

CHAPTER IV

The First Republic

The 1964 Election.

Elections based on Universal adult suffrage were held in January 1964. The United National Independence Party emerged as the dominant party winning fifty-five of the sixty-five seats on the main roll. ANC secured the remaining ten seats on the main roll. As soon as UNIP's victory was confirmed the Governor invited Dr. Kaunda as the country's first Prime Minister to form his new Government.¹ This brought to an end the coalition experiment begun at the end of 1962.

The May 1964 Independence Conference.

Shortly afterwards an independence Conference was held in London under the Chairmanship of Mr Duncan Sandys MP Secretary of State for Commonwealth Relations and the Colonies on 5th May 1964. The purpose of the Conference was to settle the form of Northern Rhodesia's Constitution on independence. The Conference comprised of the British Delegation and representatives of political parties in Northern Rhodesia.² The Conference held 14 plenary sessions between 5th May and 19th May under the Deputy Chairmanship of Mr Richard Hornby M.P. Parliamentary undersecretary of State for Commonwealth Relations and the Colonies and decided on a number of provisions to be included in the Independence Constitution. The Zambia Independence (Constitution) Order in Council) 1964.

The British Government decided at the Northern Rhodesia Conference that Northern Rhodesia under the name of the Republic of Zambia should become independent on 24th October 1964. The Zambia Independence Order continued the Legislative Assembly elected in 1963³ therefore the first elections under the Independence Constitution were held in 1968. The 1964 Constitution was only replaced in 1973 when a new Constitution was adopted by Parliament and this brought about the One Party State.

In 1964 therefore Northern Rhodesia became the independent Republic of Zambia under a Constitution which named Dr Kaunda as the first President.⁴ The way in which this was done was that the British Government passed the Zambia Independence Act, 1964 which declared under section One of the Act that 'On 24th October, 1964 the territories which are comprised in Northern Rhodesia shall cease to be a protectorate and shall together become an independent Republic under the name of Zambia and after that day the British Monarch ceased to have jurisdiction over the territory. The effect was that as from 1964 Zambia had the power to pass or repeal its own laws. The Constitution appeared as a Schedule to the Zambia Independence Order 1964, and it was in fact this Order in Council which promulgated the Constitution thus making Zambia's Constitution a Statutory Instrument made by the British executive. The Question

of the promulgation of Constitutions for independent territories has not received uniform determination by the British Government. For instance, in the Case of India, though The Indian Independence Act 1947 was enacted by the British parliament for India it did not confer a Constitution on the territory at the same time, on the Contrary it provided for the summoning of a Constituent Assembly which assembly would work out its own Constitution thus severing the constitutional link with the Colonial power. This therefore ensured thus the constitution worked out by the Assembly would be antochtonous in other words homegrown.

In some cases, however, for instance the Commonwealth of Australia, the Commonwealth of Australia Act 1900 was passed which contained the Independence Constitution. This was also the case for South Africa in 1909.

All these methods have their own advantages and disadvantages. In the case of a Constitution of a country appearing in the Subordinate Legislation of another, the recipient country might feel somewhat slighted that its fundamental law should be an act of executive function than of Parliamentary one. However in one case of Zambia this made it easy for the Legislative Assembly to change the constitution. In fact it was provided by Section 22 of the Constitution that Parliament could alter the Constitution in the same manner as it may alter any of the provisions

of the Zambia Independence Act 1964 which formed part of the law of Zambia.

Where however a Constitution is made by a Legislative body of another country this does not make the Constitution amenable to Constitutional Changes in as much as the country for which the Constitution is intended would like.

Characteristics of the 1964 Constitution.

The Northern Rhodesia Constitution of 1964 was based on the principles and practices of British Parliamentary democracy together with a Cabinet system⁵ and there was also a bill of rights.⁶ The Constitution provided however for a popularly elected Head of State in whom executive authority was vested⁷ and who was also the supreme Command of the Armed forces.⁸ Interpretation of some of the provisions of the Bill of rights has been given by the High Court which has original jurisdiction in matters concerning the infringement of these provisions.⁹ And, although a Bill of Rights did not appear in Northern Rhodesia before the Northern Rhodesia Constitution of 1963, during the Colonial period the British Government, in every Constitution which was made for the territory, reserved to itself the right to disallow legislation by the Colonial Government which discriminated against the Africans. Even in the Charter of the British South Africa Company there were

certain rights which were guaranteed in favour of Africans.¹⁰ In Northern Rhodesia, however, it was the Moncton Commission¹¹ which first broached the question of having a Bill of Rights in both the Federal and Territorial Constitutions. The Commission also recommended the introduction of a Council of State which was to review proposed legislation with power to delay its passage if it was discriminatory. The Bill of Rights found its way in the Independence Constitution while the council of state was never included in any of the Constitutions which came after the Moncton Commission but in the 1963 Constitution in Northern Rhodesia a Constitutional Council was established.¹² The Constitutional Council did not appear in the 1964 Independence Constitution, but in order to guard against bills on statutory instruments which would have violated the Human Rights in the Constitution a Special tribunal could be brought into existence to examine and report to the President and Speaker of the National Assembly which of the provisions of a bill or statutory Instrument would be inconsistent with fundamental human rights.¹³ The Bill of Rights in the 1964 Constitution was up until 1969 entrenched¹⁴ in that a popular referendum in addition to a two-thirds Parliamentary Majority at second and third reading was required to amend the Constitution.¹⁵

Republic of Zambia.

At the London Conference which thrashed out the Constitution for Northern Rhodesia the British Government decided that Northern Rhodesia under the name of the Republic of Zambia should become independent on 24th October 1964. Thus Zambia became a Republic on the day that she attained independence status. This was a significant departure from the British practice, that of granting independence to her former colonies followed by the declaration of a Republic after the lapse of a period in which the dependency still looked to the British Monarch as the head of state. This type of arrangement was worked for countries such as Kenya or Nigeria, there was thus during this period a kind of dual or split executive in which executive authority was reposed in a Chief Minister while the British Monarch remained the ceremonial head of State. In Zambia therefore in 1964 there was a Unified executive with a President as Head of State. While this position might appear to differ from the British prototype, as a matter of fact the Head of State at independence simply assumed virtually all the executive powers which the Governor used to enjoy. The only time the Governor seemed to enjoy simply ceremonial powers was during the Self-governing interregnum from January 1964 up to 24th October of the same year.

The Legislature.

Composition and Election in Zambia

The Legislature of the 1964 Constitution consisted of the President and the National Assembly.¹⁶ The Legislative power of the Republic was vested in the Parliament of Zambia.¹⁷

The Legislative Assembly was composed of 75 elected members and 5 members nominated by the President but the elected members were increased to 105 in 1968 by the Constitution (Amendment) No.2. Act of 1968. There was also provision for election of a Speaker¹⁸ and his Deputy. The provision for election to the membership of the Legislative Assembly was based on liberal principles which required that a member had to be a citizen of Zambia and over 21 years.¹⁹

The Franchise was based on Universal adult suffrage from the age of 21 years in 1964 but finally reduced to 18 in 1968. The Legislative power of parliament was to be exercised by Bills passed by the National Assembly and assented to by the President. The President had power to dissolve parliament.²⁰ During the period 1964 to 1973 the Zambian parliament passed 508²¹ Bills 507 of which became law. The Constitutional (Amendment) No. 2 Bill of 1966 was not proceeded with after it was published in the Gazette.

19 of these bills were Constitutional Amendment Bills. The National Assembly could not proceed with financial bills²²

which imposed or increased taxation or to impose or increase a charge on public funds, unless recommended by the President. Finally there were certain grounds upon which members could be disqualified.²³

The Executive.

The executive authority in Zambia was vested in the President,²⁴ who was also the Head of State.²⁵ There was a Cabinet comprising the Vice President and Ministers.²⁶ There was also a secretary to the Cabinet who became Secretary General by the Constitution (Amendment) of 1969. The 1964 Constitution limited the number of Ministers to 14. Though this number was increased in 1966 and 1970 it was abolished altogether.²⁷

The Judiciary

Section 98 provided for the High Court with unlimited jurisdiction in both civil and Criminal matters. There was also a Court of Appeal and Section 102 reserved the right to Appeal to the Judicial Committee of the Privy Council. This facility was never availed of during the first Republic and was thus revoked in the Second republic. The House of Chiefs which was already a feature of the 1962 Constitution was also included in the 1964 Constitution.²⁸

The Barotseland Agreement, 1964.

Barotseland (now known as the Western Province)²⁹ enjoyed Special treaty relations with Britain as a result of Treaties between the King or Paramount Chief of Barotseland and the British South Africa Company. The Paramount Chief or Litunga of Barotseland entered into several Treaties with the company between 1899 and 11 August 1909.³⁰

The Barotseland Agreement of 18 May 1964 sought to replace these previous agreements between the British Government and Barotseland with a new agreement which would continue the Special relationship and which would also be acceptable to the new UNIP Government.

Barotseland had always enjoyed a traditional type of Government headed by the Litunga who was the King or Paramount Chief. It had an elaborate and complicated system of administrative, judicial and legislative structure for the entire territory. At the apex was the National Council which would conform to a Parliament as in democratic systems today. This body was composed of about thirty members and it was required to meet at least once in a year. It was composed of Indunas or councillors who lived at the Capital, Lealui, and there were also three representatives from Barotseland's District councils. There was a much more exclusive body - the Saa Sikalo which was headed by the

Ngambela or Prime Minister in the modern sense. The Ngambela was the King's Chief advisor. The Saa Sikalo was the supreme administrative and Judicial body in the land. There was also a body called the Katengo council which in effect was the council of the Common people whose role was to suggest topics for discussion for the National Council. Below this superstructure there were district Kutas which represented Barotseland's various districts. These District Kutas performed both administrative and judicial functions. This then was the complete organisation of the Barotse Native Government.

Britain took over the sovereign powers over Barotseland in 1899 as a result of the promulgation of the Barotseland North Western Rhodesia Order in Council of that year which was made under the Foreign Jurisdiction Act of 1890. This Act authorised the exercise of political power acquired by agreement or usage in territories which had not become part of Her Majesty's Dominions by cession or conquest. In 1911 an order-in-Council³¹ attached Barotseland to Northern Rhodesia as a result Northwestern and North-Eastern Rhodesia amalgamated to form Northern Rhodesia. The territories Special position was expressly preserved. Under section 44 of the Order it was specifically mentioned that nothing 'shall be deemed to limit or affect the exercise of the Chief of Barotse of his authority in tribal

matters'. Again in 1924 when Northern Rhodesia was transferred from Company rule to the British Government, Barotseland's Special status was explicitly recognized in Article 41 of the Northern Rhodesia Order in Council of 1924. Barotseland's Special position continued to be recognized by the British Government up to independence in 1964. In 1953, in accordance with earlier promises to the Barotse Native Government that 'no change in the territorial Constitution would be made without prior consultation and agreement with the Paramount Chief and his Council',³² the then Colonial Secretary Henry Hopkinson flew to Lealui to announce to the National Council that their demand that Barotseland be recognized as the 'Barotseland Protectorate' within the Protectorate of Northern Rhodesia had been accepted by the British Government and hence 'Barotse Province would become Barotseland Protectorate and the Provincial Commissioner would become the Resident Commission.' Thus a Special Order in Council was issued in 1953 which styled Barotseland as a Protectorate within Northern Rhodesia and this Order also reaffirmed rights initially confirmed to the Paramount Chief in the 1924 Order in Council.³³ In 1929, the Northern Rhodesia Government introduced the 1929 Native Authority Ordinance which gave the Governor power to appoint and remove Chiefs and to institute an inquiry into disputed succession to

Chieftainship. This Order did not apply to Barotseland. In 1936 the Barotse Native Authority Ordinance 1936, and the Barotse Native Courts Ordinance 1936 were introduced which applied only to Barotseland. The Separateness of ^{Barotseland}~~Northern~~ Rhodesia was further recognized in the Northern Rhodesia Order in Council 1962 and the Self governing Constitution of 1963.

At Independence therefore the Lozi sought to use this special status bestowed on Barotseland by orders in Council and Legislation up to 1964 to demand separate status. The nub of their argument was that they were a separate Country with a different form of Government and that any association in any form with Northern Rhodesia was simply for administrative Convenience. Barotseland long before the advent of the Whitemen had enjoyed its own brand of traditional Government and the Question now was whether the British Government would agree to its separate status and whether this could legally be done. Politically of course, by 1964 the Northern Rhodesia Government was firmly entrenched in Northern Rhodesia. In July 1962 after the political parties had accepted the Macleod-Maudling Constitutional proposals Barotseland was opened to all political parties. In the elections which were held in October under this complicated Constitution whose franchise was still

qualified UNIP won all seats. Again in 1963 following reforms in the Barotsse Native Government UNIP won all the 25 National Council Seats. At a Conference in September at the Victorial Falls in Livingstone between a delegation from the Litunga and the Government the Litunga agreed to the holding of the 1964 General Elections in Barotseland which Election were also a victory for UNIP.

It was from these arrangements that Barotseland was endeavouring to secede. As a compromise however the Litunga agreed to the signing of a separate agreement which was reached outside the Conference between his delegation and the Northern Rhodesia Government. This agreement-the Barotseland Agreement 1964-was signed on 18 May 1964. Duncan Sandys the Secretary of State for Commonwealth Relations and the Colonies adding his signature 'signifying the approval of Her Majesty's Government.' The agreement was meant to take the place of the earlier treaties when Britain relinquished its power and jurisdiction in the country to an independent Republic of Zambia. This was to be the price for Barotseland coming into the new Republic and thereby enabling the country to emerge into independent statehood as one United Nation.

The Agreement stipulated in Paragraph 2 that "the Constitution of the Republic of Zambia shall include the

provisions agreed upon for inclusion at the Constitutional Conference held in London in May 1964 relating to (a) the protection of human rights and fundamental freedoms of the individual; (b) the Judiciary; and (c) the public services, and those provisions shall have full force and effect in Barotseland. Paragraph Three imposed an obligation not to discriminate against the people of Barotseland as regards rights of access to the courts of Zambia, and stipulated for regular circuit sessions in Barotseland. In the Fourth paragraph recognition was to be accorded to the person who is for the time being the Litunga of Barotseland under Customary law of Barotseland. (ii) 'the Litunga of Barotseland acting under consultation with his council as constituted for the time being under the customary law of Barotseland shall be the principal local authority for the Government and administration of Barotseland.' (iii) 'the Litunga of Barotseland, acting after consultation with his Council, shall be authorised and empowered to make laws for Barotseland' in relation to certain enumerated matters. Paragraph Five preserved the powers of the Litunga in land matters under customary law and the land jurisdiction of Barotse Statutory native courts. Paragraph Six provided that "all public officers of the Government of the Republic of Zambia who may from time to time be stationed in Barotseland shall be officers serving on permanent and pensionable

terms." Paragraph Seven imposed upon the Government an obligation to treat Barotseland alike with other parts of Zambia in the provision of financial support for administration and economic development. In Paragraph 8 the Government undertook to take steps as may be necessary to ensure that laws for the time being in force in the Republic are not inconsistent with the provisions of this Agreement. And finally by paragraph Nine the Government might and, if so requested by the Litunga, shall refer to the High Court any question concerning the interpretation of the Agreement.

In 1964 President Kaunda gave assurance to the Litunga that it was the Government's full intention that the Barotseland Agreement will be honoured fully after independence. 'I believe that the Agreement reached in London is an honourable Agreement from the point of view of both the Central Government and the Barotseland Government. I am very glad that the basis of the Agreement is that Barotseland is an integral part of Zambia, and I can assure you, Sir Mwanawina (the then Litunga) and all members of the Barotse Royal Family and of the Barotse Government, that the Government has no wish to interfere with the day to day running of the internal affairs of Barotseland.'³⁴ This Agreement was annulled by the Zambian Government in 1969.³⁵ This Constitutional Amendment provided that the Barotseland

Agreement, 1964 shall cease to have effect and all rights (whether vested or otherwise) liabilities thereunder shall lapse. Since this Agreement was recognized by the Independence Order, 1964 it had to be abrogated by a constitutional amendment namely publication in the Gazettes for thirty days before First reading and to be supported by $\frac{2}{3}$ majority at second and third reading.

In fact in 1969 when the Agreement was finally abrogated it was but a skeleton of its previous form. It had been disregarded, dishonoured and breached during its short but tortuous existence. There was no doubt in the mind of the Government that they were going to rule Barotseland in the end.

