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## EDITORIAL

### THE LAWS OF THE CONSTITUTION

Freedom and independence are the perennial pursuits of the human being. Throughout the long history of human society people have ceaselessly struggled to free themselves from the fetters of nature and society. All the struggles that constitute the great epics of the history of mankind have been struggles to defend and to realise freedom. The history of the Zimbabwean people until recently had been one intense struggle to realise independence and freedom from foreign domination and racist subjugation. Our recent struggles have not only increased in real terms our personal freedom and the freedoms available to the masses of the people, but they have also enriched our spiritual and cultural love for the dignity and freedom of men. It is against this, our historical inheritance of love for the dignity and freedom of man, that this issue of the *Zimbabwe Law Review* and the scientific researches behind it have been put together. In other words, this special issue of the *Zimbabwe Law Review* yet again evokes and stimulates our desire as a nation to build a truly free and democratic society.

Lawyers are not and should not be mere technicians of the law. The Constitution is the fundamental thesis expressing the principles upon which our nation, or any nation, is built. The Constitution expresses all our values and therefore constitutes a measure of the level of our freedom and humanity. Its criticism is the criticism of the standards of its values. Lawyers play their part in making and advising on legal aspects of both the substance and the technical standards of constitutions. In order to do a better job of this or to express the democratic yearnings of the people, our lawyers must possess a high level of critical values to assist society as a whole to create more and better freedoms for the well-being and property of the people. These freedoms to be enshrined in the Constitution of the land.

We hope that in this issue, as Zimbabwe prepares to make its own new Constitution after 1990, that the researches and critical visions on constitutionalism made here by the various authors from various scientific and ideological vantage points will assist our people and our leaders in charting and further broadening the road of freedom and independence in the drafting of our own new and sovereign Zimbabwe Constitution as we march forward towards the year 2000.

Issue Editors

# THE CONSTITUTIONAL RECONSTRUCTION OF ZIMBABWE: MUCH ADO ABOUT NOTHING?

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## INTRODUCTION

Zimbabwe became an independent sovereign state on 18th April, 1980 under the Lancaster House Constitution which had been negotiated and agreed upon by the Patriotic Front Alliance, the British Government and the Smith-Muzorewa Alliance. To date, Zimbabwe has been governed under that Constitution which has remained basically intact except for two major amendments effected during 1987. The purpose of this paper is to analyse the changes that have so far been made and those that are likely to be made to the Lancaster House Constitution with a view to assessing the interests that are being protected by such changes. However, before one can analyse the changes and in whose interests they have, or will be made, it is essential to understand what constitutions are and also what interests are protected by the Lancaster House Constitution. It is, therefore, necessary to begin by briefly explaining what a constitution is and how it comes about and its relationship with the socio-economic order of a given country and then proceed to briefly outline the major features of the original Lancaster House Constitution so as to ascertain the interests that it registered.

## THE ESSENCE OF CONSTITUTIONS AND THE RHODESIAN CONSTITUTIONS

The term constitution has, at least, two meanings — the technical or juridical meaning and the political one. In the technical or juridical sense a constitution is a legal document regulating political and social relations, delineating, structuring and empowering the different organs of state power in their interaction with each other and with individual members of society. Thus a constitution regulates the foundations of the social and state system and the legal status of the individual within the state. Politically, as the basic law in any country, the constitution is the factual basis of existing socio-economic and political relations and institutions.<sup>1</sup>

The technical definition of a constitution as a juridical document creating and governing the organs of state power does not reveal the social and political character of a constitution. The social and political character of a constitution is revealed by its political meaning. It is on the latter that most constitutional law

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<sup>1</sup> See V Chirkin, *Constitutional Law and Political Institutions*, Progress Publishers, Moscow, 1985, Chapter 3.

scholars are silent and yet, it is the socio-economic structure and the political nature and complexion of a given country, that determines the nature of the state organs that exist, how they are comprised and how they interact with each other and with the individual.<sup>2</sup> The constitution is essentially a political document given juridical characteristics.

The change from one constitution to another does not necessarily create a new social order if there has been no political and social revolution, since a constitution by its very nature does not create a new order, it merely registers in its norms changes that would have taken place in the social and political arena. Thus, the adoption of a new constitution may change the manner in which state organs relate to each other among themselves in the regulation of the same social system.

The constitutions which Zimbabwe has had with the exception of the Lancaster House Constitution can historically be classified as colonial bourgeois constitutions. They were bourgeois in that they regulated a capitalist socio-political system based on capitalist legal assumptions and concepts. They were colonial in that they were passed by a foreign legislature and enshrined the political and economic rule of a settler minority over the indigenous majority. One of the objects of this part of this introduction is to investigate the extent to which legal concepts and assumptions embodied in capitalist constitutional jurisprudence have changed or continued under the independent government of Zimbabwe. This will, necessarily be tied up with an assessment of the extent to which the social system upon which the constitution is built has changed since, as observed earlier, the constitution simply registers changes in social and political activities.

What was the nature of the social system in colonial Zimbabwe and what specific forms did it take? Colonial Zimbabwe was a capitalist country characterised by

- (a) private ownership of the major means of production (land, factories, mines, etc.) by a minority white settler community in alliance with mainly British and South African based multinational corporations,
- (b) a division of labour based on race with the majority Africans condemned to unskilled and semi skilled manual labour and the Europeans performing or being paid on the basis of skilled labour. Implicit in and concomitant with this was a denial of opportunities for Africans,

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<sup>2</sup> See for example H. Street and R. Brasier (eds) *Constitutional and Administrative Law de Smith*, (4th ed) Penguin Books Middlesex, 1981, A. V Dicey, *The Law of the Constitution* (10th ed), MacMillan, London, (1960) and E.C.S. Wade and G.G. Phillips, *Constitution and Administrative Law*, (9th ed) Longman, London, 1977.

- (c) discrimination based on race in favour of whites in social, economic and political life,
- (d) the use of force through the state and law in the suppression of all attempts by the African people to assert their right to self-determination and to other democratic rights,
- (e) the use of constitutions to enshrine the fundamental principles upon which the colonial state was based.

We shall dwell mainly on the constitutional structures and assumptions underlying constitution making and submit that the main constitutional assumptions underlying the constitutions of Rhodesia were to consolidate and develop colonial and capitalist rule. Thus we find concepts and structures similar to those in the colonial country, Britain.

