A CRITIQUE ON THE EFFECTIVENESS OF PARLIAMENT IN ZAMBIAN DEMOCRACY

BY

CHITUNDU MWAMBA

COMPUTER NUMBER 99341336

Being a paper submitted in the partial fulfilment of the examination requirement for the degree of Bachelor of Laws of the University of Zambia

December 2004
THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the obligatory essay prepared under my supervision

BY

CHITUNDU MWAMBA

COMPUTER NUMBER 99341336

Entitled

A CRITIQUE ON THE EFFECTIVENESS OF PARLIAMENT IN ZAMBIAN DEMOCRACY

Be accepted for examination: I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulation governing Obligatory Essays

Date: 21/12/2024

Supervisor: [Signature]

Mr S. Lungu
DEDICATIONS

Dad

Justice Jack Minor Chanda Chitundu (deceased) the source of my inspiration to take up this noble profession. I will always cherish you & thanks for being my mentor.

Mum

Mrs Margaret Mulenga Chitundu, I will always be proud of you. You are such a strong woman and always desires to see the best of me

Brothers

Lukonde, Chanda and ba Chileshe (Mr Mulenga), through your immeasurable contributions to my academic ambitions I am making it.

Sisters

Chileshe, Bwalya (Mrs Mulenga), Kabwe, Chitundu and Kampamba, you have worked so hard to make me reach higher heights in my career & am almost there.

Fiancé

Salima definitely your valuable contributions to my life are so enormous. You have always wanted the best of me and here it is!!

Friends

Mr & Mrs Bwembya & Lastone, definitely you are more than friends. How would life be without you guys around?
DEDICATIONS

Dad

Justice Jack Minor Chanda Chitundu (deceased) the source of my inspiration to take up this noble profession. I will always cherish you & thanks for being my mentor.

Mum

Mrs Margaret Mulenga Chitundu, I will always be proud of you. You are such a strong woman and always desires to see the best of me.

Brothers

Lukonde, Chanda and ba Chileshe (Mr Mulenga), through your immeasurable contributions to my academic ambitions I am making it.

Sisters

Chileshe, Bwalya (Mrs Mulenga), Kabwe, Chitundu and Kampamba, you have worked so hard to make me reach higher heights in my career & am almost there.

Fiancé

Salima definitely your valuable contributions to my life are so enormous. You have always wanted the best of me and here it is!!

Friends

Mr & Mrs Bwembya & Lastone, definitely you are more than friends. How would life be without you guys around?
DEDICATIONS

Dad

Justice Jack Minor Chanda Chitundu (deceased) the source of my inspiration to take up this noble profession. I will always cherish you & thanks for being my mentor.

Mum

Mrs Margaret Mulenga Chitundu, I will always be proud of you. You are such a strong woman and always desires to see the best of me

Brothers

Lukonde, Chanda and ba Chileshe (Mr Mulenga), through your immeasurable contributions to my academic ambitions I am making it.

Sisters

Chileshe, Bwalya (Mrs Mulenga), Kabwe, Chitundu and Kampamba, you have worked so hard to make me reach higher heights in my career & am almost there.

Fiancé

Salima definitely your valuable contributions to my life are so enormous. You have always wanted the best of me and here it is!!

Friends

Mr & Mrs Bwembya & Lastone, definitely you are more than friends. How would life be without you guys around?
ACKNOWLEDGMENTS

I am deeply indebted to so many people who have contributed in their respective ways in making this work become a reality. I strongly feel that this work is not an achievement of one individual but a collective achievement of every person who had an input in it.

First and foremost I owe my sincere gratitude to the Lord God Almighty, as he is the one that has enabled me come this far and complete this work. To my Supervisor Mr S. Lungu am very grateful for your tireless examination of this work and your consistent encouragement. Special thanks go to Mr J.P. Sangwa & Professor P.Mvunga for their valuable contribution to this work. I wish to thank you Ms Grace Mwape Filalo (Secretary to the Administrative Assistant Dean [AAD]) who accepted to type my work. You have really being considerate and understanding.

I wish to convey my sincere heartfelt gratitude to my employers Permanent Chambers and in particular the partners Mr R.N. Mandona and Mr W. A. Mubanga, Mr G.D. Chibangula the Associate and the entire members of staff. To you all people am your own product and definitely this is your work. I wish to further appreciate individuals who made my four (4) years stay at campus a memorable lifetime experience. These include among others Kingsley, Rodgers, Chanza, John, Bokani, the list is endless... as you guys are just too many!!

Finally, I will definitely be failing in my duties if I do not acknowledge the countless efforts of my own family. To Dad (Justice Chitundu), Mum (Mrs Chitundu), Lukonde (Fastele), Ba Chileshe, Chile, Chanda, Zeabee, Lady Kay, Du and Kamps. Thanks guys for believing in me and I promise not to let you down!! Mrs Chitundu Jnr (SNC) you make my world and story special and interesting as long as you are in it. Mule & Yande what a blessing you have been to me guys you are truly a brother and a sister!! Lastone (Chairman) you shall forever be a friend in and out of season!! I unreservedly accept full responsibility for any surviving errors and omissions in this work
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title Page</td>
<td>I</td>
</tr>
<tr>
<td>Supervisor’s Recommendation</td>
<td>ii</td>
</tr>
<tr>
<td>Dedications</td>
<td>iii</td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>iv</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>v</td>
</tr>
</tbody>
</table>

# CHAPTER ONE: PARLIAMENT UNDER ONE PARTY STATE

1.1 THE DOWNFALL OF MULTIPARTY DEMOCRACY .................................. 1
1.2 THE ESTABLISHMENT OF A ONE PARTY STATE .................................. 2
1.3 THE EFFECTIVENESS OF PARLIAMENT ........................................ 3
1.4 THE COLLAPSE OF THE ONE PARTY STATE ...................................... 6
1.5 THE DAWN OF MULTIPARTY DEMOCRACY ........................................ 7
1.6 CONCLUSION .............................................................................. 9

# CHAPTER TWO: TENETS OF DEMOCRACY

2.1 DEFINING DEMOCRACY .................................................................... 11
2.2 TENETS OF DEMOCRACY .................................................................. 12
  2.2.1 FREE AND FAIR ELECTIONS .................................................. 12
  2.2.2 THE DOCTRINE OF SEPARATION OF POWERS ............................... 15
  2.2.3 THE CONCEPT OF RULE OF LAW ............................................ 17
CHAPTER FOUR: RECOMMENDATIONS AND GENERAL CONCLUSION

4.1 RECOMMENDATIONS ..................................................................................46

4.2 RECOMMENDATIONS ON ELECTING PARLIAMENTARIANS ..........47

4.3 RECOMMENDATIONS ON OPERATIONS OF PARLIAMENT .............47

4.4 GENERAL CONCLUSION ..............................................................................49
CHAPTER ONE

PARLIAMENT UNDER A ONE PARTY STATE

"Any disappearance of the opposition and the introduction of a one party government would not be, and I emphasise, Would not be an act of government, but would be according to the people’s wishes expressed at the polls in the future."

1.1 DOWNFALL OF MULTIPARTY DEMOCRACY

The Zambian Parliament was under a one party state government from 1972 to 1991. The establishment of the one party state had the full blessings of the Constitution, which stated that

"There shall be one and only one political party in Zambia namely UNIP".\(^2\)

Before establishment of one party state in 1972, Zambia had a multiparty democracy. Among the political parties that existed were UNIP the ruling party, Unity Party (UP), Africa National Congress (ANC), United Progressive Party (UPP) and National Progressive Party (NPP). Persistent violet clashes between UNIP and UP compelled President Kaunda to ban UP and detain it’s leader Nalumino Mundia. Contrary to President Kaunda’s expectations former UP members joined ANC and not UNIP. As power struggle persistent in UNIP, in 1971 it’s founder member Simon Mwansa Kapwepwe resigned from UNIP forming UPP. Prominent senior members of UNIP joined the newly formed UPP and this devastated UNIP.

