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THE POSSIBILITY OF FORMING A RELIGIOUS POLITICAL PARTY IN
ZAMBIA WITH PARTICULAR REFERENCE TO THE ATTEMPTED
FORMATION OF THE ISLAMIC PARTY

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FORMATION OF THE ISLAMIC PARTY.

BY

YUSUF HAJI ABDUL SATTAR YUSUEMIA

SUBMITTED IN PARTIAL FULFILMENT OF THE BACHELOR OF LAW DEGREE

SUPERVISOR: MR MUMBA MALILA.

DEDICATION

To my Mother and Father and all those whom I have regarded as my parents during my academic life.

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ABSTRACT

Zambia's reintroduction to multi-party politics has seen a number of political parties being registered. In recent times however, the question as to whether political parties based on religious values can be legally formed under the existing laws has been raised.

The question has arisen in response to two seemingly contradictory objectives pursued by the government. On the one hand, the President of the Republic has sought to integrate religious values into the governance of the nation and to this end, declared the country a Christian state. On the other hand, the Minister of Home Affairs and the Registrar of Societies have sought to establish a distinction between the concepts of religion and politics, refusing to register a political party that had objectives in line with the principles of a particular religion. The Minister justified his actions to the press by stating that the constitution did not allow the registration of religious political parties.

The problem that arises is whether religious political parties have no legal basis upon which to be established or whether the refusal to register it is an indirect means of establishing the prevalence of the Christian religion.

The object of this research paper therefore is to consider the possibility of forming a religious political party under the Zambian law. By religious political party is meant a party which adopts as its objective the principles of a particular religion and not a party formed for the furtherance of the interests of a particular religious group

only. The attempted registration of the Islamic Party is used to provide a practical case illustration to this issue.

The paper discusses the constitutional, procedural and practical aspects to the possibility of the formation of a religious political party.

The first chapter will examine the freedom to form political parties and consider whether such is extended to political parties of a religious nature.

In the second chapter an insight into the various stages in the registration process will be provided. The criteria required to register a political party will be highlighted and a consideration of whether these can be met by a religiously inclined political party will be made. Further, the nature of the power to effect registration and grounds on which it may be refused will be examined.

The third chapter will deal with the practical circumstances that could result in the refusal to register a political party. In this regard the example provided by the Islamic Party's bid at registration and the factors that could have influenced the outcome will be considered.

The fourth chapter will seek to conclude as to the legal status of religious political parties in Zambia and whether this position is desirable.

To provide an examination of the subject matter primary sources like relevant laws and secondary sources in the form of various texts, legal and informative, interviews in the field etc, were consulted.

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CHAPTER ONE.

THE CONSTITUTIONAL ASPECT.

The rights to form a political party is contained in the Republican constitution which is the bastion of an individuals rights and freedoms in Zambia. All political parties are formed on the basis of this constitutional allowance. This chapter will consider the nature, basis and scope of these rights generally and the right to form political parties in particular.

1. Concept of fundamental rights and freedom generally

The concept of the fundamental rights and freedoms of a human being has evolved over a long period of time. Broadly, it is considered as those rights which are legally recognized and protected to secure for each individual the fullest and freest development of personality and spiritual, moral and other independence. They are conceived of as rights inherent in individuals as rational, free-willing creatures, not conferred by mere positive law, nor capable of being abridged or abrogated by positive law.¹

However, since these rights and freedoms would be exercised within a community of individuals there is bound to be opposition arising out of conflicting interests. Thus, although fundamental rights would entail those liberties granted to subjects and would provide for their protection by government in the assertion of their freedom in certain fields, the law granting such freedom and protection will usually also limit it to ensure that its assertion does not infringe the rights of others or that of the public order. To

understand the concept better regard must be had to its origin and its basis.

(a) Origin and basis

The origins of assertions of fundamental freedoms or human rights are to be found in the ideas of natural law and natural rights. These ideas were developed by the Greek and Roman Stoics, by the Roman lawyers and the christian fathers, and by Aquinas and some of the medieval English jurists, as a basis of the beliefs in the freedom and equality of all men; the crucial case was slavery, which positive law commonly recognized but natural law condemned. The ideas were based partly on speculation and partly on the observation of laws and customs followed by the generality of mankind. In the middle ages natural law underlay much legal and political thinking and emphasised the subordination of rulers to the rule of law and also came to be identified with the law of God.²

Individual freedoms protected from state interference were not really defined at that time. The first declarations of right, that of nobles, are to be found in the medieval accords between kings and barons or feudal assemblies. Thus in 1188 the Cartes of Leon obtained from King Alfonso IX confirmation of a series of rights, including the right to the inviolability of life, honour, home and property and the right of an accused to a regular trial. In 1222, the Golden Bull of King Andrew II of Hungary guaranteed that no noble would be arrested or ruined without first being convicted in accordance with judicial procedure. In 1215, king John of England assented to the demands of his barons contained in the Magna

Carta. This was a set of baronial demands and not an assertion of all individuals rights, but some of its clauses, notably clause 39 to the effect that no freeman shall be taken or imprisoned or exiled or in any way destroyed except by the lawful judgement of his peers and the law of the land, expressed an idea capable of extension and repeatedly invoked subsequently as applicable to all men.³

" In early modern times natural law was invoked by puritans, Levellers and Parliament men against the king, by Milton and Hele, by Grotius and Locke, and later by Blackstone. Human rights under the name of 'the immemorial rights of Englishmen' were in issue in the English civil war and were asserted in such documents as the Petition of Right (1628) and the Bill of Rights (1689)."⁴

In the United States the basis of human rights were clearly asserted in the Virginia Declaration of Rights of 1776 which commenced; "That all members are by nature equally free and independent and have certain inherent rights of which, when they enter into a state of society, cannot ... deprive or divest their posterity; namely the enjoyment of life and liberty with the means of acquiring and possessing property and pursuing and obtaining happiness and safety."⁵ This was followed in various terms by the Bill of Rights of other states, notably Pennsylvania and Massachusetts and in the American Declaration of Independence of 1776 and the Bill of Rights, namely the first ten amendments to the U.S. Constitution (1791).

The concept of fundamental rights having become firmly entrenched, assertions of these basic rights of man became

common in most subsequent constitutions. The French Declaration of the Rights of Man and the Citizen of 1789 was inspired by the writings of Tom Paine and the American example as much as by the European philosophers of the enlightenment. "In the nineteenth and twentieth centuries many countries followed suit; Sweden, 1809, Spain, 1812, Norway, 1814, Belgium, 1831, Sardinia, 1848, Denmark, 1849, Prussia 1850 etc. After 1918 Germany and most of the European states incorporated similar statements in their constitution ".... Latin American and Asiatic States have done the same. But experience has shown in many cases, that the real question is not whether fundamental rights are asserted on paper but whether they are recognized in practice and can be secured."e The conventions is that Having seen the origin and basis let us turn to examine the concept of fundamental rights and freedoms in the context of the provisions of particular constitutions. and will be used to pr (b). The rights in the United States and Zambia

Fundamental rights and freedoms are contained in the Bill of rights of the American constitution (the first nine amendments and the fourteenth) They guarantee among others, freedom of speech, press and religion, separate church and state, secure certain privileges to an individuals accused of crime, and provide that no individual shall be discriminated against by public agencies on account of his race.⁷

Constitutional rights in the United States as in other countries were products of struggle. They protect the citizen from state power by defining the limits of that power and setting minimum standards of treatment for all.⁸

In Zambia the protection of the fundamental rights and freedoms of an individual are granted in the Republic's constitution⁹ and are contained under Part III of the same. The protection is extended to the rights of life, personal liberty, protection of the law, freedom of conscience, and freedom expression, freedom of assembly and association, to mention a few.

Great Britain, Zambia's former colonial master has no one document known as 'the constitution'. "There is a British Constitution but it consists of conventions, customs and several documents. Among the documents are the Magna Carta, the Petition of Right 1628, the Bill of Rights 1689, and the Act of Settlement 1701 (seen above). Among the conventions is that English courts have no power of judicial review".¹⁰ In this respect therefore the United States provides a better means of comparison to the Zambian situation and will be used to provide such in the ensuing discussion.

The rights and freedoms mentioned and others granted under the respective constitutions of the United States and Zambia are not absolute. Certain restrictions have been placed by virtue of the very provision that creates the right. It is to a discussion of the basis and nature of these restrictions that we now turn.

(c) Limitations to rights and freedoms

The concept of fundamental rights and freedoms has inherent in it the limitation of the same since it is applied within a state structure where the rights of various individuals and public order have to be regarded.