The technical interaction of state organs was by and large based on British constitutional concepts of constitutionalism summarised by one of their leading proponents Professor de Smith thus: ". . . constitutionalism is practised in a country where the government is genuinely accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organise in opposition to the government in office and where there are effective legal guarantees of fundamental civil liberties enforced by an independent judiciary. . . ."<sup>3</sup>

Other constitutional concepts underpinning state organisation contained in the British Constitution and reproduced in Rhodesia include:

- (a) the existence of a second parliamentary chamber styled, the Senate,
- (b) the establishment of so-called politically neutral zones, such as the judiciary, the Attorney General, the public service, the police and armed forces and the electoral process together with the delimitation of constituencies,
- (c) the application of the bourgeois rule of law to the executive,
- (d) Constitutional guarantees of individual civil liberties,
- (e) the separation of the executive from the legislature and from the judiciary and the building in of checks and balances.

The above features were generally contained in all Rhodesian constitutions in varying degrees.

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<sup>3</sup> *The New Commonwealth and its Constitutions* Stevens, London, 1964.

The importance of these concepts lies not so much in their content as in the social and political system in which they operated. For example, the same concepts were used more or less in their classical formulation in the colonial oppression of the majority of Zimbabweans. The existence of a second chamber does not do away with the injustices inherent in a particular social system; the purported shielding from political control of certain state organs, if possible at all, does not ensure the realisation of social justice for the people; the application of the rule of law to the executive does not redress the social and economic imbalances inherent in a capitalist society. The latter fact was acknowledged by the International Commission of Jurists at its 1959 Congress at Delhi when it recognised that the rule of law is a dynamic concept "which should be employed not only to safeguard and advance civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized."

The constitutional guarantees of individual rights merely contained and still contain what can be termed the First Generation of Human Rights, namely civil and political liberties as were declared during the anti-feudal revolutions of the eighteenth century and which are contained in the European Convention on Human Rights of 1950. The Second Generation of Rights, that is those of a social, economic and cultural nature such as those contained in the United Nations Conventant on Social, Economic and Cultural Rights, were and still are not legally recognised. The Third Generation of Rights, namely the rights to peace, social identity and a clean environment, generally referred to as people's rights also received no legal or constitutional recognition. The First Generation of Rights embodied in Rhodesian constitutions were not justiciable and hence Zimbabweans only managed to enjoy these rights with the coming into being of the Lancaster House Constitution. However, these civil and political rights are meaningless to the majority of the people if they are not complemented by the Second and Third Generations of Rights.

The existence of checks and balances in the state apparatus is merely an efficient method of dividing labour between the different state organs and is designed to make the state operate more efficiently. It does not result in the creation of a more just state. On the contrary it may make a ruthless and undemocratic state, ruthlessly efficient.

The above concepts are to be seen in literally all the Rhodesian constitutions. They were used as part of the Constitutional machinery for the oppression and suppression of the majority of our people. After Lancaster House, the glaring racial connotations given these concepts were removed and the concepts continued albeit in a changed political environment but serving essentially the same social and political system.

The point being made is that without studying the social and economic system the state is presiding over, it is misleading to confine one's analysis to constitutional concepts and categories which in the end are derived from that system and help to reproduce it within the context of constitutional legality.

Their importance should not be underestimated, but neither should it be overstated. It must be seen within the overall context of the motive forces behind society's development.

### THE MAIN FEATURES OF THE LANCASTER HOUSE CONSTITUTION OF 1980

As said earlier, before discussing and analysing the changes that have been, and are likely to be effected to the Lancaster House Constitution it is essential to set out briefly the major political and legal features of the original Lancaster House Constitution in order to determine the interests it registered, so as to assess in whose interests the post-independence constitutional changes have been or will be made.

#### *Executive Authority*

In broad terms the original unamended Lancaster House Constitutional of Zimbabwe could be described as a typical Westminster model that incorporated the basic and general principle of the British Constitution.

The Lancaster House Constitution established a Parliamentary system of government modelled on the British Constitution. The executive authority of state power was nationally vested in a titular head of state commonly known as a non-executive President.<sup>4</sup> In practice, the President was merely a ceremonial head of state who had no real executive powers. Real executive power vested in the Prime Minister and his Cabinet which he appointed and dismissed at will. It was upon the advice of the Prime Minister and his Cabinet that the President performed virtually all his functions.<sup>5</sup>

The Prime Minister and his Cabinet were responsible to Parliament which was theoretically and legally the most powerful of the three organs of state created by the Lancaster House Constitution. However, the constitution itself was above Parliament in the sense that Parliament could not make any law that was contrary to the Constitution, the constitution being the supreme law of Zimbabwe.<sup>6</sup>

The system of a ceremonial titular head of state was borrowed directly from the British constitution under which the Monarch is the ceremonial or titular head of state, whereas the Prime Minister is the head of government possessed of real political power and therefore real executive authority. The Monarch acts mainly on the advice of the Prime Minister. This British system of a titular head of state which acts on the advice of the Prime Minister must be understood within the

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<sup>4</sup> See Section 64(1) of the Lancaster House Constitution prior to its amendment by the Constitution of Zimbabwe Amendment Act, No. 7 of 1987.

<sup>5</sup> See section 66(1) of the unamended Lancaster House Constitution.

<sup>6</sup> Section 3. This is, in fact, still the case.



context and confines of the history of the British constitutional and political system.

The present relationship between the Monarch and the government in the British Constitutional system was born out of struggles in the social and political history of Britain involving the Monarch, which represented feudalism, on the one hand and the emerging capitalists on the other. Unlike in France and other European Countries the British Monarch that represented feudal despotism was not totally defeated, and rejected, destroyed and vanquished by the new emerging class of capitalists which fought for and introduced bourgeois parliamentary democracy. The present position of the British Monarch was born out of compromises made between the victorious new rulers — the capitalists — and the Monarch which hitherto held all political power and was the law maker, the executive and judiciary.

The system of a titular head of state controlled by an elected government, which has meaning only within the historical context of the development of the British political system and British constitutionalism, was imposed on the Patriotic Front Alliance at the Lancaster House Constitutional Conference by the British, represented by Lord Carrington, and the Muzorewa-Smith alliance.

The Patriotic Front alliance made it clear that it preferred a constitutional system that established an executive presidency and not one that adopted the British non-executive head of state arrangement.

Without a historical context and therefore, without a specific meaning and relevance to Zimbabwe the British model of a non-executive head of state presented itself, in a historical sense, as an anachronism which was bound to be jettisoned for better or for worse. We will return to the subject of the presidency a little later when discussing the constitutional changes that have been made to the Lancaster House Constitution.

