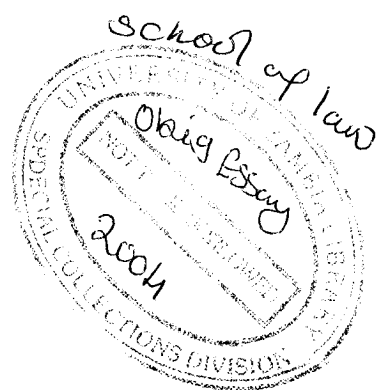


THE UNIVERSITY OF ZAMBIA



SCHOOL OF LAW



THE RELEVANCE OF A HOUSE OF CHIEFS IN A
DEMOCRATIC SOCIETY. A CASE STUDY OF ZAMBIA.

By

SUSAN CHIBOMBA

An obligatory essay submitted to the University of Zambia in
partial fulfilment of the requirements for the award of the Degree
of Bachelor of Laws (LLB).

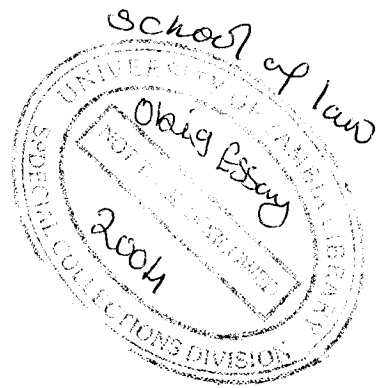
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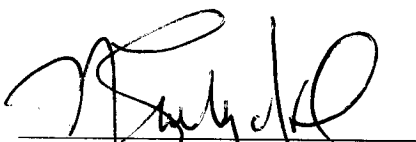
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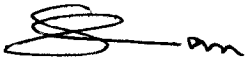
DECLARATION.

I, SUSAN CHIBOMBA, (Computer number: 99275325), DO HEREBY declare that the contents of this Directed Research paper are entirely based on my own findings. The work used herein that is not my own, I have endeavoured to acknowledge the same.

I, THEREFORE, take full responsibility for the contents, errors, defects and omissions therein.

27/12/04

Date



Signature

DEDICATION

This work is dedicated to following people:

My parents, Mr. and Mrs. Chibomba. You are the greatest teachers for you taught me everything that I know today. If there were an award for the best parents in the world, it would be given to you. You taught me the importance of hard work and determination. I set goals for myself, you believed in them and you had no doubt I could reach them. To mum; my wish is to be the woman you are. To dad; I hope to find someone like you.

My brothers, Cooper, Miller, and Mainza you were always there for me when I needed you. You gave me love and strength to go through each day with courage and knowing in my heart that I am loved. All those times I wanted to give up, you were always the voice that I heard telling me I could do it if I put my mind to it. For everything I have achieved, it is because of you.

My sister Mutinta, you are the one who always let the light in through my window of hope. As young as you are, I have learnt from you. Every time I look at you, I can see your future so promising. I love you so much and thanks for making me a proud big sister.

For everything that I have become, it is because of all of you. For this reason, I dedicate this work to you....

*For God so loved the world that He gave His only
begotten son that whosoever believes in Him shall
not perish but have everlasting life*

John 3 v16

There is no greater love than this, that a man
would give his life for a friend.

ACKNOWLEDGMENTS.

First and foremost, I would like to thank the Almighty God for the many blessings that you give me even when I do not deserve them. From the moment my life began, you have been faithful. I cannot even get to more deserving but you still love me and bless me. You love me at my worst and at my best. There is no greater love than this, that you would give your life for me, thank you.

This essay would not have been a success if it were not for my supervisor, Dr. N. Simbyakula for his continued support and patience in supervising my work. I would also like to thank the clerk of the House of Chiefs, Mr. C. Chibbonta for his assistance and support during my research.

To my family, I would first like to thank you mum and dad for being there for me every time I needed you. You believed in me when no one else did. To my brothers Cooper, Miller, and Mainza, without you, life would be boring. You made me who I am today and I will always thank the Lord for you. To my one and only sister Mutinta, you are such an angel and without you, my life would be so empty. That picture of Jesus that you drew for me when I came to the University kept me safe throughout my four years of school. To my cousin Gloria thanks for being there. To my Uncle Mr. E. Chibomba, you always believed I could do it, thanks for your encouragement, it meant a lot to me.

Mr. K. Hamudulu and your lovely, ever welcoming wife, I would like to thank you for all your support and for allowing me use your laptop to type my work and also for taking time off your busy schedule to be there every time I called on you. Without you, this work would not have been a success.

Nkumbiza and Twaambo; you were always there for me and made my life easier while on campus. You were my sisters, my strength and I will always be thankful for that. Nkumbi, you were the crazy one, Tee, you were the funny one, and you made me laugh when my days were blue. I could not have reached this far without you two. The special moments of 'tiger teeth', 'dodo-extinct bird', 'flip chart', broken blender, 'love in the books' and 'discrepancy', will always be in my heart. To Lombe, thanks for everything. Bernadette, Precious B. Mweemba, Mrs Francesca H Willima, Cassandra, Banji, Mwenda, Cheelo, Bako, Tammy, Tutwa Catherine, Malambo, Brave, Raymond, Angela and Eta, friends are friends forever.

To the fourth year class of 2004, we made it through despite the storms. Thank you for the memorable moments that we shared and for helping me fit in.

GOD BE WITH YOU ALL THE DAYS OF YOUR LIVES.

ABSTRACT

Before Zambia was colonised, seventy-three tribes inhabited it and these lived in communities. A chief headed each tribe. The chiefs were the ones responsible for governing of the chiefdoms. Each tribe had its own way of administering its affairs.

When Zambia was colonised, there were no attempts by the colonial masters to bring the chiefs closer to colonial administration so as to include them in national development. The chiefs were merely turned into tools of suppression. The chiefs' roles were merely to collect taxes and apprehension of criminals. This had no bearing on the development of the country for the colonised. Even though the native courts still existed, the judicial powers of the chiefs were not recognised and the courts operated with limited authority and highly depended on the British administration terms.

The institution of chieftaincy has been in question for the past decade since Zambia became independent. This is an institution that has been given a pride of place under the Republican Constitution. It was realised that despite recognising the institution of chieftaincy under the Constitution, there was urgent need to integrate the chiefs in national development. Therefore, the One Party State established the House of Chiefs in 1965. This institution was also provided for under the Constitution. This institution was to be an advisory body to the government on matters that touched on tradition and customs. This was ~~in~~ also in relation to bills that would be sent to the House for consideration before parliament passed them into laws.

During the One Party Rule, the chiefs had greatly contributed to national development by passing resolutions on certain matters that had to be taken on board for the development programmes that the government implemented. The chiefs were further empowered with the enactment of the Villages Registration and Development Act in 1971. This Act basically encouraged the chiefs to supervise village registration.

When the Movement for Multiparty Democracy (MMD), came into power, there was another dimension in traditional governance. The establishment of the House of Chiefs was completely ignored. This was not consistent with the spirit of the Constitution. The New Deal government that extended the MMD rule later re-introduced the House of Chiefs due to pressure from various stakeholders to have the House re-introduced.

The functions of the House of Chiefs are clearly outlined in Article 131 of the Constitution. The functions merely have to do with discussing bills sent to it for consideration and any other matters that the president refers to the House. These functions are not enough to enable the chiefs actively participate in national development.

At the moment, the House of Chiefs is merely an advisory body to the government on matters of tradition and custom. There is need to redefine the role that the House of Chiefs must play in a democratic state. It must be integrated in national development.

The functions must be extended beyond discussing bills and any other matters sent to it for consideration by the president. Moreover, the decisions of the House of Chiefs are not even binding on the government. This makes it difficult for the House to assert itself in national development. The Constitution must be amended so as to allow for a more meaningful role of the House in national development.

There is need to have a vibrant and proactive House of Chiefs. The members of the House of Chiefs can be able to voice out on certain issues that the members of parliament cannot. The chiefs must be involved at grassroots level so as to take development to the rural areas where it is lacking. The relevance of the House of Chiefs will not be seen if its roles are only restricted to discussing bills and matters referred to it for consideration. The chiefs must be involved in national development.

Therefore, the aim of this essay is to establish whether the House of Chiefs is relevant in a democratic state in enhancing national development. The essay is divided into five parts. The first chapter will basically discuss the institution of chieftaincy and the House of Chiefs. The second chapter will look at the evolution and establishment of the House of Chiefs in Zambia and the reason behind the establishment will also be given. Functions of the House of Chiefs will also be looked at in the third chapter.

The fourth chapter will outline the relationship that is supposed to exist between the House of Chiefs and parliament. The relevance of the institution will thus be analysed in the same chapter and this is in relation to national development. The final chapter will merely discuss the conclusions and the recommendations on how to ensure that the House of Chiefs is made effective and better equipped to contribute to national development.

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CHAPTER ONE

1.0 INTRODUCTION

The relevance of the institution of chieftaincy in a democracy has been in question since Zambia gained its independence in 1964. In some West African countries, the chiefs have successfully entered into the modern age as being characterized by the independent state and its bureaucratic institutions, peripheral capitalism, and a worldwide electronic mass culture. It is for this reason that the chiefs are more or less conspicuous both in daily life and even in scholarly analysis.

Zambia is also one of the countries that have reserved a place for the chiefs at the national level, where there is a House of Chiefs. This is a complementary institution to parliament, not entirely unlike the House of Lords in the Westminster tradition. The House of chiefs was first established and regulated in great detail in the Independence Constitution and its various subsequent Amendments Acts. Meanwhile, chieftaincy has been viewed as an obsolete present day survival from pre-colonial times when that institution was surrounded with mystical power and heroic glory.

1.1 THE INSTITUTION OF CHIEFTAINCY

The institution of chieftaincy is one of the oldest institutions in Zambia. The Chiefs Act provides for recognition, appointment and functions of chiefs.¹ A chief has been defined as a person who is recognized under the Chiefs Act as the holder of an office specified which include the office of

¹ CAP 287 of the Laws of Zambia.

