

**PARLIAMENT AS A FORM OF LEGAL CONTROL OF
ADMINISTRATIVE (EXECUTIVE) PROCESS IN ZAMBIA
DURING THE ONE-PARTY ERA (CRITICAL EVALUATION)**

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(I)

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By

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A dissertation submitted to the faculty of law of the University of Zambia in partial fulfilment of requirements for the award of the degree of Bachelor of laws (LLB)

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(II)

DEDICATION

This work I dedicate to my Parents for the chance they have afforded me. My brother Masauso and sisters Elizabeth and Judy for being there when I needed them; And my late brother Demmy for the chance he did not have.

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The preparation of this paper owes a lot to a number of people who offered me help and encouragement. To them all I am very grateful. I am mostly obliged to Mr Malila Mumba my supervisor, who read through my work and offered invaluable criticism and advice. My gratitude is also extended to my close friend and class-mate Towela Silweya for the help she rendered me in my stay on campus., to George Kangwa Chisanga, good friend and co-counsel at both the local and international Moot Courts, to him I say "Sic and Sin."

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has been its colonial master as from 1924. At independence Zambia was a multiparty state with ruling party being UNIP headed by President Kenneth Kaunda. There were also opposition parties, the prominent one being the African National Congress (ANC) headed by Harry Mwanga Nkumbula.² The three organs of government, that is, the executive, legislative and judiciary, were established and functioned in a manner to suit the Multiparty System. The system Zambia adopted was the Westminster model.

However, the joy of being a Multiparty State was short lived because on the 25th of February 1972, President Kaunda at a press conference at the State House made a historic statement when he announced that the government had decided that Zambia shall become a one party participatory democracy and that practical steps had been taken to implement the decision. In his statement the President announced the appointment of a National Commission, headed by Mr Mainza Chona, to consider the changes in the Republican Constitution.

This change from Multipartism to One Party System was not received with joy by everyone especially the opposition who believed that with the coming of the one-party era, people's fundamental human rights, among other things, would be infringed by the ruling party. This opposition was brought to light when the leader of ANC petitioned the state to court in a case that has become a milestone case in *Zambian Constitutional Law*.³ Despite the fact this petition was rejected, it showed that not every Zambian had voluntarily agreed to the change of the mode of system of government.

2. Mr Nkumbula died of a long illness in early 80's.

3. *NKUMBULA V THE ATTORNEY GENERAL* (1972) 2R 14.

It is common that when a state is under a one-party model it is potentially dictatorial, but the UNIP government maintained that democracy would still exist under this system and they thus called their one-party system as "one-party participatory democracy". And in the bid of trying ^{to} maintain democracy, the UNIP government decided to retain, in their new Republican Constitution, the three organs of government. It was their hope that with the retention of these organs of government an effective system of checks and balances would exist. However, argument arose as to how effective this system would be because a one-party state cannot effectively check itself to control abuse of power.

The UNIP government maintained, however, that with the existence of three organs of government abuse of power ^{would be} curbed as each organ was going to act as an effective check on the others. They believed that in achieving this, each organ was to act as a legal control of the others thus checking any abuse of power.

In trying to understand the effectiveness of these legal controls established, this paper will focus on one ^{of} these legal controls, this being the Parliament. The paper will evaluate the role parliament played during the one-party era and determine whether it had been an effective legal control of the other organs especially the executive; thus explaining whether or not a one-party state can effectively check itself to curb abuse of power.

The paper will as way of introduction be discussing what a government is. This will be in the first chapter.

This chapter will go on to identify the three organs that are found in every democratic government, these being, the executive, legislative and judiciary, thus leading to the discussion of the concept of separation of powers and explaining its importance in a democratic state. The chapter will examine further the concept of the role of law and its contribution in attaining democracy in a state.

The chapter will go on to make some statements as to the changes that are going to be made to the republican constitution as the country goes into a third republic. This will be in comparison to the situation as it existed since 1973.

The relevance of this chapter to the rest of the argument will be made as the conclusion of the chapter.

Chapter two will begin with the definition of Parliament. The chapter will continue with the discussion of the Parliament in Zambia during the one party era. Notable features like where Parliament derives its powers from, who qualifies to be a member and how one loses his membership will be explained. The chapter will go further to discuss how Parliament acts as a legal control by discussing its first form of control which will be the course of debate. This will be discussed under four heads;

(a) question time

(b) debates on appropriation bill:- This will look at how Parliament assesses, criticises and evaluates public institutions and thus control the flow of money to the institutions.

(c) Exercise of legislative power:- This will look at the power parliament possesses on debates on respective bills. This part will explain the extent of this power.

(d) Ruling, of the speaker:- This will examine the extent of the power of the speaker when he makes rulings, whether the administrative body is bound by such rulings or not.

This chapter will end with an evaluation of what is likely to be the situation in the third Republic as Parliament will now have to accommodate a Multiparty System. Reference will be made to the constitutional bill to try and explain how the Parliament will be composed of.

The third chapter will discuss the other form of legal control which is through sessional and select committees. The definition of these committees will be given and from this their functions derived. The composition and procedures of the committees will be given and although all committees will be explained, much emphasis will be placed on assessing the effectiveness of the Delegated Legislation and Local Administration committees.

Also to be explained under this chapter will be the other form of legal control and this is done through the reading of annual reports. The annual reports to be considered under this will be those of the Commission for Investigation and the Auditor General. Under this, the paper will discuss the essence and effect of reading annual reports and whether this has any control on the administrative process.

Chapter four will be the concluding chapter which will give an evaluation as to whether parliament functioned accordingly during the one-party era for it to conclude that democracy existed. The short falls of parliament will be examined. And also to be discussed will be the new constitutional bill and see how parliament will function in the third Republic.

CHAPTER ONE

(a) INTRODUCTION

As a way of introduction in this chapter it is of importance to note that there cannot be any state without a government and therefore before venturing into other areas of discussion it will be necessary to define what a government is and to explain its functions. This chapter will go further and examine the concept of separation of powers thereby identifying the three different organs of government, these being the executive, legislative and judiciary. The duties and functions attended to these organs of government will also be examined in order to emphasize the importance of a democratic state. The chapter will then consider the role of the rule of law and its significance in the maintenance of law and order in a democratic state.

The conclusion will then be given with a reference to the state of Zambia during the one-party era with an anticipation of the likely change when the republican constitution is finally repealed and replaced.

(b) The government.

The term government stems from a Latin name ' "gubernaculum" which signifies the instrument, the helm, whereby the ship to the state is compared, was guided on its course by the gubernator or helmsman, and in that view the government is but an agent of the state, distinguished as it must be in accurate thought from its schemes and machinery of government. It is a system of policy in a state. It forms the fundamental rules and principals by which a nation is governed or by which individual members of a body politic are to regulate their social action.'

1. Black's law Dictionary 5th Ed (West publishing co. St paul minn) p 625.

From the legal point of view ' a government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions. The structure of the machinery of government and the regulation of the powers and duties which belong to the different parts of this structure are defined by the mode in which these powers or these duties are performed.'² It is a constitution by which the rights and duties of citizens are prescribed and defined. It is also known as ' the machinery by which the sovereign power in a state expresses its will and exercises its functions or the framework of political institutions, departments and officers, by means of which the ... business of the state is carried on.'³

The process of government involves three distinguishable functions, vis, legislature, executive and judiciary. The way in which these functions are to be exercised and by whom is determined by the constitution of a particular state. This is clearly manifested by the way these functions are carried out, say, in United States of America as compared to Zambia. ' In America, the constitution vests the executive function in the President, the legislative functions in the congress and the judicial functions in the federal Supreme Court.'⁴ In Zambia the constitution vests the executive functions in the President like in America, but the primary legislative functions are vested in Parliament which is composed of the National Assembly and the President, thus showing that the President in Zambia unlike in America performs two functions.

2. Lord Simonds, *Halsbury laws of England vol 7(3rd)* (butterworths, London, 1954) p187.

3. *Opcit Blacks law dictionary* p625.