#### *Parliament and entrenched white seats*

The Zimbabwe Lancaster House Constitution was made and agreed to after a bitter war of national liberation in which the white settlers fought primarily to preserve capitalism and white control of the state, the economy and all the political and social processes taking place in the country. The settlers' vision of the future of Zimbabwe or rather Rhodesia was one where the white man was to be the dominant economic, political and social figure in the country for all time. The black man was there to be ruled for ever — ruled under a capitalist system which preserved the white man's racially determined economic, social and political privileges. Accordingly, in their fight against democracy the Rhodesians were mobilized around primitive, crude and uninformed anti-communist and racist rhetoric

The Rhodesians went to the Lancaster House Constitutional Conference to preserve in legal form their racially determined economic, political and social

privileges. However, the one thing the Rhodesians, together with their imperialist allies, desired most was the constitutional registration or recognition of the sanctity of private property. It was through the constitutional entrenchment of private property and capitalist property relations that Rhodesians and their allies hoped to perpetuate their dominance in Zimbabwe. This entrenchment they won through the provisions of section 16 of the Constitution. Section 16, by outlawing the compulsory acquisition of property by the state, guaranteed that the socio-economic structures of Rhodesia would remain intact in Zimbabwe.

For the entrenchment of private property and capitalism to be complete there had to be a mechanism by which the independence government would be prevented from changing the constitutional provisions that entrenched the protection of private property. The mechanism chosen by the Rhodesians and their allies was to reserve for whites twenty seats in the House of Assembly and ten in the Senate.<sup>7</sup> It was then provided that the provisions entrenching private property and capitalist property relations together with other fundamental rights could not be repealed or amended within 10 years from the time of independence without a 100 percent affirmative vote in the House of Assembly.<sup>8</sup> Nor could the reserved white seats be abolished within a period of seven years from the date of independence without a 100 percent affirmative vote in the House of Assembly.<sup>9</sup>

The net effect of these constitutional provisions was that if the entrenchment of private property was to be removed within the first seven years of independence the white members of parliament, mostly former Rhodesians, representing the interests of capital in the hands of multinational corporations and the national bourgeoisie would have had to vote for such removal.

In addition, if their seats were to be abolished before the expiration of seven years from the date of independence, the white parliamentarians would have had to vote in favour of such abolition.

The practical implications of all this was that the reserved white seats were a mechanism designed to prevent the abrogation of the economic and political interests of multi-national corporations and Rhodesian whites which were entrenched in the Declaration of Rights. The calculation of the think-tanks of imperialism and capitalism was that by 1987 or 1990 very few of the revolutionaries of the nationalist movement would be committed and willing to abolish the entrenchment of private property on the scientific assumption that by that time they would have been co-opted into the capitalist system. Their reasoning was that capitalism and capitalist institutions require capitalists to manage them and a revolutionary Marxist-Leninist oriented Party taking over state power at independence would need to move quickly and decisively to smash capitalism

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<sup>7</sup> Sections 38 (1) (b) and 33(1) (b) respectively.

<sup>8</sup> See section 52 (4) (a) as read with section 52 (3) (b) (i)

<sup>9</sup> See sections 52(3) (b) (i) as read with 52 (5)

and its institutions failing which that government would gradually be impelled by the system to be on the side of capital. They thus made it impossible for the new government to constitutionally move quickly and decisively against the abolition of capitalist property relations.

The question therefore, is whether the post-independence abolition of the reserved white parliamentary seats is of any consequence to the economic and political domination of the state by capital and white Zimbabweans who controlled capital at the time of independence. This question will be answered later.

### *The declaration of rights and the judiciary*

The effective protection of private property and other essentially bourgeois fundamental rights also depended on the existence of a seemingly non-partisan and neutral judiciary to uphold the basic tenets and provisions of the Lancaster House Constitution. Thus the judiciary had to be one of the "politically neutral" zones "impartially and dispassionately" upholding the rule of law. However, the upholding of the rule of law meant the preservation of the status quo under which the bourgeoisie dominated and controlled all the economic, social, political and legal processes occurring in the country. The rule of law in Zimbabwe had to mean that the laws which favoured the ruling classes as against the workers and peasants had to be rigorously enforced.

To uphold the rule of law and enforce the supremacy of the Lancaster House Constitution and other laws which had been made in the interests of the bourgeoisie and their allies, the Lancaster House Constitution provided for a seemingly politically neutral judiciary appointed by the government acting on the advice of the Judicial Service Commission.<sup>10</sup> This Commission was inevitably dominated by former Rhodesian judges who shared the same values in respect of the rule of law in so far as it operated in favour of the propertied classes.

The judges inherited from Rhodesia and appointed after independence were to be independent and free from all political control. They had to be lawyers of several years standing<sup>11</sup> and once in office could not be removed except after an elaborate process controlled by the judges themselves.<sup>12</sup> Their remuneration was secure in that their salaries were to be paid from the Consolidated Revenue Fund and could not be reduced during their term of office.<sup>13</sup>

All these were constitutional safeguards designed to protect the security of tenure of judges so that they would act independently from executive control, which executive was thought would not be in favour of the continuation of the

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<sup>10</sup> Section 8(4)

<sup>11</sup> Section 82

<sup>12</sup> Section 86 and 87

<sup>13</sup> Section 88

rule of law under bourgeois conditions of domination. This judiciary was to be the ultimate protector of private property in accordance with the constitution. A quick survey of property related cases decided in the post-independence period reveals that the judiciary has effectively upheld the sanctity of bourgeois property.<sup>14</sup>

It must be noted that upon realising that it was increasingly becoming difficult, expensive and internationally untenable to continue colonial domination, British imperialism changed its strategy and tactics of domination. It was driven to continue its economic and political domination through the medium of the indigenous majority population of not only Zimbabwe but its other previous colonies as well. Thus one finds the coming into being of Constitutional doctrines which are even alien to the British Westminster Constitution itself, which was supposedly the model on which independence constitutions were based. The Constitutional doctrine which was used to further the capitalist social and economic system is given the generic term of "Safeguards Against the Abuse of Majority Power."<sup>15</sup> On its face value there does not appear to be anything inherently wrong in protecting the interests of minorities. It is the meaning and practice of such protection in British Constitutional practice which clearly exposed not only the hypocrisy of such a doctrine but also its real intentions.

The tenets of the doctrine referred to above included the following:

- (a) that the electoral system and allocation of seats in the legislature be in such a way as to ensure that the voices and interests of minority groups will not be stifled.
- (b) that the will of the majority in the popularly elected legislature can be offset by a second chamber in which minority interests and traditional elements may be granted special representation.
- (c) the screening off of sensitive areas of public administration from political control.
- (d) the supremacy of the Constitution and that any other law inconsistent with it be void to the extent of the inconsistency. Implicit in this is the proposition that the courts shall determine the Constitutionality of all laws.

