

THE EFFECT OF PARTY SUPREMACY ON
CONSTITUTIONAL DEMOCRACY IN ONE
PARTY STATE: A CASE STUDY OF
ZAMBIA

BY

JOHN ZACHARIA CHALWE

A DISSERTATION SUBMITTED TO THE
UNIVERSITY OF ZAMBIA IN PARTIAL
FULFILMENT OF THE REQUIREMENTS
OF THE DEGREE OF MASTER OF LAW,

U N I V E R S I T Y O F Z A M B I A

L U S A K A

J U L Y 1 9 9 0

ACKNOWLEDGEMENT

"A constitutional state, even though dominated by bourgeoisie, offers the working class greater scope for furthering their interests...the working class has the greater need for the inviolability of the person and freedom of speech, strikes, assembly and associations".

by

Bogden Kistiakowsky

There are obvious benefits to be gained from the study of constitutional democracy: Heightened ability to appreciate democratic institutions; acquisition of knowledge of ideas pertaining to fundamental human rights and freedoms and their protection.

240174
Democratic institutions require that citizens should think for themselves, debate issues freely with one another, and decide controversies on the basis of careful consideration and the weighing of evidence. Through the study and practice of constitutional democracy one acquires respect for the other man's views and the society gains by reinforcing and securing the principles considered to be fundamental to civilisation.

To assist achieve the goals stated above, any publication on constitutional democracy should examine, inter alia, the institutions under which people live to discover whether or not they enhance the enjoyment of fundamental human rights and freedoms.

Thus, in Chapter one of this thesis, we have endeavoured to examine, inter alia, the reasons often advanced and those the Zambian Government advanced justifying the establishment of a single party system of Government. The actual implementation of party supremacy is covered in Chapter two.

The traditional arms of power of government and the role the doctrine of the separation of powers plays in promoting constitutional democracy in Zambia are analysed in Chapter three. The question of the incompatibility of fundamental human rights and freedoms with party supremacy is dissected in Chapter four. The extent to which elections are free in Zambia, and the proposal of the modes of promoting constitutional democracy in Zambia are covered in Chapters five and six respectively.

It is a pleasant duty to express my appreciation to those who have assisted me in writing this thesis. My supervisor, Professor L.S. Shimba, the current Dean of the School of Law of the University of Zambia, rendered free supervision of the writing of the thesis from beginning to end. Professor Kent, a Visiting Professor in the School of Law of the University of Zambia, read through the Research Proposal and freely rendered me valuable suggestions on how to approach the subject. Mr. A.W. Chanda also read through the Research Proposal and made valuable comments on the same. The following members of Staff of the University of Zambia Library gave me valuable assistance in the research: Messrs Webster Katete, Francis Lungu and Paul Twaambo. I appreciate the encouragement I got from some members of Staff of the School of Law. To Miss Mirriam Nyimbili who painstakingly typed this thesis I am most grateful.

LUSAKA
ZAMBIA

J.Z. CHALWE

1. <u>Introduction</u>	<u>Page</u>
(a) Geographical position of Zambia and its people.	1
(b) A brief historical background.	3
(c) Background to the establishment of a One-Party state in Zambia.	7
2. <u>Chapter 1</u>	
(A) Reasons often advanced in favour of the establishment of a single-party system of Government.	
(i) Arguments based on African Traditionalism.	18
(ii) Arguments based on national unity for development.	21
(iii) Arguments based on autochthony.	23
(B) Reasons advanced justifying the establishment of a one-party system of Government in Zambia.	26
(i) National unity.	28
(ii) Preservation and enhancement of internal peace and Tranquility.	30
(iii) Accelerated development.	31
(iv) Zambia's Geographical position.	33
(C) Assessment of the reasons advanced to justify the establishment of one-party state.	34
3. <u>Chapter 2</u>	
The actual implementation of Party supremacy.	43
(i) Constitutional amendments.	43
(ii) Meaning of Supremacy of the Party.	48
(iii) The relation between the concept of Party supremacy and the notion of Executive President.	50
4. <u>Chapter 3</u>	
Constitutional democracy under a one-party constitution: A case study of Zambia.	54
(i) The doctrine of the separation of powers.	56

(ii)	The concept of free elections.	60
(iii)	Legal protection of Civil and Political Liberties in one-party Zambia.	61
(iv)	Supremacy of the constitution over all other institutions.	66
(v)	Accountability and responsibility of government to Parliament in one-Party Zambia	71
(vi)	Independence of the judiciary.	73

5. Chapter 4

One-Party State and Fundamental Human Rights and freedoms:

	The Zambian case	80
(i)	Freedom of association and assembly.	81
(ii)	Freedom of expression and of the Press.	88
(iii)	Discrimination based on political beliefs	99
(iv)	The right to economic security.	104

6. Chapter 5

	How free are the elections in a one-party state?	115
(i)	The electoral system in Zambia and Kenya.	115
(ii)	Election of the President.	119
(iii)	How the Party organs control the Legislature.	125
(iv)	The impact of party supremacy on Local government elections.	128

7. Chapter 6 Conclusion

(i)	Constraints on constitutional democracy.	133
(ii)	Modes of promoting constitutional democracy in Zambia - change to bicameral Legislature.	134

APPROVAL

This dissertation of John Zacharia Chalwe is approved as fulfilling the requirements for the award of the degree of Master of Laws by the University of Zambia

Signatures of Examiners:

Date:

.....
.....

.....
.....

.....
.....

.....

.....
.....

.....
.....

.....
.....

.....

THE EFFECT OF PARTY SUPREMACY ON CONSTITUTIONAL DEMOCRACY IN A ONE-PARTY STATE: A CASE STUDY OF ZAMBIA.

INTRODUCTION

The introduction falls into three parts: the first part covers the geographical position of Zambia and its peoples. We discuss a brief historical background in the second part which itself falls into two sections: the first section covers the creation of the protectorate of Northern Rhodesia and the British South African Company rule. In the second section we discuss briefly the British colonial rule, the birth of the Central African Federation and its demise. Background to the introduction of a Single-Party State in Zambia is covered in the third part.

a) Geographical Position of Zambia and its peoples

Zambia, one of the countries referred to as "Commonwealth Africa" which comprises former British possessions, came into existence in 1964 when it attained political independence from Britain. The former protectorate of Northern Rhodesia, Zambia was the first country in Commonwealth Africa to attain both independence and a republican status simultaneously.

Zambia is situated in the interior of Central Africa south of the Equator and has common boundaries with Malawi and Mozambique to the East, Tanzania and Zaire to the North, Angola to the West, Namibia and Zimbabwe to the South. On the world map, Zambia lies between latitudes 8° and 18° South and Longitudes 22° and 34° East.

Zambia has an area of 750,000 square Km. The 1980 population census, published in 1985, shows that the country had a population of 5,679,808 people out of whom 17,095 were people of European and American origins, and 11,894 were people of Asian origin.¹

The majority of the people in Zambia are Africans who speak Bantu languages. About 65% of Africans live in rural areas where they are engaged in peasant farming using traditional methods of agricultural cultivation. The rest live in urban centres along the line of rail. Lusaka with a projected population of 716,923,² is the national capital. Other urban centres are Ndola, Kitwe, Luanshya, Chingola, Chililabombwe, Kalulushi, Mufulira, Kabwe, Mazabuka, Monze, Choma and Livingstone. Most whites and Asians live in urban centres along the line of rail where they dominate business, commerce and industry. A few of them are employed in the civil service. But many of them hold key technical positions in the mining industry. The majority of Africans engaged in business are marketeers.

Christianity is dominant among whites and Africans because of the long evangelisation by white missionaries. Among the main Christian denominations are Catholics, Anglicans, Seventh Day Adventists, Salvation Army, African Methodist Episcopal, the Watch Tower Jehovah's Witness, the Apostolic Church, the Lumpas (followers of "Prophetess" Alice Lenshina), the Makumbis (Makumbi Sweet Heart) led by "Bishop" ("Mulondoshi") Emilio Mulolani. The last two mentioned churches are proscribed.

Typical of all African communities elsewhere South of the Sahara, the African community in Zambia comprises seventy two tribes with each tribe speaking its own dialectic.

Although local languages are numerous, English has been adopted as the official language for administrative and business purposes. It is also being used as the medium of instruction in primary and secondary schools and in institutions of higher learning. We now proceed to discuss

b) A BRIEF HISTORICAL BACKGROUND

As already stated above we begin with the discussion of the coming into existence of the Protectorate of Northern Rhodesia and the British South African Company rule.

(i) The creation of the Protectorate of Northern Rhodesia and the British South African Company Rule - 1893-1924

After the Berlin Conference (1884-1885) and the subsequent Berlin Treaty of 1885 which laid down ground rules for the occupation of Africa, there was a scramble for colonies on the continent of Africa. Since it was clear that the statesmen at Berlin Conference had no intention of committing themselves to administering the territories to which their traders laid claims, they decided to adopt a method of granting paper protectorates to nationals trafficking in spheres of influence.³ This method was meant to keep other European nationals out. On September 28, 1893, Her Majesty's Commissioner and Consul-General in Cape Town granted a certificate of and Mineral concessions to the African Lakes Company for the tracts of territory purchased around Lake Nyasa in Nyasa Province of the British Central African protectorate from chiefs of the Wankonde, Warambia and Wahenga peoples between July 16, 1885 and February 12, 1890.⁴ Harry Johnston made treaties with the chiefs occupying the territory between Lake Nyasa and Lake Tanganyika in 1889. By the "Lewanika concessions" of June 25, 1898, and ratified on October 17, 1900, Lewanika agreed to give Robert Thorne Coryndon, representing the British South

African Company, mining, commercial and banking rights and also administrative responsibilities in the whole territory of Barotseland including all subject and dependent territories.⁵

Joseph Thompson collected treaties from the chiefs of the Baushi, Bisa, Lamba, Lenje and Lala tribes.

The North Western Rhodesia order in Council of 1899 created North Western Rhodesia, a territory covering most of Barotseland. The North Eastern Rhodesia Order in Council of 1900 brought into existence North Eastern Rhodesia. The two territories were acquired under the Foreign Jurisdiction Act of 1890. The British South African Company which administered the two territories was responsible for the administration of Justice, the raising of revenue, and generally to maintain peace, order and good government.

North Western Rhodesia and Northern Eastern Rhodesia were merged by the "Northern Rhodesia Order in Council of 1911" to create the Northern Rhodesia Protectorate (now Zambia).

- (ii) The British Colonial rule, the birth of the Central African Federation and its demise - 1924-1963

The British South African Company administration came to an end on 20th February, 1924 when Her Majesty's Government took over the administration of the territory.⁶

The Northern Rhodesia Order in Council 1924 provided for the appointment of the governor to replace the administrator,⁷ the creation of the Executive Council, the Legislative Council, the High Court of Northern Rhodesia and the Courts of Magistrates with jurisdiction over all persons within the districts assigned to them. The Governor was "authorised, empowered and commanded to exercise on His Majesty's behalf all powers

and jurisdiction as His Majesty at anytime before or after the passing of this Order had or may have within the said territory, and to do and execute all things that belong to his said Office,... "8 Although the powers given to the Governor appear to be wide and absolute, these were tamed by the requirement that in the event of his acting contrary to the advice of the Executive Council, he must report to the Secretary of State the reasons for disagreeing with the Executive Council whose views were also to be recorded.

Article six of the Northern Rhodesia (Legislative Council) Order in Council of 24th February, 1924, made provision for the white settlers to elect their representatives to the Legislative Council. The settlers had, since 1911, been agitating for an effective participation in the government of the territory. African Natives had no say in the government of the territory. However, the Imperial Government regarded itself as the 'trustee of Native interests until such a time as they would be able to assume the reigns of power in the territory. To this end the then Secretary of State for the Colonies, Lord Passfield, issued a "Memorandum on Native Policy in East Africa" in 1930. The paper stressed that the interests of African Natives must be paramount and that when White Settlers' interests conflicted with those of the African natives, those of the latter should prevail.

The publication of the aforesaid memorandum aroused strong protests among the white settlers in Northern Rhodesia who saw an end to their political advancement to dominion status. Henceforth, they began agitating for amalgamation with the colony of Southern Rhodesia which had already been self-governing in October, 1923.⁹ Africans in Northern Rhodesia and Nyasaland on the other hand strongly opposed any closer political

association with Southern Rhodesia (now Zimbabwe) whose oppressive native policies they feared.

Despite the African opposition in the two Northern territories to any closer association with Southern Rhodesia, the Imperial Government gave in to the white settlers' demands. In 1953, the Federation of Rhodesia and Nyasaland was born. The federation was founded on the principle of partnership and cooperation between all its inhabitants so as to prevent any one race dominating the others.

The white settlers, though they were 297,000 out of a total population of eight million inhabitants, dominated and controlled the Federal Government. This aroused in Africans in the two Northern territories what is often referred to as "pathological fear". The Africans regarded the Federal Scheme as a satanic contrivance of the White settlers supported by the Imperial Government meant to reduce them to perpetual servitude.

When the then British Prime Minister, Mr. Harold MacMillan, visited the Federation in 1960, he annoyed Africans when he made it clear to them that the federation had come to stay and that the government would remain in the hands of the civilised people. Since there were very few Africans at that time who were regarded as being civilised the statement was interpreted to mean that White Settlers were to dominate and control the federal government for a very long time to come if not indefinitely.

Such statements by British Officials just strengthened the resolve of the Africans in the two Northern territories to strive tenaciously for the destruction of the federation of Rhodesia and Nyasaland. The federation was abolished by the Federation of Rhodesia and Nyasaland Order in Council

of September, 1963. The Order transferred Legislative and executive powers in respect of specified matters from the Federation to the territorial governments at varying dates between October 1 and 1 December 1963.¹⁰ The Federation was abolished ten years after its creation because it was run by Whites of mostly Southern Rhodesia on racial lines.

After the break up of the Federation in 1963, Northern Rhodesia and Nyasaland became self-governing territories and in 1964 the two territories were granted their respective independence.

c) Background to the Establishment of a One-Party State in Zambia: 1964-1972

When Zambia decided to become a One-Party state in 1972, she did so in line with other African States such as Ghana, Tanganyika, Malawi, the Ivory Coast, Mali etc. which had already become one-party states. One-party system in Kenya was instituted in the Constitution in 1982. It emerged following the suppression of all the opposition parties by Jomo Kenyatta and by Daniel Arap Moi's refusal to allow new parties to be organised in opposition to the Kenya African National Union (KANU) ruling party.

(i) The 1967 Party's General Conference Elections

For the first few years after Independence, Zambia's divisive forces of polycentricism were contained by striking a precarious provincial balance of the top leadership both in the party and government. These were men and women who commanded following in their areas of origin. Provincial balance in the government and party was given a jolt at the 1967 Mulungushi General Conference of the ruling party, the United National Independence Party (UNIP), when Mr. Simon Kapwepwe decided to contest the

post of the Vice-President of the Party. The post was held by Mr. Reuben Chitandika Kamanga. Eleven other posts on the Party's Central Committee were open for contest. The elections exposed deep simmering ethnic and regional divisions within the party. Alliances were formed between the Lozi and Nyanja on the one side, and Tonga and Bemba on the other.¹¹

Kapwepwe won the post of the Vice-President of the party and automatically became the Vice-President of the country. People from Eastern and Western Provinces refused to recognise Kapwepwe as a legitimate Vice-President. Making things worse, Bembas won five of the eleven posts on the Central Committee contested. Only one person from Western Province went through unopposed.

The election results generated a lot of discontent among the peoples of Western and Eastern Provinces. The people of the former province formed the United Party, led by a former cabinet minister. Those of the latter province formed a movement called "Umodzi ku mawa (unity in the East)" and threatened to secede from the rest of Zambia if the imbalance of representation in the Party created by the 1967 Mulungushi General Conference elections were not redressed. When the United Party was banned and its leader detained, the people of Western Province swung their support to the African National Congress (ANC), led by Harry Mwaanga Nkumbula.

(ii) The 1968 Parliamentary and Presidential Elections

The significance of the December 1968 elections lay in their revelation that UNIP had lost support to the African National Congress in Western Province. They turned to ANC because they saw the ruling Party, UNIP, as a Bemba instrument of domination. They were even suspicious that the demotion of two Lozi ministers from their posts was engineered by the

Bembas.¹² The African National Congress waged a vicious election campaign in Western Province where the so-called Bemba menace was used, with success. The people of Western Province were promised secession from the rest of Zambia, to be followed by freedom to restore *wenela*¹³ in independent Barotseland if ANC formed the next government in Zambia. They were sternly warned that if UNIP formed the next government their cattle would be taken away without pay and be given to the Bembas.¹⁴ Knowing that Bemba domination haunted the people of Eastern Province too, ANC tried to use the issue to scare off voters from UNIP, but the latter used the same issue to counter Congress. Easterners were told that Bemba domination would be a thing of the past if UNIP formed the next government. UNIP was returned to power with a predictable landslide victory. As we shall see in this Chapter the process of "neutralizing" Bembas began shortly after the 1968 elections. But for Western Province the 1968 General elections had the effect of eliminating "almost completely Lozi representation in the upper echelons of the ruling Party"¹⁵ as three Lozi cabinet ministers and one junior minister lost their Parliamentary seats. The only Lozi cabinet Minister who won the election was Mr. Sikota Wina who contested Roan Parliamentary Constituency on the Copperbelt notwithstanding that it was dominated by Bemba speaking people.¹⁶

Having been given what he termed a fresh mandate, the President responded swiftly to the complaint against the Bemba-speaking people, who unwittingly had passed a death sentence on themselves by voting overwhelmingly for UNIP. He initiated early in 1969 to remove Bembas from higher posts in the government in what he called "the interests of national unity and stability".¹⁷

In August 1969 Simon Mwansa Kapwepwe resigned as Vice-President of the country on the grounds that he was not accepted as a legitimate

Vice-President by all sectors of the society and consequently Bembas were being victimized. President Kaunda took the opportunity of Kapwepwe's resignation, and within 24 hours of that resignation, he disbanded the Central Committee that had been elected in 1967, suspended the Party Constitution, appointed governing committees within UNIP and made the same responsible to him. In the government, he reorganised the ministries and top civil service posts.¹⁸

The process of eliminating Bembas from higher posts in the government and party was completed in November 1970 when Mr. Mainza Chona was appointed Vice-President of Zambia and Simon Mwansa Kapwepwe was assigned a ministerial post. Acting on mounting pressure from Bembas in the higher echelons of the government and party, Kapwepwe formed the United Progressive Party (UPP) which he launched on 25th August, 1971.

(iii) DEMONSTRATIONS AGAINST THE FORMATION OF UPP

The birth of UPP sparked off demonstrations in some towns on the Copperbelt. Addressing women demonstrators in Luanshya, the then Resident Minister, Mr. Alex Kaunda Shapi (no relative of the President), described President Kaunda as a saint and declared that God was on UNIP's side.¹⁹ In Kalulushi, "half-naked women" met President Kaunda at the South-Down Airport and assured him of their unflinching support. They carried placards demanding the arrest of Kapwepwe and his followers.²⁰ A leading article in the Sunday Times of August 29, 1971, expressed the view that "... for a long time Mr. Kapwepwe has wanted to be the President of Zambia and the Leader of the United National Independence Party..."²¹ The basis of this view was President Kaunda's reported revelation at Mfuwe tourist resort that he had known of Kapwepwe's machinations as early as 1964.²¹ The

article went on to say that Kapwepwe began to put into effect his plan when in 1967 he decided to run for the post of the Vice-President of the Party, the incumbent of which automatically became the Vice-President of the country. Means other than democratic ones were to be used to stop Kapwepwe from becoming the President of the country. We now turn to the discussion of the sordid methods which were employed.

(iv) The December 1971 By-elections and the eruption of violence

During the period 1964 to August, 1971, the ruling Party, UNIP, did not experience any serious challenge from any of the existing opposition parties: the African National Congress led by Harry Mwaanga Nkumbula, the National Progressive Party, enjoying overwhelming support among the white settlers, and the United Party led by a former Cabinet Minister, Mr. Nalumi Mundia. The National Progressive Party disappeared after the 1968 Presidential and Parliamentary elections. The United Party was banned when, according to Dennis Dresang, it began to gain support from Provinces other than Western Province.²³

The appearance of UPP on the political scene made a marked difference and the importance attached to the split from the ruling party by Mr. Kapwepwe and his followers is clearly shown by the fact that the National Council of UNIP, meeting at Mulungushi Hall, Lusaka, in October, 1971, directed the Central Committee of the Party, under Resolution (10), to work towards the establishment of one political party in Zambia.

The clamour for the establishment of a one-party state became more pronounced when Simon Kapwepwe won Mufulira West Parliamentary seat without campaigning. The Times of Zambia Opinion observed, "He did not have to

campaign. He did not have to say a word. But he won."²⁴ About one hundred demonstrators in Ndola called for the arrest of Simon Kapwepwe, carried placards asking the government to declare a one-party state without delay.

But why were the leaders of the United National Independence Party and their followers worried of the emergence of Kapwepwe's Party on the Political scene? According to Mr. Simbi Mubako,²⁶ the split of Kapwepwe and his followers from the ruling Party and the government "was the largest yet to have taken place and there was a possibility that for the first time since independence UNIP might lose power to the combined forces of Nkumbula's ANC and Kapwepwe's UPP".²⁷ Since the writing on the wall was clear that sooner or later the ruling party would lose power to the opposition parties, the leadership of the ruling United National Independence Party saw no point of caressing the pledge of bringing about a single-party state through the wishes of the people "as expressed at the polls in any future elections...." and that "only if all the members returned to Parliament belonged to one-political party".²⁸ As already indicated above UNIP decided to and did employ unorthodox methods to stop UPP from growing into a party with massive support.

The events leading to the introduction of a single-party system in Zambia are, indeed, monumental to the fact that it was the determination of UNIP to impose political unanimity by force, to perpetuate its rule by suppressing opposition parties, that brought about inter-party strife, and indeed, disturbed peace. A few examples will, I think, validate this observation.

During the by-elections of 20th December, 1971, a United Progressive Party supporter in Mporokoso parliamentary constituency was shot in the arm by a high ranking UNIP official. Police could not arrest the official saying

that they were waiting for instructions from the Headquarters in Kasama before they could arrest him.²⁹ Another UPP supporter had both his eyes gouged out during the same election campaign.³⁰ The two incidents could be contrasted with the incident involving ANC leader, late Liso Mungoni, whom Monze Police arrested and charged him with carrying arms in public because he had fired in the air to scare off UNIP attackers.³¹ There appeared a report in the Times of Zambia that Mr. Kapwepwe had the previous day been beaten up by a hundred strong mob at Kamwala Market, Lusaka. His agony in the University Teaching Hospital was portrayed thus, "wincing with pain, he repeated over and over again; 'My body...My head, my body... My head". A 20 year old eye-witness described the scene as follows:

"I saw about hundred people, elderly and young men punching and kicking him. He was bleeding from cuts, over his left eye, his nose and his head. His glasses had been smashed. A land-rover full of paramilitary police just laughed at him as he walked away. He looked a terrible mess",³²

It is interesting to note that only one man, Jaston Mpande, was arrested and was later convicted of having assaulted Simon Kapwepwe, Leader of the United Progressive Party.³³ Mr. Kapwepwe was assaulted shortly after the official opening of Parliament by His Excellency, the President, Dr. Kenneth David Kaunda. He had been trailed from Parliament building to Kamwala market.

