

SCHOOL OF LAW

OBLIG ESSAY

**A COMPARATIVE STUDY OF THE LEADERSHIP CODE AND
THE PARLIAMENTARY AND MINISTERIAL CODE OF
CONDUCT ACT, NO. 35 OF 1994.**

By

KAFUBA MBOMA

**AN ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA
IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF
THE DEGREE OF BACHELOR OF LAWS.**

**THE UNIVERSITY OF ZAMBIA
LUSAKA**

1995

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the Obligatory Essay
prepared under my supervision by:

KAFUBA MBOMA

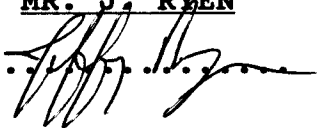
entitled

A COMPARATIVE STUDY OF THE LEADERSHIP CODE
AND THE PARLIAMENTARY AND MINISTERIAL CODE
OF CONDUCT ACT NO. 35 OF 1994.

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 regulations governing obligatory Essays.

DATE: ..06/10/95..... SUPERVISOR: MR. J. RYEN

SIGNATURE:



DEDICATION

I dedicate this work to my wife Rosemary
Chona, for her support and affectin.

ACKNOWLEDGEMENTS

The author is indebted to the scholarstic prowess prevailing in The School of Law at The University of Zambia. The invaluable contribution of the learned men and women lecturing in the School of Law moulded me into a lawyer. Their feat will certainly for a long time to come linger in my mind.

My special thanks are due to Mr. J. Ryen, my supervisor, who through his incisive comments and guidance, this work became a worthwhile academic undertaking. Not to mention Mr. Mainza, would be equivalent to 'contempt of Court' given the valuable information he gave us.

Finally, I wish to thank Ms. Lydia Masumbu for typing this work and all those whose brains I picked. To the reader I say, it is my hope that you will find this work informative and insightful.

LIST OF CASES

Chilufya v City Council of Kitwe [1967] ZR

Fraser v Evans [1984] I.Q.B. 44.

Nkumbula v Attorney General [1972]' High Court of Zambia.

R V Sunderland Justices[1901] 2 K.B. 357.

Season v G.M.C. (1889) 43 Ch.D. 366.

LIST OF STATUTES

1964, The Constitution of Zambia Act.

1973, The Constitution of Zambia Act.

1991, The Constitution of Zambia Act.

1994, The Parliamentary and Ministerial Code of Conduct Act No. 35
of 1994.

LIST OF ABBREVIATIONS

- A.C.C.** **Anti-Corruption Commission**
- A.N.C.** **African National Congress**
- U.N.I.P.** **United National Independence
Party**

ABSTRACT

This is a comparative study of The Leadership Code and The Parliamentary and Ministerial Code of Conduct Act, No. 35 of 1994. It examines The Leadership Code in the context of the One Party State Constitution. Moreover, The Parliamentary and Ministerial Code of Conduct Act, 1994 is also examined as a feature of the 1991 Republican Constitution. This study consists of four Chapters.

Chapter One covers the 1964 Constitution of Zambia and relates it to the concept of "Constitutionalism." This is done by discussing Civil Liberties and The Separation of Powers as provided for in the 1964 Constitution. The rationale for such an approach is that it provides a background to the Constitutional amendments done since 1964 which culminated in the 1973 One Party State Constitution.

Chapter Two dwells on the imposition of the One Party State. We begin by making reference to Constitutional amendment of 1969 and finally the One Party State Constitution of 1973. Chapter Three discusses the Leadership Code as a product of the One Party State Constitution.

Chapter Four focuses on the analysis of The Parliamentary and Ministerial Code of Conduct Act of 1994. A deliberate inclination towards making a comparison between the two Code is made. Finally, there is the conclusion in which some recommendations are made.

TABLE OF CONTENTS

	Page
Dedication	i
Acknowledgements	ii
List of Cases	iii
List of Statutes	iv
List of Abbreviations	v
Abstract	vi
Table of Contents	vii
Introduction	viii
Statement of Problem	ix
Objectives	x
Methodology	viii
Organisation of the study	viii
 CHAPTER ONE	 1
1.0 The Zambia Independence Constitution of 1964	1
1.1 Constitution	1
1.2 The Separation of Powers	2
1.3 Civil Liberties	5
 CHAPTER TWO	
2.0 The Imposition of the One One Party State, 1973	9
2.1 Constitutional Amendment, 1969 ...	9
2.1.1 The Constitution Amendment Act No. 33 of 1969	9
2.1.2 Property Rights	11
2.1.3 Personal Liberty	12
2.2.0 The One Party State	13
2.2.2 The Reasons for One Party State ..	14
2.2.3 The Mode of Adoption	16
2.3.0 The One Party State in Practice	19
 CHAPTER THREE	
3.0 The Leadership Code	25
3.1 Why the Leadership Code	26
3.2 The Administration of the Code ...	28
3.3 The Leadership Code	33
 CHAPTER FOUR	
4.0 The Parliamentary and Ministerial Code of Conduct Act No. 35 of 1994	44
4.1 Reasons for the Recourse to Multi-partism in Zambia	44

4.2	Introduction of the Code of Conduct	48
4.2.2	Provisions applicable to both Ministers of Members of Parliament	50
4.3.2	The Annual Declarations of Assets Liabilities and Income	53
4.4.0	The Enforcement and Administration of the Code	54
4.4.2	The Tribunal	55
4.4.4	Tribunal No. 1 of 1995	56
4.4.6	Significance of Tribunal No. 1 of 1995	57
	CONCLUSION	59
	Recommendations	61

INTRODUCTION

STATEMENT OF THE PROBLEM AND OBJECTIVES OF THE STUDY

The problem under investigation is a constitutional one in the sense that it deals with legislations made pursuant to the provisions in the One Party State Constitution of 1973 and the Multi-party State Constitution of 1991.¹ The Leadership Code was enacted pursuant to the One Party State Constitution of 1973 whilst the Parliamentary and Ministerial Code of Conduct Act 1994 was enacted pursuant to the 1991 Multi-Party State Constitution. The Republican Constitution of 1991 repealed the Leadership Code under the 1973 One Party State Constitution. The Constitutional aspect is very fundamental because one has to focus on the conceptual framework of the 1973 Constitution and that of 1991. We submit that an understanding of the conceptual framework of the two constitutions will make this study worthwhile.

The 1973 Constitutional development which saw the birth of One Party State Constitution spelt out a new vision and political direction for Zambia. This called for the enactment of laws that were not only to provide a catalytic influence but also a deterrent to those who desired to swing the nation in the opposite direction. The leadership Code was one such law - enacted in accordance with the provisions under Part IV of the 1973 One Party State Constitution.²

The Parliamentary and Ministerial Code of Conduct Act of 1994 (herein after referred to as the Code of Conduct') is a feature of the 1991 Constitution of the Republic of Zambia.³ This Code of

Conduct was enacted for Ministers and Deputy Ministers for the purposes of Article 52 of the Constitution and Article 71 of the constitution.⁴ It is interesting to note that it took close to three years to enact the Code of Conduct for the purposes of Articles 52 and 71 of the Constitution.

One should hasten to mention that though, the Codes under study belong to two different systems of government and historical epochs, they both have one common feature namely that their focus is on providing a legal mould for Political Leadership. Bearing this point in mind, the objectives of this study therefore are: Firstly, to examine and investigate the rationale for the Leadership Code in the context of the One Party System from a legal perspective. The main legal issue being whether or not the Leadership Code was so inimical to the aspirations of the Zambian People.

Secondly, it is the concern of this study to investigate whether or not the Leadership Code was a viable and practicable piece of legislation. Thirdly, it is the objective of this work to examine whether or not the Parliamentary and Ministerial Code of Conduct Act of 1994 has weaknesses in the context of the Multi-Party System. The concern of this study is to consider whether or not the Code of Conduct is compatible or in consonance with the strong desire for the entrenchment of democratic ideals that protect and promote Civil Liberties respective of social status in society. We focus on the right of property ownership to demonstrate how the One Party State and The Leadership Code in

x

particular placed severe limitations on Civil Liberties.

METHODOLOGY:

Our study is based on Library Sources, Oral interviews, Published documents and Secondary Literature. The collection of data involved extensive research in the University of Zambia Library especially the Special Collections Section. We collected data from the National Assembly Library where we had access to Parliamentary Debates and Statutes. Though we encountered various problems in data collection, that did not wear out our perseverance.

ORGANISATION OF THE STUDY

This study is organised into four Chapters. Chapter One looks at the Independence Constitution of Zambia of 1964 and the Concept Constitutionalism. We shall also look at Constitutional changes which eventually saw the dawn of One Party State.

The reason for this approach is to set the stage for the ensuing discussion and also show the nature of the 1964 Constitution. We bear in mind the issue whether or not the Constitutional amendments done to the 1964 Constitution were justified. Our thesis is that these amendments were a serious erosion of Constitutionalism. The imposition of the One Party State Constitution was the apex of that process of Constitutional amendments.

Under Chapter two we mainly pay attention to the introduction of the One Party State. We focus on the reasons and rationale for the introduction of the One Party State. It is necessary to devote a Chapter to this subject because it does endeavour to go to the root of the One Party State in terms of its essence and conceptualization. This Chapter also provides a useful background to The Leadership Code.

As for Chapter three, the thrust of our discussion is on The Leadership Code. The study highlights and analyses the reasons for the Leadership Code. We make an analysis of the provisions of the Code in the context of the Humanist ideal which was the dream of President Kaunda and the United National Independence Party Ideology.

Chapter four focuses on the Parliamentary and Ministerial Code of Conduct Act of 1994 as a product of the 1991 Republican Constitution of Zambia. Here the concern is to analyse the Code of Conduct in terms of its essence, enforcement and administration. In analysing the Code of Conduct Act a deliberate comparison and contrast with the Leadership Code shall be made. This Chapter shall be followed by the Conclusion in which we make some recommendations for law reform. This is basically the structural approach of this study.

NOTES

1. See The Constitution of Zambia Act, 1973 and The Constitution of Zambia Act, 1991.
2. See The Constitution of Zambia Act, 1973 p.
3. See Article 52 and 71 of The Constitution of Zambia Act, 1991.
4. Ibid.

CHAPTER ONE

THE ZAMBIA INDEPENDENCE CONSTITUTION OF 1964 AND CONSTITUTIONALISM.

Introduction:

The Zambia Independence Act which bestowed independence on Zambia was passed by the United Kingdom Parliament.¹ The granting of independence to Zambia, through the Act, was a product of protracted negotiations between African Nationalists as represented by the United National Independence Party and the British Colonialists. The African National Congress headed by H.M. Nkumbula on the side of African Nationalists also took part in the struggle and negotiations for Independence. Though the 1964 Independence Constitution could be said to be a product of protracted negotiations, it was not long before the United National Independence Party headed by President Kaunda manifested their dissatisfaction with it. They did this by instituting Constitutional changes. It is in light of this that we have devoted a Chapter to the analysis of the independence Constitution in relation to the concept of "Constitutionalism".

1.1 CONSTITUTIONALISM

There is no a priori definition of the concept Constitutionalism. To this extent we shall adopt the definition which in our view is in consonance with the general mood of this study. The definition we shall adopt is that provided by De Smith, when he wrote.

To be specific, I am willing to concede that Constitutionalism is practiced in a country where the government is genuinely accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organise and to campaign in between as well as immediately before elections with a view to presenting themselves as an alternative government and where there are effective legal guarantees of basic civil liberties enforced by an independent Judiciary, and I am not easily persuaded to identify Constitutionalism in a country where any of these conditions is lacking.²

The concept of Constitutionalism as defined above calls for a number of prerequisites if a particular Constitution can be said to embrace it. The following prerequisites are vital; namely the existence of political liberty, the constitutional guarantees of basic civil liberties and a deliberate intergration of separation of powers that includes the principles of checks and balances. We now examine each of these prerequisites in the context of the Independence Constitution.

1.2 THE SEPARATION OF POWERS:

One of the demands of the concept of Constitutionalism is that there must be limitation on the exercise of government power. This discourages despotic government. This raises a question as to how the limitations are to be imposed on the exercise of power. The answer to this question lies in the nature of the Constitution. The nature of the Constitution is cardinal because, as Nwabueze explains, "Government is a creation of the Constitution. It is the Constitution that creates the organs of government, clothes them with their powers, and in so doing delimits the scope within which they are to operate. A government operating under a written Constitution must act in accordance with the Constitution. Any exercise of power outside the Constitution or which is unauthorised by it is invalid. The Constitution operates, therefore, with a supreme authority."³ The practical implication of what Nwabueze is saying above can be illustrated by examining the doctrine of Separation of Powers and how it was accommodated in the Independence Constitution.

The doctrine of Separation of Powers was expounded by a French Lawyer called Montesquiu in his work entitled written in the first half of the 18th Century.⁴ His prime concern was to preserve Political Liberty by ensuring that the Executive, Judicial and Legislative organs of government were separate and not made up of the same personnel. In so doing these organs would maintain a check on each other in the exercise of their respective functions. Montesquiu argued; "Political Liberty is to be found only when there is no abuse of power. But constant experience shows that

everyman vested with power is liable to abuse it, and to carry his authority as far as it would go ... to prevent this abuse it is necessary from the nature of things that one power should check another.... Again there can be no liberty if judicial power is not separated from the Executive or Legislative".⁵ A relevant question to pose here is whether or not the Independence Constitution did embrace this doctrine and if so, to what extent?