4. These are found in the first three articles of the American constitution.

' Political scientists from Plato onwards have distinguished and classified governments. Aristotle distinguished good and bad forms of rule by one, a few, and many, namely monarchy and tyranny, aristocracy and oligarchy, polity and democracy. However, this is not exhaustive, other forms are gerontocracy or rule of elders, theocracy or rule of priests, bureaucracy or official rule. In modern times the major classification of government is liberal democracy or totalitarianism. Whether a government is monarchical or republican, matters little as they are consistent with both liberal democratic and totalitarianism government. The determining factor is the predominant social and political philosophy of the ruling government, subject to checks and balances, as by bill of rights and recognising rights in individuals.'⁵

For a government to succeed in its functions it must keep a minimum of public order by a system of police and criminal justice. ' Machinery should be provided for the peaceful settlement of private disputes in civil justice. A government must also secure to its members the certainty that it will not be interfered with in its orderly everyday life either by its followers or by agents of the state, and it must build up some kind of system protecting its citizens against accidents of life, such as illness, destitution and unemployment.'⁶ Further it must ensure that many social activities are carried on in a way that is uniform in order to have certain unity of effort and acertainty that essential things only shall be done. Finally ' it must guarantee the security of the community against foreign attacks by the organisation of common defence and conduct in peaceful relations with other

5. David Walker, *Oxford Companion to law* (clarendon press, Oxford, 1986) p532.

6. Sitav Roger, *An Introduction to politics* (Lome and Brydone, London, 1963) p108.

communities by diplomacy.'⁷

It is now clear that the function of a government are diverse and, therefore, for a government to function successfully, it should divide the functions into the three organs that exist in every democratic state. The division of the state into the three organs is called separation of powers.

(c) Separation of powers.

The doctrine of separation of powers received most of its most famous formulation by the French jurist Montesquieu in his book *Lesprit des lois*. It is submitted that 'the three basic and essential functions in the administration of any independent state are legislative, executive and judicial. From a realisation of this generally accepted opinion has sprung up various times and in different countries the idea that the agencies through these functions are exercised should be kept separate from each other, the intention being to prevent the concentration of more than one of the powers in any single authority, which might lead to tyranny and to make sure that the due exercise of each is in no way hindered by the agencies responsible for the other two.'⁸ As Brandis J observed in Myers v U.S.,⁹

"The doctrine of separation of powers was adopted not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments to save the people from autocracy."

7. Ibid p108.

8. Yardely D.C.M, *Introduction to British constitutional law* (butterworths, London, 1984) p75.

9. (1926) 272 U.S 52 at 57.

In the United States of America, when the founding fathers were enacting the constitution, in 1789, they seized Montesquieu's view of separation of powers. It is thereby seen that the first three Articles of the constitution vest federal legislative powers in Congress, the executive power in the President and the judicial power in the Supreme Court of the United States. These powers appear to have been intended for the most part to be mutually exclusive, so that no member of one branch of government may be a member of either of the others as well, but even so, the separation was not complete, and various checks and balances between the three agencies were provided. Thus, 'the President is empowered to veto legislation of Congress and such veto may be overridden by a two-thirds majority in the Senate before it comes into effect. Despite the rule that no member of one organ may belong to another, the vice-President ex-officially presides over the Senate. The President appoints judges to office in the Supreme Court and even though there is no provision in the constitution, it has been found essential that the Supreme Court should have the power to declare Acts of Congress or actions of the President illegal if they should in any way transgress the provisions of the federal constitution. The system in the United States has justly been described as a separation of powers modified by checks and balances.'¹⁰

In the United Kingdom the system is different. There is no systematic, or planned separation of powers as it exists in America. Institutions in England have developed over the years and have been given such powers. In England the legislative power is vested in Parliament, the executive power in the crown and

10. Ibid Yardely p76.

And like in the United Kingdom, these powers overlap, as all members of the executive, that is, the president and the cabinet ministers are members of parliament, as the constitution provides that parliament is composed of the President and the National Assembly.¹³ And like in Britain there is an independent judiciary but the superior judges are appointed by the President.¹⁴

Argument can thus be advanced that despite the existence of three organs, a strict separation of powers does not exist. The Zambian government, however, maintains that despite the overlaps, an effective system of checks and balances exist which control abuse of power.

(d) The rule of Law

However, despite the existence of separation of powers, a country cannot claim to be democratic one unless it is guided by the rule of law. This is usually described as the state of affairs of a country.

Professor Dicey, in his book¹⁵ elaborated and popularised the concept, saying that the rule of law existed by virtue of these three features; He stated firstly, 'that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in ordinary legal manner before the ordinary court of the lands.'¹⁶ In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint. Dicey acknowledges 'that in almost every continental community the executive exercises far wider discretionary authority in the matter of arrest, of temporary imprisonment, of expulsion

13. Article 63 of CAP 1 p52.

14. Article 108 CAP 1 p63.

15. Introduction to the study of the law of the constitution 9th Ed (Macmillan Co., London, 1950).

16. Ibid p188.

from its territory and the like, then is legally claimed or in fact exerted by the government ... and that whenever there is discretion there is room for arbitrariness, and that in a republic no less than under a monarch discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects.'¹⁷

Secondly he states that under the rule of law not only is no man above the law but that every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.¹⁸

He goes on to state that the general principles of the constitution (as for example to personal liberty or the right of public meeting) are with us as the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.'¹⁹

It is important to note that these features of the rule of law are not without exceptions, for instance, in a country which is under a state of emergency like is the situation in Zambia, the executive has wide powers to detain anybody without trial. This is regulated by the preservation of public security Act which under section 33(i) of its regulations provides that the president may detain anyone with whom he is satisfied is a threat to public security. So it is noticed that with these wide discretionary powers, the executive is able to maintain order in society. However, the executive has taken advantage of these powers to detain those people it regards as political opponents and these do not even threaten public security.

17. Ibid. p188.

18. Ibid. p193.

19. Ibid. p195.

And by the inclusion of the rule of law in the argument, we have explained its role in showing how democratic a nation should be, as this helps in safeguarding law and order in every democratic state.

Since 1973, the UNIP government had maintained that their government was democratic, and to try and achieve this they retained the three organs of government, viz, the executive, legislature and judiciary. To this effect they argued that these three organs acted as checks on each other thus maintaining law and order in accordance with the rule of law. They argued further that these organs acted as legal controls of each ^{other} in the quest of having a democratic government. This paper will thus focus and discuss how these organs acted as legal controls by examining one of them, this being the parliament. The paper will discuss in the preceding chapters the way parliament functioned under the one-party era.

But before going into the functions of parliament, it is necessary at this point to explain that because of the change from one-partism to multi-partism, the Zambian government decided to amend and repeal the 1973 constitution. The structure of parliament in the third republic will be one accommodating a number of parties. As to the changes that will happen to parliament, these will be discussed in the second chapter.

Finally, having discussed what a government is and how it functions, that is through its organs, these being the executive, legislature and judiciary argument shall focus on how one of these organs, the Parliament, functions. The chapter shall explain in detail how this organ functions as a legal control of the executive in a bid of establishing its effectiveness.

CHAPTER 2

PARLIAMENT AND ITS CONTROLS

Introduction

In the last chapter, discussion was centred on explaining what a government is. It was explained that a government functions through its three organs which are the Executive, Legislature and Judiciary. These organs act as checks on each other thus curbing abuse of power by any one of them. In controlling abuse of power, these organs act as legal controls which see to it that any organ does not abuse the power conferred on it by the constitution. In trying to understand the extent of the legal powers possessed by these organs, this chapter will focus on the Legislature. The chapter will discuss the functions of Parliament as a legal control over the other organs, particularly the Executive. We will begin by explaining what Parliament as an organ is, the qualification of its members and the legal basis of Parliamentary power.

In this chapter, the essence will be to examine the extent of Parliamentary power in controlling the executive process. It will through examples show instances where Parliament has acted as an effective control of the Executive. The weakness of Parliament will never the less be alluded to but the main emphasis in this chapter will be to show the effectiveness of Parliament over the administrative process.

(A) Parliament.

A Parliament in the simplest terms is the Legislature part of Government. It is the part of government that is concerned in most jurisdictions with makings of laws, controlling national expenditure and taxation, criticising national policies,

scrutinising the central administration and at times procuring redress for individuals.¹ It is a formal conference where discussion is on public affairs, where top statemen usually meet to discuss the state of affairs in the public.² The earliest form of Parliament can be traced as far back as the Greek state, where all men in the state could meet and discuss issues that affect their public welfare. Decisions were made at these meetings which bound all the citizens.