When 50 UPP members decided to retaliate by beating up UNIP Regional Secretary, Mr. Vincent Mulenga, outside Masala tarven in Ndola, 20 UPP members were arrested and the following day, the Minister of State at Freedom House, Mr. Ali Simbule, issued a two-week ultimatum to all those involved in violent activities for the past three weeks to stop those activities.³⁴

Commenting on the ultimatum, UPP Copperbelt Youth Secretary, Mr Andrew Mwansa said 'UPP would meet force by force. It was time UNIP, which was causing all the troubles, realised that UPP had more supporters than them. That his supporters had been subjected to beatings wherever they went. One UPP man had both his eyes gouged out during December by-elections in Mporokoso'.³⁵

The then Governor of Lusaka District, late Justin Kabwe, correctly read the government intentions when he observed that the UPP decision to meet force with force was a blunder.³⁶ Retaliation on the part of the United Progressive Party was what the government wanted in order to have an excuse for banning the Party and later declare Zambia a One-Party State.

Just one month after District Governor Kabwe's aforesaid observation, that is on 25th February 1972, President Kaunda announced at a State House press conference that his cabinet had decided "that Zambia should become a One-Party Participatory Democracy and that practical steps should now be taken to bring this about".³⁷ At the same press conference reasons were advanced in favour of the establishment of a single-party state. The reasons for not seeking the opinion of the people on whether or not they wanted a one-party system of government were also epitomized.

Since holders of political power will never admit that they want to cling to power simply because it confers benefits such as beautiful shelter, clothes, good food, and laudation to its holders, they will always invent noble reasons to justify their lust for power, at the same time they will accuse those who try to challenge their power positions of trying to rise to power by using sordid means. They will not admit that they suppress others simply because they want to be Ceasars with no one to challenge them.³⁸

Thus, whenever a country decides to establish a single-party system of government, it must advance what it considers to be compelling noble reasons in justification of the introduction of the new political system. Zambia was not an exception to the foregoing observation. But instead of plunging ourselves into the discussion of the cogent reasons that the Zambian government advanced in justification of the decision to become a single-party state, it is felt necessary to begin with the discussion of the reasons that are often cited in favour of the introduction of a single-party system of government.

References

Introduction

1. 1980 Population and Housing Census of Zambia, Volume II p. 271 Appendix 4, Central Statistical Office, Lusaka.
2. 1985 projection, Country Profile of Zambia, 1986, Central Statistical Office, Lusaka, Zambia, p. 3.
3. The New Cambridge Modern History, 1870-1898, Vol. XI, (1962) by Syndics of the Cambridge University Press, London, p. 607.
4. A History of the Mineral Rights of Northern Rhodesia, Part II, Maxwell Stamp Associates Ltd., Moor House London Wall, 1967, pp. 132-145.
5. Maxwell Stamp Associates Limited, *ibid.* pp. 12-13.
6. Section 52 of the Order in Council.
7. Section 7 of the Order in Council.
8. Section 7 of the Order in Council.
9. Claire Palley, The Constitutional History and Law of Southern Rhodesia, 1888-1965 (1966) Clarendon Press, p. 215.
10. Claire Palley, *ibid.* p. 680.
11. Dennis Dresang, American Political Science Review (1974) Vol. 68 p. 1609.
12. Nalumino Mundia and Mubiana Nalilungwe were demoted because they had recommended for the approval of funds an application from a company in which they owned shares.

13. Wenela was the practice of hiring people from Northern Rhodesia to go and work in South African Gold mines. The Zambian Government stopped this practice shortly after independence.
14. Reported in the Times of Zambia of 23rd December, 1968.
15. Dennis Dresang, *ibid.* p. 1615.
16. Reported in the Times of Zambia of 21st December, 1968.
17. Dennis Dresang, *American Political Science Review* 1974, Volume 68, p. 1615.
18. Dennis Dresang, *op. cit.* p. 1615.
19. Reported in the Sunday Times of 29th August, 1971.
20. Sunday Times of 29th August, 1971.
21. Sunday Times, *ibid.* 1971.
22. Sunday Times of 29th August, 1971, *op. cit.*
23. *American Political Science Review*, 1974 Vol. 68 pp. 1615 -1616.
24. Times of Zambia of 22nd December, 1971.
25. *ibid.*, 22nd December, 1971.
26. Simbi Mubako was a Lecturer in the School of Law of the University of Zambia.
27. Human Rights in a One-Party State - International Commission of Jurists, seminar held from 23-28 September, 1976, Dar-es-Salaam, Search Press, London, p. 48.
28. Daily Legislative Assembly Debates, 20th March, 1964, Col. 420. The pledge was made by President Kaunda.
29. Reported in the Times of Zambia of 24th December, 1971.
30. Reported in the Times of Zambia of 25th January, 1972.
31. Reported in the Times of Zambia of 25th December, 1972.
32. Times of Zambia of 13th January, 1972.
33. Times of Zambia of 5th February, 1972.
34. Times of Zambia of 24th and 25th January, 1972.
35. Reported in the Times of Zambia of 25th January, 1972.
36. Times of Zambia of 25th January, 1972.
37. Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia, Government Printer, Lusaka, p. 67.

38. Hans J. Morgenthau, Scientific Man Versus Power Politics, 1946, The University of Chicago Press, pp. 192-193, see also the introduction of Maurice Duverger's The Idea of Politics.

CHAPTER 1

(A) REASONS OFTEN ADVANCED IN FAVOUR OF THE ESTABLISHMENT OF A SINGLE PARTY SYSTEM OF GOVERNMENT.

The reasons that follow are invariably advanced in justification of the establishment of a single-party system of government wherever such a decision has been taken.

(i) Arguments based on African Traditionalism

African leaders hold a strong view that the Presidential system of Government is in conformity or corresponds well with the traditional system of government. Characteristic of the traditional political organisation was the fact that power was concentrated in one chief, though he was not expected to act arbitrarily. He was assisted and advised by a group of elders. Down the hierarchy were sub-chiefs or headmen who organised and administered the people on behalf of the leader. The Chief participated actively in tribal politics and exercised personal rule. The old traditional system of government knew no distinction between real and formal power. What existed was real power concentrated in one leader. In other words, the separation of Head of State from the Head of government has been spurned as flying in the face of African political experience.

African leaders have a burning desire to have constitutions of their countries reflect the African way of thinking about how a government should be organised based on their historical experience. Both President Kaunda of Zambia and Julius Nyerere (former President of Tanzania) share the sentiments above.¹

As for Zambia, it is contended, in support of the Philosophy of Humanism and the Principle of One-Party System, that the two concepts are not new to the Zambian Society. That these ideas were firmly rooted in our traditional past before the coming of colonial rule. "The only new thing is probably that these concepts are now generally expressed in English rather than in vernacular".² Supporting the case for the concentration of power in one person, it is pointed out that whatever the nature of the old traditional societies they did not exist loosely as at the apex of the community was the leader or chief who was respected by all for his leadership qualities. Below the traditional pyramid were subordinate leaders or elders who helped the chief to govern. Differences of opinion were appreciated and encouraged provided they were not detrimental to the community. Precisely, so they contend, these communities were organised "like one-party states, but on a smaller scale".³ That respect for the rights of the individual was maintained within these small one-party states as long as he did not endanger the community.

While the picture painted above is generally a reflection of the old traditional system of government, it is incorrect to suppose that factionalism did not exist at all. Depending upon the importance of the matter at issue, sometimes a kinship group not satisfied with the chief's decision may decide to go and offer loyalty to another chief in return for the allocation of land. Although it is correct to say that traditional leaders did not act arbitrarily, it was the system that made them act moderately and responsibly. Explaining the conditions that made the old traditional system to operate in a responsible and moderate manner, Professor Cowen has observed that

"In old days the main sanction against a tyrannical chief was for his men to leave him and offer their loyalty to another chief in return for the allocation of some of his land".⁴

In our time this facility is not available as there is severe restriction on the freedom of movement from one sovereign state to another. Sometimes when a chief became tyrannical people in old traditional set up organised themselves to depose him. This happened to Chitimukulu Susula Chincinta in 1827, because he was considered to be extremely autocratic.⁵ This was possible because old traditional rulers did not have professional armies with which to impose their will while modern rulers have coercive forces at their disposal. The so much talked about village or "consensus democracy" cannot work in modern states embracing many ethnic groups with widely differing interests and customs, making it extremely difficult to reach a consensus at meetings. The clash of interests produces hostility. A modern state has complex economic, social, political and legal institutions which are as alien to a traditional African system as is organised opposition. It is wrong to copy some European or American political institutions and reject those institutions which make modern European governments act in a responsible and moderate manner. Commenting on the American political system which he says comprises Presidentialism, Federalism and Judicialism, Professor Carl J. Friedrich has observed:

"Each of these constitutes a key feature of American Constitutionalism, that is to say, they are such vital parts of the American political system that without any of them, they system could not survive."⁶

Zambia is one of the African countries that have copied some of the features of the American political system, not for the sake of ensuring constitutionalism through the application of the principle of checks and balances but in order to effect a centralised system of government. To the American political scientist, the impact of the American system of Government on our political system has been a "...curiously twisted and paradoxical one".⁷ The old traditional system of governments also called "non-party states" operated moderately and responsibly because they served small homogenous communities on which a lot of political power devolved.⁸ More important was the weakening of the chief's power because he did not have professional armies with which to impose his will. He just depended on contributory armies from local leaders whenever he wanted to go to war with chiefs of different tribes. It is a misconception to liken a highly centralised modern government, backed up by organised coercive forces, with the old traditional government described above. Modernisation of an African State should embrace, among other things, political modernization of which an organized opposition is a vital ingredient.

(ii) Arguments based on national unity for development

The next argument put forward by African leaders in justification of the introduction of a single-party system of government is one based on national unity. It is echoed and re-echoed that the paramount need of a newly independent African country is economic development. That economic development and modernisation are only achievable in an integrated and stable society. Since national integration and social stability, together are the foundation stones for economic and social development, the argument runs, it becomes imperative that progress can only be realized in an ordered society.

Thus far no one quarrels with this line of argument. What is arguable are the methods they propose for achieving an integrated and stable society. They conclude that a multi-party system of political organisation is not suitable to an African environment comprising poly ethnic groups with latent centrifugal forces. Two reasons are advanced for rejecting the existence of opposition parties in a newly independent African country: First, it is thought that opposition parties in their unbridled desire to rise to power quickly are likely to be subverted by neocolonialists who want to come back and plunder the wealth of the new nation. That carrots dangled by neo-colonialists just bring about chaos to those countries where leaders have fallen prey. Secondly, it is contended that opposition parties just serve to disperse the energy needed for development activities. More so if smaller parties begin to appeal to ethnic sentiments in order to win support, and this, in consequence, engenders disunity if not civil war. To avoid the two evils mentioned above, an appeal is made to the opposition parties to come and join hands with the ruling party and "think of how we can mobilise ourselves... to build our country, all of us".⁹

Describing the manner of the origin of the single-party in Guinea, Mali, Senegal and the Ivory Coast, R. Aristide Zolberg says that the usual technique was to appeal to smaller parties to join hands for economic development of the country. Smaller parties were assured that such a union would not signify an attempt to create a single-party, on the contrary, the future lay in the open competition between political parties with a neutral administration acting as umpire.

Assuring his African opponents Houphouet-Boigny of the Ivory Coast said,

"Each and everyone of you can remain within his own Party. After all, we see Shopkeepers who smile at one another all day long but who nevertheless compete to get the largest number of customers. It is something like that we want to bring about here."¹⁰

Professor Nwabueze has aptly remarked that once the unwary smaller parties were caught in the trap they sooner or later were swallowed up. Houphouet-Boigny's party later admitted that the appeal had been a tactical move to disorganize its adversaries.¹¹

For good reasons, born of hard experience, African leaders have rejected the cabinet system of government in favour of Presidentialism. The former separates the Head of State from the Head of government, and African political experience of the early sixties shows that the separation of the two heads stated above breeds personality clashes between the Head of State and the Head of Government, clashes which are often detrimental to national unity.

(iii) Arguments Based on Autochthony

African leaders have argued that a constitution should be a choice of the people and express their ideas of how they are to be governed. This implies two basic demands: First, the constitution's authority as law must derive from the people who are to be governed by it. Secondly, it also means that the form of government the Constitution establishes must reflect the way of life of the people. The remnants of colonialism must be cast away because not only do they remind the new nation of its former colonial subordination, but also because such principles as the separation between the titular Head of State and the real Head of State, the argument runs, does not form part of African political experience.

This is what African leaders mean when they say that they want a Constitution that is "home grown" or autochthonous.

They do not want to hear that the constitution by which they are governed has the force of law if need be supreme law because it was enacted by the Parliament of the former colonial power. Such supreme authority must be conferred on the constitution by the natives of the soil. Nor do they want the titular Head of State to be a representative of the Head of State of the former colonial power. As already seen the idea of the separation of the formal Head of State from the real Head of State is regarded as alien to the African political experience.

In clarifying some of the major sections of the Independence Constitution, Prime Minister Kaunda (as he then was called) rejected the description that the Constitution was a hybrid of American and British patterns. He explained that the constitution had been designed to fit the conditions, needs and the way of life of the people of Zambia. He made the point clear when he said that whatever description had been given to our constitution,

"I wish to make it clear that whatever similarities there may be, our constitution is essentially our own - designed to suit our own needs and conditions and our own way of life - the Zambian way".¹²

If by "our own needs and conditions and our own way of life..." the President meant the old traditional political set up, then it was incorrect because the Independence Constitution made provision for multi-party system of government, something alien to the old traditional system of government. One would suppose that the Zambian way of life Dr. Kaunda talked about included Zambia's political experience and history under the colonial era.

The old traditional systems of government knew no political parties as defined by Halsbury in the laws of England.¹³ They were non-party states like the non-party state of Ethiopia during the reign of Emperor Haile Sellassie I.

Professor Nwabueze has convincingly argued that African "Political experience and history should include experience under colonial rule" in determining what form of government to be understood by the people.¹⁴ This is what was taken into account when the Independence Constitution for the new Republic of Zambia was drawn up in 1964.

Defending the case for an executive Presidency, Dr. Kaunda said,

"In accordance with an African way of life, we intend that the President shall be no mere figure-head and that he will have strong executive powers".¹⁵

Although the rejection of the separation between the formal Head of State and the real Head of State was made for good reasons, it is felt that some of the elements that make an executive President moderate and responsible were not provided for in the Independence Constitution as is the case with the American Constitution whose federalism acts as a brake on the powers of both the President and Congress. These elements will be discussed in the section dealing with the relation between the concept of Party supremacy and the principle of an executive President.

Julius Nyerere (former President of Tanzania) has argued, in support of the Principle of an executive President and against the separation between a titular Head of State and a real Head of State, that

"The honour and respect are given to the chief, monarch, or President not because of symbolism, but because of the authority and responsibility he wields".¹⁶

He concludes by saying that African political experience knows no separation between the formal and real Heads of State. The argument based on Africanism is debuffed by Professor Nwabueze who, though admitting that African culture is very important, contends that it has not contributed to the organisation of the government of a modern political state with its intricate institutions. Further, he argues that African political experience and history should embrace the period of tutelage under colonialism which era should not be ignored when deciding the form of government to be established which the people would understand.¹⁷ This is the point most African leaders ignore because of the lust for power. One finds it difficult not to share the views expressed by Professor Nwabueze that an appeal to African traditions is an argument of convenience meant to capture popular support for a system that otherwise is incompatible with constitutional Democracy.¹⁸

(B) REASONS ADVANCED JUSTIFYING THE ESTABLISHMENT OF A ONE-PARTY SYSTEM OF GOVERNMENT IN ZAMBIA

The noble reasons were cited by President Kaunda at a State House Press Conference at which he announced the cabinet decision to introduce a one-party system of government in Zambia. His Excellency said that the Central Committee in its study of the overwhelming public demand for the establishment of a single-party state had noted that the objective for calling for a new system of government were the fundamental needs of unity, peace and accelerated development. These were the cogent reasons that compelled the Central Committee to instruct the cabinet to introduce a new system of government without a clear mandate of the people as is often expressed at the polls.

The so-called "overwhelming public demand" for the introduction of a single-party system of government was gauged by few demonstrations staged, resolutions passed, and telegrams sent, by party stalwarts in favour of a one-party system of government.

It must be noted at the outset that the intention to introduce a single-party system of government in Zambia began before independence was wrestled from Britain. Thus to dispel the fears entertained by the opposition parties that the government might impose a single-party system shortly after independence, Dr. Kaunda who then was the Prime Minister, though admitting that there was an intention to introduce a single-party system, however, assured the Legislative Assembly thus:

"I should say here and now that any disappearance of Parliamentary opposition in this country and the introduction of one-party system would not be, and I emphasize, would not be an act of the government, but would only be according to the wishes of the people of this country as expressed at the polls in any future election."¹⁹

He also stressed the point that "only and only if all the people returned to Parliament belonged to one political party would one-party be established in this country".²⁰

Eight years later President Kaunda announced at a State House Press Conference that the government had decided that Zambia would become a One-Party State. The question of taking into consideration the wishes of the people "as expressed at the polls..." did not arise, nor did all the members of Parliament at that time belong to one political party. If, as it was claimed, the introduction of a One-Party state had overwhelming support, why was the National Commission on the establishment

of One-Party Participatory Democracy in the country not allowed to hear submissions on the merits and demerits of One-Party System?²¹ Why were not the wishes of the people sounded at the polls by making the introduction of One-Party State one of the United National Independence Party's election policies to be implemented? A sort of referendum for introducing (not amending the constitution) a totally new system of government was constitutionally required.

We have already seen that the needs of national unity, preservation and enhancement of internal peace and tranquility and accelerated development were the cogent reasons advanced in justification of the introduction of a single-party system in Zambia. Probably the best approach is to examine how each of the three reasons cited was threatened by the existence of the opposition parties.

(i) National Unity

In the first place, it was not the policy of either the African National Congress led by Harry Mwaanga Nkumbula or of the United Progressive Party (UPP) recently formed by Simon Mwansa Kapwepwe, to seek autonomy for any one or more of the nine provinces of Zambia. It is true to say that some members of the United Progressive Party made statements accusing some members of the ruling Party and government of tribal and corrupt practices.²² Even then it should be realised that it is those who practise rather than those who denounce tribalism and corrupt practices who are destructive to the state. Public servants must not only be fair in their dealings with the public but must be seen to be so. If one ethnic group sees that it is not getting a fair share of the national cake it will begin looking for leaders within the ethnic group

who will promise them the delivery of goods and services. We can only speak of national unity in our new states without necessarily opting out of the nation-state at large if and only if people of different ethnic groups see that they are getting a fair share of the national cake. The opposition Parties were, by all expressed intent, organising to achieve this end.

Besides the formation of an opposition party per se is not conclusively destructive of national unity. Some multi-party African states such as Botswana could be more national conscious than some of the one-party states such as Ethiopia. Even in Zimbabwe where political parties are organized along ethnic groupings, it is consoling to note that neither Joshua Nkomo nor Robert Mugabe of Zimbabwe African National Union (ZANU) has uttered a single word in favour of secession from Zimbabwe. Their major problem is how to share top posts in the Government.

Rejecting the arguments based on national unity the Leader of the African National Congress, Mr. Harry Mwaanga Nkumbula, asked the then Vice-President, Mr. Mainza Chona, who introduced the one-party Bill in Parliament,

"HIS HONOUR, the Vice-President says unity. What kind of unity? Are we not united in this country? Are you not singing the song of 'One Zambia, One Nation? ...Now what more unity do they want, Mr. Speaker?... We are seated here as honourable Members elected by our people in various constituencies and sharing opinion on matters affecting the people of this country. Is that not Unity?"²³

He came to the conclusion that national unity was not a compelling reason for introducing the Bill under debate in the house.

Thus the formation of the United Progressive Party by itself was not a threat to national unity, rather it was a serious threat to the ruling party, UNIP. As Simbi Mubako has observed, "...it became clear

after Kapwepwe split that for the first time since independence UNIP might lose power to the combined forces of Nkumbula's ANC and Kapwepwe's UPP..."²⁴ Professor Nwabueze has put it succinctly that the motive behind the introduction of a single-party form of government in Zambia "was more that of self-preservation than of national unity".²⁵

(ii) Preservation and Enhancement of Internal Peace and Tranquility

Preservation and enhancement of internal peace and tranquility was the second reason advanced to justify the establishment of a single-party system in Zambia. We have already seen in our analysis of the background to the introduction of a single-party system in (e) above that it was the determination of the ruling party, UNIP, to impose political unanimity by force and to perpetuate its rule by suppressing the opposition parties that bred inter-party strife and, indeed, disturbed peace in Zambia.

A review of the events related in (d) and (e) above clearly indicates that it was the ruling party, UNIP, which began the breach of peace and tranquility which the government declared it was out to preserve and enhance when it decided to establish a one-party in Zambia. Resort to violence was forced upon both UPP and ANC by the violent activities of the UNIP members whose brutish activities were often condoned by the Police.

Dismissing the arguments based on the fundamental needs of preserving and enhancing internal peace and tranquility in the country, Mr. Nkumbula accused the ruling party of being the worst disturber of peace because of forcing the people to join the UNIP. Thus, he said,

"UNIP... has used all sorts of methods to get the people to join the party. They have used all sorts of intimidation... some very uncivilised methods; including murder".²⁶

Mr. Nkumbula came to the inevitable conclusion that a one-party system had been introduced because UNIP had lost support after splits from the ruling party by Mundia and Kapwepwe in 1968 and 1971 respectively. That the split of Mr. Mundia and his followers caused UNIP to lose support in Western Province. "When later that year, 1971, Mr. Simon Mwansa Kapwepwe left UNIP", he explained, "that completely destroyed UNIP..."²⁷ He revealed that had Kapwepwe agreed to disband UPP he would have been released from detention.²⁸

He likened UNIP to a sinking ship which badly needed the imposition of a One-Party system of government for it to afloat. The legal fight against the introduction of a single-party system is adequately discussed by Professor Nwabueze in his Presidentialism in Commonwealth Africa.²⁹ Ironically, there is more of a breakdown of law and order in the country today despite the fact that we have been under a single-party for the past 15 years than was the case before the advent of a single-party system.³⁰

(iii) Accelerated Development

We have already seen in this Chapter how unwary smaller parties in Guinea, Mali, Senegal and the Ivory Coast were lured into joining the ruling parties by being promised that the proposed union would not signify an attempt to create a single-party but that the future lay in political competition while the civil service would remain non commital. It was sooner discovered that the appeal was a tactical move meant to

disorganise opposition parties.³¹

In the case of the prominent UNIP politicians there was no question of trying to lure the opposition parties into the net by falsely promising them that the envisaged union among the parties would not entail the disappearance of smaller parties. They bluntly declared that opposition parties were useless as, according to them, not only did they dissipate the energies badly needed to develop the country, but that they were also amenable to subversion by neocolonialists who wanted to come back to plunder the wealth of the newly independent African states. Thus, Mr. Mainza Chona argued:

"I honestly think that this continuance of competing with political groups is absolutely useless. Now that we have an African government we should rather think of how we can mobilise ourselves and take hands of all of us and come together to build our country, all of us."³²

This is the language used by an African politician who wants to remain in power in perpetuity. Was Mr. Chona under an impression that an African Government was incorruptible, non autocratic, or that African leaders have the monopoly of political wisdom and goodness? Political experience would not accept such a view for power has the tendency of corrupting its holders and corruption is no respecter of colour. Speaking about the amenability of opposition parties to imperialist subversion Mr. Chona said,

"The opposition groups who have no money are going to fall prey to these imperialists who will come in. Imperialists have a lot of strings. As I have said what they want is to continue to profit from Zambia in exactly the same way they had done in the past... They will naturally look to the opposition groups they can find and use them..."³³

It is significant to note that when the International Monetary Fund came in to do a very profitable business with Zambia it was the United National Independence Party which fell prey to the machinations of the Fund which is controlled by the capitalist countries, and Mr. Chona was and is still in the system.³⁴ Mr. Chona also observed that imperialism could also penetrate Zambia through the divisive forces of ethnicism.³⁵ But imperialism has enslaved Zambia not through tribalism but through the machinery of the United National Independence Party.³⁶

Although accelerated economic and social-development is one of the reasons advanced justifying the introduction of the one-party system of government in Zambia, it could not be said conclusively that there has been marked development since 1973 when the one-party participatory democracy came into effect. One World Bank Report shows that between 1975 and 1980, industrial output declined by 12 per cent, and that even though some recovery had taken place since 1980, the overall picture had been that of static growth in industrial output.³⁷ Although the main reason advanced for the Industrial stagnation is the fall in copper prices and earnings, such problems as the selection and implementation of efficient industrial projects cannot be just brushed aside.³⁸ For the past two years the price of copper at the London Metal Exchange has constantly been very attractive and yet the people of Zambia are becoming poorer and poorer.