The Independence Constitution of 1964 did embrace the doctrine of separation of powers. Chapter 18 of the Constitution provided for the Executive organ of government in which the office of President, Vice President, Cabinet and Executive functions were stipulated.⁶ The Judicative was provided for under Chapter VIII of the Constitution. Under this the Court of Appeal, High Court and Judicial Service Commission were created. Article 97 (2) created office of judges of the Court of Appeal, the Chief Justice, one justice of Appeal or such greater number of Justices of Appeal as may be prescribed by Parliament. It is important to note here that Parliament had a say in the creation of the office of Justices of Appeal. This intersection between Parliament and Judicature Organ provided a check and balance in that the Judiciary could not arbitrarily create office of Justices of Appeal without the sanction of Parliament. The intersection was also provided for between the Executive and the Judiciary in that the President was empowered to appoint the Chief Justice, and Buisne Judges in accordance with the advice of the Judicial Service Commission. The President also had a hand in the appointment of members of the Judicial Service Commission in that he appointed the Chief Justice, the Chairman of the Public Service Commission and one other member, who were all members of the Judicial Service Commission.⁷

The Legislative organ was created under Part VI of the Constitution. It was vested with power to make laws of the Republic of Zambia. Created under this was the National Assembly consisting of seventy-five elected members and five members nominated by the President. Apart from the foregoing the President provided a check on the Legislature in that under Section 71(2)"...

where a bill is presented to the President for assent he could either assent or withhold his assent."8 Section 71(4) went on further to provide that "where the President withholds his assent to a bill the bill shall be returned to the National Assembly; provided that if the President withholds his assent to or in respect of which a tribunal has reported under section 27 of this Constitution that it would if enacted, be inconsistent with Chapter III of this Constitution, the bill shall be returned to the National Assembly only if the President so directs.

(7) When a bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the President shall there upon cause it to be published in the Gazette as a law".9

What we have endeavoured to show above is the fact that the Zambia Independence Constitution of 1964 did embrace the doctrine of separation of powers. But it did go to the extent of making, for example, the Executive and the Legislature mutually exclusive. There was an intersection three organs of government. This was aimed at ensuring that there was 'check in the exercise of functions bestowed upon each of the three organs of government. The essence of checks and balances is that it avoids tyrannical rule. The fact that the constitution created the three organs does not necessarily mean that it was compatible with Constitutionalism. This calls for an examination of the relationship between the Government and the Governed. Recognising this point, Nwabueze had this to say, "There can be no doubt that the core and the substantive element of Constitutionalism is the limitation of government by a constitutional guarantee of individual civil liberties enforceable by an independent Tribunal".10 The 1964 Constitution seems to have taken this into account because under Part III of the Constitution there was provision for the fundamental rights and freedoms of the individual.

1.3. CIVIL LIBERTIES:

The 1964 Constitution did not only provide for the fundamental rights and freedoms of the individual but also ensured that Chapter III which dealt with these rights and freedoms was entrenched in the Constitution. The relevant section in this regard read as follows:

- (3) In so far as it alters
 - (a) This Section (ie. Section 72(3)
 - (b) Chapter III or Chapter VII of this Constitution; or
 - (c) Section 71(2) or 73 of this Constitution;
- an Act of Parliament under this Section shall not come into operation unless the provision contained in the Article effecting that alteration have, in accordance with any law in that behalf, been submitted to a referendum in which all persons who are registered as voters for the purposes of elections to the National Assembly shall be entitled to vote and unless those provisions have been supported by votes of a majority of all the persons entitled to vote in the referendum.¹¹

The entrenchment of the bill of rights in the above mentioned Sections and Chapters in the Independence Constitution as cited above, provided a strong limitation on the government in that civil liberties could not easily be tempered with by the caprices and whims of those wielding political power. This entrenchment aspect must also be understood against the background of what Chanda states as the "...unhappy experiences of the federal era, which was marked by gross abuse of African rights by the minority white settlers, who dominated it. The Federal experience had clearly demonstrated that previous mechanisms designed to protect African rights had failed lamentably."¹² This therefore called for a Constitutional guarantee of human rights. It must be pointed here that the spirit behind the Constitutional guarantee of human rights

was not merely to redress or recompense the abuse to which Africans were subjected but also to ensure that under the post-independence era the minority groups, namely white settlers, who had chosen to become citizens of Zambia were not discriminated against. The guarantee of their civil liberties was meant to make them feel secure even under a government dominated by Africans. To demonstrate this point one can make reference to section 18 of the Constitution which dealt with the protection of individual private property and provision of adequate compensation in the event of compulsory acquisition.¹³

The section read as follows:

18(1) No property of any description shall be compulsorily taken possession of, and no interest or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that it to say:-

(a) the taking of possession or acquisition is necessary or expedient:

(i) in the interest of defence; Public Safety, Public order; Public Morality, Public Health; Town and Country Planning or Land Settlement, or

(iii) in order to secure the development or utilization of that, or other property for a purpose beneficial to the Community;

(b) provision is made by a law applicable to that taking possession or acquisition;

(i) for the prompt payment of adequate compensation; and

(ii) Securing to any person having an interest in or right over the property, a right of access to a Court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting; within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, change or tax made or levies in respect of its remission) to any country of his choice outside Zambia.14

Quite clearly the above Section was meant principally to protect the property rights of the white settlers who, after all, were the dominant property owning class. The Africans, though they were the majority in terms of numbers, did not own much property. Those few Africans who were emerging property owners, as a result of economic opportunities opened to them with the dawn of independence, certainly saw something attractive in this legal shield. President Kaunda and UNIP seem not to have been happy with such kind of legal protectionism embedded in the Constitution. Therefore it did not take long for the Kaunda Regime to start contemplating Constitutional Changes. This idea yielded fruits in the 1969 Amendment to The Independence Constitution of 1964. We shall delve into the details of this Constitutional Amendment in the next Chapter. Suffice to say here however, that the Independence Constitution of 1964 did endeavour to integrate the salient dictates of Constitutionalism. In concluding our discussion one can safely say that the Independence Constitution of Zambia did embrace the notion of political liberty and also addressed the issue of civil liberties. The fact that they were entrenched in the Constitution is a testimony to that effect.

FOOTNOTES

1. Zambia Independence Act, 1964
2. S.A. De Smith, 'Constitutionalism in Commonwealth Today', Malaya Law Review, Volume 4, 1962.
3. B.O. Nwabueze, Constitutionalism in the Emergent States (London: C. Hurst & Company, 1973) p. 5.
4. J.F. Garner & . . .
B.L. Jones, Garner's Administrative Law (London: Butterworth & Co. Publishers Ltd, 1985) p. 7.
5. E.C.S Wade &
G.G. Phillips, Constitutional Law (London: Longman, Green and Co. Ltd, 1968). pp. 22-24.
6. Zambia Independence Act, 1964.
7. Zambia Independence Act, 1964.
8. Zambia Independence Act, 1964.
9. Zambia Independence Act, 1964.
10. B.O. Nwabueze, Constitutionalism, (1973). p.
11. Zambia Independence Act, 1964.
12. A.W. Chanda, "Zambia: A Case Study in Human Rights in Commonwealth Africa J.S.D. Connecticut: Yale Law School 1992) p. 99.
13. Zambia Independence Act, 1964.
14. Zambia Independence Act, 1964.

CHAPTER TWO

THE IMPOSITION OF THE ONE PARTY STATE, 1973

Introduction

In the last Chapter we did conclude our discussion by pointing out that the Kaunda regime was inclined to make some constitutional changes to the Zambia Independence Constitution of 1964. We also indicated that the Independence Constitution had some entrenched provisions. In this Chapter we shall examine the issue of Constitutional changes which the Kaunda regime effected prior to ushering in of The One Party System. Here we are basically referring to the 1969 Constitutional Amendments. We shall also discuss the reasons for the imposition of the One Party State in 1973. Consequently a focus on the actual imposition or steps leading to the imposition of the One Party State shall be made. In this Chapter our underlying argument, which we shall endeavour to substantiate, is that the One Party State was imposed on the people of Zambia. There was no consent and consensus on its introduction. We submit that it was a Constitutional Scheme meant to facilitate the implementation and actualization of the Kaunda-inspired and UNIP adopted Philosophy of Humanism. Its failure can best be explained by its futile attempt to suppress the people's quest for a Democratic System of government. We further submit that the enactment and integration of the Leadership Code into the One Party State Constitution was meant to supplement and complement the mood of the One Party State Constitution. We shall advance and fortify this latter submission in the next Chapter when discussing The Leadership Code.

2.1.1 CONSTITUTIONAL AMENDMENT, 1969:

In 1967 while addressing the UNIP National Council at Mulungushi, President Kaunda categorically stated his government's stand on the issue of a One Party State. He put it thus:

1. that we are in favour of a One Party State
2. that we do not believe in legislating against the opposition;
3. that by being honest to the cause of the common man we would, through effective party and government organisations, paralyze and wipe out any opposition, thereby bringing about the birth of a One Party State,
4. that we go further and declare that even when it comes about we would still not legislate against the formation of opposition parties, because we might be bottling up the feelings of certain people no matter how few.¹

The above declarations by President Kaunda demonstrate the government's animus to make Constitutional Changes. Although President Kaunda was talking about not legislating against opposition, it was not long before he had to swallow his own words. The government's dream of the withering away of political opposition was proved wishful thinking by the elections of 1968, a year later after the Mulungushi Declarations. UNIP was given an effective blow. The 1968 Election was a battle between UNIP and the African National Congress (herein after referred to as ANC) in which UNIP got 81 seats and ANC got 23 seats.² UNIP lamentably failed in Western province, where it used to enjoy support before. Certainly the 1968 elections taught UNIP a lesson namely that Political opposition was a live' in the Country.

It was an indication that political opposition was gaining ground in the Country. The use of legislation as a means to achieveing political goals became an easy alternative for the UNIP government. The Kaunda government saw it fit to institute legislative manoeuvres affected the Independence Constitution. Here, we are referring to The Constitution of Zambia (Amendment) Act No. 33 of 1969. The government saw the need to entrench itself in power even if it was at the expense of tempering with Civil Liberties.

2.1.2 THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT
NO. 33 OF 1969.

This Act made a number of changes to the Constitution which were primarily a derogation from the protection of the fundamental rights as guaranteed in the Constitution. The Amendment attacked the rights relating to Property Ownership and Freedom of movement. We now refer to these two as a basis of our assessment of this Act.

2.1.3 Property Rights

On this right the Act provided thus:

Section 18(1) save as herein afterprovided, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of an Act of Parliament which provides for payment of Compensation for the property of interest or right to be taken possession of or acquired.

Section 18(3) An Act of Parliament such as is referred to in subsection (1) of this section shall, inter alia-

- (i) provided that compensation shall be paid in money.
- (ii) specify the principles on which the compensation is to be determined; and
- (iii) provide that the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly.³

Apart from the foregoing, the Act also amended Section (18) of the Constitution so as to permit the compulsory acquisition of any property or interest therein subject to the provision of compensation; to be determined by the National Assembly. It further made the remission of any such compensation out of the Republic subject to Exchange Control permission.⁴

Quite clearly, the effect of this amendment with regard to property rights was to reduce a fundamental right to an ordinary legal proposition. It was a deterrent to both local and foreign nationals owning substantial outlay of property because such property was at the mercy of those wielding political power. The individual's freedom and right to property ownership was put in a precarious position. No wonder therefore, that debating the bill in the National Assembly the late Hon. M. Mumbuna, then member of Parliament for Mongu Constituency expressed his strong fears and opposition to the Bill in the following words:-

This is a bill which is designed to destroy the the individual liberty and freedom of us all. Before I go into detail, I would like to say here today that I think the road is ending and, as the road is ending, it is today that we must speak straight; and it is today that we must speak the past, the present and the future of this country.

We should emphasize the fact that the major difference between the 1964 Constitutional provision with respect to the right relating to property ownership and the 1969 amendment is that the latter did put restrictions with respect to compensation. It imposed the Exchange Control permission with regard to the remission of any compensation money. The 1969 amendment waived away the requirement for prompt payment of compensation and bestowed upon the National Assembly the final say with respect to compensation. The net result of this amendment in terms of property ownership was to make property owners feel insecure, subject them to unnecessary bureaucratic channels where the need for compensation arose once their property was acquisitioned and above all, increasing the time within which compensation could be paid. Let us now examine the right to personal liberty.

2.1.4 Personal Liberty:

The 1969 Amendment introduced new provisions with regard to detentions or restriction of persons. These new provisions had perhaps the greatest adversity on the constitutional protection of

Personal Liberty. The rights of detainees were affected in the following ways. Firstly, the time required to be furnished with grounds of detention was increased from five to fourteen days. Secondly, the gazetting of detention order was put to one month instead of fourteen days as provided previously. Thirdly, the provision for automatic review of detention after six months was dispensed with and replaced by a detainee's own request for review only after he had been in detention for one year.⁶ Certainly this inclination by the government to legislate against the enjoyment of fundamental rights and freedom was not a healthy sign for the Nation. Alluding to this point one opposition member of Parliament for Namwala, the Late Honourable M. Liso said: "The Constitution, Sir, is the one instrument any Parliament would not amend so easily. Since independence, Sir, I think we have amended our Constitution several times and in most cases, Sir, it has been amended to suit the ruling party rather than the Zambian public as a whole."⁷

The government of the day did not take heed of what the Honourable Member of Parliament said because it did not refrain from making further Constitutional changes. In this course of action, the decision to introduce One Party state was made and to effect it there had to be some Constitutional amendments. At this juncture, let us examine the reasons for the imposition of One Party State in Zambia.

