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THE LEGALITY AND EFFICACY OF THE  
INFORMAL MODE OF CONTROL OF THE ADMINISTRATION  
BY UNIP FOR THE PERIOD 1972 TO 1990

BY  
E.L. FUNKUTA

A dissertation submitted to the University  
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(i)

## DEDICATION

Dedication to my wife and children.

(ii)

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## INTRODUCTION

It is today a well known fact that unlike in the past, governments are involved in the provision of a number of goods and services to their citizens, a phenomena of the welfare state. It therefore follows that there is bound to be conflict between the state organs that provide these goods and services and the citizens, especially that, for good reasons, administrators have to exercise discretionary power. A feature of this power is that it leaves room for administrators to make mistakes, to exceed or sometimes to abuse it. It is because of the negative attributes of discretionary power that there is need for channels of redress of grievances.

There are a number of established channels through which remedies for administrative wrongs may be pursued and obtained and they include:

- (i) judicial review.
- (ii) special tribunals and inquiries
- (iii) parliamentary control
- (iv) the Commission for Investigation.

For the purpose of this article, however, the author intends to confine himself to the

proposal that UNIP has also distinguished itself as one such channel of redress. In order to bring into focus the kind of material that is going to be dealt with, the author will, as a matter of necessity, briefly outline the formally acceptable ways of redress.

(i) JUDICIAL REVIEW

Superior courts have the power to review the legality and validity of decisions of persons and bodies exercising administrative powers whether of a legislative, executive or judicial or adjudicatory character. The court's role is not to substitute the decision of the administrator. It means that the court will make a statement on the lawfulness of the administrator's act. The administrator will then look at the case afresh, taking into account the court's review. The outcome would depend on the case in issue.

(ii) TRIBUNALS AND INQUIRIES

Tribunals are provided for by the legislature. An appeal may lie from a single civil servant, an adhoc committee or an inferior tribunal to a specially constituted tribunal<sup>1</sup>. There are many such tribunals in Zambia, which among others include:

(i) The Industrial Relations Court;

- (ii) Town and Country Planning; *Tribunal*
- (iii) Workmen's Compensation Appeal Tribunal.

An inquiry on the other hand will normally be constituted by the Minister, to whom an appeal has been made so that he can take a decision one way or the other by taking into consideration the findings of the inquiry. Such an Inquiry differs from an Inquiry which is set up under the Inquiries Act<sup>2</sup>, whose purpose is to inquire into some specific matter for the government to take a rational course of action. The Nkumbula case<sup>3</sup>, for instance arose out of an inquiry set up under the Inquiries Act<sup>4</sup>.

(iii) PARLIAMENTARY CONTROL

Under parliamentary control a complaint is made normally through one's member of parliament. This method of pursuing a remedy is only effective where the particular member of parliament is forceful.

(iv.) THE COMMISSION FOR INVESTIGATION

Another way in which an administrative remedy can be pursued is through the Commission for Investigation which is also referred to as the Ombudsman Institution. It is the most recent channel of redress in Zambia, having come into effect with the introduction of the 1973 One Party Constitution.



It is to the above channels of redress that UNIP is being included. The rationale for this is that under the protection of the repealed article 4<sup>5</sup>, the Party went on to assume responsibilities which, in plural politics would not have been possible.

Finally, this dissertation was embarked upon in 1990, at the time when UNIP was the only legally recognised party in Zambia. Today, that position has changed and the country is now under multi-party politics.

References:

1. J.F Garner, Administrative Law, 5th ed.,  
(Butterworths, London 1979), P.101.
2. Inquiries Act, Cap. 181 of the Laws  
of Zambia.
3. Nkumbula v A-G (1972) Z.L.R III
4. ibid, Cap. 181
5. Republican Constitution, Cap.1

## CHAPTER ONE

### THE LEGALITY OF ADMINISTRATIVE CONTROL BY UNIP

The statement in the previous Chapter that UNIP acts informally in controlling the administration presupposes that the traditional channels of control, on the other hand, exercise control of the administration legally, i.e. that parliament, for instance, can point to a particular statute as the source for its power.