---

\(^2\) Constitution Amendment Act No. 5 of 1972
1.2 **THE ESTABLISHMENT OF A ONE PARTY STATE**

UPP and ANC formed an Electoral Alliance with intentions of merging into one political party. The formation of the Alliance convinced UNIP that it could lose power if drastic measures were not taken to stop the Alliance. Great fear gripped UNIP as it was losing its popularity as demonstrated in the Mufulira Parliamentary bye elections where UNIP leadership camped to campaign declaring the area a “no go zone” for UPP or ANC. Despite Kapwepwe not campaigned in Mufulira he won the elections. This was a great blow to UNIP forcing President Kaunda to ban UPP on 4th February 1972 and detaining Kapwepwe and 122 of his followers without trial.³

UNIP’s leadership from time of getting into power strongly believed in a one party state if UNIP was to cling to power. UNIP and it’s leadership however vowed not to eliminate the opposition by legislation but through effective organization and ultimately through the ballot box. To this effect President Kaunda commented

“... any disappearance of the opposition in this country and the introduction of a one party government would not be, and I emphasise, would not be an act of the government, but according to people’s wishes expressed at the polls”⁴

UNIP’s expectations proved futile as it kept on losing popularity and to ensure UNIP held on to power President Kaunda had to opt for a one party state. On 25th February

---

³ According to Dr. Kaunda this was done in the interest of nations security when in the actual fact it was to undermine the opposition which was increasing in strength and popularity.

1972, President Kaunda announced cabinet’s decision to revert to a one party state saying this was in response to demands of a “overwhelming mighty” of the people he went further and stated that

“In recent months I have received hundred of messages and letters from Churches, organizations and individuals, appealing to me to take concrete steps to bring about a one party government. Resolutions of nearly every conference, political or not are demanding for a one party state. The house of chiefs too has echoed the popular demand.”

The amendment of the Republican Constitution in 1972 outlawed the existence of any other political party other than UNIP. This marked the end up of Zambia’s first short-lived multiparty democracy from 1964 to 1972 and the birth of a one party state.

1.3 THE EFFECTIVENESS OF PARLIAMENT IN A ONE PARTY STATE

Zambian Parliament was under one party state from 1972 to 1991 and this when the role of the backbenchers in Parliament was cardinal as they served as watchdogs of the electorate over Government activities and policies. As freedom of speech was guaranteed in the house backbenchers had the liberty to criticize government bills presented in the house and voted as they wished. Government and it’s Ministers were scrutinized by the backbenchers who were renowned for their probing questions, moving critical motions and challenging replies by Ministers. Government bills viewed by the backbenchers as

---

5 President Kaunda’s speech of 25th February 1972 to the Nation.
6 By way of the Constitution Amendment Act No. 5 of 1972
7 Section 2 of Chapter 7 National Assembly (Powers and Privileges) Act Chapter 17 of The Laws of Zambia.
inimical to nation interests were ejected leading to Parliament being viewed by the UNIP Government as an opposition party within a one party state.

To undermine Parliament’s effectiveness Government introduced an administrative mechanism which eroded participating democracy in Parliament rendering it ineffective. President Kaunda appointed three quotas of the members of the house into Government and or UNIP organs.\(^8\) Subsequently there was a drastic decrease in the number of the backbenchers while a tremendous increase was recorded in the number of the members of the front bench. According to statistics the number of members of the front bench shot up from 42 in 1975 to 77 in 1991, as that of the backbenchers decreased significantly from 87 to 46 during the same period.\(^9\) This meant that the remaining 46 backbenchers could not defeat any government bill and this was further compounded by the doctrine of collective responsibility, which bound all the 77 members of the front bench to support any government bill. Reaction to this sad development former Clerk of National Assembly Chibesakunda observed that

\[
\text{"This precarious position made the vitality of debate in the House very tenuous. It also deprived the people who voted these inactive Members of Parliament effective representative in the House."}^{10}
\]

\(^8\) Various Hansards from National Assembly from 1974 to 1991.

\(^9\) The backbenchers were also members of UNIP but did not hold any party or government position and therefore were not bound by the doctrine of collective responsibility.

As if this Government administrative mechanism was not adequate to make Parliament toothless President Kaunda spelt out the precise role of Parliament and expected the house to do only that. In his speech Kaunda stressed that

"Parliament is not an opposition device to the party. In our System I regard Parliament as a committee of Government Charged with the responsibility of enacting laws for the country."

In light of this Members of Parliament could not criticize or question bills the but instead merely rubber stamped them. President Kaunda was determined to reprise any Member of Parliament who criticized or questioned any government bill and promised that government would not tolerate any indiscipline among Members of Parliament misquandering under Parliamentary privilege. "The Executive repeatedly controlled and interfered with the functions of Parliament resulting in it being ineffective by becoming an extension of the Executive. This is confirmed by the reaction of President Kaunda to Parliament's rejection of a proposed bill and to express his extreme disgust he remarked,

"Those who reject Government bills are "dissidents" who deserve to be rejected in disgrace and they should realize that they are not beyond reach to face punitive measures."

The same rejected bill was reintroduced in the house and it received overwhelming support from all members. President Kaunda lived up to is words when the axe fail on H Newstead Zimba who was perceived has been vocal challenging Government bills.

---

11 Dr. Kaunda's speech to UNIP's National Council held on 12th December 1977.
12 Dr. Kaunda's watershed speech of 1978.
Newstead Zimba was therefore not adopted by UNIP to contest party elections as a prerequisite to Parliamentary elections.

1.4 THE COLLAPSE OF THE ONE PARTY STATE

The effects of parliament being compromised by the Executive and UNIP organs resulted in parliament being ineffective and this had far-reaching impact on all the sectors of the nation. During the time parliament wet to “sleep” the majority of Zambians were improvised while the economy was ravaged. Zambia’s international debt by 1991 rose to a staggering sum of about seven (7) billion United States Dollars. Inflation rates were not spared as they skyrocketed from 2.8 per cent in 1970 to 93.78 percent in 1991.\textsuperscript{13} Zambia started to borrow heavily as its imports increased while exports decreased sharply.

As Zambia was under a state of Emergency in the one party state there was gross violation of human rights. Democratic principles such as rule of law, accountability and transparency, separation of powers, and free and fair elections were a myth. Since parliament was toothless only following the whims of the Executive, the electorate through parliament did not hold Government accountable. The economy was at verge of collapsing as living standards had declined significantly than never before. Poor agriculture policies resulted in food shortages and food riots. Levels of unemployment shot up, as there were few jobs in formal employment with poor conditions. Education standards deteriorated, hospitals went without drugs. The transport sector failed the nation with the pathetic road network, people spent nights on queues before traveling.

\textsuperscript{13} N.M. Chibesakunda, Supra notes 8 at p. 47.
Mysterious deaths were recorded of persons who were vocal of government’s failure to address national problems.

The first attempted coup against Government was recorded in 1990. As the economy was on the verge of collapsing the bilateral and multilateral institutions started linking economic aid to good governance, rule of law, democracy and respect for human rights. Amid genuine overwhelming demands by all sectors of the nation and to arrest the situation Kaunda on 24th September 1990 announced that the nation had resorted to reverting to multiparty democracy.\textsuperscript{14}

1.5 THE DAWN OF MULTIPARTY DEMOCRACY

In light of the above decision on 17\textsuperscript{th} December 1990, Article 4 of the Constitution, which provided for the existence of only one political party (UNIP) in Zambia was repealed. Following this development Movement for Multiparty Democracy (MMD), which was by then a pressure group championing Zambia’s return to multiparty democracy, transformed itself into a political party. Other political parties were formed including Democratic Party, National Democratic Alliance and the National Party for Democracy.

The 1991 multiparty Presidential and General Election saw MMD win a landslide victory with 125 seats in Parliament, UNIP trailed behind with only 25. The MMD President Chiluba got 997,462 (76\%) of the total votes cast while UNIP President Kaunda trailed

\textsuperscript{14} Dr. Kaunda’s address to the Nation on 24\textsuperscript{th} September 1990
behind with 310,761 votes (24%). These elections ushered the MMD into power with President Chiluba becoming the Second Republican President. The next Multiparty Presidential and General Elections were held in 1996 on 18th November were MMD got 130 seats with it's President Chiluba getting 835,537 votes (75%) UNIP boycotted these elections and the rest of the participating parties shared the remaining 20 seats while the independent candidates took others. As seen from the 1996 Multiparty Presidential and General Elections results there was little variation from the 1991 election results as in both cases MMD dominated parliament.