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The importance of restrictions can be ascertained from the context of the following interpretation of the word Liberty. "The word Liberty as used in constitutions means in a negative sense, freedom from restraint, but in a positive sense, it involves the idea of freedom secured by the imposition of restraint, and it is in this positive sense that the state, in the exercise of its police powers promotes the freedom of all by the imposition upon particular persons of restraints which are deemed necessary for the general welfare."¹¹

The rationale of the operation of limitations on particular rights granted can best be illustrated by case studies. Let us turn to see how the courts have dealt with such restrictions in the case of two fundamental rights, freedom of expression and freedom of religion.

(1) FREEDOM OF EXPRESSION

Generally this is regarded as the freedom accorded by the constitution or laws of a state to express opinions and facts by word of mouth or otherwise, uncontrolled by any censorship or restrictions of government.¹²

We will begin with an illustration of the American position to this Liberty. In Edwards V South Carolina ¹³ a group of 187 blacks gathered in front of the South Carolina state house in Columbia, South Carolina to protest the racial discrimination which then prevailed in the state. To get to the state house grounds which were open to the people they had to pass through a driveway where they met opposition from 300 whites gathered there. Though no violence took place, with the rise in racial tension, the police fearing trouble asked the

black group to disperse. They did not and instead resorted to singing patriotic songs, clapping and stamping their feet . They were arrested and convicted of breach of the peace. The supreme court in reversing their conviction said ...

'A function of free speech under our system of government is to invite dispute, It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech is ... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest"¹⁴

The court thus upheld the first Amendment guarantee of freedom of speech and set out that speech threatening localized violence, which merely annoys or angers the listeners, is constitutionally protected and only punishable if it creates a clear and present danger of such violence.

Another case is that of Schenck V United States¹⁵ which involved members of the socialist party who had circulated a document alleged to be intended to cause insubordination and obstruction of the draft, which the federal authorities were responsible for conducting during World War I, to men called and accepted for military service.

Justice Oliver Wendell Holme jr announced the opinion of the court and gave a formula in the form of a vivid metaphor which set the parameters for suppression of speech under the constitution:-

'The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic'¹⁶

In defining the relationship between government and expression he laid down the following doctrine:-

'The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that will bring about the substantial evils that congress has a right to prevent"¹⁷

He thus laid out the boundary for free speech. A threat to the community or its interests were a basis for limiting speech.

In Zambia, the courts had the opportunity to comment on the freedom of expression in the form of correspondence in the case of Patel V Attorney General¹⁸The petitioner in that case had questioned the legality of Regulation 35 of the Exchange Control Regulations 1963, which allowed a customs Officer to open any parcel, letter etc if he suspected that it contained items that were being exported or imported in contravention of the Act. The petitioner among other grounds argued that by opening examining and seizing the postal articles in question, the customs Officer and through him the state, had interfered with his correspondence which was protected (then) under Article 13-26 inclusive and Article 22 in particular, of the Republican Constitution.

Magnus J. in turning down the petition held that since the correspondence in question consisted of a series of crosses that were merely symbols, the meaning of which were not provided they could hardly constitute correspondence in the accepted sense of being the communication of ideas and hence there was no infringement.

The court further held that the regulations were valid as they were necessary and reasonable and thus served as a limitation of the other rights pleaded, (then article 18- deprivation of property and article 19, right to protection for the privacy of his home and other property).¹⁹

II). Freedom of Religion

This right in the United States is divided into the free exercise clause and the establishment clause. The latter, having no parallel in Zambia will not be considered immediately. Freedom of religion embraces the concept of freedom to believe and freedom to act, the first of which is absolute, but the second of which remains subject to regulation for protection of society.²⁰ Thus the constitutional right to free exercise of religion is invoked in support of challenges to laws that limit religious practice. The first significant free-exercise case, Reynolds V United States...²¹ involved federal statutes that outlawed polygamy, a practice engaged in by the followers of the mormon faith. Lawyers for the Mormon Church defended the practice on free exercise grounds. The assertion failed and federal legislation was upheld. The justices found that polygamy involved more than a belief and anticipated a later distinction between belief and action that became important to the development of the first Amendment.

The standards of religious tolerance of the Supreme Court in the United States was put to test in two cases involving the salutation of the National flag. In the first, Minersville School District v Gobbitts²² two children who were Jehovahs witnesses, were expelled from refusing to

participate in a required flag salute ceremony. A ceremony which they equated to paying homage to false gods. The Supreme Court by an 8 to 1 decision overruled the Lower Courts. Justice Frankfurter, delivering the opinion of the court argued for the symbolism of the flag and country over the individual commands and beliefs of religion.²³

The lone dissenter, Justice Oliver Stone observed;

'I am not prepared to say that the rights of this small and hopeless minority, including children having a strong religious conviction, whether they understand its nature or not to refrain from an expression obnoxious to their religion, is to be overborne by the interest of the state in maintaining discipline in the school.'²⁴

Three years later in State Board of Education V Bernette,²⁵ the Supreme Court, this time under the chief justiceship of Harlan F. Stone, the dissenting Judge in the Gobbits case, changed its position, holding that the constitution required the withholding from the state any authority to compel belief or the expression of it where the expression violates religious convictions.

In Zambia, in a case also involving the refusal to salute the National flag (Kachasa V Attorney General)²⁶ as required under the Education (Primary and Secondary Schools) Regulations 1966, the High Court arrived at a different verdict. In that case the petitioner through her farther, had asked for redress claiming that her rights under Articles 13-26 of the constitution particularly that of consciousness, religion and thought under (the then) Article 21 had been infringed.

The regulations claimed to be in conflict with the constitution were regulations 25 which required the singing of

the National Anthem and saluting of the flag and 31 which allowed the head of the school to suspend any pupil refusing to abide by the provisions of Regulation 25.

Blagden J. applied an objective test in considering whether the procedure amounted to a religious ceremony. He came to the a conclusion that it was not religious in nature.

He accepted however that in the eyes of the petitioner it was a religious ceremony that amounted to a hinderance of her rights under Article 21 but went on to say that if fell within the limitations of the right as being reasonable and necessary in the interests of national unity. He observed:-

"Article 21 of the constitution is one of the protective provisions in Chapter III of the constitution It deals specifically with the protection of the freedom of conscience ... the right to freedom of conscience, thought and religion ... is a fundamental one but is not absolute. It is subject to the provisions exacted by sub-section(5). The effect of these provisions is to allow restraints on freedom of conscience when these are imposed by a law which satisfies certain requirements and when the restraints themselves are reasonably justifiable in a democratic society."27

The above highlights the Zambian position. Boardly it could be said that where the constitution grants certain rights in the form of fundamental human rights and freedoms it does so to the extent that this right is limited to instances where it does not prejudice the rights and freedom of others or the public interest. Any other limitations would be those as would be provided for in the sub-articles of the same article granting the protection. These will normally make it a requirement that any limitation on the right be reasonably justifiable in a democratic society.

2. Freedom of association

(a) History of the right in Zambia

The right of freedom on association has been one that has undergone much legislative change in Zambian constitutional history, especially with regard to the formation of political parties.

Under the 1st Republican constitution, set out in the schedule of the Zambia independence order 1964, all persons of Zambia citizenship had the right to form associations in general and political parties in particular. In this respect, two major parties were formed, that is the United National Independence Party.(U.N.I.P) under the leadership of Kaunda and the African National Congress under the leadership of Nkumbula. Both these parties managed to obtain seats in the parliament with UNIP having a majority. In 1972, president Kaunda acting in response to written submissions made to him to change the system of government to a single-party democracy, appointed the Chona commission. This commission was given the task of considering the modalities of forming a one-party state. Despite intense opposition from the opposition party, A.N.C. and its leader Nkumbula even to the extent of unsuccessful appeals to the courts of law, the one - party state system was introduced.

The constitution of Zambia Act No.25 of 1973 repealed and revoked the Zambia Independence Act 1964 and the Zambia Independence Order 1963 and replaced it with a new constitution.²⁸ Under the 1973 constitution by virtue of article 4 there was only one political party allowed in the

Republic, namely the United National Independence Party(U.N.I.P)

The right of association and other fundamental rights under part III of the constitution were thus made subject to the provisions of article 4.

The fall of Soviet Russia and other communist governments world wide brought about 'the winds of change' that swept across the African continent. This entailed an increase in the demands for a return or introduction of a system of multi-party democracy. To this end, in Zambia a pressure group was formed known as the Movement for Multi-Party Democracy (M.M.D). Through the concerted efforts of the members of this group and the public at large the U.N.I.P. Government was made aware of the peoples will. To meet these demands and to allow for multi-party elections to be held later that year, the Constitution of Zambia Act No. 1 of 1991 was passed which repealed the 1973 Constitution of Zambia, Act.²⁹

Under the present Act, the constitution of Zambia Act No. 1 of 1991 and the constitution (republican) outlined in its schedule, the right to form political parties has been re-introduction under part III in Article 21 in particular.