Judicial functions in Zambia are impliedly vested in the courts through the establishment of the Judicature under articles 107 to 116 of the Constitution<sup>1</sup>. It therefore follows that an aggrieved person has got the right to take the grievance to the established courts of law through a hierarchy of courts starting with the local courts at the bottom and the supreme court at the top. With respect to administrative control however, the judiciary exercises both judicial review of administrative acts and judicial review of legislation. In England, for instance, where parliament is supreme the judicial review of legislation is not possible.

The next mode of control of the administration, namely special tribunals and inquiries,

as shown earlier are themselves administrative in nature, in that the channels of control are established within the administration. The legality of such controls can also be traced to particular statutes. The statutory foundation of the Industrial Relations Court, for example, is Cap 517 while that of the Town and Country Planning Tribunal is Cap.475. The Commission for Investigation is established by the constitution<sup>2</sup> itself under article 117 and so are many other tribunals statutorily founded.

Parliamentary control, on the other hand, is not as straight forward as the other two channels of control. Its legal basis for control of the administration does not rest in the constitution<sup>3</sup>. One function of parliament is to enact Legislation. The other is that of controlling the administration through question time, the system of special and sessional committees and normal course of debate. However, there is no direct origin in the constitution<sup>4</sup> for parliamentary control of the administrative process but there is the power for parliament to control delegated legislation which can be found

in Enabling Acts and also under article 28 (2) of the Constitution<sup>5</sup>. Thus, parliament has come to assume control of administrative process without explicit authority from the constitution. It is with this brief analysis in mind that control of the administration by UNIP needs to be examined.

The exercise of administrative control by UNIP, through its various organs can be equated to parliamentary control in the sense that in both cases there is no explicit statutory basis. Perhaps this is to be expected in a One Party State where the Party becomes the fourth arm of government and the most important with respect to the other organs, i.e., the Executive, Legislature and the Judiciary. The relative importance of the Party (UNIP) with respect to other government organs is made possible through the concept of Party Supremacy. Apart from utterances by senior party officials, legislative steps are taken to ensure that the Party dominates all government activities. It has been argued, for instance, that the concept of supremacy of the Party was entrenched through the (Constitution Amendment) Act No.22 of 1975<sup>6</sup>.

This Act, inter alia made the Cabinet subordi-  
nate to the Party Central Committee. By 1983  
the President was saying that:

"No one in Zambia can operate outside  
UNIP. No one can do something outside  
UNIP because whatever is happening in  
the Country is as a result of UNIP which  
brought Independence, Peace and Stability  
and gave an opportunity to some people to  
make money<sup>7</sup>."

It can therefore be assumed that the <sup>i</sup>Legislative  
enactments to make the Party Supreme and indeed  
utterances by Party Officials indirectly encouraged  
various Party organs to take upon themselves the  
responsibility of exercising control of the  
administrative process. Does this mean that  
the exercise of such power is fatal to constitu-  
tional rule? It has been shown already that parlia-  
ment too, has taken on this role in the absence of  
explicit legislative authority and yet such power  
has not been questioned. This anomaly, in the  
Zambian situation, may probably have arisen due to  
historical reasons. In this regard it is to be  
observed that in the United Kingdom there is no  
written constitution and hence whatever comes  
from parliament is supreme law and it cannot be  
questioned. The power of parliament

"is so transcendent and absolute as it  
cannot be confined either for causes  
or persons within any bounds<sup>8</sup>."

In Zambia, however, there is a written constitution which represents supreme law. It is the constitution which sets down the powers and procedures that are to be followed by institutions that have been established under its authority, including parliament. It therefore follows that in the absence of express conferment of power on the Zambian parliament by the constitution to control administrative acts, ~~and~~ the consequent exercise of the same by it is without legal basis and such role as parliament has assumed, in this regard, could be challenged in the courts of law.

The obvious conclusion, with respect to the aspect of control of the administration, is that the Zambian Parliament has arrogated to itself powers which would not, comparatively, have been questionable in the British ~~E~~ context but which must be questioned in the Zambian situation since parliament is <sup>n</sup>ot supreme. To this extent, therefore, the exercise of the power to control the administrative process by UNIP is not totally without precedent.

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1. Republican Constitution of Zambia,  
Cap.1
2. ibid.
3. ibid.
4. ibid.
5. ibid.
6. L. Shimba "The Constitution (Amendment)  
1975' The Legal Recognition of the  
Principle of Party Supremacy in Zambia,"  
Zambia Law Journal Vol.68 (82), 9180.
7. Times of Zambia. 3 January, 1983, p.1
8. E. May, Parliamentary Practice, 19th ed.,  
(Butterworths, London 1976), P.54.