The precedent set by the first two elections results of 1991 and 1996 in which MMD dominated Parliament was upset by the results of the 2001 Multiparty Presidential and General elections. In the 27th December 2001 elections no single party dominated Parliament in that two major parties shared the seats almost equally. The MMD got 69 seats United Party for National Development (UPND) got 49 seats, UNIP 13, Forum for Development and Democracy (FDD) got 12, Heritage Party (HP) got 4, Patriotic Front (PF), Zambia Republican Party (ZRP) got a seat each with one independent candidate. MMD President Mwanawasa got 34,000 more votes than UPND President Mazoka. The opposition got 70% of the votes and 30% went to MMD forming a minority Government.

---

15 Multi-Party Presidential and General Elections Results, Lusaka
16 1996 Multi-Party Presidential and General Elections Results, Lusaka
17 2001 Multi-Party Presidential and Elections Results, Lusaka
1.6 CONCLUSION

From the three Multiparty Presidential and General Elections held from 1991 the 2001 election results rejuvenated hopes that Parliament would now play a vital role of holding Government accountable. Electorates were optimistic that Members of Parliament would represent them effectively by creating a link between Parliament and electorates. It was hoped Members of Parliament and electorates to enhance genuine and effective representation of the electorate’s views would hold consultative meetings. In the alternative electorates would petition Parliament. The electorates looked forward to Parliament exercising control over the Executive by providing checks and balances and were appropriate impeach the President. It was hopped Parliament would no longer be used any more as a rubber stamp in ratifying undeserving Constitution Officer holders. People looked up to Parliament to institute financial discipline in Government spending. It was thought Parliament would no longer be controlled and interfered with by the Executive in the passage of Government bills but only those in the best interest of the nation would be supported. People thought that in all matters before Parliament national interest would take precedence over personal and party inclinations or royalty.

Among the issues and questions the rest of the paper will endeavor to address include among others has there been effective representation in Parliament of the electorate’s views? Has a link been created between Parliament and the electorate through consultative meetings? Have the electorates exercised effectively the right to petition Parliament? Has Parliament exercised control over the Executive? Is Parliament still being used as a rubber stamp in ratifying constitutional office holders and passing of
bills? Has Parliament in any way instituted financial discipline in Government expenditure? Have the Members of Parliament taken national interest as the first determinant in all matters before it? Generally the bottom line is has parliament lived up to people’s expectations?
CHAPTER TWO

TENETS OF DEMOCRACY

2.1 DEFINING DEMOCRACY

To many people the term 'democracy' is familiar, however, it should be noted that distinguished scholars have attempted in vain to formulate it's universally acceptable definition. In view of this, this paper will not attempt to formulate any universally acceptable definition of democracy as this is a futile exercise. Two working definitions of democracy will be identified in this paper. R. Duguit offers the following definition of democracy:

"Democracy is government by the people in which the Supreme power is vested in the people and exercised directly by them or through their agents under a free electoral system."  

The former President of the United States of America Abraham Lincoln, attempted to define democracy and his definition has generally being acceptable among scholars. Lincoln defined democracy as

"The Government of the People, by the People for the People." 

From the above two definitions, certain fundamental or basic features of democracy can be identified. This paper will endeavor to identify and discuss the fundamental features of democracy emanating from the given two definitions of democracy.

2.1 TENETS OF DEMOCRACY

Over the years a set of ideas, principles, practices and procedures which have became to be known as fundamentals of democracy have been developed. On this premise it is workable to identify and analyse the long time tested fundamentals of democracy. Under this segment of the paper, efforts will be taken not only to identify the fundamentals of democracy but also to discuss them. Thereafter the extent to which Zambia has observed the said tenets of democracy will be addressed.

2.2.1 FREE AND FAIR ELECTIONS

In a democratic state absolute power is vested in the people and is exercised directly by themselves or indirectly through their agents. If power has to be exercised on people's behalf, those exercising it should obtain the consent of the governed in a free and fair electoral system. This accounts for why free and fair elections are indispensable from democracy and are considered as the central institution of a democratic representative government. The holding of free and fair elections is the principal mechanism of acquiring the consent of the governed.

Former Ambassador of United States of America to United Nations who is also a distinguished scholar, Jeane Kirkpatrick understood free and fair elections to mean:

"Democratic elections are not only merely symbolic but are competitive, periodic, inclusive, definite in which the chief decision makers in government
are selected by citizens who enjoy broad freedom to present alternatives. 

For democratic elections to be competitive, opposition parties should enjoy freedom of expression, assembly and movement, as these facilitate the voicing of the opposition parties' criticisms of the government and provide alternative policies and candidates to the electorate. Democratic elections go beyond the mere granting to opposition parties access to the ballot. Elections in which the opposition parties are banned from airwaves, their activities are unpublished in newspapers if they are, then they are censored, their public rallies are harassed if held or prevented or stopped are undemocratic elections. Both the opposition parties and ruling party should have equal access to the media. In no way should the ruling party enjoy more air time in the electronic media or in the print media than the opposition parties, as this operates against the spirit of free and fair elections.

In a democratic state political office holders do not cling to power for life but periodic elections are held during which the elected officials return to the electorate at prescribed intervals to seek further mandate to continue in office. It is only when a significant proportion of the adults population participate in elections that the elections may be inclusive. This is suggestive that democratic elections must be organized in a manner that ensures maximum participation of all sectors of the population in the political system. It is expected that in genuine democratic elections the President should not interfere with the elections and neither should he be seized with the conduct of setting the dates of the elections.

Before democratic elections can be held deliberate measures must be taken to prevent or resolve any form of political crisis. Regulations, procedures, roles or laws that govern the electoral system should grieve none of the political players. As for the nations where the Constitution is the Supreme law of the land and governs the holding of elections, all controversies in respect of elections should be put to rest before proceeding to elections. There should be general consensus among the major stakeholders on the mode of adoption of the constitution and more importantly it's contents. The body that is charged with the conduct of the elections should be impartial and not be manipulated by any political players. In so far as the contracting of a company to update the voter's register is in issue, the contracted company should be agreeable to all major stakeholders. The final product of the company contracted to update the register, which is the voter's roll, should be free from glaring anomalies.

The race of seeking the consent of the electorate by those desirous of assuming power is an enormous task and is inevitably a very costly venture. This calls for fairness in the manner in which political parties source their funds. The ruling party should not enjoy pecuniary advantage over other political parties by virtue of it being in power and it should therefore desist from using public resources. The use of government resources by the ruling party will disadvantage the opposition parties who do not have access to such resources. Donations of any form to political parties from private companies should be strongly forbidden during election period in that more often the ruling party is the only recipient while the opposition are never beneficiaries. Private companies prefer donating to the ruling party and in return receive favours from government by being awarded government contracts.
2.2.2 THE DOCTRINE OF SEPARATION OF POWERS

For democracy to be viable a system of checks and balances through which decentralization of political power is attained is inevitable. To guarantee against concentration of political power within in a single branch of government the doctrine of separation of power is entrenched in government systems. Separation of power, which is also referred to as a system of checks and balances is critical in curbing abuse of power and ensuring power is used for the intended purpose. The French Jurist Montesquieu who was the first to profound the doctrine of separation of power noted that distinct membership of the three organs of government is an integral part of the doctrine. This means that the same person or persons should not be members of more than one government organ.

The fusion of the same people in more than one government organ will promote human rights abuse as the whole essence of checks and balances will be defeated. More often the Executive branch of government (Executive) is the culprit in human rights violation. The Executive initials in parliament bills infringing on people’s rights and freedoms and since it is part of parliament the bill will easily be passed into law. If the validity of such laws is subjected to litigation Judges who are part of the Executive or Legislative will uphold their validity as they had a part in their formation. The end result of fussing the same people in the three organs of government will be abuse of power, violation of human rights and this subsequently amounts to tyranny. This position is argumented by Jones Madison’s observation that;
"The accumulation of all powers of the legislative Executive and Judiciary in the same hands...may justly be pronounced the very definition of tyranny."