(b) The right itself

Protection of the freedom of association and assembly is provided for under article 21 of the constitution of Zambia, No. 1 of 1991, which provides;

(ii) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or

belong to any political party, trade union or other association for the protection of his interests.'

Article 21(1) thus provides the right to form a political party in Zambia. Article 21(1) must however be read in conjunction with article 11 which is the defining Article as was explained in the Patel³⁰ case.

'This section is definitive because it makes the provisions of the chapter effective ... for the purposes of a affording protection to those rights and freedom' and subjects them to limitations. They are two purposes for the limitations (1) to preserve the rights and freedoms of other and (2) to preserve the public interest. It is necessary, therefore, in considering the specific limitations imposed by the other provisions of Chapter III to read them together with Article 13³¹ (presently Article 11)

(c) The limitations to the right.

When read in conjunction with Article 11 the freedom of association is guaranteed under Article 11(b) but limited, these being limitations.

'... designed to ensure that the enjoyment of the said rights and freedom by an individual does not prejudice the rights and freedoms of other or the public interest.'³²

Further under article 21(2):-

"Nothing contained in any law shall be held to be inconsistent with this article to the extent that it is shown that the law in question makes provision-

(a) that it is reasonably required in the interests of defence, public safety,

public order, public morality or public health;

- (b) that is reasonably required for the purpose of protecting the rights and freedom of other person;
- (c) that imposes restriction upon public officers;
- (d) for the registration of political parties in a register established by the law and for imposing reasonable conditions relating to the procedure for entry on such a register including conditions as to the minimum number of persons necessary for registration;

and except so far as that provision or the thing done under the authority there of as the case maybe is shown not be reasonably justifiable in a democratic society"³³

This last paragraph provides that where there is a law limiting such freedom as is outlined in the article it must be one that is reasonably justifiable in a democratic society a question that will be determined by a court should it be questioned. It will operate as a limitation unless the petitioner, proves otherwise and the court of its own right declared it unconstitutional.³⁴

(d) The position of religious political parties.

Unlike the United States, the Zambian constitution does not prohibit the integration of religion and politics and is silent on the relationship between government and religion.

Under the first Amendment to the American constitution the guarantee of the freedom of religion is divided into two

distinct clauses designed to protect religious freedom. One is the establishment clause which prohibits any law respecting an establishment of religion.³⁵ The other is free exercise clause considered earlier.

The basic purpose of the Establishment clause is in the words of Thomas Jefferson, to create a wall of separation between the church and state.³⁶ The case of Everson V Board of Education³⁷ did list down some of the government actions that would clearly violate the Establishment clause. One of these outlined was that of participation

Government may not participate in the affairs of religious organizations and such organization may not participate in the affairs of the government.³⁸

There is thus a clear policy in the United States to keep religion and politics separate and arguably this could be used to disallow the formation of a political party based on religious lines or based on the promotion of religious values.

In Zambia however no such policy exists. The right to form political parties in Zambia that has been examined in this chapter has no restrictions on the formation of religious parties. The right of freedom of association under Article 21 of the constitution is not restricted to the formation of apolitical religious associations nor does it limit the freedom to secular political parties. Hence the formation of a political party based on religious grounds would be allowed and granted the same protection and freedom as other political parties. It would be subject only to such restrictions and provisions as would be applicable to any political party that is not religious in nature.

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CHAPTER TWO

PROCEDURAL ASPECTS: REGISTRATION

Registration is an essential procedure in bringing about legal recognition of a party. This chapter considers this exercise.

1. Requirement to register societies

The right to form political parties subject to certain limitations and requirements is provided as we have seen, under Article 21 of the Republican Constitution.¹ One of these requirements is that such party be registered according to such procedure, outlined in a law, as is reasonably required to enter such register. In Zambia, the law setting up such a register and governing entry through the appropriate medium is the Societies Act (Hereinafter referred to as the 'Act').²

By virtue of Section 3(1) of the Act there is set up the public office of the Register of Societies. It is this officer working with others under him who is responsible for the registration of societies or exemption of registration of societies, as the case may be, under the provisions of the said Act. The Act makes provision for the registration of societies. It should be noted that all political parties are registered under the provisions of this Act as societies. There is no separate or special provision for the registration of political parties as opposed to other eligible associations³

Society is defined under section 2 of the Act as meaning: 'any club, company, partnership or other association of ten or more persons, whatever its nature or object-

(b) having its headquarters within Zambia; and any branch of such club, company partnership or association, but does not include - '

The definition goes on to exclude companies under Chapter 686⁴ of the laws of Zambia and other associations under Chapter 507,⁵ those under Chapter 689⁶ and generally restricts any body formed lawfully under any other law in force in the Republic and those societies declared by the Minister not to be a society for the purposes of the Act.

1 (a) Basis for registration.

The rationale of having a system of registering societies can perhaps best be highlighted from the preamble of the Societies Act which provides that it is:-

"An Act to provide for the better control of societies by registration and supervision; and to provide for matters connected therewith and incidental thereto."

In effect the procedure of registration ensures that all societies formed abide by certain requirements that test their legality. It also ensures that societies formed are organized associations whose objectives, internal conduct etc, can be scrutinized by the general public by making their documents open to the public at a fee⁷

Section 10(3) of the Act allows for the documents submitted to the Registrar and entered into a register to provide a means of evidence in any proceeding concerning the same. This helps to ensure that confusing situations like two societies bearing similar names^{*} is avoided.

Overall, the practice of registration ensures an organized system for the establishment of societies and

provides an effective system of record and thus makes any matter connected to societies more systematic.

To understand the requirements that a political party or organization needs to fulfil to be registered as a society under the Act, regard must be had to the provisions of the Act and the powers of the Registrar to enter or refuse entry of the same into the register.

2. The procedure of registration.

(a) Distinction between registration and exemption

The Act makes reference to the registration, of societies and the exemption from registration when laying down the procedure for application of the same.⁸ Exemption from registration allows the societies not to submit annual returns as is required of registered societies.⁹ Further such exempted societies pay no tax or only a nominal amount.¹⁰ Since this form of registration is mainly confined to church and other service oriented organizations, not political parties, we will not concern ourselves with it.

(b) Application.

The procedure for the registration of a political party under the Act begins with an application to the Registrar of societies in accordance with section 6(1) of the Act. It provides.

'Every society shall in the manner prescribed and within twenty eight days of the formation thereof or of the adoption thereby of a constitution or of rules... make application to the Registrar for registration ... under this Act ...'

The Act empowers the Minister by statutory instrument, to provide for general rules for the better carrying out of the provisions of the Act.¹¹ Thus rules prescribing, among other things, the manner of registration of societies, the necessary

forms to be used etc have been provided for in the 'Societies Rules.'

Rule 5 of the societies Rules provides for the application procedure of registration. Under the provisions of this rule an application form (Appendix 1) has to be filled out in quadruplicate. This form bearing all the information on the society is required to be presented to the police Officer commanding of the area and the District Secretary for their consent. The rule also requires, all office bearers of the society to sign the form in the presence of the Registrar and that copies of such form be sent to the Registrar of the district in which the society has its registered office. Three copies of the constitution or rules of the society are also required to be accompanied with the application form. The prescribed fee for the registration of such societies is not refundable.¹² The submission of the above documents with the required information will conclude the application process.

(c) Factors to consider in registering or refusing registration of Society.

In considering whether to register a society in accordance with section 7(1) of the Act or to refuse to register it in accordance with the authority granted to the Registrar under section 8 and section 9 of the Act, the registrar will, upon receiving the completed application forms, call a meeting of senior officers in the office of the Registrar of Societies. Together they will sit and consider the application before them.¹³

The aspects they will consider will be those as are contained in section 8 and 9. Section 8 provides;

'The Registrar may refuse to register ... any society where it appears to him that such society has among its objects, or is likely to pursue or to be used for, any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia, or that the interests of peace, welfare or good order in Zambia, would otherwise be likely to suffer prejudice by reason of the registration of such society.'

The Registrar is thus given discretion under this section in considering whether to allow the registration of the society or not. The section is meant to cover such objects and consequences as would follow the registration of the society that are not within the ambit of section 9 but are nonetheless, in the Registrars opinion, likely to result in any or all of the undesirable results outlined above.

Section 9 on the other hand provides for specific instances where the Registrar must refuse registration where he is of the opinion that the provisions of the section have been contravened. Instances where registration is to be refused include:-

"... Where-

(a) It appears to him that the term of the constitution or rules of such society are in any respect repugnant to or inconsistent with the provisions of any law for the time being in force in Zambia."