2.2.0 THE ONE PARTY STATE:

The trend towards One Party State and authoritarianism was not peculiar to Zambia alone. At the time Zambia became a de jure One Party State, Ghana, Tanzania and Malawi had already adopted the system. These had set in motion a political tide which Zambia found irresistible. The Francophone Countries like Senegal, Mali, Ivory Coast and Guinea had adopted the system even much earlier.⁸ Until 1972, Zambia had been a multi-party state as far back as 1958 when United National Independence Party and African National Congress as nationalist movements were born and initiated the

struggle for political power. The multi-party state status continued even after independence. The White settlers in Zambia did participate by forming their own political party which independence was renamed, 'National Progressive Party'. The National Progressive Party was dissolved in 1968. This left UNIP and ANC in the political arena. This scenario changed in 1972 when UNIP legally became the only party allowed to exist. Let us now look into the reasons for this.

2.2.1 THE REASONS FOR ONE PARTY STATE:

A number of reasons have been advanced in an attempt to explain the introduction of the one party state. The UNIP leadership had its own reasons for desiring this system of government. In fact the UNIP leadership called it "One Party Participatory Democracy". President Kaunda asserted that the resort to the One Party State was a result of the demands of the people which he claims were increasing and widespread in all corners of Zambia.⁹ He used this argument to fortify his earlier pledge that though his party favoured a one party state, they were not going to bring it about through legislation but through the withering away of political opposition. President Kaunda vehemently argued:

The One Party Democracy will help us to weed out political opportunists and people who have become professionals at telling lies, spreading rumours... and pretending to oppose what they inwardly welcome and exploit for their own personal benefits in the home of Democracy... The era in which the politics of patronage has been a feature of life is gone.¹⁰

From President Kaunda's assertion it is quite clear that it was an admission on his part that his party UNIP was not in favour of dissenting views whether inside or outside the party. It was admission of the fact that whether or not the creation of one party state would infringe the people's right to hold political opinions, associate freely, and express their political views mattered less. This was not a significant consideration in the Kaunda scheme of

one party democracy. Hence legal scholars such as Mubako drove the point home when he wrote that the introduction of the one party state was "... largely influenced by political developments, particularly tribal and corruption charges by Ex-Ministers Chimba and Chisata on other members of the government culminating in the resignation of Kapwepwe, (then Vice President) and his followers from the Party and government and the subsequent formation of United Progressive Party. Remaining UNIP followers not only demanded the banning of the new party, but also called for the immediate introduction of the One Party system."¹¹ Two important points arise from Mubako's submission. First, the issue of tribal conflict borders on the issue of National Unity which is one of the justifications for the imposition of One Party State. It has been advanced by Politicians as well as scholars that the resort to One Party rule was meant to foster national unity among the so called 73 tribes of Zambia. It was a heldview that in the multiplicity of political parties, some parties especially small ones were bound to be contented with tribal support from certain regions. To this extent, they were likely to saw the seeds of disunity in the nation. Therefore, Zambia's Parliamentary set up which was more or lest based on the Westminster Parliamentary Model could sooner than later plunge the country into internal political conflict. In such a scenario it would be impossible or difficult to foster national unity due to the heterogenous nature of the society along ethnic groups. The bottom line of this reasoning was, therefore, that only a single political party could be the rallying point for National Unity.

Secondly, the dimension of the rash for material gain via the political conduit and the desire to perpetually enjoy the economic benefits associated with political office, in our view, was a militant force which was clothed in the superficial arguments or myth of desire for Peace, Progress and Stability. To this extent, we concur with Nwabueze's analysis on the trend towards One Party State when he wrote, "Much as some of them (politicians in the emergent states) admire democracy as an ideology of government, the

wealth and prestige of power are for too great to be sacrificed upon its altar. It is thus impossible for them to develop any real commitment to its requirements, so long as that might entail the loss of power and its benefits. For them, democracy must remain a high-falutin ideal, to be talked about in lofty speeches, but not to be observed in practice".¹²

The incidents of violence between political parties at General and Parliamentary elections was also used as a factor for the resort to the One Party State. However, let us now focus on the mode in which the One Party State was introduced in Zambia.

2.2.3 The Mode of Adoption:

On 25th February 1972 President Kaunda announced that his Cabinet had reached a decision that the future Constitution of Zambia should provide for a One Party Participatory Democracy. Pursuant to this a Commission was set up under the Chairmanship of the then Vice President, Mr. Maiza Chona.¹³ The terms of reference of the Commission were:

- (a) Not to look into whether or not the One Party State was desirable.
- (b) To consider changes in the Constitution of Zambia.
- (c) To consider the practices and procedures of the Government of the Republic and
- (d) To consider the UNIP Constitution and to bring about the establishment of One Party Participatory Democracy in Zambia.¹⁴

Armed with the above terms of reference, the Commission got on the job of gathering evidence from members of the Public throughout Zambia. This move by the State did not go through without legal challenge. The Late H.M. Nkumbula, then leader of the African National Congress which was the main opposition party took legal action against the setting up of the Commission with the given terms of reference. The case has now come to be known as the

'Nkumbula Case'¹⁵ and because of its historical and constitutional significance it is prudent that we examine it in some detail at the court of Appeal level where the final determination was made.

2.2.4 The Applicant's Case Before the Court of Appeal

Having engaged a leading English Lawyer Kellock, Q.C. the applicant appealed to the Court of Appeal for Zambia. This time the applicant advanced different grounds from those put forward in the Court below. It was argued that the setting up of the commission was not "for the public welfare" within the meaning of the Inquiries Act.¹⁶ It was argued that it can not in law be for the public welfare to prepare to deprive a citizen of any of the fundamental rights protected by the existing constitution.' The Inquiries Act vested in the President a discretionary power to appoint a Commission to 'inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare.'¹⁷ This was a matter for the exercise of Presidential discretion and the exercise of such discretion could legally be challenged according to some principles of administrative law if it could be demonstrated that the President exercised his discretion from improper motives, bad faith or on extraneous considerations. The burden was on the application to prove so. The applicant argued that to him public welfare meant welfare of the individuals comprising the public, and therefore to derogate from individual rights and freedom was not for public welfare. This being so the President did not act in good faith or proper motives.

On the contrary the Court held the opinion that public welfare meant 'what is in the interest of the society at large....balanced against the interests of the particular section of society or of the individual whose rights or interests are in issue'.¹⁸ If the interests of 'the society are sufficiently important to override the individual interests, then the action in question must be held to be in public interest or for the public benefit.'¹⁹ Accordingly, the Court held that the President's exercise of the powers as conferred on him by the Inquiries Act was lawful.

On the second ground of appeal the applicant sought to rely on Section 28 of the Constitution which read:

- (1) Subject to the provisions of subsection (6) of this Section, if any person alleges that any of the provisions of section 13 to 26 (inclusive) of this Constitution) has been, is being, or is likely to be contravened in relation him, then, without prejudice to any other action with respect to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.
- (2) The High Court shall have original jurisdiction
 - (a) to hear and determine any application made by any person in pursuance of subsection (1) of this Section,
 - (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this Section; and make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 13 to 26 (inclusive) of this Constitution. ²⁰

On the basis of the above provision the applicant argued that the move by the State to introduce One Poverty State would infringe his rights under the Constitution in the present form. This move accords with the words in Section 28 of the Constitution; 'it is likely to be.' However, the Court could not fall for this interpretation of the law and it rejected this argument by relying on Section 28(5) which read; No application shall be brought under subsection (1) of this Section on the grounds that the provisions of Sections 13 to 26 (inclusive) of this Constitution are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law."21 Baron, J.P. then concluded that, "In my judgement, therefore, Section 28(1) has no application to proposed legislation of any kind, far less to a proposal to amend Chapter III itself..."22

Our position is that we concur with the holding of the Court, However, we have different grounds upon which we would have argued the case. Firstly, it is our considered view that the decision to usher in One Party State amounted to discrimination on grounds of political opinions. According to Article 25(3) of the Zambian

Constitution discrimination includes holding political opinions.²³

In practice it meant that those holding political opinions different from those of UNIP would neither freely hold those opinions nor express them as they were denied a political organisation or party through which to do so. Therefore, the decision to introduce One Party State was infringement of this right. Secondly, it is our view that the introduction of One Party State prohibited the formation of political parties and this was a crucial move which desired the consent and consensus of the people. Therefore, to merely impose such a decision can not be said to be 'reasonably justifiable in a democratic society.' People have a right to say whether or not they accept such a fundamental change in the Constitution. The State denied them that right. It was therefore, in our view, an Unconstitutional move. Nevertheless, the legal challenge is significant in that it at least put on record the opposition to the introduction of One Party Participatory Democracy. It was a solitary voice for the silent majority.

Having lost the legal challenge, the ANC had no choice but to accept the inevitable; that is the imposition of One Party State Constitution. This was effectively done on 13th December 1972, when the Constitution Amendment Act got the presidential assent. The Constitution came into force on 13th December, 1973. However, what remains a truism is what Sondashi wrote mainly that "...the single party system in Zambia was introduced in haste and without the consent and consensus of the people. This therefore, confirms the theory...that all One Party States in Africa were reached at without the consensus of the people."²⁴

2.3.0 The One Party State in Practice

We shall briefly look at the issue whether or not the One Party State did enhance or derogate from the Civil Liberties of the individual in practice. It is important to raise this issue as a way of making a critique of the One Party State and providing the rationale for its demise in 1991, when Zambia reverted to a Multi-

Party State.

2.3.1 The Right to Personal Liberty:

This right was perhaps the most frequently infringed upon during the One Party rule. Cases such as Kawimbe v Attorney General (1974);²⁵ Shamwana v Attorney General (1980);²⁶ In Re Puta (1981),²⁷ Banda v Attorney General (1978);²⁸ Sithole v Attorney General (1977);²⁹ and Kaira v Attorney General (1980).³⁰ are just a few of those cases in which applicants were seeking the legal protection of their personal liberty. We shall illustrate this point by referring to the cases of Kawimbe v Attorney General (1974),³¹ and Mwaba v Attorney General (1974).³³ The Mwaba Case.³⁴ was one in which the plaintiff (Mwaba) was claiming damages for assault, intimidation, trespass to the person and false-imprisonment by servants of the Government. It was alleged that this was contrary to the Preservation of Public Security (Detained Persons) Regulations. The plaintiff alleged that whilst in imprisonment he was imprisoned in a filthy cell of minute proportions with little or no light or ventilation. He was threatened with violence and made to remain in the nude. He was subjected to torture and particularly to electric shock. He was punched and slapped. He was also forced to remain awake for long periods of time. The defendant denied this. The Court held that the defendants were liable. Moodley, J. held, "Judgement is therefore entered for the plaintiff against the defendant on the grounds of assault, trespass to person and false imprisonment. I have no doubt that the plaintiff has been subjected to torture, inhuman and degrading treatment, contrary to the protection which he enjoyed under the Constitution. Further, the relevant provisions of the Preservation of Public Security (Detained Persons) Regulations (Cap. 106) were breached by persons who were not even Police Officers, in whose prolonged custody the plaintiff was held incommunicado."³⁵

In the Kawimbe Case, he sued the Attorney General for damages for false imprisonment for two days. The defendant filed a formal notice of admission of liability. On appeal the issue was on the amount of damages. Baron, D.C.J., held that the damages to be paid by the defendant be increased from K50.00 to K200.00 because he said "I consider it to be totally inadequate as a measure of the value of "the precious right to liberty", the right to go where one pleases and do what one pleases."36

The reason for citing these cases is to show that the One Party era in Zambia was characterised with rampant abuse of Human Rights because by its very nature the system was an affront to some of the fundamental prerequisites of Constitutionalism. It denied people the right to associate and organise themselves as an alternative government to the ruling party through a general election. The absence of such a choice for the electorates amounted to the denial of their democratic right. In fact the One Party system became so hostile to dissenting views that even the exercise of freedom of speech in the National Assembly by members of Parliament came under Executive Sanction.37 In his 1975 'Watershed Speech' President Kaunda said:

"...ever since our last meeting the nation has been hearing strange 'outpouring' from the National Assembly. Members of the Central Committee, Ministers and other Party and Government leaders have been maligned. They have been accused of all sorts of addities - tribalism, corruption, nepotism and so on. The Party and Government have been severely criticised for alleged inefficiency and ineffectiveness. Since Members of Parliament, have in fact, been speaking as if they are not members of the Party and as if this government is not theirs. Their anti-party and anti-government mouthing have left some of us with the impression that they are seeking to be an opposition party in our One-Party Participatory Democracy..."38

The President then instructed the Speaker to make disciplinary rules of the Party part of the Standing Orders of Parliament so as to deal with those Members of Parliament who were too critical. The point we are making here is that the One Party State was not democratic. The Kaunda Presidency therefore lacked legitimacy and

neither could it be said to be accountable to the people. This submission raises the question whether or not the Leadership Code which was indeed part of the One Party State constitution was an exception. This is a question which we shall endeavour to answer in the next Chapter. It is crucial to answer this question as it affords us a glimpse of the legal standard which the political leadership of UNIP gave itself and whether or not it was able to attain that.