These safeguards were aimed at protecting minorities. And who were or are the minorities? In British Constitutional and political practice in Zimbabwe, the

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<sup>14</sup> See *Hewlett v Minister of Finance and Another* 1982 (1) SA 490 (ZSC); *Minister of Home Affairs V Bickle and others*, 1983 (2) SA 457 *Rensford V The Commissioner of Police* SC 3-84.

<sup>15</sup> For an elaboration of these safeguards, see S.A. de Smith — *The New Commonwealth and its Constitutions op. cit.*, Chapter 4.

minorities were the white settlers. Other local ethnic minorities were not so regarded. The question of minorities was given a racial interpretation. Such a narrow interpretation also coincided with British imperialist interests in that it is the white settlers who were custodians of capitalism in this country. Therefore protecting their interests by entrenching such protection in the constitution also meant entrenching and protecting the fundamental principles of capitalist relations of production and social organisation.

It is within this context that the supremacy of the Lancaster House Constitution, the entrenched white seats and the creation of Service Commissions in areas of public administration must be seen. It is an attempt to further capitalism under new political conditions.

## THE POST-INDEPENDENCE CONSTITUTIONAL CHANGES

### *The abolition of the reserved white seats*

The abolition of separate and reserved white parliamentary representation which became possible after 18th April, 1987 was effected through the Constitution of Zimbabwe Amendment Act, No. 6 of 1987. This Constitutional Amendment Act abolished the reserved white seats in both the House of Assembly and the Senate. The reserved white seats were replaced by open seats to be filled through an election process that involved the remaining 80 members of the House of Assembly and the remaining 30 Senators sitting as an electoral college to elect members to fill the 20 seats in the House of Assembly. The ten seats in the Senate were to be filled through the now complete (100 members) House of Assembly sitting as an electoral college to elect the ten Senators.

What is significant, however, is whether the abolition of the reserved white seats makes a substantial departure from the constitutional power relations and structures established by the Lancaster House Constitution and also whether the abolition will alter the political and economic direction of the state, having regard to the fact that the seats were intended to safeguard and protect capitalist and white dominance of the economic and political processes in the country.

At independence whites dominated the organs of state power, they controlled the entire national economy, namely, the powerful commercial, mining, farming, banking and industrial sectors. They enjoyed luxurious lifestyles to the exclusion of blacks. They dominated the professional, technical, medical, educational, administrative and managerial fields both in the public and private sectors.

As the post-independence years dragged on, the whites lost their control or dominance of the organs of state power as well as other public institutions such as parastatals. However, if anything, their control of the national economy increased and to this day they dominate the farming, industrial, commercial and mining sectors and indeed all but about 12 of the 200 top executives in Zimbabwe's leading companies are white. As a result, to this day the former

white settlers enjoy luxurious lifestyles that would certainly be the envy of any defeated former colonisers.<sup>15a</sup>

White dominance of the economy gives them substantial and indeed immeasurable, albeit subtle, influence on government policies and to that extent those who control the economy ultimately control the state. Thus over the years the white community has come to realise how unimportant direct political power is and hence when the abolition of the whites seat took place hardly any whites complained. Indeed, most of them welcomed the abolition in the hope that it would remove attention from the white community so that they could be left in peace to dominate the country's economic processes.

Thus, while the abrogation of reserved white seats may have marked a formal and symbolic burial of the direct political sway the white population had enjoyed in Rhodesia, the fact is that the whites no longer needed those reserved seats to protect their interests. Their economic empire continued and indeed continues securely under a majority black dominated government. Changing white dominance of the economy will entail much more than a piece of legislation. Accordingly the removal of reserved white parliamentary representation hardly seems significant in changing the real distribution of power, resources and wealth in the country<sup>15b</sup>. Of course, politically, the abolition is symbolically important for it has laid to rest for all time the myth of white supremacy. In that sense, therefore, the abolition marked a break from racist politics in the country's electoral and parliamentary institutions. However it must be noted that the fundamental dichotomy is no longer between black and white but between the propertied and dispossessed classes. As a matter of fact the black-white dichotomy can be used to obscure the more fundamental class conflict.

In concluding this part we ought to state that the abolition of the reserved white seats represents a substantial change in the form and substance of the constitution as a juridical document. In other words, the juridical form and content of the constitution has substantially been changed and consequently in the same sense there is no continuity with the racial juridical assumptions of the drafters of the Lancaster House Constitution. However, the underlying economic, social and political assumptions of the drafters of the Lancaster House Constitution which the white seats were calculated to preserve and protect, remain intact and to that extent there is clear continuity in the political, economic and social basis upon which the Lancaster House Constitution was premised. The economic foundations of the Lancaster House Constitution representing a specific political system remain unaffected by the abolition of reserved white parliamentary representation.

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<sup>15a</sup> See Rizu Hamid "White Power in Black Zimbabwe" *Africa Events*, infra, pp. 62-63

<sup>15b</sup> See generally Sully Abu, "Goodbye Rhodesia" *Africa Events*, Vol 3 No. 10 October, 1987, pp. 8-9.

*The Executive Presidency*

The Constitution of Zimbabwe Amendment Act No. 7 of 1987 abolished the non-executive, titular and ceremonial office of President and replaced it with an Executive Presidency. The Executive Presidency combines the powers formerly vested in the non-executive President with those formerly vested in the Prime Minister. Consequently the Executive President becomes the Head of State, Head of Government and Commander-in-Chief of the Defence Force.<sup>16</sup>

All the executive authority of Zimbabwe is vested in the President and such executive authority may be exercised by him directly or through the Cabinet or through the Vice-President.<sup>17</sup>

The President exercises his executive authority, except where otherwise provided, on the advice of his Cabinet<sup>18</sup> which he has sole responsibility for appointing and firing.<sup>19</sup> The President acts without Cabinet advice and on his own discretion in respect of the dissolution of Parliament and the appointment and removal of the Vice-President or any Minister.<sup>20</sup>

The President has the power to declare war and to make peace and to proclaim and terminate martial law without reference to Parliament.<sup>21</sup> However, in so doing he must act on the advice of his Cabinet.

It must be noted that the Cabinet, holding office at the unfettered pleasure of the President, is not intended to and cannot in reality act as a check or restraint on the excesses of a President.