Litunga of Western Province or of any other chiefly office in the Western province specified in the Order, and the office of paramount chiefs, senior chief, chief or sub-chief.²

Thus it is in section three that the President can recognize a person as a chief if he is satisfied that such person is entitled to hold the office under African Customary Law. The President can withdraw this recognition if there has been an inquiry and he is satisfied that the said person ceases to be entitled under African Customary Law to hold the office of chief in respect of which the recognition was accorded, or the withdrawal of the recognition accorded to the person is necessary in the interest of peace, order and good governance.³ The Traditional Electoral College in the affected areas can initiate the withdrawal of a chief for various reasons. The common reason is when a chief is in breach of customs.

There are other provisions that enable the president withdraw the recognition of a chief.⁴ The Chiefs Act further provides that the institution of chiefs would be maintained in Zambia so as to preserve traditional customs and culture. In short, the chiefs are supposed to be custodians of tradition and culture.

The institution of chieftaincy dates back to the pre-colonial era. Traditional rulers are regarded as supreme natural rulers of their respective ethnic communities and reign for life. Ascendancy to chieftaincy differs from one ethnic group to another. In certain instances, this is either inherited based on the record or leadership of a family or clan head or achieved through recognition of

² Section 3 of the Chiefs Act, CAP 287 of the Laws of Zambia

³ section 4(a)(b) of CA 287

⁴ This is under section 4 of the Chiefs Act.

benevolence and loyalty to the clan leadership or assumed through bravery, especially in territorial acquisitions as a result of tribal warfare.

At the moment, ascendance to chieftaincy is through selection from the royal family tree by the Traditional Electoral College. The only exception is the Western Province where the Litunga in consultation with the Traditional Council appoints the Lozi chiefs. It is after the appointment that the President is supposed to officially recognize the chiefs before the latter assumes office.

The traditional role of the chiefs are; safeguarding traditional values and customs, administration of land, allegiance to the gods, prescribing rules and regulations for the governance of social behavior, arrangement of customary marriages and protection for the community. The community in return pays homage to the chiefs by giving them esteemed reverence.

Before Zambia became Independent, the authority of the chiefs was restricted. The chiefs were merely considered as agents of the government whose chieftaincy was subject to approval by the government. If the chiefs wanted to have the right to their status and power, they had to render their services to the state and not to the people. It was in 1964 at independence that the government decided to assume the responsibility of administering the affairs of the chiefs. In order to achieve this, the Chiefs Act was enacted in 1965, but this further restricted the powers that the chiefs had previously enjoyed under African Customary Law.

The Zambian Constitution also gives a pride of place to the institution of chieftaincy.⁵

⁵ Zambia Amendment Act No. 18 of 1996

Article 127(1) provides for the existence of the institution of chief in any area of the country in accordance with the culture, customs and tradition of the people to whom it applies. The institution of chieftaincy currently falls under the Ministry of Local Government but has been moved from one Ministry to another.. The institution of chieftaincy has been an appendage to the modern government machinery. It is however capable of far reaching adaptation to modern politics.

For example, two recent Zambian cases of chiefly succession are cited as proof that Neo-Traditional Constitutional arrangements are capable of adaptation so as to produce chiefly candidates that are well versed in the modern political domain and acceptable to the government. The example is that of the Lozi Litunga in 1968, when Mr. Goldwin Mbikusita succeeded Mwanawina; and that of Kanongesha, the senior chief Southern Lunda chiefs in Mwiniluga District, North-western Province.

Van Bins Bergen had this to say, “the base of chiefs’ political power lies in their local areas. In those areas where the institution of chieftaincy is strong, the selection of a new leader through traditional procedures more or less as an automatic guarantee of his popularity. (...) it is for this reason that political parties seek to captivate local support through the chiefs because it is essential for winning both local and general elections. In part, this explains why clandestine grooming of qualified candidates whose loyalty is unquestionable is undertaken by the nationalists.”⁶

What the UNIP government did was to appoint people who were not entirely from a particular area but needed to have some necessary connection to the area. “UNIP policy, appointing in rural areas

⁶ Chiefs and the State in Independent Zambia: Exploring the Zambian National Press’.

regional and branch officials, men and women who are, if not entirely native to their districts, at least acceptable to the community as a whole. They must be persons who can gain the co-operation of the local chiefs. During local elections, with most of the chiefs' areas being designated as wards (or local constituencies) it is a common practice to put up candidates who are approved by the chiefs."⁷

This basically means that the chiefs have an influence and a tight grip on the behavioral patterns of their subjects. What the chiefs decide is in a way regarded as 'Bible truth' because of the respect that the people have in their chiefs. Thus the chiefs demand a lot of respect not only from their subjects but from everyone. Hence if a candidate needed to win an election, he or she had to be approved by the chief of that area.

Hitherto, the institution of chieftaincy was very strong in the Western Province of Zambia. During the One Party State, UNIP's initial success was derived from its appeal to the chiefs, particularly in the campaign against the corrupt regime of the late Mwanawina. When the party promised reform, the elders took this to mean restoration of power to the chiefs. Hence because of this, UNIP scored an overwhelming victory in the 1964 election. However, by 1968, there were massive governmental nationalist reforms, which in turn increased central government control.

There was a direct confrontation between the government and the chiefs and UNIP, and the latter paid for this through the loss of the province to the opposition. From the above, it can therefore be concluded that chiefs are still being regarded as very important factors in modern politics in the

⁷ Van Bins Bergen W. M. J. 1987, *Chiefs and the Independent State in Zambia: Exploring the* *Zambian National Press*, in J. Griffiths et E. A. B. Van Rouveroy Van Nieuwaal (eds), *Journal of Legal Pluralism*, Special Issue on

rural areas. A chief is an important local leader, a servant of the people. This is the African tradition.

1.2 HOUSE OF CHIEFS.

Article 130 of the Constitution provides for the creation of a House of Chiefs. This body “shall be an advisory body to the government on traditional, customary and any other matter referred to it by the president.” Even if the Constitution provides that the House of Chiefs shall advise the government, the decision of the former are not binding on the latter. Its role is merely that of an advisor and the government can take the advice or not. The government cannot be compelled to adhere to the decision or the advice of the House.

The Constitution in Article 131 provides for the functions of the House of Chiefs. The functions include discussing of bills that touch on tradition and custom before Parliament passes them into law. This does not mean that the National Assembly cannot pass a law without consulting the House of Chiefs. It is not mandatory to send a bill for consideration to the House of Chiefs. The Article says that the House *may* consider and discuss bills dealing with tradition and custom.

The role of the chiefs is simply that of a custodian of tradition and culture. The chiefs have refused to be confined to issues of culture and tradition. This is evident from the statement of Chief Mumena of the Kaonde people who said that, “the role of chiefs must be extended from that of merely being customary and cultural, but should have a role to play in governance issues. The

chiefs have great potential to contribute to national development; just confining them to traditional roles will not do any justice to the nation.”⁸

Chief Nalubamba expressed his views that the role of the chiefs should not be too confined and he stated, “Government should involve the chiefs in national activities like the African Freedom Day celebrations. This would not only foster relationship between traditional rulers and government but would also give the people some strong spirit of patriotism. The people need to be sensitized about certain activities for them to appreciate their political and cultural evolution. If we were involved, we were going to get our people and encourage them.”⁹

The question remains, what is tradition and culture? Culture has been defined as the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group. But does that include ancestral worship, under age marriages, witchcraft, traditional ceremonies, and so on. Different people have had different views on what tradition and culture is. What goes for tradition and culture is in state of flux and cannot be said to be fixed. The definitions of culture and tradition would vary from place to place. Some people would argue that the only remnants of tribal customs are perhaps the traditional ceremonies, costumes such as the Lozi *musisi* and cultural dances.

The House of Chiefs is composed of twenty-seven chiefs. There are about three chiefs appointed from each province. This is done at the Provincial Council of Chiefs. A chairman and a vice-chairman who are also elected from among the chiefs head the House of Chiefs. Article 130 of the

⁸ The Post Newspaper, Wednesday, December 08, 2004

⁹ The Post Newspaper, May 25th 2003, Article by Sheikh Chifuwe.

constitution provides that a member of the House of Chiefs shall, “hold office for a period of three years and may be re-elected for a further period of three years or may resign upon giving notice in writing to the chairman.”

Before the House of Chiefs is sworn in, they take an oath of allegiance to the president of the Republic. Article 134 of the 1991 Constitution provides that the chairman and every member of the House of Chiefs shall take an oath of allegiance to the President. If a member of the House of Chiefs dies, ceases to be a chief, if any other circumstances cause him to be disqualified for election, if he becomes a candidate to any election, or accepts an appointment, to any office in a political party, if he is adjudged or becomes an undischarged bankrupt or if he is declared or becomes of unsound mind under any law in Zambia, then he ceases to be a member and the office becomes vacant.

Thus from this, it can be noted that traditional chiefs are not allowed to take part in partisan politics. Article 129 of the Constitution bars chiefs from taking part in partisan politics. Views on whether chiefs should take part in partisan politics have been diverse and different people have expressed different views.

The House of Chiefs meets twice a year and the current one had their last meeting from the 11th to 22nd of October 2004. The chairman of the House of Chiefs is senior chief Inyambo Yeta. The President shall appoint a clerk to the house with the approval of the House and on such terms and conditions as the House may determine.

The clerk of the house is Mr. Coillard Chibbonta. The clerk is the one responsible for advising the chairperson and the other members of the House on the procedure of conducting business in the House and informing them of the approved list of business to be conducted in the House.¹⁰ It is the president who has to approve the list of items to be discussed in the house. The clerk also attends the meetings of the House.

The president appoints the day when the house of chiefs shall assemble. “Not later than seven days before the date appointed by the president for the assembly for the assembly of the house for any meeting, the permanent secretary ... shall furnish the clerk with a provincial list of the business which the house is to transact by the direction of the president...”.¹¹ The permanent secretary may delay the commencement of the sittings. This would occur if he delays in furnishing the clerk with a provisional list of the items to be discussed at the meeting.

