

Determination of the Leader of the Opposition in the

Zambian Parliament

By

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Recently the speaker of the Zambian Parliament revoked the recognition of the leader of the Movement for Multi Party Democracy's (MMD) as head of the Opposition in Parliament. This was a revocation of a decision the Speaker had made on October 19, 2011 in which he had recognized the MMD as the official opposition. Following MMD's loss of three members of Parliament through by elections, the speaker stated that none of the opposition parties had the required 53 members to satisfy the quorum as provided for under Article 84 (4) of the Zambian constitution.(The current National Assembly is comprised of: 65-PF; MMD-51, UPNDP-30, ADP-1; FDD-1 and independents-2. *I argue here that the Speakers ruling is conceptually wrong in its treatment of the subject matter at hand.* This commentary seeks to show three things: (a) that Article 84 (4) of the constitution does not, and cannot, be read to deal with the determination of whether or not there should be a leader of the opposition in Parliament or who that leader should be; (b) In a Presidential system such as ours having a quorum in Parliament is not a condition for forming a Government; and, (c) according to United Kingdom Parliamentary practice (which we purport to follow) in the absence of disagreement among opposition parties as to the identity of the leader of the opposition, the determination of who is to be a leader of the opposition in Parliament is not a matter to be determined by the Speaker. In the absence of

disagreement, the answer is that *whoever leads the largest opposition party in Parliament is the leader of the opposition*. That in our view is not a legal issue but a factual one to be determined by simple mathematics.

This commentary examines the history of having a leader of the opposition in British parliamentary practice and the reasons for recognizing a leader for the opposition. We begin by looking at Article 84 (4) of the Zambian Constitution. The article is appropriately titled “Voting and Quorum.” In Article 84 (1) it provides that except as otherwise provided in this Constitution all questions at any sitting of the National Assembly shall be determined by a majority of votes of the members present and voting other than the Speaker or the person acting as Speaker as the case may be. (2) The Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote if there is an equality of votes.” It then provides in Article 84 (4) “the quorum for a meeting of the National Assembly shall be one third of the total number of members of the Assembly and, if at any time during a meeting of the Assembly objection is taken by any member present that there is no quorum, it shall be the duty of the speaker or person acting as such, either to adjourn the Assembly or, as he may think fit, to suspend the meeting until there is a quorum.” A quorum as defined by the Oxford English dictionary is: “ a minimum number of members of an organization that are required to be present in order to conduct business.” The Article deals with the numbers of members of Parliament required to quorate the National Assembly. *It nowhere mentions the question of the Leader of the Opposition in Parliament nor is there any basis for saying that it implicitly deals with that question.* The inescapable conclusion is that it is not a matter that was considered. I therefore find no authority for the proposition that in order for a leader of the opposition to be recognized, his or her party must form a quorum in Parliament.

**Comment [T1]:** Please review this sentence

It appears that it was argued that since a party that does not have a quorum in Parliament cannot form a government, it therefore cannot be the official opposition. Although that might be true in a Parliamentary system (even there it is doubtful), it is certainly not true of a presidential system such as ours. In a Presidential system, the executive branch is led by a President who serves as head of Government. Elections are held at scheduled times and cannot be triggered by a vote of no-confidence in Parliament or other such Parliamentary procedures. In a presidential system, the central principle is that the legislature and executive branches of government should be separate. This leads to the separate election of the president, who is elected to office for a fixed term, and only removable by impeachment or dismissal for gross misdemeanor. He or she does not need to choose cabinet ministers commanding the support of the National Assembly. By contrast, in a parliamentary system, the executive branch is led by a council of ministers headed by a Prime Minister, who is directly accountable to the legislature. The Prime Minister is the leader of the party that wins the majority votes to the legislature (either *defacto*, or some cases through an election held by the legislature.)

Arguably, our system is a mixture of the two systems. Nevertheless, under the Zambian constitution even though Ministers are appointed from parliament they need not come from the ruling party. In fact as Mutharika of Malawi showed in his first term of office, a President in our system could rule with his Party as a minority in parliament. Even in a parliamentary system a government may be a coalition of parties in parliament as is the case in the current UK government.