It should be appreciated as well that separation of power entails that one government organ should not control or interfere with the exercise of the functions of another organ. It follows therefore that under the doctrine of separation of power the Executive should desist from controlling or interfering with the exercise of the legislative or adjudicative functions. Parliament too should refrain from controlling or interfering with the exercise of the functions of the judiciary in particular that under the strict doctrine of separation of power the independence of the judiciary is paramount. This is in view of the fact that is incumbent upon the Judiciary to protect citizens from having their rights and freedoms from being violated. In a democratic state certain disputes especially those arising between and among political parties cannot be left to the whims and fancies of any political branch of government or to individuals but should be adjudicated upon by the Judiciary hence it’s independence is indispensable. An illustration of such disputes include among others election results disputes or constitutionality of an Act of Parliament. The danger of fusion of same people in different organs of government can not be put in better terms than the words of the Englishman John Rocke who wrote that:

"It may be too grant a temptation to human frailty, apt to grasp at power for the same persons who have the power of making laws to have also in

---

their hands the power to execute them, whereby they may exempt
themselves from obedience to the laws they make and suit the law,
both in its making and execution, to their own private advantage."\(^5\)

The absence of meaningful independence of the Judiciary results in the Judiciary falling into
slumber or deep sleep in the midst of human rights violation. It is the sacred duty of the
Judiciary to safeguard the rights and freedoms of all individuals especially minority groups
against the Executive and Legislative abuse of power. The Judiciary therefore should be
independent from the Legislature and Executive in order for it to effectively restrain the two
organs from abusing their powers and thereby prevent human rights violation. Any form of
threats or intimidation aimed at the Judiciary is an enemy to the independence of the Judiciary
as it undermines it’s independence. In discharging it’s duties the Judiciary should not act
under any instruction from other government organs but should only act under the law and
without fear, favour, affection or ill will.

In many countries the Executive enjoys enormous powers making the temptation to abuse such
power high. Among the ways in which the Executive abuses it’s power is by formulating only
policies that are favourable to the ruling party while disadvantaging the opposition parties, non
governmental organization and citizens. When such policies are initiated in parliament for
enactment into law it is at this occasion that an effective representative parliament should raise
to the occasion and provide checks and balances on the Executive’s attempts to abuse powers.
This will safeguard the electorate’s rights and freedoms. The end result of an effective
Parliament is the outright rejection and ejecting of such an oppressive bill from parliament.

2.2.3 THE CONCEPT OF RULE OF LAW

The concept of "rule of law" is an ambiguous expression and maybe construed in various ways depending on the context in which such a concept is used. For purposes of this paper the concept of rule of law should be construed to mean as understood by Dicey. In his writing Dicey perceived the concept of rule of law to mean that;

"No man is above the law but that every man, whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."⁶

In its strict interpretation the concept of rule of law underscores the principle that regardless of the state, social status, condition, ethnic incriminations, religious beliefs or political affiliation everyone is equal before the law. It is on the strength of this preposition that it is held that even a king or an elected President is not above the law but subject to it and ought to be amenable to the jurisdiction of the ordinary courts. Where the concept of rule of law is respected, the law is equally, fairly and consistently enforced and under no circumstances should the state impose any inequalities but should deal evenly and equally with all the citizens. To this effect Bracton writing in the thirteenth century stated:

"The King himself ought not be subject to man but subject to God and to the law, because the law makes him King."⁷

The enjoyment of Presidential immunity from any form of prosecution and making the
President not amenable to the ordinary courts while he is in office flies in the teeth of the very
concept of rule of law. In such cases the President is seen as being above the law and in turn
may shield those that are loyal to him by influencing the investigating agencies and the courts.
Selective justice and biasness in the manner government agencies conduct politically sensitive
matters are not only threats to the concept of rule of law but work against the concept itself.
The rule of law curbs arbitrary power thereby creating a law based state as opposed to one in
which decisions are based on the whims and caprices of rulers.

Professor A.V. Dicey the chief proponent of the concept of rule of law has had his
writings studied by generations of scholars, statesman and those interested in public affairs
thereby qualifying it in many respects. The concept of rule of law expresses a preference of
law and order in society rather than anarchy, warfare and constant strife. The concept of rule
of law is founded on a legal doctrine of fundamental importance that government must be
conducted according to law which is a general principle of law declared and upheld by judicial
decisions. It is a basic rule of constitutional law that the organs of government must
themselves operate through law and therefore every decision made or action taken should have
legal authority. Any actions of public authorities which are beyond their legal power may be
declared ultra vires and invalid by the courts. A breakdown in the concept of rule of law in any
democratic government will result in the name of the state, individuals being imprisoned, their
property seized, being tortured, exiled or executed without legal justification. The doctrine of
government according to law requires that a person directly affected by government action

must be able to challenge the legality of that affection before a court of law. On the strength of this the concept of rule of law requires that public authorities and officials be subject to effective legal sanctions if they depart from the law. These sanctions come in form of the courts nullifying or invalidating the unlawful acts or decision of those in public offices.

2.2.4 RESPECT FOR FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

The fundamental principles upon which democratic governments are founded on are enshrined in the American Declaration of Independence. The relevant part reads:

“We hold these truths to be self evident, that all men are created equal, that they are endeavored by their creator with certain inalienable rights that among others are life, liberty and pursuit of happiness. That to secure these rights government are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute new government”

From the foregoing quotation it is apparent that democratic governments instituted among men do not grant fundamental rights or freedoms but merely secure and protect them. Among the inalienable rights and freedoms on which a democratic government is instituted upon include among others freedom of speech and expression, freedom of association and assembly, freedom of movement and the right to equal protection before the law. It is expected that

---

8 The American Declaration of Independence.
democratic government establish wings charged with the mandate of securing and protecting individuals human rights and freedoms.

The securing and protection of individual human rights by the relevant government wing should not be selective or determined by any political inclination. The only prerequisite for an individual to enjoy his human rights and freedoms is that he has to be in existence. Where human rights and freedoms are not secured and protected the members of the opposition parties suffer most abuses of their rights and freedoms. On the other hand the ruling elite are rarely prosecuted for their crimes even in the midst of overwhelming evidence to guarantee prosecution. For one to enjoy his rights and freedoms he does not necessarily have to be a member of the ruling party or be it’s sympathizer but needs only to be a human being.

Human rights and freedoms are so fundamental that the continuance existence of man is anchored on them. This accounts for their inclusion in the supreme law of nations, which are constitutions. A significant number of countries worldwide contain the Bills of Rights where the fundamental rights and liberties are enshrined. This position goes to confirm how indispensable human rights and liberties are to the existence of man. Notwithstanding the position that not all countries have Bills of Rights in their respective conditions this does not imply that the rights and liberties of individuals are not recognized or respected. In such nations human rights and liberties are guaranteed by ordinary legislation or common law. It is equally true that the presence of Bills of Rights in the constitution does not necessarily result in their enjoyment. In the last resort individual fundamental rights are subject to the will of the
state, they may be taken away by legislation, judicial interpretation or by the decisions of an unfree judiciary or alternatively may not be accorded any kind of positive recognition.

There can never be meaningful democracy in any nation in the absence of respect for fundamental human rights and freedoms and this confirms the position that any form of viable democracy is premised on respect for human rights and freedoms. Among the indispensable fundamental human rights and freedoms include among others freedom of association and assembly, freedom of movement, freedom of expression and speech and the right to vote. The freedom of association legalizes the formation of political parties and once violated or not recognized will legalize the existence of any political party. It is only where the freedom of assembly is accorded its due recognizance and respect that political players will be able to convene public meetings and carry out their businesses. In the contest for power the freedom of expression is very cardinal, as those aspiring to get into power must sell their policies and alternative candidates to the electorate. The role of the media also is very central to the contest for power by the political parties. The electorates will only acquire knowledge of what political parties are offering through the media. Any efforts to manipulate the media and stop other political parties from using the media works against the very principles on which democratic governments are funded. All these rights and freedoms only became meaningful if the electorate have the right to the ballot. The absence of this right to the ballot nullifies all the other freedoms and rights discussed above.
2.2.4 ACCOUNTABILITY AND TRANSPARENCY

In essential component in any government claiming to be democratic is that both elected and appointed government officials make decisions and discharge their duties not in their own interest but according to the will and wishes of the governed. Needless to point out that accountability is the function of checks and balances on public power. Transparency in governance entails the governed being made aware of government decisions and actions. Citizens should be empowered with information so that they appreciate who makes what decisions and why. In its literal meaning the concept of accountability and transparency advocates that citizens have access to information in respect of government decisions and actions.

The role of the media is indispensable from meaningful accountability and transparency in the governance process. For the media to effectively discharge it's duties of informing the governed about decisions and actions of the government it is mandated that the media be independent, impartial and objective. Furthermore, the media should be protected from any form of harassment, threats or intimidation especially from those in whom power is vested. Failure to protect the media not only by legislation but also through the courts of law will defeat the whole essence of accountability and transparency. The information being disseminated to the citizens by the media should not at all be doctored in favour of those in government and neither it be suppressed if it is in favour of the opposition parties. Editors and Reporters working for the independent media must not be howled before the courts to answer
charges all in the name of breaching the state Security Act, defamation of the President or being imprisoned for contempt of parliament.