(iv) Zambia's Geographical Position vis-a-vis Her Hostile Neighbours

The above reason was included in the principles to be observed by the Commission in their sacred duty of recommending to the Party and the Government the most democratic one-party constitution. The Commission was admonished to note that

"...Zambia's geo-political position demands a strong and purposeful government and a united nation if Zambia's Revolution is to succeed".³⁹

Showing the determination to do away with the liberal ideal of organised opposition, it was stated that "there can, therefore, be no room for complacency or lofty ideas".⁴⁰ The "Geo-political position" of Zambia vis-a-vis her hostile neighbours might have been one of the valid reasons compelling the government to introduce a single-party system of government in Zambia at that time because some of Zambia's neighbours: Mozambique, Angola and Zimbabwe, all now independent, were under colonial rule. Zambia's declared policy of rendering active support to the Liberation movements made her come into constant conflict with the colonial powers. Since Mozambique and Angola became independent in 1975 and Zimbabwe in 1980, foreign incursions into Zambia have been drastically reduced. Zambia's geographical position in relation to her neighbouring states can no longer be a cogent reason for clinging to a one-party system of government.

Having examined the reasons put forward to justify the introduction of a single-party system of government in Zambia, let us now assess whether each of the reasons has achieved the declared desired end.

(C) **ASSESSMENT OF THE REASONS ADVANCED TO JUSTIFY THE ESTABLISHMENT OF ONE-PARTY STATE**

Regarding national unity which was the main reason put forward to justify the introduction of one-party system in Zambia, it is arguable whether the unity we are enjoying in this country is as a result of the establishment of the one-party state in the country. As for peace, it is obvious that the introduction of one-party system has not enhanced

it as was thought when the decision to establish a single-party system was announced. In the words of Mr. Daniel Lisulo,...Member of the Central Committee, MP and Chairman of the Legal and Political Subcommittee of the Central Committee, (as he then was), "There is an apparent breakdown in law and order and as a result life of the Ordinary man in the street has become intolerable".⁴¹ We have already seen, as regards accelerated development, that industrial output has remained stagnant since 1975.⁴² We have it from authority that the government in Zambia is in a state of degeneration or decay and that the political situation is deteriorating everyday at an incredible rapidity.⁴³ We are also informed by those in the corridors of power that imperialists and neo-colonialists have taken effective control of Zambia. In the words of Mr. Daniel Lisulo, "Zambia is being ill-advised by the imperialist forces."⁴⁴ President Kaunda is reported to have said that Zambia has become a slave of the industrialised countries of the North.⁴⁵ One assumes that the President had in mind economic bondage. It is worth noting that this economic imperialism came through the most revolutionary Party, the United National Independence Party, under a single-party system of government.

The assessment of the performance of the one-party system in Zambia leads us to the inevitable conclusion that one-party system per se does not ensure accelerated development or enhance peace. We have witnessed, for example, loss of human life because of the food riots on the Copperbelt.⁴⁶ "Ninjas" have slaughtered people at will, and the Lusaka strangler committed more than 30 separate murders before he was arrested.⁴⁷ We have had and still have harsh economic measures causing malnutrition, high infant mortality and stunted growth.⁴⁸ The nation will pay in terms of intellectual decline. We witness the introduction of school fees, examination fees and medical fees. Why cannot we emulate Ghana which is reported to

have embarked on an economic recovery with a human face or human recovery.

Julius Nyerere has observed that One-Party system cannot be efficient because it offers no challenge to those in power.⁴⁹ Holders of power must live in fear that there are people who are ready to take over from them should they mess up things if they are to work efficiently. This challenge is provided by the institution of an organised Parliamentary opposition.

One school of thought believes that a multi-party system of government in Commonwealth Africa can succeed given the will to succeed. This school of thought contends that a careful examination of the indigenous African Society will reveal that two important notions of government were common to all African Societies whether they were chiefly or chiefless. That the indigenous African Political system had a governing council where regional representatives of the tribal kingdom sat to discuss issues affecting the kingdom. Decisions in the council were arrived at after exhaustive discussion of the issues and all shades of opinion had been expressed.

From this description of the indigenous African Society the School discerns the existence of two important concepts in the old traditional political set up,

(a) government by discussion which (b) contained a representative principle

According to Martin White, one of the protagonists of this School of thought, these are the qualities the indigenous African political set up has in common with the Parliamentary system bequeathed to Commonwealth Africa by Britain.⁵⁰ Professor T.O. Elias sees no reason why Africans "...should not be able to operate the modern institutions of

Constitutional government, given the will to do so.⁵²

Taking Zambia as an example, we are informed by Simbi Mubako that the government decided to enforce the one-party system just before the next Presidential and General Elections without a referendum because it became clear after Kapwepwe split "that for the first time since independence UNIP might lose power to the combined forces of Nkumbula's ANC and Kapwepwe's UPP..."⁵² It would be a delusion to expect someone who wants to cling to power at any cost to the governed to try to make modern institutions of Constitutional government work. As Professor Nwabueze tersely commented,

"the fear that further eruptions of the Mundia and Kapwepwe sort of episodes might destroy UNIP was the operative factor in the decision to establish the One-Party state. The motivation was more that of self-preservation than of national unity".⁵³

Obviously, a ruler who is determined to perpetuate his rule cannot be expected to adopt institutions that set up barriers against arbitrary rule or which make the road lie open to power for any citizen. It is for this reason that we do not share the view that the one-party system provides a tutelage period during which people are being groomed for genuine democracy by creating the conditions that sustain democracy. It is true that mass education, solid middle class, industrialisation and mass urbanisation are the prerequisites of a sustained constitutional democracy. But when we recall that the guiding principle in the establishment of a single-party system is self-preservation, then it would be a negation of that principle to suppose that holders of power will eventually adopt institutions that make constitutional democracy sustainable.

That the one one-party system in Zambia has come to stay is borne out by the following facts: Addressing the National Council of the United National Independence Party at Mulungushi Hall, Lusaka, on 6th March, 1972, President Kaunda warned that he would crush underground opponents of One-Party Participatory Democracy.⁵⁴ The Constitution of the United National Independence Party (1972) makes provision for a "PLEDGE" to the effect that "Forever the common man will rule the Republic through Humanism and the United National Independence Party".⁵⁵ It is abundantly made clear that the people of Zambia are not free to rule the Republic through a different ideology and party, for if they dare try to do that they will be crushed by the loaders of the United National Independence Party. This is irrespective of whether 90% of the people of Zambia, that is, the common man, wants a change. Now, if the one-party government of UNIP is to be maintained irrespective of the dislikes of the majority of the people, can Zambians boast of being under a democratic government? People who are unable to change their institutions even if the conditions which favoured their creation have become irrelevant are slaves of their institutions. This means that under Zambia's single-party system, political, economic and social matters are assumed to be decided with an element of finality. The question which arises is whether the people the leadership in UNIP purport to represent have agreed upon the political, economic and social fundamentals of our society and how they are to be implemented. In other words, one wonders whether our one-party system has already fixed in advance "the main lines and directions of future development"⁵⁶ of the Zambian society?

As we have already seen in the assessment of the reasons advanced in justification of the establishment of the one-party state in Zambia, the one-party constitution has long started falling under its weight. This is because there is a lot of complacency among the leaders. And as for the so-called common man, lack of political competition provides no incentives as he sees that the road to political advancement to the higher echelons of the Party lie closed to the majority of the citizens. These are some of the flaws that make one-party system lethargic.⁵⁷

We discuss in chapter 2 the method adopted in the implementation of a single-party system of government in Zambia.

References

Chapter 1

1. B.O. Nwabueze, Presidentialism in Commonwealth Africa, 1974, C. Hurst and Company, London, p.65.
2. Party Development: Organisation, Administration, Mobilisation and Politicisation, Research Bureau, Freedom House, Lusaka, 8th October, 1986, p.1.
3. Party Development, *ibid.* p. 3.
4. Victor Dennis Cowen, Constitution-Making for Democracy: an alternative to Apartheid, Johannesburg, Anglo-American Corporation of South Africa, 1960, p. 6.
5. A.D. Roberts, A History of the Bemba, Longman Group Limited (1973), London pp. 102-104.
6. Carl J. Friedrich, The Impact of American Constitutionalism Abroad, 1967, Boston University Press, p. 8.
7. Friedrich, *ibid.* p. 11.
8. See Article by Robert L. Hess and Gerhard Loewenberg in The American Political Science Review, May 1965.
9. The appeal was made by Mr. Mainza Chona in Parliament: National Assembly Debates, Hansard No. 2, January 12 to January 22, 1965, cols. 84, 85.

10. Zolberg, One-Party government in the Ivory Coast, 1969, Princeton University Press p. 152.
11. R.A. Zolberg, op. cit. p. 152.
12. Legislative Assembly Debates, 27th May - 5th June, 1964, Col. 7.
13. Paragraph 586 of Vol. 5 of the third edition of Halsbury's Laws of England. A Political Party is defined as "a society of persons associated together...for the promotion of politics...."
14. Nwabueze O.B., Presidentialism in Commonwealth Africa p. 65.
15. Legislative Assembly Debates, 27th May-5th June, 1964, Col. 7.
16. Quoted by B.O. Nwabueze in his Presidentialism in Commonwealth Africa, 1974, C. Hurst and Company, London, p. 65.
17. Nwabueze, op. cit. p. 65.
18. Nwabueze, B.O. op. cit. p. 65
19. Daily Legislative Assembly Debates, March, 1964, Col. 420
20. Daily Legislative Assembly Debates, ibid. Col. 421.
21. Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia, p. 68.
22. Zambia Law Journal Vol. 5, 1973, p. 67.
23. Parliamentary Debates, No. 31, 5th December - 14th December 1972, Col. 69.
24. Human Rights in a One-Party state - Seminar held at Dar es Salaam University by the International Commission of jurists (1976) Search Press, London, p. 48.
25. B.O. Nwabueze, Presidentialism in Commonwealth Africa, p. 225
26. Parliamentary Debates, No. 31, 5th December -14th December, 1972, Col. 66.
27. Parliamentary Debates, ibid. cols. 70-71
28. Parliamentary Debates, op. cit. col. 71
29. B.O. Nwabueze, Presidentialism in Commonwealth Africa, pp. 225-229.
30. See the Paper Mr. Daniel Lisulo, Member of Central Committee of the United National Independence Party and Member of Parliament (as he then was) presented to the Seminar attended by Judges and Magistrates at Mulungushi International Conference Centre, Lusaka. The same was reported in the Times of Zambia of 25th August, 1987.
31. See Note 11 of chapter I.

32. National Assembly Debates, Hansard No. 2 of 12th January-22nd January, 1965, cols. 84-85. ✓
33. National Assembly Debates No. 2, *ibid.* col. 93. ✓
34. See Zambia Daily Mail of 11th December, 1986 where Mr. Daniel Lisulo, Member of the Party's Central Committee (MCC), Member of Parliament and Chairman of the Political Sub-Committee of the Central Committee (as he then was) is reported to have told a seminar of Judges and Magistrates that Zambia was ill-advised by Imperialist forces. See also Zambia Daily Mail of 18th August, 1986 where His Excellency is reported to have said that Zambia "is a slave of the Industrialised countries of the North"
35. National Assembly Debates, Hansard No. 2, January 12 to 22 January, 1965, col. 94. ✓
36. See Zambia Daily Mail of 18th August, 1986. ✓
37. World Bank Report (W.B.R.) No. 4436 - ZA p. 11; see also the 1988 Budget Address, part III, No. 43 p. 5 where the Finance Minister declared, "Mr. Speaker Sir, the fundamental problem facing the economy is declining production ... there has been hardly any growth in the economy since 1981". ✓
38. World Bank Report No. 4436 - ZA, *ibid.* p. III
39. Report of the National Commission on the establishment of One-Party Participatory Democracy in Zambia, Government Printer, Lusaka, p. 68.
40. Report of the National Commission... *ibid.* p. 69.
41. Reported in the Times of Zambia of 25th August 1987. ✓
42. Reported in the Times of Zambia of 30th January, 1988; see also the 1988 Budget Address, part III, No. 43, p. 5
43. Mr. Daniel Lisulo, Member of the Central Committee, ^{and} Member of Parliament is reported to have told a seminar of Judges and Magistrates - see Times of Zambia of 25th August, 1987.
44. Zambia Daily Mail of 11th December, 1986. ✓
45. Zambia Daily Mail of 18th August, 1986. ✓
46. Reported in the Times of Zambia of 10th December, 1986. ✓
47. Times of Zambia of 24th October, 1987, 23rd Independence Anniversary Supplement; see also the Times of Zambia of 23rd April, 1980. ✓

48. B.B.C. radio interview of the British Secretary of State for Economic Aid to Sub-Sahara Africa on 15th September, 1987. See also the Times of Zambia of April 7, 1990 where President Kaunda is reported to have said that infant mortality caused by malnutrition was frightening.
49. See Times of Zambia of 10th June, 1986.
50. Martin White is mentioned by T.O. Elias in his Government and Politics in Africa (1963), Bombay, Asia Publishing House, p. 19.
51. T.O. Elias, *ibid.* p. 20.
52. Human Rights in a One-Party state - Seminar by the International Commission of Jurists held at Search Press, London, 1976 p. 48. Paper presented by Simbi Mubako who was a Lecturer in the School of Law of the University of Zambia.
53. B.O. Nwabueze, Presidentialism in Commonwealth Africa, 1974, C. Hurst and Company, London, p. 225.
54. Reported in the Times of Zambia of 7th March, 1972.
55. The United National Independence Party Constitution, p. 1.
56. Professor Edward McWhimney is quoted by Professor Thomas M. Frank in his Comparative Constitution Process: Cases and Materials, 1968, Sweet and Maxwell, London p. 9 Professor McWhimney in discussing the new Canadian Constitution is against too many specifics in the Constitution which make the Constitution too rigid to change. This, he says, is dangerous in a society which is in a state of flux.
57. Times of Zambia of 10th June, 1986 where Dr. Julius Nyerere, former President of the Republic of Tanzania is reported to have cited the major weaknesses of One-Party system of government.

CHAPTER 2

THE ACTUAL IMPLEMENTATION OF PARTY SUPREMACY

(i) Constitutional Amendments

The establishment of a single-party system in Zambia was effected in December 1972, by amending Article 4 of the Independence Constitution. Clause I of Article 4 of the amended Constitution reads as follows:

"There shall be one and only one political party or organisation in Zambia, namely, the United National Independence Party (in this constitution referred to as 'the Party') the Constitution whereof is annexed hereto for information."

Clause 2 of Article 4 prohibits any attempt at forming any party or organisation or express any opinion in sympathy with any other party.

Article 75 was amended to provide for "Primary elections" and the vetting of aspiring candidates by the Party's Central Committee for the purpose of nominating candidates for Parliamentary elections. Primary elections were abolished later because they were fraught with corruption. The vetting of candidates was retained.

Although the Constitution of Zambia (Amendment) Act No. 5 of December 1972 made UNIP the only de jure Party, introduced the vetting of candidates and made membership of UNIP one of the qualifications for contesting either Presidential or Parliamentary elections, it did not by itself make the United National Independence Party Supreme over all the institutions in the land.

Having established a single-party state in Zambia in December 1972 it became not only logical but also imperative that the only party be accorded supreme status over and above those of other institutions in the land both

legally and factually. Leaders in the higher echelons of the Party were aware of the anomaly and were feverishly striving to give the Party the paramount status it was due. Thus in his "Watershed Speech" delivered to the National Council of the Party in July 1975 at Mulungushi Hall, Lusaka, President Kaunda said,

"The United National Independence Party is supreme over all institutions in our land. Its supremacy must not be theoretical nor is it enough to merely reduce it to Constitutional provision. More than ever before our task now is to translate Party supremacy into something much more meaningful in the life of our beloved nation."¹

The National Council passed a resolution directing the Government to amend the Republican Constitution to reflect the paramountcy of the Party over other institutions in the land. The Constitution of Zambia (Amendment) Act No. 22 of December, 1975 therefore tried to meet the demands of the leadership in the Party accordingly.

The first amendment deleted from Article 4(1) the words "the Constitution whereof is annexed hereto for information" and inserted section 3 after section 2 and the new section provided "where any reference to the constitution is needed for the purpose of interpreting or construing any provision of this constitution or any written law or for any other purpose, the text of the constitution of the Party annexed hereto together with such amendments as may from time to time be made thereto by the Party and published in the Gazette, shall be taken to be the sole authentic text of the Constitution of the Party".

This section emphasizes the authenticity of the Party Constitution by virtue of being published in the Gazette and that it should be used for the purpose of interpreting or construing the Republican Constitution or

any other written law. The fact that the Party Constitution could be used to interpret or construe the national constitution or any other written law did not by itself make the Party supreme although this was the impression given by the Prime Minister, Mr. Mudenda, when he introduced the Bill in Parliament. Mwanakatwe rightly remarked that the amendment to Article 4 of the 1973 Constitution just made it "possible for the Party Constitution to have legal validity that we have always wished it should have".²

It became necessary to make other amendments to the constitution to make Party supremacy a reality.³ These amendments provided for an active participation of the Party organs in the running of the day-to-day affairs of the state in the exercise of the paramount powers and authority of the State. From that time on, such party functionaries as the Secretary-General and the Central Committee were per force the new constitutional provisions to take precedence in rendering advice to the President on various constitutional and government matters over that of the Prime Minister than had been the case before.

Although Article 43 of the National Constitution 1972 had provided for the Secretary-General of the Party or in his absence a Member of the Central Committee elected by the Central Committee to act when the President was out of the country or for inability caused by ill health or for any other cause specified in the Constitution, and the Central Committee formulated the policy, vetted candidates for Parliamentary elections and nominated the Presidential candidate who was to contest the office of the President of the Republic, yet the Secretary-General and the Central Committee were per force constitutional provisions excluded from participating in a considerable area of government activities. The President

too was not constitutionally obliged to seek the advice of either the Central Committee or the Secretary-General, and yet he was recruited from the Central Committee.

This anomaly was rectified by effecting an amendment to Article 43 by which amendment the Secretary-General and the Central Committee not only have a say but an overriding one on all governmental and constitutional matters. Included in these matters are: those requiring the Head of State to seek advice from the Central Committee and the Secretary-General, moving a motion to remove the President for reasons of physical or mental inability (Art. 40). The amendment to Art. 40 provided for a joint resolution of the Central Committee and the Cabinet to initiate the removal of the President. A similar amendment was made to Article 42(3) making the Acting President to consult both the Central Committee and the Cabinet before dissolving Parliament or revoking any appointment made by the President when he is performing his functions under clause (2). Article 43 was similarly amended in clause (2). Part V of the Constitution was amended by inserting immediately after Article 47 of Articles 47A, 47B and 47C. Article 47C(1) charges the Central Committee with the responsibility of formulating government policy and of advising the President on matters concerning the policy of the Party and government and on such matters as may be referred to it by the President. The Party was made superior to the Government by making provision in the Constitution that when the decision of the Central Committee was in conflict with that of the cabinet that of the former shall prevail.⁴

The amendment regarding the constitutional relationship between the

Central Committee and the Cabinet with regard to policy formulation and policy execution created a problem as it is not in practice easy to separate the two roles.

In Western democracies the problem is solved by having many members of the party national executive, charged with policy formulation, on the cabinet when the party forms the government. As already seen, this is not so in a one-party state.

The National Commission on the Establishment of One-Party Participatory Democracy in Zambia which recommended the separation of the Central Committee and the Cabinet and further recommended the separation of the policy formulation role of the party from the policy execution role of government thought that the problem created by such separation could be solved by having joint sessions of the two bodies when need arose.⁵

At the joint meetings of the Central Committee and the Cabinet there were clashes between the Cabinet and the Central Committee but there was no Constitutional standing for deciding which decision should prevail over the other. Hence, the amendment in Article 47C (2) already cited above which gave the Central Committee a superior status over the cabinet in the government.

The other amendment which gave noticeable recognition to the principle of "Party Supremacy" concerned consultations when making appointments and removals of Ministers and Senior government officers. The amendment made to Article 68 obliged the President to consult both the Secretary-General and the Prime Minister before such appointments and removals could be made instead of consulting the Prime Minister alone as had been the case before. Having seen the legal implementation of the supremacy of the party through

the 1975 Constitution amendment Act, let us now examine what the phrase "supremacy of the party" means.

(ii) Meaning of the Supremacy of the Party

In his "Watershed Speech" to the National Council Meeting held at Mulungushi Hall, Lusaka, from 30th June to 3rd July 1975, President Kaunda said that

"The United National Independence Party is supreme over all institutions in our land. Its supremacy must not be theoretical nor is it enough to merely reduce it to constitutional provisions. More than before our task now is to translate Party supremacy into something meaningful in the life of our beloved nation."⁶

Although the President said that the United National Independence Party was "synonymous with the people",⁷ their aspirations and their efforts to realise those aspirations, he pointed out that the people were superior to the Party. This he made clear when he said that "the Party ...exists for the people as their instrument for improving and defending their welfare."⁸ He defined Party supremacy as lying in the fact that the Party was involved in every aspect of human activity.

Mr Pius Msekwa, the then Vice-Chancellor of Dar-es-Salaam University, gave a similar definition in his keynote address to the International Commission of Jurists at Dar-es-Salaam University when he said,

"The concept of the supremacy of the Party which has been accepted here implies that it is the Party's responsibility to guide and supervise all activities of the government, the parastatals and other national organisations, all of which are regarded as instruments of implementing party policies."⁹

What degree of guidance and supervision should the Party exercise over

the judiciary and over such mass organisations as the labour movements without extremely curtailing their independence is a burning question. M.J.C. Vile appears to give credence to the definition given by Msekwa when he observes that

".....it has become the prime function of the Political party to co-ordinate by using primary functions as mere tools... and, therefore, to some extent to subordinate them. The political party process has come to compass the electoral, legislative, and executive processes, and indeed the judicial process as well."¹⁰

If the Party in power is to subordinate even the judicial process as well, how then do we prevent the leader of the ruling party from becoming despotic? This question becomes crucial in a one-party state and will be given a detailed examination in Chapter 3 when we discuss the means by which Constitutional democracy is implemented.

Having defined party supremacy let us find out in which organs of the party the supremacy of the party lies.

An examination of both the national constitution and the Party Constitution will reveal that Party Supremacy is not located in any one or two organs of the Party. It would appear that the supremacy of the Party is diffused among the several organs of the party. In its relation to the Government, it is clear that supremacy of the party lies in such functionaries as the Central Committee and the Secretary-General. While the former's decision prevails over that of the cabinet in the event of conflict, the latter must be consulted before Ministerial appointments and appointments of Senior Government Officers are made or revoked. As already noted in this chapter, this was not the case prior to the 1975 Constitution

Amendment Act as only the Prime Minister was consulted when such appointments were made. Now the motion to remove the President for reasons specified in the National Constitution cannot be initiated by the cabinet alone. It must be at a joint meeting of the Central Committee and the cabinet.