In England, the origin of Parliament was not primarily of a law making body. It was a council summoned to discuss some important matters. The monarch had absolute power in matters that concerned its subjects and would usually convene meetings with these subjects to make decisions.³ At these meetings, one feature that was common was that the monarch, derived from its subjects money in form of payments, while the subjects obtained redress of grievances in the form of legislation.⁴ From this the monarch granted the rights and liberties to the subjects by means of enactments. Through this Parliament in England, gradually rose to what it is today.

The Parliamentary system of England today is bicameral meaning that there are two houses of Parliament and these are the House of Commons, which consist of elected members representing the people, and the House of Lords. It is important to note that Parliament in England is the most supreme organ and as such unlimited power to make and change any law. Notably in England, be it the Executive, or Judiciary can declare void any enactment passed by the British Parliament on the grounds of such enactment being opposed to the constitution

1. DeSmith, *Constitution and Administrative Law* (Penguin books, London, 1987) p247.

2. Hood, P., *Constitutional and Administrative Law 4th* (Smeets and Maxwell, London, 1967) p95.

3. *Ibid* p95.

4. James P. *Introduction to English Law* (Butterworths, London, 1966) p124.

or any ground whatsoever, except, its being repealed by Parliament.⁵

The American Parliament known as the Congress is also bicameral and consists of the House of Representatives, and Senate. However, unlike in England, Congress is not the most supreme body in the country as it is created by the constitution of the United States of America. It nevertheless has a lot of power vested in it such that it can question any action of the executive which is unconstitutional.

(B) Parliament in Zambia.

At independence, Zambia acquired the Westminster type of system with significant changes. Since independence in 1964, Zambia's Parliamentary system has been unicameral consisting of one chamber or house only.

In the 1964 Parliamentary set up there were Seventy-Five elected members representing their constituencies. The president was empowered to nominate up to five additional members. The president was not a member of the National Assembly but could address it at any time. The speaker was elected by the National Assembly from among its own members or from persons outside Parliament who were qualified for membership. The life of Parliament was five years unless it was sooner dissolved. The power to summon and dissolve Parliament was vested in the president and any Bill passed by the National Assembly required the president's assent before it could become law.⁶

However, the 1964 Parliament had only one five years term because in 1973, Zambia became a one-party state.⁷ Despite becoming a one-party state, Zambia decided to retain the Westminster type of system with the three organs

5. Dicey A. *Introduction to the law of the constitution* (Macmillan, London, 1965) p40.

6. These were found in the 1964 Independence Constitution which was repealed in 1973.

7. It is important to note that at the time of writing this paper the 1973 Constitution was still in force.

functioning as they did only that as from 1973 they have had to function within the Party (UNIP) lines. It is because of the nature of the system adopted in 1973 that arguments have been advanced to allege that the National Assembly has not functioned as an effective control because it has to follow UNIP policies. This, it is argued has made it a toothless body without as much independence as a Parliament should have. In order, however, to appreciate such an argument, there is need to take a closer look at how Parliament has functioned during the one-party era.

It is important to note that despite having adopted the British Westminster model, the Zambian Parliament has not been the supreme organ in the country, but has been controlled by the Republican Constitution.⁸ The Republican Constitution provides that the legislative power of the nation vests in Parliament which is consisted of the president and the National Assembly.⁹ The President is not a member of the National Assembly, but he can address the House at any time. The National Assembly consists of the Speaker, who is the head of the House, one hundred and twenty-five elected members and not more than ten nominated members.¹⁰

Being a one-party, elections to the National Assembly are restricted to Zambians of 21 years or above who also belong to the ruling Party UNIP. They also have to be literate and conversant with the official language.¹¹ However, even though one possess these qualifications, one can nevertheless be disqualified from becoming a member of the National Assembly.

8. It was established under Article 63 of the Republican Constitution (1973).

9. Ibid p52.

10. Article 64, Republican Constitution (1973) p52.

11. Article 67 Republican Constitution (1973) p 53.

The 1973 Constitution had provided, initially, that a person who was not successful in primary elections could not qualify as a member of the National Assembly. It provided further that the candidate also had to be approved of by the central committee if he was to proceed for elections as a member of the National Assembly.¹² The latter requirement has in recent years taken a more powerful role than the former. The central committee has been empowered to veto any candidate from becoming a member of the National Assembly. This has become a very effective tool of the ruling Party, as it has used this machinery to get rid of those it regards as being against the Party policies. This includes people who are very controversial in the House, and criticise government policies. Thus a lot of the suspected critics have been vetoed by this committee and only those that government feels are loyal to it have gone on to contest in Parliamentary elections.

Being a Westminster model, the National Assembly has the members of the Executive as members. The ministers in the House represent government affairs. They are headed by the Prime minister. Most ministers are also elected members of the National Assembly. This means that when such ministers lose in Parliamentary elections, they lose their positions as ministers.¹³ The Prime minister need not be an elected member of the National Assembly. He, like some members of the House can be nominated by the President.¹⁴

Every member of the National Assembly vacates his position when Parliament is dissolved. Similarly one is supposed to vacate his seat when one ceases to be a citizen of Zambia or when one ceases to be a member of the ruling Party

12. Ibid p53.

13. For instance Mr Basil Kabwe in 1989 lost Parliamentary elections and in consequence lost his position as minister.

14. For instance Prime minister Malimba Masheke was appointed in 1988.

¹⁵

UNIP.

However, due to the signing of the Bill that repealed Article 4 of the Republican Constitution (1973)¹⁶, a multiparty state was created and a commission was formed to create a new constitution.¹⁷ New parties have been established as a result of the change in political structure, and many people who belong to UNIP have joined the other parties. In the National Assembly some members decided to join the other parties. With this move, the government argued that since these members had ceased to be members of UNIP, they had lost one of their qualifications and therefore they should vacate their seats in the National Assembly. Two members¹⁸ of the House who had left UNIP decided to petition the court seeking an injunction to restrain the government from removing them from the House. They claimed that notwithstanding the fact that since 1973 there has been a one-party system, Parliament is not an organ created by the party (UNIP) but by the government and thus once someone was elected to Parliament, he wasn't representing the party, but the people of Zambia. They further argued by way of counter claim that because of the change in the political structure all nominated members of Parliament be removed from the house as they didn't represent any one.

¹⁹

The supreme court decided that all those members of the National Assembly who had left UNIP could nevertheless remain as members of the House, as Parliament was a body formed by government and not by the Party and that the provision in the constitution that provided for vacation of the seat because

15. Article 71 Republican Constitution (1973) p55.

16. On 12th December 1990 by the President

17. As earlier stated, at the time of writing this paper, the 1973 constitution was still in force.

18. Whos names are Joshua Lumina and Bennie Mwiinga.

19. June 11 1991. Daily Mail

of not being a UNIP member could not now operate as article 4 of the constitution had been repealed thus paving way for multipartism. With the repeal all limitations that had existed in the constitution were removed. The court held further that all nominated members of Parliament could remain in the House as they were qualified members having been appointed by the President in accordance with the constitution.²⁰ Because of this decision, the status in the National Assembly is that, not all members of the House are UNIP members.

Under the 1973 constitution, Parliament lasts for five years of the end of which it is dissolved in readiness for presidential and Parliamentary elections.

This then is the structure of the Parliament in Zambia as established by the 1973 constitution. In order, however, to ascertain whether it has been an effective control it is necessary to examine the way it has functioned since 1973.

(C) Parliamentary Controls.

Parliamentary control of the executive process refers to the accountability of the executive to Parliament on the grounds that as a representative institution, Parliament has administrative and political control over the executive. It denotes the practical realisation of the concept of checks and balances between the Executive and the Legislature.

The constitutional basis for Parliamentary control of the executive in Zambia is contained in Articles 87 and 90 of 1973 constitution. Article 87 provides that,

"Members of the National Assembly shall be free to speak
and vote in any issue in the Assembly."

20. Article 64 of the constitution (1973).

21

This article read together with Article 91. Confer on the members of the National Assembly freedom of debate in such a way that Parliament can raise and discuss issues of general importance which mark shoddy activities by the executive. With this power, Parliament can question the executive to explain its activities and if Parliament is not satisfied it can condemn executive action.

Article 90 provides that

"Subject to the provisions of this constitution, the National Assembly shall determine its own procedures."