In 1965 after the Barotseland Government had resisted the introduction of development plans in their territory, the Government introduced the Local Government Bill which repealed the Barotse Native Authority Ordinance and the Barotse Native Court Ordinance. The National Council was abolished and was replaced by five elected councils. The Act provided that its provisions 'shall apply in Barotseland and the powers contained herein may be exercised in relation to Barotseland, notwithstanding anything to the contrary contained in any other written law or in the Barotseland Agreement, 1964.³⁶ The Chief's Act was passed

also which empowered the President to recognize or withdraw recognition from any Chief in Zambia.³⁷ The Act stipulated that recognition might be withdrawn under the Act if the President, after due inquiry was satisfied that this was necessary in the interests of peace, order and good government.³⁸ The Agreement on the other hand had contemplated that the only ground upon which recognition might be withdrawn was if an incumbent Litunga ceased to be entitled to the office under customary law. The Mines and Minerals Act of 1969 deprived the Litunga of his mineral rights in certain lands reserved under the Agreement with the British South Africa Company and the Constitutional (Amendment) Act of 1970 empowered the President to compulsorily acquire property for the purpose of its administration or disposition by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the Statute law, the Common Law and doctrines of equity relating to or affecting the interests in or rights over land or any other interests or rights enjoyed by Chiefs shall apply through out Zambia.

Thus as the *Zambian Mail* of 3 September 1965 said the Litunga was 'Just another Chief now'. It is true that the Agreement was just an ordinary contract³⁹ which was subject to the sovereign power of the State which could refuse by legislation to honour its obligations under it.

CHAPTER V
NORTHERN RHODESIA IN THE FEDERATION
OF RHODESIA AND NYASALAND.

Why Federation

The movement towards some form of closer association among the European communities in Central Africa began when both the Rhodesias were still under company administration¹. At the time in fact an Order in Council making provision for the administration of Northern Rhodesia by the Company Administrator and Council in Southern Rhodesia had been prepared, but because of the ill-timed Jameson Raid the British Government refused to endorse such a scheme.² In 1917 the British South Africa Company had contemplated amalgamating Northern and Southern Rhodesia and an Order-in-Council was again prepared. Though this Order in Council was passed in the Southern Rhodesian Legislative Council which by that time already boasted of settler majority, the majority of the elected members voted against it and the Colonial office took note

of settler opposition to the Scheme and thus refused to sanction it. The only administrative device which the Company employed was in the appointment of an Administrator to run both territories. As it has already been shown in the previous Chapter the Southern Rhodesian Settlers prior to 1923-24 did not favour any association with the north because they feared that their positions would be taken by the emerging black clerks and artisans from the north. But after the attainment of responsible government for Southern Rhodesia in 1923 attitudes began to change. Northern Rhodesia had also obtained Protectorate status in 1924 and the vast copper resources in the country which still had to be exploited became attractive to the settlers in the South who began to clamour for amalgamation. But amalgamation was rejected in 1929 by the Milner Young Commission.³ Another Commission⁴ had reported that Northern Rhodesia and Nyasaland were opposed to closer political ties with the East African Territories of Tanganyika, Uganda and Kenya and that the two Central African Territories were 'economically and strategically oriented toward the South, rather than the north. The Commission headed by William Ormsby-Gore recommended however that before the formation of a broad federation of the five

British dependencies communications and other common services needed to be improved.⁵ It has also been shown in the previous Chapter that the Bledisloe Commission⁶ though it recommended that amalgamation would be advantageous to the Territories and that it should be accepted in principle⁷ nevertheless it was felt that the time for amalgamation was not yet appropriate because of the 'divergent native policies and the fears and suspicions at present prevalent among the natives.'⁸ The Commission also took the view that 'any attempt to federate three governments enjoying such different measures of responsibility and in such different stages of development was unlikely to succeed.

As a matter of fact it was not the first time the word 'federation' had been used to describe some form of association for the European communities in South - Central Africa. As early as 1907 Lord Selbourne as High Commissioner to South Africa had suggested that Europeans in South Africa should federate in the development of the area as far as Lake Tanganyika in a development comparable to that of the United States of America. He particularly considered that the Northern railway belt should be united to Southern Rhodesia.⁹ This suggestion, like the proverbial bad penny was to be heard from time to time during the coming decades. The Chairman in the Hilton Young

Commission, for, instance favoured a partition of Northern Rhodesia with the rail line being added to Southern Rhodesia, North-Eastern Rhodesia to Nyasaland, with Barotseland a Native Reserve, all to be under a High Commissioner who would also be Governor of Southern Rhodesia.¹⁰

In the Legislative Council of Northern Rhodesia the newly elected Unofficial for the Northern Electoral Area Colonel Stewart Gore Browne had proposed that Northern Rhodesia should be carved into three separate parts. Central Rhodesia, corresponding with the railway strip, then North-East and North Western Rhodesia. He then suggested that Northern and Southern Rhodesia and Nyasaland be linked together in a federation, North East and North-West Rhodesia and Nyasaland being part of the Federation but remaining under the control of the Colonial office while the White dominated railway strip would be joined to Southern Rhodesia under the Constitution similar to that enjoyed by the latter. Each area was to be virtually autonomous with Federal Government responsible only for defence, communications, posts and telegraphs, customs, research and civil aviation.¹¹

It is also interesting to note that in 1960 when the Monkton Commission¹² was collecting evidence for use during the Federal review Conference mentioned that a Schedule Known as the 'Central African Alliance' in essence similar to that suggested by

Gore Brown was supported mainly by a section of European opinion in Northern and Southern Rhodesia.¹³ The 'line of rail' which includes the Copperbelt and most of the European population should, it was suggested amalgamate with Southern Rhodesia which would form an independent, self governing Dominion. The rest of the Federation to be divided into a number of wholly African states at first under the tutelage of the United Kingdom Government but eventually self governing. It was then suggested that the African states would be linked in a loose alliance with the Dominion which, together with the United Kingdom Government would manage common services such as railways, posts and telegraphs, rather on the lines of the East African Commission.¹⁴ This suggestion was rejected by the commission because it 'ran contrary to Her Majestys Government's pledges concerning the protected status of the inhabitants of Northern Rhodesia.

Thus closer association in Central Africa was conditioned by the British Governments responsibilities for the Africans and the differing native policies pursued by settler governments in Northern and Southern Rhodesias.

But these factors did not in any way stop the settlers from demanding some form of association for Central Africa. Their main arguments were economic and

political ones. It was felt that the creation of a United Central African Territory would rationalise the economic potential of the region. Northern Rhodesia's mineral wealth and Southern Rhodesia's Tobacco Industry would be developed even further and therefore provide a viable export market for the products. On the political level it was felt that the creation of a white Dominion State in Central Africa would act as a buffer against black nationalism from the north and the White racialism in the form of apartheid from South Africa.

But the Africans saw any form of closer association in Central Africa as the reincarnation of the settler dream of domination over the Africans for the foreseeable future. Thus as far as the Africans were concerned they were determined to oppose any such scheme.

But even before the first world War, the Settlers of Central Africa had begun to co-operate informally by holding annual Governors' Conferences at which closer relations between the Territories with respect to Communications, education research, defence and customs were discussed. In 1939 for instance the Rhodesian Court of Appeal was formed.¹⁵ In that year also the Bledisloe Commission appointed to examine the problem of Closer association in Central Africa recommended the creation of an

Inter-Territorial Council¹⁶ consisting of the Governors of Northern Rhodesia and Nyasaland and the Prime Minister of Southern Rhodesia. The suggestion was not acted upon by the British Government until October 1944 when it announced the formation of a Central African Council which first met in 1945.¹⁷ The Chairman of the Council was the Governor of Southern Rhodesia and the Governors of Northern Rhodesia and Nyasaland and the Prime Minister of Southern Rhodesia were ex officio members.¹⁸

The Council was essentially an advisory body whose decisions could not be enforced. Its main purpose was to promote co-operation between the Central African States in the field of education, communication, research agriculture, veterinary and forestry, African labour and such matters as might be agreed upon.²⁰ It was in essence a consultative body and therefore did not satisfy settlers aspirations. Thus Sir Godfrey Huggins, the Prime Minister of Southern Rhodesia said that it was 'nothing more than a sop,' and that his cabinet had agreed to it only because they thought it would bring them a stage nearer to amalgamation.²¹ The same reservations were expressed by Welensky who saw it as leaving 'the door slightly ajar towards amalgamation'.²²

But as far as the British Government were concerned their attitude towards amalgamation had changed and were now

in favour of Federation.²³ And as a result of this Sir Roy Welensky and Sir Godfrey Huggins the Prime Minister of Rhodesia called a Conference of political leaders from the three Central African Territories at which no Africans were considered. The Conference was held in February of 1949 at the Victoria Falls.²⁴ Though the participants concluded the conference in favour of a Federal Scheme, no formal demands to the British Government issued from the Conference.

Meanwhile in Northern Rhodesia, Welensky was moving a motion at the end of the year that 'in the opinion of this House the time is opportune for His Majesty's Government to take the lead in creating a Central African Federation consisting of Southern Rhodesia, Northern Rhodesia and Nyasaland'.²⁵ The officials abstained when the motion was voted upon, however the motion was passed by the votes of the Unofficials against those representing African interests.

As Gore Browne said in a statement which all representatives of African interests agreed 'the general verdict of the African public as disclosed in numberless meetings and gatherings in all parts of the country is overwhelmingly against Federation....We cannot say that the time is opportune for His Majesty's Government to take the

lead in creating a Federal State and further we must in all honesty make it clear that we ourselves are opposed to the proposals made at the Victoria Falls in so far as they were made public there on the grounds that they appear to be amalgamation under another name'.²⁶

However the Central African political leaders and the British Government were determined to introduce some form of closer association. In the United Kingdom General Elections of 1950, Mr. Creech Jones was replaced as Colonial Secretary by Mr. James Griffiths. On the 8th of November 1950 Mr. James Griffiths issued a statement in which he said 'the question of the closer association of the Central African Territories of Southern Rhodesia, Northern Rhodesia and Nyasaland has been under discussion for many years. His Majesty's Government in the United Kingdom have after careful consideration formed the conclusion that it is desirable that there should be a fresh examination of the problem....'²⁷ He went on to say that His Majesty's Government had therefore accepted the suggestion of the Prime Minister of Southern Rhodesia that a Conference of officials of the Commonwealth Relations Office and Colonial Office shall be held in London for the purpose.

A Conference was thus held in London Comprising

officials of the three Central African territories, the United Kingdom Government, and of officials of the Central African Council in March 1951.²⁸

The Conference recommended a Federal system.

'We believe that this would enable the territories to be United together for common action in those spheres where it would be most beneficial to all of them while leaving Unimpaired the authority of the individual territories in spheres where this seemed most appropriate and all recognizing Her Majesty's Government in the United Kingdom towards the African peoples.'²⁹ The Conference also suggested that the Federation might be called 'British Central Africa'. The Conference also rejected amalgamation, (or any partition of Northern Rhodesia) or and a League. The basis of the division of functions was that matters closely affecting African life and development would be reserved to the Territorial Governments and Legislatures as opposed to the Federal Sphere. As a safeguard against African interests there was to be an African Affairs Board and a Federal Minister for African interests. The African Affairs Board was to exercise reserve powers in relation to legislation detrimental to African interests. There was to be a Federal Assembly consisting of thirty-five members: Seventeen would come from Southern Rhodesia, Northern Rhodesia would have

eleven and seven from Nyasaland. There were to be three representatives of African interests from each of the territories four of whom would be Africans.³⁰

During August and September 1951 the Colonial Secretary and the Commonwealth Relations Secretary visited Central Africa and as a result of this Visit a Conference met at the Victoria Falls in September 1951. It was attended by the three Central African Governments and the British Government. The Southern Rhodesian delegation did not include any Africans.

The Conference Communique noted the failure of the Conference to reach agreement on the principle of Federation.³¹ The African representatives from Northern Rhodesia on the other hand expressed a willingness to consider Federation on the basis of the Report of London Conference of officials after the policy of partnership in Northern Rhodesia had been defined and, as so defined, put into progressive operation."³²

In order to assuage African fears the Conference agreed that in any further consideration of proposals for federation

(a) the protectorate status of the two northern territories would be accepted and reserved. This excluded

any consideration now or in the future of amalgamation of the three territories unless a majority of the inhabitants of the three territories desired it

(b) Land and Land rights in the Northern territories to remain under the ultimate authority of Her Majesty's Government as was political advancement.³³

In November 1951 the new Colonial Secretary Mr. Oliver Lyttelton announced his Government's intention³⁴ to proceed with Federation and consequently in January 1952 an unofficial Conference of the Governors of Northern Rhodesia and Nyasaland and the Prime Minister of Southern Rhodesia including the Colonial Secretary took place.

The full Conference of all these delegates took place in April and May 1952. The Conference was boycotted by Africans from the northern territories. The report of the Conference took the form of a Draft Federal Scheme³⁵. Further Changes in the Officials report were made particularly relating to African safeguards.³⁶

For instance the African Affairs Board was now to consist members who were not parliamentarians. Each Governor was now empowered to appoint One elected unofficial and one African.³⁷ Thus the Minister of African Affairs was deleted from the Draft Scheme. In this respect the Board was thus weakened. The powers of the Board were

further truncated by requiring that it could now only comment on legislation of a 'differentiating measure' and not legislation detrimental to African interests.³⁸

In another aspect the representatives from Southern Rhodesia were now to be elected by the predominantly European Electorate of Southern Rhodesia.³⁹ The Federal Parliament was now empowered to make provision for a federal franchise.⁴⁰ The Federal parliament was also permitted to make Constitutional Changes though the officials had recommended that no major Constitutional Changes should occur within the first five years of federation.⁴¹

Thus the federationists were now finally decided it will have to be introduced against the wishes of the Africans. In both northern territories anti-federation pressure was stepped up. In Northern Rhodesia Mr Harry Nkumbula new Leader of the African National Congress elected to replace Godwin Mbikusita in July 1951 called a big Congress in Lusaka at which Chiefs were also present. It was decided to set up a Supreme action council which was to include trade unionists which would 'in the fight against Federation 'paralyse the country' including the calling of a general strike on the Copperbelt.⁴²

In the Northern Rhodesia legislative Council the

Draft Federal Scheme was debated upon.⁴³ Mr Sokota, member representing African interests chosen by the African Representative Council who was also a member of the African National Congress said 'The whole entire African Community is solidly opposed to the plan and we are United in doing so'.⁴⁴ He continued 'We are the people referred to as protected people by the British Government. The target which the colonial office has set itself, that all colonial territory should be guided and assisted towards responsible government within the British Commonwealth has been most welcome to us but now we see a dark cloud overshadowing that hope. The proposed British Central Africa does not give the list hope for Africans to reach the target set by the Colonial office'.⁴⁵

Despite this opposition by the Africans the final Conference met in London in January 1953. It had before it reports by specialised Commissions which looked at Judicial, fiscal and Civil service arrangements for the new State.⁴⁶ Further Changes were made in relation to the African safeguards. The African Affairs Board was now to be a Standing Committee of the Federal Assembly consisting of three European representatives of African interests and one African from each territory.⁴⁷ It was also provided that for the first ten years No change could be made in the division of

powers unless all three territorial legislatures gave their prior consent.⁴⁸

In April 1953 a final debate in the Northern Rhodesia legislative Council took place. Federation won support from the elected European members while representatives of African interests both white and black voted against it.⁴⁹ Mr Nkumbula had called a Congress in Lusaka at which he burned in front of delegates seven copies of the British Governments white paper on Federation. The Conference also resulted in the calling of 'two days of national prayer' during which no African would go to vote.⁵⁰

In Southern Rhodesia the scheme was approved in a referendum. Thus the Rhodesia and Nyasaland (Federation) Act 1953⁵¹ became law on July 14. Under this Act the Federation of Rhodesia and Nyasaland (Constitution) Order in Council was made. The Federal Constitution was annexed to the Order in Council and the Federation Commencement Order in Council brought the operation of the Constitution on 3 September. On 7 September the first Prime Minister was appointed.⁵²

Intense opposition to the Federal arrangement continued unabated from the northern territories and in 1959 emergencies were declared through out Central Africa. Because of this events the British Government was forced

to change policy and in July 1959 the Prime Minister of the United Kingdom announced that an Advisory Commission⁵³ would be appointed to advise the five Governments in preparation for the 1960 review on the Constitutional programme and framework best suited to the achievement of the objects contained in the Constitution of 1953 and its preamble.

