands convincing a voter to be at candidate's side, that's to vote for him.

The third Freedom ties up with the second Freedom, that is the Freedom to communicate freely with the voters by radio, television, press or public rallies

this third freedom could be placed together with the Freedom of Expression at places of a candidate's choice.

The third Freedom is the Freedom of a candidate to identify himself with the voters. This means that a candidate is supposed or should be allowed to choose his election symbol so as to enable him explain why he had chosen such an election symbol.

Zambia has still high percentage of illiteracy and voters tend to associate the election symbols with the candidates. The Zambian Society although is still having a high percentage of illiteracy it has various groups of voters. It is these various groups of classes of voters that a candidate has to attract and convince to vote for his followers, about 75% of the urban population is literate, but 80% of the rural population is illiterate and yet this is the population which contributes more members of Parliament.

Zambia is a One-Party State and that being the case all parliamentary candidates are drawn from One-Party (UNIP). In a Multi-Party State, like British Parliament candidates come from either Conservative Party, Labour or Liberal Party and other small parties. During Parliamentary elections each party designs its strategy.

Each candidate organises his method of attracting the voters. He may direct his campaign towards Mine Worker's Union, Civil Liberties, Young Women Christian Association or any other organised societies. Such method of campaigning can be possible where Parliamentary Candidates have freedom of movement in their constituencies. In Zambia, Parliamentary Candidates are not allowed to move or hold public rallies without a Party's approval. It is the Party to arrange a programme of meetings in every constituency. It is the Party which arranges transport to take the candidates to places of meetings.

It is the party that chooses the subject that candidates should address the voters. It is the Party that decides how much time should be given to each candidate. It is the Election Officer who decides who should start talking to the public and who should be the last one to talk.

In One-Party State, almost all forms of elections are party controlled except those election concerned with social welfare of a society like clubs-elections. However, it is important to mention that in Zambia's One-Party State there is an understanding and an assumption that, although the elections are controlled by the Party and its government, elections officers should see that elections are held under the philosophy of Humanism and Participatory Democracy. These

philosophies are seen to operate in Zambia, and are presented to other international institutions as Zambia's Democracy.

The philosophy of Humanism has been internationally recognised. Rene Maheu, Director of General of the UNESCO, in his address speech during the Human Rights', Conference in Paris, 16-20th September, 1968, expressed his application to His Excellency Kenneth Kaunda's on doctrine of "Humanism" and the said;

"May I be permitted to render homage to the interest he (President Kaunda) thus shows in the cause of Human rights and interest in which he gives daily proof by his efforts to promote in his own country this doctrine of 'Humanism in Zambia" 2

Under this Philosophy of Humanism and Participatory Democracy, President Kaunda defended his ideologies at this Human Rights Conference by saying that;

"It is the inescapable responsibility of the State or Government to remove Conditions under which individuals can react in no other way except by violence as an expression of his rejection of the rules and regulations which infringe upon his dignity and rights" 3

Relating the two quotations to Free and Fair Elections in Zambia it can be said that, under the philosophy of Humanism and Participatory Democracy Zambia enjoys the most peaceful Presidential and Parliamentary elections because the hostilities caused by multi-party political parties contesting for seats, power and influence are not there in Zambia.

There is nothing so humiliating in elections than intimidation of candidates or voters. In a One-Party State like Zambia, all Parliamentary Candidates expression is one that, the Party instructs what should be the topic at Public rallies. Candidates have no manifestos or canvassing literature. They have only two things; their words and Elections symbols.

A candidate has to design or arrange with his election agents on how to persuade or pull more people on his side. These are approaches of gossiping in dark corners, gossiping of who is a better candidate and who is a bad candidate. Candidates are not allowed to direct attacks by word of mouth to one another, neither are they allowed to denounce each other publically. The absence of these personal confrontation among parliamentary candidates could be said to be a sign or element of free and fair elections in Zambia.

I have spoken of the absence of some Four Freedoms in a One-Party State. In all fairness, it is important to appreciate that Zambia's political independence is just about twenty-three years old. Developing a society or cultivating a society to its political maturity is not a matter of making a target but it is a matter of time and experience. People have to appreciate that,

at all times and there should be a government.

"I think that without Party Parliament Government is impossible"4

Political education is normally introduced to people through various ways but mostly through time and experience. The federal Government of U.S.A was born in 1789; and yet the United States of America is rated as a single state with violent politics of Presidential Assassinations.

In a developing country like Zambia, it is important to appreciate that people have to be educated as to why they should vote.

The question to be determined in the Party Presidential elections as well as Presidential General Elections is to whether there is Freedom and Fairness. The term Freedom in elections should be interpreted to mean Freedom to stand as a candidate and also Freedom to vote for the candidate whom the voter wants to vote for. In Zambia's situation, it is a situation of one candidate only the Party machinery sees to it that they should not be two or three candidates. The idea is that, the Presidential Party elections as well as the General Elections lead to unity and not to disunity. It is this one man-type of politics which developed countries say that,

"In Africa, there is a tendency of perpetuating the One-Party, same leaders, same politicians the idea is to perpetuate the Party and its government despite its imperfections.⁵

It is difficult to define perfection in terms of government activities. It could be true to say that, no government would say that;

"everything is in order. That's to say the economy of the country is 100%. And that the welfare of the citizens is well. No unemployment. All politicians are honest or all government leaders are honest. Such perfection is impossible."