With regard to this sub-section, factors such as membership of the society, objectives etc could be taken into

account. For instance where the society to be registered is the 'Nigerian Association', restricting qualification of membership to being Nigerian is not in conflict with any law. This is because the objectives of such association would only concern affairs of Nigerians and would not extend to non-Nigerians, such that non-Nigerians would be unable to contribute anything by becoming members. That such restriction is valid can be ascertained from the fact that there is a Nigerian Association registered under the Act.¹⁴

In contrast, where the society to be registered is a political party, restricting membership to a certain class of people based on race, creed, sex or otherwise would amount to a restriction in contravention of the constitution. Such restriction would be against the right of freedom of association and other non-discriminatory rights in the form of fundamental rights contained in part III of the Republican Constitution.¹⁵ Such restrictions would therefore, not be allowed.

Section 9(b) of the Act gives the Registrar the authority to refuse registration where he feels that the provisions of the Act have not been complied with.

Here, considerations like minimum memberships of the society, procedure of application followed, forms completed and the like will be had regard to.

Registration of the society can also be refused where such society is believed, on reasonable grounds, not to exist.¹⁶

The final specific instance provided where the Registrar must refuse registration is that concerning the name of the

society. Under sub-section 9(d) of the Act the registrar is required to refuse registration where the name of proposed society is identical with that of another society already registered. Also where such name so closely resembles the name of another society so as to cause confusion or where the name is otherwise undersirable or inconsistent with any law for the time being in force in Zambia, registration is to be refused.

Thus it can be seen that with regard to the name of the society the Registrar appears to have wide discretion. Infact this is one of the main areas where applications of registration have met opposition for example, the only political party in recent times to be refused registration was the Caucus for National Unity which bore initials similar to that of another political party already registered, the Congress for National Unity (C.N.U.). Hence the former was obliged to register only by the addition of the word 'party' so that its initials became C.N.U.P.¹⁷

(d) Registrars discretionary powers.

Having looked at the aspects of application and influencing factors in the Registrars decision, it is necessary to consider the aspect of the Registrars discretion, if any.

The question that arises when considering Section 8 of the Act is the extent of the powers given to the Registrar and the nature of the same.

In the old English case Julius V. Bishop of Oxford¹⁸ the court sought to lay down some guidelines in determining whether the words in a provision are to be interpreted as

granting discretion or imposing a ministerial duty. " Such words as 'may' and it shall be lawful are prima facie to be construed as permissive, not imperative, "¹⁹

Under section 8 of the Act, the words 'may refuse ... where it appears to him 'are used . This when read together with the context in which the words are used, that is where for all purposes the application is not in contravention of any law or otherwise invalid but merely concerns the Registrar's opinion as to its undesirability, suggests a discretionary power rather than a ministerial duty.

Section 9 of the Act provides for situations where the Registrar must refuse to register the wording used is 'shall' which implies that a necessary course must be followed. This section only leaves the Registrar with the discretion in deciding whether the provisions of the section are met for his powers to be exercised.

J.M. Evan's authoritative text 'deSmiths' Judicial Review of Administrative Action.' gives a summarised account of the principles governing the exercise of discretionary power:-

"The authority in which a discretion is vested can be compelled to exercise that discretion but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case . In the purported exercise of its discretion it must not do what it has been forbidden to do, nor ... what it has not been authorised to do. It must act in good faith, must have

regard to all relevant considerations and must not ^{be} swayed by irrelevant considerations, must not seek to provide purposes alien to the letter or to the spirit of the legislation that gives it power to act and the must act arbitrarily or capriciously."²⁰

Bearing these princip^{les} in mind it will be noted that the extent of discretionary power of the Registrar covers a wide field and would be very difficult to question. The difficult generally in contesting a decision under such powers can best be brought out by a case illustration.

The aspect of discretionary power was the subject of judicial proceedings in the Zambian Court of Appeal case of Nkumbula V the Attorney General.²¹ In that case the appellant had argued that the appointment, by the President, of the Commission of Inquiry under Section 2 of the Inquires Act (Chapter 181) was ultia-virus null and void because the matters to be inquired could not be for the public welfare within the meaning of those as used in the said section.

Section 2(1) of the Inquiries Act, (chapter 181) provided;

"The president may appoint a commission ... to inquire into any matter in which an inquiry would in the opinion of the president, be for the public welfare"

Baron J.P. delivering the opinion of the court held that the words 'in the opinion of the president's clearly made the matter one for the subjective decision of the president and that consequently a decision made in consequence of this power could not be challenged unless it was shown that the authority vested with the power acted in bad faith or form improper

motives or on extraneous considerations or under a view of the facts or the law which would not reasonably be entertained.²²

The appellant was thus unsuccessful in claiming that the appointment of the commission to look into modalities of forming a one-party state was not in the public welfare. Since the opinion was in the discretion of the president, challenging it would amount to saying that the president did not hold the opinion he actually did.

(e) **Registration**

Once all the stages in the procedure of registration have been passed, that is application, consideration thereof and exercise of discretion, there remains only the last stage, namely, the actual registration of the society.

The power of the Registrar to register a society after due application has been made is provided under section 7(1) of the Act.

Evidence of such registration is provided by the issuance of a certificate by the Registrar to the society in a prescribed form²³ in accordance with section 7(3) of the Act.

While the process of application for registration is continuing, and up to the time that it is actually registered, the society is treated as a lawfully registered one.²⁴

Once the certificate has been issued in the prescribed form and in accordance with section 7(3) of the Act, the Registrar will under section 10(1), enter the name of the society, and all the particulars given in the application, in a register kept for the purpose.

Section 15(a) of the Act also obliges the Registrar to inform the general public of the registration of the society by notification through the Gazette.

This then concludes the procedure of registration.

3. REGISTRATION OF RELIGIOUS PARTIES

We turn now to the main focus of this chapter; the possibility of registration of religiously inclined political parties. When considering the conclusions in the various stages outlined above, we can conclude that generally speaking there is no law prohibiting the formation of a political party on religious lines. Provided that the provisions of the Act met, a political party which is religiously inclined, that is, has objectives based on principles of a particular religion etc, but which otherwise has all the trappings of a political party can be registered under the Act.

In an interview with the present Registrar of Societies,²⁵ the question of a religious party's eligibility for registration was posed. The Registrar was of the opinion that in the case where there was no conflict with any provision of the Act, it appeared possible to register a political party which is religious in terms of its objectives and nature but otherwise complies with all the aspects and requirements of the Act.

An example where such a party has been registered is provided by the case of the Christian Alliance for the Kingdom of Africa Party (CHAKA) which was registered before the general elections of 1991. A perusal of its fundamental principles as set out in its constitution will reveal the

religious stand and nature of the party. Its constitution provides:-

Article 1

- (1) The name of the party shall be; CHRISTIAN ALLIANCE FOR THE KINGDOM OF AFRICA PARTY.
- (2) The party guided by the philosophy of Gods supremacy is the militant organization of committed christians regardless of denominations and conservative peasantry. Christ never changes. He has the same teachings yesterday, today and tomorrow. The party's conservatism is based on Gods love for his ordained traditional rulers of the world. This love is centred on man and his environment for prosperity.

Article 2

- (1) The main task of the party is to accomplish a smooth and effective integration of chieftaincy into state and government politics
- (2) The party shall wage a relentless struggle against all internal and international revolutionary forces. It shall fight against both extreme capitalism and socialism for mixed economy until Zambia learns to OBEY GOD for justice, peace and prosperity to abound."

The above will clearly show the influence of christian religious principles in the party's objectives. The party was registered because although it was religiously inclined in principle it was not discriminatory. This can be seen from its rules with regard to membership. The constitution under Article 6 provides:-

(1) The party shall have two types of membership:

- a. Ordinary membership
- b. Honorary membership.

(2) The ordinary membership of the party shall be voluntary and open to all sane citizens of Zambia from the age of 18 and above regardless of sex, religion, race or tribe.

The parties constitution further insured that there was no internal discrimination within the party. Under the rights of a member it provides:-

Article 11

Subject to the provision of this constitution a member of the party shall enjoy the following rights:-

- (a) To freely elect or to be elected at all levels of the party structure.
- (b) To freely participate in party deliberations at all party meetings,

These factors served to justify its registration.

The ruling Movement for Multi-party Democracy party (MMD) too could be said to be a party that is religiously inclined. Although it is not as precise as the CHAKA party in outlining its christian religious principles, MMD by virtue of its manifesto declares:-

"The MMD government recognizes and accepts that Zambia is a christian country which is tolerant of other religions."

Zambia's permissive stance towards the formation of religious political parties thus seems to be apparent. However the unsuccessful bid by the proposers of the Islamic Party to register their party, brings out a whole new aspect to the

question of the possibility of forming such parties in Zambia. To understand the Islamic Party's failure to obtain registration a consideration of the surrounding circumstances is necessary to see how these may have influenced the outcome. These can be covered by looking at the subject matter of the essay from the practical aspects to it.