Article 99 of the Constitution of the Federation of Rhodesia and Nyasaland provided that 'no less than seven nor more than nine years from the date of the coming into force of this Constitution, there shall be convened a Conference consisting of delegations from the Federation, from each of the three Territories and from the United Kingdom, chosen by their respective Governments, for the purpose of reviewing this Constitution".

Thus in terms of this Article the Conference could have been held any time between 1960 and 1962. The Monkton Commission in its report which was made public in October 1960 noted the dislike of the federation among Africans in the two Northern territories as 'Widespread, sincere, and of long standing. It is almost pathological'.⁵⁴ It further stated that 'Federation cannot, in our view be maintained in its present form. On the other hand to

break it up at this crucial moment in the history of Africa would be an admission that there is no hope of survival for any multiracial society on the African Continent and that differences of colour and race are irreconciliable'.⁵⁵

Although the commission recommended that federation could not continue unless it commanded general acceptance dissolution was rejected as this would lead to 'hardship, poverty and distress'.

The Review Conference in London in 1960 was adjourned never to meet again and meanwhile as we saw in Chapter 111 Constitutional Changes were taking place in Northern Rhodesia and Nyasaland. In 1960 it was agreed that Nyasaland would be given a new Constitution which finally ushered in internal self government in 1963. And finally Nyasaland became independent on 6 July 1964, while Northern Rhodesia was already self governing by the beginning of 1964 becoming independent on 24 October 1964. Meanwhile on 19 December 1962 and on 29 March 1963 it was announced that Nyasaland and Northern Rhodesia respectively would be allowed to secede from the Federation.⁵⁶ Finally the Rhodesia and Nyasaland Act of 1963 was passed by the United Kingdom parliament 'to Make provision for the dissolution of the Federation and the consequential distribution of functions of the Federal Government and Legislature among the Territories'.⁵⁷

CHAPTER VI

THE SECOND REPUBLIC

Zambia's One Party State Constitution.

On 13 December 1972, Zambia became a one party state.¹ This was as a result of an amendment to the Constitution which provided that the United National Independence Party shall be the only party and that it is unlawful to form or belong to or sympathise with any political party. The Constitution amendment thus amended certain Sections of the Constitution by requiring that certain holders of Constitutional posts shall be Members of the party such as the President, Vice President, Ministers, Attorney General Speaker and his Deputy.

The political decision to introduce the One Party State was taken at a UNIP National Council meeting in Mulu-ngushi in Lusaka in October of 1971 by resolution No 10 which directed the Unip Central Committee to work towards the establishment of one-party democracy in Zambia.² Though it had been the aim of Unip that Zambia was going

to be a one party state, it had been thought that this contingency was going to come about by evolution rather than by legislation.³ Legally of course several factors made it relatively easy to introduce the One Party State. In 1969 there was an amendment to the Constitution⁴ which removed the entrenched Constitutional Amendment procedure which required that for any bill to amend the Constitution, its draft must be published in the Gazette at least thirty days before its first reading in parliament and it had to be supported by not less than two-thirds of all the members at its second and third readings. In addition the matters required the popular approval of the people at a referendum such as the Bill of Rights under which the fundamental rights and freedoms relating to personal liberty, slavery and forced labour, inhuman treatment, deprivation of property, privacy of home and other property, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and freedom of discrimination, provisions relating to the judiciary and to the exercise of legislative power and the amending procedure itself. In 1971 the new Party Constitution was adopted at the 6th General Conference of the Party and this also opened the way for the introduction of the one party state.⁵ Then of course there was the Constitutional (Amendment) No 5 Act which proscribed the African National Congress and

prohibited the formation of any other political party outside UNIP. This amendment received Presidential Assent on 13th December 1972.⁶

The irrevocable gambit towards the establishment of the One party state or what Mubako calls⁷ 'the next step in the process of Constitutional engineering' was the appointment on 25th February, 1972 of a National Commission headed by the then Vice President Mainza Chona to consider the Changes in the Constitution of the Republic, the practices and procedures of the Government and the Constitution of Unip necessary to bring about the establishment of a One-Party Participatory Democracy in Zambia.⁸

The Commission was also empowered to consider matters incidental to or connected with the aforesaid matter, such matters relating to the Presidency, the nature and structure of Government, Parliament and its relation with National Council of the Party, the relationship between various political and administrative, elected and appointed bodies ranging from Village productivity and Village Political/Section Committees to the Cabinet and the Central Committee of the Party, the Code of Leadership, the Supremacy of the party vis-a-vis Government administration, the amount of freedom for people to form pressure groups based on tribal loyalties or for particular purposes,

the role of the Labour Movement, the participation of public servants in politics and the freedom of Candidates to stand for elections at local or national level. The Commission's terms of reference did not include the hearing of views on the pros and cons of the establishment of a One Party State but simply on the form the One Party State should take.

In commending the National Commission in its important task - the President directed that the Commissioners shall in their consideration and recommendation adhere to certain principles which he described as being 'cardinal, inviolable and built in safeguards of One Party Participatory Democracy in Zambia' which were that⁸

- a) Zambia shall continue to be a sovereign Republic.
- b) Zambia must continue to build a humanist society
- c) All citizens of Zambia shall continue to enjoy complete equality.
- (d) the supremacy of the rule of law and independence of Judiciary shall continue to be maintained
- (e) fundamental rights and freedom of the individual shall be protected as now provided under Chapter 111 of the constitution of the Republic in Zambia.
- (f) the right of the individual to freely choose leaders and representatives to Parliament and many other democratic institutions, national and local, shall be fully preserved

(g) Supreme power must be vested in the people and everything shall be done to ensure that power is exercised by them directly where possible and indirectly through established democratic representative institutions

(h) Zambia is part and in the frontline of the continent wide revolutionary movement which seeks to liberate Africa and aid the Continent of all forms of imperialism, colonialism, racism and foreign exploitation which have plagued the African people in the past.

(1) Zambia is permanently opposed to exploitation of man by man and the people of Zambia will persist relentlessly in their struggle for self-reliance and the establishment of protective measures against possible exploitation by foreign and local economic interests.

There is no doubt that these guidelines covered a wide spectrum of National, political and economic determinants and goals reflective of the ethos and jurisprudence upon which the Republican Constitution was to be based.

Composition of the National Commission.

The Commission was composed of Government and Party Officials headed by the Vice President. Two representatives of the African National Congress its President Mr. Nkumbula and the Deputy Mr. Nalumino Mundia refused to take part in the work of the Commission. There were also

representatives from the labour movement, Chiefs, Business and Industry, University of Zambia, Defence Forces, the Church, Civil Service comprising nineteen Commissioners in all.

The Commission toured the entire Republic and had Sixty-seven sittings in all Zambia's provinces and districts in a bid to give, in the Commission's own words 'ample opportunity to as many Zambian Citizens as possible to enable them to express their views on the matter either orally or in writing.' The whole exercise was reminiscent of Tanzania's own experience when it introduced its One Party State.

(iii) The August 1973 Constitution

Zambia's One Party State Constitution is based on the philosophy of the One Party Participatory Democracy. As President Kaunda said in one of the guidelines which the National Commission was to follow, 'there shall be complete freedom among the people to participate fully in the running of their affairs at local and national level through institutions under people's own control.' This is the essence of participatory Democracy, the people must directly or indirectly control the exercise of power in all institutions of the land. What this therefore means in

Zambia is that there must be organs for the articulation and Channelling of the demands and needs of the people and these organs are the village, ward, district and provincial development committees strengthened by the regional, branch, Constituency and the Central Committee levels of the party. All those institutions, together with the executive, the judiciary, the Party itself and parliament would derive their powers and procedures from the Constitution which is the grund norm in Zambia's body politic.

Despite the introduction of the One party State in Zambia many of the provisions of the Zambia Independence Act, 1964 which established the independent Republic of Zambia and the Zambia Independence Order 1964 which made transitional provisions and to which the Independence Constitution was attached as a Schedule had to be re-enacted.

In point of fact the National Commission on the Establishment of a One Party Participatory Democracy in Zambia (hereinafter to be referred to as the Chona Commission) recommended that the Zambia Independence Act and the Zambia Independence Order 'should no longer be tied to the British Constitutional provisions and that the Zambia Independence Act, 1964, and the Zambia Independence Order, 1964 should cease to have any legal effect in Zambia and that any provisions of the British Laws which are still applicable

to Zambia by virtue of the Act and Order be replaced by
Zambian legislation. Thus the repeal of the Zambia
Independence Act, 1964 and the Revocation of the Zambia
Independence Order was facilitated by a provision in the
Independence Constitution which stated that the amending
procedure under section 72 of the Constitution extended to
the Zambia Independence Act 'in so far as it forms part of
the Law of Zambia.'¹⁰ Since the onerous amending procedure
requiring the plebiscitary endorsement of such a move by a
popular referendum had been removed in 1969 it was thus
relatively easy for the passage of the Bill which brought
about the new Constitution and which repealed and revoked
the Zambia Independence Act and the Zambia Independence
Order respectively since it had only to conform to the
requirement that the draft bill be published in the Govern-
ment Gazette at least thirty days before its first reading
in the National Assembly and be supported at its second and
third readings by two thirds of all the members. Article
three of the Constitution of Zambia Act, 1973 thus repealed
and revoked the Zambia Independence Act, 1964 and the
Zambia Independence Order, 1964 respectively. Article Six
continued in force after the commencement of the Act exis-
ting laws 'as if they had been made in pursuance of the
Constitution'. And in the interpretation section existing
laws' means all laws, whether a rule of law or a provision

of an Act of Parliament or any other enactment or instrument whatsoever (including any Act of Parliament of the United Kingdom or Order of Her Majesty in Council), having effect as part of the law of Zambia or part thereof immediately before the Commencement of this Act, and includes any Act of Parliament or statutory instrument made before such Commencement and coming into force on such commencement or thereafter.'

Whatever the merits or demerits of the method by which the one party Constitution was adopted it is submitted that it did not begin its existence on a clean slate, in other words it did not represent an effective break with the past. The truth of the matter is that the 1973 Constitution simply represented an embodiment of the rules, regulations, laws and procedures which has marked the Constitutional development of Zambia for the past fifty years or more.

Notwithstanding this Continuation of the British institutions and practices and procedures there are certain new features in the Constitution such as those relating to the office of commission for Investigations¹¹ and institution of the Leadership Code. Both these bodies will be examined in greater detail later on. The Act also creates a Citizenship Board¹² which scrutinizes claims or applications for Citizenship.

One other innovation was recommended by the Chona Commission and this was the inclusion of a preamble in the Constitution to reflect 'the guiding principles of the Constitution, the sentiments and aspirations of the people of Zambia'.¹³

Thus the Constitution now embodied in the Constitution states that 'the people of Zambia have established a One-Party Participatory Democracy under the Philosophy of Humanism that they 'uphold their inherent and inviolable right to decide, appoint and proclaim the means and style where by they will govern themselves as a United and undivisible Sovereign state under the banner of our Motto "One Zambia, One Nation". The preamble also recognizes that 'all men have the right freely to determine and build their own government and in shaping the destiny of their own motherland' It goes further to declare that all men have the right freely to determine and build their own political, economic and social system, by ways and means of their own choice and also 'recognizes individual rights and citizens including freedom, justice, liberty and equality and also the rights and duties of all men to the protection of life, liberty and property, freedom of conscience, expression and association within the context of the National Constitution.'

The Preamble also pledges to 'all citizens the bounden duty of the state to respect the rights and dignity of all men, to uphold the laws of the state, and to conduct the affairs of the state in such a manner that its resources are preserved, developed and enjoyed for the benefit of its citizens as a whole and to prevent the exploitation of man by man.' The Preamble finally predicates Zambia's hope that she may by her 'action enhance the development of Pan-Africanism, African Unity, independence and the total liberation of Africa and further strive to foster the development of non alignment and all other forms of international co-operation conducive to the consolidation of peace and the strengthening of mutual respect and friendship among peoples and states.'

Malawi, Ghana and Tanzania do not have Bills of Rights in their Constitutions and preferred to embody in the Constitution Declarations or Fundamental principles of Government.¹⁴

It has since been held that preambles and declaratory principles of this nature are of no legal effect.¹⁵ They are merely goals to which Governments should pledge themselves to attempt to achieve. Perhaps mention should also be made of the position of the Party in the Constitution. As it will be recalled, among the terms of reference

of the Chona Commission was a directive that the Commission should consider changes in the 'Constitution of the United Nations Independence Party'. The new party Constitution was accordingly annexed to the National Constitution 'for Information'.¹⁶ But in 1975 Party supremacy was given further recognition when the Constitution of UNIP was 'annexed to the Constitution of Zambia together with amendments that may from time to time be made to it by the Party and published in the Gazette'.¹⁷ Thus Unip now assumes even a much more Central placement in Government organisation thus departing from the Westminster and American traditions which regards parties as extra legal associations. Indeed this is as it should be. Unip has pervaded almost every aspect of activity in Zambia and it is only logical that it should form part of the Constitution of the land.

The Legislature.

Composition and election

The introduction of the One Party State still retained the formal structures of Government. The Legislative power of the Republic is vested in the Parliament of Zambia which shall consist of the President and the National Assembly. The National Assembly is composed of one hundred and twenty-five Members including ten nominated

members.¹⁸ Article 66 of the Constitution justifying the device of elected members says that, 'the President may appoint as nominated Members of the National Assembly such persons not exceeding ten in number, as he considers desirable in the public interest in order to enhance the representative character of the Assembly or to obtain the service as a member of the Assembly of any member who, by reason of his special qualifications, would, be of special value as such a member.' The prerogative of nominating members to Parliament has been in use in Zambia since 1924 when the Legislative Council was formed. As a matter of fact nominated members have, during the Colonial days formed the larger component of the Legislative Council up to 1959. But with the advent of the one party state Constitution it has become difficult to defend the continuation of nominating members to Parliament because the Assembly is now composed of members belonging to the same party and therefore the President has a wide spectrum of people from whom to select his Ministers. At the time of writing virtually all key Ministries in the land with the exception of The Ministry of Finance are in the hands of nominated members.¹⁹ Obviously in a situation of this nature it would be difficult to contend that in every case this is done to enhance the representative Character or obtain the service of a Special Member. The Membership of

the National Assembly has been increased to one hundred and twenty-five in the One Party State and therefore the President has a large membership from whom to seek Ministerial talent or Special qualifications. It would seem that the device is used to nominate members into key positions so that the President can have his wishes prevail, after all every President would like to be his own Minister of Foreign Affairs and so a nominated member would be an ideal choice for such an assignment. While abolishing this device would not be in the best interests of the country, the Chona Commission recommendation that there should only be three nominated Members would seem to be reasonable. The Commission also recommended institutional representatives to Parliament appointed by the Churches, Chiefs, Civil Service, National Council of Commerce and Industry, Zambia Congress of Trade Unions, Youth Council of Zambia, University of Zambia, Security Forces, Professional Organisations and the National Women's Council. However these recommendations were rejected by the Government. The Speaker is also part of the National Assembly.²⁰ There is also provision for election of a Deputy Speaker.²¹

Voters Qualifications

Since 1964 Zambia has enjoyed Universal adult suffrage. In 1964 the voting age was 21 years. This was reduced to 18 in 1968 and this is still the case at Present. Thus

every citizen of Zambia who has attained the age of eighteen years shall be entitled to be registered as a voter.²²

(vi) Qualification For Election as A Member and Vacation of Seats.