Pursuant to this article, Parliament has formulated the National Assembly standing orders which provide the means through which it scrutinises executive activities. It has been able to formulate its procedures as to how it can effectively scrutinise executive activities. Parliament has functioned as a legal control on executive power through various ways including question time, the speakers rulings, debates an appropriation bill and exercise of legislative power. We shall now discuss these control mechanisms.

(i) Question time.

This is acknowledged in English law as a practice whereby a member of Parliament can put a question to a minister on a matter concerning his department. It has been described as perhaps one of the most powerful implements of democracy! Questions to ministers cover the whole administration of the country, and range from foreign relations to individual convictions, which enables a member to investigate any government department activity which does not

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21. Which provides that "the National Assembly and its members shall have such privileges and immunities as may be prescribed by an Act of Parliament."

22. Norman D. An Encyclopedia of Parliament, 3rd revised Ed (cassell, London, 1960) p613

satisfy him. It is very important that "nothing could more weaken the control of Parliament over the executive than the abolition or curtailment of the right of a member of Parliament to ask questions in the house.²³

In Zambia, the system is similar to the one in Britain. Member of Parliament have the power to ask the government questions on matters concerning the whole country in general and their constituencies in particular. The power to ask questions is governed by standing orders the relevant one of which provides that,

"the seventh item on the daily routine of business in the house is questions to ministers."²⁴

The standing orders go on to provide how questions can be brought before the house by providing that,

"(1) Questions shall be put only to the ministers and then only relative to public affairs with which they are officially connected, proceedings pending in the Assembly or any matter of administration for which they are responsible.....

(3) In giving notice of question a member shall deliver at the table or to the office of the clerk.

a copy of such notice, fairly written, subscribed with his full name and signature indicating whether a written or oral answer is required....."²⁵

Members of Parliament have used this facility whenever the

National Assembly is in Session. For example in a typical year of approximately

23. Ibid p614.

24. Standing order number 22 of the National Assembly Standing orders.

25. Standing order number 27 of the National Assembly Standing orders.

one hundred and twenty sitting days, more than two hundred and fifty questions were asked by members.²⁶

During question time, the executive is put to task by members to answer questions on aspects. The questions relate to policy or implementation of the government through the machinery of the executive. However, some questions that have been asked by members of Parliament have been of little relevance, while some have. For instance one member asked the minister of defence what the Zambia National Service was planning to do with a closed camp as the member alleged that some officials were selling some roofing materials of the buildings there. The minister was put to task in answering this, because at first he informed the house that the National service wasn't planning to do anything. But after some supplementary questions, the speaker ruled that the minister had to go and investigate the matter and was supposed to come back to the house and make a report, which he did.²⁷ Similarly, member of Parliament for Kabwata, asked the minister of tourism to explain a poaching scandal that involved the chairman of the Circuit Safary. He wanted to find out why the government hadn't pursued the prosecution of the chairman after, he alleged, the minister of tourism covered the case up. He further wanted the minister to explain why the same chairman was allowed to bring into the country fire-arms which did not pass through the customs office and no police escort was allowed to accompany the arms all because the minister had issued instructions not to do anything. The minister tried to answer this question, but after a lot of supplementary questions the speaker

26. Mumba S. K. C. (late). "Legal Control of the Administration process" *Zambia Law Journal* vol 18.(Zambia Printing Co. 1986) p9.

27. Parliamentary debates 1990 Question by member of Kalomo.

stated that this was a serious issue. The minister did carry out an investigation and he reported back to the house explaining what the governments stand was on the issue.²⁸

Some questions, as earlier^{mentioned} were of no relevance and of a personal nature, in so far as they pertain to some members' constituencies, for instance a member of Sinazongwe, at one time, asked when the government was going to electrify the entire Gwembe District as compensation to the people of that area for displacing them as a result of the construction of the Kariba dam. The minister simply answered that these people had already been compensated and as such it was not necessary to compensate them again.²⁹

Looking at question time as a control it is evident that the National Assembly has a somewhat useful mechanism through which it asks government to explain and justify its actions which may otherwise be ultra vires its powers.

Question time as a control, however, has weaknesses, and the most fundamental one is that of accountability. The executive is not really obliged to act or refrain from acting on issues raised in question time. The executive can make promises in the house on the implementing some of its policies, and non implementation of the policies does not subject the executive to any punitive action from the National Assembly. Even if the National Assembly may criticise the executive for failing to implement policies, nothing more may be done as there is no effective way of checking compliance with executive promises given to the house. This weakness waters down the essence of control Parliament is

²⁸.Ibid

²⁹. Parliamentary debates 1986.

of the speaker to explain the interpretation he puts upon it. Also situations arise where the government actions are in question and all the members look up to the speaker to give a ruling from the chair. The speaker then gives ruling on the issues and this ruling is binding on the members in the house including the executive members and administrators.

It is from the speakers rulings that one is able to argue that from 1973 this form of control has been effective in checking the executive activities. In 1984, for instance, the government through the Ministry of Commerce and Industry issued instructions to District Councils to authorise Ward Chairmen and Chairmen of Party Committees at work places to issue permits for the purchase of essential commodities. Member of Parliament raised points of orders asking under what constitutional provisions the measures had been undertaken and whether government was in order to allow the arrangements to continue existing. The speaker ruled that in the absence of a Statutory Instrument to promulgate such measures, the action undertaken was illegal. And the executive complied with this ruling and resinded its decision.³¹

Similar in 1986, the executive decided to adopt the word comrade to replace both 'Mr' and 'Mrs'. They intended that the term be applied everywhere in the country including in Parliament. Again the speaker ruled that the term could not be used in Parliament.³²

And in 1990 when an administrator failed to appear before the house after he had been ordered to do so by the speaker, he was arrested after the speaker made

31. Dail Mail, Friday November 30th 1990 under the Heading 'measures illegal.'

32. Parliamentary debates (1986)

33. Ibid 9614 where he said 'I am afraid that in the house.....the word comrade is unparliamentary.'

³⁴

a ruling to that effect.

From these examples, it is seen that the speakers rulings in Parliament have been an effective control over executive actions. Through the rulings, the National Assembly has been able to voice its dismay over some of the actions of the executive. Members of the National Assembly have used the facility of the speakers ruling to their advantage in that, if they have any queries on government action, they put their questions before the speaker who makes a ruling which is binding on the executive. Although the executive is not bound by law to the speakers rulings, it is nevertheless bound because of the limitation the system of checks and balances impose on it.

However, one set back that has affected the position of speaker is that for one to be a speaker, he must be a member of the party (UNIP). This is not a constitutional requirement but this has been the trend. And so the party influence is strong on the speaker when he performs his duties. But despite this set-back the speaker in Zambia since 1973 has received respect from the executive that has enabled him to perform his duties satisfactorily. The speakers rulings have contributed to what the other controls of Parliament have done in making the executive accountable to Parliament in its activities.

(iii) Debates on the appropriation Bill.

During debates in Parliament, the house has another way of making sure the administration process functions in a manner that is for the benefit of society.

To begin with, the constitution provides³⁵ that money can be withdrawn from the general revenues for use in some specific government department or local council. The withdrawing is done^{by} the executive. However, no money can be expended from the general revenues of the republica without authorisation of the president. The expenditure has also, to be charged by the constitution or any law that deals with revenue in the country.

However, notwithstanding the president's authority, no warranty can be issued unless the expenditure has been proposed in a supplementary estimate approved by the National Assembly, and has been authorised by the necessary law, which is the appropriation Act.³⁶ With this, Parliament has the power to set the limits and conditions pertaining to the appropriation of expenditure. Thus, through debates it has the power to control the allocation of funds to executive institutions. Its functions are to approve estimates of expenditure allocated in the budget in order that all public institutions such as the ministries, departments and the party receive the funds with its authority.

It is thus mandatory for all public institutions to present before Parliament their annual reports, these include financial reports. The reports are supposed to explain to Parliament how they utilise the funds that allocated to them. And Parliament utilises the debates on the appropriation bill to assess, criticise and evaluate the functioning of these public institutions. Various ministries and departments have to justify their request for public funds on the basis of their operational efficiency so that Parliament can approve their expenditure.