The supremacy of the party applies also to the people in their mass as one cannot contest either Presidential or Parliamentary or local Government elections unless one is a member of the Party. Some Senior Government posts can only be filled by members of the Party.

Within the party itself it is clear that the General Conference of the Party is the Supreme Policy-making body and elects the President of the Party who automatically becomes a candidate for the Republican Presidency, and also elects the Members of the Central Committee.¹¹ The decisions of the General Conference are valid and bind the Party, Government and public institutions.¹² We should now consider the supremacy of the Party in relation to the President of the Republic with respect to very important state affairs.

(iii) The Relation between the Concept of Party Supremacy and the Notion of Executive President

The 1975 Constitutional amendment gave rise to the problem of reconciling 'Party Supremacy', now a noticeable feature of the national constitution, with (a) the power Parliament of Zambia has to amend portions of the constitution by securing at least a two-thirds majority, (b) the executive power of the Republic vested in the President and exercisable by him directly or through officers subordinate to him.¹³

With regard to Parliament, the powers which it has to amend portions of the Constitution include the power to amend all those provisions establishing the superiority of the party organs. The question is whether

Parliament can be so stubborn as to pass an amendment to the constitution which would entail the removal of superiority of the Party functionaries.

Professor Shimba thinks this is not possible for two reasons, namely,

(a) Parliament is effectively controlled by the Party, and (b) is regarded as one of the instruments for implementing Party policies. Thus, he says,

"It is, of course, impossible for Parliament to behave in such a stubborn manner since Parliament itself is controlled from all directions by the Party and is, in fact looked upon as one of the many instruments which the Party uses to govern."¹⁴

We have already seen that both the Independence Constitution and the One-Party Constitution introduced a Presidential system of government with an executive President. The right to govern is vested in the President.¹⁵ This means that neither the Central Committee nor the Cabinet can claim an autonomous authority to carry out any business of the government unless such authority is delegated to them by the President.

Although the Central Committee nominates the candidate for Presidential elections, the President is directly elected by the people.¹⁶ This puts him in a stronger position. In the business of policy formulation the national constitution provides that when the decision of the Central Committee is in conflict with that of the cabinet that of the former shall prevail.¹⁷ This gives the impression that the Central Committee has, in matters affecting policy formulation, almost complete and independent monopoly of power. It does not have such powers. The President who presides over the joint meetings of the Central Committee and the Cabinet can, if he so wishes, cause the decision of the cabinet to be adopted in spite of the fact that it is at variance with that of the Central Committee. To quote Professor Shimba again, in matters relating to policy formulation,

"...the decisions of both the Central Committee and the cabinet partake the form of advice to the President who is constitutionally the final authority to say which one of them should be adopted."¹⁸

It would appear that in a one-party state the supremacy of the party lies in the President. Moreover, he is the one who nominates the Members of the Central Committee for presentation to the National Council for approval and later to the General Conference for elections. This is the reason why, since 1968, candidates for the Central Committee posts nominated by the President have been going through unopposed. Thus, one could safely conclude that the supremacy of the party lies in no other functionary than the executive President.

Having examined the meaning of party supremacy and its abode we should now turn to the examination of the principles that give substance to constitutional democracy.

References

Chapter 2

1. The "Watershed" Speech, 30th June - 3rd July, 1975, Government Printer, Lusaka, p. 3.
2. Parliamentary Debates, No. 40 of 1975, 2nd December to 18th December, 1975 Col. 115.
3. I am indebted to Professor L.S. Shimba for the ideas expressed in his article in the Zambia Law Journal 1980, Vol. 12, pp. 67 - 72.
4. Article 47c (2)
5. p. 47
6. The "Watershed" Speech, p. 3
7. ibid. 4
8. op. cit p.4
9. Human Rights in a One-Party State, A seminar of the International Commission of Jurists, Held in Dar-es-Salaam, 23rd-28th September, 1976, Search Press, London, 1978, p. 32.

10. M.J.C. Vile, Constitutionalism and the Separation of powers, Oxford, Clarendon Press, 1967, p. 349. ✓
11. Article 44 of the United National Independence Party gazetted in 1979.
12. ibid. Article 45.
13. Article 53.
14. L.S.imba, Article in the Zambia Law Journal 1980, Vol. 12 p. 72
15. Article 53.
16. Article 53.
17. Article 47C.
18. Professor L.S. Shimba, Article in the Zambia Law Journal 1980, Vol. 12 p. 67-72.

CHAPTER 3

CONSTITUTIONAL DEMOCRACY UNDER A ONE-PARTY CONSTITUTION:

A CASE STUDY OF ZAMBIA

The concept of constitutional democracy conveys the idea that barriers have been set up against the possible abuse of political power by its holders so that the pursuit of individuals' security and happiness is enhanced. It is essentially an effort to make the wielders of political power govern moderately, responsibly and in accordance with predetermined rules of law.

There exist several techniques of achieving constitutional democracy and we proceed to discuss briefly those restraints upon governmental action.

The application of the doctrine of the separation of powers is among the several modes of setting up barriers against the possible abuse of power. For the doctrine to operate effectively as a limiting technique, there should be a provision in the constitution for the traditional arms of government to have a minor participation in each other's allotted functions. Thus, parliament should have power to impeach the chief executive and the latter should have power to reject a bill passed by the former if he considers it to be obnoxious. The modification of the doctrine of the separation of powers enables the three arms of government to check and balance each other.

Used in conjunction with the doctrine discussed above are free elections held on a wide franchise and at frequent intervals so that the electors are afforded an opportunity to say whether people at the steering wheel of the state ship should continue piloting the ship. By free

elections we mean that the candidates competing for election to the legislature are represented by different sets of policies and the electors are not made to choose their representatives from a list of candidates approved by the government. Another mode of limiting government action is the institution of civil and political rights in the constitution and the constitution is placed beyond the reach of the sovereignty of electoral mandates which occur at frequent intervals. The legal protection of civil and political liberties gives hope to man that he will be free from all array of compulsions, fear, oppression, psychic and physical insecurity.

Placing the constitution beyond the reach of the executive and legislative manipulation is another mode of limiting governmental action. This makes the constitution reign supreme over all other institutions. This supremacy emanates from the fact that a constitution is, or is thought to be, a solemn and deliberate act of the entire community which have decided that certain matters are so fundamental that they must be reduced to definite written form and have prescribed a particular manner for their change. Thus, the constitution's supremacy derives from a body that is superior to the legislature. A constitution can be said to be a neutral guardian of constitutional democracy. It makes the executive be accountable to the legislature through the budget. The doctrine of the separation of powers discussed above is a pre-requisite to the notion of accountability and responsibility of the executive to parliament. A complete fusion of the executive and legislative functions would render the principle of accountability inefficacious as the executive would subordinate the legislature and thereby rendering the notion of checks and balances ineffective.

All the techniques of limiting governmental action discussed above

would be a nullity if courts were not free to interpret the constitution and other law without interference from the government. Where the judiciary is free, the government is suable in the courts for tort or breach of contract on the same footing as a humble citizen, thereby forcing the government to act with restraint in public affairs.

Having alluded briefly to the meaning of constitutional democracy and the means by which it is implemented, it is appropriate that we discuss its implementation in one-party Zambia. We shall proceed by examining the extent of the implementation in Zambia of each of the techniques discussed in this section.

(i) The application of the doctrine of separation of powers in a one-party state: Zambian experience:

In its pure form the doctrine of the separation of powers states that to establish and maintain a free society it is indispensable that government be divided into three branches, namely, the executive, the legislature, and the judiciary, each branch of power being responsible for a distinct and identifiable function to perform. It insists on avoiding the overlapping of functions and that each structure should have its own personnel. The objective is to provide "a system of effective restraints upon governmental action."¹

We saw in the preceding section that for the doctrine to operate effectively provision must be made in the constitution for the three traditional structures of government to have a "minor participation" in each other's allotted functions with a view to making the three branches check and balance each other. Whether or not this minor participation in each other's function implies making any of the branches amenable to the other's manipulation will be central in our discussion of the doctrine in

one-party Zambia.

Both the Independence constitution and the One-party constitution of Zambia make the executive, the legislature and the judiciary substantive parts of the constitution, making power-sharing a reality. The executive power of the Republic is vested in the President.²

The power to make laws for the Republic is vested in parliament and parliament is defined as comprising the National Assembly and the President.³ Parliament exercises its legislative powers through bills passed in the National Assembly and assented to by the President. The power to interpret the constitution and other law authoritatively is vested in the High Court with appeal to the Supreme Court which is the final court of appeal and record.⁴

We have already seen in the general discussion of the doctrine in this section that for the doctrine of the separation of powers to operate effectively none of the three branches of government should dominate the other. As we shall see in the discussion of the independence of the judiciary in Zambia, the appointment of judges of the Supreme Court and High Court does not secure independence to the courts of law.

As regards the legislative branch, the effectiveness of the doctrine of the separation of powers as a mode of imposing restraint on governmental action is extremely weakened by the absence of an opposition party.

With these general remarks on the weakness of the doctrine of the separation of powers, let us now see in detail how it relates to the legislature as an instrument of control of the executive action.

The system of restraints Zambian Parliament uses to exert control over the executive consists essentially of debates, Parliamentary questions, private member's motions, scrutiny of departmental reports, and sessional

committees. We now proceed to have a brief discussion of how each of these techniques has been employed in an effort to control governmental action.

(a) Debates in Zambian Parliament

Through criticism of government policies and practices, some irregularities and cases of gross inefficiency have been exposed during parliamentary debates. As an example, we may take the TIKA case which was revealed in Parliament on 8th February, 1981. Parliament refused to approve the estimates for the Ministry of Mines, Vote 14/01, demanding a clarification of the K2 million the government was requesting to pay compensation to the investors in the TIKA Iron and Steel Project which had been declared bankrupt. The project had started in 1972 as a Party (UNIP) Scheme, but was secretly transferred to the government when it went bankrupt. Parliamentarians wanted to know who the original shareholders (owners) were.

Another startling revelation was made during the debate on Supplementary Estimates of 1979. The Ministry of Finance was seeking approval of K3.4 million to pay compensation to TAW International Leasing Corporation (US) for the breach of contract by the Zambian Government. It was revealed during the debate that one of the counsels for TAW International had in fact been the Minister of Legal Affairs in the Zambian Government when the contract was made and later terminated. The same Minister was reported to have bought some of the vehicles belonging to TAW International which the Zambian Government had rejected on the advise of the Minister.⁵ We now turn to Parliamentary questions as a technique of making government act responsibly and moderately.

(b) Parliamentary Questions

Questions have been used to reveal irregularities obtaining in the

Government so as to impose some measure of control on the executive through exposure.

One such question concerned the sale of Nega Nega Brick Factory to Libro Textiles owned by Limbada and Sons at K800,000.00 after rejecting K2 million offered by the Mazabuka District Council. What was not revealed during the debate in Parliament was the fact that a Member of the Central Committee of the Party had bought shares in Libro Textiles.

The third technique extensively used by the Zambian Parliament to exert a modicum of control over the executive are reports of sessional committees of Parliament.

(c) Sessional Committees

Of the nine committees of Parliament, the most important are the Public Accounts Committee, the Committee on Parastatal Bodies and the Committee on Local Administration. These investigative sessional Committees have assisted Parliamentarians by supplying them with more information on government bills, policies and administrative activities.

The Committees have revealed many cases of unconstitutional and unauthorised expenditure in recurrent expenditure, arrears of income tax due from companies and individuals, uncollected customs duty, non deduction of income tax from payments made to contractors etc. What is surprising is that irregularities and negligence of the same sort are repeated year after year. How do we explain this lack of concern about irregularities and gross negligence? As we indicated earlier in this section the doctrine of the separation of powers cannot operate effectively in the absence of an opposition party which normally appeals to the electorate to change the government if the executive becomes more powerful and relaxes in its performance of public affairs. What this means is that for constitutional democracy to be maintained after it

has been established, people in power should be conscious of the presence of some people who are ready to take over from them should they mess up things. It is necessary also that the people who are to instil fear in the holders of political power should be freely elected on a wide franchise.

The extent of the implementation in Zambia of the concept of free elections on a wide franchise at frequent intervals as a mode of controlling executive power comes next in our discussion of the techniques of implementing constitutional democracy.

(ii) The implementation in Zambia of the concept of free Elections held on a wide franchise at frequent intervals

For the opposition party to instil fear in the wielders of political power, we saw above, it is necessary that the governed are free to elect the rulers on a wide franchise and at frequent intervals.

That elections are held on a wide franchise and at frequent intervals in Zambia cannot be doubted since the one-party constitution enfranchises every Zambian citizen of 18 years of age and above.⁷

Elections to the National Assembly are held every five years as provided for in the republican constitution read in conjunction with the party constitution.⁸ Thus parliament is dissolved before the Party Congress is held and ordinarily meets every five (5) years.

Although our political system meets the requirements of adult suffrage and frequent elections which are among the means by which constitutional democracy is established and maintained it is doubtful whether elections are free in Zambia. Lack of political competition and the system of vetting people aspiring to be elected to the Legislature and Local councils are obvious constraints on the notion of free elections in Zambia and these

will be fully discussed in chapter 5 of this Thesis.

Unless the right to elect rulers at frequent intervals, on a wide franchise, and other political and civil liberties are protected by law, constitutional democracy loses substance. This mode of its implementation merits discussion now.

(iii) Legal Protection of Civil and Political Liberties in
One-Party Zambia

(a) Meaning of Liberty

In these introductory remarks it is appropriate that we sketch the main idea of liberty and then relate it to its various disciplines.

Although universal and absolute liberty is a contradiction in terms as, in the political realm, the freedom of one is paid for by the lack of freedom by somebody else, it is generally agreed that in a free society the sovereignty of external controls over man's freedom should be minimal. That is to say, man must be free from what Professor Clinton Rossiter calls "a whole array of compulsions."⁹ It must be a measure of his freedom that he is not oppressed or humiliated by fear, and should be free from insecurity, "psychic and physical."¹⁰

Such a situation is possible only in a community which has resolved to traverse the bumpy road to democracy rather than the smooth one to tyranny. This demands self-discipline on the part of the government which must reject present indulgence in preference for the future good. All in all, liberty signifies a situation in which recognition is given to equality in citizenship without which justice as fairness is unattainable.

It is generally agreed that true liberty will only be guaranteed if fundamental rights and freedoms and their protection are instituted in the

national constitution with very few, if any qualifications. This is the only way to consolidate and conserve the gains of every victory.

The institution of the bill of rights and other limitations on the government in the constitution alone is not enough unless it is made difficult to change the constitution by any "sovereignty of electoral mandates" which occur at frequent intervals. There must be instituted a special procedure for their change, preferably involving an external body.

(b) Zambia's One-Party Constitution

The mode of establishing and maintaining constitutional democracy was devised by the British colonial power whenever it gave independence to the colonies.

Zambia's Independence constitution as well as the One-Party constitution contain express provisions protecting fundamental human rights and freedoms and these are categorised as primary and secondary rights.

The former comprises those rights and freedoms touching on the integrity and dignity of man. These are rights to life, personal liberty, the protection of law, freedom from slavery, freedom from forced labour, and freedom from inhuman treatment. The latter category comprises mainly those rights and freedoms which protect political, social and economic liberties.¹¹

Since it is an established fact that even a constitutional government finds it necessary to equip itself with adequate constitutional powers not only to preserve itself but also to protect the rights and freedoms of the individuals within that community, the Zambian government cannot be an exception to that necessity.

Both the independence constitution and the one-party constitution set up two limitations on the enjoyment of fundamental human rights and

freedoms: some limitations are based on public interests; others are based on the enjoyment of the same rights by other people.¹² This means that there is no absolute enjoyment of fundamental human rights and freedoms in Zambia as was argued in the Kachasu V. Attorney-General case. It was contended on behalf of the state that individual rights were dependent upon the safety of the state; the former found fulfilment when the latter was not harmed.

In the above case, the applicant, Feliya Kachasu, a member of the Watchtower Religious Society, had been suspended from school and refused unconditional readmission thereto for refusing to salute the national flag and sing the national anthem. The applicant argued, inter alia, that the refusal constituted hindrance in the enjoyment of her right to freedoms of conscience, thought, and religion guaranteed to her by sections 13 to 21 of the independence constitution.

The applicant lost because clause 5 of section 21 of the Independence Constitution authorised the state to derogate from the provisions of the section provided the action taken was reasonably required in the interests of the state and for the purpose of protecting the rights of other people, and was reasonably justifiable in a democratic society.¹³

The essential point to remember is that although primary and secondary rights and freedoms are instituted in the constitution, those pertaining to the protection of political, economic and social rights are so qualified as to render them ineffective. Moreover, the rights and freedoms pertaining to political association and assembly, expression in political matters, political beliefs and political participation, which we shall consider in chapter 4 of this Thesis, have not been fully protected in the constitution.

In conclusion, it may be said that the legal protection of civil and political rights as an essential element of constitutional democracy is ineffective in one-party Zambia as some of those rights are not even enshrined in the constitution.¹⁴

Another source of worry is the easiness with which Zambia's one-party constitution can be changed. The Zambian constitution cannot be regarded as a bedrock of constitutionalism. This now merits a brief discussion.

The constitution provides for its amendment the publication of the text of the bill in the Government Gazette thirty days before its first reading in parliament and that it must be supported on its second and third readings by the votes of not less than two-thirds of all the members of the National Assembly.¹⁵ There is no secret ballot as the names of those who vote for or against the bill are recorded in official documents, including the daily parliamentary Debates.

In One-party Zambia it requires a lot of courage for a parliamentarian to vote against the bill introduced by the government.

We may take the constitutional amendment Acts passed between 1986 and 1988, by way of example, of the easiness with which the constitution in Zambia can be changed.

The One-party constitution which resulted from an amendment effected to the Independence Constitution required a person working in the civil service or in any post prescribed under an Act of parliament to resign his post upon his being declared elected to the National Assembly.¹⁶

In 1986, the Government introduced a bill in parliament seeking to amend this particular provision so as to require a person seeking to contest Parliamentary elections to resign his post, office or appointment before seeking election to the National Assembly. The persons to be affected were

workers in the civil service, defence and security service, judicial service and in the parastatal bodies.

Parliamentarians liked the bill but objected to the exclusion of full-time party workers from those who should resign from their posts before seeking election to the National Assembly. After a protracted debate, the government gave in and the bill was amended to include party workers on full-time employment.¹⁷ Full-time party workers considered their inclusion as thwarting their chances of advancement as they were already full-time politicians. They considered being elected to the National Assembly as a sort of promotion.

At the Party's 22nd National Council meeting held at Lusaka's Mulungushi Hall from 18th to 22nd December, 1987, it was resolved that the recent amendment to the National Constitution was ultra vires of Articles 7 and 15 of the Party Constitution. The resolution instructed the Government to repeal the amendment.¹⁸

Acting on those instructions, the government introduced the constitution (amendment) (No.1) Bill of 1988, which, substantially, sought a reversion to the provisions of clause (5) of Article 68 of the One-Party Constitution 1972, as it had been before the constitution (amendment) (NO.3) Act of 1986. Parliamentarians rejected the bill.

At an extra-ordinary meeting of the Party's National Council, the President is reported to have warned parliamentarians that they were not beyond the reach of the system as they seemed to think. He accused them of "selfishly opposing revolutionary political changes and threatened to "eject" them from the Party in disgrace."¹⁹

When the same bill was reintroduced later in June 1988, it was passed in the National Assembly with overwhelming majority.²⁰ This is adequate

and compelling evidence for concluding that in One-Party Zambia parliament plays no restraining role over the executive power. Further, it shows, as already indicated above, that the national constitution cannot be relied upon as a bedrock of constitutional democracy as it can be changed when/as and in any way the executive sees fit without fearing hostile public opinion. The role played by a supreme constitution in the implementation of constitutional democracy now beckons for consideration.

(iv) The Supremacy of the Constitution over all other Institutions

Although it is generally accepted in Western democracies that a written constitution is supreme over all other institutions in the land, it is also agreed that for the constitution to command loyalty, respect and confidence of the people, it must be founded upon the expressed will and acceptance of the people to be governed by its provisions if it has to endure. A constitution is supreme because it is, or it is thought to be, a solemn and deliberate act of the people in their sovereign capacity; that is to say, the entire community decides to reduce to written form certain matters they consider to be so fundamental that if they have to be changed a particular manner for their change has to be employed.

Two essential points to bear in mind are that for the constitution to be legitimate and supreme it must first be based on the expressed will and acceptance of the entire community and must be an original act of the people of all classes and of all political persuasions in the community.

The most efficacious way of eliciting the real will of the entire community is by summoning a constituent assembly whose primary function is to consider carefully the substantive restraints upon the powers of the government to be created by the new constitution. Then it must be subjected

to public discussion. What emerges thereafter is a true will of the people, declaring certain matters to be so fundamental that they cannot be subjected to the vicissitudes of political controversy. These rights constitute the very essence of man's integrity and dignity.

We now proceed to examine how these principles are met in Zambia's national constitution.

(a) Zambia's One-Party Constitution

A review of the background to the establishment of One-Party democracy in Zambia will, I assume, assist us in the examination of Zambia's one-party constitution. In that background we saw that the decision to change to the new political system was that of the cabinet. The decision was announced by President Kaunda at a state House Press Conference held on 25th February, 1972. We also saw that the National Commission on the establishment of a single-party system in Zambia was precluded from hearing petitioners who expressed views on the merits and demerits of the proposed new political system. The petitioners who dilated on the pros and cons of the new system were, however, not listened to. Thus, a change to a new political system was not an expression of the will and acceptance of the entire people of Zambia, more so in the absence of a referendum.

In the face of the opposition from the Opposition Parties, the Labour Movement and churches, although individual church leaders sat on the commission, it was not possible to summon a national convention or constituent assembly to give careful consideration to the draft provision of the one-party constitution nor was it subjected to serious public discussion.²¹ It was only the National Council of the United National Independence Party, meeting in Hindu Hall in Kabwe, which considered both the

Report of the National Commission and the White Paper containing government decisions on the Report of the National Commission.

One such government decision totally rejected the National Commission recommendation that sought to limit to ten years the length of period one should serve as president after which he should be illigible for re-election to that office for five years; thereafter he becomes eligible. The government argued that

"There should be no limitation on how long a man or woman can serve his or her country in the office of President."²²

By Resolution (I) (IV), "The Government Paper was accepted" in toto by the National Council.²³ This unanimous approval of Government Paper should not surprise us because very few members of the National Council were not political appointees of the Party.

Back to the legitimacy and supremacy of the National constitution, it is certain that it was not founded on the expressed will of the people of Zambia because the introduction of the new political system, which a constitution is supposed to embody, was done in the face of a strong opposition from many quarters. President Kaunda took note of this opposition when, commenting on the turbulent period during which the National Commission had been gathering evidence from the petitioners, he said,

"The period between March and mid-June this year must have been very trying indeed. You all heard how critics received tremendous publicity..., the over-publicized criticism of the Party and Government... had created the impression that Zambia was torn apart beyond redemption."²⁴

The One-Party constitution of Zambia though not founded on the expressed will and acceptance of the people was enacted by Parliament into supreme law on 18th December, 1972, and has endured for about fifteen (15) years because no one is allowed to express any opinion against the established political Party (UNIP). Let us see how it was done in Sierra Leone.