In the last thirteen years of the Movement for Multiparty Democracy rule, the chiefs have been used to achieve political ends. For instance, during the third term campaign for the former Republican President, Dr. F.T.J. Chiluba, chiefs were paraded to support the call. When the chiefs rally behind the party in power, it is not partisan politics. It only becomes partisan politics when the chiefs support or rally behind the opposition. This is evident from the reaction of the ruling party when a chief supports the opposition.

The Patriotic Front president, Mr. Michael Sata, then minister in the Chiluba government, exchanged angry words with Chitimukulu Chitampwa over his support of UNIP. Thus in the past

¹⁰ Section 9 of Statutory Instrument No. 41 of 1998.

¹¹ Ibid.

decade, the chiefs have been used by the MMD government to achieve its political ends. It is thus difficult to understand the meaning of 'partisan politics', does it mean supporting the party in power and not the opposition?

The Republican president Mr. Levy P. Mwanawasa, in his speech to the House of Chiefs warned the members of the House of Chiefs not to turn the House into an opposition political party working against the government of the day. He further called on the house to support the government in its programmes, but this makes the role of the House of chiefs very difficult. How can a non-partisan body be asked and expected to support a particular party and still maintain its neutrality?

It is because of this reason that the relevance of the institution of chieftaincy and the House of Chiefs has been questioned time and again. Other people have argued that this is just an institution to keep the chiefs from various parts of the country content.

The House of Chiefs proceedings are regularly published and offer very little useful materials on the interaction between the chiefs and the post colonial state. The ideal situation is that there must be an interactive relationship between the House of Chiefs and the government. This can be achieved if time and again the House of Chiefs is consulted by the central government on customary and traditional issues.

The relatively stable nature of this interaction is indicated by the fact that the House of Chiefs for as long as thirteen years (1968-1981) could be chaired by Chief Undi. Paramount Chief of the

Chewa people and as such, the neo-traditional focus of one of the few major ethnic clusters in Zambia- that of the Easterners who identify with the Chewa/Nyanja language as their mother tongue or lingua franca.

1.3 CONCLUSION

Therefore from the discussion above it can be noted that even if the chiefs are considered to be confined to the rural areas, they can be used by the government to advance some of the policies that would in turn benefit the country as a whole. The chiefs thus now have a forum through which they can contribute to the country. There has been debate for the last decade concerning this Institution. People have expressed their views by saying that the House of Chiefs is not necessary in advancing democratic principles of the country. Therefore, it will be the aim of this paper to critically discuss whether the House of Chiefs is relevant in a democratic state.

CHAPTER TWO

2.0 HOUSE OF CHIEFS: A CONSTITUTIONAL REQUIREMENT.

The House of Chiefs was first established in 1965 just after Zambia attained independence. The creation of the House of Chiefs was provided for under the Independence Constitution.¹² The creation of the House of Chiefs was made necessary so as to foster the diverse tribal cultures, customs and traditions of the people of Zambia and also to foster the aspirations of the people of Zambia at chieftom level. Article 130 of the Constitution as amended in 1991, provides that;

“There shall be a House of Chiefs for the Republic which shall be an advisory body to the government on traditional, customary and any matters referred to it by the president.”

From the above provision, it can be noted that the establishment of a House of Chiefs is a Constitutional requirement. It is important that there be a House of Chiefs so that the chiefs can have a forum through which to participate in the development of the country. It is therefore through the creation of the House of Chiefs that the chiefs can make meaningful contribution to the development of the country.

The creation of the House of Chiefs enables the traditional giants from all over the country to meet together and deliberate on matters that are beneficial to the country. It was the intention of the founding fathers the establishment of the House of Chiefs be a Constitutional requirement. Once the creation of the House of Chiefs is provided for under the Constitution, it is incumbent upon the government in power to ensure that the institution is put in place.

There is need for a harmonious working relationship between the government and the House of Chiefs on one hand, and between the House of Chiefs and parliament on the other. Thus it is of importance that formal communication lines be opened between these two organs. The relationship between the House of Chiefs and parliament is that the two organs must be able to work hand in hand when it comes to legislating for the country. The National Assembly must be in a position to consult the House of Chiefs before passing bills that touch on tradition and custom. In this way, the input of the chiefs is greatly necessary.

The above does not mean that the House of Chiefs and parliament have the same status. Parliament is the supreme body that is constitutionally mandated to make laws for the country and the role of the House of Chiefs is to ensure that traditions and customs are preserved. It would therefore be wrong to consider the House of Chiefs as a second parliament. The House of Chiefs is that institution where the government or executive goes for advice on matters that touch on tradition. This is because the chiefs are the custodians of the country's traditions and customs. The chiefs will thus be in a better position to advice on such matters. The decisions are of course not binding on the executive.

The House of Chiefs currently falls under the Ministry of Local Government and Housing. This institution has been constantly moved from one Ministry to another leading to haphazard administration and co-ordination of the affairs of the chiefs. The chiefs are however demanding to have the House of Chiefs delinked from the Ministry of Local Government and Housing so as to make it an autonomous institution under the office of the President or the Vice President

¹² Articles 95-106, Chapter 1 of the Laws of Zambia.

2.1 EVOLUTION AND THE ESTABLISHMENT OF A HOUSE OF CHIEFS IN ZAMBIA.

When the colonial masters came to Zambia, they found that seventy-three tribes inhabited the country and these lived in villages. Each of these villages had a headman. Above the headman was a chief of the tribe. Some of these tribes were small while the others were large and in case of the latter, there was a senior chief or a paramount chief, and in certain exceptional circumstances, a king of the tribe.

For instance, the Litunga is the Paramount chief of the Lozi people of Western Province. A paramount chief is the overall head in the hierarchy of chiefs and these are usually found in centralized kingdoms. Centralized kingdoms are those kingdoms with an organized structure and the duties of the chiefs are properly divided.

Politics in Zambia has already existed even before it was colonized, since the tribes lived in communities from time immemorial. It was in these same communities that politics began. Each had its own way of administration of its affairs and this was through the chief, king or headman. This did not mean that the chiefs and kings ruled their dynasties on their own. Hereditary Councilors assisted them in running the kingdoms. Chiefs had their own traditional councilors to assist them in their duties while the headman had advisors from among the genealogical relations.

2.2 DIRECT RULE

When the colonial masters first came to Zambia, they attempted to rule using a method known as Direct Rule. This was their theory of administration. The Native Commissioner was the one in

charge of everything that happened in the District. The Commissioner was the one who was in charge of the territory. Chiefs were merely, "constables' minor executive officials receiving no fixed salary in reward for their services." ¹³ The chiefs were responsible for the apprehension of criminals and also assisted in the collection of taxes, and a great variety of other duties. The powers of chiefs were regulated to be of a magical kind.

The formal courts continued to exist but the judicial powers of the chiefs were not recognized in law. This was because the Native Commissioner had, "eventually very little time to concern himself with the marital affairs of his charges or with the disputes...."¹⁴ Mostly these disputes were about water and fishing rights. If the chiefs retained any power, it meant cheap administration, and the chiefs were encouraged to adjudicate in minor cases with the blessings of the British administration.

There were some attempts to appoint chiefs but this was usually in stateless societies, for instance, that of the Tonga people in Southern Province. This is because the Tonga, "are scarcely distinguished as tribe: indeed it is not always clear to whom the name should be applied. In all directions they shade into peoples possessing similar cultures, but called by other names; and the boundaries at which the people call themselves by other tribal appellations, and are scarcely called thus by outsiders, very considerably."¹⁵

The Tonga people did not have an organized structure and this made it very difficult to have proper administration.

¹³ L. H. Gann. 1964. *A History of Northern Rhodesia: Early Days to 1953*. London. Chatto and Windus. P153

¹⁴ Ibid. p. 153. When the British colonized Zambia, they 'stole' the thunder from the chiefs because the chiefs were left with very little power and were treated more as constables.

¹⁵ Ibid.

The chiefs received very minimal salaries for their services and as a result, they were worse off than their subjects. The Africans resented the Direct Rule because they felt that it was imposed on them from without. In certain situations, they were forced to pay tax in cash rather than in kind and hence in order for them to raise money, they were forced to seek employment along the line of rail and mostly on the Mines on the Copper belt Province.

Moreover when the natives committed certain wrongs, criminal law was applied, these cases were in the past dealt with by the chiefs but they were now very serious offences under the new government. For example, what normally used to happen was that if a person killed another, the relatives of the deceased would be allowed to avenge the death by either killing the person guilty or any of his relations. Under the new system, a person who killed another would be personally liable. He would usually be tried for murder and sentenced to death. This in effect meant that the commission of a crime was personalized.¹⁶

2.3 INDIRECT RULE

The Direct Rule however ended in 1924, when the British government took over the running of the company due to the fact that it was running at a loss. Indirect Rule was introduced. This was, “a system by which the tutelary power recognized the, then, existing African societies and assisted them to adapt themselves to the functions of Local Government.”¹⁷ It was known as Native Local Government and the loyalty of the people was directed towards their own chiefs and tribesmen, it was a local government with a difference. It was realized that if the chiefs were to become

¹⁶ L. H. Gann. 1964. *A History of Northern Rhodesia: Early Days to 1953*. London. Chatto and Windus. P.154

¹⁷ Perham, M., 1937. *Native Administration in Nigeria*, Oxford: Oxford University Press. Pp.345-46

effective and permanent auxiliaries of government, they required more strictly defined powers as well as greatest say in monetary matters. It was in 1933 that the Provincial Commissioner agreed that the chiefs have more financial responsibilities, but the question that remained to be answered was how much power they ought to have.

The system of Indirect Rule delegated administrative authority to the native people through their chiefs and village headmen. This kind of arrangement led to the creation of Native Authorities, which were presided over by the traditional rulers. Some of the tribes were forced to accept this system of governing to facilitate the creation of Native Authorities. These Native Authorities only performed functions of tax collection and administration of justice when petty disputes occurred among their subjects.

The Native Authorities did not perform functions of modern administration. Because of this arrangement, the authority of the chiefs was restricted as they were only considered as agents of the government. In this way, the chiefs were mainly pursuing the policies of the government thereby risking their relationship with their subjects. This entailed that the chiefs had no, "right to their status and power unless they rendered their services to the state conscientiously."¹⁸ As a result, the chiefs lost their supremacy and independence.