## CHAPTER TWO

### THE WARD CHAIRMAN'S ROLE IN-THE CONTROL OF THE ADMINISTRATION

It is to be noted that Ward Chairmens' functions have not been expressly spelt out in the Local Administration Act, No.15 of 1980. However, the functions of wardchairmen can be deduced from what is discussed at district council meetings which they are obliged to attend.

In some quarters it has been said that their role

"is to spearhead development in their wards and not interfere in administrative matters<sup>1</sup>."

In practice however, the ward chairman's role in the administrative process can be equated to that of a member of parliament. Indeed there are many analogies that could be drawn between the two representatives, amongst which is the fact that both are essentially elected by the people for purposes of representation. It may therefore be argued that the ward chairman may, in this regard, be justified in emulating the role that a member of parliament

plays in seeking remedies to grievances from his electorate.

Problems that are brought to the ward chairman for his action are varied and they are not different from those that would meet the criteria for consideration by other channels of administrative control. Take, for instance the issue of licencing. In one incident, it was reported that,

"All licenced traders in Lusaka have been directed to obtain letters of authority from ward chairmen in their respective areas for presentation to wholesalers<sup>2</sup> when buying essential commodities".

To be discerned from this is the reasoning that ward chairmen were better placed to distinguish honest traders from blackmarket-eers. In a wider perspective, this can be seen as a licencing control measure, presumably in the interest of the people of the concerned wards. Here, the ward chairman is seen to be protecting his people from exploitation by would-be unscrupulous traders by threatening to withhold essential goods from owners of valid trading licences. Such extra-legal powers can only be exercised by someone who is under an illusion of some

superior power, which in this case is UNIP. Where such power is vested by the party (UNIP) and left unchallenged, it would expectedly remain in force until revoked by similar powers. In this particular incident, however, after complaints from members of parliament the Speaker of the National Assembly said,

"recent measures taken by the Party to curb blackmarketeering in essential commodities were illegal. Any measures that affect the people should be those that the people are aware of and are created legally under powers specifically delegated by parliament. This was a cardinal principle underlying the rule of law upon which the<sup>3</sup> constitution of the country was based."

This is but one of the many instances and one wonders as to how many such illegal measures have been prescribed by councils and ~~they~~ have not been questioned.

Other grievances that are brought before the Ward Chairman are intended to be passed on by him to higher or relevant authorities. This is very much similar to the role that a member of parliament plays. The following two complaints may serve to illustrate the point. In the first complaint, parents in Ndola's Itawa Ward complained that their children at Ndeke Primary School did not

receive enough lessons to enable them pass examinations because too many women teachers there went on maternity leave too often.<sup>4</sup>

This complaint was made by parents to a ward chairman, Wilfred Chilembo. Another complaint on similar lines was to do with a grievance by people in a resettlement scheme relating to non provision of transport to the sick. The Chief said,

"Party Ward Chairman Chintulye wrote a letter to the Provincial Agricultural Officer Mr. David Kajim saying that the people of Miengwe did not want Mr Van der Vienne and that he should go or they would pull out of the Scheme<sup>5</sup>."

In both instances, a remedy was being asked of the Chairman although, effectively, the remedy was to come from somewhere else other than the Chairman himself. Of significance or relevance to this article is the manner in which the ward chairman tries to pursue a remedy to an administrative problem.

The Ward Chairman's role is not without obstacles. Reacting to conduct of both members of parliament and ward chairmen, governor Shiyenge Kapini said,

"Some members of parliament and councillors who were going round promising people they could reverse the Council decision to evict

and disconnect water were making a very big mistake because they won't be listened to by this council<sup>6</sup>."

This and the issue relating to trading licences which has been discussed above, demonstrate unsuccessful attempts by ward chairmen in their desire to provide remedies to grievances.

The task of assessing the successes and failures of the ward chairman's role in administrative control will be left for discussion in the last Chapter of this article. For now, as can be seen already, it suffices to say that the assumed role is not an easy one.