NOTES

1. Constitution of Zambia, Act No. 1 of 1991, Laws of Zambia
2. Chapter 105 of the Laws of Zambia.
3. As was explained in an interview with G. Phiri The Registrar of Societies on 20/08/93.
4. Chapter 686-Companies Act Laws of Zambia.
5. Chapter 507-Trade Union and Trade Dispute Act, Laws of Zambia.
6. Chapter 689 - Co-operaaive Societies Act, Laws of Zambia.
7. According to Section 10(2) of the Societies Act op cit
8. Section 6, Ibid.
9. Rules 16(1) The Societies Rules' under section 38, Ibid.
10. As was explained by a Junior Officer, C.M.D. Zulu in the office of the Registrar of Societies in an interview on 20/08/93
11. Provided under section 38, Societies Act op cit.
12. Rules 5(2) 'The Societies Rules' op cit.
13. As was explined by C.M.D. Zulu, junior officer in the office of the Registrar of Societies on 20/08/93.
14. This was gathered from an explanation given by a junior officer in the office of the Registrar of Societies in an interview on 20/08/93.
15. Act No.1 of 1991, Laws of Zambia.
16. Section 9(c) of Societiess Act op cit.
17. example given by junior officer in office of the Registrar of Societies in an interview on 20/08/93
18. (1880) 51AC 214.
19. In J.M. Evans 'De Smiths Juducial Review of Adminstrative Action' Steven and Sons, London, 4th ed. pg. 284.
20. Ibid pg. 285.
21. (1972) Court of Appeal.
22. In M.Ndulo and K. Turner 'Civil Liberties Cases in Zambia' African Law Report, Oxford, 1984 pg 125.
23. Form S.O.2, Rule 6, 'The Societies Rule ' op. cit.

24. Section 23, `Societies Act op. cit.
25. G. Phiri on 20/08/93
26. MMD Manifesto - section (2) pg,10

REFERENCES

1. Evans J.M. de Smith Judicial Review of Administrative Action 4th ed. Steven and Sons, London 1980.
 2. Muna Ndulo and Kaye Turner Civil Liberties Cases in Zambia African Law Reports, Oxford, 1984
- Other: statutes
3. Constitution of Zambia, Act No.1 of 1991, Laws of Zambia.
 4. Societies Act, Chaptr 105, Laws of Zambia.

Party Constitutions

5. Constitution of the Christian Alliance for the Kingdom of Africa Party.
6. Movement for Multi-party Democracy Party Manifesto

Notes

7. Notes on interview with Registrar of Societies G. Phiri and Junior Officer, C.M.D. Zulu in the office of the Rigrstrar of Socities. former Namibian Institute.

CHAPTER THREE

THE PRACTICAL ASPECTS

The Registrar's discretion in the registering of political parties has been outlined in the previous chapter. In exercising this discretion, the Registrar would generally have regard to surrounding factors and events that would affect the registration of such societies. Therefore a consideration of some of these influential factors is essential to understand the Registrar's position towards religiously inclined political parties in general and his particular reaction towards the Islamic Party's case. This chapter will attempt to provide such a consideration.

To begin the discussion, a brief background of the events leading up to the present situation concerning the attempted registration of the Islamic Party is provided.

1. Brief facts of the Islamic Party's attempted registration

In a bid to provide a forum to air their views, a group of indigenous Zambian muslims together with some non-muslims resolved to form a political party. They sought to form such party in line with Islamic values which they felt were universally applicable and essential to solving some of the problems of the country.¹

To this end, a constitution was drawn up in September 1992 and the application process for registration began. The approval of the Town Clerk and Officer Commanding was obtained along with that of the Office of the President. The constitution of the party was finally submitted, in accordance with the regulations to the Registrar for approval.²

The Registrar of Societies who meet with the proposers of the party, initially objected to one of the clauses in the constitution which was to the effect that the principles and objectives of the party would be those as would be in accordance with the Quran (the muslim religious text).³ The proposers accepted these objections and resorted to change the provisions of the party constitution accordingly.

An amended constitution where all reference to the Quran was removed was then re-submitted to the Registrar. In the meantime, investigations had been carried out on the members of the proposed party by the Office of the President acting with the Ministry of Home Affairs⁴. Various leading Islamic societies were approached for information. These societies, being unaware even of the existence of such a movement to form a political party, objected to the Minister to its formation. Their objection was based on their apprehension to the use of the word 'Islamic' especially since they harboured misgivings as to the objectives of the proposed party.⁵

When the Registrar met again with the members of the party he advised them of the events that had taken place and asked if they would consider changing the name of the party. The request was turned down as it was thought that this would defeat the purpose of the formation of the party. Subsequently the Registrar informed the members that he objected to the use of the word 'Islamic' and refused to register the party. Unable to reach a compromise on the issue, the applicants appealed to the Minister of Home Affairs in writing. The Minister, however, did not react immediately to appeal.

At this stage a number of events took place which undermined the position of the formation of an Islamic party (we will look at each of these in detail later).

A state of emergency was declared on the 4th of March 1993 following the discovery of a seditious document called the Zero-option Plan. This document was found in the possession of some high-ranking officials of the opposition party, the United National Independence Party (U.N.I.P.). In addition two embassies, who were alleged to have been interfering in the affairs of the state, were expelled. These events affected the Islamic Party's position in that the offices of their senior members were located at the U.N.I.P. Headquarters, Freedom House. They were further implicated by the fact that they had received funding from one of the expelled embassies, Iran.

The members of the Islamic Party denied any link with this apparent conspiracy and were never ever detained or otherwise charged with being involved in the same. The media, however, succeeded in portraying the picture that the party had questionable origins. The subsequent circulation of documents, a communique, of what was considered a fundamentalist organization, the Islam in Africa Organization (IAO) served to further undermine the Islamic Party's position.

The contents of the documents published in the local newspapers⁶ purported to reveal a conspiracy to further Islamic interests within countries of Africa and suppress all other religions. Though no direct link between the Islamic Party and the fundamentalist organization was established, the

and information concern national security.¹² The Registrar, himself was reluctant to comment on the status of the application stating that the matter was no longer in his hands. The position at law of the party is not too clear either as it has not officially been refused to be registered in that no such notice in writing has been given nor has it been gazetted in accordance with section 15 (e) of the Societies Act¹³ which requires all refusals to register a society to be notified by Gazette. Recent reports indicate that the matter is to become the subject of judicial proceedings.¹⁴

Despite the present unclear position of the party's standing, we will continue in this chapter to consider some of the factors both local and international that may have influenced the present outcome.

2. Political factors

There have been many incidents arising out of the actions of government either preceeding or after the attempt to register the Islamic Party that could have contributed towards the decisions made. We will consider some of these and discuss their influence.

a) Declaration of Christian Nation: Legal and practical implications

The declaration of Zambia as a Christian nation by the President on the 29th of December 1992, has caused much controversy in various circles of the Zambian community and affected a number of events. To consider the Islamic Party's standing an understanding of the legal and practical implications of this declaration is necessary.

Barely two weeks after his appointment, the Minister of Information banned an Islamic Programme on radio and a singers dances from television on the ground that these were against the principle that Zambia was a Christian nation.¹⁵

The ban was subsequently revoked on order of the Vice-President.¹⁶ This was effected based on the various protests from the public, members of Parliament and even the former Minister of Legal Affairs who branded the banning order unconstitutional.

The declaration of Zambia as a Christian nation was made following this controversy. It was a means by which the government clarified its position with regard to the Minister's statements as to the status of the country. The President called a number of members of the Christian faith to State House and declared Zambia a Christian State in accordance with the provisions of the Movement for Multi-party Democracy (MMD) party's manifesto (the ruling party).¹⁷

The declaration initially caused much controversy and was questioned by non-Christians especially muslims, and other Christians who were from churches not ascribing to the American revivalist, born-again, movement.