The establishment of a single-party system of government in Zambia can be contrasted with the attempt to introduce a single-party system of government in Sierra Leone in 1966. In the latter country, it was Parliament which, during the 1965-66 session, passed a resolution directing the government to seriously consider the introduction of a single-party system of government in the country. Though the White Paper issued to that effect made proposals as to the type of one-party state it wished to be established in Sierra Leone, the White Paper ended with two pledges: One pledged to preserve fundamental human rights and freedoms, both basic and secondary. This, the Zambian Government also did. The most significant pledge and which the government of Sierra Leone adhered to was to the effect that

'Any changes in our political system which are proposed will only be brought about if the people agree to them, after being consulted by a method which is both constitutional and popularly acceptable.'²⁵

According to Professor Shimba, and many constitutional lawyers share his views, that what was done in Sierra Leone is, "From a democratic point of view, ... a more acceptable and preferable way of effecting a change to bring a new system of government than was the case in Zambia".²⁶

From this discussion, it is clear that Zambia's one-party constitution, being an imposition on the people, cannot command their loyalty, confidence and respect. This being the case, its claim to supremacy, if any, has a

weak foundation.

(c) Semblance of Supremacy

But theory regarding the link between legitimacy and supremacy apart Zambia's One-party constitution shows some semblance of supremacy over all other institutions in the land in that it creates the three traditional arms of power of government, bestows and delimits their powers.

Thus, the constitution vests executive power in the President.²⁷ Legislative power of the Republic is vested in Parliament.²⁸ While power to interpret the constitution and other law is vested in the Supreme Court of Zambia.²⁹

But the supremacy of the constitution in a single-party state, like Zambia, means nothing since the mass-based party which of necessity must co-ordinate the three arms of government in order to realize social services completely subordinates them in the absence of an opposition party which normally serves to strengthen the legislative arm. Consequently, the legislature becomes a rubber stamp, while the judiciary becomes amenable to executive manipulation.

Although the One-Party constitution in Zambia provides the requirement of two-thirds majority of all the members of parliament in the second and third readings of the bill for its change,³⁰ in practice, parliamentarians can only reject a bill proposing a change to the constitution at their own risk as the events between 31st March 1988 and June 1988 show. Parliamentarians rejected a bill seeking an amendment to Article 68 of the constitution. After parliamentarians had been threatened with "ejection" from the Party in disgrace, the same bill was reintroduced in Parliament in June of the same year and was passed with overwhelming majority. As we shall see in chapter 5, many parliamentarians were prevented from seeking

re-election to the National Assembly in the 1988 Presidential and General Elections.³¹

This shows clearly that Zambia's One-party constitution cannot sustain constitutional democracy as it can be changed at the whim of the government. This, in other words, implies that it is the executive and not the constitution that is supreme in one-party Zambia because the legislature, as we saw when we discussed the doctrine of the separation of powers, has no power of checking the executive action. After reaching this conclusion, we can now proceed to examine whether or not the government is accountable and responsible to parliament in one-party Zambia.

(v) Accountability and Responsibility of Government
to Parliament in One-Party Zambia

The doctrine of the separation of powers discussed under (i) above of this chapter is a prerequisite to the principle of accountability and responsibility of the executive to parliament. A complete fusion of executive and legislative powers renders ineffective the notion that the executive can be made accountable and responsive to public opinion through the machinery of the legislature. When complete fusion takes place, though some fusion there must be, the executive waxes more powerful and dominates the legislature, and the accountability of the executive to Parliament becomes a nullity.

As we saw in the preceeding sections, it is the existence of the opposition parties that gives strength to the legislature because an alert and strong opposition party is likely to bring down the government of the day. We now proceed to relate to the Zambian Government what we have just discussed above.

We saw in the preceding section that the One-Party constitution in

Zambia has made the executive, the legislature and the judiciary substantive sections of the constitution and the constitution makes it mandatory for the Minister of Finance to lay before the National Assembly annual financial report of revenue and expenditure.³² No warrant of expenditure from the general revenue of the Republic can be issued unless such expenditure is authorised by an Appropriation Act or the President considers that expenditure to be in the public interest.³³

Despite the provisions cited above, there have been numerous cases of unconstitutional and unauthorised expenditure. In 1987, there were 1666 cases of unconstitutional and unauthorised expenditure totalling K96,673,863. This amount included unconstitutional expenditure in the sum of K75,421,658.³⁴ This has been the state of affairs year after year. Just recently, the Parliamentary Committee on local Administration revealed cases of

"violations of financial regulations by District
Governors who owed K180,800.00 to councils in
unretired imprest, advances, loans, rent and
water arrears..."³⁵

This apparent disregard of parliamentary criticisms is explained by the fact that sanctions against the erring executive are non-existent in our community and therefore the government can only comply when it suits its own interest. The reward to the holders of political power is permanent. There is nothing to motivate them to do a better job. In other words, the fear of punishment for bad performance or the expectation of reward for good performance from the public are non-existent in one-party Zambia and consequently, play an insignificant role in influencing executive action.

Thus, when the executive in one-party Zambia renders an account of its

activities in public affairs to Parliament, it does not seek to maintain the loyalty of its members in Parliament and win for itself the support of the electorate, rather, it does so as a mere formality. If the government acts responsibly, it does so not to influence public opinion but only wishes to be responsible. It is because of the disregard of public opinion that we had food riots on the Copperbelt which resulted in the loss of life.³⁶

What this means is that accountability and responsibility to Parliament as one of the means of implementing constitutional democracy is only effective if more than one political party exists in parliament. We now turn to a brief discussion of the independence of the judiciary as an important means of implementing constitutional democracy. We begin with the conditions precedent for the judiciary to be said to be independent.

(vi) Independence of the Judiciary

The independence of the judiciary signifies a situation in which courts are free to interpret the constitution and other laws without any interference from the government. In such a situation the government is suable in the courts of law for tort or breach of contract on the same footing as a humble citizen. The government is thereby forced to act with restraint in the performance of public affairs. The motivation is to maximize the enjoyment of fundamental rights and freedoms but without at the same time enfeebling the government so that it is unable to hold out against those wishing to overthrow it by force. In other words, what is needed is to prevent an effective central government from degenerating into an arbitrary rule. Having considered the conditions precedent for any judiciary to be independent, let us now apply the same to the judiciary in One-Party Zambia and find out whether or not it can be impartial in

therefore, be impartial in interpreting the constitution and other law when the government is a party to the case properly brought before the court.

The most important conditions are (a) the security of offices and emoluments of judges, (b) the appointments and removals of judges should be placed beyond executive or legislative manipulation and, (c) the jurisdiction and composition of superior courts should not be subject to the vicissitudes of political controversy.

For the judges to be secure in their posts, their removal, if appointed by the executive, should involve an external body and their emoluments should not "be diminished during their continuance in office."³⁷ Their appointments should also involve an external body to prevent appointments based on political antecedents being made. In Israel the Bar participates in the appointment of judges of superior courts.³⁸

While the jurisdiction of the superior courts may not be interfered with in order to obtain a favourable judgement from the court, in crucial instances, the executive is likely to interfere with its composition in order to achieve the desired end. Even the United States Constitution does not impose any restriction on the composition of the Supreme Court.

Having examined the conditions precedent for an independent judiciary, we now proceed to relate the same to the Zambian situation and begin with

(a) The security of offices and emoluments of judges in Zambia

The constitution of Zambia prohibits the abolition of the offices of the supreme court and of the high court while there is a substantive holder thereof.³⁹ These particular provisions give the impression that judges of the Supreme Court and puisne judges of the High Court enjoy the security of tenure of their offices. But the precedent we have had points to the

vulnerability of their offices. Honourable Justice Fredrick Chomba has twice been removed from the bench and given a cabinet post in the government from which, if unfortunate, he could be removed without the appointing authority being required to justify the removal. There is no specific provision in the constitution protecting the emoluments of the judges. The jurisdiction of the Supreme Court comes next for examination.

(b) Jurisdiction of the Supreme Court

The One-Party constitution provides that "it shall be the Superior Court of record, and, save as otherwise provided by Parliament, shall have all the powers of that Court."⁴⁰ The saving Clause gives an opportunity to the executive to initiate an amendment to the provision which may encroach on the court's jurisdiction. As, for example, the Supreme court has no jurisdiction over the Industrial Relations Court.

Very crucial to the independence of the judiciary is the manner of their appointment, and how this is done in Zambia calls for consideration now.

(c) Appointment of judges in Zambia

Judges of the Supreme Court in Zambia are appointed by the Republic's President without the participation of an external body as is the case in the United States of America where such appointments are subject to confirmation by Senate, or in Israeli where members of the Bar, the existing judiciary, as well as members of the government, are given a voice in judicial appointments. The chief executive in Zambia can, if he so desires, make appointment to the Supreme Court on the basis of the appointee's political antecedents.⁴¹

Appointments of the High Court judges are made by the President "acting in accordance with the advice of the Judicial Service Commission."⁴²

But the composition of the Judicial Service Commission is a source of worry. It comprises five members, three of whom are members of the executive branch, namely, the Attorney-General, the Secretary to the Cabinet and the Chairman of the Public Service Commission.⁴³ At least the risk of having political appointments being made to the High Court persists as long as the Commission is controlled by the government.

It may be of interest to compare the composition of the Judicial Service Commission in the Independence Constitution with the one just discussed above. In the Independence Constitution the Judicial Service Commission composed of the Chief Justice, as its Chairman, the Chairman of the Public Service Commission, a Justice of Appeal or Puisne Judge appointed by the Chief Justice, and one other member, who holds or has held a high judicial office, appointed by the President of the Republic and removable by him.⁴⁴

One could discern an element of balance of power between the executive and the judiciary in the composition of the judicial service commission in the Independence Constitution; the Chief Justice and the Justice of Appeal appointed by him represented the Judicial branch. While the Chairman of the Public Service Commission and the other member appointed by the President represented the executive branch.

Back to the provisions in Zambia's One-Party constitution regarding judicial appointments to the superior courts, where, as we saw, the risk of having political appointments being made to the bench persists, we may safely conclude that only very brave judges can, and do, act independently of executive influence in determining cases tainted with political innuendoes, justiciable and non-justiciable factors.

The High Court for Zambia was in such a situation in the case of Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe V The Attorney-General, where

6. Parliamentary Debates, 3rd March to 26th March, 1981 cols. 3898-3905.
7. Article 72 of the one-party constitution 1972.
8. Article 38(3) of the Republican constitution 1972 and Article 50(2) of the constitution 1988.
9. Aspects of Liberty, Essays presented to Robert E. Cushman, Edited by Milton R. Konvitz, and Clinton Rossiter, Cornell University Press, March 1958, p. 17.
10. Op. Cit. p. 17.
11. Articles 13 to 20 of the one-party constitution 1972, and sections 14-18 and 20 of the Independence Constitution 1964.
12. Articles 19(2) (a) (b); 21(a) (b) (5); 22(2) (a) (b).
13. Zambia Law Reports (1967) p. 167.
14. Article 4 of the one-party constitution 1972, limits freedom of political association and assembly, expression or sympathize with political beliefs contrary to those held by the de jure party.
15. Article 80 (2) (a) (b);
16. Article 68 (5) of the one-party constitution 1972.
17. See constitution (amendment) No. 3) Act of 1986.
18. See NC/22/87 resolution No. 1.2 under subheading "legal and political affairs" in its draft form.
19. Zambia Daily Mail of April 22, 1988, p. 1.
20. Constitution (Amendment) (No. 2) Act of 1988.
21. See Report of the National Commission on the establishment of a one-Party Participatory Democracy in Zambia, October, 1972, Government Printer, Lusaka pp. 3, 35-38.
22. See summary of Government Paper on the Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia, 15th October, 1972, The Government Printer, Lusaka.
23. "A Nation of Equals", an Address by H.E. to the National Council of UNIP Meeting held in Hindu Hall, Kabwe, from 1st to 3rd December, 1972, p. 52.
24. "A Nation of Equals" ibid p. 2.
25. Quoted by Professor L.S. Shimba, Zambia Law Journal, 1981, Vol. 13, p. 53; See also African Law Reports, SLJ, 1967 at p. 7.
26. Zambia Law Journal, 1981 Vol. 13, p. 53.
27. Article 53 of the One-Party Constitution 1972.

28. Article 63 of the One-Party Constitution 1972.
29. Article 107 of the One-Party Constitution 1972.
30. Article 80 of the One-Party Constitution 1972.
31. See Zambia Daily Mail of 23/9/88 which reported the dropping of "vocal" former Parliamentarians from polls.
32. Article 124 (1) (2).
33. Article 12 (2) (a).
34. Auditor-General's Report for 1987 para. 14; see the Public Accounts Committee Report 1987 p. 2.
35. Report of the Committee on Local Administration, January, 1987, page 111, see Zambia Daily Mail, 12th December, 1987.
36. Reported in the Times of Zambia of 10th December, 1986.
37. Article III (1) of the United States Constitution.
38. The Laws of Israeli, "Judges Law, 5713, 1956".
39. Articles 107 (3) and 109 (3).
40. Article 107 (4).
41. See Article 108 of the One-Party Constitution 1972.
42. Article 110 of the One-Party Constitution 1972.
43. Article 115 of the One-Party Constitution 1972.
44. Section 104 of the Independence Constitution.
45. Zambia Law Reports, 1978 ZR 300 - 1121 p. 378.
46. Op. Cit., p. 382.
47. The case has been given a detailed discussion in Chapter 5 of this Thesis.

CHAPTER 4

ONE PARTY STATE AND FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS:

THE ZAMBIAN CASE

Since we have already discussed in Chapter 2 the meaning of the supremacy of the Party, it is proposed to begin with the discussion of the meaning of fundamental human rights and then examine the extent of their observance in Zambia.

Both moralists and realists agree on the meaning of the fundamental human rights and freedoms as the conditions of life without which man can hardly realize the best that is in himself. The two Schools of thought, however, differ on the source of these inalienable right. While the natural law theorist believes that fundamental human rights have been endowed to man by his creator and regard them as inherent and inalienable, the realist contends that only rights granted by law are legitimate and capable of being enjoyed.

While this is a true reflection of a real political situation, historical evidence, however, bears witness to the fact that when the rights which ensure human dignity are not given legal recognition, people will always struggle for their legal recognition.

We hasten to point out that the term "inalienable rights" can be misleading as some rights are transferable as would happen when one transfers the right to property to someone by an act of gift. But such rights as the right to life and the right to liberty cannot be dispensed with. Having discussed the meaning human rights embody we can now examine

their implementation in one-party Zambia.

We may take for granted that certain fundamental human rights and freedoms such as freedom of association and assembly, freedom of expression and the press, and freedom against discrimination on political grounds are incompatible with the concept of Party Supremacy. This issue has been adequately covered elsewhere in literature.¹ We shall concern ourselves with the extent of their implementation in Zambia.

Just recently, President Kaunda observed that because the Party and the Government have strictly adhered to the doctrine of the separation of powers people of Zambia have been enjoying so many freedoms. Among those he enumerated are:-

"Freedom of Association

Freedom of Worship

Freedom of Speech

Freedom of the Press

Freedom of Movement."²

We begin with the Freedom of Association

A. Freedom of Association

As regards the freedom of association, the One-Party Constitution makes it unlawful for anyone to attempt to form any political association other than the United National Independence Party, or to belong to, or to assemble or associate with or even express any opinion in support of any political organisation other than the United National Independence Party.³ Obviously it is only the members of the de jure Party who enjoy complete freedom of association and assembly.

By necessary implication those who are not members of UNIP are not

allowed to call in question the values and institutions established by the present government.

We may ask whether a state which does not allow its citizens to question its own values and the institutions, or which denies its citizens the right to organize themselves in opposition to the government of the day can rightly claim that people in that state enjoy freedom of association?

This conclusion implies that it is only in a multi-party state that democracy flourishes as in such a state the existence of an opposition party offers the citizen an opportunity to replace the rulers together with their policies. As Aristotle has observed, liberty is the ultimate aim of democracy and that liberty means ruling and being ruled in turn.⁴

Another argument in favour of the multi-party system of government is that it ensures a smooth transfer of power from those who have been rejected at the polls.

In Zambia, as in many independent African states, it is contended, in support of one-party system of government, that the idea of one-party state was firmly rooted in our old traditional form of government with the King or Chief at the apex of the pyramid of power. Below the traditional pyramid were subordinate chiefs. Precisely, so they contend, these communities were organized "like one-party states, but on a smaller scale".⁵ They claim that fundamental human rights and freedoms were observed and therefore, the system was democratic.⁶ The principle of equal liberty when applied to freedom of association and assembly, militates against one-party system of government.

If, as we have just seen, the substance of democracy is the opportunity it offers the governed to enjoy fundamental human rights and freedoms,

including the right to replace rulers then democracy cannot be African or European. It only means liberty.

If we want to cling to the old traditional system of government, we must cleanse our minds of the idea of party politics and concentrate on creating non-party states with the absolute monarch at the pinnacle of power. But once we accept the element of party politics, then we must also cherish the notion of organised opposition which is one of the essential elements of constitutional democracy.

Organized opposition, together with the freedom of expression and of the press, work against the possibility of a democratic state degenerating into a totalitarian state and also helps to achieve "necessary social change without resort to violence,..."⁷ This makes the society more adaptable and stable.

Dr. Meebelo is partly right and partly wrong when he states that

"two or multi-party systems are, even in western democracies, rarely born out of principle but rather out of expediency and sectionalism. They subsist....on the concept of 'haves and have-nots or on the oppressed and oppressor..."⁸

Dr. Meebelo states a perennial political force when he says that conflict of interests gives birth to two or multi-party systems. This is a perennial political force with which we have to come to terms. Dr. Meebelo is wrong in believing that egoism, which gives birth to sectionalism from which two or multi-party systems arise, can be eliminated from society. He appears to belong to the school of thought which believes that a rational and moral political order can be achieved on earth, and now, if only obsolescent institutions and depraved isolated individuals or groups can be eliminated

from society through education, reform and sporadic use of force.

We would be fighting an endless battle if we attempted to eliminate egoism from society because it arises from the scarcity of resources necessary to satisfy myriad needs. That is why even a moralist finds it difficult to be unselfish. Hence, the perpetual conflict of interest resulting from what Dr. Meebelo calls "expediency" for which there is no remedy. Today's political reality and historic experience bear witness to the fact that a society without conflict of interest is not of this earth.

(a) "Haves and Have-nots" in Zambia

Writing in support of the cabinet decision to introduce a single-party system in Zambia, Dr. Meebelo argued, as already stated in this section, that expediency and sectionalism rather than principle breed two or multi-party systems. That the existence in any society of the "haves and have-nots or the 'oppressed and oppressor' conduce to their subsistence. Such "a situation", he argues, "does not exist in Zambia".⁹ Let us look at the situation that obtained in Zambia in 1972 when Dr. Meebelo wrote his book. The majority of the people living in rural areas and urban shanty compounds were leading a hand to mouth life. The situation is even worse today when dry Kapenta (small dry fish) is costing K140 per kg.¹⁰ Today, it is not possible for a Permanent Secretary, a Professor or an Army General to buy a good second hand car even if he obtained a loan from his employer because the prices are out of his reach. But the people in the leadership of UNIP have been so good to themselves that they have given themselves from the government coffers huge loans to enable each of them to import new vehicles. This was revealed when one of the heads of the mass media who interviewed President Kaunda on the eve of his 64th birthday questioned the

the fairness of the government decision to give loans of U.S. \$30,000 to each of the leaders to import new vehicles in view of the ailing economy.¹¹

One wonders whether Dr. Meebelo still holds the view that Zambia is not torn between 'the haves and have-nots' or between the oppressed and the oppressor'? President Kaunda thinks this is the situation which prevails in Zambia today. His Excellency is reported to have condemned the continued exploitation of the poor by the rich and declared that he would support the poor if they rose against the rich.¹²

Since according to both President Kaunda and Dr. Meebelo, "two or multi-party systems" subsist on the concept of 'haves and have-nots or on the oppressed and oppressor'," ¹³ a situation which obtains in Zambia today, it is fair then that we revert to the multi-party systems of government which will usher in freedom of association and assembly.

(b) Is the mere Existence of Opposition Enough?

U Thant is reported to have argued that it is not necessary that there in fact must be an organized opposition in order to have genuine democracy. What was required, he contended, was "only freedom for opposition, not necessarily its organised existence".¹⁴ The situation U Thant has described can only be suitable for a non-party state which is homogenous and sparsely populated with the people leading a subsistence life. Once the state has industrialised, there is bound to emerge groups with conflicting interests, arising from the hierarchical nature of the economic, social and political institutions. This is so because the hierarchical nature of the institutions in the society breed inequalities which those who feel oppressed and have the courage can strive to eradicate. Those in power help to bring about inequalities because they are haunted by the evil tendency which makes

them give themselves what Professor Ely calls "better treatment" than the governed. Once the oppressed capture the reigns of power they in turn behave in a similar manner. This creates a vicious circle. There is no way one can eliminate the clash of interests from society. This is one of the root causes of the emergence of more than one political party in modern states.

Moreover, U Thant's argument is devoid of fairness in that there is no justification in denying those opposed to the policies of the ruling party the right to organize themselves in an opposition party. What U Thant appears to render support to is sporadic opposition which does not foster smooth transfer of power from one group to the other and, therefore, cannot enhance constitutional democracy. He is supporting a form of government in which one man or a group of men are enthroned in power for life. Freedom of Association and assembly are one and the same thing in the sense that people who associate must also assemble. Leadership in a single-party state can afford to be arrogant, complacent and insensitive to public opinion as will be shown below when we discuss the efficacy of opposition parties.

B. Freedom of Assembly in Zambia

Freedom of assembly in Zambia is edged in by the provision of the Public Order Act which requires getting a permit by those wishing to convene an assembly or a public meeting or form a procession in any public place. A public place is defined as any place other than a building which is lawfully used by the public.

Permission to hold a public meeting or an assembly is granted when the regulating officer is satisfied that such a meeting or assembly will not lead to the breach of public peace. The permit must show such details as the date of and the place and time at which the meeting is authorised to take place, the maximum duration of the meeting, the names of the persons to address the meeting or assembly and the matters to be discussed at the

meeting.

Only the President, the Prime Minister, Cabinet Ministers, Ministers of State, the Speaker and Deputy Speaker of the National Assembly are exempt from adherence to the provisions referred to above.¹⁵ Processions for purely religious purposes are also exempt. Members of Parliament cannot address a random public meeting.

(a) THE EFFICACY OF OPPOSITION PARTIES

Multi-party systems are democratic because opposition parties play the role of saving the legislature from being turned into a rubber-stamp. It makes the government to be careful in its activities in public affairs as it can appeal to the electorate when the government begins to be negligent, arrogant, insensitive or becomes complacent after being in power for a long time.

Leadership in a single-party state can afford to be arrogant, complacent and insensitive to the public opinion. As an example of arrogance among the leadership in a single-party State, the Secretary-General of the United National Independence Party (UNIP) is reported to have told the nation that

"The Central Committee's proposals for reform of Parliament can only be opposed by the majority of Zambians out of ignorance because they are meant to benefit them".¹⁶

This statement can be interpreted to mean that the Central Committee has the monopoly of political wisdom. The Secretary-General of the Party made this statement just eight days after both the Fourth National Convention and the National Council of the Party had rejected the proposals. Members of the Central Committee attended both the Fourth National Convention and the National Council. Out of the nine committees of the National Convention,

seven committees rejected the proposals. Only the Defence and Security Committee, and The Women's Affairs Committee supported the proposals. In its "Main Resolutions" the National Council resolved as follows:

"(a) The Council resolves that the proposals relating to the electoral college, the withdrawal of salary payments to Members of the National Assembly and non-resignation upon being duly elected to the National Assembly, be deferred for further study".¹⁷

If the National Council of the Party deferred the proposals "for further study", how does the Secretary-General of the same Party expect the people of Zambia to approve them?