Government Officials should undertake serious measures to articulate government decisions and actions to the governed. This position tarries with what was earlier intimated that absolute power is vested in the people while those elected or appointed into power are agents of the people. It follows therefore that before, during and after discharging their mandate the government officials are obliged to constantly keep the governed informed in respect of the progress made. Circumstances where it is difficult for the private media to access government information should be rare if not non-existent. The government ought to desist from labeling almost all government information as “confidential and protected by the state Security Act.”

The concept of accountability and transparency plays a very vital role and can never be dispensed with from the management of public funds. Accountability and transparency demand that government discloses it’s sources of funding, how the funds are disbursed and used. The end result of this is that the governed will be informed of where the government is sourcing it’s funds, how it is appropriating them and how the funds are being used. If at all public funds are misappropriated from their intended purpose the citizens have a right to know of such transactions. Funds not appropriated by parliament are not to be disbursed at all as this amounts to unconstitutional expenditure. Furthermore, attempts by the press to establish the source of unconstitutional expenditure not appropriated by parliament must not be frustrated by those in power especially where transparency and accountability is introduced in the governance process.
2.3 PARLIAMENT’S ROLE IN PROMOTING TENETS OF DEMOCRACY.

One of the tenets of democracy already discussed is holding of free and fair elections. Parliament’s role in the holding of elections is paramount if elections are not only to be held but also be free and fair. Parliament plays a vital role in holding of free and fair elections as it enacts electoral laws that provide the legal framework for holding of free and fair elections. If Parliament fails to enact a good legal framework elections can not be free and fair e. In respect of the doctrine of separation of powers Parliament is indispensable if the said doctrine is to be meaningful. For the doctrine of separation of powers to be upheld, Parliament should enact laws that create for the three organs of the Government to have distinct membership. Furthermore the law should prohibit any of the three organs of the Government from interfering or performing functions of other organs. Parliament should also decline from ratifying constitutional appointments that violate the doctrine of separation of powers. Additionally Parliament should desist from interfering with the functions of the other Government organs.

The other tenet of democracy already considered is the concept of rule of law. For rule of law to be realized Parliament should discharge it’s functions effectively and ensure that no enacted law considers any man whatever be his rank or standing in society above the law but that all be equal and subject to the ordinary law of the land and amenable to the jurisdiction of the ordinary tribunals. Parliament therefore should enact laws that enhance equality, fairness and do not impose inequalities or discriminates against a class of citizens. Parliament should also refrain from exempting a class of individuals and institutions from being subject to the ordinary law of the land or exempting them from being subject to the jurisdiction of the
ordinary courts. Respect for human rights and freedoms is another tenet of democracy that was reviewed. It is a well established human rights principle that neither Parliament nor any other Government institution grants any human rights or freedoms. This is not to say that Parliament has nothing to do with observance of human rights; in fact it has an extremely crucial role of securing and protecting human rights and freedoms. Parliament does this by putting in place legislation that establishes institutions that protect and promote human rights and freedoms.

Transparency and accountability is another tenet of democracy that was discussed. For this tenets to be realized Parliament is definitely indispensable. Parliament ought to enact laws that promote the free flow of information from the Government to the governed. Parliament should therefore enact laws that promote and protect a free media. This enables the media to freely and without fear of consequences to keep the governed informed of Government decisions and actions. All those laws that hinder free flow of information should be repealed and replaced with ones that advocate for transparency and accountability through promoting and protecting free flow of information. In the spirit of enhancing transparency and accountability Parliamentary debates should be open to the public, while it’s members should be reporting to the electorate about their business.

2.4 CONCLUSION

The discussion above endeavored to explore the tenets of democracy. Attempts were taken to define the ‘term’ democracy and it was indicated that it has no universally accepted definition. Notwithstanding this position, two working definitions were identified and used in the
discussion. The paper went further to identify and discuss the tenets of democracy. It was stressed that tenets of democracy are the very cornerstone of democracy. In view of this there can never be true democracy without observing the tenets of democracy.

During the cause of the discussion five tenets of democracy were considered. This is not to say that these are the only tenets of democracy but that these are among the most fundamental tenets of democracy. The holding of free and fair elections was discussed first followed by the doctrine of separation of powers. The concept of rule of law was analysed before proceeding to the tenet of respect for human rights and freedoms. Then the element of accountability and transparency was considered as the fifth tenet of democracy. The last part of the discussion addressed the role of Parliament in promoting the tenets of democracy. It was stressed that all the five considered tenets of democracy can only be realized where Parliament discharges it’s functions effectively. The that remains to be determined is whether the Zambian Parliament has been effectively discharging it’s functions and thereby promoting the tenets of democracy This issue which is the gist of this paper will be addressed in the next chapter.
CHAPTER THREE

THE EFFECTIVENESS OF PARLIAMENT IN ZAMBIA

"African Parliaments are largely decorative mostly to rubber Stamp Executive decisions. [Zambia's] Parliament is under threat Of withering away and substituted by the Executive's supremacy."

3.1 THE CHALLENGES OF PARLIAMENT IN ZAMBIA

The end of UNIP's reign was full of economic crisis, high inflation rates, heavy borrowing, declining exports, raising imports, food shortages, riots, deteriorating health and education standard. Mysterious deaths of government critics were recorded; there was abuse of power, no rule of law, separation of powers, free and fair elections or accountability and transparency. In 1990 Government dramatically doubled prices of the stable food, maize meal leading to riots and looting in which 27 people were killed and a thousand more arrested by the state. On 30th June 1990 an army lieutenant Mwamba Luchembe took over the state television and announced a coup. All these set backs were attributed to Parliament's ineffectiveness in taking the Executive to task to address national problems. Parliament was accused of being there for decorative purposes as in reality it was a rubber stamp of Executive decisions.

After MMD’s victory in 1991 hopes rose that the new Parliament would remedy Zambia and it would hold the Executive accountable and responsible for it’s decisions and actions. People believed Members of Parliament would represent them effectively and link them to Parliament. It was thought there would be consultative meetings between Members of Parliament and the Electorate failure to which the latter would petition the former. Expectations rose that Parliament would exercise control over the Executive through checks and balances and where appropriate impeach the President. Citizens hoped Parliament would cease being used as a rubber stamp to ratify undeserving constitution office appointments by the Executive. People believed Parliament would bring financial discipline in national expenditure and revenue collection. Zambians felt the Executive would no longer control or interfere with Parliament’s functions. It was hopped Parliament would stop substituting national interest with personal or party patronage. This paper ascertains if Parliament has lived up to people’s expectations.

3.2 THE FUNCTIONS OF PARLIAMENT

3.2.1 CONTROL FUNCTIONS

Parliament is mandated to exercise control over Executive decisions and actions, as the Executive members are accountable and responsible to it. Government
watchdog wings are also subject to Parliament’s control\textsuperscript{3}. It also exercise control over the President through impeachment. Equitable power balance between the Executive and Judiciary should be maintained by Parliament so that the former does not dominate the latter. Parliament checks on the Executive’s abuse of power in different forms as discussed below.

3.2.2 RATIFICATION FUNCTIONS

Executive Constitution Office appointments are subject to Parliament’s ratification\textsuperscript{4}. Parliament is entrusted with this function so that it verifies the qualifications and suitability of Executive appointments. Where those appointed are unqualified and unsuitable Parliament should decline to ratify them. Ratification should be on merit and not loyalty to appointing authority. During ratification party patronage of Members of Parliament is immaterial and irrelevant. Ratification prevents the Executive abusing it’s power by appointing people who are unqualified and unsuitable.

3.2.3 BUDGETORY FUNCTIONS

It is incumbent on Parliament to approve Government expenditure and taxation proposals. Parliament approves national budget were appropriate. It also

\textsuperscript{3} Such institutions include Electoral Commission of Zambia, Investigator General’s Office, Auditor General’s Office and Permanent Human Rights Commission.