In order for a person to be elected to Parliament he must be a citizen of Zambia and over twenty one years. He has to be a member of the party and be literate and conversant with the official language of Zambia.²³ And a person can only be disqualified if he is under a declaration of allegiance to some country other than Zambia, or declared to be of unsound mind or has been convicted of any offence or is bankrupt or detained.²⁴ A person nominated for election for the office of President shall not be qualified for election as a member of the National Assembly.²⁵

The Legislative power of Parliament shall be exercised by bills passed by the National Assembly and Assented to by the President.²⁶ Where the President withholds his assent to a bill and the bill is returned to the Assembly and the Assembly resolves within six months of the bill being so returned by a motion supported by the Votes of not less than two thirds of the Members of the Assembly that the bill should again be presented the President shall assent to the bill within twenty-one days of its

presentation unless he sooner dissolves Parliament.²⁷ Parliament under Article 80 of the Constitution has the power to alter the Constitution. This would require publication of the text thirty days before its first and second reading and it has to receive two-thirds support of members at Second and Third readings. An amendment to such a bill however does not require publication in the Gazette.²⁸ The first Constitution of Zambia Bill No. 28 was superseded by Constitution of Zambia bill No. 30 and the second bill had to be published for thirty days again in order to comply with the old requirement that if during the passage of bill in Parliament there is an amendment to it such amendment had to be published in the Gazette again. Thus the amendment to the Constitution does away with this requirement. There are restrictions on Parliament to proceed with certain bills dealing with some financial measures.²⁹ The President may at any time attend and address the National Assembly³⁰ and the President summons, prorogues and dissolves parliament.³¹ Article 90 and Article 91 of the Constitution deal with the procedures which Parliament will follow and also its privileges and immunities.³² The Procedure of the Assembly is governed by Standing Orders which may be altered from time to time by the Assembly.

Financial Powers.

In accordance with British Parliamentary principles

regarding Control of Public finance the Zambian Legislative Assembly has the sole power to impose or alter taxation.³³ Defence and public security budget is charged on the General revenues of the Republic³⁴ but parliament does not discuss this vote anymore.³⁵ Article 128 provides for the office of Auditor General for the Republic whose duties relating to the auditing of accounts relating to general revenues of the Republic and the expenditure of money appropriated by Parliament. Parliament has created by its Standing Orders, a Public Accounts Committee which shall examine the accounts showing the appropriation of the sums granted by the Assembly to meet the public expenditure and such other accounts laid before the Assembly as the Committee may think fit.³⁶ As far as the control of public expenditure is concerned the annual reports of the Auditor General have shown that the Zambian parliament has been unable year after year to control misuse of public expenditure by Government Ministries.³⁷

Elections Under One Party State.

Following the Report of the Delimitation Commission established under Article 73(1) of the Constitution of Zambia³⁸ a new Electoral Act 1973 now governs the procedure relating to parliamentary Elections. The country in accordance with the number of the one hundred and twenty-five

electd members of parliament is divided into One hundred and twenty-five constituencies. This is in line with Article 74 which stipulates that 'Zambia shall be divided into Constituencies for the purpose of elections to the National Assembly so that the number of such Constituencies shall be equal to the number of Seats of elected members in the Assembly and that in delimiting such constituencies the Delimitation Commission shall have regard to the availability of means of communication and the geographical features of the area to be divided into constituencies. The Constituencies are delimited in such a way that there shall be at least ten constituencies in each administrative Province. Each Constituency shall return one member of the National Assembly. There is also a Constitutional requirement that the boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable. Commenting on this provision the Delimitation Commission said that 'Close adherence to the population quota would result in a gross and unacceptable over-representation of the Urban centres. To avoid this the Commission determined that it would be necessary to delimit some Urban Constituencies so that they would contain a population in excess of the population quota by at least fifty per cent. It followed that many rural areas would be so delimited as to contain less than the population quota and the

Commission determined that in areas where low population densities coincided with poor means of Communication the population might fall short of the population quota by up to thirty per cent.³⁹ The Commission then gave an example of North Western Province the proviso to paragraph two of Article 74 requiring a minimum of ten Constituencies in each administrative Province affected its work. It said that 'without this proviso this province with a total population substantially less than that of the city of Lusaka would probably have contained eight Constituencies. In terms of the proviso however it receives the minimum of ten Constituencies. As a result the five Constituencies in Zambia with the smallest populations are found in the North Western Province, and it cannot be said that these constituencies have as poor communications or as low population densities as may Constituencies elsewhere in Zambia.⁴⁰

Thus Zambia's Parliamentary Elections under the One Party State with a few exceptions such as those relating to the primary Elections is still based on universal adult suffrage as before and is still similar to the British system which based on Constituencies delimited by an Electoral Commission and each constituency returning one member to the National Assembly on a simple majority or 'first past the post system.

Parliamentary Elections.

The Constitution has introduced a filtering mechanism of Candidates for the National Assembly at two levels, both road blocks being new innovations into the Constitution presumably designed to screen the credentials of election hopefuls.

The whole gamunt of parliamentary and local Government elections are controlled by the Party Machinery. Article 34 of the UNIP Constitution declares that

'No person shall be selected as a Candidate for any parliamentary or local Government election or by-election unless he or she is a member of the Party. The Regional Conference (formed by Article 22 of the Party Constitution) shall submit to the Central Committee names of all candidates selected for any election or by-election together with the number of votes cast for each candidate. And then the Central Committee (formed according to Article 7) shall be responsible for selecting three Candidates to contest any parliamentary or local government election or by-election.⁴¹

To be a candidate for parliament therefore a person must be a member of the Party, voted for in the primary elections by local party officials. Those who manage to bypass this hurdle still have the Central Committee to think about.

Article 75 of the Constitution gives constitutional significance to these party requirements.

For the purpose of selecting persons from any constituency to be candidates for election to the National Assembly the Electoral Commission shall hold primary elections in that constituency. At a primary election a poll shall be held at which the following persons resident within the constituency of the National Assembly shall be entitled to vote.

(a) the Regional Secretaries, the Regional Women Secretaries, Regional Youth and Publicity Secretaries and Two Trustees of the Party.

(b) the Chairmen, Vice Chairmen, the Secretaries, the Vice Secretaries, the Treasurers, the Vice Treasurers, the Publicity-Secretaries and the Vice Publicity Secretaries of every Constituency of the Party, and

(c) the Chairmen, Vice-Chairmen, the Secretaries, the Vice Secretaries, the Treasurers, the Vice Treasurers, the Publicity Secretaries and the Vice-Publicity Secretaries of every Branch of the Party.

At end of the poll the Electoral Commission shall then submit the names of all Candidates to the Central Committee together with the number of votes received by each candidate. Then finally the three persons who have received the greatest number of votes at the primary election shall be

qualified for nomination as candidates for election to the National Assembly from that constituency unless (and here is the rub) the Central Committee disapproves the nomination of any such person on the ground that his nominating would be inimical to the interests of the State, in which event the person who has received the next highest number of votes after the said three persons at the primary elections shall become qualified for the nomination.'

In the 1973 December Elections under this mechanism 26 successful candidates in the primary elections were barred from proceeding further to the National elections.⁴² Some of the candidates had wide support in their constituencies but because of this procedure their electorate were denied the right to exercise their votes in their favour. First there is a question of whether this type of action can be reviewed by the courts and secondly whether, if it is the genuine intention of the Founding Fathers of our Constitution to see the One party participatory Democracy in truthful action, this type of invidious reserve powers of disallowance is in the best interests of the Nation. True, the Constitution says that the nomination of

such a person shall be disapproved 'on the ground that his nomination would be inimical to the interests of the State' but it would be difficult to contend that some of the Candidates who were in the party hierarchy such as District Governors were 'inimical to the interests of the State.' As Mubako says 'in the whole process the party plays a vital role of the only selection agency of the nation's legislators from among whose membership the President appoints government Ministers',⁴³ and it is therefore of vital importance that candidates are not deprived of their freedom of expression even though this is done under the authority of a Constitutional provision because what is in bad taste is not the Constitutional provision which in any case has found its way into the Constitution through the people by whom it is being exercised but the capricious abuse of the power to which it is prone.

The Chona Commission's recommendation on the Conduct of Elections came to the conclusion that 'in a One Party Participatory Democracy, elections should be completely free and that the party should have no role in vetting or selecting candidates in order to avoid changes and practices of nepotism, tribalism and the possible abuse of this function by local party officials.' The Commission

went on to say that 'since to qualify as a candidate one must be a Party member, we felt that the electorate should be left to choose the best candidate from among the contestants. Moreover as the membership of the Party should be open to every citizen and every Party member should be free to stand for elections, we came to the conclusion that there should be no independent candidates.'

On the question of primary elections the Commission came to the conclusion that 'the idea of conducting primary elections in order to arrive at the final list of Candidates would be expensive to the tax payer apart from the involving the electorate in numerous elections.' The commission therefore recommended that there should be no primary elections in the One Party Participatory Democracy.

However in the White paper⁴⁴ the Government rejected this recommendation arguing that 'all election campaigns should, in the name of fair play and justice be conducted under the Party supervision and control.' The Government therefore ruled that 'there should be primary elections in the One Party Participatory Democracy at the district level; names of all candidates elected by the regional Conference should be submitted to the Central Committee together with the number of votes cast for each candidate. The Central Committee will select up to four names and have

the final say. Its decision will be based on whether or not a candidate is a full member of the Party and fulfils all the conditions laid down by the Party. The Electoral Commission shall conduct the Primary Elections.

It is to be regretted that the Chona Commission recommendation was rejected by the Government. Since the General Elections in 1973 there has been a growing mood of dissatisfaction among the members of Parliament and the people in general against the holding of primary Elections in the General Elections.

For instance, during the debate of the Electoral (Amendment) Bill⁴⁵ whose objectives were

(a) to incorporate in the Act corrupt and illegal practices and other elections offences; and provide for matters connected with or incidental to the foregoing Members of Parliament called on the Government to stop vetoing candidates so that people could choose their own representatives to Parliament. Mr. Jameson Kalaluka member of Parliament for Kaoma said 'We should do away with the vetoing system because it is not necessary and has proved that candidates vetoed in the primary elections are the ones who are popular.'⁴⁶ At its Annual General Conference, the Law Association of Zambia also called for the abolition of the system of primary Elections.⁴⁷

CHAPTER VII

The Role of Parliament in Zambia's One Party State.

Undoubtedly, an examination of the role and functions of Parliament in the context of the present paper is not intended to be exhaustive but merely to show in a nutshell the direction in which Zambia's One Party State Parliament has moved since Zambia became a One Party State. As earlier pointed out because there is only one political party or organisation in Zambia namely, the United National Independence Party, the formation of other political parties or organisations as well as any expression of opinion or other activity in sympathy with such political parties or organisations is prohibited and thus membership of the Party becomes a necessary qualification for election to, and membership of parliament. Thus all members of parliament are members of UNIP.

The Question therefore is, since there is only one political organisation in Zambia, has Parliament's role changed its focus? Or, to put the question differently, has the role of parliament merely become decorative, in other words has its role been reduced to that of simply rubber stamping decisions already taken by the party and that therefore it has no independent existence. More positively is the institution of a One Party State at variance with the working of an independent and effective parliament?

It is proposed that the subject will briefly be examined under three heads. Firstly the Constitutional structure of Parliament. Secondly under the general heading of parliamentary performance we shall examine its legislative and representative functions and thirdly under Parliamentary Control of Executive or Government its critical role, thus making the Executive or Government accountable to the legislature and through the legislature, to the electorate.

As we have already seen the legislative power of the Republic is vested in the parliament of Zambia which consists of the President and a single Chamber National Assembly.¹ The importance of this provision is that it recognizes that parliament shall be the sole repository of legislative power in the country. Thus on the basis of this no other body can purport to enact laws for the country except if Parliament confers such powers on such body. The Constitution also makes the President a Constituent part of parliament, and together with the National Assembly they exercise the legislative function of parliament. Thus both the President and the national Assembly have to concur in order to bring a particular piece of legislation into being. The Constitution does not vest legislative powers exclusively in the President as this

would constitute a serious derogation of the sovereignty and independence of the legislature.² No bill passed by the Assembly shall become law without the President's assent.³ The importance of legislation has been said to be that it is the means by which the life of the nation is regulated, and from which therefore the authority to govern derives.⁴

There must be a Parliamentary session at least once a year,⁵ and since independence the Assembly has divided each of its sessions into three or four meetings. And according to Article 93(3) the life of Parliament shall be five years from the date of its first sitting after a dissolution, unless the President dissolves it earlier. Zambia's first Parliament was dissolved in November 1968 . and the Second parliament was dissolved in October 1973 and the first parliament under the One Party participatory democracy was elected in December 1973.

Having briefly examined Parliaments Constitutional format let us then proceed to examine its parliamentary performance under the heads of representative function and its critical role.

Members of parliament are supposed to play a significant part in the political system because of their

representative roles. They are supposed to represent the views of their constituents and espousing their interests, secondly they are required to articulate party policies and to a certain extent their own policies as well.

Recognizing this different role which Parliament has to play from what obtains in multi-party system, the Speaker of the National Assembly Mr. Robinson Nabulyato said 'in the first instance it demands the coming to the forefront of backbench opinion as against the multiparty system in which the public expression of Government backbench opinion is muzzled by the demands of party discipline and solidarity. The M.P. in the One Party System, as a broker for his Constituency, will need to be closely responsible and as a consequence, constantly in touch with the needs of his Constituents, not simply in terms of their individual relations to the administration and various Government or semi Government institutions, but for the correction of bureaucratic inroads against individual liberties, as is usually envisaged in advanced countries. In performing this function the parliamentarian will at the same time be expected to have a duty to the Party and the Government. The One Party System is directed towards the democratic expression of a wide range of perspectives all held within the agreed goals of modernisation for the country as a whole and

anchored in the realities of a decentralised administrative structure'.

With the introduction of the One Party State in 1973 there was a general apprehension among a number of people that the role of parliament would have been reduced to a mere formality, as members of Parliament would simply join in a chorus of litanies of praises in support of the Government. The rationale being that since Government policy on issues would usually be taken to be known by Members of Parliament and since, after all, members of parliament were members of the party-there would inevitably be unanimity on all policy issues. Indeed it was President Nyerere who affirmed this point of view when he spoke of the role of Parliament in Tanzania's One Party State.

"As individuals within the party," Nyerere said of the National Executive Committee (which is the equivalent of Zambia's National Council) we are free to express our own opinions; to say exactly what we think about the subject under discussion. In Parliament, on the other hand, TANU members were expected to follow the 'Party line' as laid down by the National Leaders at a preliminary Meeting of the TANU parliamentary party.⁶ The Parliamentary

party met, normally for one or two days, immediately before each meeting of the National Assembly. Proceedings were Confidential and were designed to promote the maximum possible agreement among MPs on all matters of public interest.⁷ It would therefore appear that these organs tended to emasculate the liveliness of parliamentary debates. At the National executive, said Nyerere 'We are deciding in broad terms what the party policy shall be, whereas in the National Assembly members were discussing 'the question of exactly how, when, in what order of priority and so on, the agreed policies shall be put into effect'.⁸

Despite all this control of parliamentary freedom Nyerere has insisted that TANU should retain its pre-independent character of 'a broad based national movement, representative of all shades of opinion in the country.'⁹ For instance the parliamentary party has now been abolished in Tanzania and this no doubt has saved parliament from being completely overshadowed.

In Zambia generally, though there have been no major policy differences among Members of parliament differences of emphasis on certain policy matters have emerged. A sharp fall in the price of Copper, increase in foreign pressures from the South resulting in the Closure of the Rhodesia-Zambia border in 1973 which also resulted in the

people facing severe economic difficulties resulting in chronic shortages of essential commodities, meant that within UNIP itself there would be a reassessment by some members of Parliament of the policies of the Government.

Another way in which parliamentary practice expects a member of parliament to be a representative results from his being elected by a specific territorial area in order to voice the interests of the residents in the legislature. This would appear to be a relatively easier role to play when compared to the one of espousing government policies. With the introduction of the One Party State the majority of members of parliament stood for election in their home areas. They could thus speak the language of the people and share their culture and traditions thus there was a common identity between the electors and their representatives.