35. Under Article 121 of the Republican Constitution (1973) p79.

36. Article 121 (2) (a) Republican Constitution (1971) p79.

The discretion is on Parliament to decide whether or not to allocate funds to them. In 1987, for instance, Parliament withheld allocation of funds to all public institutions that had not submitted their annual reports to it for assessment.³⁷ Similarly it refused to allocate funds to the new Ministry of Presidential Affairs, that had been created by the government. After analysing its report Parliament, established that because the ministry had not been properly created and thus was illegal, it could not allocate funds to it.³⁸

It is seen therefore, that this control does exert some pressure on the executive, in that the latter makes sure that each year an annual report from all public institutions are submitted before Parliament. And because Parliament is vested with the power of allocating funds to these institutions, it sees to it that all institutions should submit before it, satisfactory annual reports which explain the way funds allocated to them are spent.

Like other controls, this control has shortfalls mainly because of the party influence. It is usually noticed that the party, which also receives funds from Parliament does not always submit annual reports to the house, and if it does, the reports are not usually properly accounted for meaning that party does not make proper account as to how it spends the money that is allocated to it, but Parliament cannot question it and cannot stop the allocation of funds to it. The domination of the party in the country has tended to disturb the essence of this control and many other, thus destroying domestic practices.

But despite this, the control of debates on appropriation bill has earned itself

37. Report of the Public account committee (1987) revealed that some institutions had not submitted their annual reports and debate was conducted at which the decision was reached.

38. Parliamentary debates (1987). The ministry was subsequently abolished.

respect from the executive institution in that they have to submit before Parliament reports in order for them to be allocated funds.

(iv) Exercise of Legislative power.

Parliament in Zambia, has another control which it uses in the bid of trying to control the abuse of power of the executive. This power is found under Article 63³⁹ of the Republican constitution. Parliament uses this power to legislate law in the country. The executive is responsible for drafting bills which are brought before Parliament scrutiny and finally legislating. But for a bill to be enacted, it has to go through a process of debate. This is divided into four stages viz, the first reading, second reading, committee stage and third reading. There is one more stage which is outside Parliament and this is presidential assent.

(a) First Reading.

According to the standing orders of the National Assembly when a bill is brought before the house, it is read the first without questions being put forward. At this point the minister in charge only has it ^{read} the first time. The reading is only the short title. This means that only the title of the bill is read as a way of introducing it. After the reading the minister then informs the house when the second reading can be made.

(b) Second Reading.

This is as some scholars say the most important stage a bill passes through, for its whole principle is in issue and is affirmed or denied by vote of the house, though at this stage it ^{is} not ⁴⁰ discussed in detail.

39. This provides that the Legislative shall be vested in Parliament.

40. Griffith A.G. Parliamentary Scrutiny of government bills (George Allen, London, 1974) p24.

This happens in the Zambian Parliament, as it is during this stage that debate is allowed on a bill though at a minimum level. Members of the house are allowed at this stage to make some amendments to the bill.

At this stage that the bill is criticised by the members of the house who after looking at the bill are in a position to discover its irregularities. The executive at this time is put to task in trying to explain the importance and justification of the bill in the bid of winning support on the motion as a bill cannot pass through second reading without a two-thirds majority in favour of the bill.

When the bill passes through the second reading, it goes into the committee stage for consideration.

(c) Debate in committee stage.

At this stage, the function of Parliament is to go through the text of the bill clause by clause and if necessary word by word. The main reason for this is to make amendments which are aimed at making the bill generally accepted. The minister who presents the bill before the house a tremendous duty of ensuring that the bill is reported to the house with all the principles and details to enable debate to flow in a proper manner. Amendments to the bill are made at this stage. These are not effected as the committee has first to report to the House about the amendments.

After the end of the consideration of the bill, the chairman of the committee, who is usually the deputy speaker, makes reports to the house, stating whether the bill has been amended or not. If the bill has passed through without any amendments it is ordered straight away to be read the third time. But if it has been

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amended, the minister has to name a day on which the bill could be taken into consideration. When considering a bill that has passed through committee stage, whether amended or not, debate is allowed. This enables members to make more contributions and make new clauses, and if none are made, the bill is read the third time.

(d) Third Reading

On third reading no amendments, not being verbal or amendments to title are allowed. And after the third reading no further questions are allowed and the bill is deemed to have been passed.⁴²

However, for a bill to have full legal force, there is need for the President to give assent to it.⁴³

This, therefore, is how a bill passes through Parliament before it finally becomes law. The scrutiny of government bills is based on some factors, these being the bill itself, whether or not it complies or is compatible with social factors. The other is the policy behind the bill. This is what causes more debate, as usually the policies can be more to the benefit of the government than the people. At times, despite the policies being well known it is noticed that the detailed means adapted by the government to effect it are not. This is so even if the government precedes the bill by a statement like a government white paper.

With its Legislative power, Parliament has the mandate to refuse to pass or to modify bills that are presented to it by the executive. But the executive has on numerous occasions imposed on Parliament by forcing it to enact laws. For

42. Standing order number 114 of the National Assembly Standing Orders.

43. Article 79(3) Republican Constitution (1973) p61.

instance in 1981, Parliament refused to pass the Corrupt Practices Bill. The President threatened to dissolve Parliament before the house reluctantly passed the bill, but Parliaments concern was realised when the High Court held that some of the provisions of the Act were ultra vires as they contravened the Constitution.⁴⁶

Despite such setbacks, Parliament has since 1973 been a strict control when enacting any bill such that it refuses to pass bills which it has felt are not for the benefit of the people. For example in 1980, it refused to pass the Local Administration bill until the amendments it had proposed were incorporated in the bill. Also it refused to pass the Bank of Zambia amendment Act until its proposed amendments were incorporated in it.⁴⁷ Through such incidences the effectiveness of Parliament is seen.

Employing Parliamentary debates as a means of control, Parliament has, since the formation of the one-party state, been an effective check on the activities of the executive. It has been in a position to limit the power of the executive by making the executive accountable to it. Further despite the fact that Parliament has had weaknesses have not defeated the whole essence of it being an effective check on the executive action.

However, it is worth noting that what has been discussed above are not the only forms of control that parliament possesses. Other forms includes Sessional and Select Committees which are instruments which it uses to probe into the activities of the executive, and the reading of annual reports where Parliament scrutinises the reports of all public institution in monitoring the activities of the

46. *In Re Thomas Mumba* (1984)ZR 38.
47. Parliamentary debates (1980).

executive. These forms of control shall be discussed in the next chapter which shall venture into establishing the effectiveness of the controls.

The 1973 Constitution which is still in force awaiting repeal by the signing or assenting of the president and when this is done, a new constitution will be brought into force. The coming of the new constitution will mean a change in the political structure of the government and as such it will be necessary now to allude to what the likely changes will be.

(e) Changes in the third Republic.

On 8th October 1990, a ~~Commission~~ commission headed by Professor Mvunga was appointed by the president to inter alia 'examine and determine a system of political pluralism that would ensure a government which would be strong enough to rule the Zambian nation and ensure the personal liberties of the people'⁴⁸ and to examine and determine a system of government that would ensure the separation of powers of the Legislative, Executive and the Judiciary so as to enhance the roles of these organs.⁵⁰

The commission several months of deliberations came up with recommendations as to the way government can be structured. From these recommendations, a constitutional bill that has since been passed by Parliament (awaiting presidential assent) was made. This has made a number of changes to the structure of the government.

48. By virtue of Statutory instrument number 135 of 1990.

49. Ibid section 1 p371.

50. Ibid section 1 (i) p371

(1) The Executive.

The new constitution (like the 1973 one) also vests the executive power in the President.⁵¹ This means that in the Republic the office of the executive President will be maintained. The constitution has created a new position that was not present in the 1973 one and this is the office of Vice-President. It provides that,

"There shall be an office of the vice president of the Republic."⁵²

The Vice-President will be appointed by the President. However, the appointment of the Vice-President will be subject to the ratification of the National Assembly.

The President will also be vested with the power to appoint ministers. This is by virtue of Article 44(i) which provides that,

"There shall be such ministers as may be appointed by the President."