\textsuperscript{4} The Constitution states which Constitution Office appointments are subject to Parliament’s notification.
monitors and controls Government expenditure. Approval of supplementary funds allocation in addition to those approved in the budget is done by Parliament, this is because Government should not spend any unauthorized funds. Exclusive powers to impose and regulate taxes are Parliament’s domain, which has control over the public purse.\(^5\)

3.2.4 LEGISLATIVE FUNCTIONS

The Constitution vests all legislative powers in Parliament that is the President and National Assembly. Here Parliament receives, considers and passes bills into law for the President’s assent it also repeals, amends and replaces laws. Parliament can delegate legislative functions to subordinate bodies, which is why Ministers make Statutory Instruments\(^6\).

3.2.5 REPRESENTATIVE FUNCTIONS

Parliaments are established to represent the electorate and through their members who are agents of the governed and this why Members of Parliament should act in the best interest of the governed. A mechanism of how Members of Parliament receive the electorate views and later on present them to Parliament is critical. This may be through consultative meetings between Members of Parliament and the electorate, which creates a link between the two. Parliament

\(^5\) Article 114 of the Constitution of Zambia  
\(^6\) Article 80 of the Constitution of Zambia
also receives petitions from citizens on national matters while its debates on national issues should be open to the public.

3.3 THE PERFORMANCE OF PARLIAMENT

The discussion will now focus on performance of the Zambian Parliament in multiparty democracy. By assessing Parliament’s performance, its effectiveness is also being ascertained. Partly this was addressed earlier on when considering the role of Parliament in upholding tenets of democracy and therefore, the discussion will be brief and concise.

3.3.1 PARLIAMENT’S CONTROL OF THE EXECUTIVE

During question time Members of Parliament publicly concern themselves with Government operations. This keeps Ministers on their toes and makes the Executive answerable to Parliament. Members of the house use this time to solicit for information from the Executive on national matters, which compels the Executive to act on national matters. Questions may also be raised to merely embarrass the Executive. Stressing the significance of question time former National Assembly Clerk Chibesakunda observed;

"Question time is important for Parliamentary control of the Executive and is a rare occasion when back-benchers take
evidence on Government activities in their possession. Through these Committees Parliament effectively scrutinizes Government performance. The Committees are vital in preparing and scrutinizing legislation and examining national estimates and expenditure. They also investigate Government activities, considers ministerial reports and studies in detail bills. One of the Committee scrutinizes constitution appointments before ratification or recommendation to the House.

Select Committees have proved effective in their operations but those dominated and/or chaired by the MMD often recommend what is favourable to the Executive and are less effective. This is because it's members should never fall out of favour in the Executive's eyes as doing so may disqualify them for Ministerial appointments or may never be adopted to contest Parliamentary elections. Select Committees dominated and/or chaired by the opposition members are often effective in their duties. Such members do not fear the Executive as they belong to the opposition and are beyond the Executive's reach. Select Committees sharing seats between the opposition and MMD are quite effective.

3.3.2 RATIFICATION OF CONSTITUTIONAL APPOINTMENTS

Parliament is vested with ratification powers of constitution office appointments and this is another way in which Parliament controls the Executive as the former
ensures that only qualified and suitable appointments made by the latter are ratified. All Constitution Office appointments from 1991 to mid 2004 have always been ratified. This has been despite persons appointed to such offices being unqualified and unsuitable. Parliament merely rubber stamped the appointments without proper scrutiny for fear of being viewed as challenging the Executive. This is seen from the appointment of Meebelo Kalima as DPP amid representations from LAZ that he was not qualified and suitable to be DPP. A few months later the President suspended him on allegations of improper conduct and a Commission was instituted to look into his possible removal from office.

It has taken Parliament 13 years to effectively scrutinize Constitution office appointments and decline to ratify such appointments were appropriate. From 1991 Parliament as for the first time in 2004 declined to ratify the appointment of Caroline Sokoni as DPP for being unqualified and unsuitable. This was after representation from LAZ, Magistrates’ and Judges Association of Zambia (MAJAZ) and Anti-Corruption Commission (ACC) to the effect that she lacked experience in Criminal Law to be DPP. Parliament’s refusal to ratify Sokoni’s appointment shows it’s effectiveness and it can only be hoped that this positive development in democracy will not be seen as challenging the Executive.

3.3.3 APPROVAL OF THE NATIONAL BUDGET

Only Parliament is mandated to approve government expenditure and taxation proposals it ought to only approve reasonable taxation proposals. Despite taxes being a major source of Government revenue this should not impoverish taxpayers. Parliament hurriedly approves all Government expenditure and taxation proposals amid taxpayer's outcry and this is done for fear of being labeled as rebels by the Executive. Parliament's approval of the new income tax band system in the 2004 budget when tax payers strongly rejected and demonstrated against it by going on a country wide strike and petitioning Parliament not to approve it is only one instance of parliament's failures. Parliament amid such overwhelming opposition disregarded the tax payer's views the targets of the new income tax proposal and approved it. Parliament has continued to hurriedly approve Government expenditure without proper scrutiny. This has been amid strong representations against approval of such unreasonable expenditure. This is seen by how Parliament deliberately disregarded people's views and approved former President Chiluba's Presidential Slush Fund and hefty funding of District Administrator's offices. This was when key ministries were under funded or Government declined to release their budgetary allocations. In fact Presidential Slush fund was far in excess to poverty alleviation allocation.\(^9\) Parliament has also being selfish in allocation of funds. This is evident from how it has

---

allocated itself alarming sums of money as loans and gratuity when Zambians are being told to sacrifice and reach HIPC completion point.

After the 2001 general elections Parliament has been instrumental in ensuring that the Executive does not allocate itself staggering sums of money. This is seen by how opposition Members of Parliament were alarmed and subsequently rejected the Presidential travel expenditure. This compelled the President to call for withdraw of the budget from Parliament and thereafter reduced the allocation. This explains why the President has few foreign trips this year. For Ministries under-funded Parliament proposes upward adjustments, which the Executive reluctantly accepts. This is evident from how in the 2004 budget health centers not actually funded aggrieved the Opposition in Parliament who demanded for their funding and the Executive did so.

3.3.4 LEGISLATIVE FUNCTIONS

As earlier intimated Parliament is mandated to receive, consider and pass bills into laws, amend laws, repeal and replace others. For Parliament to pass a bill majority of votes of members present and voting is mandatory. Where the bill seeks to alter the constitution two thirds of all members of Parliament should support it. In enacting laws numbers are crucial and therefore if one party dominates Parliament it will pass bills with negligible opposition. After the 1991 and 1996 general elections the MMD dominated Parliament with 125 seats
without objections and seeing that this was a futile exercise it was called off. In reaction to walk outs in Parliament a highly distinguished Scholar Nwabueze has written:

“Opposition sometimes is demonstrated in form of unfruitful boycotts or walk- outs. It is a dramatic form of protest and has public value in so far as it attracts public attention to the matter at issue.”

To strengthen the MMD and weaken the opposition in Parliament after the 2001 general elections close to ten opposition Members of Parliament at MMD’s instigation have since resigned from the opposition to join the MMD. These re-contested and won their seats on the MMD ticket and some of these have been awarded with Ministerial positions like Minister of Sports Youth and Child Development Gladys Nyirongo who resigned from HP. To further consolidate the dominance of MMD in Parliament and frustrate the opposition President Mwanawasa appointed close to 15 opposition Members of Parliament to Ministerial positions. These are de facto MMD Members of Parliament despite elected on opposition ticket because the doctrine of collective responsibility builds them to always agree with the Executive.

The Executive continues to undermine Parliament’s Independence by threatening disciplinary measures against it’s Members who object to it’s

---

proposed bills. This is done in MMD’s Caucus meetings with the latest one seeing the President dare rebel MMD Members to resign. This was after allegations that it’s Members objected to the Local Government Amendment Bill.¹¹ The bill was withdrawn from the house and only re-presented after the Caucus meeting and received overwhelming support from all MMD members in the House. Parliament also lacks seriousness in it’s duties as often no consultations with affected groups are held before passing any bill. The house is renowned for it’s hurriedly manner it passes bills as seen from how the Public Order (Amendment) Act passed all the 3 stages in one sitting an unprecedented feat.¹²

3.3.5 REPRESENTATIVE FUNCTIONS

Members of Parliament should represent the interests of the governed and not their parties. Where the two interests conflict the latter should prevail over the former and this calls for consultative meetings between the electorate and Members of Parliament. This is yet to be realised as only political rallies are held prior to elections in which leaders seek another mandate to govern and this is worsened by absence of Members of Parliament’s offices in their constituencies. Parliament does not always represent the electorate’s views but those of their parties. Members of Parliament who support the electorate’s views at the expense of the parties’ risk expulsion from the parties. Lack of

¹¹ The Post 5th August 2004
¹² The Post 28th February 1996
consultative meetings between the electorate and their representatives force the
former to petition the latter. This has been successful but not often as seen from
the rejection of the petition not to introduce the new income tax bands in the
2004 national budget. Absence of powers to recall a non performing Member of
Parliament by electorate accounts for an ineffective Parliament. It's only at
elections when the electorate can vote out their unperforming representative,
which is once in 5 years. Often party loyalty prevails over the electorate's views
in the house and this is evident from Parliament's approval of expenditure for
the Presidential Slush Fund and District Administrator's offices, which were
rejected by the electorate. Electorate's views are only affected when they are in
line with those of the Executive.