In Zambia therefore members of Parliament can be broadly divided into two categories, i.e. members who represent rural constituencies and those who represent Urban Constituencies. From a general assessment of their contributions one tends to find that members of parliament from the rural areas tend to be specific in their issues. One member of Parliament from the rural area said 'We must speak for the man in the village who has sent us to this

House. I am the hundred per cent representative of the government and of the common man in the village. I do not want to go home and tell people at home how good Lusaka is . . . I cannot go there and tell them that we are having many cars and so on when the common man is suffering.¹⁰

Be this as it may the representative role of members of parliament tends to be truncated for a number of reasons. One of the most important reasons for the weakness of the links between members of parliament and constituents is the fact that many members of parliament hold government posts or have other official duties to perform, making it difficult for them either to visit their constituencies regularly or to devote much of their time to constituency matters. And before the second Republic a number of members of parliament were at times detained or restricted and this prevented them from attending to the welfare of their constituencies.¹¹ Perhaps the most important factor which reduces the role of the National Assembly as a forum for the articulation of constituency interests is the existence of alternative avenues for the redress of the grievances of the voting public. And this has been broached by President Kaunda in one of his national council addresses as far back as 1969. While 'parliament must . . . more and more effectively play its role as the custodian of this nations' interests,' he said..... 'members of parliament cannot do this alone members of parliament cannot continue to guess what people

want. People must through Party Channels, put forward their suggestions in constructive form'. This remains true today perhaps even more so than it was in 1969.¹²

Thus the voting public finds it much easier and probably more efficacious at district level, to approach for instance the District Secretary, or the UNIP regional Secretary or the District Governor instead of approaching their member of parliament. Furthermore the people could voice their needs through Chiefs. Chiefs have had a traditional role of safeguarding the interests of their subjects and perhaps because of this people find it appropriate to approach them instead of their member of parliament. And since the Constitution provides for the House of Chiefs,¹³ though a non-legislative body, there is evidence that some Chiefs use the House for airing their people's grievances.

Thus these various factors prevent members of Parliament from monopolising as the sole constituency spokesman, and because of these various avenues open to the people the member of parliament finds himself little used.

Perhaps the most common Criteria of judging the independence of the Legislature is its function as a forum of debate on government policy and conduct, and it

is this function which is usually under public view.

The implication is that Parliament is there to inform and educate the public through constructive criticism, scrutiny and publicity of Government policy. In effect therefore, though there is no official opposition criticism and self criticism should still be present even under a One party State.

The Role of the Party.

With the coming of the One Party state in Zambia there were fears in certain quarters that Parliament would now become a rump. Let's consider these facts. Article 29 of the Unip Constitution provides for the National Council of the Party which comprises members of the Central Committee, members of parliament and all other party officials such as District Governors. The importance of the National Council is underscored by the fact that it is the policy making body of the party.¹⁴ The point is that since members of parliament are members of the National Council, and since the National Council is the policy making body of the Party then members of parliament would take part in the discussion of the policy of the Party at the National Council and thus parliament would simply become a body to transfer into law decisions of the National Council. Secondly under Article twelve of the Unip Constitution the Central Committee should 'exercise complete control over all officials.'¹⁵ These factors then tended to create the

impression that members of parliament would become neutralised and that in the end they would simply become parliamentary robots. The Chona Commission on the One Party state however recommended that

(a) Members of Parliament be free to speak and/or vote as they like on any issue in the National Assembly.

(b) Ministers should not be free to criticise Government policy publicly unless they resign their posts; and

(c) Party parliamentary caucus meetings should not be held

The Government accepted these recommendations and thus Article eighty-seven of the Republican Constitution states that members of the National Assembly shall be free to speak and vote on any issue in the National Assembly. In other words the Freedom of Speech in parliament is recognized.

The performance of parliament under the One Party State during the past five years therefore presents an opportunity to assess its effectiveness in so far as its critical and legislative roles are concerned.

Opening the First session of the Third National Assembly¹⁶ President Kaunda warned members of parliament that 'any member of parliament who used a Unip ticket in

the General Election for the purpose of using this House as an instrument for counterrevolution must now seriously engage in an act of meditation, self inspection and self criticism and finally undergo voluntary political Cleansing'. ✓

Obviously these were strong words by the Head of State to the new members of parliament. Parliament spent much of the time during the period under review passing legislation, debating the budget and debating the motion of thanks to the Presidential address at the beginning of each Session. In all one hundred and sixty bills appeared in the Gazette.¹⁷ One hundred and fifty six of these became law, forty-two of which received amendments at the Committee stage. Two bills only received the first reading these were the Public Order (Amendment Bill (N.A.B.3/74) whose object was to amend the Public Order Act (Cap. 104) so as to include the Secretary-General and other members of the Central Committee of the United National Independence Party among those who may convene and address public Meetings without the permission of the appropriate police officer and the District Governors Gratuity (Amendment Bill. (N.A.B. 11/78). The National Sports Council of Zambia Bill (N.A.B. 23/76) was itself negatived on Thursday, 29th July 1976 in its second reading. The Ayes being 31 and

the Noes 58. The Electoral (Amendment) Bill, (N.A.B. 27/77) was withdrawn by the Prime Minister on Friday 9th December 1977. On 17th December, 1976 a Private Members Motion 'That this House Urges the Government to overhaul the present operation of the Cold Storage Board of Zambia in order to reduce the current beef shortage in the country' was agreed to without amendment. On 29th March 1978 a motion 'That this House condemns the attitude of the Zambian Press towards the leadership of our country' was by leave withdrawn after the Front Bench had pleaded with backbench that the motion, though a genuine one, be withdrawn for the sake of maintaining unanimity in the House and the entire Republic of Zambia. On 8th March another Private members motion 'that this House urges the Government to repatriate aliens who are in the country illegally' was agreed to by the House without amendment and finally on 8th April 1978 another private members motion 'that this House urges the Government to declare all areas in the Eastern Province and other parts of the country which are flooded by recent heavy rains as National Disaster areas and urgent help be provided to save life and property' was agreed to without amendment.

As far as its critical function is concerned Parliament availed itself of the freedom conferred on it by the Constitution. The members of parliament also used

their right to ask Ministers questions. And the importance attached to this role of Members of Parliament was shown by the Speaker on July 10th 1975¹⁸ when he criticized the Government for lack of co-ordination between Ministers of State. This followed the failure of a Minister of State to answer a question from a member of parliament because he was not briefed by his senior Minister who was himself absent from the House. The role of Government backbenchers as critics of the conduct of Government was therefore taken quite seriously. And in fact some sections of the Community began to question whether Parliament was not going too far in its criticism of Government. This led to member of parliament for Petauke to fire a salvo at these critics. He said 'members of parliament had a solemn duty to ensure that parliamentary freedom and privileges continued. This house should never accept that it has become a group of yes men or rubberstamps.'¹⁹ He cautioned "it should be accepted that all of us are patriotic because members of parliament had been screened by both the Central Committee and the electorate". And on 18th January 1975²⁰ President Kaunda in his opening address to parliament praised the role of parliament since the introduction of the One Party participatory Democracy. He said "there was no country which could boast of freedom of Speech like that enjoyed in Zambia."

There is some truth in this. If the independence of the legislature is to be judged by the degree of freedom which it has to discuss and criticise and not necessarily to reject government measures then Zambia's One Party State should receive some kudos. Without necessarily coming close to replacing their own policies for that of the Government members of parliament no doubt assumed their responsibilities under the One Party State with the seriousness with which National Assembly matters deserved to be dealt.

Expectedly the criticisms of members of parliament were not taken kindly to by some people. A Governor for instance accused the Members of Parliament of misleading the masses. He said, 'members of parliament had turned parliament into a platform to criticise government instead of tackling major issues.'²¹

And because of these criticisms a new standing Order was enacted²² which empowered the standing Order Committee to enforce relevant disciplinary rules of UNIP for breaches of rules within the precincts of parliament. This undoubtedly acted as a warning to Members of Parliament that they could be disciplined for what they say in parliament. Up to the time of writing no member of parliament has been disciplined as a result of this amendment. Thus though Zambia's parliament under the multiparty system was described as "more or

less passive"²³ this certainly cannot be said of the parliament under the One Party State.

The *raison d'être* of parliament should not be wanton rejection of Government measures (unless they are insidious in nature) but to act as a watch dog over the affairs of Government. To instil, by constructive criticism, a sense of responsibility and restraint in Government Ministers so as to reflect the continuing participation of the community in its activities.

(ii) The Executive

The executive power of Zambia is vested in the President and it shall be exercised by him either directly or through officers subordinate to him.²⁴ In exercise of these powers the President shall act in his own deliberative judgment and shall subject to the provisions of the Constitution not be obliged to follow the advice tendered by any other person or authority.²⁵ He is the Commander in-Chief of the Armed forces.²⁶ He is also the Head of State.²⁷ The President is immune against criminal proceedings in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted in respect of which relief is claimed against him in respect of anything done in his private capacity.²⁸

Election of President

The Chona Commission reported that 'the majority of the petitioners expressed the view that the President of the Republic should be popularly elected and that candidature for the post of the President should be open to every citizen'.²⁹ Consequently the commission recommended that there should be an open contest and

- (a) that the President be popularly elected
- (b) that the nomination period be thirty days
- (c) that if after the nomination period there is only one Candidate, that candidate be presented to the electorate for confirmation by a simple majority. If not confirmed the Parliament elects a President other than the rejected candidate and
- (d) that all Presidential Candidates be accorded equal election facilities during the election campaign.³⁰

The Government White paper accepted the recommendations with certain amendments and modifications. For instance while accepting that the President be popularly elected, the Government reduced the nomination period to ten days, and that if after the nomination period there is only one candidate, that candidate shall be deemed elected; it also endorsed the Chona recommendation that all

Presidential Candidates be accorded equal election facilities during the election Campaign.³¹

As a result of these agreements the first Constitution of Zambia Bill³² provided for an open contest. The General Conference of the Party was to act as the electoral college to elect three Candidates. However Constitution of Zambia Act No 27 of 1973 provided instead that the General Conference was the body that was to choose President, 'and such person shall be the sole candidate in an election to the office of President'.³³

Article 32 of the Party Constitution says that a General Conference shall be held once every five years. Delegates to the Conference must be members of the party and this includes

- (a) all members of the National Council;
- (b) up to 600 delegates from each province selected in accordance with the rules made by the Central Committee.
- (c) one delegate representing each trade union affiliated to the Zambia Congress of Trade Unions; and
- (d) one delegate from each organisation affiliated to the Party.

The General Conference apart from choosing the President

is also empowered to consider review or change any policy of the party.³⁴ On the tenure of office of President the Commission reported that 'petitioners expressed divergent views on this issue. Varying terms of office ranging from six months to life presidency were suggested. After discussing this matter, we came to the conclusion that the Post of President should be within reach of as many aspiring citizens as possible.'³⁵ Hence the Commission recommended that

(a) the term of office for a President be five years; and

(b) that the President be eligible to stand for a second term of five years after which he shall not be eligible to stand as President for a period of at least five years; thereafter he shall be eligible to stand for a new term of five years.³⁶ The government rejected this recommendation arguing that 'there should be no limitation on how often a man or woman can serve his or her country in the office of President'.³⁷

(iv) Qualification for Election to the Post of President.

A Presidential Candidate has to be a citizen of Zambia and a member of the Party and be thirty-five years of age. The Chona Commission had recommended a minimum

age of thirty but the Government White paper raised the minimum age to thirty-five

The Prime Minister and Cabinet

Parliament or, subject to the provisions of any Act of parliament, the President may establish office of Prime Minister and such other offices of Minister of Government or Junior Minister.³⁸ The Prime Minister is appointed by the President from among the members of the National Assembly and in consultation with the Prime Minister appoints other Ministers or junior Ministers also from among members of the National Assembly.

The Chona Commission had recommended that there be a President with specified executive Powers supported by a Prime Minister who would be responsible for Government administration.³⁹ Government accepted this recommendation regarding the functions of President and gave the President full executive powers. Government noted that Zambia has many enemies surrounding her and therefore the implementation of the One-Party Participatory Democracy as well as Humanism, together with the attendant problems, require a unified Command under an Executive President.⁴⁰

The Prime Minister is the head of Government administration, and leader of Government business in the

National Assembly and responsible under the directions of the President, for such other business of the Government as the President may assign to him.⁴¹

In the event of death, removal, resignation or incapacity or absence of the President the Secretary General, an official of the Party appointed by the President of the Party from among the three nominated members of the Central Committee or from the twenty members elected by General Conference of the Party shall perform the functions of Office of the President.⁴² Within three months of the office becoming vacant an election to the office of the President shall be held.⁴³

The Cabinet consists of the Secretary General of the Party ex officio, the Prime Minister and Ministers appointed by the President. The President presides at meetings of the Cabinet and in his absence the Secretary General presides. In the absence of the Secretary General of the Party, the Prime Minister and in the absence of the Prime Minister such Minister as the President may designate.⁴⁴

The functions of the Cabinet include advising the President with respect to the Policy of Government and to be responsible, under the direction of the President for such business of Government as the President in consultation with the Prime Minister may assign.⁴⁵ The Party

Constitution however provides that the Central Committee is responsible for the 'implementation of the entire policy of the Party' and further that, 'should any decision of the Central Committee conflict with any decision of the Cabinet on any matter of Government or Party policy, the decision of the Central Committee shall prevail' thus endorsing the supremacy of the party over the Government.

Article twelve of the Party Constitution creates the Central Committee which is charged with the implementation of the entire policy of the party and programming party policy as formulated by the National Council. The Central Committee also exercises complete control over all officials. The Central Committee comprises the President of the Party, the Secretary General of the Party, the Prime Minister ex officio, twenty members elected by the Party's General Conference and three members nominated by the President should elect the President of the Party and twenty members of the Central Committee. It shall be held every five years.⁴⁶ The functions of the Central Committee were transferred into the Republican Constitution by the Constitution of Zambia (Amendment) Act 1975.

There are sub-committees of the Central Committee whose members are appointed by the President of the Party from among the members of the Central Committee and the National Council.⁴⁷

As can be seen from these provisions there are several structural and functional arrangements which provide for very close interaction between the Central Committee and the Cabinet. The most significant ones could be summarised as follows

- (a) The executive power of ^{the} Republic is vested in the President of the Republic who is also the Principal officer and leader of the Party and when present presides over the separate meetings of the Central Committee and Cabinet as well as over their joint meetings.
- (b) The Secretary General of the Party is a Member of the Central Committee ex officio.
- (c) Both the members of the Central Committee and the Cabinet are members of the General Conference and the National Council of the Party. This undoubtedly underlines the fact that they are both party members because only members of the Party can qualify to be members either of the General Conference or the National Council.
- (d) There is provision for joint meetings between the Central Committee and Cabinet, for instance, Article 40 (4) of the Constitution of Zambia (Amendment) Act 1975 states that proceedings for the removal of President on grounds of physical or mental incapacity should commence with a resolution of the Central Committee and Cabinet

sitting jointly.

Thus rigid separation between the Party and Government and consequently between the Central Committee and Cabinet and also legislature cannot be attained.

The fundamental function of any political party is to select and maintain an orderly government. The selection involves both personnel and issues. The political party must take a special position on each of these matters, and if in power guide the Government along that line. Therefore the only major difference between the Status of the Party between the multi-party system and the present set-up lies in the fact that the Party now commands the Government machinery in 'perpetuity' whether it has specialised and full time organs for this or not. The crucial issue rests upon the availability or non-availability of proper control mechanisms over Government Machinery.

It must also be clear that under the present system of One Party Participatory Democracy, both policy formulation and implementation is really an obligation of all. At least this is demonstrated by the existence of numerous points of interaction between the Central Committee and the Cabinet. For one thing one cannot be a member of the Central Committee and Cabinet^{or} Minister unless he is a member of Unip. Therefore it would appear that any attempt

to make water-tight separation between the Party and Government and subsequently the Central Committee and Cabinet would not make sense. What is needed is flexibility.

The Judiciary

The Constitution provides for a Supreme Court of Zambia which shall be the final Court of Appeal for the Republic.⁴⁸ Before the coming into operation of the One Party State Constitution the Court of Appeal was the final Court of Appeal. The Chona Commission recommended that 'the Constitution should provide for a final Zambian Court of Appeal in line with our status as a sovereign state.'⁴⁹ Hence the Commission recommended that the Court of Appeal should become the Supreme Court of Zambia and that it be the final Court of Appeal in the Republic. The Chief Justice and the other judges of the Supreme Court are appointed by the President. Article One hundred and nine also provides for the High Court for the Republic which shall have original jurisdiction to hear and determine any civil or criminal proceedings under any law.

The Chona Commission made certain recommendations with regard to the Supreme Court which were accepted by Government. The Commission resolved that 'the time had come to remove even the permissive references to the

appellate jurisdiction of the judicial Committee of the Privy Council.⁵⁰ Though the possibility of appeals to the Judicial Committee of the Privy Council had existed in the 1964 Constitution the President had never made use of this power. Secondly the Commission recommended that the Supreme Court be empowered to give advisory opinions on Constitution matters without the need for litigation. This recommendation was accepted by the Government though it never found its way into the Constitution.

