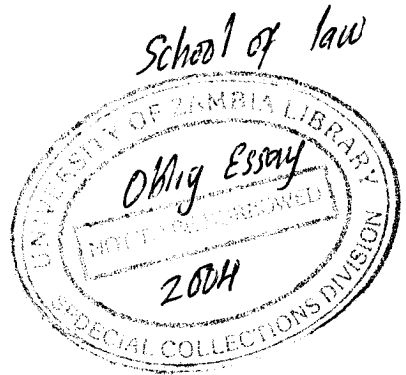


# THE ROLE OF THE ZAMBIAN PARLIAMENT IN CONTROLLING ADMINISTRATIVE ACTIONS



BY

HENRY KUPALELWA

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STUDENT NAME: HENRY KUPALELWA

SIGNATURE: 

DATED THIS: 10<sup>TH</sup> DAY: DECEMBER 2004.

# **THE ROLE OF THE ZAMBIAN PARLIAMENT IN CONTROLLING ADMINISTRATIVE ACTIONS**

**BY**

**HENRY KUPALELWA**

Being a paper presented in partial fulfilment of the examination requirements for degree of Bachelor of Laws of the University of Zambia.

November, 2004

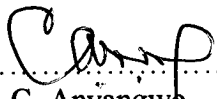
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## SCHOOL OF LAW

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### THE ROLE OF THE ZAMBIAN PARLIAMENT IN CONTROLLING ADMINISTRATIVE ACTIONS,

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to formal as laid down in the regulations governing Obligatory Essays.

Date:..... 10 Dec 2004 ..... Signed:.....  .....  
Prof. C. Anyangwe  
**(SUPERVISOR)**

## **ABSTRACT**

The Obligatory essay focuses on the role of the Zambian Parliament in controlling administrative actions. The choice of this topic was largely influenced by my desire to recast the discussions on “what other functions apart from legislative functions does our Parliament have”, especially to open the minds of the citizenry as regards the Parliamentary control function.

There is currently a quest for a more democratic system of government than has ever existed in Zambia’s political history. The question, however, is whether there are independent institutions that can check or control public administration. This work names Parliament as one of the important institutions in Zambia that is designed to act as a check on administrative actions.

## **ACKNOWLEDGEMENTS**

My sincere gratitude and thanks go first to Professor C. Anyangwe, my faculty supervisor at the University of Zambia, without whose guidance and valuable comments, the completion of this work would have been extremely difficult.

My thanks also go to Ms. C.M. Mfula—Chief Librarian at the National Assembly Library and her entire staff for their support during my research. To Miss Precious Mweemba for typing my scripts.

Above all things, I thank the Almighty God for the wisdom, knowledge and favour He bestowed upon me during my stay at the University of Zambia.

## **DEDICATION**

To my entire family without whom I could not have attained my education to this level.

## **TABLE OF CONTENTS**

### **PAGE**

Title .....	i
Supervisor's recommendation.....	ii
Preface.....	iii
Acknowledgments.....	iv
Dedication.....	v
Table of contents.....	iv
Glossary of Terms.....	viii
General Introduction.....	x

### **CHAPTER ONE**

#### **1.0 THE HISTORICAL DEVELOPMENT OF PARLIAMENT IN ZAMBIA(1)**

1.1 The British South African Company Rule (1889 – 1924).....	2
1.2 The Legislative Council of Northern Rhodesia (1924 – 1964).....	4
1.3 The National Assembly in the First Republic (1964 – 1972).....	9
1.4 The Parliament in the Second Republic (1973 – 1991).....	10
1.5 The Zambian Parliament in the Third Republic .....	11

### **CHAPTER TWO**

#### **2.0 THE CONTROL OF GOVERNMENT'S FINANCIAL ADMINISTRATION.....**

13

2.1 Budget Presentation.....	13
2.2 Committee of Supply.....	14
2.3 Committee of Ways and Means.....	16
2.4 Public Accounts Committee.....	17
2.5 Committee on Estimates.....	19

### **CHAPTER THREE**

#### **3.0 THE CONTROL OF PRESIDENTIAL APPOINTMENTS TO CONSTITUTIONAL OFFICES AND CONTROL OF DELEGATED LEGASLATON .....**

21

3.1 Control of Presidential Appointments.....	22
3.2 Control of Delegated Legislation.....	27

### **CHAPTER FOUR**

#### **4.0 THE CONTROL OF GOVERNMENT POLICIES THROUGH PARLIAMENTARY DEBATES.....**

30

4.1 Parliamentary Questions time.....	31
---------------------------------------	----



4.2	Motions.....	33
4.3	Papers laid on the Table and Annual Reports of Government Institutions.....	35
4.4	Ministerial Statements.....	37
4.5	Petitions.....	38

## **CHAPTER FIVE**

5.0	<b>THE CONCLUSION AND RECOMMENDATIONS.....</b>	<b>40</b>
5.1	Conclusions.....	40
5.2	Recommendations.....	43
5.3	Bibliography.....	50

## **GLOSSARY OF TERMS**

*Act:* A Bill which has successfully passed through all its stages and has received assent from the President becomes an Act of Parliament and, thus, a law of the land.