In conclusion one can say that the adoption of the One Party State in Zambia was not democratic as it was merely imposed on the people. The people were not given the opportunity to decide whether or not they wanted such a fundamental change to the Constitution - a change which would affect their fundamental rights and freedoms. It is not surprising therefore that the One Party rule was characterised by abuse of human rights. In examination of the Leadership Code, in the next Chapter, will try to show the ineffectiveness of the Code and the moribund nature of the One Party State as a whole.

NOTES

1. Proceedings of the Annual Conference of the United National Independence Party, held at Mulungushi, August 14-20, 1967, ZIS, Government Printer, Lusaka. pp. 10-11.
2. Lawrence Zimba, 'The Origins and Spread of One Party States in Commonwealth Africa, their Impact on Personal Liberties: A Case Study of the Zambian Model', in Muna Ndulo (ed), Law in Zambia, (Nairobi: East Africa Publishing House. Ltd 1984). p. 116.
3. Constitution (Amendment) Act, No. 33 of 1969 p. 3
4. Constitution (Amendment) Act, No. 33 of 1969, p. 6
5. Per then Mongu Constituency Member of Parliament, the Late Honourable Mumbuna, in Hansard No. 18, July 15, 1969, Co, 128.
6. Constitution (Amendment) Act, No. 33 of 1969, p. 8
7. Per then Namwala Constituency, Member of Parliament, the Late Honourable Liso, in Hansard No. 18, July 8, 1969, Co. 66.
8. Supra 2, p. 111
9. Quoted in the Report of the One Party State Commission, para. 2, 1975.
10. As quoted by John, M. Mwanakalwe, End of Kaunda Era (Lusaka: Milti-media-Zambia, 1994) p. 88
11. Simbi v Mubako, 'Zambia's Single Party Constitution: A Search for Unity and Development' in Zambia Law Journal, Volume 5, 1974, p. 67
12. B.O. Nwabueze, Constitutionalism in Emergent States, (London: C. Hurst & Company, 1973) p. 162.
13. Supra 2, p. 120
14. Supra 2, p. 121
15. Nkumbula v Attorney-General (1972), High Court of Zambia.
16. See Chapter 181, Inquiries Act.
17. See Chapter 181, Inquiries Act, Sec. 1
18. Per Baron, J.P., op. cit., p. 210

19. Per Baron, J.P. at p. 210
20. See Section 28 of the 1964 Constitution
21. See exception Clause to Section 23 or Section 28(5) of the 1964 Constitution.
22. Per Baron, J.P. at p. 214
23. Article 25 of the 1964 Constitution
24. Sondashi
25. For a brief of this case and those from Note 26 to 36 Sec. Muna Ndulo and Kaye turner, Civil Liberties Cases in Zambia. (Oxford: African Law Reports, 1984).
26. Ibid,
27. Ibid.
28. Ibid.
29. Ibid.
30. Ibid.
31. Ibid.
32. Ibid.
33. Ibid.
34. Ibid.
35. Per Moodley, J. p.
36. Per Baron, D.C.J. p.
37. As quoted by Remmy Mushota, 'Constitutional Framework' in Akashambatwa Mbikisita-Lewanika & Derrick Chitala (eds) Proceedings of the National Conference' on Multi-Party Option at Garden House Hotel Lusaka, 20-21 July, 1990, Zambia, (Lusaka: Zambia Research Foundation 1990) p. 39
38. Ibid. p. 39.

CHAPTER THREE

THE LEADERSHIP CODE

Introduction

The Constitution of Zambia Act, which established a dejure One Party State in Zambia on 13th December 1973 provided for a Leadership Code under Part IV.1 To understand the essence of this Code one should not just look at it in isolation from the entire conceptual frame-work of the One Party constitution. The opening paragraph of the Preamble of the Constitution gives us an insight into the conceptual framework of the One Party State Constitution. It read: "We the people of Zambia, by our representatives assembled in our Parliament, having established a One Party Participatory Democracy under the Philosophy of Humanism."² The relevant concept here is Humanism. Humanism, according to Kaunda was a stage in the historical development of the human society which Zambia as a nation had to deliberately endeavour to reach. Politically, it was a guiding ideology or philosophy which was suppose to influence the thinking of those in leadership. It was opposed to Capitalism which in Kaunda's view was exploitative and created a society of 'haves' and 'have nots'.³ Addressing the National Council on 2nd December 1972, President Kaunda said: "... When a people have been given an opportunity to change but do not, when a people have chosen Humanism but a few choose to follow the line of Capitalism instead, then the Party has the right to take a hard line against them."⁴ Our submission is that this was the conceptual framewoek of the Leadership Code. The provision for the Leadership Code was a necessary legal tool in the realisation of the humanist society,

Having provided the conceptual framework of the Code and the One Party Participatory Democracy let us highlight the structure of the discussion in this Chapter. Firstly, we shall look at the reason for the provision of the Leadership Code in the One Party State Constitution. Secondly, we shall look at the Constitutional

provisions under Part IV which focuses on the Leadership Code. Under this head we look at the provisions for the Leadership Committee; Powers of the Leadership Committee, Consequences of non-compliance with the Code, and the tribunal. Thirdly, we shall look at the Leadership Code or Regulations made in exercise of the powers contained in Article 33 of the Constitution.⁵ Fourthly we shall examine the Leadership Code in Practice. Our concern in this part is to examine whether or not the Code was an effective deterrent for Political leaders. Lastly we shall focus on the repeal of the Constitution of Zambia Act, 1973 and the resort to multi-party democracy in 1991. This change also repealed the Leadership Code.

3.1.0 WHY THE LEADERSHIP CODE

Prior to stating the reasons for the provision of the Leadership Code in the One Party State Constitution, let us define it. According to Article 33 (1) of the Constitution, the Leadership Code is actually Regulations made by the Leadership Committee, through a statutory instrument to apply to the holders of specified offices and their spouses.⁶ What is meant by specified office shall be defined when we look at the Leadership Code itself. Under Article 33 (2)b a spouse was defined as:

any spouse who carries on, either by herself or himself, or in partnership with, or through, any other person, any business, trade, industry, farming or any other gainful occupation (other than employment for salary or wages) and employs for salary, wages or other remuneration one or more persons in connection with such business, trade, industry, farming or occupation, or who has any separate income, exceeding such limit, if any, as may be prescribed by the Leadership Code, from any property or investment, or who owns any such assets as maybe prescribed by that Code.⁷

From the definition of a spouse given above one can see the linkage between Humanism and the role of leader in the one-party set up in the sense that a leader was perceived to play a leading role in the realisation of Humanism. Therefore, it was crucial to

define the scope and extent to which he or she could engage in self enrichment activities which if not controlled may in the final analysis put him or her as a stumbling block in the road to Humanism. The Code was meant to unsettle the existing socio-economic set up which President Kaunda viewed as Capitalist and an inheritance from the Colonial regime. Making this point President Kaunda said, "We have replaced Capitalism with Humanism as a guide to the establishment of a new social and economic order. We have replaced the old foreign system, based on foreign experience and foreign values, with our own brand of Participatory Democracy based on our philosophy of Humanism".⁸

One of the reasons for the formulation of the Leadership Code stems from the realisation that those in political leadership found themselves in positions whereby they could enrich themselves. They could organise themselves to control and own the major economic resources of the country in such a way that they would dominate not only the political sphere but even the economic sphere. Such a scenario would not be compatible with the endeavour to create a classless or egalitarian society. The demand of the philosophy of humanism was equal distribution of national wealth. It is against this background that a legal check had to be put in place which would ensure that those in leadership do not amass wealth at the expense of the rest of the citizenry. The Code was one such legal check to ensure that those who were in leadership have a restraint in amassing wealth. Concurring with us on this point Ngenda also came to the same conclusion on the rationale for the Leadership Code and this is how he put his point across: "It is therefore, against this background that the introduction of the Leadership Code has to be seen. It was not a decision that was made in a vacuum but a culmination and incarnation of the principles of the philosophy of Humanism and the inexorable quest for an Egalitarian Society."⁹

The argument that those in leadership particularly the Emergent African States had a selfish acquisitive tendency probably at the expense of the majority of the people is a plausible one.

In fact it is this tendency which has led to the rise of authoritarianism in the new independent African states since those leaders who came to be exposed to the fruits of political power have developed such an appetite for power in order to continue enjoying the fruits. Alluding to this cardinal point one learned author B.O. Nwabueze wrote, "... in underdeveloped countries power offers the opportunity of a lifetime to rise above the general poverty and squalor that pervades the entire society. It provides a rare opportunity to acquire wealth and prestige, to be able to distribute benefits in the form of jobs, contracts, scholarships and gifts of money and so on to one's relatives and friends. These are very high stakes indeed in a country where money and jobs are scarce."¹⁰

Our submission here is that the mooting out of the Leadership Code was meant to restrain those in leadership from engaging in what Nwabueze has just described above. Whether or not the Code was able to be an effective restraint in that direction is one of the issues which this study shall explore and establish. Our thesis is that the Leadership Code lamentably failed to do so. We shall endeavour to prove this point when we look at the Code in Practice. At this juncture let us look at the administration of the Code as provided in the One Party State Constitution.

3.2.0 ADMINISTRATION OF THE CODE

The administration of the Leadership Code was vested in two organs namely the Leadership Committee and the Tribunal.

3.2.1 The Leadership Committee:

The Committee consisted of five members, all of them appointed by the President. This Committee was given a number of powers which, inter alia, included.

- (i) to make regulations by statutory instrument to apply to the holders of specified offices and their spouses. These regulations would constitute the Leadership Code.¹¹

- (ii) To inquire or authorise any person or body of persons in writing to inquire into any allegation of non-compliance with or breach of the Code.¹²

- (iii) Where the Committee after inquiring established that a holder of specified office had not complied or breached the Code it had the following options:
 - (a) refer the matter to the Tribunal (which shall discuss below) or

 - (b) impose punishment on such a defaulting leader in the form of
 - (i) Censure
 - (ii) suspension from office for a maximum of six months.
 - (iii) forfeiture of the emoluments of the specified office or any other income of the holder of a specified office, in whole or in part, for such a period as it may deem fit.¹³

Under Article 33A, clause 5, once the Leadership Committee has imposed punishment on a leader, the Tribunal had no power to hear and determine such an allegation. In other words, the Leadership committee was another Tribunal whose determination in a particular case could not be referred to another tribunal. The legal status of the Committee in terms of powers and immunities conferred on it by the Inquiries Act. In other words members of the Leadership Committee had the same powers and enjoyed similar immunities as those enjoyed by the Commissioners in the Inquiries Act. How did it the Leadership Committee conduct proceeding?

3.2.2 The Leadership Committee (Inquiry) Regulations

According to statutory instrument no. 89 of 1976 the procedure for conducting an inquiry by the Leadership Committee began with an allegation being addressed to the Secretary-General of the Party who in turn submitted the same to the Leadership Committee.¹⁴ It was a requirement under the regulations that he who alleges had to submit his name, address, signature or thumb-print and particulars of the allegation. The Secretary-General of the Party required to treat such communication as confidential and mark the written allegation as such. The Leadership Committee had power to decide whether or not to conduct an inquiry upon receipt of such communication from the Secretary-General of the Party. Where the Committee decides not to go ahead, the Secretary General of the Party would communicate that decision to the person who made the allegation without giving reasons for the Committee's decision.

A few points of observation here are necessary. Firstly, it is quite clear that the Leadership Committee (inquiry) regulations shrouded its proceedings with a lot of secrecy and confidentiality. Moreover, the arm of the party through the involvement of the Secretary-General of the Party is another dimension which in our view amounted to obscuring dealings which are supposed to project leaders as mirrors of the society. In actual fact, this form of procedure defeats the case of making leaders to the people because the people were not in the light of what was going on behind closed doors. It is our view that this approach made many to perceive the Leadership Committee with a lot of scepticism. As for the leaders

it offered them sanctuary or it became a cocoon in which defaulting leaders could easily recoil and seek refuge. The shield of confidentiality in the proceedings of the Leadership Committee made it accountable to itself only and not to the general public who were 'thirsty' for a 'clean' leadership which Kaunda was talking about when arguing the case for the Leadership Code. The shield of confidence we are referring to here was well articulated by Lord Denning M.R when he said, "No person is permitted to divulge to the world information he has received in confidence, unless he has just cause or excuse for doing so. Even if he comes by it innocently, nevertheless once he gets to know that it was originally given in confidence, he can be restrained from breaking that confidence."¹⁵ He stated this in the case Fraser v Evans (1984) 1 Q. B44,16

The second observation we would like to make is that the Leadership Committee was not accountable to the people. We advance this view on the ground that it only reported its findings to the Secretary-General of Party. When it reached conclusions in a particular inquiry, a report was compiled and submitted to the Secretary-General of the Party. This was in line with Regulation (13) which governed its proceedings. The Secretary-General in turn, under the same regulation, when informing the person who made an allegation of the results of the inquiry, was not compelled to state the reasons for arriving at any result in the inquiry. This means that whatever answer the Secretary-General of the Party would give to the person who made the allegation, it was not questionable. Let us now examine another organ in the

administration or enforcement of the Code; This is the Tribunal.