References:

1. Times of Zambia. 1 January, 1983 p.5
2. Zambia Daily Mail. 9 November, 1984 p.5
3. ibid. 30 November, 1984 p.1
4. Times of Zambia. 11 March, 1985 p.5
5. ibid. 24 January, 1983 p.5
6. Zambia Daily Mail. 8 November, 1984 p.5

### CHAPTER THREE

#### How Fair is This mode of Control?

The question as to fairness of any mode of control entails the observance of natural justice rules in the process leading to the final outcome to the grievance. As will become evident later in the article, the observance of natural justice rules can best be seen at work in the formalised modes of control such as administrative tribunals and the judiciary. In these two cases there are laid down procedures that have to be followed as regards the treatment of the parties to the grievance.

Natural justice is basically comprised of two rules. The first is nemo iudex in causa sua, which means that no person should be judge in his own cause. The second rule is audi alteram partem. This Latin phrase means that the administrator should hear the other side before taking a decision. Broadly speaking, the two rules combine to form a code of fair administrative procedure. These two principles must be observed in courts of law and by statutory tribunals. However, the principles are often overlooked in the ordinary exercise of administrative power.

In the exercise of informal control of the administration it would therefore appear normal that the rules of natural justice are not strictly applied. In any case, the ward chairman himself will, in the majority of cases, never have heard of the rules.

For another reason, the informality of this mode of control means that there are no statutory provisions in terms of procedures that the ward-chairman has to follow. The end result to the grievance is what appears to be of concern and not the manner in which that result is arrived at. It is, however, to be expected of the ward-chairman to play his role as best he can since results will ultimately depend on how well he presents or conducts himself. He cannot therefore be expected to behave in an unbecoming manner with respect to those people that he will be dealing with from time to time to try and achieve his intended objectives. Thus, these observations on natural justice should be helpful in considering the following aspects with a view to assessing the fairness or otherwise of the mode of control.



### PROCEDURE OF SECURING A REMEDY THROUGH THE WARD CHAIRMAN

Informality of this mode of control pervades the whole process and the procedure of securing a remedy is not an exception. Unlike other modes of control where certain formalities are a must, a complainant does not need to satisfy any at all when making a presentation of the grievance. All that is needed is to approach the particular ward-chairman and narrate to him the nature of the complaint. In other modes of control a complaint may have to be written down and sometimes legal representation is necessary.

### SOURCES OF GRIEVANCES

Grievances may be brought to the ward chairman either by individuals or organisations. Infact all complaints that have been cited in this article came from groups of individuals while only one of them originated from an organisation.

### TYPES OF GRIEVANCES

These too are varied and they cannot be reduced to a definable class. As has been seen, a ward chairman's assistance has been sought for instance, for purposes of: enlistment of recruits into the army<sup>1</sup>; issuing of letters of

authority to allow businessmen to trade in essential commodities<sup>2</sup> etc. Thus, the range of grievances is inexhaustible.

#### COST AND SPEED

In other modes of control of the administration an ~~ag~~grieved person would probably require a legal counsel for representation and in the process expenses would naturally have to be paid for by him. This is especially so where an individual's complaint is such that it has to be taken before courts of law other than local courts. One also requires to be represented by legal counsel before the Industrial Court.

On the other hand, a complaint to the ward chairman does not involve any expenses. For one thing, the councillor is not bound to pursue the matter at all cost and at no stage will he, in his personal capacity, institute proceedings before a court of law on behalf of the complainant. The speed by which problems are resolved ultimately depend on the nature of the grievance and the redress that is being asked for. There can be no assurance that a remedy will be made available within the shortest possible

time. What appears to be the trend, as observed in the grievances that have been examined in this article is that since most of the remedies are not dependent on the ward chairman himself the question as to how quickly a remedy will be made available becomes unpredictable.

Since strict adherence to the principles of natural justice are not observed it may therefore, in that respect, be argued that this mode of control is not fair. However, it was also pointed out earlier that it is only courts of law and statutory tribunals that are obliged to follow the principles. Thus, it may again be argued, in the alternative, that failure to observe the principles of natural justice, especially in an informal mode of control does not lead to unfairness. In the absence of reported irregularities with regard to observance of natural justice it can be concluded that this mode of control is as fair as it can be given the nature of its informality.