In the United Kingdom the leader of the opposition is the politician who leads the official opposition. He is normally the leader of the largest party not within Government which is the second largest political party in the House of Commons. For there to be a recognized leader of the opposition historically, it was necessary that there be a sufficiently cohesive opposition to warrant a formal leader. The first time this developed was in the Parliament of 1807-1812, when the members of the

**Comment [T2]:** Please clarify this sentence

Grenvillite and Foxite Wing factions decided to formalize a joint leadership for the whole Whig Party.

**Comment [T3]:** Is this the name?

George Ponsonby was the first leader of the opposition in the House of Commons. In the period 1830-1837, the normal expectation was that there would be two leading parties of which one would form the government and the other, the opposition. Both these parties were expected to have recognized leaders in the two houses, so there was normally no problem in identifying who was leader of the opposition in each house. However as the leadership of the opposition only existed by custom, the normal expectations and conventions were modified by political realities from time to time.

In 1846 for example, the Conservative Party split into Protectionist Conservative and Peechee Conservative factions. The Protectionist being the larger group, the recognized leaders of the opposition were drawn from their ranks. Leaders of the opposition, in the two houses of Parliament in the UK have generally been recognized and given a special status in Parliament for more than a century before they were mentioned in legislation. Erskine May: "Parliamentary practice confirms that the office of Leader of the opposition was first given statutory recognition in the Ministers of the Crown Act of 1937. Section 5 states that "There shall be paid to the leader of the opposition an annual salary of two thousand pounds. Section 10(1) states that "leader of the opposition" means that member of the House of Commons who is for the time being the leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that house." Section 1937 also contains an important provision to decide who the Leader of the Opposition is if this is in doubt. Under section 10 (3) "if any doubt arises as to which is or was at any material time the party in opposition to His Majesty's Government having the greatest numerical strength in the House of Commons, or as to who is or was at any material time leader in that house of such a party the question shall be decided for the purposes of this Act by the Speaker of the House of Commons, and his decision, certified in writing under his hand shall be final and conclusive." This provision speaks to who is the leader of the opposition as a matter of fact. This often arises in a situation where the leader of the opposition in the

house is different from the leader of the Party outside parliament. The leader of the opposition is strictly a parliamentary office. The party would typically have party chairperson who may or may not be a member of parliament. In most democracies a parliamentary leader of a party in parliament is recognized. It enhances democracy. Terminologies vary in the United States, for example as the "leader of the Majority Party" and "Leader of the Minority Party" are some of the terms used/

The practice of recognizing a leader for a party in Parliament enhances democracy and effective operation of Parliament. *A democracy operates on the basis that there is room for choice.* This implies that the legislature which makes the laws of the country must itself provide an opportunity for various views to be heard. Society's acceptance of a valid role for the opposition is in itself an important underpinning of the work of the legislature. It is equally important that the government accepts a role for the opposition and that the media give space to the views of the opposition in their reports of the affairs of government.

In mature democracies, opposition leaders are given access to sensitive information and informed about major security issues. In South Africa for example Article 174 of the South African Constitution requires the president to consult the leaders of parties represented in the National Assembly when appointing the Chief Justice and the Deputy Chief Justice. This signifies acceptance of competitive politics. In order to do its work the opposition must be responsible, respected, and united as a political party. Parliament provides a good forum for an effective opposition and must be used as such. The Government also has responsibilities to the opposition. In the first place, sufficient resources should be provided for carrying out their work and the Government must respect and recognize opposition leaders. One of the main functions of the opposition is its work in scrutinizing the operations of the executive, that is, exercising the oversight of the implementation of the law from the angle of performance, and accountability, and especially the use of financial resources granted to the executive for its work.

In conclusion I would like to emphasize that the management and accommodation of diversity in any country depends on the development of political systems which are inclusive, tolerant, reject arbitrariness and give people a sense of ownership of the political process. The political process should further ensure that majoritarian domination is avoided and every effort is made to ensure minority participation in the political and economic life of the country. The transition from authoritarianism to greater participation in political and economic decision making requires determined long-term efforts and a huge investment in the development of institutions that can promote greater participation in the state's political and economic system. It has to be remembered that stability in a nation state can only be sustained if it is inclusive and has a solid foundation of respect for fundamental human rights that encompasses a willingness to coexist with differences, a culture of respect for the rule of law, a culture of political tolerance, and the protection of all citizens under the law, as well as the economic and social well-being of all citizens regardless of ethnicity and geographical origin. Those charged with the responsibility of interpreting the law have a sacred duty to interpret the law in a way that promotes these values.