3.2.3 The Tribunal:

This was created by Article 35 which read thus:

- (1) An allegation that a person has not complied with, or has committed a breach of, the leadership Code shall be heard by a tribunal consisting of a Chairman, to be appointed by the Chief Justice, who is or is qualified to be a judge of the High Court, and two other persons to be appointed by the President.
- (2) Any person argrieved by any determination of such tribunal may appeal therefrom to the Supreme Court.¹⁷

From the foregoing it does appear that the tribunal was equivalent to the High Court in terms of jurisdiction since appeals from it could only go to the Supreme Court instead of the High court. But in order to fully appreciate the role of the tribunal in the enforcement of the Code, it is pertinent to look at The Leadership Code (Tribunal) Rules which were made pursuant to Article 36 of the Constitution. These rules were gazetted under Statutory Instrument No. 90 of 1976.¹⁸ According to these rules the Tribunal comprises the Chairman appointed by the Chief Justice, members appointed by the President, a Secretary appointed by the Chairman, and the Secretary-General of the Party.¹⁹

3.2.4 Proceedings in the Tribunal:

The rules of the tribunal stated that a notice of hearing could only come from the Leadership Committee. In other words the tribunal could only hear matters or cases refered to it by the Leadership Committee. At such hearings the Secretary-General of the Party was required to be present inperson or if not his legal representative. Moreover, any leader alleged to have breached the Code could address the tribunal by way of opening statement. A leader appearing before the Tribunal could call witnesses where

need arose and the Tribunal was also empowered to summon witnesses and administer oaths at such hearings.

The tribunal under rule 8 was required to observe the rules of national justice and could also take notice of any fact which may be judicially noticed by a Court. The proceedings of the Tribunal were to be in public but the tribunal reserved the right to determine whether or not any proceedings or point thereof shall be in 'camera'.

Under the rules the tribunal upon reaching a determination was required to put it in writing and stating the reasons for the determination. Moreover, the tribunal was also required to furnish a statement of reasons for its findings. Any party to the proceedings could if he so wished request the tribunal to furnish him with a copy of the determination provided the request was made within fourteen days of the pronouncement of the determination. It must be recalled that, as we mentioned earlier, the right of appeal by any person aggrieved by any determination of the Tribunal to the Supreme Court was given under Article 35(2) of the Constitution.²⁰

Having dealt with the Leadership Committee (Inquiry) Regulations and The Leadership Code (Subunal) Rules, let us now focus on The Leadership Code itself as Regulations made by the Leadership Committee under Article 33 of the Constitution. These regulations actually constituted the Leadership Code itself. A general overview of this Code actually shows that it was a Code of 'don'ts' that a leader was suppose to know and follow.

3.3.0 The Leadership Code

In order to understand the rules under the Code and their practical effect we should begin defining a leader. According to Statutory Instrument number 88 of 1976, a leader was defined as 'a person holding a specified office, whether on a temporary, probationary or permanent basis, but does not include any person employed on the authority of an employment persuit issued under the Immigration and Deportation Act.'²¹ This means that expatriate employees were excluded. The above definition still leaves out a

question unanswered namely what is a specified office? To answer this question the first schedule, regulation 2 of the Code itemized holders of specified offices to include:

all members or persons in the service of

- (a) the Party;
- (b) the Government;
- (c) any local authority;
- (d) any corporation, body or board, including an institution of higher learning, in which the Party or the Government has a majority or controlling interest;
- (e) any commission established by or under any law;
- (f) the Zambia Congress of Trade Unions or any registered Trade Union; in receipt of an annual salary of K2,500 or more.²²

From the above definition it is crystal clear that those who escaped the net were those in the private sector and informal sector. Those in the private sector, given Zambia's monopolistic and commandist economic set up then, constituted a very insignificant minority group. The majority were therefore affected and embraced by the Code. As we shall point out in our critique below, this 'all embracing approach' of the Code was also a source of its weakness.

As a general rule the Code did not allow a leader to receive income other than his emoluments. A leader was not allowed to engage in any business. However, there were some exceptions to this rule. Such exempted income included pensions gratuities, annuities, proceeds from insurance policies, dividends on Government stock, interest on money deposited within Zambia in a bank or building society, payments in respect of the publications of works, rent of any dwelling house gains or benefits from Land held or occupied by him and so on.²³ In terms of landownership a leader was not allowed to own land in excess of (10) hectares on which his dwelling house is situated or intends to build his dwelling house. However, under regulation 5, the President was empowered to exempt a leader where the leader stays on land reaching 10 hectares or wants to grant tenancy. Where such

Presidential exemption was granted, the leader in question would not be paid his salary of the specified office.²⁴

The Code also endeavoured to address the issue of corruption and abuse of office. Under regulation 6 the Code stated: "A leader shall not directly or indirectly solicit or accept any property or other material benefit for himself or any other person on account of anything done, to be done or omitted to be done by him in the discharge of his duties, nor shall any leader give or accept any gifts, save bone fide gifts."²⁵ Under regulation 7 the Code addressed the issue of abuse of office and forbade a leader to do any arbitrary act prejudicial to the rights of any other person.²⁶

Under regulation,⁹ a leader was required to declare his Assets and Liabilities upon assuming the duties of the specified office and so was the spouse. Such a declaration was to be submitted to the Secretary-General of the Party.

In a nutshell, the essence of the Code was to disallow leaders from engaging themselves in business and taking advantage of their privileged position for self enrichment resulting in the creation of a society of 'haves' and 'have nots'. Since the One Party Constitution had declared Humanism as the guiding philosophy, then leaders were expected to be setting an outstanding example for the 'masses' or the people in general. The Leadership Code therefore was perceived to be the tool to use to ensure that the leaders tore the party line. The Code was perceived to be a restraint against capitalist inclinations and catalytic force towards the realization of the Egalitarian Society desired by the One Party Participatory Democracy System. The fundamental question however, is how did the Code perform in Practice.

3.3.1 The Leadership Code in Practice:

The performance of the Code in practice was an absolute disaster. Though, initially it was a welcome idea, according to our field information, in due course it became a piece of legislation which merely gathered dust. The failure of the Code

was at three levels namely, its legal provisions, its implementation and above all its utopian philosophical outlook as embedded in the decadent One Party Participatory Democracy. We shall therefore critically examine the issue of the Code in Practice at the three levels we have just mentioned.

(a) Provisions in the Code

In one of our field interviews we talked to a former Provincial Political Secretary Mr. Alexander Kwibisa at UNIP headquarters and here is what he said about the Code:

"The leadership Code though it had good intensions was not a success story because it had many weaknesses. The leaders were not ready to enforce it against themselves. I mean those who were in top party and government leadership. Some of them tried their best to derail me when I embarked on the exercise of writting a book on 'Who owns what among the Zambian leaders'. I was being portrayed as an enemy by some of the leaders."²⁷

The problem that Kwibisa was alluding to in fact were embedded in the provisions of the Code itself. Firstly, if we take the case of the provisions on the Leadership Committee we find that this Committee was made to stand as judge in its own cases. The Committee, under article 33(1) was empowered to make the law, at the same time under article 33A(1) it was made to inquire into breaches of the law it has made and finally under Article 33A(4) the Committee was also empowered to judge whether or not a leader has broken the law and mete out punishment. This provision and procedure in our view is in contradiction with the rules of natural justice. In the case R v Sunderhand.²⁸ The Court of appeal set aside an order made by the borough justices on the ground that they had previously, as councillors, spoken in the Council on the matter out of which the case arose.²⁹ In another case Leeson v G.M.C. (1989) 43 Ch. D.³⁶⁶ it was also held that it is contrary to natural justice for the judge to be accuser or presecutor or even for a decision to be reached in the presence of the prosecutor.³⁰ The point we are making here is that the leadership Committee had its

'hands' and 'legs' tied in that on the basis of this provisojn whatever decision it arrived at could in actual fact be declared null and void for its serious infringement of the rules of natural justice.

The second criticism we have against the Code is on the Leadership Tribunal. The Tribunal was ineffective in that it could only hear matters refered to it by the Leadership Committee. The Committee also could only deal with cases refered to it by the Secretary-General of the Party. Such a bureaucratic web was definately intertwined with inefficiency.

The third criticism against the Code in terms of its provisions is on the element of secrecy and condifentiality which it embodied. Under regualtion 10 of the Code, for instance, the declarations of assets and liabilities of leaders were not easily available to public inspection. This means that practically it was not possible for a common man to actually access the records and see whether or not a leader has made a declaration and if so, whether the declaration was true or not. It was easy under such provisions of the law, for the ruling elite to protect itself. Regulation 10 stated:

- (1) Every declaration made under this Code shall be secret and, save as provided under this regulation, no person shall be entitled to have sight of or inspect such declaration.
- (2) Any person may apply to the Secretary-General of the Party for permission to inspect any declarations made under this Code.
- (4) The Secretary-General of the Party may, in his discretion, grant or refuse permission to see or inspect any declaration and shall communicate his decision to the applicant in writting but shall not be obliged to assign any reason therefor.³¹

From the foregoing it is clear why perhaps in the 17 years of its existence no single leader was prosecuted under the Tribunal on the ground that such a leader has either breached or not complied with the Leadership Code. This problem becomes clearer when we look at the implementation of the Code.

In terms of compliance with the Code evidence available to us does suggest that it only affected those who were appointed into specified offices of the President. Even among such leaders, it was not easy to know whether or not a leader has complied with the Code given the confidentiality aspect that was attached to such declarations. However, the author was able to confirm from the Former Prime Minister, Mr. Daniel Lisulo, during the One Party rule and Former Member of Central Committee Mr. Enock Kavindele that they did comply with the Leadership Code under Regulation (5) by opting not to get a salary for their specified offices.³⁶ Their reasons for this was that they did not want to lose their businesses and assets as required in the Code.

Generally, the Leadership Code proved in practice to be a piece of legislation which greatly desired changes if it were to achieve its intended goals. It lacked relevance or complementary links with other Law enforcement Wings such as the Anti-Corruption Commission (A.C.C). For instance, where the Anti-Corruption Commission came across a case of a defaulting leader it could not directly refer such a case to the Leadership Tribunal. The Anti-Corruption Commission did come across such cases which were in breach of the Leadership Code. In 1982, the A.C.C made the following report:

Investigation Report 10/82: The General Manager of a parastatal Company and Senior Executive were found to be proprietors of a private company which hired a Truck to the parastatal Company at K100 per day. Both officials also owned houses which they rented to the parastatal company. A disciplinary inquiry has been ordered into the conduct of the General Manager and Senior Executive and a report has also been made to the Leadership Committee.³⁷

In 1983 the AAC also made a report as follows:

An officer of the Zambia Police was found to be in possession of assets disproportionate to his official emoluments, It was established that although the assets had not been acquired through any corrupt practices, the officer was engaged in business activities apparently in contravention of the Leadership Code.³⁸

Reports such as the two cited above were actually not acted upon by the Leadershipship Committee. The bottom line however, seems to be that they ended at the level of being referred to the Leadership Committee. Neither could the ACC follow up such cases since they had no such power. In short the point we are labouring to make here is that the Code was a failure because the rewards for non-compliance were too great.

(C) **ITS UTOPIAN OUTLOOK:**

The Code did set out the rules of 'don'ts' without necessarily providing an alternative for such leaders. This point was well acknowledged by President Kaunda himself in 1985 when he addressed the National Council where he said: "It should be said at this point in time that we all accept the fact that without an effective leadership Code, the achievement of an egalitarian society, which means creating a socialist society that should eventually lead us to a Humanist one becomes a pipedream. On the other hand, it should be said equally forcefully that without social security for the leadership, as indeed for all our people, the law demanding that leaders behave in a certain way in so far as accumulation of wealth is concerned, literally becomes immoral and primitive."39

From Kaunda's admission it is clear that the Leadership Code was merely a political weapon for those in top political leadership to suppress those who could through their economic muscle challenge the authoritarianism of One Party State. The right to property ownership was reduced to a mere privilege to be given and withdrawn at the whims and caprices of the so called One Party Participatory Democracy leaders. The Leadership Code as a legal instrument neither made the leader transparent in the eyes of the ruled nor make him accountable to the people since the people could not easily access records of his declared assets and liabilities. It does appear that both from the legal provisions of the Code and

the general party supremacy under the One Party State Constitution, such declarations of assets and liabilities by leaders were strongly guarded secrets.