It was at independence in 1964 that the government decided to assume the responsibility of the affairs of the chiefs and in 1965, while recognizing the role of chiefs, the government found it necessary to spell out the functions of chiefs and as such it enacted the chiefs Act of 1965. This Act further restricted the powers that the chiefs enjoyed under African Customary law. The Local

Administration Act, which was subsequently enacted in 1965, further weakened the authority and status of the chiefs by virtue of appointing them to political positions.

It was in 1965 that the chiefs had their own institutional House of Chiefs. The founding fathers of modern day Zambia wanted to integrate matters of tradition, culture in national development. It is doubtful whether the functions performed by the House of Chiefs have anything to do with national development. The House of Chiefs was intended to also be an advisory body where the government would go for consultation. It is also very doubtful whether the House of Chiefs has ever been consulted on any matter since its establishment.

The main role of the House of Chiefs was to be an advisory body to the government. The first Republican President, Kenneth Kaunda appointed chiefs into the party hierarchy. By so doing, the appointed chiefs in a way belonged to the ruling party and would in turn speak the language of politics to their people. The participation of the chiefs in party politics worked to the advantage of the ruling party, which was the United National Independence Party (UNIP).

With the coming in of the Movement for Multiparty Democracy, there was another dimension where traditional governance was concerned. The House of Chiefs was not established and this led to massive outcries country wide for the re-introduction of the House. During the MMD rule, the House of Chiefs was not allowed to function and it was denied financial resources in the national budget. Thus the House of Chiefs was non functional from 1991 and this was contrary to the letter and spirit of the Constitution of Zambia. The House of Chiefs was later re-introduced by the New Deal government.

¹⁸Chiefs Affairs Policy. 1998. Ministry of Local Government and Housing. Lusaka.

Under the British rule, the chiefs had authority and not influence over their subjects. It is this influence that the chiefs have that was the centrifugal force for the re-establishment of the House of Chiefs. Despite the controversy over the continuance of the House of Chiefs by the MMD government, the chiefs were still paid their allowances and their palaces renovated.

The House of Chiefs had played a constructive role in mitigating the conflict that arose between the demands of modern legislative procedures on one hand and the desire to preserve the cultural values and traditional form of authority on the other. Therefore, even though there was a parliament recognized under the Republican Constitution as the sole body mandated to make laws, it was recognized that there were certain sensitive issues that could not be acted upon without the input from the historical custodians or stakeholders. Some of these issues included land allocation and natural resources.

2.4 REASONS FOR THE ESTABLISHMENT OF THE HOUSE OF CHIEFS

The primary reason why the House of Chiefs was established was to accord the chiefs a chance to participate in the national affairs of the country. In as much as the House of Chiefs was created so as to enable the chiefs contribute to the development of the country, this has not been the case. The roles of the House of Chiefs have been confined to those functions outlined in the Constitution. It has been asserted that the House of Chiefs is to be an advisory body to the government. This is in relation to the matters that touch on customs and traditions of the country. When parliament intends to pass a law that touches on tradition and custom, the House of Chiefs is supposed to consider the proposed bill before it can be passed into law.

It is important that matters of tradition and culture be integrated into the nation's affairs and this can only be done through the input of the House of Chiefs. The House of Chiefs is also supposed to consider any other matters that are referred to it by the president. The House of Chiefs can contribute to national development by passing resolutions on certain matters that the government should take on board for development programmes. The government can later implement these programmes. The House of Chiefs was created so that it can be able to advise the government on matters that the chiefs feel the government should consider if the country has to develop.

The chiefs are placed in a better position to accelerate development at the lower levels of the country. Development is needed especially in the rural areas and hence the government can use the chiefs in an effective manner unlike restricting these traditional leaders to discussing bills. Even though it has been claimed that the House of Chiefs was created so as to integrate the chiefs in national development, the House has a remote seat in national development.

The House of Chiefs meets twice in a year and the current House chaired by senior chief Inyambo Yeta has their second sitting from the 11th to the 22nd of October 2004. The House of Chiefs is supposed to act as a link between the government and the citizens. This is because the chiefs usually have an influence on their subjects and this would lead to meaningful development. In this way, the chiefs can also further the interests of their subjects by proposing to government measure the latter can undertake to bring development to rural areas.

2. 5 CONCLUSION

Therefore, it can be noted that the existence of the House of Chiefs in Zambia heavily relies on the Constitution for its creation. The functions of the House of Chiefs as outlined in the Constitution are basically the main reason why the House was created. This was to ensure that the different traditions and customs of the country are woven in the nation's affairs. Culture and tradition are the fabrics of society and it is important that they are maintained and not eroded with the globalization of the world. Traditions and cultures define peoples from all walks of life and therefore Zambia has a duty to maintain its culture and this can be done if the chiefs are part of the national development.

CHAPTER THREE

3.0 FUNCTION OF THE HOUSE OF CHIEFS.

The traditional roles of the chiefs and the House of Chiefs are not written down. The Chiefs Act, which is supposed to define the roles of the office of chiefs, is silent on this matter. The constitution of Zambia however outlines what the functions of the House of Chiefs are and these are stipulated in Article 131

“Notwithstanding Article 130, the House of Chiefs may-

- a) consider and discuss any Bill dealing with, or touching on custom or tradition before it is introduced into the National Assembly
- b) initiate, discuss and decide on matters that relate to customary Law and practice;
- c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and
- d) submit resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolution to be laid before the National Assembly.

Thus from the above functions of the House, it can be concluded that the Government can consult the House of Chiefs on bills that affect traditions and customs. Before such a law can be passed, the House of Chiefs should be consulted and this process is very vital so that any changes in custom and tradition are made into law and binding on all citizens after a thorough discussion of

the former. It is not mandatory for the government to consult the House of Chiefs before passing any law.

Thus the Government can consult the House before the process of enacting a law touching on tradition and custom can be done. In as much as this is so, the issue becomes even very difficult when chiefs are involved in politics. When asked what the functions of the House of Chiefs are, it would be very easy for one to just point to the provision in the constitution that clearly outlines what the functions of the House ought to be.

The functions or the role of Chiefs should be to speak for their people that they represent. In short, the members of the House of Chiefs and all the traditional leaders should act as a link between the Government and the communities they represent in coming up with health policies that will improve health outcomes. Thus in a way, the role of the House of Chiefs will extend to acceleration of the protection of rights and civil liberties of individuals and also ensuring that the citizens access proper health care.¹⁹

Since one of the functions of the House of Chiefs is to consider and discuss Bills dealing with or touching on custom or tradition, the input of the traditional rulers will be needed before the Proposed Traditional Healers Act and the Human Tissue Act are passed. Despite the fact that the House has that function of discussing and considering Bills touching on custom and tradition, there is no record in Zambia to show that there is a Bill that has been referred to the House for consideration.²⁰

¹⁹The Presidents (Levy Patrick Mwanawasa, SC) speech at the official opening of the House of Chiefs. P 7

²⁰ ibid

The president, vice president and cabinet ministers may address the House of Chiefs. This is in relation to the matters, which are considered relevant to the so-called role of chiefs; there is no provision for any chief to address the National Assembly on a subject, which he considers they ought to be appraised on. This question then is, what criteria does the President, vice president and cabinet ministers use to determine that a particular issue is relevant or not to the role of chiefs? This in a way restrict the functions of the House of Chiefs for as long as a matter is not considered relevant to the role of the House, there is nothing that the Chiefs can do about it but only wait until it is referred to them for consideration.

Probably, the functions are even made difficult with the fact that the president has to refer that particular Bill or any matter to the House for discussion. Thus as long as the Bill has not been referred to the House of Chiefs, the latter cannot on its own elect to discuss and consider any Bill. Moreover, it is not possible for the House of Chiefs to initiate any kind of legislation that it may deem fit. Therefore in a way, the House of Chiefs relies on the Constitution for its creation but heavily relies on what the President prefers or decides to refer to the House for consideration.

3.1 CONSIDERATION OF A PROPOSED BILL BY THE HOUSE OF CHIEFS

The House of Chiefs can only, initiate, discuss and decide on matters that relate to customary law and practice. This function does not entail that the House of Chiefs can initiate Bills, but that they can only discuss matters that relate to tradition and custom. The argument probably might be that

there is only one law making body in this country and that is parliament. This is the reason why the functions or the roles of the traditional rulers should be clearly laid down so as to avoid conflict of roles. The House of Chiefs is supposed to be subordinate to parliament and can thus only discuss those bills that have been referred to it before parliament can enact them. Before a bill is introduced in parliament that touches and customary law and tradition, it is supposed to be referred to the House of Chiefs for consideration. Thus as long as there are no proposed bills that touch on tradition and custom, then the House of Chiefs has no bill to discuss.

The bill that has been referred to the House of Chiefs for discussion is not even introduced in the House for all the members to discuss it. The committee considers the bill. Section 107 states that,

“On the day appointed for the consideration of the draft bill, the minister responsible, or representative nominated by him from his ministry to address the House on his behalf, shall move a motion which shall not be amended or debated, the House do now resolve into committee to consider the clauses of a draft bill...”²¹

This means that the only people that have an opportunity to consider a draft bill are those that are in Standing Committee and not the rest of the House. The bill must be presented before the whole House so that there is wider representation and discussion of the draft legislation.