The only remedy to complacency and arrogance lies in the introduction of political competition between parties. This enhances the efficacy of the system of internal checks and balances. The ultimate aim should be to render support to the legislative function of making the law rather than be used as a rubber-stamp. This means that the opposition Party renders support to the Legislature in its effort to control the executive. This is a situation which is lacking in One-Party Zambia.

Since it is one of the characteristics of a single-party state that it lacks equal liberty of association and assembly, we should now examine whether people who are denied freedom of association and assembly can enjoy freedom of expression and of the press.

(ii) Freedom of expression and of the press

The foundation of the concept of the freedom of expression lies deeply rooted in the belief that all men are by their creator created free and equal and they are endowed with the gifts of conscience and reason.

At long last men have come to realize that freedom cannot be and has never been an outgrowth of rights. It is only a free man who is capable of freely exercising his conscience and choose what to believe in. That is to say, the creator has given to man the responsibility to decide for himself and be personally responsible for his deeds. The gift of reason is meant to assist man to make responsible and sound choices. All fundamental human rights and freedoms, freedom of expression included, can only be enjoyed by equals. This is not possible in a one-party state where membership of the Party is restricted to those who support the aims and policies of the Party.¹⁸ The importance of constitutional protection of freedom of expression to the sustenance of genuine democracy is best stated by Professor Thomas I. Emerson, but for the sake of brevity it is proposed not to quote him verbatim. Freedom of expression he argues helps to advance knowledge and advance the truth. It also provides the opportunity for testing one's opinion by exposing it to conflicting views, thereby enabling all members of the community to effectively participate in public affairs as they are furnished with vital information and ideas. The result is that responsible and sound decisions are made. Freedom of expression facilitates the achievement of a stable and adaptable society because necessary social changes are brought about without resort to violence. Lastly, it generates in the individual some degree of "personal self-fulfillment" and enables him to realise his "potentialities as a human being".¹⁹

These are noble and forceful reasons advanced in support of freedom of expression. Let us see how much justice is done to freedom of expression in Zambia.

FREEDOM OF EXPRESSION IN ONE-PARTY ZAMBIA

Freedom for political expression is curtailed in One-Party Zambia by the provisions of the national constitution which not only legalizes the existence of only one political party but goes on to mention the United National Independence Party as the only party which must have both legal and actual existence. The One-Party Constitution reiterates this point by prohibiting the expression of any opinion in favour of the formation of any political organization in opposition to or to replace the United National Independence Party.²⁰

The sum total of the provisions of Article 4 of the One-Party Constitution is to make Zambians slaves not only of the One-Party System but also of the ruling United National Independence Party as any attempt at changing the political system or replacing the ruling Party will be attended by repressive measures in the name of preserving the national constitution.

For a full discussion of the curtailment of the freedom of expression in One-Party Zambia and the importance of Party-membership of a single-party, the reader is referred to Professor Shimba's Ph.D Thesis which is available in University of Zambia Library.²¹

The One-Party Constitution, however, guarantees freedom of debate and voting in Parliament.²² We now turn to the discussion of this guarantee.

1. (a) FREEDOM OF EXPRESSION IN ZAMBIAN PARLIAMENT

Although both the One-Party National Constitution and "The National Assembly (Powers and Privileges) Act" secure the right to debate and vote in Parliament freely, those members of Parliament who have been outspoken critics of Party and Government policies have had the exercise of this right in Parliament visited by punitive measures. This has been possible

because the same national constitution which secures freedom of expression and voting in parliament empowers the Central Committee of the Party to vet candidates for election to the same body if considered to be "inimical to the interests of the state".²³ The Constitution forbids the disclosure of the facts on which the decision was based.

One could safely conclude that the provisions guaranteeing freedom of expression and voting in Parliament is a trap for unwary Members of Parliament.

Just recently President Kaunda had harsh words to say about some Members of Parliament who voted against the constitution (Amendment) bill No. 1 of 1988, seeking to require civil servants and workers in parastatal bodies to vacate their posts after they have been declared elected instead of resigning before they are declared elected as was the case then. No one denies that the proposed amendment was in the interest of democracy.

Reacting to the rejection, President Kaunda called those Members of Parliament who had voted against the bill "dissidents" who "deserved" to be "ejected in disgrace".²⁴ He accused them of advocating unbridled freedom which could result in anarchy in the country. He warned that Parliamentarians should realise that they were not beyond the reach of the system.²⁵ Indeed "vocal MPs" have been "ejected" by preventing them from seeking re-election to the National Assembly".²⁶

(b) Background to the President's Reaction

The One-Party Constitution which resulted from the amendment made to the Independence Constitution provided that a person working in the Civil Service or in an Office or appointment prescribed by or under an Act of Parliament shall vacate such post or appointment "immediately upon his being declared as a member of the National Assembly".²⁷

In 1986 the Government introduced a bill in Parliament which sought to amend this particular provision so as to require a person wishing to contest Parliamentary elections to resign from his post, office or appointment before seeking election to the National Assembly. The persons to be affected by this provision were employees in the Civil Service, Defence Force, Zambia National Service, Police Force, Cadet Force, Zambia Security and Intelligence Service, Anti-Corruption Commission, Prisons Service, Judiciary, Teaching Service and the Parastatals.

Parliamentarians liked the bill but objected to the exclusion of persons working in the Party on the basis of full employment from among those who should resign from their posts before seeking election to the National Assembly. After a protracted debate the government gave in and the bill was amended to include full-time Party Workers.

Full-time Party employees considered their inclusion as thwarting their chances of advancement as they were already fulltime politicians. They considered being elected to the National Assembly as a sort of Promotion.

At the Party's 22nd National Council Meeting held at Lusaka's Mulungushi Hall from 18th to 22nd December, 1987, it was resolved that the recent amendment to the National Constitution requiring workers to resign from their posts before seeking election to the National Assembly violated Articles 7 and 15 of the Party Constitution. Article 7 allows members to be "politically conscious" and "active", while Article 15 guarantees to Party members the right "to elect or to be elected or appointed to the Leadership in the organs of the Party, Government or the State". The resolution instructed the Government to repeal the amendment.²⁸

(c) CONSTITUTION (AMENDMENT) BILL NO.1 OF 1988

Acting on the instructions of the National Council, the Government introduced the above bill which provided in Clause (5) of Article 68 that a person holding or acting in certain specified post, office or appointment "shall vacate such post, office or appointment immediately upon being declared elected". Substantially, what was being sought was a reversion to the provisions of Article 68 of the One-Party Constitution as it was before the Constitution (Amendment) Act No. 3 of 1986.

It was reported that before the bill was given its second reading in Parliament, Parliamentarians were summoned to State House where they were ordered to support the bill. The Speaker of the National Assembly was angered by the "Bill Order" when he learned about it through an anonymous note sent to him by one of the Parliamentarians who had attended the State House Meeting.²⁹

Before the Speaker called upon the Prime Minister to read the Bill the second time, he assured Parliamentarians to debate the bill freely and seriously as they were protected by the constitution and the provisions of the National Assembly (Powers and Privileges) Act. He told them to disregard any orders or directions which did not come from the "House itself". "Anyone who issues orders on the House", he warned, "does so at his or her own risk", as doing so, he said, violated the "articles of the Zambian Constitution".³⁰

Despite the assurance given by the Speaker, not even a single Parliamentarian stood up to utter a word for or against the Bill. Just before he called for the vote on the bill, the Speaker reminded the Members of the provisions of article 80(a)(b) which require the bill to secure two thirds majority at its second and third readings before any alteration

could be effected to the national Constitution. The bill did not muster the necessary two thirds majority as only 58 members voted for and 48 against in a House of 135 MPs. This angered the President.

At the Extra-ordinary Meeting of the Party's National Council, the President is reported to have warned Parliamentarians that they were not beyond the reach of the system as they seemed to think. He accused them of "selfishly opposing revolutionary political change including the proposal to review the Constitution to make Parliament a Part-time institution" and threatened to have them "ejected" from the Party in "disgrace".³¹

A day earlier the fourth National Convention had rejected the Central Committee's proposals to create a Parliament comprising Part-time and full-time Parliamentarians. Seven committees out of nine rejected the proposals; only the Defence and Security Committee, and the Women's Affairs Committee supported the Proposals.

The Extra-Ordinary National Council was careful in rejecting the proposals as it resolved that the proposals "be deferred for further study".³²

One can safely conclude that freedom of speech in the Zambian Parliament can only be enjoyed at the risk of being vetted at the next Parliamentary elections as happened to Valentine Kayope, Arthur Wina, Peter Chanshi and late Francis Matanda in 1978, and to Valentine Kayope again in 1983, and in the 1988 Presidential and General Elections "vocal MPs" such as Colonel Sosala, Dennis Katilungu, Dawson Lupunga, Palakasa Chiwaya and Valentine Kayope were vetoed.

2. FREEDOM OF SPEECH IN THE PARTY'S CENTRAL ORGANS

(a) The National Council

Knowledge of the composition of the National Council will, it is hoped, aid us in our examination of its potency as a vehicle of articulating

human rights.

The overwhelming majority of the members of the National Council are full-time political appointees mostly drawn from the district and provincial organs of the party. Added to these are members of the Central Committee, Heads of Zambian Missions abroad, Senior Officers from the Party's National Headquarters, and representatives from each of the security forces.³³ Only MPs and representatives from ZCTU and those from each of the affiliated unions are not political appointees.

In the case of the Union representatives, their membership of the National Council must have the approval of the Central Committee of the Party. It is true to argue that constitutionally Members of the Central Committee are not political appointees as the Party Constitution lays down an elaborate procedure for their election at the General Conference of the Party.³⁴ But the right of the Party member to be elected as a member of the Central Committee is curtailed by the requirement that his application for nomination must be approved not only by the outgoing Central Committee but also by the National Council which as we have just seen is mostly composed of political appointees. Worse still, the Party's President has to indicate to the National Council the applicants enjoying the approval of the Central Committee. The worst devastating blow to the right of the members to be elected to the leadership of the Party is the provision that "A person whose candidature is disapproved by the National Council shall not be eligible for election as a Member of the Central Committee."³⁵ This provision defeats the principle of equality in the membership of the Party, which is one of the essential elements of constitutional democracy. In short, it nullifies the principle of "equal political participation".³⁶

(b) Freedom of Speech in the Central Committee

As to the freedom of expression in the Central Committee, we have already noted that Members of the Central Committee are not elected and being appointees of the President it is not abnormal that each one of them tries his best to curry favour with the appointing authority. It would appear that the presence of the President in the Central Committee meetings inhibits the members from speaking their minds on the issues under discussion. This may be the reason behind the recent proposals for the reform of Parliament, which purported to have emanated from the Central Committee, were "deferred for further study"³⁷ by the Extraordinary National Council whose Committees are chaired by Members of the Central Committee. That is why the President is reported to have accused the Members of the Central Committee of having surreptitiously encouraged other members of the Council to reject the proposals.³⁸ Thus we can conclude that there is no freedom of expression in both the National Council of the Party and the Central Committee because the two organs are dominated by political appointees.

Now let us examine freedom of the Press in One-Party Zambia since this freedom is interrelated with the freedom of political expression.

3. FREEDOM OF THE PRESS

Freedom of the press is of cardinal importance even in multi-party states because the information collected has to be interpreted before it is disseminated to the public. Very often the wealthy who monopolise the mass media pour to the public the information that just serves the purpose of maintaining the status quo. That is to say, that the press is used as an instrument of maintaining an atmosphere favourable to the rich few.

But the existence of an institutionalised opposition helps to appraise the reliability of the information supplied by the mass media of

communication. The appraisal of the information enables the people to debate the issues intelligently. The observation by the International Commission of Jurists that "a high degree of freedom of the press is consistent with a one-party state"³⁹ can hardly be sustained. The mass media of communication that pour out information to the public in single-party states is owned by the government. The radio, television and daily newspapers are in state hands.

Instances are not hard to come by to show that the Zambian government has not been tolerant to the critical press. Even before Zambia became a single-party state the government had to deal firmly with critical reporters. Thus in January 1972, Dunstan Kamana was replaced as Times of Zambia Editor-in-Chief by Vernon Mwaanga for being critical of defects in the government.⁴⁰ Commenting on the removal of Mr. Kamana, the Liberal British Newspaper the Guardian observed,

'The importance attached to the replacement is indicated by the fact that the announcement is made by the Head of State even though the newspaper group is owned by the British Finance house, Lonrho. Dr. Kaunda is understood to have been under pressure from UNIP politicians to make the change....Mr. Kamana has taken militant line against defects in government, and this has frequently brought him into collision with the authorities'.⁴¹

Mr. Kamana was given a diplomatic post in Moscow. Just recently, the Speaker of the National Assembly entertained misgivings about the existence of freedom of the press in Zambia as he could not understand why the activities of 'controversial farmer Eric Winston in Chief Chiawa's area had not been reported on radio, television and in the Zambia Daily Mail'.⁴² In his

ruling on the point of order raised by the MP for Mzanzala, the Speaker left it to the Members of Parliament to judge for themselves what type of democracy existed in Zambia as he thought there were different types of democracy some of which used the barrel of the gun or dictatorship to govern.⁴³

If, as it has been observed in some quarters that freedom of the press "under any system" hinges on the "attitude of its owners", and in a single-party state the government owns the press, is there any seriousness in contending that for the press to be "effective and accurate" there is need to secure "the understanding and support"⁴⁴ of its owners? Of course the press will be accurate in reporting government action that boosts its image but not its activities in public affairs that blemish its image. As, for example, in July 1986, when President Kaunda officiated at the opening of the Sinazongwe farm of the Gwembe Valley Development Corporation, a project jointly owned by Zambian government with Hoechst of Germany and Lummus of America, he is reported to have told the two investors: 'This is a very happy moment for me, and for Zambia. This project will help us defeat poverty. It will bring progress to the area.'⁴⁵ Nothing was reported about the six hundred families or so who had complained that they lost land in the establishment of the farm, and yet the Corporation employed only two hundred workers.

Political reality is against any thought that a free press can find sustenance in a One-Party State where the media of mass communication is owned by the government. We may assume that a democratic regime allows free competition of all shades of political idea. Let us see how this principle is observed in Zambia.

(iv) DISCRIMINATION BASED ON POLITICAL BELIEFS

The issue here is whether or not a single-party system can, as the national constitution which prohibits discrimination based on political opinion seems to imply, accommodate all shades of political opinion.⁴⁶

This is a contradiction in terms as the purpose of introducing a single-party system is to rid the political community of those political opinions contrary to those espoused by the de jure Party. It is for the same reason that only those who support the aims and objectives of the legalised Party who are afforded the opportunity to participate in the affairs of the state.

It is in the light of these observations that we must question the seriousness of the claim that

"A One-Party State can, however, be a truly democratic form of government where the Party is freely open to all citizens who support its objectives."⁴⁷

If the objectives of the Party are derived from political beliefs, how could it be possible that an overwhelming number of the citizens could have the same political beliefs?

The fact that a single-party is introduced is an indication that those holding contrary political truths are threatening those currently holding power. A political system that excludes those holding contrary political opinions from participating in the affairs of the state cannot be rightly described as being "truly democratic".

The protagonists of a single-party state cannot have a democratic attitude because their overriding motivation for establishing a single-party state, Professor Nwabueze has aptly remarked, is self-preservation.⁴⁸ Since they want to cling to power at any cost they cannot be expected to refrain from discriminating others on the ground of political beliefs.

Freedom of conscience is anathema to One-Party Zambia except as it relates to purely religious matters.

As already observed, leaders in a single-party state assume themselves as imbued with the monopoly of political truth and, therefore, use the monopoly of political power to suppress ideas they consider to be dangerous.

It appears that the International Commission of Jurists have indulged in self-contradiction when they concede that

"In the last resort, however, the extent of freedom within a One-Party State will depend upon the commitment of the party to human rights and the rule of law".⁴⁹

If the observance of human rights and the rule of law depends upon the holders of power, is it really possible that these people will respect those rights if such observance threatens their power positions? For one thing, the people upon whom the observance of human rights depends are the ones who have decided to do away with one of the essential elements of constitutional democracy, namely freedom for the governed to organise themselves in opposition to the government of the day and hopefully rule them in turn.

Later in the same passage the Commission warns that the absence of any organised opposition in a One-Party state calls for greater alertness if violation of human rights is to be avoided. What "vigilance"?⁵⁰ People in One-Party states are helpless. Their Lordships' earlier observation regarding the enjoyment of freedom being dependent upon the goodwill of the rulers still remains valid.

If, therefore, people will enjoy freedom only to the extent that the rulers commit themselves to the observance of human rights and the rule of law" then it is a contradiction in terms to demand alertness from the governed.

who are helpless. They are helpless because it is the holders of powers who decide the type of the national constitution by which terms people are to be governed and they control the engines of organised force. Such a constitution, as often happens in single-party constitutions, includes provisions barring non Party members from political participation.

(a) IN ONE-PARTY ZAMBIA

Membership of the United National Independence Party is "open to all... who accept the philosophy of humanism and the party policies and programme of action".⁵¹

The national constitution provides that only members of UNIP shall present themselves for election to the National Assembly. But all sane citizens who have attained the age of eighteen years are free to vote in Presidential and Parliamentary elections.⁵²

It is unfortunate that the vetting of candidates for parliamentary and local government elections has been extended to non-political Institutions, as for example, the membership of the Unionised Staff on the University Council is not automatic. Those nominated by the Union to sit on the Council must be cleared by the Central Committee before becoming members. There is no doubt discrimination on the ground of political beliefs is closely interrelated with the right to political participation which we are going to examine in the following section.

(iv) The Right to Political Participation

The right to equal political participation has universal recognition because, Laski has observed, "Men discovered at long last the exclusion from privilege is exclusion from benefit".⁵³ Thus exclusion from governing the country is exclusion from benefits accruing from that governance. However, the scope of equal right to political participation is determined by the

nature of the national constitution which may or may not set limitations on governmental action.

A just constitution says Rawls, must meet two requirements: first, it must provide for equal political liberties. This means that, as regards political participation, all citizens must be treated on a footing equality. The principle of equal treatment is of cardinal importance to constitutional democracy because it signifies equality in citizenship. Second, the content of the constitution must be arranged in such a way that its operation results in just and effective legislation being enacted.⁵⁴ There must be respect for the precept of One-man-one-vote and all votes being accorded the same weight.

Let us now see how these essential elements that enhance equal political participation are met in One-Party Zambia.

By its nature, a single-party state cannot be consistent with the right to form political associations. The requirement in the national constitution that only members of the de jure Party can run for election to the National Assembly curtails the right for all sane citizens to participate in political affairs.

With regard to participation in Local government affairs the provision in the Local Administration Act that persons elected ward Chairmen in party elections automatically become ward councillors further curtails the right to political participation.⁵⁵ Even councillors representing trade unions in the district must be cleared by the Party's Central Committee before they assume seats on the Council.

The precept of one elector one vote applies to national elections only as at the Local level only party members participate in electing councillors. In both national and local elections the precept that one man's vote must weigh the same as the other man's is not respected. This rule is necessary in order

to prevent some people from determining the outcome of elections.

The power of the Central Committee to vet candidates running for election to either the National Assembly or Local Councils has, to some extent, the effect of determining the outcome of elections. This is so where a candidate with the massive support is removed or where one of the two candidates in a constituency is prevented from standing. The same applies to the election of the Members of the Central Committee who are nominated by the President and are later submitted to the Party's National Council for approval. This means that the right to run for elective positions and to hold places of authority is limited. This is much so as regards the filling of party posts where, as already seen, posts are filled with political appointees except for the leaders at the ward level and below.

Leaders at the district, provincial and national levels are all political appointees either of the President or of the Central Committee. This manner of filling party posts deprives well endowed and motivated citizens of the opportunity of holding places of authority. Clash of political beliefs, interests and attitudes should be accepted as a condition of life. There must be respect for one's point of view. It is not in the nature of the holders of political power in single-party Zambia to allow what they espouse as political truth to compete in an open arena.

It is clear from the preceding discussion that the right to equal political participation as one of the fundamental human rights has not been enjoyed in one-party Zambia. Lack of equal political participation therefore disqualifies Single-Party Zambia from being regarded as constitutional democracy. We discuss in the section that follows economic security as a foundation that inspires confidence in those who struggle to achieve other disciplines of liberty.

(v) Economic Security

Widespread economic security is a condition precedent for the effective realization of liberty. By wide spread economic security we mean that material needs must be within the reach of most men, and economic security means material well-being which is acquired without the loss of liberty. The reality of life is that men begin asking whether or not they are under a democratic form of government after their material needs have been satisfied.

As already indicated above, the importance of economic well-being lies not so much in making men or nations free but in making available a sure foundation which gives hope to men and nations that in their struggle for the realization of other disciplines of liberty the victory is on their side.

In our discussion of economic security a word needs to be said about the right to food. This right should come immediately after the right to life which comes first in most, if not all, national and international documents on fundamental human rights and freedoms. The charter of the United Nations, the Universal Declaration of Human Rights and the Covenants all rank the right to life first.

The reason for placing the right to food immediately after the right to life is clearly stated by Jose Antonio Viera Gallo when he says,

"....it is possible to live - although without dignity - without work, without shelter, without adequate health assistance, without access to education and other forms of culture, but it is not possible to live without food."⁵⁶

The right to food means that not only should there be adequate supply of food and within the reach of all citizens but also the type, quality and nutritional value must be taken into consideration.

(a) ZAMBIA

Let us now examine how the right to economic security which, as we have seen, is the foundation of all liberties, is observed in one-party Zambia.

One-party states suffer from one serious defect which former President of Tanzania, Dr. Julius Nyerere described as complacency among leaders.⁵⁷ Leaders in Zambia have become complacent because they do not face any serious challenge to their power positions. This complacency has produced in the leadership habitual relaxation in the performance of national duties. Eventually, this relaxation has spread to all ranks of party and government workers, and to workers in parastatal companies.

Political interference in the running of parastatal companies has also been a serious constraint to rapid economic advancement. Politicians who are hardly technically or professionally qualified have been appointed to boards of directors. These people have sought to direct how the companies ought to be managed in order to advance socio-political objectives they deem necessary.

Not only are politicians appointed to boards of director, new comers with political backing supersede long serving employees, a fact which produces despondency.⁵⁸

The Zambian Government was in a state of impasse in 1970s because of the conflict between the desire to promote socio-political objectives and the need to run parastatal companies in a business like manner.

This was a consequence of President Kaunda's 1968 Mulungushi Speech on economic reforms when the government decided to take a leading role in the industrialization of the country. In order to accelerate Zambianization, minimize profiteering by foreign entrepreneurs and ensure reinvestment of

surplus wealth in Zambia, the government nationalized the key sectors of the economy.