The absence of the opposing candidate or second candidate is party machinery and Party discipline. At the top, UNIP operates as a team and this results in that team presenting one unopposed candidate whom the Party trusts.

"many aspire to power and recognition, but relatively few are chosen"²

The Party Presidential Elections are matched with Parliamentary Elections and the life span of the two is five years. Zambia's One Party System seems to operate well in that the Party has worked a system of undivided support for the Presidential candidate.

PRESIDENTIAL ELECTIONS

Presidential Elections in Zambia's One-Party system is One-Man show. Since attaining independence on 24th October, 1964; there has been one unopposed candidate both at Mulungushi National Council and Parliamentary elections.

The procedure of electing the Republican President is that, the party UNIP has in the first place have to raise a candidate at Mulungushi General Conference. The United National Independence Party for the election of the President of the Party and its states;

"The President of the Party shall be elected at the General Conference of the Party"5

It is at the same conference where members of the Central Committee are elected. However, the topic is about Presidential Elections at Mulungushi.

Presidential Party elections are open and any candidate who aspires to stand for Party Presidential elections has to put his intention to stand to the Secretary General of the Party not less than one-day before the date of the General Conference. The Secretary General having received the name or names of the candidates, he shall submit those names to the Central Committee for approval. And the names of those

approved are submitted to the General Conference for approval. A Party Presidential candidate must in the first place must have been nominated by twenty supporters from each province of the delegates to the General Conference.

The candidate who receives the largest number of votes becomes a Party President and it is that candidate who also becomes a Presidential candidate at the General Elections to Parliament. Article 5(9), requires that, a candidate to Presidential elections must be a member of UNIP, and must have been a member of the Party for the last five years to the date when Party Presidential Elections are held.

There is one important requirement at the General Conference that, Party Presidential candidate has to be supported by twenty delegates from each province. This actually gives an assumption that such a candidate must be popular. This again means that candidate must receive or have about two hundred supporters in all.

The Americans claim that,

"The greatest of all elected officials is the President of the U.S.A. And American Presidential Elections is the greatest electoral show on earth so great that it dwarfs congressional elections altogether."7

The Zambia Presidential Elections to Parliament is not in the dramatic way of the American style. In the first place, in American Presidential Elections, there is a lot of publicity, radio and television coverage. American politics are of a multi-party system and therefore there is a political spirit of party competition as well as personality competition. The campaign spirit is high and expensive. It is politics of the rich people and expenses run into millions of dollars.

Zambia's presidential Elections is more on the pattern of mass political education to enable the citizens mostly illiterate to know that voting is a right as well as a responsibility. And that government is formed by the consent of the adults.

Zambia's Parliamentary elections operate under some kind of plural voting in that; a voter is allowed two votes. This means that, a voter is given two voting papers. He has to vote for his or her candidate only in that constituency. The second vote is a vote for the President. In the last Presidential Parliamentary election the symbol for the Presidential candidate was an eagle.

In conclusion it can be said that, in view of a high degree of illiteracy in Zambia, and the age of our independence plus different ethnic groups of our

society, it can be said that, elections based on One-Party System in Zambia are Fair and Free. It can be said that, Zambia could to-day claim to be one of the most peaceful countries in Africa. This can be attributed to a system of our One-Party politics. There is no doubt that, the situation would have been different if we had a multi-party system of politics. It is a question of maturity and immature politics. The Zambia nation is still immature in politics. It should be realised that the office of the President calls for very high calibre, and that being the case the Party sees to it that it tenders a responsible person intellectually and internationally respected. He must be a mature person of high moral standards. Article 38(2)(c) provides that only those who are of the age of thirty five may become Presidential Candidates.

The question of Free and Fair elections in Zambia is important, but human nature is not rigid. There are checks and balances of weighing the welfare of a society, risks, unity and security of the state. For example, Britain went into the First World War with Liberal Party in power, but before the end of the War there were coalition governments with Conservative Party in 1915, 1916 and 1918. May be Britain would have suffered disunity at that serious moment. Britain

was at war with Germany as a result, both Liberal Party and Conservative Party had each to part with its pride for the sake of uniting their political powers and influence.

I would like to end this chapter by saying that, Freedom in electing a President is vital but there must be some limitations suiting the welfare of the citizens, unity and high responsibilities so as not to loose the simple pattern of Participatory Democracy. For the time being, as long as we have a responsible person as President of the Party, and President of the Republic who is unbiased, the monotype of politics will give us peace and unity. And therefore presently it can be said that Zambia's Parliamentary and Party Presidential Elections are Fair and Free.

FOOTNOTES

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6. United National Independence Party Constitution, 1975; S. 38.
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