The role of traditional Chiefs in Zambia has been in question since 1964. During the One Party State, Chief Undi once complained about what the role of Chiefs ought to be and stated, “one wonders today what chiefs are doing in the Republic of Zambia, and what they were doing in the

²¹ Statutory Instrument number 41 of 1998.

colonial government. If the chiefs are now proved to be doing nothing, what has made them so...?"²²

There is no written record available in Zambia to show that a Bill has ever been referred to the House of Chiefs for consideration since independence. It has been argued that maybe the reason could be that most of the Bills that are passed are not only concerned with rural areas but with the development of the country as a whole, "but even if such Bills were referred to the House of Chiefs, there are grave doubts as to the contribution these gentlemen would make to the eventual passage in the National Assembly...."²³

One school of thought believes that the identity of the traditional rulers should be kept in the rural areas where it has been since the Chiefs are not so conversant with modern day politics, let alone the pre requisite of a modern democratic state. This fact has been attributed to the nature of their backgrounds since most chiefs have held not to be so sophisticated and their education leaves much to be desired, "their qualifications range from grade 11-grade VII which is hardly adequate for them to have meaningful discussions on a complicated piece of proposed legislation which is at times even difficult for members of parliament to comprehend in the National Assembly."²⁴ This view has to be looked from the background from which it was written.

To say that chiefs cannot discuss Bills because of their education would be so erroneous in that the current House of Chiefs is composed of chiefs who have a high level of education; for instance,

²² Cherry G. The Political Process in Zambia. Documents and Readings. Volume 12, p54

²³ *ibid.*, p55

²⁴ Cherry G. The Political Process in Zambia. Documents and Readings. Volume 12, p55

the chairman of the House of Chiefs is educated. It is also wrong to hold that the chiefs should only be confined to rural areas, as they are not conversant with modern democratic state.

Chiefs should be involved in the development process of the nation and their functions should not be confined only to the discussion of Bills. One of the notices of motion proposed by chief Shabila for the second meeting of the House of Chiefs was that Section 9(1) (b) of the Local Government Act, CAP 281 of the Laws of Zambia be amended. The section provides that,

Section 9(1)(b) A council shall consist of-

(b) two representatives of the Chiefs, appointed by
all the Chiefs in the District;

The House of Chiefs wants this provision to be amended so as to enable at least two chiefs to attend council meetings as opposed to their representatives. This will enhance the full participation of the chiefs. Chiefs should be more responsible for the rural areas and must play a decisive role in urging their people to put more work in rural development. Government desires the involvement of chiefs in all spheres of national development. Currently there has been an outcry by the Chiefs country wide that they should be integrated in the development process.

The Health sector has a number of public health priorities that have been considered to relate to the functions of the House of Chiefs and these include: Child health, HIV/AIDS, Cultural and mental health, Environmental health.²⁵ Since the traditional rulers possess a lot of traditional influence on their subjects, they can be used as an instrument in disseminating information or even to educate the people of their communities. For instance, Chief Mukuni of the Toka Leya has been used in an

AIDS advert to educate people about condom use. This might seem absurd but in a way this is very effective in that people in communities have great respect for their rulers and thus it is easy for them to adhere to the words of their leader. Chiefs know what is beneficial to their subjects and they are therefore capable of disseminating information to the people that they rule because of that influence that they command amongst their subjects.²⁶

3.2 CHIEFS AND NATIONAL DEVELOPMENT

Chiefs should also be used as mediators in developmental issues. It is very important that the government work with the Chiefs in matters of national development. This is because the chiefs enhance the promotion of unity in the nation. Chiefs are capable of disseminating information relating to developmental policies to the people that they rule. It is a well-known fact that developmental programmes initiated by the grassroots are in many cases more successful than those that are planned by the Central Government.

Chiefs hold a tight grip on the behavioral patterns of their subjects and so the government can be best advised on what is practical and not. If the chiefs still have influence, and there are still problems in carrying out development projects, one way of aiding the process of development could be to involve the chiefs. The House of Chiefs through chiefs can be a means of overcoming the several limitations of centrally national planning by ensuring that development is supervised and managed at lower level

²⁵ President Levy Patrick Mwanawasa speech to the House of Chiefs, official report.

²⁶ *ibid.*

It has been argued that chiefs can rarely be used for developmental plans but their importance is only recognized, “at the time of elections when delegation upon delegations of political party leaders make it their duty to pay courtesy calls on chiefs palaces. Clearly, there are several generations of Zambians today who have no connection with the village and may not appreciate the relevance of chiefs.”²⁷

3.3 CHIEFS AND LAND ADMINISTRATION

One of the other functions that the members of the House of Chiefs or chiefs in general should be to allocate land. The position of the Chiefs in relation to land matters must be first understood. It has been said that the chief is the owner of the land, but what does it mean? The chief is merely a custodian and as a result cannot just allocate land to anyone without consulting his or her subjects who might be affected by the allocation. This should only be in relation to allocating land to the subject and no other person. This is because there has been controversy where investors have bribed the chiefs so that they can allocate large portions of land to the latter.

Investors find it very easy to bribe the chiefs because of their state, in that most of the chiefs are impoverished and as a result it is very easy to lure them with money or any other form of bribery. Moreover, chiefs are easy to be taken advantage of because of their level of education.

When it comes to allocating land to an investor or any person who needs land for investment, this must be left to the higher authorities but the chiefs should still be consulted before that particular

²⁷ Neo Simutanyi, The Relevance of House of Chiefs. The Post, Monday May 17, 2004.

land is allocated. This is because a chief is merely a custodian and he or she must in turn be able to consult the subjects to try and see if there is anyone who will be affected by the allocation.

In the case of Village Headman Albert Phiri Mupwaya and Kamaljeet Singh V Mathew Mbaimbi,²⁸ it was held that the law was not complied with in that before the grant of land was made, the chief did not consult the respondent who was an interested person.

The same was held in the case of Siwale V Siwale,²⁹ the appellants were affected by the grant of the land but they were never consulted before the grant was made. This case involved 400 hectares of land, which the deceased had left and it was held under customary law. The respondent applied for the piece of land to be allocated to him and obtained a letter for Chieftainess Naitwika for insurance. The appellants brought an action on the basis that they were not consulted before the grant was made as they were also affected being children of the deceased. Section 3(1)(4)© of the Lands Act provides,

3 (1)Notwithstanding anything to the contrary contained
in any other law, instrument or document, but subject to
this Act, all land held in Zambia shall vest absolutely in the president
and shall be held by him in perpetuity for and on behalf of the people
of Zambia.

(4) Notwithstanding subsection (3), the president shall
not alienate land situated in a district or an area
where land is held under customary tenure
© without consulting any other person or body whose

²⁸ SCZ . Appeal number 41 of 1999

²⁹ SCZ, 1999

interest might be affected by the grant.

Therefore, from the above provision of the law, the president cannot allocate land under customary law tenure, without taking into consideration the local customary law on land tenure which is not in conflict with the above Act and without consulting the chief and the local authority in the area in which land to be alienated is situated. The above discussion of some of the cases that have come before the courts is just an illustration that the chiefs should at all times guard and look out for the interest of the subject and that land cannot be allocated without consulting the chiefs in charge of the area in which land is to be allocated.

Thus the chiefs must be able to allocate the land that is within their areas but the most cardinal thing is that there must be wider consultation with the subjects so as to ensure that no one is affected with the allocation. The above cases show that once a chief has allocated land and the subjects have not been consulted, that the court can overrule decision or allocation. This in short means that the chief must strive to advance the needs of the people he rules and not his own interest. The role of the chief must be to safeguard the interests of the subjects and not his ends. A chief must be able to ensure that his subjects are not deprived of their land.

The House of Chiefs should not have the final word on whether land in their chiefdoms be allocated or not. Some people have argued that the chiefs should be left in charge of allocating land in their areas. This should not be the case. The simple reason is that, once the chiefs are allowed to administer land, there would be a lot of problems.

This is because most of these chiefs have not been to school so they feel that once land is allocated to a person who wants to invest, and then their chiefdoms will reduce. In as much this true because once land has been allocated, it converts to statutory tenure and is no longer in the hands of the chief. This mentality retards development and therefore the chiefs should only be custodians of customary land.

Because of migration, many people are moving to urban areas and leaving so much land in the rural areas. The government needs more land for development and so it is up to the chiefs to open up more land so that the government will be able to, “deliver meaningful development ...and help reduce poverty through an improved standard of living...”³⁰ The Republican president, Mr. P. L. Mwanawasa in his opening speech to the House of Chiefs urged them to assist government in identifying land for future economic development and also to encourage their subjects to have titled land so that they can use it as collateral in borrowing funds from lending institutions. This in a way would be able to empower the people.

The problem however arises in issues of land allocation by the chiefs. The role of chiefs in traditional land tenure system has been in question for the past decade. What normally happens is that foreign investors come into the country and they approach chiefs so as to be allocated land. Thus some chiefs are known to have sold traditional land to these investors without consulting their subjects. The government is making efforts to ensure that the land delivery system is improved. The Ministry of Lands is doing everything possible to ensure that adequate measure are put in place so that the land can be available to both the Zambian people as well as the potential investors, “to this effect ... government through the Ministry of Lands. has come up with a draft

land policy document, which is currently being debated by different stakeholders throughout the country.³¹

This said draft land policy is meant to come up with ways of how to best administer land in the country. The chiefs or rather the members of the House of Chiefs are the main stakeholders so the President in His speech urged them to take keen interest in the said on going discussions over the draft document and make their contributions in order that the land delivery system in the country can be improved.

In Zambia, agriculture is the priority sector of the economy and it for this reason that the New Deal administration has treated it as such. Small-scale farmers, who mostly come from the rural areas and reside in certain chiefdoms, produce about two-thirds of the country's agricultural output. In this view, it is therefore imperative that the Chiefs take up a more active role in the development of the country's agricultural sector and the economy as a whole. There is need to establish a vibrant and robust agricultural sector and this can only be achieved by ensuring that issues that discourage farming are properly addressed. Chiefs can be used to encourage their subjects to engage in sustainable agricultural practices and these include; agro forestry, crop rotation and conservation farming so that soil productivity can be maintained.