In this regard, therefore, the power of the President is totally unchecked. The President may declare a State of Emergency at any time, provided that such State of emergency shall lapse at the expiration of 14 days after its declaration if it has not been approved by the House of Assembly within that time.<sup>22</sup>

The President holds office for a period of six years whereupon there shall be elections for the office of President. The President can be removed from office by the House of Assembly before the expiration of his term if he has acted in wilful violation of the constitution or he is incapable of performing his functions by reason of physical or mental incapability or when he has committed gross misconduct.<sup>23</sup>

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<sup>16</sup> Section 27(1) of the amended Constitution.

<sup>17</sup> Section 31 H(i) of the amended Constitution.

<sup>18</sup> Section 31 H(5)

<sup>19</sup> Sections 31D(i) (a) and 31E (i) and the proviso to section 31 H(5).

<sup>20</sup> Proviso to Section 31 (H) (5)

<sup>21</sup> Section 31 (H) (4)

<sup>22</sup> Section 31 J(1) and (2)

<sup>23</sup> Section 29(3)

The House of Assembly has the power to pass a vote of no confidence in the President.<sup>24</sup> Normally, if a vote of no confidence has been passed on a government that government must resign. Curiously, according to the Zimbabwean constitution, a vote of no confidence in the President gives him three options, either to dissolve Parliament or to dismiss his Cabinet or to resign his office.<sup>25</sup> This is a strange Constitutional provision for it gives the President unusual constitutional options which render Parliament a kind of "toothless bulldog" in that while it has legal power to pass a vote of no confidence in the President, the President can by-pass the vote of no confidence by either dismissing his Cabinet or dissolving Parliament itself. This renders the constitutional safeguard against executive excesses and arbitrariness nugatory.

The assumption underlying this provision is that once the President has dissolved Parliament he should call a general election. However, a President determined on maintaining his power can, after dissolving Parliament, merely proceed to declare martial law and still rightly claim he is ruling in accordance with the constitution.

From the above presentation of the powers of the office of President as embodied in the Constitution it is clear that the Presidency is a very powerful office. Undoubtedly there is concentration of power in the office of President and thus shifting the usual balance of power between the various organs of state power in bourgeois constitutions in favour of the executive and in particular the President.

For present purposes, the crucial question is not whether the Presidency has accumulated a lot of constitutional power, but in whose interest that power will be exercised? Will it be exercised in the interests of the working classes or will it be exercised in the interests of the bourgeoisie and their allies? That question can only be answered with the passage of time.

The introduction of the Executive Presidency clearly marks a fundamental departure from the juridical assumptions of the Westminster Constitutional model. It also shifts the balance of power in favour of the executive at the expense of the Legislature.

However, it is the exercise of the Presidential executive powers that will determine whether there will be continuity or change in the economic, political and social assumptions of the Lancaster House Constitution. In other words, whether the social and property relations assumed and indeed registered in the Lancaster House Constitution will continue or change will depend on how and in whose interest the executive powers of the office of President would be exercised.

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<sup>24</sup> Section 31 F(1)

<sup>25</sup> Section 31 F(3)



## POSSIBLE FUTURE CONSTITUTIONAL CHANGES

### THE ABOLITION OF THE SENATE

A likely change in the constitution of Zimbabwe after 1990 is the abolition of the second House of Parliament — the Senate. The President and the government have already indicated that they will take measures after 1990 to abolish the Senate and then create a uni-cameral parliamentary system.<sup>26</sup> It is submitted that this would be an expedient measure which, *inter alia*, would cut down the red tape in legislation making and possibly reducing the burden on the tax payer in funding two Parliamentary Houses.<sup>27</sup> We cannot attribute much political weight to the government's intention to abolish the Senate. In any case, the Senate does not have the same historical origin, significance and role as that of the House of Lords in Britain.

### TOWARDS A ONE PARTY POLITICAL SYSTEM?

In this part of this article we summarize and critique some of the main arguments that have been used to justify one party rule in Africa, as well as those that have been advanced so far in Zimbabwe. We also attempt to provide a theoretical framework within which the one party state debate should be carried out. We conclude by offering suggested safeguards against abuse of power in a one party political system.

#### *Arguments in favour of a one party political system*

At its National Congress in August 1984 ZANU(PF) mandated its Central Committee to work towards the eventual introduction of a one party political system in the country.<sup>28</sup> However, so far, the one party system has not been introduced mainly because the government has fully respected the Lancaster House Constitution. This prohibits the creation of a *de jure* one party system in that it entrenches until 18 April 1990, the Declaration of Rights which *inter alia* protects the right of all Zimbabweans freely to associate with each other in the formation of political parties.

Be that as it may, the question of the introduction of a one party political system is one which has captured the imagination of many Zimbabweans who

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<sup>26</sup> See interview with former Minister of Justice, Legal and Parliamentary Affairs Dr. E. Zvobgo in *MOTO*, October, 1984 at p. 4.

<sup>27</sup> The move will reduce the burden on the tax payer provided all other things remain equal, for example, if there is no consequent enlargement of the House of Assembly and the appointment of more and Ministers within government.

<sup>28</sup> See Resolutions of the August 1984 Congress of ZANU(PF)

have extensively written and debated on it in the national press.<sup>29</sup> By and large, the debate has concerned itself mainly with arguing the merits and demerits of a one party state. What this part of this discussion seeks to do is to summarize and analyse the main arguments that have been advanced as to why a one party system is necessary in Zimbabwe and elsewhere.

The most persistent argument in favour of a party political system has been that Zimbabwe needs national unity, stability, peace and economic development and these can only be achieved under a one party political system which unites the efforts and energies of all Zimbabweans in one direction under the one party. It is argued that in a new nation, ridden by racial, ethnic and regional conflicts, unity under a single political party is essential for political stability which would then allow the government to direct its efforts and resources towards national economic development, instead of being bogged down in petty inter-party struggles. It is said that the task of economic and social development is a most challenging and urgent one because the majority of our people do not possess and enjoy basic necessities for a decent life, instead they are ridden by poverty, hunger, homelessness, illiteracy and general underdevelopment. To lift the nation out of this position the whole population should come together under the party because inter-party struggles undermine the ability of an underdeveloped nation to organise the supreme efforts required by the situation. It is argued that the task facing the nation is so urgent and difficult that it admits of no diffusion of energies in unbridled and divisive competition for power.

Moreover, within the specific conditions of Africa the multi-party system produces chauvinistic tribal based political parties, some of which preach the dismemberment of the nation into small tribal kingdoms. The multi-party system is, then, seen as conducive to the promotion of tribal politics which negate cohesive national integration. Accordingly, the one party system is indispensable for national integration and unity.<sup>30</sup> In this context, the choice of African countries has not been and is not between one-party and multi-party systems, but between divisive tribal-based anarchy and one party states.