*Appropriation:* It is one of the cardinal rules of the system of public expenditure that no money may be spent for any purpose other than that for which it was authorised by Parliament.

*Assent:* To agree to and append a signature to a document. A Bill becomes effective after the President has given his/her assent to it.

*Backbencher:* A member not holding office in the Government or who belongs to the Opposition.

*Bill:* A legislative proposal to amend or repeal existing law or to create a new law.

*Budget:* The Government's statement of its fiscal, economic and social policies. It is usually presented once a year.

*Clerks-at-the Table:* The term refers to the Clerk, the Deputy Clerk, and the Assistant Clerk.

*Committee:* A body of Members selected to consider such matters, including Bills, as the House may refer to them to examine.

*Committee of the Whole House:* All Members of the House sitting as a Committee.

*Constituency:* A division of the country, represented by a legislator, distinguished in numerical order by geographical boundaries.

*Constitution:* A written instrument, embodying the fundamental principles of the state, that guarantees certain rights to the people.

*Debate:* Discussion of a matter in the House according to Parliamentary rules.

*Estimates:* Ministerial expenditure plans, consisting of the main estimates, tabled annually, and supplementary estimates, tabled as required.

*House:* Assembly of people's representatives. In the Zambian context, this is the National Assembly.

*Member of Parliament:* A person either elected or nominated to the House.

*Ministerial Statement:* Statement by a Minister in the House regarding the Government's domestic or foreign policy or an announcement by a Minister on public business arrangements or legislative proposal.

*Motion:* A formal proposal made to the House by a Member that the House do something, order something to be done or express an opinion with regard to some matter.

*Order Paper:* A paper containing the agenda of the House's business on a given day.

*Point of Order:* Any Member of Parliament can and should bring to the Speaker's immediate notice any instance of what he/she considers a breach of order or transgression of any written or unwritten law of the House which the Chair has not perceived, and he/she may also ask, for the guidance and assistance of the Chair, regarding any obscurities in procedure.

*Presidential Address:* An address delivered by the Republican President to the National Assembly at the commencement of the first session after each general election and at the commencement of every session each year.

*Select Committee:* A Special Committee of the House appointed by the Speaker to look into a particular issue and is dissolved upon adoption of its report by the House.

*Speaker:* Presiding officer of the National Assembly of Zambia elected by the House.

*Standing Orders:* A collection of permanent written rules adopted by the House to govern its proceedings.

*Whip:* A member charged with keeping other Members of the same party informed about the business of the House and ensuring their attendance in the House especially when a vote is anticipated. Each party normally has a Whip and one or more Deputy Whips.

## **GENERAL INTRODUCTION**

The Zambian Constitution embraces the concept of Separation of Powers. The legislative powers of the republic are vested in Parliament, that is, the National Assembly acting together with the President.<sup>1</sup> The executive power is vested in the President,<sup>2</sup> whereas judicial authority is vested in the Supreme Court, High Court, Industrial Relations Court, Magistrates Courts, Local Courts and any other court that may be created by Parliament.<sup>3</sup>

The endorsement of the concept of separation of powers is an expression of the need to control power. It is intended to ensure that powers of government are properly exercised. The rationale for this concept is to provide for checks and balances among the three organs of government.

The doctrine of checks and balances focuses on the prevention of the abuse of powers vested in the hands of those who run public administration. In the United States, for instance, the doctrine of checks and balances plays a prominent role in helping the organs of government check each other as regards the exercise of power. Thus, under the American Constitution, the President's power in regard to appointments and the making of treaties is 'checked' by the necessity for the Senate's approval.<sup>4</sup> Him and the Vice-President and other civil officers are liable to impeachment before Congress for treason, bribery or other high crimes and misdemeanours, and, upon conviction, to automatic dismissal from office.<sup>5</sup>

The effect of checks and balances is not to subordinate the organ or person being checked to the authority exercising the checks nor does it make functions of the organs of government a joint responsibility. Its main purpose is to make the Separation of powers a more effective instrument of limiting governmental powers.