(vii) SERVICE COMMISSIONS

The Constitution establishes the Public Service Commission, Teaching Service Commission and a Police and Prison Service Commission.⁵¹ Article 115 establishes the Judicial Service Commission. The power of the President in relation to these Commissions have to be exercised in accordance with their laid down procedures and regulations.⁵²

The 1973 Constitution included two new innovations which were not in the 1964 Constitution. These are the Leadership Code⁵³ and the Commission for Investigations.⁵⁴

The Chona Commission made wide ranging proposals with regard to the Leadership Code. The Commission itself referred to it as the Code of Leadership. Reporting on the subject the Commission said that 'the majority of the petitioners who spoke on this subject generally accepted the

idea that a Code of rules to guide national leaders at various levels in society should be worked out and implemented in the One-Party Participatory Democracy." ⁵⁵

Consequently the Commission made elaborate recommendations relating to the categories of leaders who were to be affected by it. ⁵⁶ 'The Government accepted the recommendations in principle arguing that there was need for more time to study in detail the rules and categories of leaders to whom the Code will apply.' ⁵⁷

The history of the leadership Code dates back to 1970 when President Kaunda ⁵⁸ first introduced the subject to the Unip National Council meeting at Lusaka. Early comprehensive suggestions were made, thus in 1972 the Unip National Council meeting at Mulungushi Hall, Lusaka from 4th to 6th March resolved that 'in view of the fact that Zambia is going a significant metamorphosis that will lead to a One-Party State, the Central Committee should at its earliest convenience look at this question in order to produce tangible guidelines of what will be expected of the leaders in a new-look Zambia;

(b) that the guideline so produced should be such that the leaders are not placed in a doubtful position whether they themselves and their followers do not know what they should do or not do."

Article Thirty-two of the Leadership Code creates

the Leadership Committee consisting of five members appointed by the President. And it is this Committee which has the duty of making regulations by statutory instrument applicable to Leaders of Specified offices and the regulations are to be the leadership Code.⁵⁹ The holder of a specified office must comply with the Leadership Code within three months failure to which the leader will vacate office. The President is given the discretion to extend the period for compliance with the code. The Code does not apply to holders of the offices of President, judge of the Supreme Court, judge of the High Court, Investigator General, Director of Public Prosecutions and Auditor General.⁶⁰ Allegation that a person has not complied with or has committed a breach of the Leadership Code⁶¹ shall be determined by a tribunal consisting of a Chairman, to be appointed by the Chief Justice, who is or is qualified to be a judge of the High Court, and two other persons to be appointed by the President. Appeals may then lie to the Supreme Court from the decisions of the tribunal.

It is the implementation of the Leadership Code which has proved difficult. Discussing the Leadership in Parliament member of Parliament for Livingstone Mr. Arthur Wina said

'Let us get a published statement, investigated by the investigator General and confirmed by him that the

provisions of the leadership code have been fully complied with by the members of the Central Committee, before we go to ask office orderlies, University lecturers, Clerks in the Parastatal organisations to burn their homes. It is important that the country must know that those who claim to lead it with high moral principles of morality are the first to show an example and make sacrifices'.⁶² Mr Valentine Kayope member of parliament for Bahati said on the Code 'We realise that there are two categories of leaders in Zambia, the new and the old. How do we strike a balance. The old ones in my view have had opportunity to amass wealth judging from the quality of their physical appearance and by seeing the mansions they have built for themselves. The new ones have nothing, yet we should have a common base.'⁶³ Indeed these were genuine fears about a measure which was pregnant with problems of execution. If it had to be not of decorative value it had to be seen to bite, by the public. At the same time it would have been naive to expect that leaders with property would accept the measure without a murmur. The Leadership Code as Mubako⁶⁴ rightly pointed out 'has become a headache for the draftsman and nightmare for the enforcement agencies.'

The first statutory instrument⁶⁵ was replaced by statutory instrument 47 of 74 and within the same year this statutory instrument was replaced by statutory instrument

108 of 74 which was finally replaced by statutory Instrument 88 of 76. The first statutory instrument was revoked because (as the Secretary General informed the Unip National Council meeting at Mulungushi on Twentieth to Twenty-fifth April 1975) the Central Committee wished to extend the period by which leaders were supposed to comply to twentieth 1974. Two provincial Committees of the National Council⁶⁶ recommended that in order to protect leaders from false and unwarranted allegations or accusations the assets and liabilities of the leaders as declared by them under the code should be published in the Gazette so as to enable those making complaints to the Committee to be aware of what has been or has not been declared by the person accused. The Committee from the Southern Province on the other hand urged the Leadership Committee to recognize the responsibility of family property and ownership and that emphasis on achieving an egalitarian society be placed more on improving the advancement of all the people rather than discouraging the sense of enterprise and initiative of the few. None of these comments and resolutions found their way in the final resolution of the Conference.

The turbulent weather in which the Leadership Code was passing through was demonstrated by President Kaunda at the UNIP National Council meeting at Mulungushi between 30th June and 3rd July 1975 when he announced that he had decided

to impose on those who had not complied with the code a penalty amounting to a loss of a month's salary to be called by the Party and put in a fund. And this was to be paid in two instalments.⁶⁷ The President also announced that a good number of leaders had decided to dispose completely of what excess property they had.

Because of this measure the Secretary General was able to announce at the UNIP National Council which met from 27th-29th April 1976 some progress. The Secretary General announced that as at 31st December 1975 10,831 leaders had submitted their declarations to the office of the Secretary General of the Party as compared to 5166 who had done so by the end of 1974. He also announced that about two-thirds of those who submitted them did so during the latter half of the year. This he said was attributable to two main factors. Firstly as a result of the Penalty imposed by the President on 30th June 1975 in his Watershed Speech at the National Council. Thus at 31st December 1975 he reported that the Party head quarters had collected the sum of K21,000 which was deposited in a UNIP Special Bank. Secondly because of the pay rise which had been announced that year the number of leaders earning more than K2,500 increased. The Leadership Code Committee was also given more powers with the passage in Parliament of the Constitution of Zambia (Amendment) Act No. 22 of 1975 to make

regulations and enquire into allegations of non-compliance or breaches of the Code by leaders as well as to impose punishment as deemed fit depending on the nature of each case of such non compliance or breach of Code. The Amendment also included spouses in the definition of leaders. Until this Constitutional amendment spouses were not in their own right affected by provisions of the Code and therefore had some liberty to engage in activities which they would not otherwise be permitted to carry on under the Leadership Code.

There is no doubt that the Leadership Code was scoring some successes as time went on but the sheer amplitude of the work which the Leadership Committee has to deal with makes their work almost insurmountable. With the coming of the Statutory Instrument No. 88 of 1976 the work of the leadership Committee was made lighter by amendments which were made to it. The definition of leader was made more definite. The Statutory Instrument now said that 'leader' means a person holding a specified office, whether on a temporary, probationary or permanent basis, but does not include any person employed on the authority of an employment permit issued under the Immigration and Deportation Act. And in a Schedule to the Act Holders of specified offices include all members or persons in the service of

- a) the Party
- b) the Government
- c) any local authority
- d) any corporation, body or board, including an institution of higher learning in which the Party or the Government has a majority or controlling interest;
- e) any Commission established by or under any law
- f) the Zambia Congress of Trade Unions or any registered trade Union; in receipt of an annual salary of K2,500 or more. As President Kaunda acknowledged to the 6th National Council of UNIP 'We have to implement the Code through the only reliable method of trial and error.'

The other innovation in the one Party State Constitution is that relating to the Ombudsman, or as the Constitution call it the Commission for Investigations. The idea of the institution of Ombudsman first started in Sweden in 1809. Although the institution did not become popular until about a century later, today a number of countries have variations of the system. For instance Norway, New Zealand, Guyana, Tanzania, Great Britain, India, Australia and Others have the system.⁶⁸

In Zambia President Kaunda announced his intention of establishing an office of Ombudsman in 1969. The Chona Commission on the One Party state recommended the establishment of the institution. It said 'that the Investigator

General investigates any matter of individual injustice or administrative abuse of power or authority involving corruption, tribalism, nepotism, intimidation all other forms of discrimination". These recommendations were accepted by the Government and thus Part IX of the Constitution of the Second Republic Establishes the "Commission for Investigations". The Commission comprises, the Investigator General, who is a person qualified for appointment as a Judge who shall be appointed by the President in consultation with the Judicial Service Commission who shall be the Chairman and three Commissioners who shall be

appointed by the President.⁶⁹ The Commission acts on the directive of the President, or on its own initiative or at the request of a complainant.⁷⁰ The President and Judicial officers are excluded in the operation of the institution in their judicial but not administrative functions.

Otherwise the Commission can investigate allegations of misconduct or abuse of office or authority of any person in the service of the Republic, any person holding office in the party, the members and persons in the Service of a local authority, the members and persons in the service of a statutory corporations, bodies or boards including institutions of higher learning, established wholly or partly out of public funds, the members and persons in the service of any Commission established by this Constitution or any Act of Parliament.⁷¹ The Commission's powers are limited

to investigating and reporting details of the enquiry and conclusions to the President and presenting an annual summary to the National Assembly.⁷² Thus it is up to the President to act on the report or ignore it.

As the Eleventh Commonwealth Parliamentary Conference said in its report⁷³

'The Ombudsman has no judicial or administrative authority. He cannot make a decision, that is binding merely because he himself makes that decision. He is an authority who investigates complaints and makes recommendations and it is for the administration to act on those recommendations. He does not replace the member of parliament, nor the Courts nor parliament.'

Recognizing that where power is exercised it may also be abused deliberately, maliciously or carelessly the Ombudsman is meant to check the abuse that comes with power, to act as a deterrent against temptation of power and to offer the citizen protection of his liberties.

Since its inception the Commission for investigations has been very helpful to the public as is evident by the annual reports which are presented to parliament.⁷⁴ As the Chona Commission⁷⁵ suggested the Ombudsman has been of tremendous value to the administration in soothing public feeling over reports of outrageous practices by the very

fact that their complaints were receiving the attention of the Investigator General.'

CHAPTER VIII

CONCLUSION

In the preceding Chapters we have attempted to show the historical and evolutionary trend of Zambia's Constitutional development since the 1890's and an examination of Zambia's One Party State Constitution. At the same time this paper has attempted to show the importance of political factors in shaping Constitutions during the colonial period and the post independence period as shown by the introduction of the One Party State Constitution. It is important to realise that though Zambia is today under a Single Party Constitution it has undergone Constitutional vicissitudes which are by no means insignificant. At the same time it should be realised that Zambia's Constitutional institutions have been inherited from the Colonial period. Colonial Constitutional institutions were dominated by the European settlers to which Africans were excluded.

Though the Legislative Council was established in 1924, it was not until 1948 that two Africans were appointed to represent African interests. Up until 1959 Africans were disenfranchised because the vote was only restricted to British subjects and since Africans were British protected Persons this effectively denied them the vote.

Thus between 1924 and 1962 Africans could not influence the political course directly. But even in this Condition Africans were able indirectly to bring pressure to bear on the settler government to take into account their opposition to some of the measures which the Government intended to take. This has been shown by their United opposition to settler moves to amalgamate the Central African territories, Federation and to any form of responsible government which would have kept Africans in perpetual subjugation in relation to them. The few Africans who were members following the Constitutional Changes of 1948 made little impression on the settler policies. But with this participation in Government Africans began to learn the operations of government and this was to stand them in good stead at the time of Zambia's independence. The present Speaker of the National Assembly was a member of the Legislative Council during the Colonial days.

The Legislative Council became prior to independence the Legislative Assembly and after independence the National Assembly. In 1964 there were seventy-five elected members and five nominated. Prior to the 1968 Elections the number of elected members was increased to 105 while that for nominated ones remained at five and following the introduction of the One Party State there were one hundred and twenty-five elected members and ten nominated.

From 1945 onwards Northern Rhodesia began to experience some Ministerial system and in 1948 Unofficials were included in the executive Council and in 1949 two Unofficials were given portfolios and by 1959 there were ten Ministers of whom two were Africans. Up until 1948 the Colonial Governor presided over the Legislative Council. In that year a Speaker for the National Assembly was chosen.

The Colonial Governor was both the Chief executive and the Head of State. He had a lot of powers in relation to the executive Council and the legislative Council. Both bodies were in the final analysis only advisory. The Governor could disregard their advice. At independence the executive council was transformed into the Cabinet and the Governor's powers were assumed by the Head of State. At independence Zambia became a Republic which essentially meant that the British Monarch ceased to be the nominal head of the country and the President became both the Chief executive and the Head of State virtually like the Governor was. The Cabinet after independence and the Central Committee following the introduction of the One Party State one advisory and the President can disregard their advice.¹

Thus the presidential system with its immense powers has tended to eclipse the Cabinet as a collegiate decision-making body as in the Westminster system. The Ministerial

system therefore as a Collegiate decision-making body has been ineffective in the Zambian situation.²

One area in which the executive powers of the colonial Governor passed on to the President largely unaltered are those relating to security powers.

The exercise of security powers in Zambia, like in most other independent African countries dates to the period of the colonial era. The security laws of today in most of the African countries are undoubtedly an inheritance from the colonial past. The emergency legislation which formed part of British Colonies in Africa was the Emergency Powers Orders in Council 1939-61 and after independence arrangements were made for the continuance of these powers into force. It is quite understandable why these security powers had to be introduced in the colonies. This was so because the colonial governments were concerned with public order and security. These governments were always apprehensive of a possible revolt by the people against the imposed administration on them. Thus the Governor was authorised under these powers to declare that the provisions of the Order-in-Council should come into operation in any part of the country concerned. And it was left to his subjective decision to say when a public emergency existed and thus bring into force the powers conferred

by the Order. Once the proclamation was declared regulations were then made which authorised the detention or restriction of persons without trial.

In Zambia, then Northern Rhodesia, the exercise of these wide powers conferred on the Governor were utilised mainly during the late 50' when the struggle for independence was gaining momentum. Thus in 1959 in Northern Rhodesia regulations authorising restrictions were issued and these were enforced against African Nationalists of the Zambia African National Congress.

It is perhaps ironical that the same 'notorious' laws that were used against Africans by the Colonial Governments should, after independence be directed against fellow countrymen, but as a notable author has said³ 'even the most constitutional regime finds it necessary to arm itself, under the Constitution with Special powers to deal with an emergency ... since an emergency implies a state of danger to public order and public safety, which cannot adequately be met within the framework of governmental restraints imposed by the Constitution.'

In Zambia security powers are embodied in the Constitution, which is the supreme law of the land and their exercise is limited to the President. Article thirty of the Constitution⁴ relates to declarations of emergencies

or threatened emergencies. It reads "the President may at any time by proclamation published in the Gazette declare that -

- a) a state of public emergency exists, or
- b) A situation exists which, if it is allowed to continue, may lead to a state of public emergency.

Thus two different types of legislation may be made -

Those applying during (a) a declared or proclaimed emergency, (b) an undeclared or unproclaimed emergency, a kind of semi-emergency type of situation when the regulations are made under a declared or proclaimed emergency they are made under the enabling powers of the Emergency Powers Act and when regulations are made under a semi-emergency they are made under the Preservation of Public Security Act.

A declaration made under this Article shall cease to have effect on the expiration of a period of twenty-eight days commencing with the day on which the declaration is made unless before the expiration of such period it has been approved by a resolution of the National Assembly exclusive of any time during which parliament is dissolved.⁵ The President may revoke a declaration made under this Article before it has been approved by a resolution of the National Assembly by a proclamation published in the Gazette,⁶ and when an incumbent President ceases to hold office any

declaration made under this Article shall cease to have any effect on the expiration of seven days.⁷ In the independent Constitution the maximum permitted period for the duration of a proclamation of a state of emergency was six months subject to extensions for further periods of six months at a time, and an extension could only be authorised by resolution of parliament, and by the President and such declaration could only be revoked by either the President or Parliament. In Zambia however since 1969 a declaration has continued in force until revoked by either the President or the National Assembly, or unless there is a new President when it lapses within seven days of his assumption of office.⁸ Zambia has various Acts too which empower the President to invoke the use of security powers if need arises. These include the Public Order Act, Chapter 104, the State Security Act Chapter 110, the Societies Act Chapter 105 and even under the Immigration laws. Apart from war which would constitute an obvious use of powers of emergency, it is entirely left in the President's discretion to define what constitutes an emergency. There is thus no guarantee that he may not in fact use these powers when his own position is threatened. In newly independent states the President is the symbol of the nation, and national security is thus given a personal dimension, he is indeed the government and as such identified with the

State. Thus it has been said that the power given to the President for the preservation of the state is perhaps his greatest source of power and authority in the whole machinery of government.⁹

In Zambia the Preservation of Public Security Act was brought into operation on July 27, 1964 and this has continued up to January 28, 1976 when a full state of emergency was declared bringing the Emergency Powers Act into force. In 1964 the Preservation of Public Security Act was brought into operation because of the Lumpa uprising led by prophetess Alice Lenshina. Pursuant to regulations under this Act, the Government banned meetings and assemblies within the affected area. The whole of Northern Province of Zambia was declared "prescribed areas" which made them amenable to the Special power of the Police to prohibit meetings and processions. Lenshina and her husband and three others were detained. Her husband died in detention and in December 1975 she was herself finally released from detention.