It cannot be disputed that in developing countries including Zimbabwe there is an urgent need for economic development to deal with the problems of hunger, poverty, starvation, homelessness, unemployment. Again, few would not agree that national cohesion and integration is essential. However, what cannot be

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<sup>29</sup> See for example S. Nzombe, "The One Party Debate" *MOTO*, July, 1984. W. Ncube, "The One Party Political System: Which Way Zimbabwe" *SAPEM* Issue, No. 12, September 1988, 15; B MacGarry "One Party Democracy?" *MOTO*, No 64 April, 1988, W. Ncube, *The Sunday News*, 4.9.88, 11.9.88 and 18.9.88 and Chitubura "The One Party State Debate" *MOTO*, No. 28 October, 1984, p. 12

<sup>30</sup> See generally interview with the President, R. G. Mugabe in *MOTO*, August 1984 at p. 10; *MOTO*, August 1982 at p. 8 and also in *Zimbabwe News* p. 9 and see also J. Nyerere, *Democracy and the Party System*, Tanganyika Standard Limited, Dar-as-salaam, 1962

accepted is that national integration can only be achieved through a one party political system. Surely, national integration is not synonymous with political unity under a single party. In any case, experience elsewhere in Africa has not shown that tribal and regional conflicts disappear under a one party political system. Nor has experience demonstrated that the one party system leads to greater national cohesion and integration. On the contrary, the experience of countries like Kenya, Zaire, Malawi, etc. have shown that the ban on political parties has directed regional, tribal and personal conflicts and jealousies inwards within the single party. Indeed intra party clashes in countries like Kenya and Tanzania have shown that the one party system does not abolish divisive political clashes.

It must be accepted that the mushrooming and growth of tribal or regional parties in any country is not caused by the multi-party system. The multi-party system merely allows for the manifestation and reflection of already existing divisions. Thus, abolishing multi-partyism does not *ipso facto* abolish these divisions. It only turns them into the single womb of the one party to boil from within that womb.

The other argument that has been preferred in favour of a one party system takes the form of a nostalgic appeal to tradition. It is said that the idea of an organised opposition is foreign to the African concept of government. The African knows and understands allegiance to one authority, the chief or king. Accordingly, it is right and proper to install a President at the head of the government and the single party to unify the nation in one salute of allegiance to a single authority.<sup>31</sup>

At best, this argument is misconceived, unscientific and totally lacking in historical context. How a political party in a modern state can be equated to a feudal chief or king is not easy to understand. At worst it must be dishonest to attempt to justify the political processes and institutions of a modern and complex state embracing peoples of varied racial and ethnic origins with widely differing social, economic and political interests by appealing to a misunderstood and vanquished tradition or culture. This argument seeks to portray the African feudal state as having been democratic so that we should copy it. Yet in fact the old African political institutions were, like all feudal systems, exploitative and oppressive.

It is also fashionable in Zimbabwe today to justify the one party state by using Marxists-Leninist jargon. It being argued that socialism is opposed to the multi-party system and that a one party state is a necessary precondition of the successful construction of socialism. Nothing could be more false. The truth is that neither the one-party nor multiparty system is a pre-condition for socialism nor democracy of any kind. Indeed among the many socialist countries that have been created, some have one party systems and others multi-party systems. Examples of socialist countries with multi-party systems include Bulgaria and

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<sup>31</sup> See D. Mutasa, "The One Party State" *Zimbabwe News*, November, 1987 pp. 8-9.

the GDR. Thus whether or not a socialist country has a one-party or multi-party system is not and cannot be a question of principle but a practical political question that can be answered only by reference to the historical realities of each country.<sup>32</sup>

### *Establishing a theoretical framework*

In order to fully understand and participate meaningfully in the debate on the one party state one needs to draw a theoretical framework within which to conduct the debate. In doing this we need to juxtapose the western and the Marxist-Leninist conception of democracy.

The western countries and their philosophers and ideologies equate democracy to a multi-party system so that any system that does not allow people to choose from one or more political parties is *ipso facto* undemocratic. Accordingly, a one party state cannot be democratic since it is premised on the denial of political options to the electorate who can only choose from a list of politicians belonging to the same party with the same ideology and policies. It is said that it is a fundamental right that people should be free to form and associate in political parties of their choice without restriction. To deny this right of freedom of political association outside a single party is a negation of democracy.<sup>33</sup> In any event it is argued that a one party system easily degenerates into dictatorship by the party and its leadership.

On the other hand Marxist-Leninists take the view that the history of political science and practice teaches us that democracy cannot be measured in terms of the number of parties that operate in any given system. Thus, neither the one party system nor the multi-party system is a criterion of democracy, be it bourgeois or socialist democracy. There have been and there are numerous fascistic countries in the world that boast multi-party systems.<sup>34</sup> Rhodesia was one. South Africa is another. Similarly the world abounds with fascistic one party regimes such as those in Malawi, Kenya, Liberia and Zaire.

For Marxist-Leninists only one thing is important, namely, whether or not the party or the parties function in the interests of the masses of the people or of a handful capitalists who are holding the masses in subjugation, poverty, hunger, malnutrition and unemployment. Thus, a one party system or a multi-party system which does not function in the interests of the masses is inherently undemocratic. Accordingly, the essential question to pose is: in whose interests

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<sup>32</sup> For a comprehensive treatment of constitutionalism and the one party state in Africa see B.O. Nwabueze, *Presidentialism in Commonwealth Africa*, C. Hurst and Company, London, 1974, Chapter 8. See also S. Mubako, "Zambia's Single-Party Constitution — A search for Unity and Development." 1973 ZLJ 67 at pp 80-85

<sup>33</sup> For a summary of these arguments see S. Mubako *op.cit.*, p 82

<sup>34</sup> Note that some liberal bourgeois scholars subscribe to this view and see Edmond Morgan, *Inventing the People*. MacMillan, London, 1977.

does the party rule and act or whose interests are represented and protected by the party or the parties?

Put briefly, the Marxist-Leninist view is that past and present social and political practice shows that the degree of democracy in any country is determined by whether or not the masses of working people wield and exert real influence on the direction of society and on the formulation and implementation of social policies.

Thus, the question of how many parties there should be in any one country cannot be raised in abstract outside a concrete analysis of the specific realities and historical conditions of a given country. Neither the multi-party nor the one-party system can be constructed artificially outside the context of the given country. That is to say, the question of whether a one party or a multi-party system would serve the interests of the masses would depend on a variety of forces operating in a given country and the essence of the party and parties.