The fact that the President had emphasised that 'minority religions would still be tolerated as enshrined in the party manifesto' did not help the situation at all. The minority religions were not comfortable with the position. As one muslim leader put it; "The constitution does not talk about tolerance but equal rights of workshop for all, regardless of numbers. This whole issue contradicts the principles of a true democracy".¹⁸

In considering the legal implications, it will be noted that the declaration has no legal backing. Further, it is apparent that in making the declaration the President did not consult his Cabinet nor leading figures from the orthodox Christian churches.¹⁹

One veteran Catholic priest cautioned the President on the importance of consulting other churches. The newspapers carried the story on the worry among churches with regard to the influence of the 'born-again' groups on the MMD government. The concerned bodies included the Zambia Episcopal Conference and the Christian Council of Zambia.²⁰

The former Legal Affairs Minister warned that; "Religious bigotry and fundamentalism has crept into Zambian soil and we should not lose sight of this fact. We must fight to keep freedom of worship as alive as when the United Nations was formed."²¹

However, as the President subsequently explained, the declaration was meant to be a 'mere pronouncement' aimed at reinforcing Christian values to get rid of vices such as corruption and bribery in government.²²

Legally therefore the declaration is no more than a statement of policy and does not thereby infringe on or derogate from the rights of atheist or people belonging to other minority religions, these rights and freedom of worship being protected by the Constitution. Further it does not establish Christianity as a national religion as opposed to other religions, as the Constitution is still secular in nature.

Practically however, the situation is quite the reverse. Various communities and organs of government have taken the declaration literally and pursue it as a government policy.

A chairman of the Apostolic Council of churches was quoted as saying; 'Since Zambia has been declared Christian, Muslims should be given little chance of collaborating with local people. Young Zambians should shun Islam while muslim programmes on radio should be banned.'²³

Further, as a political analyst observed, 'the MMD government now seems to have chosen Christian values as its governance ground. Having pronounced Zambia a Christian nation, radio and television are now religious veins. Everyday we see several preachers on television.'²⁴

Christianity thus has been regarded by some as Zambia's new political philosophy replacing the former President's "Humanism". This has had its effect on governmental organs as well. When attempting to register the Islamic Party, the members were confronted with statements from the Registrar to the effect that they were pursuing a foreign religion and trying to impose a foreign ideology²⁵, indicating that it was a religion alien to the country and necessarily implying that the country had its own religion that was established as such.

The declaration of Zambia as a christian nation, though having no legal implications or authority, has served in bringing about a rift within the various religious communities. New concepts like foreign religion and religious fundamentalism have become common phrases used widely. Its

contributory influence to the unsuccessful registration bid of the Islamic Party is apparent.

(b) The Zero-option Document and the State of Emergency-

The people of Zambia were subjected to the imposition of another declaration of a state of Emergency on the 4th of March 1993, barely a year and half after the lifting of the last State of Emergency. The reasons for the new declaration were based on the existence of a conspiracy to usurp power from the government after causing wide spread fear and chaos in the country. This plan was contained in a document called the Zero-option plan, found to be in the possession of certain high ranking U.N.I.P. Officials.

This discovery resulted in certain members of the opposition party being detained and subsequently charged. The involvement of two foreign embassies in the internal affairs of the country was also reported. Subsequently the embassies of the Republic of Iran and Iraq were expelled from the country.

These events while seemingly remote from the attempted registration of the Islamic Party, nonetheless may have affected it. Firstly the Lusaka offices of the members of the Islamic Party who were also members of the Islamic Youth Wing were located at Freedom House, the official U.N.I.P. headquarters. These offices had been rented by the Islamic Youth Wing.

Further it became public knowledge that the proposers of the Islamic party had received some funding from the Iranian embassy. It was argued that this funding was not towards the

formation of a political party but rather towards the Youth Wing. 26

It was speculated that the Islamic Party was one of the dis-stabilising means through which the Zero-option plan was to be effected.

Further, the minister of Home Affairs sought to question the Islamic party's motives. In reaction to their appeal, he was quoted in the newspaper as saying; 'If they admit they are getting money from Iran, they must strictly consult their conscience, they shouldn't think society is so backward they don't know the objective they wish to pursue.'²⁷ The Minister thus seemed to have assumed the party's guilt by virtue of its association. This factor must certainly have influenced the minister in the making of his decision.

(c) The Conspiracy Documents.

On the 21st of March this year an article under the heading 'Muslim Conspiracy Unearthed' appeared in a local newspaper.²⁸ It published the provisions of a document that was said to be circulating in the capital, Lusaka. It purportedly spelt out an Islamic plan to take over Africa by sponsoring national political parties in countries with large christian populations.

The documents were said to be the resolutions of an organization called the Islamic in Africa Organization (IAO) which was said to have nine African countries as members of its steering committee. Some of the resolutions in this document included;_

"To ensure the appointment of only muslims into strategic national and international posts of member-nations; to create

in all its forms and ramifications non-muslim religions in member-nations etc"

The fear that was generated through the press from the implied link of this organization to the Islamic Party must have contributed toward the decisions resulting in the present state of affair's.

3. Public opinoin

The opinions of the various organizations consulted during the investigations on the Islamic Party and those expressed later in the press when the registration bid was made public knowledge, were certainly an important factor that could have been taken into consideration in deciding the fate of the proposed party. We will examine some of the opinions expressed here.

(a) The Islamic Organizations

Members of the muslim faith worldwide are split into two major groups, the Sunnis and the Shia's. It is a division that has existed since the earliest times of the religion. The basic tenet of the separation is that the Shia's in contrast to the Sunni's, do not accept the first 3 Caliphs (Religious Leaders) that ruled the Arabian empire after the death of their prophet. They believed that the rightful hier should have been the prophets cousin and son-in-law, Ali.²⁹

This split, essentially political in nature, is of relevance for our purposes in that Iran is seen as the main propagator of the Shia belief. Its followers are mainly viewed generally, and especially by the Sunni sect, as being more radical, emotional and even at time violent in asserting their rights and beliefs.

Therefore, when the Islamic Organizations (who are subscribers to the Sunni belief) heard of the attempted formation of the Islamic Party, a factor which they had no knowledge of, having never been approached or consulted in the matter, and upon hearing that the members had received funding from the Iranians, they assumed that the movement was a Shia inspired one. Representations were therefore made to the Minister warning him that the registration would create problems for the government.

A founder leader of an Islamic Organization warned the Minister through the press. He was quoted as saying the followers of the party were trouble makers capable of disrupting peace in the country. He charged that there was outside pressure from powerful forces who were behind the formation of the party.³⁰

Two chairmen of other Islamic organization told a press conference that they were opposed to the use of the word 'Islamic.'³¹

Further the Islamic council had disowned the Muslim Youth Wing which had initiated the formation of the party.

This public disassociation by various existing Islamic organizations from the prospect of having an Islamic party and the warnings issued showed support for both the Registrars and Ministers decision not to register the party. This disassociation is likely to have played an influential part in the outcome of the decisions when such were being considered.

(b) Influence of the Churches.

The influence of the church in Zambian politics as an expression of public opinion and concern has always been

apparent. However the declaration of the Christian nation, though it creates no legal establishment of the church has served to give more weight to the opinion of the church in decision making.

The churches concern with regard to the influence of Islam in the country was expressed by the Anglican Bishop. The vicar general of the Anglican diocese of Lusaka expressed the churches fear of the rapid spread of Islam in the country.³² He told 100 delegates attending a three day synod that it was saddening that Islam had netted more than half a million followers. He said the shite's claimed to be numbering 1.2 million while the Sunni's boasted of a million during the past three years (these figures are unsubstantiated)

The Reverend disclosed to the press that church leaders had protested to the president on the intended signing of numerous agreements with Iran. The church was said not to be able to sit idle and observe the aggressive subtle Islamic campaign and therefore through diplomatic channels went to state house to register its concern just before diplomatic ties between Zambia and Iran were severed.³³

Further, other churches used the press to warn the President that allowing the Islamic party to be registered would lead to confusion.

One well known christian leader warned authorities that religious groups vying to transform into parties would promote discrimination which could degenerate into civil war as followers competed to assert themselves.³⁴

These views of the various churches under the new secured position of christian opinion was likely to have played an influential role in the fate of the Islamic Party.

4. Rise in fundamentalism worldwide

Of all the factors considered under this chapter the aspect of the rise in fundamentalism worldwide and the fear that this has instilled in many governments the world over has probably had the greatest influence on the out come of the attempted registration of the Islamic Party. As we will see this factor is not entirely independent of the others discussed and there are general areas of overlap.

The factor of fundamentalism is important for our purposes in that the Islamic Party has among other allegations been accused of being a fundamentalist movement liable to bring chaos in the country. The fear that is generated in political circles by anything that has to do with Islam has to be appreciated to understand the influence of this factor on the unsuccessful bid at registration of the Islamic Party.

Most fundamentalist movements have arisen in areas hard hit by the effects of the world wide recession. They have been feared because they have resorted to violence and terrorist acts to impose their beliefs

The imposition of Islamic law after violent revolutions in countries like Iran and the Sudan have contributed towards the cautiousness with which most African governments view any political aspirations of members of the Islamic faith. This can best be seen by how two African countries have dealt with the attempted formation of political parties by muslims.