As earlier stated, Chiefs are the custodians of Zambia's tradition and culture and it is expected that the House of Chiefs play a crucial role in ensuring that Zambia's tangible and intangible cultural

³⁰ Presidents speech to the House of Chiefs

³¹ *ibid.*

heritage is safeguarded. This can be done by deliberating on cultural matters and recommending appropriate action to government in key areas. Some of these key areas include;

1. Establishment of formal and informal training institutions for cultural practitioners.
Cultural practitioners are those people that are educated on traditional and customary matters and these in turn would be able to educate others on the same. For instance, these practitioners can be put in primary and secondary schools so as to teach the children on the value of tradition and culture no matter how a society is.
2. With this modern era of technology and computers, people rarely know anything about their traditions and culture because of the imported culture from the western world. People need to be educated on their tradition and culture so that it is maintained. Culture is what identifies people of different origins. Thus Zambia needs to maintain its traditions and culture. For example, the people of Nigeria are easily identified by their tradition and this is through the way they dress.
3. Revision of relevant cultural legislation
4. Implementation of international cultural cooperation programs and activities.³²

Until 1991, there was in existence Provincial Councils where the chiefs would be able to participate in decision-making. However with the enactment of the Republican constitution³³, the Provincial council was abolished. Although the Republican constitution³⁴ provides for the existence of the House of Chiefs, it does not provide for the existence of sub structures at district and provincial levels. Furthermore, the constitution (Amendment) under Article 129 has excluded

³² President Levy Mwanawasa speech to the House of Chiefs, official report.

³³ (Amendment) Act No. 1 of 1991

chiefs from sitting in council meetings either directly or through representation. This has led to chiefs not participating fully in the decision making process.

Because of the lack of establishment of the substructures for the participation of the chiefs and their subjects at chieftdom, district and provincial level, the chiefs have not participated in the decision-making in matters that relate to their areas. The House of Chiefs thus demanded for the establishment of district councils of chiefs for easy co-ordination of development projects and for purposes of creating a clearing house for issues to be brought to the provincial council of chiefs and subsequently to the House of Chiefs.³⁵

Even though there is a provision for the chiefs to participate in matters of development in their localities, the same provision has not been implemented due to political interests and as a result, the chiefs have felt that they are not part of the development process.³⁶

The Local Court Act of 1996 separated the chiefs from the Local Court since they cannot no longer sit and hear cases with the court justices appointed by government. The non-involvement of the chiefs in the administration of justice in Local Courts has lowered their traditional authority in the administration of justice in their areas. Moreover, the chiefs are not allowed to adjudicate on any matter relating to witchcraft³⁷. The Witchcraft Act does not recognize witchcraft although the chiefs are convinced that it exists and is a major source of concern in their chieftdoms.

³⁴ (Amendment) Act No. 18 of 1996

³⁵ The House of Chiefs urges the government to amend Statutory Instrument No. 41 of 1998 under which the House of Chiefs regulations are promulgated with a view to establishing district councils of chiefs.

³⁶ Registration and Development of Villages Act No. 30 of 1971

³⁷ This is under the Witchcraft Act of 1965

The existence of witchcraft has been proven by the presence of witchcraft objects in the communities and those that are displayed by museums. This is because it is a criminal offence for the chiefs to recognize witchcraft or even to have witch finders to cleanse their chiefdoms. This criminalization of witchcraft has also curtailed the traditional authority of the chiefs over matters of customary law. This situation has effectively curtailed the responsibility and functions of the chiefs as custodians of customary law, thereby lowering their authority and dignity.

In most situations, the level of education of chiefs leaves much to be desired. This calls for deliberate measures to be put in place so that the traditional rulers are educated on certain issues. For instance, there should be deliberate seminars held so that the chiefs can acquire some knowledge that they will be able to disseminate to their subjects. Chiefs are very influential and thus must be used as tools to enhance development of the rural areas. In Zambia, there has always been a problem of food insecurity where at some point in time, there is hunger in certain parts of the country and this forces the surplus units to give to the deficit units so as to rectify the situation. Chiefs can be used to encourage their people to grow a lot of food and this in turn would help the nation at large as the problem of food insecurity will be solved.

It is in this line that the chiefs should be influential in the promotion of co-operative governance in the country. As traditional rulers, the chiefs should be able to disseminate the importance of farming not only for consumption but also for profit by selling the surplus produce. In order that the House of Chiefs performs its functions effectively, there must be good communication between the Government and the House of Chiefs. .

3.4 CONCLUSION.

From the above discussion of the function of the House of Chiefs, it can be noted that these functions have been restricted to only discussing of bills that are referred to it for consideration by the president. The chiefs have however refused to only be confined to discussing bills but want to be concerned with issues of development of their rural areas instead. In as much as the functions remain as they are outlined under the Constitution, their role and function must be extended in order that they can perform even other functions to do with development and not only the discussion of bills.

As a matter of fact, most of the bills that are passed deal with the nation as a whole and usually in such a situation, there is nothing that the House can do and so it is for this reason that the functions of the House of Chiefs must go beyond the discussion of bills. Moreover, there is no record to show that a bill has ever been passed that was first sent or referred to the House of Chiefs for consideration. The chiefs can do more than just sitting behind closed doors discussing bills, they can be integrated in the development process and they can thus give meaningful contribution, because they have an influence on their subjects.

CHAPTER FOUR

4.0 HOUSE OF CHIEFS AND PARLIAMENT.

There is no clear outline of the relationship between parliament and the House of Chiefs. The Constitution also does not say anything about the relationship between parliament and the House of Chiefs, only that the latter has the function of considering and discussing any bill that deals with or touches on tradition and culture before it is introduced in the National Assembly. The National Assembly or Parliament is the Legislature and it is one of the three organs of government. The Constitution states that parliament shall have the legislative powers of the Republic.

Parliament is an organ where the representatives of the people meet and make laws on behalf of the electorate. Its relationship to the other branches of government is clearly laid out under the principle of Separation of Powers. This simply means that parliament has its powers clearly defined and it can therefore not perform the functions of the other organs of the government. This is very important in that the powers or functions of the organs should not overlap.

Since Zambia attained independence in 1964, it has had a Westminster Parliamentary system of government. The basic feature of this kind of system is that there is a form of democracy where the elected representatives of the people are charged with the responsibility of legislating for all the national affairs in all spheres. This kind of system is very important in upholding principles of democracy, but despite that, it should be noted that even before this system was introduced, there existed in Zambia other forms of traditional forms of representative leadership.

These had evolved over many years and they were effective in maintaining unity, loyalty, and respect within traditional territories. This form of representative leadership gave the country its cultural identity such that even in the modern times, this is still being recognised and acknowledged as an important basis for human development and its sustenance.

The National Assembly being the only body that is constitutionally mandated to make laws for the country, it was realised that it is important that certain sensitive issues could not be acted upon without an input from the historical custodians. Thus the House of Chiefs in short can be said to be a junior “parliament” though it does not make laws but merely discusses those bills that are referred to it for consideration. The only difference is that it has no powers of enacting or initiating any legislation. If it were allowed to do so, then its functions would overlap with those of the National Assembly. It is for this reason that the relationship between parliament and the House of Chiefs should be clearly defined.

Some people have said that some of the problems that African states are facing and Zambia in particular is that there have been so many ideologies imported instead of traditional forms of governance. This goes to show that the country imports most of its ideologies and rarely uses its own system of governance of the country. Thus the country must revert back to the form of governance where the historical custodians are given the mandate to determine the ways of life of the people.

It has been asserted that African states have failed to solve some of the problems that they have because of the system of democracy, which is imported. Moreover the system of parliamentary democracy is also an imported phenomenon. Power is vested in just a few individuals, political parties and as a result, this has led to the abuse of authority by those very people at the expense of the general populous. Africans have abandoned their own system or type of democracy and African technology, hence more often than not, “Africans have been forced to walk before they crawl and sometimes even forced to run before they crawl.”³⁸

The system of governments of parliament and democracy has brought so much confusion in African leadership. It is during these confusions that the developed world reaps from Africa. Zambia has adopted the British system of having a few elected officials drawn from all the nine provinces to sit in the National Assembly and legislate on behalf of the masses that elected them. According to the Zambian perspective, this is democracy. This cannot in turn be said to be democracy, for the true application of democracy can only be applied or practised through a novel order of governing which will permit the people to govern themselves, by themselves and not be governed by political parties claiming to rule on their behalf.

Once these people’s representatives are put in Parliament, what becomes of more concern to them are party politics and not the interest of the people that put them in office in the first place. What they seek to do is to advance the policies of their various political parties and not the policies or the will and interest of the masses that put them in office.

³⁸ James Kabaso, The Post Newspaper. Wednesday September 24, 2003. P17

Zambia is made up of so many political parties and among these particular parties, there is obviously a strong party and this is of course the ruling party. This makes it apparent that the actions of parliament are invariably subject to party policies and never parliaments of the people that they represent. This is because the parliamentary system only enables the parties in power to exercise authority and have the upper hand in the decision making of the country. Parliamentarians are supposed to be the watchdogs of the people's interests and guardians of society. This kind of situation thus tends to isolate the masses from their representatives and as a result, usurps their sovereignty. The members of parliament are supposed to be the guardians of the people that put them in power and as such represent their interests.

This type of governance has caused most of the problems that Zambia is experiencing. The mere existence of parliament entails the absence of the people, but true democracy can only exist through the participation of the people and not through the activity of their so-called representatives. Parliaments are in a way a hindrance to the people exercising their power. This does not mean that everyone in a democracy is supposed to sing the same song. With the system of parliament, they are excluded from exercising their power and thus their sovereignty is usurped in the process.

A parliament is a misrepresentation of the people and thus cannot be used as a solution to some of the problems that are prevailing in the country. Therefore from this, it has been claimed that the solution to some of these problems is to resort to traditional forms of representative democracy. Again this would create a number of problems in that the world is slowly integrating into one economy and has been modernised with the advent of computers.

Time and again, there has been debate that power should be given back to its original owners who happen to be the chiefs and the headmen. These people unlike the members of parliament cannot abandon their kingdoms to join another. Members of parliament have time and again defected to join another party and this has led to unnecessary by- elections, which are a drain on the country's resources. This just goes to show that once they are elected, the members of parliament are only concerned with their interest and not those of the people that they represent. The nature of the chiefs is to stay and represent people free of charge and chiefs are the only custodians of the land that should represent their people or subjects. Unlike the members of parliament, the chiefs live amongst their people and are thus placed in a better position to advance the needs of their people. The members of parliament usually do not even live in the area, which they purport to represent in parliament.