Nobody who is not a member of the National Assembly will be appointed as minister. It is worth noting, however that this was not the original intention of the government. It wanted to completely separate the Executive from the Legislature by first providing that 'ministers were to be appointed from inside or outside Parliament.'⁵³ But after consultations with the opposition Parties (notably MMD) this was amended. The functions of the cabinet will be to aid and advise the President in the exercise of his functions. This is a big change, as in the present constitution (1973) this function is being performed by the Central Committee

51. Article 31(2) provides "The executive power of the Republic of Zambia shall vest in the President..."

52. Article 43(1) Constitution of Zambia bill (1991)p49.

53. Government white paper number 2 1991(Government printers, Lusaka) p25.

⁵⁴
of UNIP.

All public officers⁵⁵ who will be appointed by the President, will be so appointed with or subject to Parliamentary ratification. What this means is that if the National Assembly refuses the President's appointment they can compel him to appoint another person.

This shows that despite the Executive power being vested in the President, this power will be checked at all times by the other organs especially the Legislature.

(2) The Legislature.

This has been established under Article 60 which provides that,

"the Legislative power of the Republic of Zambia shall vest in Parliament which shall consist of the President and the National Assembly."

It (the constitution) provides further that the National Assembly shall consist of one-hundred and fifty elected members. There will be a number of eight members who will be nominated by the President, and the speaker who will be the head of the House.

From this, we see that the executive presence will be there in the Parliament, but despite the presence of the President, he will not be a member of the National Assembly and his functions will be as they are in the present constitution (1973) vis to address the House and to assent to the bills passed by the House.

Members of the National Assembly will be elected from their respective

⁵⁴. Article 47C Constitution (1973) p48.

⁵⁵. Like the Director of public prosecution, solicitor-general etc.

political parties and their functions will be basically the same as the one they perform as provided for under the 1973 constitution. However, more authority had been vested in them as they have to verify any appointment the President makes. Also the National Assembly has the authority, after a two-thirds majority to have a former President stand trial for a criminal or civil charge labeled against him.

This goes to show that in the next Republic, Parliament will have a very big role to play in the safe guarding of law and order and the preserving of the fundamental Human Rights. It will be in a position of acting as an effective check on the activities of the other organs especially the executive.

(3) The Judicature.

The 1991 constitution establishes the courts of the nation as being the Supreme Court, High Courts and any other courts as may be prescribed by an Act of Parliament.⁵⁶ Initially, there was addition to the number of courts and this was the Constitutional Court. But it was realised that the creation of such a court would only mean expenses and so the government decided to remove it from the structure of the courts. This means that the structure of the courts will not be different as it is. The only difference, however, will be in the appointment of the Judges.

The Chief Justice shall be appointed by the President subject to the ratification of Parliament.⁵⁷ This is different from the way the Chief Justice is appointed under the 1973 constitution. He is appointed by the President without consultation of any one.

The High Court Judges shall be appointed by the President on the advice of

56. Article 96 Constitution (1991) p69.

57. Ibid Article 98 p70.

the Judicial Service Commission, subject to Parliamentary ratification. The composition of the Judicial Service Commission will be dominated by people who are legally qualified than it is. This turn will make it more independent and qualified to know who is capable of making a good Judge.

It is thus hoped that with such a structure of government, there is going to be a strict separation of powers and an effective checks and balances. It is also hoped that in the third Republic democracy will be practiced to the maximum in the hope of attaining a suitable rule of law.

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CHAPTER 3

OTHER CONTROLS OF PARLIAMENT

Introduction

In the preceding Chapter, we discussed several mechanisms which serve as legal controls of parliament over Executive action. Mention was made that other important but probably less influential control methods exist. It is to these other means of control that this Chapter is devoted. These controls are sessional and select committees and reading of annual reports. This Chapter will show the extent of control these controls possess over the Executive actions.

(A) Sessional Committees

It has been acknowledged that 'democracy used to be associated with the belief in the supremacy of the legislature and even though this view has been modified, the legislature nevertheless remains the only organ that can call on the Executive to account for its actions. To a large extent, however, this type of legislative control depends on the freedom of inquiry, so that using the information obtained, the executive can be put to task. Without information reasoned criticism can be impossible.'¹ The committees established by parliament are some of the instruments through which it uses to probe into the activities of the Executive. As one British Parliamentarian observed,

"The increasing complexity of government, and the extension of its powers into many new fields, have also high lighted the inadequacy of the traditional concept of Parliamentary control."

1. Morris A, *The growth of Parliamentary Practice* Pregamas, Oxford, 1970).

No longer, can the House of commons by questions and debates on motions and bill, expect to exercise an effective check on all major decisions and acts of government. But I do believe that the increasing power of the executive to direct the affairs of the national should be matched by an increasing power of Parliament to control, in the direct sense, the use of executive power.... This I believe to be the heart of the case of an extension of Parliamentary Sessional or Select Committees."²

This is the importance attached to Sessional Committees - They supplement the effectiveness of question time and debates in trying to control the power possessed by the executive.

The Sessional Committees are appointed at the beginning of every session to consider particular matters and 'sometimes they inquire into various issues relating to government administration with a view of monitoring the executive'.⁴ As de Smith³ adds on,

"the idea of committee rests on the idea that Parliament through these committees would play an active role in scrutinising and even criticising where need be, the aims and actions of the executive"⁵

So with the creation of Sessional Committees Parliament hopes to increase its check on the executive actions and aims, which if not controlled may be abused.

In the Zambian National Assembly, there are thirteen Sessional Committees

2. Meeha, *The Dynamics of modern government* (Rochen & Steedman, London, 1966) p196.

3. Eskino. M, *Parliamentary Practice and Procedure* (Butterworths, London, 1976) p604.

4. In his book, *Constitutional and Administrative law* 3rd Ed (Penguin Books, London, 1971).

5. at p293.

which are appointed at the beginning of every session. The creation of these committees is done by the Standing orders of the National Assembly. It is important to note that not all sessional committees are involved with the monitoring the activities of the executive. There are five sessional committees in the House that deal only with the internal affairs of the House. These are the Standing orders committee; The Library committee; The House committee; The committee on Parliamentary practice, custom and tradition, and the committee on absence of members from the House and sessional committees. Because these committees do not contribute to the control of the executive actions, they will not be examined further. The remaining sessional committees are concerned with the monitoring of executive actions. It is important to note, however, that the committee on parastatals does not deal directly with the executive. But it is considered to be under the umbrella of the executive because of the way the executive influences the policies that are adopted by the parastatals through the appointments of the executives of these bodies.⁶

The sessional committees have specific functions to perform which are intended to check the activities of government. These committees are;

- (i) Committee on Parastatal bodies which examines the functions of parastatal companies;
- (ii) Committee on government assurances which scrutinises the assurances government makes in the House;
- (iii) Foreign Affairs committee, this examines the countries foreign affairs

6. Mutale P., Parliamentary control of executive through sessional committees. Obligatory Essay (1985) p19.

policy;

- (iv) The Public Accounts Committee, which examines the use of the funds that are granted for projects to the government;
- (v) Committee on social services whose duty is to scrutinise government policy on health, Education and Social welfare;
- (vi) Committee on Agriculture, Land and Co-operatives, which examines the activities and administration of government policy on agriculture.

It is important to note that the committees mentioned above are not the subject of discussion, but we shall concentrate, however, on two other committees and these are the committee on Delegate legislation and the Local Administration committee.

(vii) Committee on Delegated legislation.

By virtue of Article 81 of the Republican Constitution (1973) the National Assembly is empowered to confer on any person or authority power to issue Statutory Instruments. The power to promulgate Statutory Instruments is conferred on the executive and is referred to as delegated authority. The laws made by any executive authority pursuant to such authority is called delegated legislation. The provisions empowering the National Assembly to delegate legislative power to the executive clearly recognises that, by its very nature the National Assembly does not sit every day of the year and yet need usually arises for laws to be made to take care of contingencies that may arise when the National Assembly is not in session. Further some issues are essentially of technical nature, for

example those concerning the Auditor-General, and as such qualified people are left to deal with them.