To achieve these objectives Ministers and other politicians were appointed to boards of directors. But, as Ben Turok has pointed out, "their presence on the boards of directors of parastatal companies constituted political interference in their management without giving them any sense of direction, resulting in industrial stagnation which has contributed to the present widespread poverty".⁵⁹

The system of indirect taxation is also a factor contributing to industrial stagnation as industries which needed promotion paid customs duties and excises. Industrial stagnation has resulted in widespread poverty which has caused profound concern among the Christian Churches leaders who have lamented,

"Many people living in inactive rural areas and shanty towns are badly fed, poorly housed, illiterate, and lacking minimum educational, medical and/or other requirements. Their material living conditions are so bad that a high proportion of our fellow citizens are unable to live a moral, dignified and responsible life. Increasing number of children suffer from malnutrition and many of them are unable to attend school".⁶⁰

According to Government of the Republic of Zambia/UNICEF study which came out in 1986 real per capital income of Zambia had declined by 60% since 1974.⁶¹ The cost of living went up 53% between August 1984 and March, 1986.⁶²

Commenting on the recent decontrol of the prices of bread, the Acting General Secretary of the Zambia Congress of Trade Unions expressed surprise that:

"the government which castigates price sharks is in the fore-front to encourage the scourge". 'We shall be lucky' he is quoted to have said 'if we will buy bread at K10 a loaf because at this time when flour is in short supply bread has only been found on the black-market"⁶³

If, as we have seen in this section, economic liberty is the foundation which gives hope to human rights activists that in the struggle for the realization of other disciplines of liberty, victory is on their side, then Zambia, and indeed, Zambians at the moment lack this foundation. This is so because domestic consumption has been drastically reduced in favour of exports. While our country grows visibly in poverty and the rich few consume extravagantly luxuries the overwhelming majority of our people lack the basic necessities. This is so because holders of power do not fear losing power. It may be of interest to compare economies in Military regimes with those in single-party states.

(b) Military Regimes of Latin America

Egoism and lack of fear of losing power have made leaders in military regimes and one-party states incapable of managing national economies in a business-like manner.

Commenting on the plight of the people in Latin American military regimes Janet Townsend has observed,

"In Latin America, it is the rich who consume; the rest merely produce, as cheaply as possible".⁶⁴

To maintain such gross inequalities in the distribution of national wealth, the most sophisticated repressive measures are employed with the assistance of multi-national companies which have been attracted to invest in those countries because of low wages paid to workers. Human rights in

Latin American states are a "cipher". Egoism of the rich few has reduced the rest of the people to conditions of subhuman beings. Dom Helder Camara, Archbishop of Olanda and Recife in North East Brazil, gives a clear picture of the plight of countless people in Latin America when His Grace observes,

"...Now the egoism of some privileged groups drives countless human beings into (a) subhuman condition, where they suffer restrictions, humiliations, injustice; condition is that of slaves".⁶⁵

From this discussion we can safely conclude that a single-party state, like a military regime, cannot sustain economic security mainly due to the mismanagement of the national economy. This is a natural consequence of the fact that leaders in one-party states as in military regimes have a propensity for relaxation in the performance of national duties. It is complacency that gives birth to relaxation. The former arises from the fact that holders of political power face no serious challenge to their power positions. This makes them make political appointments of incapable persons to run key economic sectors.

People in one-party states as in military regimes have no time to reflect on the form of government under which they are governed as they are preoccupied with the struggle for survival. They have no time for leisure. Malnutrition takes a toll of the infants and those who survive have stunted growth. It is the nation which ultimately pays in terms of intellectual decline. It seems imperative that something should be said about the freedom of labour movements to organize themselves in single-party states.

(vi) FREEDOM OF LABOUR MOVEMENTS AND OTHER PRIVATE ASSOCIATIONS TO ORGANIZE THEMSELVES WITHOUT ANY POLITICAL INTERFERENCE.

Provisions in the national constitution that give protection to labour movements and other private associations to organize themselves without any

political interference and the instances when these protective provisions may be derogated from are fully discussed elsewhere in literature and therefore I can not repeat them here.⁶⁶

Freedom of assembly and association is not protected absolutely in the national constitution as the protection can be derogated from in the interests of the public and for the purpose of protecting the rights and freedoms of other persons.⁶⁷

This saving clause enabled the Zambian government to retain among its laws the Societies Act. By this act the Registrar of Societies is empowered to refuse registration to any organisation if he is of the opinion that such an organisation has aims and objectives that are prejudicial to the public interests.⁶⁸

What has brought about conflict between the Congress of Trade Unions and the Party is the tenacious refusal by the former to come under the effective control of the party and government.

Leaders in the Party and Government are suspicious that leaders in the Zambia Congress of Trade Unions (ZCTU) are under the control of neo-colonialists. They are accused of not being committed to what the philosophy of humanism stands for. The truth, however, is that the ZCTU is regarded as a threat to the power positions of the holders of power.

At times some leaders in the ZCTU have been prevented from attending international conferences organized by the Interantional Labour Organisation by withdrawing passports from the would be delegates nominated by the ZCTU.⁶⁹ Statutory Instruments have been passed stopping employers from deducting subscriptions on behalf of the unions from their members. This is calculated to weaken the labour movement financially.⁷⁰

Finding that these measures have not procured the desired end, the Party wants to make it constitutionally mandatory that only Party members qualify

to present themselves as candidates for election to the leadership of the labour movement. This will give the Party power to vet the candidates.

INTENDED LEGISLATION

Hitherto the Party has not interfered with the elections of Labour Leaders. Party members and non-Party members have been eligible to stand for election.

Now the Party wants to give itself constitutional power to have control over the conduct of trade union elections. This is intended to be done by incorporating Articles 1 to 5 of the Party Constitution into the Republican Constitution. This, it is thought, will "give legal authority to the Supremacy of the Party".⁷¹

But article 3 of the Party Constitution, which will be one of the five articles to be incorporated in the Republican Constitution provides, inter alia, that the Party

"shall ensure that all public institutions....

and popular mass and similar organisations are

led by persons who are members of the Party"....

Labour movements are listed among mass organisations.⁷² When this intended amendment to the Republican Constitution is passed effective labour movement in Zambia will be no more.

Before we come to the concluding remarks on the effect Party Supremacy has on constitutional democracy, a few remarks needs to be made about the fairness of elections in One-Party Zambia.

Reference

Chapter 4

1. Professor L.S. Shimba, Ph.D Thesis, pp. 232-550

2. H.E.'s Address to the Fourth National Convention held in Lusaka, 18th-20th April, 1988, pp. 14-15.
3. Article 4(2) of the 1972 Constitution.
4. Aristotle, POLITICS, book 6, Chapter 1.
5. PARTY DEVELOPMENT: Organization, Administration, Mobilisation, and Politicisation; Research Bureau, Freedom House, Lusaka, 8th October, 1986, p. 1.
6. See my comments on pp. 21-22 of Chapter one.
7. Professor Burke Marshall, The Supreme Court and Human Rights, The American Centre, 1982, p. 67.
8. Main Currents of Zambian Humanist Thoughts, Oxford, University Press, London, Nairobi, Lusaka, 1973, p. 51.
9. See his book, Main Currents of Zambian Humanist Thoughts.
10. The price was displayed on the board during April and continued in May, 1990, Niec Store, Lusaka.
11. This amount was not reported in the newspapers the following morning, that is on 28th April, 1988. At the present fixed exchange rate of ZK 8.00 to US \$ 1.00, US \$ 30,000. is equal to ZK 249,000.
12. See the Times of Zambia of 1st April, 1986, and also the Times of Zambia of 15th May, 1986, Member of the Central Coomittee of UNIP, Betty Chilungu is reported to have regretted the widening gap between the rich and the poor.
13. Dr. Meebelo is a Member of the Central Committee of UNIP in charge of Legal, Constitutional and Political Affairs sub-committee.
14. Times of London of 7th July, 1962, also quoted by Dr. Meebelo in his Main Currents of Zambian Humanist Thoughts.
15. Section 5 subsections (4), (5) and (6). N.B. the post of Vice-President has been abolished. The Secretary-General of the Party is assumed to be the Vice-President.
16. Times of Zambia of 29th April, 1988.
17. See Resolution EONC/3/RES/1, political issues, 3rd Extra-ordinary National Council of UNIP, 21st to 22nd April, 1988.
18. See Article 7 of the UNIP Constitution.
19. The Supreme Court and Human Rights, p. 67.
20. Article 4(1)(2).
21. L.S. Zimba, Ph.D Thesis, pp. 180-182, 188-190.

22. Article 87.
23. Article 75 of the National Constitution 1972 as amended by Constitution (Amendment) Act No. 1 of 1983.
24. Article 85 of the National Constitution, 1972.
25. Daily Mail of 23rd September, 1988 p. 1.
26. Zambia Daily Mail of 23rd September, 1988 p. 1.
27. Article 68(5) of One-Party Constitution, 1972.
28. See NC/22/87 Resolution No. 1.2 under subheading "Legal and Political Affairs" in its draft form.
29. Times of Zambia of 31st March, 1988. The events took place on 30th March, 1988.
30. ibid. Front page.
31. The Extra-ordinary National Council was held from 21st to 22nd April. 1988; See Daily Mail of 22/4/88.
32. See "Main Resolutions" of the EONC/3/RES/1(a) under "Political Issues".
- * Valentine Kayope has so far been vetted four times, that is, in 1978, 1979 by-election, 1983 and 1988.
33. Article 48 of the Party Constitution.
34. Article 53 of the Party Constitution.
35. See Clauses 3 and 4 of Article 53; see also Article 15 for the right to be elected or appointed or to elect to the leadership of the Party.
36. John Rawls, A Theory of Justice, Harvard University Press, 1971, Cambridge, Massachusetts, p. 221.
37. See "Main Resolutions" of the EONC/3/RES/1(a) under "Political Issues".
38. H.E. is reported to have made this accusation when the resolutions of the nine committees were read out.
39. Human Rights in a One-Party State, by the International Commission of Jurists, p. 117.
40. Times of Zambia of 3rd January, 1972.
41. ibid., of 4th January, 1972.
42. ibid., of 26th March, 1988.
43. op. cit.
44. International Commission of Jurists, Human Rights in a One-Party State, p. 117.
45. Times of Zambia of 29th December, 1986 and 13th July, 1987 quoted also in Third World Quarterly, January 1988 Vol. 10, No. 1, Article by Kenneth Good.

46. See Article 25 of One-Party Constitution, 1972.
47. International Commission of Jurists, Human Rights in a One-Party State, p. 109.
48. B.O. Nwabueze, Presidentialism in Commonwealth Africa p. 225.
49. Human Rights in a One-Party State, p. 109.
50. op. cit. p. 109.
51. Article 7 of the Party Constitution, 1983 print.
52. Article 67 (c) of One-Party Constitution 1972.
53. Harold J. Laski, The Dangers of Obedience and Other Essays, p. 208.
54. John Rawls, A Theory of Justice, Harvard University Press, 1971, Cambridge, Massachussetts, pp. 224-225.
55. Local Administration Act No. 15 of 1980 Section 10(d).
56. The Right to Food: Contribution to Peace: (FAO). I/S2001, 1986, p. 4.
57. Reported in the Times of Zambia of 10th June, 1986.
58. Suspension of the Managing Director of SIDO by the Chairman because of the accusations and counter accusations of tribalism in filling posts is an example.
59. Charles Elliot, Constraints on Economic Development of Zambia, Oxford University Press, Ely House, London, 19 p. 73.
60. Christian Liberation, Justice and Development: Church's concern for Human Development in Zambia, Printed by Mission Press, Ndola, 1987, 1.6 p. 5.
61. GRZ/UNICEF, Lusaka, 1986, 12.1 p. 47, and 11.20 p. 40.
62. Price Watch Supplement of Daily Mail, 9th April, 1986.
63. Times of Zambia of 20th June, 1988, half a loaf of bread is reported to sell at K6 by Lusaka Traders.
64. Professor F.E. DORWICK, Human Rights - Problems, Perspectives and Texts, Durham University Press, 1979, Article by Janet Townsend, p. 122.
65. ibid, p. 110.
66. See for example Professor L.S. Shimba's Ph.D. Thesis pp. 180 -186 where the provisions of Article 23 of the One-Party Constitution 1972 and the Societies Act (Powers of the Registrar of Societies) are fully discussed.
67. See Article 23 (2).
68. See section 8 of the Societies Act, cap 105 of the Laws of Zambia.

69. Passports have been given back to the ZCTU leaders affected.
70. Statutory Instrument No. 6 of 1986.
71. See The National Policies for the Decade 1985-1995: Aims and Objectives of the Third Phase of the Party Programme, Issued by Office of the Secretary-General. Freedom House, p. 13.
72. *ibid*, p. 37.

CHAPTER 5

HOW FREE ARE THE ELECTIONS IN A ONE-PARTY STATE?

In a free society that espouses freedom of political competition essential to constitutional democracy, people campaign and vote freely. Elections are among the widely recognized modes of political participation. Political rights and political participation are closely related concepts. According to Rhoda E. Howard, "genuine periodic elections"¹ taken together with freedoms of thought, expression, peaceful assembly and association, and participation in the conduct of public affairs, are crucial to political rights that enhance constitutional democracy. Richard P. Claude expresses a similar view when he lists voting, candidacy, association, discussion, assembly and the free press as some of the cardinal political rights the absence of which makes constitutional democracy lose substance.²

Even the African Charter of Human and Peoples' Rights recognizes the cardinality of free elections to the sustenance of constitutional democracy when it guarantees to every citizen freedom of participation in the government of his country, "either directly or through freely chosen representatives in accordance with the provisions of the Law."³

Does the ambiguous wording of Article 13 cited above make it possible for the national government to make the law that will curtail political participation in the conduct of public affairs which of necessity must include free election? Professor James R. Scarritt thinks not. Thus he says

"In spite of the slight ambiguity of this wording, it may be presumed that the new law cannot prohibit free participation or free choice."⁴

Since the theme of our discussion in this chapter is the extent of free

elections in single-party states, we now proceed to examine electoral laws in Zambia and Kenya, the latter being a de facto one-party state.

(a) ZAMBIA

We propose to begin with a brief examination of the constitution of the United National Independence Party (UNIP) because party elections at the national level have a direct bearing on the Presidential and General elections

The Party constitution provides that sections are the primary organs of the party. Above the sections are branches and wards in that order. Party members exercise the right to elect their leaders in the organs of the party mentioned above.

What impinges upon the right of all sane citizens to elect their own representatives to the local councils is the provision of section 10 (d) of the Local Administration Act No. 15 of 1980 which makes Party ward chairmen become Ward Councillors for the purpose of Local Government elections. These Party ward chairmen who become ward councillors are elected only by party members who have paid the annual subscription prescribed by the party. This means that only Party members in the ward have the right to participate in the election of councillors. In addition to ward chairmen, many political appointees sit on local councils.⁵ The situation is even worse in Provincial councils.

Apart from Parliamentarians, Provincial Councils are dominated by Political appointees from the districts and representatives of the security services in the province. Each district in the province sends not less than five political appointees to the Provincial Council against one or two Parliamentarians. Thus, Chilubi and Mporokoso Districts send one Parliamentarian each to the Provincial Council. Other political appointees who sit on Provincial Councils include Provincial Member of the Central

Committee, Provincial Political Secretary, Provincial Youth League Secretary, Women's League Chairlady, and one member from each of the Security Services operating in the Province. Parliamentarians and Provincial Trade Union Leaders are the only elected Provincial Councillors.⁶

At the national level, the provisions of Article 48 of the Party constitution show clearly that the National Council is dominated by political appointees. Members of Parliament, representatives from the Zambia Congress of Trade Unions and one representative from each of the affiliated trade unions are the only freely elected delegates on the Party's National Council.

Though the Party constitution makes an elaborate provision for the election of the Members of the Central Committee at the Party Congress⁷ at which congress the Republican Presidential candidate is also elected, the first and last competitive elections were held in 1967.⁸ Since then candidates nominated by the President and submitted to the National Council for approval have invariably gone through unopposed. Any person aspiring to be elected to the Central Committee of the Party whose candidature the National Council does not approve is disqualified. It is for this reason that we feel safe to conclude that Central Committee Members are also political appointees, the provisions of the Party constitution notwithstanding.

What this means is that the National Council exercises no restraining influence on the party chief who appoints most National Council members.

The party congress comprises the National Council members and up to 600 delegates from each of the nine (9) Provinces of Zambia and normally meets every five years. Its main functions include the election of the Party President, the members of the Central Committee, and it is the supreme policy-making organ of the Party. But the formulation of Party policy is done by the Central Committee which submits the same to the Party Congress for approval.⁹

The recent amendment to the Party Constitution has increased the number of the Central Committee Members from 23 to 68, seven of whom are to be nominated by the Party President, and twenty Cabinet Ministers automatically become Part-time Members of the Central Committee. The President will actually nominate 27 members. As usual, the remaining 40 will be nominated by the President and go through unopposed.

Before the 1988 amendment to the Party Constitution, delegates to the General Conference (now Party Congress) were being hand-picked as there was no laid down procedure for selecting the delegates.¹⁰

The delegates at the Party Congress are deprived of the right to elect the Members of the Central Committee because the elections have, since 1967, been non competitive. Well endowed members of the Party have also been deprived of the opportunity to seek election to elective Party positions. It is only when delegates to the Party Congress are called upon to give a plebiscital approval to the proposed amendment to the Party constitution that they exercise the right to Vote.

Although now delegates to the Party Congress will no longer be handpicked by political appointees it is doubtful whether the majority of them who do not attend the National Council will have the opportunity to speak their minds and vote freely on very important national issues at the Party Congress.

(b) KENYA

People aspiring to be elected either to the National Assembly or Local Councils have to face Primary elections, sign a pledge of loyalty to the President and are vetted by the National Governing Council of the Party before they are allowed to contest either of the aforesaid elections.

As regards the conduct of Primary elections, aspiring candidates and voters must be validly registered Kenya African National Union (KANU) members, in possession of a current membership card. Aspiring candidates must complete a

special form obtained from KANU Headquarters, pledging loyalty to the President. The nomination forms, together with the loyalty forms, are sent to the National Executive Committee which makes comments on each aspiring candidate. These are then sent to the National Governing Council of the Party which decides on who should be allowed to contest the elections.

Any aspiring candidate who feels that the vetting is unfair, or is due to mistaken identity can appeal to the President within four days after the inspection period of three days has elapsed.¹¹ In Zambia no appeal lies to the President from the decision of the Central Committee. Probably this is because the President presides over all the Central Committee meetings.

Back to Kenya, the vetting is followed by the nomination day when those qualified to vote in primary elections are made to queue behind the candidate they support or behind his agent.¹² The three candidates with the greatest number of votes are qualified for nomination. A candidate getting 70% and above of the votes cast goes through unopposed.

The system of queuing behind the candidate has been condemned as being a threat to democracy by Prominent Kenyans including the Anglican Bishop of Eldoret Diocese, the Right Reverend Alexander Muge.¹³ His Grace has called for a nation-wide referendum to determine whether the people of Kenya wanted the secret ballot to be scrapped.

Back to Zambia, let us examine the role played by the Central Committee and the National Council in the election of the Republican President and Parliamentarians.

(c) Election of the President

The Republican constitution provides that delegates at the General Conference (now the Party Congress) "shall elect a President of the Party who

shall be sole candidate in an election to the office of President..."¹⁴ of the Republic.

The Party Constitution provides that a person wishing to be elected to the office of President of the Party must "indicate to the Secretary-General of the Party his intention to stand for"¹⁵ that office. The Secretary-General submits the names of aspiring candidates to the Central Committee which must indicate the candidate who enjoys its support. The Central Committee submits to the National Council the name of the candidate it supports together with any other aspiring candidate for approval. The person whose candidature the National Council does not approve is not eligible for election to the office of President of the Party.¹⁶

If as we saw in this section the Central Committee comprises wholly political appointees of the President and the National Council is dominated by the appointees of the President, it becomes obvious that the incumbent President faces no Challenge from the Members of the Central Committee or from any other person for that matter.

It is for the same reason that the incumbent finds it easy to secure the approval of the National Council the Majority of whom are his appointees.

The Party constitution does not provide for a plebiscital approval by Party Congress of the Presidential candidate supported by the Central Committee and approved by the National Council.

As already noted above the composition of both the Central Committee and the National Council of the Party does not offer an equal opportunity to all Party members to seek election to the office of President of the Party who, as already noted, becomes the sole candidate in an election to the office of President of the Republic.

When in 1978 Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe, Presidents of the African National Congress (ANC) and the banned United Progressive Party (UPP) respectively, announced their intention to contest the office of President of the Party, the Central Committee immediately took measures which made it very difficult for the two to be eligible for election to that office.

Thus, Article 50 (9) of the Party constitution was amended so that aspiring persons must have been members of the Party for five (5) years "Immediately preceding the elections." The original provision had been for a period of five years without the words "immediately preceding the elections."

Simon Mwansa Kapwepwe who had just rejoined UNIP and Harry Mwaanga Nkumbula who had prevaricated in joining UNIP when Zambia became a one Party State could not qualify under the amended constitution. Even the requirement that an aspiring person's candidature needed the approval of the National Council before becoming eligible for election to the office of President of the Party was introduced by the 1978 constitutional amendment of the Party constitution.

The amended constitution was approved by the Party's General conference and was used for the purpose of the 1978 elections at the General Conference of the Party in derogation of some of the laid down provisions of the Party Constitution.¹⁷ Harry M. Nkumbula and Simon M. Kapwepwe took the United National Independence Party (UNIP) to court because of what they considered to be glaring irregularities in amending the Party constitution. The case was heard in the High Court before judge Sakala who found for the defendant (UNIP). An appeal was made to the Supreme Court and the following were the grounds of appeal:

- (i) That Article 38 (1) of the 1973 Party Constitution which required giving notice of 30 days to all National Council Members of the proposed amendments to the constitution was not complied with.
- (ii) That the provisions of Article 38 (2) (b) of the Party constitution which required secret ballot to determine two-thirds majority was derogated from.
- (iii) Non compliance with Article 4 (3) of the Republican constitution in that the Party constitution as just amended was not published in the Government Gazettee in order to become an authentic document.

The Acting Deputy Chief Justice Gardner delivered the judgement of the Supreme Court.

As regards the giving of the notice of 30 days as required by the Party Constitution of the proposed amendments to the constitution, the Attorney-General had argued in the lower court that laws relating to meetings held by proprietary clubs should not apply to meetings held by UNIP and the learned trial judge had accepted this defence. The Supreme Court's view was that the nature of the club or party, as the case may be, did not affect the general law as to the conduct of meetings. The court rightly observed that "the purpose of the party promulgating a constitution to which it is expected that every member of the party will adhere, must be taken by law as meaning that if any member of the Party does not adhere to the constitution, or if the rules as to notice or any such matter are derogated from, any court is bound to acknowledge that such rules are not observed."¹⁸

The court found as a fact that certain members of the National Council, notably representatives of Zambian missions abroad were not given notice of the proposed amendments to the Party Constitution as required by Article 38 (1) (a) of the 1973 Party constitution. This could be taken to be a clear case of unfair conduct of Party elections which elections have a direct bearing on the Republican Presidential elections because whoever is elected the President of the Party at the Party Congress becomes the sole candidate for the purpose of the elections to the office of President of the Republic.

With regard to the contention that a secret ballot was necessary to determine the two-thirds majority required to secure the approval of the proposed amendments, the Supreme Court, citing Curry on 'Procedure at Meeting' 19th edition that Voting by voice is adopted when it is obvious that the meeting is practically unanimous and no actual Vote is called for', held that "From the evidence available before the court which was accepted by the trial judge there was unanimity... Vote was not called for, approval by acclamation was valid."¹⁹

Yet in the court below the appellant had submitted evidence to show that calls for a vote had been made and when this was rejected many delegates walked out shouting "shame". But the learned trial judge had rejected this piece of evidence.