3.4 THE PRESIDENT'S ATTENDANCE

The President can personally attend and address Parliament or send messages.
His personal attendance definitely influences Parliament's conduct of it's
business as often all the members of his party approve all he says. This
compromises Parliament's autonomy as it is reduced to an agent of the
Executive only executing the latter's wishes. The supremacy of the Executive
and subordination of Parliament is the result despite no law stating so. In the
President's address to Parliament he outlines Government policies and actions,
which are mostly without thought out rightly approved by Parliament.
This is augmented by President Mwanawasa’s address to Parliament on 11\textsuperscript{th} July 2002 where he alleged wrongs committed by former President Chiluba and called on Parliament to remove his immunity against criminal prosecution. After 5 days on 16\textsuperscript{th} July 2002 Parliament reconvened and with overwhelming support voted for removal of the former President’s immunity. In fact Parliament suspended standing orders so that it affects the President’s wishes. It is undisputable that the President’s address to Parliament influenced the latter’s conduct in lifting the former President’s immunity and had it not been for him it is highly doubtful if Parliament would have acted the way it did.

3.5 THE CONDUCT OF THE SPEAKER

Parliament’s effectiveness is also determined by the Speaker’s conduct when presiding over the business of the house. A dictatorial partisan and overzealous Speaker in support of Government undermines Parliament’s effectiveness as he should hold a balance between competing interests of the house and must not be partial to Government or be intolerant to its critics. On the Speakers paramount role Kenyan Speaker noted;

"The Speaker should guard the dignity and independence of the house and not reflect government’s wishes or carry out its directives in the conduct of Parliament."\textsuperscript{13}

\textsuperscript{13} Ibid at p.10
In Zambia the Executive has invaded Parliament’s autonomy as the Speaker has allowed his loyalty to the Executive his sponsor to the office to override his duty to the house. Failure to apply his independent judgment in the business of the house displays his overzealous support for Government. This prevents the opposition from providing checks and balances on the Executive. The conduct of the Speaker prior to the 2001 elections undoubtedly showed his overzealous partiality towards Government. More than one third of the Members of Parliament notified the Speaker of their impeachment motion alleging that the President had violated the constitution and grossly misconducted. Notwithstanding the constitution provision being satisfied the Speaker adamantly declined to summon Parliament within twenty-one days of notification to consider the motion. In fact the Speaker violated the constitution by failing to summon Parliament as mandated by the constitution as he allowed his loyalty to the Executive his sponsors to the office to override his duty to the Constitution and the house.

3.6 THE EFFECTIVENESS OF PARLIAMENT

It is now plain that Parliament has often been ineffective in it’s duties particularly from 1991 to 2001 when MMD dominated the de facto one party Parliament. The Executive’s proposals to Parliament were always endorsed for

14 The Post 23rd April 2001
fear of being viewed as challenging the Executive. The undeniable Executive’s supremacy over Parliament weakened the latter from controlling the former. Parliament merely rubberstamped Executive appointments even undeserving ones. Government proposed expenditure and taxation measures were always approved by the toothless Parliament. Budgets were approved by Parliament without critical scrutiny as this may be linked to rebellion. Bills were passed without opposition as the MMD dominated Parliament was an agent of the Executive. The house lacked seriousness in it’s business as shown from passing of the Public Order (Amendment) Bill through all stages in one seating. Often consultations were not made with concerned groups before passing bills. Views of the opposition were often disregarded leading to unfruitful walk outs.

After the 2001 elections the opposition dominated Parliament despite MMD being a sole party with majority seats. The opposition could even challenge Executive proposals as seen from the rejection and withdrawal of some provisions of the 2004 budget. Parliament’s refusal to ratify the appointments of Caroline Sokoni as DPP also shows Parliament’s control over the Executive. Parliament could now challenge the Executive as seen from funding of national projects. In passing bills, despite MMD having the requisite number the opposition have been critical of such bills leading to their withdrawal. Currently no Constitution amendment can be passed by MMD without opposition support to meet the two third majority of votes. The 2001 Parliament which has been a little effective than the pervious ones has had set backs in it’s effectiveness. The
personal attendances of the President in Parliament influences and undermines the latter’s autonomy. The poaching or buying of opposition Members and their appointment to ministerial positions by the Executive as undermined Parliament’s effectiveness.

In respect of promoting of tenets of democracy, Parliament from 1991 to 2001 was one of the institutions that undermined tenets of democracy. It’s failure to enact a good legal framework for holding free and fair elections is evidence of this. Parliament deliberately ignored and thereby allowed a poor legal framework to remain in force, which could not support free and fair elections. Despite demands for the repealing of the Electoral Act, Parliament ignored such demands. This accounts for why most elections held were alleged to have been not free and fair. Theses were not just mere allegations but reality as the High Court and the Supreme Court declared some of those elections not being free and fair and therefore nullified them.

Parliament lamentably failed to provide a good legal framework that would not only create institutions to promote and secure human rights and freedoms but also more importantly give them the powers to do so. Such institutions lacked competent workforce and were also under funded, the Permanent Human Rights Commission is one of them. Parliament sadly violated human rights and freedoms as it enacted laws that violated human rights. The amendments of the public order act after the Supreme Court ruling in the Christine Mulundika
and six others VS The People is proof for this. Parliament continued to violate rights and freedoms of individuals and courts intervened to correct such violations.

During the period under review transparence and accountability, which are tenets of democracy, were undermined by Parliament. The strengthening of the Securities Act by Parliament impaired the free flow of information thereby defeating the transparence and accountability. This is said to have been done in the name of national security but these were well-calculated measures to undermine transparence and accountability. The doctrine of separation of powers and rule of law which are both tenets of democracy were equally violated. This seen from how Parliament took over the role of the judiciary and acted as an arbiter by imprisoning Fred Me’mbe, Lucy Sichone and Bright Mwape for alleged contempt of Parliament as revealed in the case of Fred Me’mbe, Lucy Sichone and Bright Mwape VS The Attorney General, The Inspector of the Police and The Speaker of the National Assembly. This is a clear violation of the concept of rule of law and separation of powers by Parliament as it failed to observe the above two concepts.

From 2001 when the opposition dominated Parliament there has been a change in the approach of parliament towards tenets of democracy. Parliament has now been promoting and observing tenets of democracy as opposed to previous ones.

15 1996 2 LRC 175
16 (1996) HN/1199
The fact that currently the electoral legal framework is undergoing review is an indication of the promotion of free and fair elections. Parliament has also shown political will in the promotion of human rights and freedoms. This is seen from it’s indication that it will move a motion for the amendment of the Public Order Act so as to promote and secure the fundamental rights of expression, freedom of assembly and association.

In respect of separation of powers and rule of law the current Parliament has demonstrated commitment to these tenets of democracy. The fact that Parliament has never taken over the role of the Judiciary is proof for this. Parliament’s lifting of former President Chiluba’s immunity and thereby making him subject to the ordinary law and amenable to the courts shows Parliament’s promotion of the rule of law. The concepts of transparence and accountability are slowly getting entranced in Zambia’s democracy. Parliament has taken a lead in this area as it’s debates are open to the public and are broadcasted live on it’s radio station. The construction of offices for Members of Parliament in their constituencies shows it’s commitment towards transparence and accountability.