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1. Times of Zambia. 22 January, 1986, p.7
2. Zambia Daily Mail. 8 November, 1984, p.5

## CHAPTER FOUR

### EVALUATION OF THE UNIP MODE OF CONTROL

One way of assessing the effectiveness of any mode of control would be by referring to the number of cases that are handled by the particular mode, say in any given year, as this will be an indicator as to the popularity and efficiency of that mode. Other indicators will relate to cheapness, speed by which grievances are disposed of and minimum formality procedures to be followed when pursuing a remedy. A comparative study of the various modes could be an alternative way of determining the effectiveness of a particular mode of control.

### CERTAINTY

A general attribute of the formal modes of administrative control is the use of precedents. Thus, a case of similar facts will be similarly decided. This attribute is not however present in informal modes of control. Thus the UNIP mode of control, because of its informal nature, keeps no records of past decided cases or grievances and as a result, it

is bound to be uncertain as to the likely outcome of a grievance.

### REMEDIES

Established courts of law have at their discretion a number of possible remedies that they can prescribe in any given situation. In the UNIP mode of control it is obvious that the ward chairman, as the main actor, is not in a position to do the same. To this extent therefore, even the range of grievances that are tabled before him are correspondingly limited to those within his remedial powers. To illustrate the point, the remedy of injunction for instance, cannot be granted by the ward chairman with the result that grievances with a view to securing this kind of remedy cannot possibly be presented to him.

### ENFORCEMENT MECHANISM

Court rulings or decisions are backed by enforcement procedures in case of default. In the UNIP mode of control no such formal enforcement mechanism exists. Underhand methods have instead been employed under the protective cover created by the atmosphere of the one-party rule. The following quotation is also relevant to this

aspect of enforcement in the sense that UNIP, as the only recognised party, sought supremacy in all spheres of the Zambian life. One Luanshya businessman summed it by saying.

"When the <sup>UNIP</sup>(Unip) officials came round looking for donations, we had to give them money. It did not matter whether we had made any profit or not. What mattered was that we could not appear to be anti-party, for such an impression could jeopardise the renewal of the trading licence.<sup>1</sup>"

#### ACCEPTANCE OF JURISDICTION

The effectiveness of this mode of control is further limited by the fact that parties to a dispute should be willing to accept the remedy without question. Where, for instance, a remedy has been challenged as did happen in the following situations, the weakness of this mode of control becomes apparent. In one instance, the speaker ruled that the involvement of the ward machinery in the recruitment of soldiers in the army was illegal and unconstitutional<sup>2</sup>. In the other ruling the speaker said,

"recent measures taken by the party to curb blackmarketeering in essential commodities were illegal<sup>3</sup>".

#### CONCLUSION

The efficiency of pursuing a remedy at  
*efficacy*

the ward chairman's level seems to be questionable. The research has shown, through the above shortcomings, among others, that the attempt at the control of the administration has not succeeded. Thus, pursuit of remedies appears largely to hinge on employing unorthodox means by the ward chairman. This has in turn invited criticism and sometimes threats from within the party itself. In one incident a district governor was reported to threaten some members of parliament and councillors in his district for going round promising people that they could reverse the council decision to evict and disconnect water<sup>4</sup>. Such promises, however, are probably not really devoid of substance because after all, councillors do sit on district committees and they are, in that respect, likely to influence the committees' decisions.

There also appears to be a conflict of opinion on the role of the councillor. Chingola governor Evaristo Mutale noted that most ward chairmen had neglected their party duties and were only interested in civic responsibilities. He warned that if this



trend continued the chairmen concerned would  
5' lose their posts.<sup>5</sup> In what may be viewed as  
a contradiction to the governor's warning  
another party functionary, the Lusaka Urban  
District Youth Chairman, was saying something  
else. He was quoted as saying:

"Ward Chairmen are supposed to assist  
students who are suspended or expelled  
from schools without proper reasons<sup>6</sup>."

The potential for the ward chairman to  
intervene in helping to solve grievances such  
as those relating to denial of trading licences,  
denial of a plot etc, is great because he is  
exposed to the council machinery while at the  
same time he is in close contact with the  
people in his ward. His role, in this regard,  
would be appreciated by the majority of the  
people who are not enlightened enough to know  
when denial of a service by his council is or  
is not legal.

For the moment, however, and judging  
from utterances from both within the party  
(UNIP) and outside of it, the general consensus  
seems to be that the ward chairman's role is more  
or less at the level of mere political interference  
in the administrative process rather than an  
effective mode of control of the administration.

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