(a) Kenyan example

At the end of 1991, the Kenyan president announced the country's return to Multi-party politics following a long period under one-party rule

A political analyst in reviewing the role of Islam there commented; "In Kenya where muslims constitute upwards of a quarter of the population, there is a sense of frustration that they are under-represented in the civil service, academia and the private sector. This perception associated with the suspicion that the muslim establishment is doing too little to protect the interest of its followers could easily trigger a process of radicalization which could itself be exacerbated by democratization.³⁵ It was hardly surprising therefore that when multi-party politics was reintroduced in Kenya by amendment of article 2A of their constitution there was a subsequent attempt in 1992 to register the Islamic Party of Kenya. (IPK)

The registration attempt was unsuccessful the bid being turned down. The muslim trying to form the party were accused inter alia of wishing to propagate fundamentalism, fanaticism slavery and imposition of Islamic law and rule.³⁶

Unlike Zambia, Kenyas refusal to register the party met with much violent protest resulting in riots and general unrest, even death.

The refusal to register the IPK meant that it could not participate in the elections of 29th December 1992, which were won by the incumbent president, Daniel Arap Moi.

The Kenyan president, later, in an appeal by the members of the unregistered party, said he would not allow the

registration of the party as it was not in the interest of the state to sanction fundamentalism. He added that he would not allow parties based on religion.³⁷

There is no indication that the law in Kenya provides that religiously inclined parties cannot be registered and it seems that the registration of the party has been withheld mainly on the belief that it is fundamentalist in nature and therefore a possible security threat.

(b) The Tanzanian Case

Tanzania provides a curious case study in that the possibility of the formation of a political party along Islamic lines was ruled out even before any formal attempt was made to register one.

In an interview with a local newspaper here the Tanzanian High Commissioner stated that the formation of an Islamic Party in Tanzania was not possible as such an exclusive movement was against the country's law.³⁸

He explained that political parties in Tanzania had to show support in all regions and provinces and that of the 20 political parties given provisional licences to show they had no less than 200 supporters in all the regions within six months, only four had met the criteria. None of them were religiously inclined.

The main reason for the refusal of the application for an Islamic Party in Tanzania was based on the existent religious tensions in that country.

The circulation of the conspiracy documents (similar to those reported in the *Zambian Press*) coupled with the allegation that Tanzania was represented on the steering

committee of the fundamentalist organization IOA was represented by the press as an Islamic plot.³⁹ Given that religiously volatile political climate the formation of an Islamic party was discouraged. This was so despite the fact that it was subsequently proved that the Tanzanian government had no connection with the IOA and the document, purporting to be a communique were in fact forgeries.⁴⁰

Whether an Islamic Party would have been able to muster the support required from the various regions of the country is a question of fact. The main reason for the failure of such party was the overbearing government pressure to discourage and disallow its formation due to the religious tension caused.

The case illustrations of how these two East African countries, Kenya and Tanzania have dealt with the prospect of the rise in Islamic political parties could certainly have influenced the decisions regarding the formation of the Islamic party here in Zambia. The aspect of the fear of fundamentalism that was paramount in the Kenyan case could have lead to a fear of similar violence here. The threat of the apparently fundamentalist organization IOA whose objectives were reported as being to insure that only muslims were appointed to positions of power would certainly have been perceived as an external threat. This was the case in Tanzania and may have served as a discouraging factor in the acceptance of the formation of an Islamic Party here.

Under this discussion of the influence of fundamentalism a final consideration is required, that concerning which of

the two concepts secularism or democracy has been promoted by the Western countries for use in African Countries.

(c) Socialism V Democracy: The Algerian experience.

The current emergence of democratic forces and multi-party systems in various parts of the world especially in Africa have been warmly welcomed by the West. The West under the guise of a new world order has been on a hard sell campaign for democracy.⁴¹ Many heads of one-party states have seen their aid inflows dwindle. Larger releases of loan commitments were made conditional to the introduction of a pluralist system as was the case in Kenya⁴².

However the western ideal for democracy was side-stepped for another, that of the maintenance of secularism, in the Algerian case. An examination of the Algerian experience is provided here.

As one American writer wrote, Algeria as result of its colonial experience and the post-independence imposition of marxist principles was one of the most secularised, post-sharia countries despite having a 99.1% muslim population.⁴³

Thus the winning of the Municipal elections in 1990 by the Islamic Salvation Front (FIS), considered by the west as a fundamentalist party, took the ruling party and most of the western countries by surprise.

The FIS's subsequent gaining of a clear majority in the first round of the parliamentary elections of December 26, despite massive government opposition and discouraging tactics served to indicate that they represented the people will.

The military subsequently staged a coup-d'etat led by their defence Minister. A state council was set up and a former freedom fighter brought to chair it. This new council called off the second round of the parliamentary elections thus effectively robbing the FIS of its victory at the polls.

Surprisingly enough, the West, rather than condemn this disruption of the democratization process by the Algerian authorities, applauded it. The West thus seems to welcome any authoritarian rule in Algeria that opposes the Islamic movement. French Ministers openly supported the January coup against the FIS (whom they consider fundamentalist) election victory.⁴⁴ They thus opposed any genuine move towards democracy.

For our purposes, Islam and the fundamentalist nature that it has been seen to portray in recent times has contributed towards the cautious view with which any muslim political movement is seen. At times the fear of the effects of allowing such movements has led to an abandonment of democratic principals to secure peace and security thought likely to be endangered.

Thus Zambia's position towards this perceived threat could conceivably have been the reason for the expulsion of the Iranian and Iraqi embassies and the reason for the fadament refusal to register the Islamic Party.

(N.B. The various factors discussed under this chapter are by no means the only ones that contributed to the course of events concerning the Islamic Party's failure at registration, nor indeed are they necessarily the actual ones. They are

considered, however to have played an influential role in the outcome of events.

In discussing the various factors, like fundamentalism, the Iranian funds etc it was not intended to purport that the applicant were actually associated with such organization or that they had such tendencies, but merely to provide an illustration of what sort of picture was portrayed to the public, the government and the decision takers in particular and how these may have influenced them to take the stand they have).

NOTES

1. As was gathered from an interview with Abdul Aziz Mulenga Kosa, interim President of the proposed Islamic Party on 23/08/93.
2. As explained by Abdul Aziz Mulenga Kosa in an interview on 23/08/93
3. As was gathered from an interview with Abdul Aziz Mulenga Kosa on 23/08/93 and, the unregistered, Islamic Party's initial legal advisor, Aziz, Adam on 20/08/93.
4. This was revealed by Abdul Aziz Mulenga Kosa in an interview with him on 23/08/93. His view were based on information he had gathered from discussions with the Registrar.
5. These views were gathered from an interview with Yusuf Patel, Chairman of the United Islamic Organization on 13/08/93
6. In Sunday Times of 21/3/93.
7. Contained in Times of Zambia article 'Zimba Throws out Islamic Youth Appeal' on 14/04/93.
8. Times of Zambia, 15/04/93.
9. Times of Zambia. 14/04/93.
10. Revealed by Abdul A.M. Kosa in an interview on 23/08/93.
11. Times of Zambia, 15/04/93.
12. These facts were gathered from an interview with G. Phiri, the Registrar of Societies on 20/08/93.
13. Chapter 105, Laws of Zambia.
14. Reports in the Weekly Post, October 8-14, 1993 where it is stated that the members of the party have instructed their lawyers to file a writ.
15. Reported in, Elias Nyakutemba's article 'Storm in Chiluba's Cup' in Africa Events magazine Vol 8 No. 2 February, 1992 Pg 13.
16. Levy Mwanawasa, Ibid.
17. Ibid pg 14.
18. Ibid.

20. Ibid.
21. Roger Chongwe, Ibid.
22. Ibid.
23. Reverend Paul Mutanda, Ibid.
24. Dr Sam Chipango in his article 'Is Unita the other option?' in Times of Zambia on 7/6/93.
25. As was revealed by Abdul Aziz Mulenga Kosa in an interview on 23/08/93 and reported in the Weekly Post October 8-14, 1993 as being a reason for the Part's non-registration.
26. Assertions made by Yusuf Phiri, National Youth Co-ordinator of the Islamic Party in Times of Zambia on 20/04/93.
27. Times of Zambia, 20/04/93.
28. sunday Times, 21/03/93
29. Bernard Lewis 'The Arabs in History' Hutchinson Press, London, 1977 pg 71.
30. Sheikh Mubarak Tonga of Islam for all Nations, in Times of Zambia, 16/04/93.
31. Yusuf Patel of United Islamic Organization and Sheikh John Mwale of Islamic Council in Times of Zambia, 14/04/93
32. Revered Pierre Dil, Times of Zambia 10/05/93.
33. Ibid.
34. Bishop John Mambo, Times of Zambia. 16/04/93
35. In article by Eduardo Serpa 'Islam in Sub-Sahara Africa' in Africa Insight Magazine Vol. 22 No. 4 1992 pg 241.
36. In Abdallah Khamis Abdallah's article Righting the wrong's reported in Africa Events magazine Vol. 8 No. 8 August 1992 pg. 39
37. Times of Zambia, 08/01/93.
38. Nimrod lugoe, in an Interview with Sam Phiri, reported in Times of Zambia, 9/5/93
39. As reported in article 'No longer at ease' in Africa Event, Vol. 9 No. 3 March 1993 pg 19.
40. Ibid.
41. Editorial opinion, entitled 'Coming to Roost' in Africa Events magazine, Vol.8 No. 2 February 1992 at pg 6.