As to the requirement that the Party Constitution must be published in the Government Gazette to be an authentic document,²⁰ the Supreme Court, though conceding the ambiguity in which the article in the national constitution was enacted, upheld the ruling by the trial judge that the requirement did not refer to construing the Party constitution itself but was for the purpose of construing any other law. That it was physically impossible to gazette the amended constitution before elections which were

to take place thereunder were concluded. Thus, Justice Gardner concluded,

"I would therefore find that failure to gazette the Party Constitution did not result in its being ineffective for the purpose of the holding of elections and the consequent elections were therefore not invalid by virtue of the breach of this article."²¹

Although the Supreme Court found for the applicants that the notice required by Article 38 (1) (a) (b) of the Party Constitution for the proposed amendments was not given, Justice Gardner, using judicial discretion, nevertheless threw out the appeal holding that:

"nothing in the evidence indicates that, if further conference were held, followed by further elections after due and proper notice of the new constitution, there would be any change in its unanimous adoption and consequent elections. For this reason, I would hold that this is not a case for this court to make the declaration asked for. I would dismiss this appeal."²²

Using Bickel's telling language, one would aptly describe the court's use of its own discretion in the instant case as "good judicial politics".²³

What is important for our discussion is the finding by the Supreme Court that the amendments to the 1973 Party constitution were done in derogation of the provisions of the constitution in that the notice required by the constitution for its amendment was not given. But the court did not invalidate the elections held under the changed constitution because "courts cannot make orders that are of no avail."²⁴ That is to say, if a further conference were held, there was nothing to show that the new constitution would not be adopted.

The present constitutional provisions of the party constitution clearly show that elections at the congress of the party are not competitive because

the National Council has the last word on who should stand for election to the Central Committee and to the office of President of the Party.

Since the President indicates to the National Council the candidates enjoying the support of the outgoing Central Committee it so happens that those candidates go through unopposed. This is easily understood when it is remembered that the National Council is dominated by the political appointees of the President. The National Council has virtually become a rubber-stamp.

The delegates to the congress are not even asked to give plebiscital approval to the candidates nominated by the President and approved by the National Council. The system of filling elective offices with appointees is detrimental not only to development but more so to genuine democracy.

Speaking of fair elections in a system which does not allow people to run for elective offices is abuse of language because freedom and fairness are closely related concepts. One cannot speak of political justice in a system lacking political participation on a footing of equality.

The majority of delegates at the Congress of the Party do not participate in the election of the Members of the Central Committee and the President of the Party.

Having examined the role of the National Council in the election of the Members of the Central Committee and the President of the Party let us now consider the part played by the Central Committee in Parliamentary and Local Government elections.

(d) How the Party Organs Control the Legislature

We saw in the last section that the power to decide on who should be eligible for election as a Member of the Central Committee lies, per force the party constitution, with the National Council of the Party. But in

practice it is the President of the Party who appoints the Members of the Central Committee and uses the National Council as a rubber-stamp.

Constitutionally and in practice the power to approve the candidates for election to the National Assembly lies with the Central Committee of the Party. It is the Republican constitution which confers this power on the Central Committee by providing that candidates whose election to the National Assembly is considered to be "inimical" to the state shall not have their names adopted by the Central Committee.²⁵

The word inimical has been liberally interpreted to include extraneous reasons. The vetting of candidates is based on the reports from the district committees of the party, confirmed by the Provincial Committees and, of course, on the Security reports from the office of the President. The Speaker of the National Assembly also makes reports on the Former Parliamentarians seeking re-election to the National Assembly.

The Central Committee is not obliged to assign any reason for its decision and its decision shall not be a subject of litigation in a court of law. The victims of vetting are shunned at least by those holding renumeration offices in the Civil Service, Party and parastatal bodies.

Unlike in Kenya where an aspiring candidate who feels that the vetting is unfair or is due to a mistaken identity can appeal to the President against the decision of the National Governing Council of the Party, no such appeal lies from the decision of the Central Committee in Zambia. When a popular candidate is not adopted by the Central Committee, the voters just demonstrate their indignation by abstaining from casting their votes in the Parliamentary elections.

The essential point to be noted is that the national constitution which is expected to impose restraints on the government has actually given more

power to the government to effectively control the legislature. The so-called freedom of debate and voting in Parliament is exercised at the Parliamentarian's own risk as has happened to Valentine Kayope, Arthur Wina, late Francis Matanda, Colonel Chanda Sosala, Palakasa Chiwaya, Dawson Lupunga just to mention a few.²⁶

The system of vetting aspiring candidates hardly enhances constitutional democracy as it undermines the principle of equal participation in public affairs because the electorate chooses Parliamentarians from a list having an imprimatur of the Central Committee. This means that in some cases the Central Committee determines the outcome of elections. Professor Nwabueze has made this point clear when, writing about the right to nominate candidates of the Supreme soviet reserved to the Communist Party of the Soviet Union, he has observed

"a right undermines, if it does not nullify, the system of 'universal equal and direct suffrage by secret ballot' established by an earlier article."²⁷

In the case of Zambia, Article 72 of the national constitution grants to every sane Zambian "who has attained the age of eighteen years," the right to register and vote in parliamentary elections unless disqualified by an Act of Parliament or he is in lawful custody. The right to vote for the candidate of one's choice is undermined by the provisions of Article 75 which empowers the Central Committee to approve the candidature of aspiring candidates.²⁸ This means that suffrage though being universal is not equal and direct.

Through this provision not only does the Central Committee control the legislature but also controls the electorate who have to choose their representatives in Parliament from lists already approved by the core of the Party. In many cases aspiring candidates popular to the electorate who

- 128 -

happen to be out of favour with the Central Committee are prevented from contesting elections to the National Assembly. In this way the Central Committee is able to determine the outcome of elections in many Parliamentary constituencies. The situation is even worse in Local Government elections to which we shall turn now.

THE IMPACT OF THE SUPREMACY OF THE PARTY

ON LOCAL GOVERNMENT ELECTIONS

(a) BACKGROUND TO LOCAL ADMINISTRATION ACT 1980

We discussed in Chapter 2 the meaning and actual implementation of the supremacy of the Party over the three arms of government. We wish now to examine the legal implementation and effect of the supremacy of the Party on local councils.

Although both the Independence Constitution 1964 and the One-Party constitution 1972 contain no provisions for Local Government, Zambia had an elaborate system of local government inherited from colonialists the provisions of which were found in various Legislative Acts and, after Independence, in Acts of Parliament.

Before the 1980 Local Administration Act there existed four types of local authorities, namely, the Municipal, Township, Rural and Mine Township Councils. The first three were governed by chapter 480 of the Laws of Zambia. While Mine Township Councils were governed by chapter 472 of the Laws of Zambia.

For the purpose of representation on Councils, Municipalities, townships and rural areas were divided into wards and each ward was given a name.²⁹ Councillors elected from wards sat on Municipal, Township and Rural Councils.

For the purpose of presiding over council meetings, Councillors on Municipal councils elected Mayors and Deputy Mayors annually from among themselves; while township and Rural Councils meetings were presided over by Chairmen and their Vice, also elected annually by the Councillors from among themselves.³⁰

People aspiring to be elected to councils were to be Zambian citizens of not less than 21 years of age, members of the Party for a continuous period of not less than two years immediately preceding the nomination for primary elections, and must be literate and fairly conversant with the official language of Zambia.³¹

To qualify as a Voter in local government council elections, one had to be "registered in a register of voters relating to any polling district" in a ward.³²

In 1971, the President appointed the Simance Working Party, deriving its name from its Chairman, Mr. Alan James Francis Simance, to review the system of decentralised Administration. The Working Party submitted its Report in 1972, and one of its recommendations was that a committee of officials should be appointed to implement those recommendations of the Report which the Government would accept. Six Government officials were appointed to implement those recommendations of the Report which the Government would accept. Six Government officials were appointed to implement the relevant recommendations. These officials also made recommendations the notables ones being the proposal that the system of Local Government elections as provided for under cap 482 of the Laws of Zambia should be abolished;³³ the replacement of Township, Rural and Municipal councils with District Councils and that the functions of the District councils should include Party organization.³⁴ The system of Local Government Elections were replaced by Party elections.

Thus, those elected as Party ward chairmen were automatically to become District Councillors. This means that District Councils, Councillors and the personnel working therein were to be regarded as structural extension of the Party.³⁵

The recommendations cited above and others not relevant to the present discussion were given legal effect when the Local Administration Act No.15 of 1980 was passed in Parliament.

(b) EFFECTS OF THE ACT

As already seen, under the old system of Local Government Elections any one registered in a register of voters relating to any polling district in a ward qualified to vote in Local Government elections. With the passing of the Local Administration Act in 1980, only Party members who have paid current annual subscriptions qualify to elect Party ward Chairmen who automatically become district councillors. The old system allowed non Party members to participate in the election of councillors to represent them on local councils. The net effect of the introduction of the new Local Administration Act in 1980 has been the reduction of political participation as it relates to elections by many if not the majority of Zambians. Yet voting is one of the "commonly recognized modes of Participation"³⁶ that influence the actions of government, Political party or political groups.

Under Zambia's One-party participatory Democracy, one cannot run for an elective position to the National Assembly, district council or Party post unless one enjoys the approval of either the National Council of the Party or the Party's Central Committee. The system of vetting curtails the opportunity of Party members, let alone non party members, to run for an elective position in the party or government and hold places of authority. As regards voting in the district councils elections, we have seen that only

party members who have paid party annual subscription in the year elections are held qualify to vote. Non party members are excluded from voting.

The above concluding remarks just go to show that Zambia's one-party system cannot enhance constitutional democracy because it curtails political participation as regards voting rights and the right to be elected to any elective position in the Party, government and Local government.

References

Chapter 5

1. Human Rights in Commonwealth Africa, Totowa N.J., Rowman and Littlefield, 1986, p. 6.
2. "Comparative Rights Research: Some Intersections Between Law and Social Sciences," in Claude, Ed., Comparative Human Rights, (Baltimore: Johns Hopkins University Press, 1976, p. 392).
3. BANJUL CHARTER, Article 13.
4. Changes in the Right to Participate in politics and their Relation to Development: Zambia, 1973-85.
Prepared for delivery at the Conference on "the African Context of Human Rights: Development, Equality, and Justice," Part Harcourt, Nigeria, June 9-11, 1987, Presented also at UNZA, School of Humanities and Social Sciences Seminar, Lusaka, July 15, 1988.
5. See Section 10 of Local Administration Act No. 15 of 1980.
6. *ibid.* Section 85.
7. See Times of Zambia of 17th August 1988 for the change from General Conference of the Party to the Party Congress when the Party Constitution was amended.
8. Professor Scarritt. *Ibid.* p. 8.
9. See Article 44 and 54 (g) of the Party Constitution 1979.
10. See Article 44 (4) of the Party Constitution 1979 and also Article 51 of the amended Party Constitution 1988.
11. Daily Nation, February 3, 1988, pp. 1, 12 and 13 (Kenya)
12. The Standard, City Edition (Kenya), April 24th and 25th 1988.

13. Ibid. of 25 and 26th April, 1988.
14. Article 38 (3) of the One-Party Constitution 1972.
15. Article 50 (2) of the Party Constitution 1979, see note 16 below.
16. Ibid. Article 50 (5) or Article 73 of the Party Constitution 1988.
17. See The Zambia Law Reports (1979) pp. 273-278.
18. The Zambia Law Reports (1979) ZR p. 273
19. ibid. p. 275.
20. Article 4 (3) of the One-Party Constitution 1972.
21. (1979) ZR p. 276.
22. (1979) ZR p. 278. Law Reports.
23. Bickel, The Least Dangerous Branch, 1962, p. 449, No. 38. Quoted by B.O. Nwabueze in his Judicialism in Commonwealth Africa, 1977, C. Hurst and Company, London, p. 41.
24. Zambia Law Reports (1979) ZR p. 278.
25. Article 75 (1) of the Republican Constitution 1972 as amended by Constitution (Amendment) Act No. 15 of 1981 and Act No. 1 of 1983.
26. See Zambia Daily Mail of 23rd September, 1988 which reported the dropping from the polls of what it called "Vocal" MPs.
27. Nwabueze B.O. Constitutionalism in the Emergent States, C. Hurst and Company Limited, 1973 London, p. 3. The Article referred to in the Constitution of the Soviet Union is Article 134.
28. Article 75 of the One-Party Constitution 1972 was amended by Constitution (Amendment) Act No. 1 of 1983.
29. Section 10 of Local Government Act Cap. 480.
30. Section 20 of cap 480 of the Laws of Zambia.
31. ibid. Section 16.
32. ibid. Section 14 as amended by Act No. 16 of 1975.
33. "Decentralized Government: - Proposals for integrated Local Government Administration, Zambia Information Service, Government Printer, Lusaka 1977, para. 42.4 (c) (i).
34. ibid. para. 42.2.
35. ibid. para. 42.3 (b) (i)
36. James R. Scarritt, ibid. p. 1. The Seminar Paper is available in the School of Humanities and Social Sciences of the University of Zambia. See also John Rawls, A Theory of Justice, pp. 222-223.

CHAPTER 6

CONCLUSION

The concluding presentation of the effect of party supremacy on constitutional democracy falls in two parts: in the first part, we give a brief summary of the constraints exerted on constitutional democracy by party supremacy; modes of promoting constitutional democracy in Zambia form the second part of this chapter.

(a) Constraints on Constitutional Democracy

In the presentation of the effect of party supremacy on constitutionalism, we noted, inter alia, that certain fundamental human rights and freedoms found no sustenance in a single-party state. Among them were fundamental human rights and freedoms pertaining to: association and assembly, freedom of expression and of the press, right to political participation and free interplay of conflicting political opinions.

The methods of appointing judges to the bench, it was noted, did not assure the independence of the judiciary, without which, the liberty of the governed hangs precariously.

It was shown in chapter 3 that in one-party Zambia, the legislature plays an insignificant role in influencing executive action in public performance. This is so because political sanctions by society against the erring executive are non-existent as there are no democratic avenues available for effecting change in the personnel and policies of the government. What this means is that the reward to the holders of political power in one-party Zambia is permanent. There is no motivation for doing a good public job because fear of losing power has been removed.

The foregoing brief discussion leaves us in no doubt that the restraints

on executive action normally imposed by the operation of the doctrine of the separation of powers have been rendered wholly ineffective. This being the case, it is, therefore, a misrepresentation to call a single-party system of government a participatory democracy when the word democracy connotes freedom and after having shown that certain fundamental human rights and freedoms cannot be sustained in a single-party state. Political participation, it was shown, was an outgrowth of equal liberty and it is only an authentic democracy that can satisfy the principle of equal participation in public affairs.

From the foregoing remarks, we can safely conclude that being a single-party state, Zambia's political system cannot and does not safeguard the principle of equal participation in public affairs without which constitutional democracy has no substance. In view of the above conclusion, it is logical that we now proceed to discuss the modes of promoting constitutional democracy in Zambia.

(b) Modes of promoting Constitutional Democracy in Zambia

Paramount to the promotion of constitutional democracy in any society is the awareness that monopoly of political power either by one person or a group of persons severely curtails the liberty of the governed. What is being restated is the ancient belief that one man rule, now incarnated in the modern garb of single-party system of government, has the invariable tendency of degenerating into a dictatorship. How else does one explain the warning the Secretary of State for Defence and Security is reported to have given to the Matero suburb audience that those voters "who will not vote or will vote no" in the Presidential elections should not cheat themselves that they would not be known. They would be known and would be regarded as enemies.¹

It is only under a single-party system of government that holders of political power can afford to issue out such threats because voters have no democratic channels for removing the leaders who have waxed arrogant.

As already indicated above, never at any time should a people think that a single-party system of government has any goodness overriding that of a multi-party system of government. This is so because, as shown earlier in this discussion, under the former people lose political freedom and people without freedom invariably lack development, both material and human. Thus, the late Kwame Nkrumah who saw that political freedom is a sine qua non of advancement coined the slogan; "seek ye Political Freedom ..." ² all else will be added to it. As earlier noted, the leadership in a single-party state have the tendency of waxing arrogant and of relaxing in their public performance mainly because the system does not avail the subjects with any democratic avenues for effecting change in the personnel and policies of the Government.

Back to lack of advancement, this comes about mainly because those in power have no motivation because they have been permanently rewarded as any political blunder is not visited with sanctions. The subjects of political power who have realised that the avenues to political advancement have been permanently closed to them tend to relax too.

The end result is lack of development with its concomitant vicissitudes of poverty. Those wishing to end poverty should first tenaciously struggle for the establishment of constitutional democracy.

Back to the modes of promoting Constitutional democracy in Zambia, the discussion of the nature of single-party states has led us, if only by implication, to the conclusion that as a political system it cannot be reformed to make it democratic because the system is founded on the

monopoly of power by one or few individuals. It can only be abolished and on its ruins a democratic system can be established. What is happening in the eastern bloc is relevant to the theme of this discussion. Thus, a trend has emerged in Zambia in favour of the re-establishment of a multi-party system of government as both the Central Committee and the National Council of the United National Independence Party have resolved by Resolution EONC/5/RES/2 that a referendum be conducted to determine whether or not the people of Zambia want to revert to a multi-party system of government.

The conclusion drawn in the preceding paragraph notwithstanding, it is appropriate that we suggest some reforms to the so-called single-party participatory democracy in Zambia to make the system less totalitarian in case the people of Zambia commit suicide by rejecting the re-introduction of a multi-party system of government. The proposed reforms fall under: Repeal of the Vetting of candidates aspiring to be elected to Parliament or Local Councils; Reform of the Local Government Electoral Act; A Change to a Bicameral Legislature.

(a) Repeal of the Vetting System

It is insisted upon, in order to enhance participation in the affairs of the state, that the system of vetting candidates aspiring to be elected to parliament or Local Councils should be abolished.³

The vetting of aspiring candidates by the Party's Central Committee on the ground that a candidate if elected would be inimical to the state has been and will continue to be abused as long as what constitutes being inimical to the state remains undefined. In one election year, two aspiring candidates who had been dropped from the race were allowed to re-join the race after threats of serious demonstrations by their supporters.⁴ This particular incident has cast doubts on the seriousness of the Central

Committee when vetting the candidates.

The case for freedom to choose rulers is stated clearly by Professor Cowen in his discussion of the South African political situation when he argues that:

"Thus: as it is the business of democratic government to promote free life of all men, all men should,... have their say as to how the work of government is promoting or hindering their interests. It is the individual affected by government who alone knows where the shoe pinches; and therefore... every individual affected ought to be free to ask for another shoemaker when his feet have' been pinched, even if he may not himself know how to make governmental shoes"⁵

In any case, why should a person who is compelled to pay tax, who may be required to serve in the armed forces if need be, who, in short, is compelled to obey, not have "his opinion counted at its worth?" People should be free to stand for election so that their opinions on public affairs are counted.

In another passage Professor Cowen defends the right to stand when he contends that there cannot be talk ~~of~~ genuine democracy unless the government is accountable to the people and that government can only be accountable to the people if there is "freedom to vote and stand."⁶

Having stated the case for freedom to vote and stand for election to public offices, let us now see how the Local Government electoral system could be reformed.

(b) Reform of the Local Administration Electoral Act

In actual fact there is no elaborate system of electing District Council members. Since the substance of changing from Local Government to Local

Administration was to integrate the structure of the Local Government into the Party Structure, the provision for the election of Councillors is to be found in the Party Constitution. Thus, Article 38 of the Party Constitution provides that Party Ward Chairman, who automatically becomes Ward Councillor for the purpose of the election to the District Council, shall be elected by the Party members in the ward. Section 10 of the Local Administration Act No. 15 of 1980 which provides for the composition of the District Council does not indicate how Ward Councillors are to be elected. Actually, many Councillors are nominated members or represent electoral colleges. Zambia cannot boast of being a participatory democracy when non UNIP supporters are excluded from participating in electing their representatives on District Councils.

It is proposed and insisted upon that Ward Councillors be elected by all the people in the Ward who are qualified and are registered as voters for the purpose of Parliamentary elections. The number of nominated Councillors should also be drastically reduced and party officials at the district level who aspire to sit on District Councils should seek election to them rather than be nominated members. It is necessary to emphasize that the Chairman of the District Council should be someone elected by Councillors from among themselves.

This particular proposal would seem to suggest that recruitment of the Party Leadership at the District and Provincial levels should be through election if Party Members are to exercise control over the leaders at the two levels of the party structure.

If the proposed reforms are implemented, how do we then ensure that they are not made amenable to the vicissitudes of Parliamentary majorities which occur from time to time.

In the first instance, it is proposed that the system of electing Ward Councillors should be enshrined in the Constitution of Zambia and the republican constitution should be made difficult to change by introducing a second House of Parliament.

(c) Change to bicameral Legislature

There should be a change to a bicameral Legislature for the reasons already stated in this chapter. The Legislature should comprise two Houses: the Lower House of elected members shall be called Katengo. All legislation should be initiated in the Katengo. But no bill should become law unless and until it has secured the approval of the Upper House.

The Upper House to be known as Senate shall have life members who shall be called Senators . The following qualifications should apply in relation to the life membership of this House:

- (a) All traditional leaders of the ranks of paramount and Senior Chiefs aged 50 years and above⁺ and are conversant with the official language of Zambia;
- (b) Former Presidents of the Republic shall be Ex Officio life members;
- (c) Former speakers and former clerks of the National Assembly who have reached retirement age;
- (d) Former Chairmen of various service Commissions on normal retirement;
- (e) Any person who held the office of Judge of the Supreme Court and High Court and has reached retirement age;
- (f) Any person who has been decorated State Counsel and is no longer in service of any Government.

The membership of the Upper House ceases when one decides to run for election to the Lower House or accepts an Office in the Government or Parastatal body. In either event membership is demised for life.

(d) Functions

The functions of the Upper House should include:

- (a) Scrutiny of the bills, excluding expenditure and Revenue Bills, which have been passed by the Lower House before they are presented for Presidential assent.
- (b) Debate on the government implementation of the philosophy of Humanism.
- (c) Exercise such powers as are given to it by the constitution.

As already indicated above, any bill seeking amendment to the Republican Constitution must secure a two - thirds majority concurrent support of the Upper House before the amendment is given legal effect. Any ordinary bill rejected by the Upper House if in its opinion the bill appears to contravene any of the provisions of the constitution, should be referred to the tribunal provided for in Article 28 of the Constitution.

The necessary implication of the suggestions made in this chapter is that there is need to convene a National Convention to give thought to the actual content and efficacy of the existing Republican Constitution, to give particular consideration to what Wheare refers to as "the circumstances, if any, in which the basic rights and freedoms may be qualified or suspended..."⁷

References

Chapter 6

1. Times of Zambia of 13th October, 1988.
2. Quoted by Dr. Jonathan H. Chileshe in his Nothing Wrong with Africa, Except...; Vikas Publishing House Limited, New Delhi, India, 1988, p. 66.
3. Article 75 of the Constitution of Zambia as amended by Act No. 1 of 1983 should be repealed. The qualifications provided under Article 67

and the disqualifications provided under Article 68 as amended by No. 22 of 1975 should suffice.

4. See Resolution EONC/5/RES/2 (Political Affairs) of the 5th Extra-Ordinary National Council Meeting of the United National Independence Party held at Mulungushi International Conference Centre, Lusaka, from 28th - 29th May, 1990.

In 1978 Presidential and General Elections, Messrs Rupiah Banda and Elias Chipimo in Munali Parliamentary Constituency were re-adopted after being dropped from the race.

5. Cowen, Dennis Victor, Constitution - making for Democracy: Alternative to Apatheid; Johannesburg, Anglo-American Corporation of South Africa, 1960, p.16.

6. Cowen, *ibid* p. 26.

+ Freedom to vote, that is, to choose rulers, means that voters should not choose rulers from lists of candidates already approved by the Government of the day. People should be free to stand for elections.

7. Quoted by Professor Cowen, D.V. in his Constitution-making for Democracy: Alternative to Apatheid, Johannesburg, Anglo-American Corporation of South Africa, 1960, p. 26.