A one party state in which the party represents minority interests of a handful of capitalists must inevitably be undemocratic particularly in a third world country bedevilled by underdevelopment and poverty. The world provides numerous examples. In all neo-colonial countries of Africa, such as Malawi, Zaire, Kenya, Tanzania and Zambia the one party system has produced various shades of dictatorships varying only in their degree of fascism and totalitarianism. All these countries have regularly resorted to mass detention, torture, murder and political assassinations.

Democracy within the parties of these countries is non-existent. Opponents of the often fanatical ruling cliques which control the party are often expelled from the party and sometimes imprisoned. The current situations in Kenya and Malawi suffice as examples.

What do the experiences of these countries teach us about one party rule or more accurately the nature of the state in neo-colonial countries pursuing economic policies that are unable to satisfy the genuine everyday needs of the people? The theoretical lesson that must be drawn from these experiences is not that the one party system is *ipso jure* undemocratic but that a one party system operating in a neo-colonial country dominated by and serving the interests of foreign capital at the expense of its own people inevitably degenerates into dictatorship.

The degeneration of African one party systems into fascism and dictatorship must be understood within the context of the nature of the state in these countries. African economies are dominated by international capital which plunders their natural resources and syphons super-profits through multi-national corporations.<sup>35</sup> This syphoning of African wealth to be enjoyed by imperialist countries

<sup>35</sup> For statistics concerning the rates of profits realised by Multi-national Corporations in Africa and Zimbabwe see Rene Loewenson, Foreign Investment or Self Reliance: the Zimbabwean Dilemma" *SAPEM*, Sept. 1988, 12 at pp. 12-14.

means that the local people do not benefit from the country's natural resources and wealth and hence underdevelopment is the norm. In this scenario the peasants are neglected, exploited and forced to grow cash crops like cotton, tobacco and cocoa in order to earn foreign currency which is used to purchase consumer luxuries for the elites. The working class toil in factories at starvation wages unable to adequately feed their families.

Mass unemployment, poverty, starvation and homelessness become the order of the day. As a result, the hungry masses often take to the streets, the revolutionary intellectuals demand a change in the policies of the government which responds by engaging in mass detentions, torture, murder and all sorts of political repression.

Accordingly the popularity of one party regimes in Africa which soon degenerate into dictatorships must be understood within the context of the fact that:

"The metropolitan bourgeoisie needs activist states on the periphery, states that are strong enough to suppress, by whatever means, growing social contradictions and states that can make foreign investments profitable and profits secure despite various unfavourable circumstances within the national and world economy."<sup>36</sup>

As a general proposition, therefore, it is correct to say that a state presided over by a party which is unable to resolve the acute problems of underdevelopment and poverty must sooner or later become dictatorial whether or not the country's political system is multi-party or one party.

Accordingly, in posing the question of a one party political system in Zimbabwe we must be clear that if a one party state is introduced under conditions in which underdevelopment, unemployment, poverty, homelessness and hunger reign supreme that one party system, notwithstanding the nice sounding declarations in the constitution safeguarding against abuse of power, would sooner or later become dictatorial and fascistic. The constitutional provisions safeguarding democracy, the rule of law and justice would be gradually changed whenever they are a hindrance to the maintenance of "Law and Order," as defined by the ruling party.

If this argument is accepted it must lead to the inevitable conclusion, (contrary to the arguments of the protagonists of one party-systems), that the fact of underdevelopment demands a multi-party system because a multi-party system would serve to check some of the extreme tendencies of one party rule where such rule is unable to satisfy the demands of the masses. Accordingly the potential threat of being voted out of power in preference to another party is likely

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<sup>36</sup> See (M Von Freyhold, "The Post Colonial State and its Tanzanian Version: Contribution to a debate in Othman Haroub, *The State in Tanzania., who controls it and whose interests does it serve?*)

to serve as a safety-valve against abuse of power and dictatorship by a party, that would be under pressure from the masses to meet the people's demands for basic necessities of life and economic development.

Posed more directly the question is whether a one party system introduced in a Zimbabwe where the peasants remain largely landless, where unemployment runs into hundreds of thousands and where the working people struggle under the constantly rising cost of living would move decisively towards the resolution of these problems? If the one-party state management of the national economy resolves these problems then there would be no political agitation by the masses, which agitation would inevitably lead to repression. However, if the one-party system fails to move quickly and decisively towards the abolition of exploitation, hunger, poverty and underdevelopment then political discontent is inevitable and such discontent would eventually lead the one party state into denials of freedom, democracy and justice.

The rule of law will be replaced by arbitrariness, detentions, interference with the due process of law and the general criminalization of ordinary politics. Accordingly, justice would become impossible to obtain in courts for those deemed to be the political opponents of the system. All progressive and democratic elements must oppose the introduction of a one party political system in Zimbabwe if, that one party system would operate under a national economy characterised by underdevelopment, poverty, landlessness, joblessness and general capitalist exploitation, because in those circumstances it would be inevitable for that system to turn itself into a dictatorship when the exploited masses can no longer take their exploitation lying down.

We must point out that a genuine people's one party state need not be introduced by way of legislation or made *de jure*. Those who would like to bring about a one party state must do so through political organisation which would result in the *de facto* elimination of other parties through their ability to satisfy the multifaceted needs of society. They must earn a *de facto* one party state status. If the ruling political party is able to meet the needs of its people the desire for an alternative party is reduced, if not eliminated altogether. Such a *de facto* situation would be the most ideal. We do not see any political justification for the legal entrenchment of one party rule particularly when such a party has not proved itself, to be a democratic and people's party, not through elections but through its achievements in tackling social and economic issues of underdevelopment, poverty, landlessness, unemployment and all those social problems associated with capitalist neo-colonial development.

#### *Safeguarding democracy under a one party political system*

It is not possible to provide a perfect blue-print for the preservation of democracy and freedom under any political system, let alone under a one party political system which is often fraught with all sorts of dangers. Thus, what we seek to do in this part of this paper is to give warnings of possible dangers and to suggest, where possible, structural and substantive one-party constitutional

provisions that would make a one party political system more democratic. These suggestions, must however, be understood within the context of our earlier conclusion that no amount of intricate and elaborate safeguards would prevent a slide towards dictatorship in a country where underdevelopment, poverty, homelessness, landlessness and unemployment reign supreme, for the state in such a country must resort to repressive measures to maintain its rule in the face of challenges from exploited and hungry citizens.