In conclusion, it is important to note that the Leadership Code as a legal weapon meant to be used in the creation of an egalitarian society was unsuccessful and not effective because not only was it embodied with serious legal contradictions but also lacked the general consent and support of the leaders it was meant to apply to. It cast its net so wide that it was not easy to pull it ashore with fish in it. We therefore, concur with Seidman who predicted, at the time the Code was in force, that, "The Zambian Code seems on the whole most unlikely to emerge from the pages of the gazettee to change the behaviour of the elites. The rewards for non-compliance are too great, the avenue for successful avoidance or evasion too open." 40 Small wonder therefore, that the Leadership Code did not withstand the democratic change of 1991 which ushered in a new Constitution for the Republic of Zambia. What is interesting however, is the fact that under the 1991 Constitution there was provision for a Code of Conduct for Ministers and Deputy Ministers under article 52 of the Constitution and a Code of Conduct for Members of the National Assembly under Article 77 of the Constitution.41 It is in pursuit of the legislation under these two articles (ie. 71 and 52) that our study in the next Chapter shall focus on. The animus being to make a comparison with the Leadership Code.

NOTES:

1. The Constitution of Zambia Act, Chapter 1, p. 39
2. Ibid. p. 15
3. The Leadership Code, (Lusaka: Zambia Information Service, 1972) p. 6.
4. Ibid p. 9.
5. Supra 1, p. 39
6. See Article 33(1) and (2), Supra 1, p. 39.
7. See Ibid. p. 39
8. Supra 3, p. 6
9. Sipalo, Ngenda, The Leadership Code Obligatory Essay. (Lusaka: The University of Zambia, 1974/75. p. 4.
10. B.O. Nwabueze, Constitutionalism in the Emergent States, (London: C. Hurst a Company, 1973) p. 161.
11. Supra 1, p. 40.
12. Supra 1, p. 40, See Article 33 A(1)
13. Supra 1, p. 40, See Article 33A(4).
14. Supra 1, p. 142, See Regulation 5(1-3).
15. See Fraser v Evans (1984) 1-Q.B. 44.
16. Ibid.
17. Supra 1, p. 146, See Regulation (4)
18. Supra 1, pp. 146-146/2, See Regulation 5(2 to 9).
19. Ibid. p. 146/2; Regulation 5(4)
20. See Article 35 of the Constitution of Zambia, Act, p. 41
21. The Constitution of Zambia Act, p. 139. See First Schedule.
22. Ibid.
23. Statutory Instrument No. 88 of 1976. pp. 1-2.
24. Ibid, p. 2

25. Ibid, p. 2.
26. Ibid, p. 2
27. Interview with Mr. A. Kwibisa, Former Provincial Political Secretary in UNIP, on 27th July, 1995, Lusaka.
28. See R v Sunderland Justices (1901) 2 K.B. 357.
29. Ibid.
30. See Season v G.M.C. (1889) 43 Ch. D. 366
31. Statutory Instrument No. 88 of 1976. p. 2 See Regulation (10).
32. K.D. Kaunda, Humanism Part I (Lusaka: Government Printer, 1967).
33. K.D. Kaunda, Take up the Challenge. (Lusaka: Government Printer, 1970).
34. See Times of Zambia, 10th November, 1970.
35. See Report of the National Council, June, 1973: held at Mulungushi Hall, Lusaka, Zambia.
36. Interview with Mr. D. Lisulo Former Prime Minister, Lusaka.
37. Anti-Corruption Commission (A.C.C.) Annual Report, 1982.
38. Anti-Corruption Commission Annual Report, 1983.
39. K.D. Kaunda's Address to the UNIP National Council Mulungushi Hall, Lusaka, 1985.
40. R.B. Seidman, Law and Development: A Theory of Law as an Instrument of Social Change.
41. See Articles 71 and 52 of The 1991 Constitution of Zambia Act.

CHAPTER FOUR

THE PARLIAMENTARY AND MINISTERIAL CODE OF CONDUCT ACT, 1994.

Introduction:

We shall devote this Chapter to analysing the Parliamentary and Ministerial Code Act of 1994 herein after the "Code of Conduct"). This Code of Conduct was enacted by the Zambian Parliament in 1994 in pursuance to Articles 71 and 52 of the Constitution of Zambia Act, 1991. This Constitution repealed the Constitution of Zambia Act, 1973. Therefore, the repeal of the 1973 Act also affected the Leadership Code. A clear distinction between these two Codes is that the Leadership Code was part of the 1973 One Party State Constitution while the Parliamentary and Ministerial Code of Conduct Act, 1994 is a creature of the 1991 Constitution of Zambia. Our primary concern therefore is to compare these two Codes bearing in mind the fact that the 1994 Code operates in a multi-party Constitutional set up.

The discussion in this Chapter is structured as follows: Firstly, we shall briefly look into the demise of the One Party State. Secondly we examine the objectives of the Code of Conduct Act, 1994 in the context of the Multi-Party State Constitution of 1991. It is important to examine this issue in that context if we are to do justice to the legal issues the Code of Conduct raises. Thirdly, we shall examine the administration and enforcement of the Code of Conduct. It is in this section of the discussion that the 'test cases' under the Code of Conduct Act, 1994 shall be looked at. The 'test cases' we are referring to here are those cases which have so far been raised under this particular legislation. Lastly, we shall make comparative analysis of the Leadership Code and the Parliamentary and Ministerial Code of Conduct Act, 1994.

4.1 Reasons for the recourse to Multi-partism in Zambia.

Zambia, once again became a multiparty state on the 24th August 1991 when the 1991 Constitution of the Republic of Zambia

was assented to. This effectively revoked the Constitution of Zambia Act, 1973. The 1991 Constitution of Zambia Act under Article 21(1) restored the individual's right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade Union or other association for the protection of his interests. 1 The restoration of the right to form or belong to any political party of ones choice effectively nailed to death the One Party Participatory Democracy. This historic and fundamental constitutional change was as a result of a number of factors which mulitated against President Kaunda's 17 years of One Party rule.

Firstly, a one party system is by its very nature undemocratic and Kaunda's One Party Participatory Democracy was not devoid of undemocratic practice. From the onset, the One Party State Constitution of 1973 lacked legitimacy in the eyes of the people or the governed because they were denied the opportunity to express their views as to whether or not they wanted a One Party State. 2

We indicated in Chapter 2 of this study how the people including the then African National Congress, through its leader Mr. H. Nkumbula made a legal challenge against the introduction of the party state. The 1973 Constitution was not subjected to a plebiscite, hence it was more of an imposition on the people by UNIP. The people had no stake in it, hence they did not percieve it as their own to nurture. That being the case, therefore, our argument is that this lack of legitimacy in the eyes of the people was more of a 'time bomb' which would explode in the hands of its maker. To this extent we concur with Professor Nwabueze's view that;

a major cause of collapse of Constitutional government in many of new states was the general lack of respect for the constitution among the populace and even among the politicians themselves. The state itself is alien, if also a beneficial creation; its existence is characterised by a certain artificiality in the eyes of the people and it is remote from their lives and thought.3

Secondly, Democracy as defined by Abraham Lincoln is a government of the people by the people for the people. This was not adhered to in the Zambian one party system. The Zambian One Party State was therefore not based on the consent of the governed. It had in place many undemocratic practices. For instance, it was not democratic to deny the people of Zambia the right to fully participate in their own governance on account of not being members of the only legal party UNIP. People who were not members of the Party, UNIP, could not vie for political office at both local government level and Parliamentary level. Under Article 67 of the 1973 Constitution of Zambia, a person who was not a member of UNIP could not qualify to be elected or nominated as a member of the National Assembly.⁴ Moreover, under Article 71(2) b, a member of the National Assembly would vacate his seat in the Assembly once he ceases to be a member of UNIP.⁵ Such Constitutional provisions amounted to an infringement on the people's democratic right to choose from a variety of political views and organisations since everything was centred on one party, UNIP. Unashamedly, President Kaunda could publicly declare, "No one in Zambia can operate outside UNIP. No one can do something outside UNIP because whatever is happening in the country is a result of UNIP which brought independence, peace and stability and gave an opportunity to some people to make money."⁶

These utterances by President Kaunda demonstrate the extent to which the Party Supremacy had gone in its endeavour to dominate and dictate the affairs of the people.

Thirdly, another undemocratic practice of the one party system was with regard to the election of the President. According to the 1973 constitution only one Presidential candidate was allowed. Article 38(3) stated: "The members of the General Conference shall elect a person to be the President of the Party, and such person shall be the sole candidate in an election to the office of President".⁷ This provision to say the least was a stifle of democracy in the sense that the electorates who included non-UNIP members were presented with no choice at all. Chipimo's critique

of this provision is apt and instructive It goes as follows:

The process of electing our President reaches farcial proportions when it is realised that by a quirk of rare ingenuity a largely illiterate electorate has been asked to choose a much publicised national hero against the non-existent opposition from a snake, a hyena, a rabbit and goodness knows what next. Not only are the odds heavily laid against the bestial opponent but the poor creature has no alternative program to put forward, no spokesman, no radio, no television, no newspaper coverage and no State paid gents and Parliamentary aspirants to campaign for him. A candidate who would lose in such a contest would be well advised to resign life itself.⁸

Fourthly, the relationship between the one party state and the protection of fundamental rights and freedoms of the individual in practice proved to be a very 'unholy marriage'. The Kaunda one party rule proved to be a restraint in the enjoyment of the fundamental rights and freedoms. For instance, the freedom from Discrimination on grounds of political opinion, freedom of Expression, freedom of Assembly and Association could not be freely enjoyed by the people under the One Party Systems.⁹ In the case of Chilufya v City Council of Kitwe,¹⁰ Mallon Ag.J. held that it was unconstitutional to discriminate on grounds of political affiliation or oponion but yet during one party rule non-UNIP members were discriminated against for holding views different from those of UNIP. The UNIP political leadership was intolerent to dissenting views and every member was expected to tore-the Party line. A case in point here is the statement by Mr. fines Bulawayo, then Lusaka Province Member of Central Committee who declared "Aspiring Members of Parliament will be prevented from campaigning unless they first canvas votes for President Kaunda"¹¹ Commenting on the freedom of expression during the One Party State, one learned scholar R, Mushota said, "This is yet another fundamental freedom that is bound to be impinged upon by the introduction of a De jure One Party State. And yet it is one of the most significant freedoms in the process

of establishing and sustaining a free and democratic society."12 The point we have endeavoured to establish here is that the One Party rule in Zambia was incompatible with the protection and enjoyment of some of the fundamental rights and freedoms as purported to have been given in the 1973 Constitution. In the final analysis, therefore, this led to rampant violation of personal liberty, a trend which perhaps more than anything else brought the One Party State into confrontation and being viewed with ridicule by the people. The end result was the people's rise, under the umbrella of the Movement for Multi-party Democracy headed by Fredrick Chiluba, against one party rule in December 1990. This coupled with the International Community's linkage of AID to democratic governance was too much pressure for Kaunda and UNIP to bear.13 Hence, through the ballot Zambia's one party rule Chapter was closed.

4.2 INTRODUCTION OF CODE OF CONDUCT

In the preceding section we deliberately focused on the issue of why one party rule came to an end in Zambia in order to provide a perspective from which the Parliamentary and Ministerial Code of Conduct Act, should be viewed. The Code of Conduct Act came into being pursuant to provisions in the 1991 Constitution of Zambia that ushered in Multi-Party Democracy. We hold the view that one can only fully appreciate the significance and relevance of the Code of Conduct Act in that context. At this juncture we may pose a question; what are the objectives of the Code of Conduct Act?

4.2.1 Objectives of the Code

The Code of Conduct, under study, has the following objectives. First it provides a Code of Conduct for Ministers and Deputy Ministers, pursuant to article 52 of the 1991 Constitution of Zambia 14 Secondly, it provides a Code of Conduct for Members of the National Assembly, pursuant to article 71 of the 1991 Constitution of Zambia. In a nutshell the Code covers only two political offices namely that of Minister and Member of National

Assembly. The President is not covered by this Code of Conduct. In comparison to the Leadership Code one can safely say, that the Code of Conduct is narrower in its scope and the political offices it covers; Civil Servants are excluded. The third and most important objective of this Code of Conduct is to provide a legal frame work through which political leaders namely Ministers and Members of Parliament can be seen to be transparent in the eyes of the public as regards their Assets, liabilities, pecuniary interest in government contracts and income. We hold the view that this last objective instrumental in influencing the quick legislation of the Parliamentary and Ministerial Code of Conduct Act of 1994.

Infact, political events prior to its legislation can be said to have accelerated the process. The political events we are referring to here are the resignations of Ministers from the Movement for Multi-party Democracy government. Mr. Akashambatwa Mbikusita-Lewanika quit his position as Minister of Science and Technology in 1993. The Late Mr. Baldwin Nkumbula also quit as Minister of Youth, Sport and Child Development in 1993. Giving reasons for their move both of them charged that there was a lot of corruption in government and that the government was sliding into undemocratic practice.¹⁶ Another former Minister of Education the Late Authur Wina, reacting to their dismissal from their Ministerial position by President Chiluba in April 1993 said, "The Movement for Multi-party Democracy government is not transparent otherwise President Chiluba would have told us why he fired us. He should explain in detail why he took this action when rotten eggs are still there who should be removed. Corruption is rife in the M.M.D government, with talk of reports of Ministers awarding contracts to friends, Ministers engaging in drug trafficking, awarding each other illegal tenders, and using their influences to rescue bankrupt Banks."¹⁷ Certainly, given such serious allegations any prudent government would, devise a mechanism of making itself transparent and secure. We contend that it is in light of this background that the Code of Conduct Act was brought

on the scene. Concurring with this argument, one Economist Gilbert Mudenda stated, "It has been said that Kaunda's Leadership Code was wrong in that, it encouraged politicians to be economically irresponsible and totally dependent on the state. What the MMD government is badly in need of is not a leadership code, however, modified, but rather a moral Code which condemns corruption and inculcates a deep sense of service for those who wish to be in public office. Those who want to make money should be encouraged to go or remain in business."¹⁸ Let us now focus on the salient features of the Code of Conduct Act.