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CHAPTER FOUR

CONCLUSIONS.

Before making any conclusion as to the subject matter of this essay, a summary of the various arguments forwarded in the preceeding chapter to answer the question as to the possibility of forming a religious political party in Zambia is provided. We will further discuss whether the present position of the law in Zambia is satisfactory or not and will suggest possible reforms to the law.

1. Summary.

The right and freedom to form a political party in protected under the Republic Constitution.¹ In outlining this right and the limitations thereto, the constitution does not make it a requirement that political parties be secular in nature. Nor does it restrict the formation of religious political parties. The only limitations expressly provided, that are relevant for our purposes, are that such parties be effectively registered. The first chapter, thus sought to provide an illustration of the constitutional right to form political parties and show that the formation of religious political parties was not excluded by this right.

The Societies Act² provides the legal procedure for the registration of political parties. This Act too does not restrict the registration of parties to those that are secular in nature. The specific instances under which an application for registration can be refused are provided for under section 9 of the Act. Refusal for registration under this section could be avoided by insuring that the provisions of the applicant party's constitution are not discriminatory do not

advocate for the breaking of any law, are not in contravention with any law and otherwise comply with the requirements of the Act.

The only time apparently that a religiously inclined political party that meets all the requirements of a registerable political party can be refused registration is where, the Registrar exercises his discretion in accordance with section 8 of the Act.

Such party could be refused registration based on the belief that such registration will be used or will probably result in a disruption of the peace, welfare and good order of the country.

By considering the process of registration in the second chapter it was sought to show that religiously inclined party's can and have been legally registered, provided they abide by the provisions of the Act. Such party's could only be refused registration where the registrar exercised his discretionary powers.

The Registrar's discretion, like all discretionary powers is limited in its exercise to circumstances where it is reasonably applied. External factors could be regarded, however, such surrounding practical circumstances considered, in order to have a bearing on the case, must be such as to enable the Registrar to reasonably conclude that the undesirable effects outlined, that is the disruption of peace, welfare and good order, are likely to result from such registration.

The third chapter served to emphasise that parties could not be refused registration by virtue of this religious

inclination, but rather that surrounding circumstances could cause such applications to be rejected.

With regard to the specific example of the Islamic Party, the rights of the applicants to form such a party is not in doubt. The legal position of the party, however, was not too clear. The members of the party claim not to have received official notification of the refusal to register, and, apart from reactions in the press, the authorities never gave notice by gazette as required by law,³ stating their reasons for refusal.

With this unclear position of the party, the practical factors considered were examined with a view to speculating as to the party's position, had these been taken into consideration, if thought relevant.

2. Conclusions

Generally we can safely conclude that a political party which has as its guiding path the principles of a particular religion, can effectively be formed within the legal framework of the Zambian state. The Minister's statement⁴ to the effect that the constitution does not allow the formation of political parties by religious organizations can be held not to have any legal basis. The limitations on the registration of such parties will only be those as would concern any other application by a political party, secular in nature. Such limitation would not operate as a result of, or by reason of the religious nature of the party.

In the case of the Islamic Party, rather than conclude as to the party's standing, given the surrounding circumstances of its attempted formation, it is chosen to leave the question

open. The reader can decide whether on the given facts there is reasonable ground to disallow the registration of such party or whether the principles of democracy and the rights protected under the institution would be abused by the non-registration of such party.

3. Desirability of present legal position and possible reform.

The contradictory government policies, that is, the declaring of a christian state while refusing to register a religious political party has raised the main issue in this problem; To what extent should religion be allowed to integrate with politics.

Various countries world-wide have religious political parties with a national outlook. The Muslim Brotherhood of Egypt, Bharati Jantadal Party of India, the Christian Democratic Party of Italy and the Christian Democratic Union of Germany to name a few.⁵

The declaration of Zambia as a christian state has been a blessing for some, giving added authority to those who always had influence in politics, to others it has spelt disaster causing confusion as to where they stand in their countries new found religious consciousness. Much of the religious tension in the country can be traced back to this declaration. Religion and politics can only be integrated effectively, where the population of a country predominantly believes in one religion and its people are willing to be guided by such principles.

No precise statistics of the country's religious breakdown are available, however some christians claim that

almost 80% of the population is christian. The official statistics show that about 50% of the population is under 15 years and thus not legally mature to hold strong opinions. In addition, more than 55% of the population lives in rural areas where Christianity is less active while some of Africa's strongest traditions are as alive as ever."⁶

Thus, it cannot be argued that any one religion could be said to win the support of the people of Zambia without leaving a large number of people dissatisfied. In fact, the attempt at integration between religion and politics has led to some unsatisfactory results in Zambia.

The non-registration of the Islamic Party would, thus, in the eyes of its members at least, be seen as a government effort to discourage the rise in influence of any religion except Christianity. The allowing of the formation and registration of a political party with clear Christian overtones and then refusing one with an Islamic outlook would serve to create the impression that Zambians not belonging to the 'state approved' christian religion do not have any rights and cannot even have a say in the governance of the country of which they are citizens.

To solve the present undesirable position and ensure that national unity prevails over religious differences, it is proposed that Zambia develop a system similar to that of the United States.

The United States under its first amendment contains two distinct clauses to protect religious freedom. One is the free-exercise clause.⁷ The other is the Establishment clause,

which prohibits any law respecting an establishment of a religion.⁸

The basic tenet of the introduction of the Establishment clause, was in the words of Thomas Jefferson, 'to erect a wall of separation between church and state.'⁹

The clause has served the dual purpose of ensuring religious freedom and achieving a separation between the fields and religion and politics.

In Zambia such an amendment to the Republican constitution will serve to set a limit between the scope of politics and religion and thus cause ^{less} religious friction.

Religious freedom is a fundamental right. Fundamentalism be it Islamic or Christian, resulting in restricting such freedom should not be condoned and discouraged where possible.

NOTES

1. Part III of the Constitution, Act No. 1 of 1991.
2. Chapter 105, Laws of Zambia.
3. Section 15 (e) in Societies Act, Ibid.
4. Reported in Times of Zambia, 14/04/93.
5. In AFRICA EVENTS Magazine Vol. 8 No.8 August 1992. pg.39.
6. In African Events Magazine Vol. 8 No. 2, February 1992 pg.15.
7. See Freedom of Region, under Chapter 1 pg. 9.
8. In Steven Emmanuel 'Constitutional Law' Emanuel Law Outlines Inc, New York 1987 pg, 630
9. Ibid pg, 631.

FIRST SCHEDULE
PRESCRIBED FORMS

FORM S.O.1
(Rule 5)

REPUBLIC OF ZAMBIA
THE SOCIETIES RULES

APPLICATION FOR REGISTRATION OR EXEMPTION FROM REGISTRATION OF A SOCIETY

Registrar of Societies:

..... (name of Society)

..... Branch, hereby applies for registration/exemption from registration*.

Following are particulars of the Society:

Name of Society

Office-bearers:

Designation	Full Names (BLOCK CAPITALS)	Occupation	Nationality	Residential Address	Postal Address	Date of Appointment
.....
.....
.....
.....
.....
.....
.....

Situation of registered office

Postal address

Objects of the Society

.....

.....

.....

) The name of each organisation or group of a political nature established outside the Republic of which the Society is a branch or is affiliated to or connected with

.....

) The class or classes of persons to whom membership of the Society is restricted

.....

) The present number of members

) The immovable property owned by the Society and the manner in which such property is held or vested

.....

.....

.....

) The date of commencement of the Society's financial year

Signed Designation

Signed Designation

Signed Designation

Signed Designation

-This application must be completed in QUADRUPPLICATE and signed in the presence of a Registrar by all office-bearers, and must be accompanied by three copies of the constitution and/or rules of the Society, together with three copies of English translations of the same if they are not in the English language:

Provided that where an office-bearer is unable to present himself before a Registrar by reason of illness or absence from Zambia, the application could be accompanied by an affidavit to such effect.

FOR OFFICIAL USE ONLY

..... Division, Zambia Police

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(No. 6 of 1972)

APPENDIX

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