3.7 CONCLUSION

The discussion has shown that from 1991 to 2001 MMD dominated Parliament, leading to it failing to provide checks on the Executive. Parliament was there only in name and merely rubber stamping Executive proposals and became an
agent of the Executive only executing the it’s wishes. Many people looked up to Parliament for redress on national issues not knowing that Parliament had fallen into “deep sleep” and it was definitely ineffective in it’s functions.

The 2001 Parliament is slowly waking up from it’s “deep sleep” and attempting to discharge it’s functions effectively. Opposition dominance in Parliament accounts for this as it can now challenge and compel the Executive to effect it’s demands. Unfortunately the opposition is being weakened by the “poaching or buying” and appointment of it’s members into MMD or to ministerial positions. If this trend is not addressed the opposition will be further weakened and Parliament turned into a de facto one party Parliament. Parliament’s effectiveness, which is taking root, is slowly being eroded by these Executive’s actions. The strength of the opposition in Parliament determines Parliament’s effectiveness. The 2001 Parliament has been a little effective in it’s functions than the previous ones but sadly it is being rendered ineffective by the Executive’s actions. The success of the Executive sending Parliament back to “deep sleep” will be a success in rendering Parliament ineffective once more.
CHAPTER FOUR

RECOMMENDATIONS AND GENERAL CONCLUSION

4.1 RECOMMENDATIONS

Having substantiated the undisputable fact that the Zambian Parliament has been ineffective in its duties since 1991, recommendations will now be made on strengthening Parliament's effectiveness. Two categories of recommendations will be discussed, firstly it will be factors that determine the electing of Members of Parliament. This is because the effectiveness of Parliament is determined by those voted into it. Secondly the other category of recommendations will consider the circumstances under which Parliament operates.

4.2 RECOMMENDATIONS ON THE ELECTING OF PARLIAMENTARIANS

Zambian elections have not been free and fair partly due to ECZ (the body seized with conduct of elections) being toothless, and dependent on the Executive thereby making it prone to manipulation by the ruling party. It is therefore submitted that the ECZ Act and the electoral code of conduct be revised to give teeth to ECZ with which to bite, and make it independent from the Executive. This will protect ECZ against manipulation by the ruling party. Furthermore the setting of the date for general elections should cease being the sole discretion of the President as this takes the unprepared opposition by surprise if not shock but favourable to the ruling party which by then would have kicked off campaigns. In view of this it is recommended that the
general elections date be enshrined in the Constitution and this should be in the dry season when all roads are passable. Since campaigns are very costly ventures it is recommended that government funds major political parties. This will prevent only the ruling party using state funds illegally for campaigns when the opposition parties are literally bankrupt. There should also be equal access by parties to the public owned media. This can be done by making provisions to that effect in the electoral code of conduct drawn up by ECZ and the public owned media.

It is submitted that on the actual day of general elections polling stations should only close after all the electorate present have voted. This will address the problem of the electorate being disfranchised by polling station being closed, due to time being up despite the electorate outside waiting to vote. Furthermore election results should only be announced after all polling stations have closed. This will remedy the problem of influencing the electorate on how they should vote by learning of the results of other polling stations. Alternatively elections can be held in two consecutive days so as to give as many electorates as possible an opportunity to cast their ballots.

Aggrieved parties have petitioned the last two general election results in court. Settling Parliamentary election results disputes time consuming and a length process is worse off Presidential election petitions. It is now three years since the last general elections were held yet the Presidential election petition is far from being settled. To prevent the unnecessary pending of election results petitions it is submitted that an election tribunal specifically for settling of election results disputes and other related
matters expeditiously be constituted. Furthermore no candidate should occupy office if election results have been petitioned until the elections tribunal rules so. During this period of the presidential election petition the Chief Justice or the Speaker of the National Assembly would act as the republican President. The tribunal before proceeding to elections should settle all disputes relating to elections. This will address boycotting of elections by political parties due to pending differences regarding elections. To ensure that the President is legitimately elected the Constitution should provide for a successful President to have at least 51% of the total votes cast in the Presidential elections.

Currently Zambia's Parliamentary elections are held on constituency basis where Members of Parliament are voted on the basis of their Constituencies. This has seen only stronger parties being represented in Parliament. In light of this it is recommended that Parliamentary elections based on constituencies should be abolished and substituted with proportional representative based elections. This is where the electorate merely vote for a political party in their location and not for a specific Member of Parliament candidate. On the basis of the proportional votes received political parties will be allocated Seats and they will choose who among their members will take up the seats. The advantage of proportional representative based elections is that all political parties regardless of their strength will be represented in Parliament provided they have received reasonable proportion of votes. However, the stronger party gets more seats while the weaker parties get few seats. This is very
attainable in the Zambian situation especially that it has worked so well for our neighboring country Namibia and for the South Africa.

4.3 RECOMMENDATIONS ON OPERATIONS OF PARLIAMENT

Members of Parliament are duty bound to represent the electorate’s views in Parliament. Sadly this has been impaired by lack of consultations between the electorate and Members of Parliament which has been compounded by lack of offices for Members of Parliament in their constituencies. It is therefore submitted that offices for Members of Parliament where consultations will be held with the electorate be built in every constituency. Before discharging any Parliamentary duties the electorate should be consulted. Through these offices Members of Parliament should inform the electorate of Parliament’s deliberations. It is further recommended that where a Member of Parliament fails in his duties the electorate should be empowered to recall and replace him.

To strengthen Parliament’s effectiveness it is submitted that Minister be appointed outside Parliament. Once Members of Parliament are not eligible for Ministerial appointments they will fearlessly and without favour discharge their duties. Furthermore Members of Parliament who resign from their parties should not be allowed to re-contest elections for five years. This will prevent the “poaching” and “buying” of opposition Members of Parliament by the ruling party, which weakens the opposition and renders Parliament ineffective.
The submission of annual reports by government watchdogs on their operations to Parliament should be made mandatory and failure to do so should be a very serious offence. Parliament should be empowered to dismiss any public officer found wanting according to the submitted reports. With regard to the select committees submissions should be invited from the public. A strong legal framework must be established to promote and protect the Speaker’s independence, impartiality and loyalty to the house. Failure of the Speaker to act as wise should result in him being voted out of office by the Members of the house.

4.4 GENERAL CONCLUSION

The paper has discussed and shown how the MMD dominated Parliament from 1991 to 2001 literally failed to effectively discharge its duties. This was in fact a de facto one party Parliament merely acting as an agent of the Executive by executing its wishes. Parliament merely rubber stamped Executive decisions and thereby fell into “deep sleep” despite people looking up to it for redress on national issues. Parliament was unquestionably ineffective in it’s duties from 1991 to 2001.

The 2001 Parliament is gradually awakening from the “deep sleep” it fell into between 1991 to 2001. Slowly Parliament is becoming effective in it’s duties and this is attributed to the opposition dominance in Parliament. Parliament can now challenge the Executive resulting in the latter being compelled to give effect to the wishes of the
former. The Executive has had to relentlessly reverse some of it’s proposals due to opposition from Parliament. One can only say that Parliament is developing it’s “teeth” with which it can bite.

Unfortunately the “poaching” and “buying” of opposition Members of Parliament by the ruling party or their appointment to Ministerial positions is weakening the opposition and undermining the growth of Parliament’s effectiveness. These are well calculated measures meant to send Parliament back to “deep sleep” and render it ineffective. If this trend is not addressed Parliament will definitely go back to “deep sleep” and become ineffective. Notwithstanding this sad development solace can be found in the recommendations advanced above which when fully implemented will definitely create and protect a very vibrant and effective Parliament.
REFERENCES


Dicey A.V. The Law of the Constitution. (1885)


STATUTES

The Constitution of Zambia. CAP. 1 of The Laws of Zambia (1964)

The Constitution of Zambia. CAP. 1 of The Laws of Zambia (1972)

CASES CITED

Christine Mulundika & Six Others VS The People, (1996) 2 LRC


OFFICIAL REPORTS

President Kaunda’s address to the Nation, (4th February 1972)

President Kaunda’s watershed speech, (1978).

Dr. Kaunda’s speech to UNIP’s National Council, (12th December 1977)


Dr. Kaunda’s address to the Nation (24th September 1990)


General Presidential and Parliamentary Elections Results, (2001)


NEWSPAPER ARTICLES

The Post Newspaper, (28th February 1996)

The Post Newspaper, (23rd April 2001)

The Post Newspaper, (15th July 2001)

The Post Newspaper, (5th August 2004)

The Post Newspaper, (25th September 2004)