4.2.2 PROVISIONS APPLICABLE TO BOTH MINISTERS AND MEMBERS OF PARLIAMENT

Part II of the Code of conduct Act makes provisions that apply to Ministers, Deputy Ministers and members of the National Assembly. Pursuant to Article 71 of the constitution, the Code under Section 3(1) states that a breach of this part of the Code will result in the vacation of the seat of the member.¹⁹ Under Section 4 of the Code, Circumstances are outlined under which a member shall be presumed to have breached the Code. The term member here means any Member of the National Assembly (including a person holding Ministerial office). A member shall be deemed to have breached the Code where

- (a) he acquires dishonestly or improperly any pecuniary advantage,
- (b) he improperly uses or benefits from information which he obtains in the course of his official duties and which is not generally available to the public;
- (c) discloses any official information to unauthorised persons;
- (d) exerts any improper influence in the appointment, promotion, disciplining or removal of a public officer;
- (e) directly or indirectly converting Government property for personal or any other unauthorised use, or

- (f) **soliciting or accepting transfers of economic benefit, other than:**
- (i) **benefits of nominal value, including customary hospitality and token gifts;**
 - (ii) **gifts from close family members; or**
 - (iii) **transfers pursuant to an enforceable property right of the Member or pursuant to a contract for which full value is given.²⁰**

The mischief which Section 4 of the code seems to prohibit is that of corruption and abuse of office. However, we have few observations to make as regards the exceptions to the general rule, created under Section 4 (e) (i) and (ii). The first exception refers to benefit of nominal value, including customary hospitality. The Act does not define what is meant by nominal value and what customary hospitality is. In so doing over view is that the Act merely creates an absurdity under which culprits could be shielded.²¹ At this point in time, Zambia is a complex mixture of cultures; African, European, American, Asian and so on. Therefore, this makes it even more difficult to understand what is meant by customary hospitality. Under the second exception, the Act refers to gifts from close family members. In the Zambian situation where extended family is more of a norm than an exception, it becomes difficult to draw a boundary between what constitutes close family members and extended family members. In other words, the Act should specify what constitutes close family members.

4.2.3 Contracts with the Government

The Code of Conduct Act does not preclude a member from contracting with the Government either as a member in a firm or body corporate. However, it prohibits a member from speaking in the National Assembly, or in a Committee thereof, on a matter in which he has a direct pecunriary interest.²² He can only do so if he has disclosed the nature of his interest to the National Assembly or Committee thereof.

It is further provided that where a member has an interest in an contract that is made or is proposed to be made by the government, then he should make a declaration of the nature and extent of his interest by writing to the Chief Justice.²³ The reason for this declaration is that member's contractual interests should not be cloaked in secrecy. They should be known by members of the public who are interested to know. We hold the view that if a member was prohibited from entering into contracts with the government, such a provision would amount to discrimination against a member on grounds of political office. Hence, it is sufficient for a member to be allowed to only declare his interest. But the question is, what amounts to an interest?

Interest, according to the Act is where a member:

- (a) would derive any material benefit whether direct or indirect.
- (b) has a material interest in a firm or body corporate which is a party to the contract.
- (c) holds debentures of the body corporate even if he holds shares in the body corporate with a total market value less than his annual emoluments as a member of the National Assembly.²⁴

Failure to declare interest or making a false declaration is construed as a breach of the Code of Conduct.²⁵ What we have highlighted are the basic provisions applicable to all members of the National Assembly. One may ask what was the position as regards those in Ministerial office?

4.3.0 PROVISIONS APPLICABLE TO MINISTERS AND DEPUTY MINISTERS

Sections 8,9 and 10 of the Act make provisions applicable to Ministers and Deputy Ministers.²⁶ Basically, the provision relating to Ministers and Deputy Ministers are two-fold. The first relate to Collective responsibility of Ministers. The second relate to the Annual Declarations of Assets, liabilities and income. Let us now focus on them in some detail.

4.3.1 The Collective Responsibility of Ministers

Under the Code a person holding a Ministerial office is prohibited, among other things, from;

- (a) publicly contradicting or disassociating himself from any policy adopted by Cabinet.
- (b) issuing public statements criticising another person holding Ministerial office; or
- (c) making unauthorised disclosures of Cabinet discussions, decisions or documents.²⁷

The principle of collective responsibility was deliberately fused in the Code in order to present a United front among members of Cabinet. Prior to the existence of the Code it was common for Ministers to contradict each other via public statements on matters of government policy.²⁸ Even the portfolio of Government spokesman was non-existent. However, since the coming into force of the Code such contradictions, if any, are rare.²⁹ The portfolio of Government spokesman is now in existence and it is designated to the Minister of Information and Broad Casting.³⁰

Moreover, in a multi-party system the principle of collective responsibility becomes a necessity because the other political parties competing for power can easily capitalise on the divisions in the party in power. Therefore, it is incumbent upon the party in power to present a united front that is credible in the eyes of the public. We should hasten to state that this principle is not peculiar to Zambia. In the British Constitution, for example, it is an acknowledged fact and practice.³¹

4.3.2 THE ANNUAL DECLARATION OF ASSETS, LIABILITIES, AND INCOME

The Code of Conduct does compel, Ministers and the Deputy Ministers to make annual declarations of their Assets, liabilities and income by submitting such a declaration to the Chief Justice.³²

In fact, Section (10) includes even the Speaker or Deputy Speaker as officers to make declarations.

The rationale, in our view, for this annual declarations of Assets, liabilities and income is to enable the public to look beyond a Ministerial office and see the person in that portfolio. The public is entitled in our view to know the true picture of those in political power. To illustrate this point, one would give an example of the lifting of the veil of incorporation' in company law.³³ This is where the court would go beyond corporate personality and focus on the individual members constituting the company. In the same vein, the public should be able to lift the veil of Ministerial office and see the person in that portfolio. We further hold the view that requiring Ministers to make such annual declaration is a justifiable requirement because it ultimately shields those who make honest declarations. The public on the other is at liberty to challenge their should them make false declarations.

What we have mentioned so far as regards provisions relating to Members of the National Assembly, Ministers and Deputy Ministeres would be in a vacuum without looking at the enforcement and administration of this Code of Conduct.

4.4.0 THE ENFORCEMENT AND ADMINISTRATION OF THE CODE

The enforcement and administration of this Code seem to hinge on the Chief Justice and the Tribunal - as created under this Code of Conduct.

4.4.1 The Chief Justice:

The Chief Justice is given a number of responsibilities which, INTER ALIA, include:

- (i) receiving annual declarations by Ministers and Deputy Ministers' and registering the same.³⁴
- (ii) notifying the President and the Speaker of the National Assembly of an allegation of breach of Code, appointing a tribunal to investigate the allegation and report its findings to the President.³⁵

- I. (iii) receiving complaints from any person alleging that a member of the National Assembly has breached the Code of conduct and appointing a tribunal to investigate the allegation.³⁶

From the foregoing it is clear that the Chief Justice is also a key player in the enforcement of the Code of Conduct.

II.III.A.4.4.2 The Tribunal:

Under Section (14) a tribunal shall consist of 3 persons appointed by the Chief Justice. Such persons should hold or have held the office of Judge of the Supreme Court or of the High Court.³⁷ The Chief Justice is also empowered to appoint the chairman of such a tribunal from among those three persons.³⁸ The Act gives a time limit of 45 days within which the tribunal should complete its inquiry and submit a report to the President.³⁹

4.4.3 Powers of Tribunal

The Act empowers the tribunal, once constituted, to engage the services of technical advisers or other experts as it deems fit for the proper conduct of the inquiry.⁴⁰ It can also request for assistance from investigative organs including Police, the Anti-Corruption Commission and the Commission for Investigations. At the end of its inquiry the tribunal is at liberty to make recommendations in relation to administrative actions, criminal prosecutions or otherwise as it thinks fit.⁴¹

What we have outlined are the basic provisions on the powers of the Tribunal. But at this juncture we should refer to 'The Report of Tribunal Number 1 of 1995' which was constituted pursuant to Section 13 of the Code of Conduct Act, so that we have a flavour of its Practice.⁴² This was the first Tribunal to be constituted since the enactment of the Code of Conduct Act. It consisted of three members namely: The Hon. Mr. Justice Ernest L. Sakala - Chairman, The Hon. Mr. Justice David M. Lewanika Member, and The Hon. Mrs. Justice Ireen M.C. Mambilima - Member. This tribunal considered two complaints which we now refer to briefly.

4.4.4 **Tribunal Complaint No. 1 of 1995:**

(i) **Nature of the Complaint:**

The complaint was in the matter of Section 13 of The Parliamentary and Ministerial Code of Conduct of 1994 and in the matter between Dr. Guy Lindsay Scott complainant and Stewart Security Services Ltd (T/A Zambia Crime News) - Respondents. The issue was that the publication contained in the Respondent's Newspaper, volume 1, issue 39 for the period 21-27th February, 1995 entitled "Guy Scott in US\$ 1.5m RIP OFF" breached Section 14(d) of the Parliamentary and Ministerial Code of Conduct Act of 1994.43

(ii) **The Article Complained Of:**

"Former Agriculture Minister Dr. Guy Scott and Lint Company of Zambia General manager Brain Mulala allegedly shared over US \$ 1.5m donated for Lint Development.

According to Crime News investigatins, a Scandivanian donor country donated the money to Lint Company but the two shared the money in London.

Sources at the firm including a former union steward, confirmed the fraud which they said was discovered by an Internal Auditor who has since been promoted to Financial Manager. "The Internal Auditor sent the report to the Union Shop Steward by post, a copy of which was unsuspectingly taken to the then Agriculture Minister Dr. Guy Scott", the sources said,44

Anyhow for lack of space we shall not reproduce the entire article here. But the point has been made mainly, that an allegation was made against Dr. Guy Scott. Therefore the complaint was referred to the Tribunal.

(iii) **Finding of the Tribunal**

The Tribunal established that "on the totality of the evidence put before it and in particular on the admission on oath by Mr. Elias Jack Kamanga, one of the authors of the article, that the report was erroneous, the tribunal was satisfied the the publication was false and malicious."45

IV.4.4.5 **Tribunal Complaint No.2 1995**

(i) **Nature of the complaint:**

The second complaint was in the matter of Section 13 of The Parliamentary and Ministerial Code of Conduct Act No. 35 of 1994 and in the matter between Kangwa Nsuluka - Complainant and Stewart Security Services Ltd (T/A Crime News) - Respondent. The issue was the publication contained in the respondent's newspaper volume 1, issue 35 for the period 23rd to 30th January 1995 entitled "Nsuluka attempts smuggling mealie meal - Police" was false. 46

(ii) **Article Complained Of:**

Again we shall not reproduce the whole article here but we shall only refer to its gist. The article read, "The two trucks impounded by Police in Chingola three weeks ago allegedly belonged to the outspoken Copperbelt Deputy Minister Kangwa Nsuluka who was trying to export Maize to Zaire. According to the Police in Chingola, Mr. Nsuluka who had been agitating for the ban on mealie meal exports working with an unnamed bogus investor, have been smuggling mealie meal out of the country"47

Therefore, Mr. Nsuluka lodged the complaint arguing that the article was false, malicious and frivolous

(iii) **The finding of the Tribunal**

The tribunal established that from the evidence adduced it was satisfied that the publication in issue was frivolous and malicious. Hence, it advised that the complainant was at liberty to institute legal proceedings against the Respondent.48

4.4.6: **Significance of Tribunal Number 1 of 1995.**

The appointment of Tribunal Number 1 of 1995 is significant in a number of ways. First, it marks the enforcement of some of the provisions in the Code of Conduct. The nature of complaints are significant in that the findings of the Tribunal set a warning and standard for the exercise of freedom of the press in particular for those in the Print-Media. It is a challenge to those who perceive

leaders as easy targets for rumours and speculations. Whereas it is an accepted practice to criticize the leaders in government and our members of Parliament but to fabricate stories against them, such as in the instant case, is not in our view, a necessary tenet of democracy. To this extent, therefore, we concur with section 17 of the Code of Conduct Act, 1994 which imposes a penalty of a term of imprisonment not exceeding one year.

Secondly, the appointment of Tribunal Number 1 of 1995 is significant in highlighting some of the administrative and logistical problems in the operation of a tribunal set up under the Code of Conduct Act. In our research we talked to Mr. Mainza, who was Secretary of Tribunal Number 1 of 1995. He did point out to us that the Tribunal did face a lot of problems such as lack of transport, lack of stationary, and even non-availability of money to the necessary expenses. This is a challenge to the government which is supposed to ensure that Section 15 of the Code of Conduct is followed.¹⁸ Section 15 provides that any fees remuneratin or expenses payable in respect of a tribunal under this Act shall be paid out of moneys appropriated by Parliament for that purpose.