The situation even gets worse when it comes to the cabinet ministers who are bound by what is known as collective responsibility. This means that once cabinet has made a decision a minister cannot oppose it in parliament but must be in a position to defend it. This clearly goes to show that the will of the people matter less than to advance the policies of the party. There is therefore no true representation of the people in the final analysis. The electorate thus can only complain and wait for the next elections when they will put in office someone else who is more 'responsive' to their needs and aspirations.

However, this has never happened as the same trend repeats itself over and over again. To make it even worse there is no available mechanism in Zambia to allow the electorate remove their

Member of Parliament from office if they are convinced that he is not representing their interests adequately. If there were such a mechanism, the interest of the people would be represented for fear of losing the sit and other privileges that go with it.

It is very easy for the chiefs to represent their subjects because they live among them, and thereby know better the needs that are prevailing in that particular area. The members of parliament rarely visit their constituencies since they live in Lusaka. The only time that they visit is just before elections. These members of parliament are thus foreigners to the people that they represent. They are foreigners in the sense that in certain cases these members of parliament do not even know the area, which they represent.

They would stand for election in that constituency because of some connection with that area. As a result, the people of that area do not usually know them. The only time that they visit their constituencies is before elections so as to rally support from these people. The members of parliament must be able to identify themselves with the people that they represent in the National Assembly.

It is therefore imperative therefore that the relationship between parliament and the House of Chiefs be established. At the moment, the only thing that the House of Chiefs can do is to discuss bills that parliament is about to pass that touch on tradition and customs of the country. The role and the function of the House of Chiefs should be extended. As long as there is no issue or bill referred to it, the House has nothing to do but discuss issues that affect the welfare of the chiefs. These traditional giants in the House of Chiefs must do more than just wait to discuss bills or any other issues that are referred to it by the president.

The functions of the House of Chiefs must be able to initiate legislation that touches on customs and tradition of the country but this does not mean that the functions should overlap with those of Parliament. Parliament should have its own clearly defined rules and so should the House of Chiefs. The role of parliament should be to deal with legislation that concerns the development and welfare of the whole country.

The House of Chiefs on the other hand should be able to pass legislation or come up with bills that are strictly connected to tradition or custom. The main thing is that the two organs should be able to work hand in hand; there must be a harmonious relationship between the two. This is important so as to avoid the two organs coming into conflict with each other because of the overlap of functions. In this way, it will be like there are two parliaments, with the National Assembly being the supreme parliament and the House of Chiefs being the lower parliament that mainly deals with the customs and traditions of the country.

The Chiefs are the custodians of tradition and they must be allowed to deliberate on bills and issues that touch on the traditions or customs of the country. In short, the House of Chiefs should be empowered to discuss all the issues related to the national development of the country. The most important thing is that there must be a closer check up by parliament of the functions or activities of the House of Chiefs so as to ensure that the latter is within its boundaries with regards to its functions.

4.1 THE RELEVANCE OF THE HOUSE OF CHIEFS IN ZAMBIA.

The question of whether the House of Chiefs is relevant in Zambia or not has been one of the most controversial subjects since the country attained its independence in 1964. For one to question the relevance of the institution of Chieftaincy in this modern society is almost a taboo. The constitution in Article 127 gives a pride to the institution of Chieftaincy. Despite this however, the institution is an inferior appendage of the modern government. The colonial government and later the One Party State systematically undermined the traditional Chieftaincy and subordinated it to central government.

The co-operation of the chiefs was however sought in order to purchase political patronage. This was done through different strategies, some of which included the co-optation of some chiefs into the political establishment. Chiefs under the One Party State were appointed to political positions. Examples of chiefs appointed to political positions include Chitmukulu Chitapakwa of the Bemba people, Litunga of Barosteland. Some chiefs were appointed to positions in the diplomatic service while others served as parastatal chiefs.

It has always been argued that the rationale for appointing the chiefs into these positions was mainly to bolster the diminished status of the chiefs and to integrate them into the modern political system. Some people felt that the involvement of the chiefs in politics did not only undermine their status and dignity but went against tradition and culture. It was for this reason that when the Mwanakatwe Constitutional Review Commission was appointed, it was to address the issue and some of the recommendations that it received were that the chiefs should not participate in partisan politics.

Since then, there has been a heated debate on whether the chiefs should be involved in partisan politics. The views on whether the chiefs should be involved in partisan politics are rather divided and some sections of people feel that it is not in order for the chiefs to be in politics since their role is to be guardians of their subjects without any political affiliation.

The questions then would still remain, what is the relevance of the institution of Chieftaincy and what is the relevance of the House of Chiefs in a democratic state like Zambia? While the chiefs may seem to take their jobs seriously, the House of Chiefs is merely an advisory body whose decisions are not binding on the executive. Is it therefore justified to have such an advisory body at the expense of the nation? The role of the House of Chiefs can thus only be understood by first analysing the evolution of the institution of Chieftaincy.

The constitution in article 127 provides that the institution of chiefs shall exist in any part of the country in accordance with the culture, tradition, and customs of the people to whom it applies. The Chiefs Act also provides that the institution of chiefs shall be maintained in Zambia so as to preserve traditional customs and culture. Therefore the chiefs are supposed to be custodians of traditional culture but in essence this is not what the chiefs have been throughout history.

The importance of the chiefs is usually only recognised at the time when the country is going for election. This is the time when the chiefs are paid courtesy calls and their palaces renovated.

The House of Chiefs is very relevant in a democratic society like Zambia. The country is made up over 70 tribes and these have different cultures and traditions and so it is very important that they

are maintained and woven in the nation's affairs. This can only be done through the involvement of the chiefs who are the custodians of tradition and culture.

The only way that the traditions and culture of the nation can be woven into the nation's affairs is through the House of Chiefs deliberating on bills or matters that in effect integrate these traditions into the nation's affairs. Thus it is important that the functions of the House of Chiefs extend beyond discussing bills only and matters referred to it by the president. The functions under the constitution are more restrictive. How can an institution be relevant if since its establishment in 1965, there is no record that a bill has ever been referred to it for consideration?

This institution must be put to use instead of maintaining it at the expense of the nation's resources. Its functions must be redefined and extended beyond the current ones of just discussing bills and any other matter that the President feels the House must discuss. The House of Chiefs must be a second chamber of parliament and the government should still continue to consult it before any law relating to traditions and customs is formulated. The modern system of government must be able to exist side by side with the traditional form of democracy and this is where the chiefs are involved in the affairs of the country.

The House of Chiefs is relevant in the country because this is a body that would be able to advise the government on matters relating to land, cultural heritage, and tradition. The chiefs would be in a better position to advise the government on whether there is available land in their area and in cases where there is, it is also the duty of the government to consult the chiefs before allocating

that land to anyone. This is important in that the land may be allocated to an investor whom the subjects are not happy with.

In other situations, it would be important to consult the chiefs on land issues in that the latter is in a better position to state whether the subjects would approve of such an undertaking or they would rather use the land for something else. The chiefs in Zambia are powerful and influential leaders especially in the rural areas. The relevance and effectiveness of the House of Chiefs however remains to be seen.

Many of the duties that were performed by the chiefs are now either being performed by arms of government or government departments. Chiefs are thus left with very few duties but the truth of the matter is that there are a lot of traditional rules deep in the rural areas that are not doing anything. The government can bring these chiefs on their side and thus would augur well for achieving the objectives of the former in the objectives in the periphery. Chiefs would be very influential in the promotion of the policies of government. To avoid unwarranted conflicts, the government must be able to consult the chiefs before authorising or undertaking any project in chiefdoms.

4.2 CONCLUSION.

The relationship that should exist between the House of Chiefs and parliament is not clearly stated. The constitution only goes as far as stating that the House of Chiefs will discuss the bills that touch on tradition and custom before they are passed in parliament. Unlike the relationship of parliament and the other organs of government which is clearly stated through the separation of powers, this is

the not the same with the House of Chiefs. The question of whether the House of Chiefs is relevant in a democratic state has been in question since independence. This institution will not be relevant if the only functions it can perform are those of discussing bills. There is no record that shows that the House of Chiefs has ever discussed a bill before it is passed into law by parliament. This is because most of the bills that are passed are not only about tradition and culture but also concern the nation as a whole.

Thus it is for this reason that if this institution is to be relevant, it must be integrated into the nation's affairs as a whole. The functions must be extended beyond the mere discussion of the bills. Besides it is not even stated whether parliament can be bound by the views that the House of Chiefs would make with regards to a bill sent to it for discussion. Therefore, if the House of Chiefs is to be effective, its functions must be redefined and extended beyond the ones outlined in the constitution.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

From the above discussion it has been noted that the institution of chieftaincy has been given a pride of place in the Zambian constitution. Traditional chiefs have been regarded as supreme natural rulers of their respective ethnic communities and reign for life. The traditional role of the chiefs is not stipulated and the Chiefs Act is also very silent on the same. The Lands Act only stipulates the relationship on customary land between the state and chiefs and local authorities, it does not clearly specify the role that must be played by a chief. This situation has led to the conflict of roles and unclear relationships between the chiefs and the central government, chiefs and the local authority.

To give a pride of place to the institution is one thing, to determine its relevance is another. Thus the question of the relevance of the institution of chieftaincy has been in controversy since 1964. In order to include the chiefs in the modern government, it was realized that there was need to have an institution to enable these traditional rulers meet and deliberate on matters of concern to the country as a whole. Thus the House of chiefs was established in 1965 to enable the traditional giants meet and make their contribution to the nation through the discussion of bills and matters referred to it for consideration.

The role of chiefs has not been critically examined and it for this reason that it has been difficult to state whether the chiefs should be integrated in the Local government system. The chiefs have not in any way been integrated in the development process. It has been stated that the chiefs are to be

responsible for the areas that they rule but this has been seen not to work. Most development programmes or projects have been carried out in certain areas without the involvement of the chiefs of that area. It has been said and believed that the chiefs do play a decisive role in urging their people to put more work in their quest for rural development and are responsible for the rural areas, yet the real situation is that the chiefs are not at all in charge of these rural areas. The only role that they seem to have is that of sorting out nebulous and petty disputes that arise among their people.