However, despite having the authority to issue Statutory instruments, the executive is under the scrutiny of the National Assembly. And the duty of scrutinising is done by the sessional committee on Delegated Legislation. This committee consists of eight members and is created under Standing order number 143. Its duties are to examine whether the power conferred on the executive authorities to promulgate statutory instrument is exercised properly. In examining the executive power, the National Assembly looks at five items which are;

(a) that the Statutory instrument, issued is in accordance with the constitution or the statute under which it is made. If the Statutory instrument or any part of it is inconsistent with the constitution or enabling statute, it is null and void. Further, Statutory instruments are supposed to be promulgated by specified persons such that Statutory instruments that are issued by those not in authority will be declared null and void by the committee. This happened in 1985 when the committee declared null and void a Statutory instrument because it had been issued by the Director of Civil Aviation as opposed to the Minister of Power, Transport and Communications who in accordance with the Act under which it was made, was the relevant authority.⁷

(b) Seeing that the delegated legislation does not trespass unduly on personal rights and liberties of the people of Zambia. If any statutory instrument infringes any of these rights, the committee will declare it null and void.

⁷. Report of the Committee on Delegated Legislation (1988) p7.

(c) Checking that a subordinate legislation does not amount to a substantive legislation, as this is a matter of Parliamentary enactment.

(d) to examine that Statutory instruments do not make the rights and liberties depend upon administrative decisions.

(e) Finally to make sure that the Statutory instrument is not contrary to the Philosophy of Humanism.

If any Statutory instrument issued is contrary or inconsistent with any of the above items, the committee has the authority to declare such instrument null and void.

However, before a Statutory instrument is laid before the House, it has to comply with Article 81(2) of the constitution which provides that,

"Every Statutory instrument shall be published in the Gazette not later than fourteen days after it is made... and if it is not so published it shall be void from the date on which it was made."⁸

The Committee has the power to declare Statutory instrument null and void if it does not comply with Article 81 (2). In 1984, for instance the committee declared null and void the merchant shipping (Temporary provision) (Part of Regulation) order 1984, after discovering that it had been published more than fourteen days after it was made.⁹ From this, it is clearly shown that the committee has the power to control the activities of the executive authorities. The Committee has in recent years reported,¹⁰ that most Statutory instruments are made in accordance with the regulations laid down. This shows the extent of control

8. p63. Constitution (1973)

9. Report of the Committee on Delegated Legislation (1985) p2.

10. For example the 1985 and 1990 Committee reports

possessed by the committee.

The Committee has however faced often problems particularly from those ministries that have not been supplying adequate information on the Statutory instruments they present before it. Mr Nkhata¹¹ express his displeasure with ministries which were hampering the committees work by not supplying explanatory memoranda, he stated that if the committees' main function of watch dog of the rights and liberties of the common man have to be effectively carried out, it is imperative that all issuing authorities of Statutory instruments, reply promptly to the queries raised by the committee.¹² This has become a very major set back of the committee because without adequate information the passing of Statutory instruments. Nevertheless, the committees activities in the control of Statutory instruments has been described as one of the most effective tools of Parliamentary control.

(vii) Committee on Local Administration.

This is the latest committee, formed in 1982. It was created as a result of a change in the administrative structure of local governments, as in 1980 the Local Government Act was repealed and replaced by the Local Administration Act. With this the national Assembly decided to create a watchdog which was going to monitor the functioning of these Administrations.

The Committee has a membership of ten back benchers whose duties are to examine the accounts showing the funds appropriated to district councils by the National Assembly. It further examines the efficiency of district councils in the

11. Chairman of the 1985 Committee on delegated Legislation (1985).

12. P13.

context of autonomy and has to consider whether the affairs of the councils are being run in accordance with the Local Administration Act. It also has the task of considering the Audit-reports tabled in the National Assembly in accordance with section 42 of the Local Administration Act. The Committee works together with the Auditor-General who has the responsibility of submitting annual reports from the district councils, and if he states that some councils have spent more funds than was allocated to them by the National Assembly, the committee has the responsibility of inquiring into the causes of the excess expenditure. In this regard the committee has the authority to summon before it the District executive Secretaries (who are responsible for the administration of funds in councils) to explain how the funds are used.

After such deliberations, the Committee compiles a report in which it discusses all that transpires between it and the local administration officials. In its report, the committee also makes recommendations which are expected to be implemented by the councils. However, the councils are under no obligation of implementing the recommendation, and they can opt not to implement them. However, if they decide not to implement the recommendations, they have to give reasons.

When the report is compiled, the committee submits it before the House sixty-days after it has been adopted by the committee. An action-taken report¹³ is also laid before the House and in it are the responses from the district councils, and the ministry responsible for the councils, on what has been done about the

13. This is a report in which the actions taken by the Councils are compiled.

Committees' report.¹⁴

The committee's control is in the form of recommendations it makes in its reports. This already shows a weakness in the functions of the committee as a control as the administrations are not bound to implement the recommendation. When the councils do not implement the recommendations, the committee can do nothing other than express its disappointment, like what Mr Mukuka who was Chairman of the Committee on Local Administration in 1986 did when he expressed his disappointment at the 'failure by the minister of Decentralisation to respond positively to the committee's recommendations.'¹⁵ As at the time of making the report in the House, the ministry had done nothing in implementing the committees recommendations. Such reactions from the administrators defer the functions of the committee as a control.

It is important to note, however, that despite this set back of non-implementation of recommendations, the committees controls have on many occasions been adhered to by the councils. For instance in 1984, all responses¹⁶ of the district councils were in accordance with the requirements of the committee. The committee had recommended to the government to implement certain steps to lessen the misplacing of staff that was prominent in district councils and at the time the report was being made to the House the response was that the government was taking corrective measures to solve the problem. In the same report, the Kabwe Urban District council responded that it had regulated the over-expenditure that was prevailant in the previous years.¹⁷ This goes to show that although

14. Opcit Mutale Patrick p23. (for procedure).

15. Report of the Committee on Local Administration, Parliamentary Debate (1986) p460.

16. Report of the Committee on Local Administration (1985) p8. Also the Reports of (1987), and 1989 reported compliance with their recommendations.

17. Ibid p10.

the Local Administrations are not bound to implement the recommendations of the committee, they nevertheless implement the recommendations, as failure to do so means that they have to come before the committee and explain why they did not implement the recommendations. Local Administrations, therefore, feel duty-bound to implement the committees recommendations.

Through the use of sessional committees¹⁸ Parliament has been able to effectively question the governments activities, making the government work within the limits the controls have stipulated. This shows that Parliament 'has against all odds managed to secure for itself an important place in the Public law of Zambia by providing some additional controls over administrative authorities'¹⁸

(B) Select Committees.

In addition to sessional committees, the National Assembly can appoint Select Committees¹⁹ to investigate on specific matters. These committees are adhoc.

Since 1973, there have been a number of Select committees which have been formed to investigate problems that have arisen, and these committees have given recommendations on how to redress these problems. In 1977,²⁰ due to the rapid decline in the Zambia economy the National Assembly decided to appoint a Select committee to examine the state of the National economy, and this committee made a wide range of findings, from the government misappropriation of funds to the overstaffing in Parastatal bodies. In its report²¹ the committee made a number of recommendations. However, not all recommendations of the report were

18. Mumba S. K. C., 'Legal controls of administrative process' *Zambia law journal* (Zambia Printing, Lusaka, 1986) p10.

19. This is done by Standing orders committees by virtue of Standing order number 121.

20. Report of the Select committee on the state of the economy (October 14th 1977)

21. Ibid p8.

adhered to by the executive. Again in 1990,²² a select committee was appointed to establish ways in the United National Independence Party (UNIP) could be made more democratic. It made recommendations which would have assisted UNIP in becoming democratic, but the recommendations were not followed. The non-compliance by the executive has really deterred the functions of the select committees of the Parliament and only shows 'the marginal extent to which the administrative authorities²³ considers themselves bound by law.' This has destroyed the whole essence of establishing the select committees as legal controls of Parliament.

However, one appreciating fact about select committees, is that by their very nature, they are able to identify the problems that exist in the country thereby leaving to the executive to implement and correct the problems that arise. The committees should therefore be commended for the small contribution they have made in the exercise of Parliamentary control in Zambia since 1973. It is hoped that in third Republic these committees will be given more authority over the executive bodies if it is to function effectively.

Another form of control is the reading of annual reports. We now turn to examine this in detail.

(C) Annual Reports.

As already explained, the National Assembly has the power to allocate public funds to all public institutions including the Party (UNIP). As such, it is a mandate that all these institutions should submit before the house their annual

22. Report of the Parliamentary Select committee, on the democratising of UNIP (July 1990).

23. *Opcit* p9.

reports. In these reports, the institutions explain as to how they exercise their duties and how they spend the funds allocated to them by the National Assembly.