The proclamation of July 27 bringing the Act into operation was continued in force until April 24, 1965, by the Independence Order in Council which provided that the proclamation should be deemed a declaration by the President duly approved by the National Assembly in terms of the Constitution such declaration had then to be approved

by the National Assembly within five days and might be continued in force for successive periods of six months by the Assembly. And this very procedure was used to extend the declaration of July 27 from April 24, 1965 until 1969 when the Constitution (Amendment) (No. 5) Act of that year made it unnecessary. By that amendment a declaration continues in force until revoked by either the President or the National Assembly. This means that the whole of Zambia has, since July 27, 1964 been subject to the emergency regulations made by the President and indeed the whole country has been declared a prescribed area. During the late 60's these detention and restriction powers were very much used against political opponents. Between March, 1971, and February, 1972, alone about 338 persons had been detained and restricted.¹⁰ In 1968 and 1972 two opposition parties formed by splinter groups from the ruling United National Independence Party (UNIP)-Mundia's United Party (UP) and Simon Kapwepwe's United Progressive Party (UPP) respectively had been banned in the interests of public security under the Societies Act.

It is quite evident that quite apart from these powers of restriction and detentions the other powers of the President under the regulations have not been much used and even the powers pertaining to detention and restriction have not been used wantonly against citizens. The

majority of those who got detained were released and have joined ranks in both party and Government. For instance Alice Lenshina was released from detention in December 1975 and she pledged not to revive her movement and Nalumino Mundia is the Minister for North Western Province. This followed what came to be known as the Choma declaration of 27th June 1973 when former members of the African National Congress renounced their former political organisation and joined Unip, while on 9th September 1977 former leader of the United Progressive Party (UPP) Simon Kapwepwe and his Stalwarts rejoined UNIP after resigning in 1971. Thus the quest for national Unity which has to arise from respect for Constitutionalism in Zambia appears to be taking root.

The Conditions of a lawful detention or restriction are indeed spelt out in the bill of rights. According to Article 27 of the Constitution a detained or restricted person 'shall, as soon as is reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement... specifying in detail the grounds upon which he is restricted or detained, and such detention or restriction shall be published in the Gazette within one month after the commencement of his restriction or detention. The right to make representation to the detaining authority can be made if requested 'at any time during the period of such

restriction or detention not earlier than One year after the commencement thereof or after he last made such a request within the period ... his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, appointed by the Chief Justice, who is or is qualified to be a judge of the High Court.¹¹ The detainee was also entitled to the services of a lawyer of his own choice (at his own expense) both for the purpose of making representation and also at the hearing of his case by the tribunal and he must be afforded reasonable opportunities to consult with the lawyer. The role of the tribunal is merely to make recommendations to the detaining authority concerning the necessity or expediency of continuing the detention, but the latter was not bound to act in accordance with the recommendation. Up to 1969 in Zambia there was a right of automatic review but since then this has been substituted by a review on request.

According to a number of cases decided in Zambia¹² the provisions relating to the furnishing of grounds and publication in the Gazette have been held to be mandatory, and non compliance or compliance out of time is not a mere procedural defect which can be cured by appropriate remedy but one that renders the detention unlawful and the state

liable to pay compensation from the expiration of the time prescribed. The detainee is then entitled to be discharged forthwith, subject to the right of the State to make a fresh detention Order. The detention order is not made unlawful and void from the beginning, only further detention under it becomes unlawful.

However the Constitution of Zambia (Amendment) Act, 1974 has changed this position. It amended Article 27 of the Constitution by conferring power on the President to refer to the tribunal the case of any person who has been or is being restricted or detained pursuant to any restriction or detention order.¹³ The Constitution also amended Article 29 of the Constitution by the addition of Clause 8 which says that 'no court of law shall make an order for damages or compensation against the Republic in respect of anything done under or in the execution of any restriction or detention order signed by the President' except claim for damages or compensation arising from

- (a) physical or mental ill treatment
- (b) any error in the identity of the person restricted or detained.¹⁴

Thus it would appear that the noncompliance with the provisions relating to the furnishing of grounds and publication in the Gazette will no longer afford a detainee compensation from the State as long as the detention or restriction has been signed by the President.

The BREAK-UP OF THE FEDERATION

As we have seen in the preceding Chapter the birth of the Federation of Rhodesia and Nyasaland was met by implacable resistance from all shades of African opinion, Chiefs, African representatives in the institution created by the Settler administration such as the African Representative Council and African Nationalists. No amount of resistance however could stop the British Government and the Settler governments from changing their plan. They naively believed that the economic developments which Federation was going to bring would placate African opinion. This was a mistake of monumental proportions. The Africans of Northern Rhodesia and Nyasaland were aware of their treaty obligations with Her Majesty's Government and thus refused to hand over their destiny to a minority who wanted to preserve white supremacy. The Barotse on the other hand received special mention in the Northern Rhodesia (Barotse-land) Order in Council of 1953¹⁵ when their territory was

named 'Barotseland Protectorate' although it continued to be part of Northern Rhodesia.

As far as the White settlers were concerned their idea was to enhance the status of the Federation so that it would become a British Dominion before the Conference Review in 1960.

In anticipation of this, the British Government made a number of concessions to the demands of the Federal Government at the beginning of 1957 onwards. In April 1957, in a joint communique issued by the Secretary of State for Commonwealth Relations and the Federal Prime Minister,¹⁶ the United Kingdom Government announced that the Federation was to be entrusted with 'responsibility for External Affairs to the fullest extent possible consistent with the responsibility which Her Majesty's Government must continue to have in international law, so long as the Federation has not a separate international entity.' In addition the Federal Assembly was enlarged¹⁷ whereby the membership of the Assembly was increased from 35 to 59. Thus there were now to be 44 elected members of whom 24 were to be elected by Southern Rhodesia, 14 by Northern Rhodesia and 6 by Nyasaland. The effect of these changes together with those brought about by the new franchise law¹⁸ was to 'pack' the Federal Assembly with members who

were predominatly elected by the European Electorate. When the African Affairs Board in accordance with Article 97 and 75(1) of the Federal Constitution reported both measures as differentiating they were ignored by the British Government hence the Board lost any legitimacy it might have had as an institutional safeguard for African interests. It was also agreed between the British Government and the Federal authorities that a conference should be convened in 1960 in order to review the Constitution and 'consider a programme for the attainment of such status as would enable the Federation to become eligible for full membership of the Commonwealth.'

Thus the British Government was stealthily encouraging the Federal Government to have Dominion Status before the review Conference 1960. But for the British Government to have permitted the Federal Government advance to Dominion Status before the majority of the Africans were able to run their own governments would have constituted a breach of the preamble to the Federal Constitution which declared that 'Northern Rhodesia and Nyasaland should continue under the special protection of Her Majesty's Government for so long as their respective peoples so desire those governments remaining responsible (subject to the ultimate authority of Her Majesty's Government in the United

Kingdom) for in particular the control of land in those territories and for the local and territorial political advancement of the peoples thereof.' Thus in the entire Act this declaration proved to be more important to Africans than any other provision.

The Africans' unanimous opposition to Federation was recognized at the Review Conference in 1960 when it was adjourned and never to meet again. Meanwhile as we have seen Constitutional advances in the Northern territories began to introduce Majority rule in the legislatures and thus the break up of Federation.

(ii) The Issue of National Unity

When President Kaunda appointed the National Commission on the establishment of a one-party participatory Democracy in Zambia he emphasized that 'the Central Committee in its study of the subject noted that in this overwhelming public demand the objective for calling for a new system of Government is the fundamental need to preserve Unity, strengthen peace and accelerate development in freedom and justice'.¹⁹ The move towards a One Party State were challenged²⁰ in the courts by the leader of the former opposition party-the African National Congress-Mr Harry Nkumbula and ^{together with} his Deputy Mr Nalumino Mundia declined to serve on the Commission although they had been appointed by

the President to do so. The grounds of the appeal were that the appellant's freedom of assembly and association enshrined in the Constitution were likely to be contravened in a One Party State. The Court of Appeal rejected the appeal because after the Government would have amended the Constitution, the appellant would have no rights to be infringed. As we have seen on June 17, 1973 former members of the African National Congress joined UNIP. Certainly, all these events which have taken place indicate a major breakthrough in the struggle for national unity in this country. They increase the importance of both national identity and the legitimacy of UNIP and the new Government apparatus.

It is thus clear that UNIP has finally emerged as the agency for welding the peoples of this country together. UNIP is and will be expected to be such an institution for national integration. Speaking on the quest for Unity in Zambia, President Kaunda said that the first African government was formed through Unity of UNIP and ANC on December 14, 1962 and that on December 13, 1972 this dream of 1972 became a reality. 'This event crowned the process which was started on December 14 1962 but temporarily abandoned when we were in search for a new route to Unity.'²¹ Now that Unity has been found in the One

Party Participatory Democracy and that 'from a people without dignity merely swept along by forces planned, directed and controlled by others we have now emerged in our own.'²² Thus Zambia's leaders have a duty to see that the new political dispensation succeeds.

Participatory Democracy calls for consultation and discussion amongst the people and their leaders. There must be continued respect for Parliament and therefore President Kaunda's words in this regard are reassuring. 'Mr Speaker the House is absolutely committed to strengthening parliament as one of the pillars of our One Party Participatory Democracy. We value it. We will continue to defend it and work for its dignity and efficiency.'²³ These must be continued respect for Constitutionalism and Zambia's record in this regard is commendable. The Party and Government institutions such as the judiciary must be seen to work independently and in the interests of all. New Party and Government institutions such as the Leadership Code and the Commission for Investigations must be made to work in order to enhance the confidence of the people in it. As we have seen, of the two institutions it is the Ombudsman which has come to the aid of the common man more than the leadership code. The latter's work is shrouded in secrecy and bureaucratic red tape and therefore not open to easy scrutiny by the general populace. As Mubako

submitted 'the leadership Code would be more suitable in the party Constitution or its standing orders than in the Constitution of the Republic.'²⁴ The sheer volume of work which the ad hoc Leadership Committee is entrusted with simply makes their task daunting. The entire exercise also depends for its efficacy on the honesty of an individual; herein lies its main weakness. But as we have shown the Party has scored some United success even in this area. These institutions must not be there as a window dressing exercise, but there must be a genuine desire to see them effectively implemented otherwise the legitimacy of the Party and Government will be torpedoed.

In this regard the 'pinpricks' of Zambia's One Party State those relating to the primary elections, the election of the President and the Central Committee must be re-examined and an attempt made to make them more democratic. The system should not be manipulated in the interests of an individual or a group of individuals but if it has to continue as a viable institution all bottlenecks which stand in the way of its implementation must be removed. To this extent therefore one hopes that the proposed Party Constitution will take into account these changes. The Party has assumed a Central position in the country being the sole political organisation allowed by law. Be this as it may, its laws should be flexible

enough to allow of participation by those people who may aspire to join it. There must be discipline in the Party but this should not be used capriciously by expelling members from time to time even on flimsy grounds. It is true that the One Party State will not be a panacea to all Zambia's ills but in its five years of operation there can be no doubt that Zambia enjoyed unprecedented peace though the goal of economic self-sufficiency still remains a mirage.

FOOTNOTES.

Chapter 1.

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3. The Birth of a Plural Society p. 47.
4. The story of the Rhodesias and Nyasaland A.J. Hanna p. 82
5. Ibid, p. 82
6. The Birth of a Plural Society p 47.
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9. Royal Charter of Incorporation granted to the B.S.A. Company 29th October, 1889 Cited in HERTSLET - The Map of Africa by Treaty, Volume 1, 3rd Edn, London, Frank CASS and Co. Ltd 1967.
10. A.J. Hanna - The Story of Rhodesia and Nyasaland, 2nd Edn. London, Faber and Faber, 1965 p 84.
11. Ibid p. 82
12. Royal Charter op.cit. Art. 10.
13. Ibid Art 14.
14. Ibid Art. 13
15. Ibid Art. 13 and 22.
16. Ibid Art. 5
17. Ibid Art. 7.
18. Ibid Art. 33.

19. L.H. Gann - A History of Northern Rhodesia. Early Days to 1953, London, Chatto and Windus, 1964, p.
20. L.H. Gann A History of Southern Rhodesia
P. Mason The Birth of a Dilemma
A.J. WILLS - An introduction to The History of Central Africa 2nd Ed. London, Oxford University Press 1967.
21. It was in 1897 that Foreign Office in London gave its approval for the name of Northern Rhodesia for the British South Africa Company. Territories north of the Zambesi and that of Rhodesia for the whole of the territories north and south of that River although the name 'Rhodesia', had been in the South of the River since 1895. see A.H. Hanna - The Story of Rhodesia and Nyasaland op.cit. p.
22. A.J. Hanna The Story of Rhodesias and Nyasaland op.cit. p. 75.
23. The Wank Concession, 27 June, 1889 Cited in Gervas Clay - Your Friend, Lewanika, Litunga of Barotseland 1842 - 1916 (London) Chatto and Windus 1968 p. 158.
24. The Lochner Concession, Cited in Gervas Clay, Ibid
25. Gerald L. Caplan - The Elites of Barotseland 1878-1969. A Political History of Zambia's Western Province, London, C. Hurst and Co, p. 54.
26. Gerald L. Caplan - The Elites of Barotseland Ibid p. 54.
27. James Johnston, Reality Vs Romance in South Central Africa (London 1893, p. 148 Ibid p. 51.
28. Colonial Office to Foreign Office, in FO 403, Vol. 137, No. 169 Quoted in Gerald L. Caplan Elites of Barotseland op.cit. p. 51
29. Gervas Clay, Your Friend Lewanika, op.cit. p. 74.
30. Gervas Clay, Your Friend Lewanika, ibid p. 109.
31. Ibid p. 137.
32. Elites op.cit. p. 66.

33. The Lawley Concession - Gervas Clay - Your Friend, Lewanika - The Treaty of 1898, (later called concession "A", Appendix 'D' p. 163.
34. Gervas Clay *ibid* p. 118.
35. *Ibid* p. 118
36. *ibid* p. 167
37. Gerald L. Caplan. *Elites* p. 76.
38. Eric Stokes, Barotseland, The Survival of An African State. p. 261.
39. L.H. Gaun, A History of Northern Rhodesia, Early Days to 1953 (London, 1964), p. 41.
40. Barotseland-Norther Western Rhodesia Order-in-Council in Statute Law of North Western Rhodesia 1910-1911, Government Printer, Livingstone, 1917.
41. *Ibid* Art. 3
42. *ibid* Art. 5
43. *ibid* Art. 6
44. *ibid* Art. 8
45. *ibid* Art. 9
46. *ibid* Art. 10
47. Courts of Justice Proclamation in Statute Law of North Western Rhodesia *ibid*.
48. High Commissioner Proclamation No. 6 of 1965 Art. 3 and 5. in Statute Law of N.W.R.
49. Articles 6 and 7.
50. High Commissioner Proclamation No. 51.
51. ~~Barotseland - North Western Rhodesia~~ Order in Council 1902 in Statute Law of North Western Rhodesia *ibid* (Op cit) p. 7.