The role of the chief must be to serve their people through effective and wise guidance and this can only be done through promotion of unity and patriotism and also by helping in the maintenance of law and order. This calls for proper, effective and efficient running of his or her area. A chief is an important leader and he must be a servant of the people furthering their needs and not his own needs at the expense of the subjects. The onus is on the chiefs to encourage rural communities to be development oriented and thus encourage and educate their subjects on development projects. The only way in which the chiefs can better educate their subjects is to be first educated themselves.

In the past, most of the chiefs have been illiterate and their educational background leaving much to be desired. The current situation is different in that, most of the chiefs; especially those that are part of the House of Chiefs are educated. For instance, the current chairman of the House of Chiefs, Senior Chief Inyambo Yeta is at least educated.

5.2 RECOMMENDATIONS

If the chiefs have to be involved in the development of the country, then the first thing to do is to put in place a deliberate program so that the chiefs are educated. It is only when they are educated that they will be in a better position to educate their subjects. Without education, there is no way that they will understand some of the complex concepts of a modern democracy.

Under the current Local Government Act, section 9(1) (b) CAP 281 of the Laws of Zambia, a chief is not part of the council and does not attend council meetings. This section must be amended so as to enable at least two or four chiefs to be part of the Council under the said Act. This will give the chief a forum for participation in decision making at district level. In line with this, there must be local councils for the chiefs so that it is easy for them to co-ordinate the developmental projects that are done in their areas. This in short calls for decentralization so that the chiefs can be directly involved in the development projects that take place.

Article 130 of the Zambian Constitution must be amended. This is the section that outlines what the functions of the House of Chiefs are. It must be amended in that it is so restrictive and only confines the role of the House to only discussing bills. The role of the House should not be confined but must extend to be involved in the development process of the country. Moreover, there are no records that are available to show that a Bill has ever been referred to the House of Chiefs for consideration since independence. Taking a look at most of the Bills that have been passed, one would notice that most of them are not only concerned with rural areas but the country as a whole. These Bills usually deal with the development of the country as a whole and not specifically the rural areas.

The other problem is that as long as the chiefs are not educated, it would be very difficult for them to discuss such Bills and make meaningful contributions before the Bills are passed. This is because most of these Bills are sophisticated and complicated and would require an educated person to understand with the fact that even the members of parliament who claim to be educated find some Bills too complicated to comprehend. It is even doubtful if the Members of Parliament understand most of the Bills passed before they are passed. The whole House and not the standing committee must discuss the draft bill sent to the House of Chiefs for consideration

It follows that if the chiefs were involved in the development plans of the country, then they would still be consulted on matters of national development. The chiefs should be integrated into the development and decision making process in their localities. Thus the government should consult the House of chiefs when Bills concerning the development of the rural areas are concerned; the role should not only be confined to the discussing of Bills touching on custom and tradition.

The role of the chiefs must be clearly defined so as to avoid conflicts of roles. The relationship of the House of chiefs and parliament and the central government must be clearly outlined. The constitution or the Chiefs Act does not specify what the relationship between the government and the office of chief or House of Chiefs is.

On the relationship between the House of Chiefs and parliament, the parliamentary system should remain unicameral, the National Assembly being the sole legislative body, while the House of Chiefs remain the principle advisory body to the Executive and the National Assembly, not only

on matters touching on custom and tradition but the role should be extended to also discussing issues of rural development. Formal communication lines must be opened between the government and the House of Chiefs.

However, this is not to mean that the House of Chiefs should be partisan. The Chiefs Act, CAP 287 of the Laws of Zambia is silent on the participation of chiefs in politics, while the Constitution under Article 129 bans the chiefs from taking part in partisan politics. The Act does not even spell out the sanctions that would be imposed on the chiefs who participate in politics.

The above Article 129 of the Constitution must be amended or removed so as to allow the chiefs take part in partisan politics if they so wish. The office of Chieftaincy is itself a political institution. Therefore there is no way that it can be insulated from partisan politics. The House of Chiefs has been time and again called on by the government to support it, how can a non-partisan body be expected to support a particular party.

The Chiefs Act under section 8 provides that the chiefs be paid subsidies as the president may direct or determine for the purposes of enabling him to maintain the status of his or her office and also to discharge the traditional functions of his office under African customary law in a fit and proper manner. The Act does not state whether this money should come from the government as appropriated by parliament or whether it should come from other sources. The Act should further be amended to state that the money should go to the royal establishment for administration of the office of chief and not for personal use of the chief.

The subsidies that are paid to the chiefs are derived from the public funds. The Ministry of Local Government and Housing through the District Councils administers these funds. If the Chiefs continue to be paid money for personal use, they might as well be considered employees of the government. Therefore as a result of this, the chiefs cannot effectively perform their functions since they will owe their allegiance to the president.

The payment of money to the chiefs has in turn lowered their status in the eyes of the public. The chiefs should no longer be given official gifts because these bring inequity in the distribution of income or wealth to the traditional rulers. Subjects of a particular chief are supposed to pay him or her homage in accordance with local custom or tradition. Most of the chiefs are impoverished and cannot as a result be distinguished from their subjects; this is because the subjects feel that they have no obligation to their chief, which should not be the case. As a result, the chiefs look to the government for allowances and salaries. This then makes it impossible for the House of Chiefs to decide or want to oppose the government.

There may be subjects who do not support the government, thus because their chiefs owes his allegiance to the president, the subjects will lose their loyalty since the chief will no longer be accountable to the people or subjects. This has lead to the trend of not having confidence or respecting of the office of chieftaincy. The importance of the chiefs is only recognized just before elections when most of the political party officials pay courtesy calls on the chiefs. The payments of subsidies should be done away with but instead grants should be introduced and these should only be given to the royal establishment and these grants should be paid through the Local councils.

Under Statutory Instrument number 41 of 1998, the House can or is empowered to form a committee and the chairperson of the House shall be the chairman of the committee. This would however create problems if the chairman of the House of Chiefs is the chairman of the committee in that there is no way that the committee will freely discuss matters. Thus there must be an amendment to exclude the chairman of the house to act as a chairman of the committee. Moreover, the House of Chiefs should be empowered to form such other committees, as it thinks fit, as opposed to the current restriction of one standing committee.

The Local Court Act, CAP 28 of the Laws of Zambia does not allow the chiefs to sit in the court. Therefore the government must amend so as to enable the chief's sit with the court justices when hearing and determining cases that involve customs and tradition. This is because the chiefs are the custodians of tradition and customs in the country thus they must be accorded a chance to preserve it. The government in appointing these local courts justices must consult the House of Chiefs. The government should also empower the chiefs to have jurisdiction over matters of witchcraft in their chiefdoms.

There must be substructures of the House of Chiefs created established at the provincial and district levels for the purposes of feedback between the House and the substructures. This will in turn improve co-ordination amongst the chiefs. This is because only three chiefs from each are elected to the House of Chiefs and the creation of these structures will help involve the other chiefs that have not made it for election to the House of Chiefs. Moreover the number of chiefs elected to

the House of Chiefs from each province should be increased from the present three to at least five or so. This will thereby increase the total membership to forty-five.

Section 7(1), does provide that the president can withdraw recognition of a chief if he is satisfied that the presence of such a person in any area would be prejudicial to the maintenance of public order in that area, the president may prohibit such person from residing within the specified areas. This is in violation of the fundamental human rights and freedoms that are guaranteed in the constitution of Zambia under Part III.

Therefore, that section must be done away with or amended since it is incompatible with the democratic principles of the land. Under the same Chiefs Act the president can recognize any person residing within a specified area as sub chief of that area. There is no person who is currently recognized by the president as a sub chief thus the provision must be removed since it is redundant.

The chiefs can be used to advance government policies. For example, there are many people that have moved from the rural areas to the urban areas in search of greener pastures. These migrate in large numbers leaving their land in the rural areas uncultivated and the schools half-empty. Once they are in the urban areas, the schools are oversubscribed and the jobs that they seek are non-available to them and so is the land for farming. As a result of this, there are untold hazards. This is an area where the chiefs can play a very important role.

The chiefs can influence their people to take up farming seriously and profitably, instead of looking for work in the urban areas, which is none, existent. The destitute street children that are in the city would be taken back home to their relatives where, according to African culture they would be taken care of. In this way, the chiefs can use their influence in stabilizing the society. Therefore the chiefs can be used as a tool of stabilizing the country or society as a whole through their influence.

The chiefs should have influence over their subjects in the rural areas so that the social-economic and political development of the country can be speeded up. The people in the rural areas have a traditional respect for their chiefs. Therefore the chiefs can be catalytic to the development of the country if confidence is built into them by the central government. As a result, the chiefs should be let to participate in the Local government because they will have influence in the governance of the rural areas where economic development is highly in question. The government should consider the chiefs as influential in to running of the local councils.

The House of Chiefs should also be a second chamber of parliament that strictly deals with matters to do with tradition and custom. However, the Ministry that is responsible for the affairs of chiefs should work in conjunction with the Ministry of Legal Affairs for the purposes of carrying out a review of the legislation passed by the House of chiefs. The issue of having the House of Chiefs as a second chamber of parliament usually brings fear to the Members of Parliament. The MP's feel that if that would be the case, the House of Chiefs would be very powerful.

The constitution should go further and outline the relationship that must exist between the two organs of the government so as to avoid one organ usurping the powers of another. But this should not mean that the chiefs would not be involved in matters of development of the country. The chiefs should still be involved in the development process especially when it concerns the areas that they are in charge of. This is important so as to avoid unnecessary delays and conflicts.

In a nutshell, if the rural population wants to benefit from the development programmes that the government wants to implement, the role and functions of the House of Chiefs should be critically addressed. There is need to have high participation of the chiefs in national development. The Constitution must be amended so that the functions of the House of Chiefs are not restricted to discussing bills. The functions of the House of Chiefs should extend beyond mere advisory role on traditional and customary matters because the chiefs are part and parcel to the development of the country as a whole. There is need to have a proactive House of Chiefs.

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