There are two types of annual reports that are submitted before the National Assembly; general reports and particular reports. General reports are those which are produced by institutions like the commission for investigation and the Auditor-General.²⁴ These the two institutions share a common attribute as they are supervisory bodies over administrative authorities. They are termed as general annual reports, because they do not concentrate on one particular institution but rather, they comment on all public institutions, 'revealing instances of administrative high-handedness in wide ranges of authorities.'²⁵

Particular reports on the other hand, 'are those which are produced by specific administrative authorities such as government departments and Parastatals. These reports mainly concentrate on describing the administrative structure of the respective bodies and finance.'²⁶ From their description, it is noticed that the functions of these reports cannot be said to constitute any control for the National Assembly to challenge the executive. Thus, for present consideration, discussion shall focus on the two general annual reports, vis, the commission for investigation report and the Auditor-General report.

(i) Commission for Investigation annual report.

The Commission for Investigation is an administrative (Executive) supervisory body, that has been established to check and control the activities of the executive authorities. It belongs to the group of controls established by the

24. Mumba Cpait p11.

25. Ibid p11.

26. ibid p11

executive. This body receives complaints from public workers and those from parastatal bodies on matters of gross misconduct and abuse of Power by the administrative officials and it carries out independent investigations to establish the allegations. After carrying out investigations this commission submits its recommendations to the President who has the discretion of either agreeing with it or not. At the end of each year the commission compiles a report which it submits to the National Assembly.

The annual report of the commission for investigation, offers the National Assembly little opportunity to criticise the actions of the executive officials. This is because, at the time the report is submitted the conclusions in the report will have already been made and all that the National Assembly does is to see how the commission conducted its investigation. It can thus be argued that this form of control serves no purpose in the National Assembly as all the House does is to comment on and not to criticise the report when it is submitted.

(ii) Auditor-General annual report

Of all reports that are submitted before the National Assembly, the ones that provides the House with an opportunity to challenge administrative authorities are the Auditor-Generals' report.

These are reports from the Auditor-Generals office, which is classified as the accountant of the government. This office deals with the accounts relating to the spending²⁷ of public funds that are allocated to the government ministries and departments.

²⁷ OpCit mutare p. p29.

The Auditor-General reports make recommendations which are adopted by National Assembly as to how the government may lessen the spending of funds, but in most these recommendations are not followed and the auditor-General is not vested with any authority to compel the executive to follow the recommendations. The National Assembly can only criticise the executive for the wastage of funds allocated to it but cannot compel it to stop the misuse of funds. This has been a major setback of this control because, despite the advice it gives to government, the latter nevertheless spends the funds allocated to it on ventures that are not for the benefit of the people in Zambia. It is thus, felt that this form of control should be vested with more authority if the National Assembly is to adequately check the activities of the executive.

In looking at Parliaments control through the reading of annual reports, it is of essence that this control be vested with more authority if parliament is to successfully check the actions of the executive. One way in which this can be done is by making the two bodies that is, the commission for investigation and the Auditor-General directly answerable to the National Assembly. In this way, they are going to be additional controls of the National Assembly in supervising the activities of the executive.

Conclusion

The Parliamentary controls through sessional and Select Committees and the reading of annual reports have been discussed in this chapter. It has been discovered that these controls have especially sessional committees have

contributed to the effectiveness of Parliamentary check on the activities of the executive. However, it has noticed that these controls are not as effective as Parliamentary controls should be. It is thus necessary that changes should be made to make these controls capable of effectively checking the executive power.

It is thus hoped that in the third republic, the Parliamentary controls will play a fundamental role of ensuring that the system of checks and balances is strictly adhered to. It is going to be the function of Parliament to see it that the executive does not use up its power by monitoring its every activity. This will in turn mean that democratic policies will be safeguarded.

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CHAPTER 4

CONCLUSION

This paper has explained how the Zambia Parliament has functioned since 1973, and in particular it has attempted to examine the control mechanism of Parliament and how these have been over the years employed as checks on possible executive abuse of power.

The paper began as a way of introduction in chapter one by explaining what a government is. Its functions were alluded to. The concept of separation of powers, these being the functioning organs of a government were explained and their importance in the attaining of democracy in a particular country were explained. The role of law was also discussed and its contribution in a country was shown.

In Chapter 2 the paper discussed one of the three organs of a government this being the Parliament. The Zambia Parliament was discussed and the first type of control through debates was discussed. The ways through which Parliament exercises the power of debates were examined, these being question time, speakers ruling debate on appropriation bill and Exercise of legislative power. The functions of these controls has been explained and their contribution to the control of the executive was shown. Their weaknesses were also alluded.

Chapter 3 discussed the other forms of control these being through sessional and Select committees and the reading of annual reports. The contribution of these controls to the function of Parliament was explained and their weaknesses were

mentioned with suggestions made thereafter.

When determining how effective these controls have been, two conflicting views emanate, one alleging that during the one-party era the national Assembly has been a toothless organ without any force, while the other has been that despite the position the National Assembly has been in, it has nevertheless acted in an effective way. In light of these statements it will be necessary to address these issues in more detail so as to attain a clear understanding as to whether the National Assembly has been an effective organ in the system of checks and balances.

(A) National Assembly not effective a control.

When Zambia became independent in 1964, it adopted many aspects of the British system and one of these was the Parliamentary system. Between 1964 and 1973 this system functioned appropriately as then Zambia was then a Multiparty state.

After 1973, when Zambia became a one-party state, it maintained the British system of parliament. And thus the first argument is that it is not possible to allege that Parliament functioned adequately as it is a one-party model whereas the system it was derived from is one that accommodates a Multiparty one. Further the Zambian Political system is a one-party and thus, Parliament is seen to be under the influence of the ruling party (UNIP). In addition the announcing of the party supremacy policy¹ meant that the party has become the most important organ in the country and this has destroyed the essence of democracy as all organs,

1. President Kaunda's watershed speech (1975)

including Parliament has to function under the party policies which have not been for the benefit of the common man.

(B) The National Assembly an effective control.

This view begins with an acknowledgement that the Zambia Parliamentary system as from 1973 is one meant for a Multiparty model as former National Assembly speaker stated,

"The Parliamentary procedures we have inherited were evolved in the context of a Multiparty system. It may well be that we shall have to evolve Parliamentary procedures which will give fuller play to democratic process in which the whole political community participates from the grass root upwards"²

Since 1973 this is exactly what the National Assembly has been doing, creating an organ that has been an effective check on the executive. It has created new sessional committees³ in the bid to strengthen its activities. It has made sure that every important sector of the government is answerable to it. We have noticed that sessional committees have been created to deal with specific aspect of society and these committees have effectively checked the functions of the executive. It has been acknowledged that 'while the National Assembly may not be the repository of state sovereignty, it certainly influences, and promises to increase its influence over administration through Parliamentary control of administrative authorities.'⁴ It has, against all odds managed to secure for itself an important place in

2. Robinson Nabulyato, *Parliament under one-party state in Zambia* (1975) p9.

3. The Committee on foreign affairs, for example was created in 1980, and the committee on Local Administration in 1982.

4. Mumba S. K. C., *Legal controls of Administrative process*, Zambia law Journal (Zambia Printing, Lusaka (1986) 911.

the public law of Zambia by providing some additional control of administrative authorities.

Looking at the two views discussed above, it must be admitted that both are stating facts. While it is true that the executive in many instances use Parliament for its benefits, it must be accepted that Parliament through its controls acts as a check on the action of the executive. It has been shown in the argument that Parliament has the power through its control to scrutinise all bills that pass through the House and at times refuses to pass them if they do not comply with certain requirements. Similarly, it has been noticed the Parliament through its control is responsible for the allocation of funds to all the public institutions. From this, it is proper to argue that Parliament is slowly becoming more relevant to the government, that is, the controls of Parliament are having more influence in the structure of checks and balances. And it is a belief that this trend will increase if the rule of law is to be implemented to a higher degree than at present. Credit should thus be awarded to the National Assembly, that has strived through a system that is distasteful to come up and become a recognised body this is involved in creating the rule of law and not the rule of men.

Finally, now that Zambia is going in a third Republic, this means Parliament will have a very big role to play in the system of checks and balances. It is hoped that Parliament will be vested with more authority which it will use to check the functions of the executive.

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