Moreover, it must be understood that constitutions and constitutional safeguards against the abuse of power are made essentially for "*good men and women*" who have no inherent desire to be dictators. Constitutional limits to power serve as restraints to such men and women because they believe in constitutionality and the rule of law and hence, but for the normal temptations to abuse power, they would govern without elaborate constitutional restraints. Put differently, constitutional safeguards cannot prevent inherent dictators from resorting to repression. Committed dictators have no respect for constitutions and for the rule of law. No amount of constitutional safeguards would have stopped the Hitlers, the Amins, the Bakassas of this world. Such men have no respect for constitutionality and law. They are a law unto themselves and thus constitutional safeguards are not intended to prevent such men from being dictators.

Constitutional safeguards are intended to be a reference point to guide ordinary men and women in the running of government — ordinary men and women who believe in democracy and freedom. Such men and women would respect constitutional safeguards and indeed would always refer to the constitution to check and measure the legality of their actions. Such men and women would want to be seen by their countrymen as upholders and not violators of the law and the constitution.

The most basic pre-condition of a one party democracy of any description is the existence of an open democratic party which is controlled by the mass of its supporters and not by a clique of the top leadership which manipulates the people into permanent sloganeering robots. Thus, any one party state that would be democratic in character needs as a pre-condition a people's party — a party with structures and rules which ensure that it is the ordinary party members who control the party. Such control by the people would mean substantial limitation on the powers of representative organs such as the Politburo and the Central Committee.

The powers of these organs must be subservient to mass structures such as the District and Provincial Committees, particularly in respect to such matters as the control of the membership of the party, the disciplining and expulsion of members, the formulation of party policies and the choosing of party candidates at elections be they national or party elections. the Politburo and Central Committee which can easily fall under the control of fanatical and fascistic cliques must not be given sweeping powers of expelling members from the Party. The power of expulsion must vest in the National Congress. More importantly,



the Politburo and Central Committee must never be given power to over-rule the party constituencies in the selection of candidates for party or national elections. Practices countries like Tanzania and Kenya have demonstrated that when the in higher organs of the Party are controlled by cliques these cliques have used their power of veto to reject popular candidates in favour of stooges who will always agree with them.<sup>37</sup>

Thus, if the mass organs of the party have the power to select their own candidates for national parliamentary elections and for party elections without any interference or supervisory power from the higher organs, that would be a step in the direction of securing democracy. For then the mass of correct the people can always prune and discard an arrogant, fascistic and unresponsive leadership.

A party which is controlled from the top quickly becomes unresponsive to the needs of its rank and file membership and accordingly cannot create a one party democracy. It assumes the mantle of supervising and managing the people as if they were an unconscious mass in bondage.

Further, once a person has been elected to Parliament by his or her constituency that person should only be capable of being removed from his seat by his constituency. The Central Committee and/or Politburo should not have the power to deprive a person of his or her parliamentary seat. In Tanzania, where the higher organs of the party have powers of expelling members from the party and Parliament, this power has often been used to stifle critical debate of national issues.

Where MPs have vigorously questioned national policies they have often been expelled from the party and Parliament by the powerful national executive committee on grounds of violating the party creed. In a one party state it is important to strengthen all mass organisations that directly represent the people. Thus it is crucial that Parliament must not be subservient to the executive. Parliament as an elected body must be able to act as a rallying point of the people in supervising and checking the executive arm of the state. A rubber stamp Parliament is an unnecessary and expensive anachronism.

It is all too easy to argue for a powerful and meaningful Parliament but it is singularly difficult to create it, particularly in a country without a long history of democratic political traditions. However, the greatest guarantee of an independent, lively and supervisory Parliament is the creation of conditions conducive to the freedom of Parliamentarians. The atmosphere of freedom can be created inter alia, by the protection of Parliamentarians from removal by any other body or persons other than their constituencies. Moreover the constituencies must have a right to recall and remove their representatives at any time whenever they are

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<sup>37</sup> Note that the present 90 member Central Committee of the ruling party ZANU(PF) is elected by the Party Congress which meets every four years and the 15 member Politburo is appointed by the President — see the Constitution of ZANU (PF).

dissatisfied with their performance. Such powers of removal by constituencies would make Parliamentarians constantly responsive to the needs of their constituencies and hence would not sit by while the executive erodes the freedom of the mass of the people.

The greater majority of Parliamentarians, no less than 95% of the total membership of Parliament, must be elective. The power of a President to appoint Parliamentarians must not be such that he or she can appoint more than five percent of the total membership of Parliament. This should help to ensure the freedom and independence of Parliament from executive manipulation and control. The executive should not have the power to dissolve Parliament except if a general election is to be called.

Yet another measure would be to provide that members of the Cabinet, except for the President and Vice-President should not be members of the party Central Committee.

This scheme assumes that the Central Committee would be responsible for policy while the Cabinet would be in charge of administration. If that is the case, then the Central Committee can more effectively supervise government. Where the Central Committee and Cabinet are constituted of virtually the same people the Central Committee of the party is easily made subservient to the powerful Ministers in the Cabinet. It is also essential that the constitution should limit the number of terms for which a President can hold office. The absence of such limitations is a sure guarantee for the creation of *de facto* life Presidents. History has not provided us with any examples where a serving President in a one party state has lost an election even where it has been clear that that President is unpopular. Somehow elections in one party systems never result in the removal of a serving President and hence a President in a one party state can only relinquish office by resignation. In practice such resignations have been hard to come by. Africa can only boast of four.<sup>38</sup>

Mass organisations, such as trade unions, co-operative unions, student organisations and professional organisations should not be integrated into the Party and controlled from within it. These organisations must have freedom of operation without being submerged into the party structures.

Finally, the usual bourgeois political and civil liberties apart from the protection of bourgeois property must be constitutionally protected and be justiciable. These must be complimented by the maintenance and safeguarding of the judiciary from executive control and interference. A situation where judges are told to decide cases in a particular manner by the executive must be avoided at all costs. If the judiciary becomes a direct arm of implementing executive decisions the last bulwark against a slide towards dictatorship would have failed. The confidence of the people in the system would be extinguished

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<sup>38</sup> These are Julius Nyerere of Tanzania; Leopold Senghor of Senegal Siaka Stevens of Sierra Leone and Amadu Ahidjo of Cameroon.

and the courts would become dispensers of injustice. Where justice and the rule of law are substituted with injustice, arbitrariness and the rule of man there can no peace, no democracy no freedom.

These suggestions are not meant to be exhaustive of the possible safeguards in a one party state. Moreover they are only a small contribution to the continuing debate on the one party state. The debate must go on until Zimbabweans come up with refined suggestions that would guide those who hold political power in the introduction of a one party state if and whenever that takes place.



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