52. Art 2 *ibid*
53. Eric Stokes, *Barotseland* p. 292.
54. *ibid* p. 283
55. A J. WILLS *An introduction to the History of Central Africa*. 2nd Ed. P. 168
56. Extension of Field of Company operation North of the Zambezi, No. 35 Cited in Hertslet, *Map of Africa by Treaty*.
57. Hertslet, *ibid* Vol (1) p. 286 *op.cit.*
58. A.J. Hanna, *The Story of Rhodesia and Nyasaland* p. 114 *op.cit.*
59. Article 2, Hertslet - Condition on extending the Field of Operation of the B.S.A.C. *op.cit.* No. 35.
60. L.H. Gaun. *The Birth of Plural Society* *op.cit.*
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63. *ibid* Art. 8
64. *ibid* Art 38
65. *Ibid* Art. 17
66. *Ibid* Art. 21
67. *Ibid* Art. 35
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21. The Southern Rhodesia Order-in-Council 1898
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56. See Part 1 of the First Schedule to the Order *ibid*,
57. Part 11 of First Schedule to the Order *ibid*.
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93. Rhodesia and Nyasaland Law Reports at page 616.
94. Article 8(11) N.R. 1962 Constitution *op.cit.*
95. Northern Rhodesia (Constitution) Order in Council 1963 Art. 32.
96. *Ibid.*, Art. 38
97. See Art. 7-13 and Art. 71 *Ibid*
98. Art. 75(2) *Ibid.*
99. *Ibid.*, Art. 69.
100. *Ibid.*, Art 71 (1) and (2)
101. *Ibid* Art. 19 (1) Art. 20
102. *Ibid* Art. 20(3)
103. *Ibid.*, Art 63.
104. *Ibid* Art. 63(2)
105. *Ibid* Art. 112 (2)
106. *Ibid* Art. 41.
107. *Ibid* Art. 41(3)
108. *Ibid* Art. 36.
109. See *Ibid* Art 84, 85, 89.

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2. Northern Rhodesia Independence Conference 1964.
3. Zambia Independence Order, 1964 S.11.
4. The Constitution of Zambia S. 32. The Constitution of Zambia appeared as a Schedule to the Zambia Independence Order, 1964.
5. Ibid., S.45
6. Chapter 11 of Constitution.
7. Ibid., s. 48.
8. Ibid Section 49.
9. See *Kachasu v. The Attorney-General for Zambia* and *Patel v. Attorney-General for Zambia* 1968 (unreported.)
10. Article 13 guaranteed freedom of worship to Africans.
11. Cmd. 1168
12. See Art. 17(1) of N.R. Constitution 1963.
13. See Section 27 of N.R. 1964 Constitution op.cit.
14. S. 72 Ibid.
15. Constitution (Amendment) No 3 Act. 1969
16. Constitution of Zambia, 1964 S. 57.
17. Ibid.
18. S.63(1) and S.64(1) ibid.
19. S.61 ibid.
20. S. 83(2) Ibid.
21. Bills, National Assembly.
22. S. 73 Constitution Zambia, 1964 ibid.

23. Section 62 *ibid.*
24. *Ibid* s.48
25. *Ibid* s. 31 *Ibid*
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30. For a detailed exposition of the treaties and events which led to them, See Chapter One.
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38. S.4(1)
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2. L.H. Gann op.cit. see also B.M. Long op.cit. p. 216-17
3. Cmd. 3234, Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa, pp. 89-95.
4. Cmd. 2387 (1925) Report of the East African Commission
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8. ibid p. 218 see also reservations by Mr. W.H. Mainwaring and Mr. T. Fitzgerald, Mr. I. Orr-Ewing and Mr. E. Evans.
9. African 872, No. 118, 17 June 1907.
10. Cmd. 3234 op.cit.
11. Hansard, 29 October 1936, Col: 249.
12. Cmd 1148. Report of the Advisory Commission on the Review of the Constitution of Rhodesia and Nyasaland.
13. Ibid. p. 32.
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15. N.R. (Amendment) Order-in-Council 1939 S.30A.
16. Rhodesia and Nyasaland Royal Commission Report, op.cit. p. 221.
17. L.H. Gann. op.cit. pp. 357-8.
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19. Ibid., Art. XIII
20. Ibid., Art. VIII
21. A.J. Muna op.cit., p. 249.
22. Hansard 16 January 1945, Col. 192.
23. D. Taylor, op.cit. p. 103-7.
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26. Mutende, Dec. 12, 1949.
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34. Cmd 8411. Closer Association in Central Africa Statement by Her Majesty's Government in the United Kingdom, 21 Nov. 1951.
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36. For a detailed examination of the Changes and reasons for them see Thomas Franck op.cit. pp. 47-55. See also Claire Palley. The Constitutional History and Law of Southern Rhodesia 1888-1965 Oxford University Press, London pp. 337-338.
37. Cmd 8573 op.cit. pp. 23-26

38. Ibid. p. 24.
39. Ibid p. 17.
40. Ibid p. 14.
41. Ibid p. 33.
42. Epstein. op.cit. p. 37.
43. N.R. Hansard. Official Report of the Debate Held in the Legislative Council on the 3rd, 4th, 7th, 8th July 1952 on the Draft Federal Scheme for Southern Rhodesia, Northern Rhodesia and Nyasaland.
44. Ibid. p. 30.
45. Ibid. 31.
46. Cmd 8573 p. 26-31.
47. Report by the Conference on Federation London January 1953 Cmd 8753. p. 26.
48. Ibid p. 37.
49. Hansard No. 77 April 21, 1953.
50. Quoted in Epstein op.cit. p. 761.
51. 1 and 2 Eliz. 11 C. 30.
52. For a fuller discussion see Claire Palley op.cit. pp. 341-344, Thomas Franck op.cit. pp. 60-63 and for a detailed discussion of the Federal Constitution and the changes it underwent see Claire Palley op.cit. pp. 345-409.
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54. Ibid. p. 16
55. Ibid p. 111
56. Claire Palley op.cit. p. 677-678
57. Ibid p. 680 see also the consequences of the breakup of the Federation from pp. 680-701.

Chapter VI

1. See Constitution (Amendment) No.5 Act, 1972
2. For the reasons which precipitated the introduction
See S.V. Mubako - Zambia's Single Party Constitution
- A search for Unity and Development in Zambia Law
Journal. Vol. 5 1973 P. 68.
3. Legislative Assembly Debates, March 20, 1964, Col.420
4. Constitution (Amendment) No 3 Act 1969
5. Legislative Assembly Debates, 12 December 1973 Col. 14.
This was in an address to the First Session of the
Third National Assembly by His Excellency Dr. Kaunda.
6. Daily Mail, 14 December 1972.
7. S.V. MUBAKO, Ibid p. 69.
8. S.I. 46, 1972.
9. Report of the National Commission on the Establishment
of a One Party Participatory Democracy in Zambia
Lusaka, October, 1972, Government Printer ix.
10. Constitution of Zambia, 1964 s.72
11. Constitution of Zambia, 1973 Art. 117.
12. Ibid Arts. 10
13. National Commission p. 5
14. See For instance Constitution of Malawi 1964
15. Re S.2 Akoto, Civil Appeal No.42/61; See Nwabueze,
Presidentialism in Commonwealth Africa op.cit. p.303-304
16. Constitution of Zambia, 1973 Art. 4.
17. Constitution of Zambia (Amendment) Act 1975
18. Constitution of Zambia, 1973 Art. 64 and 66.
19. The Ministries of Foreign Affairs, Home Affairs,
Legal Affairs, Health and Commerce and Foreign Trade

20. Art. 64
21. Art. 70
22. Art. 72
23. Art. 67
24. Art. 68
25. Art. 68(2)
26. Art. 79(1)
27. Art. 79(5)(6)(7)
28. Art. 80(4)
29. Art. 82.
30. Art. 83.
31. Art. 92 and 93.
32. See J.T. CRAIG: The Privileges of Parliament and the Constitution, Zambia Law Journal 1971-72 pp 143-152 where he examines two cases - one The People v. Chairman of the Standing Orders Committee of the National Assembly ex parte Mundia 1971 in which the Court refused certiorari directed to the Chairman of the Standing Orders Committee of the National Assembly and the People v. The Speaker of the National Assembly ex parte Nkumbula 1970 in which the Court permitted the issue of an Order of Mandamus to the Speaker ordering him to comply with subsection four of section 65 of the Independence Constitution. See also Legislative Assembly Debates, 20 February 1973 Cols. 1309-1312 in which the Speaker of the National Assembly upheld parliamentary privilege.
33. Article 120.
34. Art. 127.
35. Daily Hansard, 21 January 1970 Cols. 383-402.
36. Standing Orders, 1967 p. 68.

37. See For instance the Reports of Auditor General 1973, 1974, 1975.
38. Report of The Delimitation Commission Established under Article 73(1) of the Constitution of Zambia (privately held).
39. Ibid §.3
40. Ibid 6.2
41. Art. 34(1)(2)(3)
42. S.V. MUBAKO: The Supremacy of the Party Under Zambia's One-Party Constitution p. 4. This was a paper presented to the Second Law Convention of the Unza Law Association January 12, 1974. This was exactly a month following the holding of the elections in December.
43. Ibid. P. 5
44. Report of the National Commission on the Establishment of a One Party Participatory Democracy in Zambia- Summary of Recommendations Accepted by Government p.11.
45. N.A.B. 27/77
46. See Times of Zambia, Dec.10.1977.
47. See Times of Zambia Dec. 1977.

Chapter VII

1. The Constitution also provides for the House of Chiefs without any legislative powers. Art. 95.
2. B.O. Nwabueze, Presidentialism op.cit. p. 257.
3. Constitution of Zambia 1973 - Art. 79.
4. B.O. Nwabueze, op.cit. p. 256.
5. Constitution of Zambia Act, 1973 Art. 92(2).
6. William Tordoff; Government and Politics in Tanzania p. 17.
7. Ibid, p. 19.
8. Ibid, p. 16.
9. Ibid
10. M.P. for Kasempa, Nat.Ass.Deb. Feb. 1976.
11. e.g. Mr N. Mundia, former UNIP Cabinet Minister and later on President of United Party had been in restriction in 1968. He is now Minister for North Western Province.
12. Address by President Kaunda to the UNIP National Council, 21 March 1969.
13. Constitution of Zambia Act 1973 Art. 95.
14. UNIP Constitution Article 31
15. Ibid Art. 12(1)(c)
16. National Assembly Debates-First Session of the Third National Assembly 12 Dec. 1973 Col. 19. Address by His Excellency the President Dr. Kenneth Kaunda.
17. I am indebted to the Journal's Clerk of the National Assembly Mr. Tembo who allowed to use his books for this paper. Thanks also go to Mr Ntambakwa the research officer of the National Assembly and Miss Membe the Assistant Librarian for their invaluable assistance in this area.
18. Daily Mail July 19, 1975.

19. National Ass. Debates Jan. 23 1975 Col
See also Daily Mail Jan. 24 1975.
20. National Ass. Debates Jan. 18 1975 Col.
See also Daily Mail Jan. 24, 1975.
21. Kalulushi Governor. See Times of Zambia February 25,
1974.
22. Standing Order 137 A of August, 1975.
23. See Anirundha Gupta: The Zambian National Assembly
Study of an African Legislature-Parliamentary affairs
XIX (1965-66) p. 54.
24. Constitution of Zambia Act 1973 Art. 53(1)
25. Ibid Art. 51(2).
26. Ibid Art. 54.
27. Ibid Art. 37.
28. Ibid Art. 47.
29. Report of the National Commission op.cit. p.11.
30. Ibid p. 12.
31. Republic of Zambia, Government Paper No.1 of 1972,
Report of the National Commission on the Establish-
ment of a One-Party Participatory Democracy in Zambia.
Summary of Recommendations accepted by Government.
Lusaka Government Printer 1972 p.4.
32. N.A.B. 28 superseded by (N.A.B. 30) 1973.
33. Constitution of Zambia Act No. 27 of 1973 Art. 38(3).
34. UNIP Constitution Art. 32(1)(3)(6).
35. Report of National Commission op.cit. p. 12.
36. Ibid. p. 13.
37. Government Paper No.1 1972 op.cit. p. 5.
38. Constitution of Zambia Act 1973 Art. 48(1).
39. Report of National Commission op.cit. p. 11.
40. Government Paper No.1 1972 op.cit. p. 4.

41. Constitution of Zambia 1973. Art. 55.
42. Constitution of Zambia Act, 1973 Art. 47(1) and UNIP Constitution Art. 7.
43. Constitution of Zambia, Act 1973 Art. 47.
44. Constitution of Zambia Act, 1973 Art. 50.
45. Ibid Art. 56.
46. UNIP Constitution Art. 7 and 8.
47. Ibid Art. 16.
48. Constitution of Zambia, 1973 Art. 107.
49. Report of National Commission op.cit. p. 25.
50. Ibid. p. 25.
51. Constitution of Zambia 1973 Art. 130.
52. See for instance Kangombe v. Att.Gen.
53. See Art. 32-36 of Constitution of Zambia 1973.
54. See Art. 117-119 Ibid.
55. Report of National Commission op.cit. p. 54.
56. Ibid. pp. 57-60.
57. Government White Paper op.cit. p. 30.
58. Take up Challenge, Speech made by His Excellency the President Dr. Kaunda to the UNIP National Council, Mulungushi Hall, Lusaka 7-10 November 1970. (Zambia Information Service, Lusaka.) p. 52.
59. Constitution of Zambia Act 1973 Art. 33.
60. Ibid, Art. 34.
61. Ibid Art. 35.
62. National Ass. Debates 23 July-2nd August 1974 Col.1527.
63. Ibid, Col 1540.
64. S.V. MUBAKO Zambia's One Party State Constitution Zambia Law Journal.

65. S.I. 288 of 73.
66. Eastern Province and Northern Province
67. UNIP NATIONAL COUNCIL MEETING 30TH JUNE TO THIRD JULY 1975-FREEDOM HOUSE.
68. See for instance Hing Young Cheng. "The Emergency and Spread of the Ombudsman Institution", annals of the American Academy of Political and Social Science Volume 377, May 1968 p. 29.
69. Constitution of Zambia Act 1973 Art. 118.
70. Ibid Art. 117(2).
71. Ibid Art. 117(4).
72. Ibid Art. 117(3).
73. Eleventh Commonwealth Parliamentary Conference. Report of Proceedings Wellington New Zealand. Nov-Dec. 1965 p. 233.
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75. Report of National Commission, op.cit. p. 38.

Chapter VIII

1. Constitution of Zambia Act. 1973 Article 56(1) read in conjunction with Article 53(2).
2. Cherry Gertzel (ed.). The Political Process in Zambia - Documents and Readings Volume II. The Presidential System: Government Institutions - University of Zambia Page xx.
3. B.O. Nwabueze, Constitutionalism in Emergent States, C. Hurst and Company, London P. 174.
4. Constitution of Zambia Act. 1973.
5. Ibid, Art. 30(2)(a)(b)
6. Ibid, Art. 30(3)
7. Ibid, Art. 30(5)
8. Constitution (Amendment) (No. 5) Act. 1969. On January 28, 1976 - President Kaunda declared a full state of emergency under Article 30 1(b) of the 1973 Constitution. See also Times of Zambia issue of 29, January, 1976.
9. B.O. Nwabueze, Presidentialism Op. Cit. P. 298.
10. Ibid, P. 340.
11. Constitution of Zambia Act. 1973 Art. 27(c).
12. See For instance Chipango v. Att.Gen. of Zambia, 1970 S.L.L. 179 (Grounds furnished 2 days out of time and notice published 3 weeks out of time). See also Muadia v. Att.Gen. of Zambia HF/902/70 of 1 August 1971 (grounds furnished 5 days and gazette notice published 19 days out of time).
13. Constitution (Amendment) Act. 1974 Art. 3.
14. Ibid, Article 4.
15. S.I. 1953 No. 739.

16. Claire Palley Op.cit. 364, W.V. Erelsford, Handbook of the Federation of Rhodesia and Nyasaland, London, 1960 P. 609.
17. Constitution Amendment Act. No. 16 of 1957.
18. Federal Electoral Act. No. 6 of 1958.
19. Report of the National Commission op.cit. P. 67.
20. Nkumbula v. Att.-General for Zambia 1972 S.J.E. P. 40.
21. National Assembly Debates, fifth Session of the 2nd National Assembly December 1972, Col. 4.
22. National Assembly Debates First Session of the Third National Assembly, 12 December 1973 Col. 19.
23. National Assembly Debates, Fourth Session of the Third National Assembly 7th January to 1st April 1977 Col. 2.
24. S.V. Nubako Op.Cit. P. 85.

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