From what we have discussed in this Chapter one can draw the conclusion that the Code of Conduct Act is substantially different from the Leadership Code. There are differences in scope, content and Context. However, we shall discuss this aspect in the conclusion of this study. For now suffice to say that the Code of Conduct Act does induce a sense of high moral integrity among Ministers and Members of Parliament. They are made to be transparent by declaring their Assests, liabilities, income and interests in Government contracts.

NOTES

1. The Constitution of Zambia Act, 1991 p. 30.
2. See Sondashi L.S., Zambia's Single Party System: The Emergence of Presidentialism and Democratic Responses Ph.D. Thesis: Warwick: University of Warwick, 1990) p. 117
3. Nwabueze, B.O. Constitutionalism in Emergent States (London: C. Hurst & Company, 1973) p. 24.
4. The Constitution of Zambia Act, 1973 p. 53.
5. The Constitution of Zambia Act, 1973, p. 53.
6. Times of Zambia, January 3, 1983 at 1
7. The Constitution of Zambia Act, 1973 p. 42
8. See National Mirror, July 21, 1990 at 3.
9. See article by R. Mushota, 'Constitutional Framework' in Akashambatwa Mbikusita-Lweanika and Derrick Chitala (eds), Proceedings of the National Conference on Multi-Party Options. (Lusaka: Zambia Research Foundation, 1990) pp. 30-34.
10. See Chilufya v City Council of Kitwe (1967) ZR p. 8.
11. Times of Zambia, January 3, 1983 at 1
12. See Supra 9, p. 35.
13. According to A.W. Chanda's Ph.D. Thesis entitled: 'Zambia: A Case Study in Human rights in Commonwealth Africa', S.J.D (Connecticut: Yale Law School, 1992) the fall of communism in Eastern Europe contributed to the fall of One Party rule in Zambia. p.469
14. See Constitution of Zambia Act, 1991.
15. See Constitution of Zambia Act, 1991.
16. The Weekly Post, January 8-14, 1993 at 15.
17. The Weekly Post, April 23-29, 1993 at 6
18. The Weekly Post, April 16-22, 1993 at 5
19. The Parliamentary and Ministerial Code of Conduct Act

No. 35, 1994, (^{Herein} ~~has~~ after "The Code of Conduct Act") See Section 3(i)

20. Supra 19, pp. 621-624
21. The Code of Conduct Act, p. 622
22. The Code of Conduct Act, p. 621
23. The code of conduct Act, p. 623
24. The Code of Conduct Act, p. 623
25. The Code of conduct Act, p. 623
26. Se Sections 8 to 10 of the Code of Conduct Act, pp. 624-625
27. The Code of Conduct Act, p. 624
28. This came to light when President Chiluba dismissed Deputy Minister for Agriculture Hon. Ackson Sejani and Hon. Mathias Mphande as Deputy Minister for Mines, for their public statements on the Privitisation of Zambia consolidated Copper Mines Ltd. (ZCCM): See times of Zambia, 1993.
29. Former Deputy Minister in office of the President Hon. Dean Mungomba was dismissed from his post in 1994 when he made public statements about the deliberations of the 'Paris Club' meeting held between Zambia and Donar countries in Paris, France in November 1994. See The Weekly Post, 1994.
30. The Portfolio of Government Spokesman has been held by Honourable Kelly Walubita and is now held by Honourable Amusa Mwanamwambwa.
31. See E.C.S. Wade & G.G. Phillips. Constitutional Law (London: Longman, Green & Co. Ltd, 1968) p. 420.
32. See Section 11 of The Code of Conduct Act, p. 624.
33. See L.C.B. Crower Principles of Modern Company Law, (London: Steren and sons, 1969). p. 189
34. See Section 10, of The Code of Conduct Act, p. 624
35. See Section 13(3) of The Code of Conduct Act, p. 626
36. See Section 13(i) of the Code of Conduct Act, p. 626
37. See Section 14 of The Code of conduct Act, p. 626

38. See Section 14(3) of The Code of Conduct Act, p. 626
39. See Section 10 of The Code of Conduct Act, p. 624
40. See Section 14(6) of The Code of Conduct Act, p. 627
41. See Section 14(8) of The Code of Conduct Act, p. 627
42. The Tribunal No. 1 of 1995 appointed under The Code of Conduct Act, heard both complaint No. 1 and No. 2 of 1995.
43. Crime News, Volume 1, No. 39 February 21-27, 1995.
44. Ibid.
45. The Report on Tribunal complaint No. 1 of 1995, p.9
46. The Report on Tribunal complaint No. 2 of 1995, p.a
47. Ibid
48. Ibid p. 8
49. See Section 15 of The Code of Conduct Act, p. 627.

CONCLUSION

This study has attempted to make a comparative analysis of The Leadership Code and The Parliamentary and Ministerial Code of Conduct No 35 of 1994. The analysis was from a legal perspective. We have advanced and justified the thesis that the Leadership Code, enacted in the context of the one party state, was a deliberate legislation aimed at the realisation of the UNIP Philosophy of Humanism. Humanism was seen as a stage to be attained in the historical development of the Zambian Society. To this extent therefore, it was felt that leaders - as defined by the Leadership Code, were to play a leading role. Hence, the need for them to abide by a Code that was both a deterrent and catalyst. It was a deterrent to those leaders who wanted to enrich themselves. However in practice the Leadership Code was shrouded with a lot of secrecy and confidentiality with regard to declarations of Assets by leaders. More often than not the persistent breach of the Leadership Code, as evidenced by reports such as those from the Anti-Corruption Commission, 1 was significant Reports merely gathered dust and remained unattended to by the Leadership Committee.

The Parliamentary and Ministerial Code of Conduct Act No 35 of 1994 is a feature of the 1991 Constitution of Zambia. The Code of Conduct basically covered Members of Parliament and Ministers (including Deputy Ministers). It is transparent because members of the public can easily access the register of declarations of assets, liabilities and income which is kept by the Chief Justice. This provision in the Code of Conduct Act distinguishes it from the Leadership Code. Another distinguishing feature is that the Code of Conduct Act does not limit the number and value of Assets that a Member of Parliament and Minister is supposed to own. This, we contend, is in line with the protection of the individual's right to own property so long it is not acquired through underhand methods such as those of corruption. The Leadership Code, on the other hand, could be said to have been a blatant violation of the

individual's right to private property ownership because it discouraged such ownership as well as limiting the extent to which a leader could own property. For example, under the Leadership Code a leader (ie A member of Parliament and Minister inclusive) could not own more than ten hectares of land.² Neither could a leader hold or occupy any land or other real property outside Zambia.³ Moreover, the Leadership Code did not allow a leader to carry an any business unless such a leader has been allowed to do by the President and in which case, he had to forego the salary of his specified office.⁴ These provisions in the Leadership Code are a sharp contrast to the Parliamentary and Ministerial Code of Conduct Act of 1994. The Code of Conduct Act does not stop a leader (ie. Mp or Minister) to carry on any business and neither is he denied a salary from his post on account that he is carrying on a business. In our view this is a positive point in favour of the code of Conduct Act because it allows a leader to be less dependent on one income and ultimately, he can easily consolidate his material base and social security and hence shielding himself from being a pauper when he finally leaves his office.

The other point of contrast is that the Leadership Code had a wider coverage of specified offices embracing all the three organs of government namely The Legislature, Executive, and Judiciary. For instance, in the Judiciary, the Judges, and Magistrates were included in the category of leaders covered by the Leadership Code. In the Executive arm of government, the President, Prime Minister, Ministers and all Civil Servants were included as leaders covered by the Leadership Code. In fact in the text of this study, we did allude to the point that this wide coverage of the Leadership Code made it so far-fetched that enforcement was almost impossible. In contrast the Code of Conduct Act covers only members of Parliament and Ministers.

Perhaps, the most fundamental distinction between the Leadership code and the Code of Conduct Act is the fact that the latter, in our view, does foster democracy. We make this submission on the following grounds. First, the Leadership Code

was undemocratic in its quest to inhibit property ownership and free engagement in business. Secondly, the Leadership Code was a deterrent to local investment because the leaders could not freely invest their income in any productive venture. In other words, it can not be said to be a tenet of democracy where a law is made that stops a person from disposing his income in a business of his choice. We further contend it is not democratic to compel leaders to declare their assets and liabilities yet at the same time the public can not see whether or not such declarations have indeed been made and are in accordance with the requirements of law.

In the light of the foregoing, we have a few recommendations to make as regards the Code of Conduct Act. First of all, the Code of Conduct Act does not derogate from the right of property ownership nor does it advocate deprivation of property. It does encourage leaders to create for themselves a strong material base by allowing them to engage in business, provided they declare their assets, liabilities and income. The Code of Conduct Act does not encourage abuse of office and corruption. The Code of Conduct also does not allow the public image of leaders to be tarnished by unfounded allegations. This, we contend, fosters democracy by ensuring that only a clean and dedicated leadership is in government. Therefore, the people can have confidence. However, despite the above positive points in favour of the Code of Conduct Act it has some weak points.

RECOMMENDATIONS:

The Code of Conduct Act is weak by not defining terms such as 'close family members' and "customary hospitality" because it allows uncertainty and doubt. Being a Code of Conduct, we contend, its language must be precise and clear so that those it affects are left without any doubt.

The second point is on the fact that the Code of Conduct Act whilst providing for the Tribunal to inquire into allegations of the breach of the Code it does not empower the Tribunal to award any compensation or impose any sanction. This omission, in our

view, merely prolongs the legal process which a complainant has to go through. The process could be shortened by empowering the Tribunal to award compensation or impose sanctions.

We are therefore proposing that the Tribunal be empowered to award any compensation or impose any sanction. The party unsatisfied with the Tribunal decision must also have the right of appeal to the Supreme Court. We contend that by so doing the Tribunal will assist in decongesting the backlog of cases before our Courts of law. At least those cases falling within the ambit of the Code of Conduct Act could be disposed off by the Tribunal.

The third and last recommendation we have is that the Code of Conduct should provide for how Members of Parliament, Ministers and Deputy Ministers should perform their official duties and arrange their private affairs so as to ensure that public confidence in them is not easily eroded. The Code of Conduct should also go further to stipulate what conduct would be inappropriate to public confidence in the integrity of both the National Assembly and Cabinet.

NOTES

1. See Annual Reports of The Anti Corruption Commission Reports for the Years, 1984, 1988, and 1989.
2. See The Constitution of Zambia Act, 1973, p. 136, The Leadership Code regulation 4(2)
3. Ibid, regulation 4(1)
4. Ibid, regulation 5.

BIBLIOGRAPHY

A: PRIMARY SOURCES

1. **NEWSPAPERS:**
 - (a) The Times of Zambia, 1970
 - (b) The Times of Zambia, 1983
 - (c) The Weekly Post, 1992.
 - (d) The Weekly Post, 1993.
2. **JOURNALS:**
 - (a) The Zambia Law Journal, Volume 5, 1974.
 - (b) The Zambia Law Journal, Volume 1988
 - (c) Malaya Law Review, Volume 4, 1962.
3. **ANNUAL REPORTS:**
 - (a) The Annual Report of the Anti-Corruption Commission for the Year 1982". (Lusaka: Government Printer, 1982).
 - (b) The Annual Report of the Anti-Corruption Commission for the Year 1983. (Lusaka: Government Printer, 1983).
4. **RESEARCH PAPERS AND DISSERTATIONS:**
 - (a) Chanda, A.W. "Zambia: A Case Study in Human Rights in Commonwealth Africa. J.S.D. (Connecticut: Yale Law School, 1992).
 - (b) Ngenda, Sipalo, 'The Leadership Code: An Obligatory Essay.' (Lusaka: University of Zambia, 1984/75
 - (c) Sondashi, L.S. 'Zambia's Single-Party System: The Emergency of Presidentialism and Democratic Responses' Ph.D. Thesis (University of Warwick, 1990).
 - (d) Zimba, L.S. The Constitutional Protection of Fundamental rights and Freedoms in Zambia: An Historical and Comparative Study'. Ph.D Thesis (University of London, School of Oriental and African Studies, 1979).

B: SECONDARY SOURCES

5. **Published Books:**
 - (a) Akashambatwa Mbikusita-Lewanika and Derrick Chitala (eds) Proceedings of the National Conference on Multi-Party Option at Garden house Hotel,

Lusaka, 20-21st July, 1990, Zambia.

(Lusaka: Zambia Reserch Foundation, 1992).

- (b) Garner, J.F. and Jones, B. L., Garner's Administrative Law. (London: Butteroorth & Co. (Publishers Ltd., 1985.
- (c) Kaunda, K.D., Humanism in Zambia Part I (Lusaka: Government Printer, 1967).
- (d) Kaunda, K.D., Take Up the Challenge (Lusaka: Government Printer, 1970).
- (e) Mwanakatwe, J., End of Kaunda Era. (Lusaka: Multi-media-Zambia, 1994).
- (f) Ndulo Muna (eds), Law in Zambia (Nairobi:East African Publishing House, 1984).
- (g) Nwabueze, B.O. Constitutionalism in Emergent States (Sondashi: C. Hurst and company, 1973).
- (h) Wade, E.C.S. and Phillips, G.G., Constitutional Law (London: Longman, Green and Co. Ltd., 1968).