In the United Kingdom on the other hand, the executive is answerable to Parliament for administrative actions. The presence of Ministers in the House of Commons makes it possible for them to be responsible to Parliament for their actions collectively. However, in the UK, Parliament is supreme over other organs of government. Meaning the Courts in the UK cannot invalidate any law enacted by the British Parliament.

The situation in Zambia is similar to that of the United States and the United Kingdom as regards Parliament's control on the Executive. The Zambian Parliament has the mandate to check the actions of the Executive. This is to ensure that the power vested in the Executive is not abused by the officials.

Parliament in Zambia has an obligation of overseeing government administration as demanded by the doctrine of checks and balances. It watches over public

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<sup>1</sup> Article 62 of the Constitution.

<sup>2</sup> Article 33(2) of the Constitution.

<sup>3</sup> Article 91 of the Constitution.

<sup>4</sup> B.O. Nwabueze, **Presidentialism in Commonwealth Africa**, 1974, New York, St. Martins Press, p.30.

<sup>5</sup> Ibid, 30.

administration. Therefore, the aim of this work is to explore the role of the Zambian Parliament in controlling administrative actions.

## CHAPTER ONE

### THE HISTORICAL DEVELOPMENT OF PARLIAMENT IN ZAMBIA

According to **Blackman's Law Dictionary**, 'Parliament' has been defined as the supreme law-making authority, with the ability to control and scrutinize the actions of the government. Parliament is a very important institution of any sovereign state. It has two main roles, that of legislating or law making; and that of controlling the Executive or Government actions. In most commonwealth countries it has a special role in the raising and expenditure of public money.<sup>6</sup>

The composition of Parliament may differ from country to country but its roles are similar. In Zambia, Parliament comprises of the President and the National Assembly and it is vested with legislative role,<sup>7</sup> controls and scrutinizes the actions of the government. The power to do so is derived by implication from Article 51 of the Constitution of Zambia. In Britain, Parliament is the supreme legislative assembly that consists of the House of Commons and the House of Lords. This means that in Britain there are no legal limitations upon the competence of Parliament to legislate. This is the power "to make and unmake any law whatever; and further that no person or body is recognized by the laws of England as having a right to override or set aside the legislation of Parliament"<sup>8</sup>: Dicey.

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<sup>6</sup> Ghai and Mc Auslan:, Public Law and Political change in Kenya. 1970, p. 312

<sup>7</sup> Article 62 of the Constitution of Zambia.

<sup>8</sup> E.C.S Wade and A.W. Bradley:, Constitutional and Administrative Law, Longman, London, 1987, p. 65.

However, in Zambia where there is a written Constitution, Parliament is a direct creature of the constitution and as such its powers and functions are derived from the same. It does not enjoy unlimited legislative power in that the High Court and the Supreme Court can invalidate a law which is inconsistent with the constitution<sup>9</sup>.

### **The British South African Company Rule (1889-1924)**

The British government granted a Royal Charter of incorporation to the BSA Company on October, 29<sup>th</sup> 1889 which gave the company a mandate to rule Northern Rhodesia (later became Zambia) on behalf of the British government. By the orders-in-council of 1889 and 1890, Northern Rhodesia was divided into two territories namely; the North-Western Rhodesia and North-Eastern Rhodesia basically for administrative convenience.

Both the North-Western Rhodesia Order-in-Council and the North-Eastern Rhodesia Order-in-Council did not create any central legislative institution in the two territories. In the North-Eastern Rhodesia, the legislative source was the Queen in Council through Orders-in-Council in exercise of the powers conferred under the Foreign Jurisdiction Act, 1890.

In addition the Administrator (head of the territory) and his council were empowered by the Royal Charter of 1899 and the North-Eastern Rhodesia Order-in-Council to make, alter and repeal regulations for the administration of justice, the raising of revenue, and generally for the peace, order and good government. But to be valid, such regulations

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<sup>9</sup> Mulundika and Others v. The People [1996] ZLR The Supreme Court invalidated section 5(4) of the Public Order Act.

had to be approved at the outset by the British High Commissioner to South Africa, who was the supervising authority<sup>10</sup>. The commissioner could also legislate for the territory and such legislation was known as Queens Regulations<sup>11</sup>.

In North-Western Rhodesia the British High Commissioner for South Africa was made the legislative authority for the territory<sup>12</sup>. He could make proclamations to provide for the administration of justice, for the raising of revenue, and generally for the peace, order, and good government, and for the prohibition and punishment of acts tending to disturb the peace. The imperial government retained its checking power of disallowance of any undesirable legislation, through the Colonial Secretary.

The North-Eastern Rhodesia and North-Western Rhodesia amalgamated into one territory named Northern Rhodesia pursuant to the Northern Rhodesia Order-in-Council of 1911. Article 13 of the 1911 Order-in-Council provided for the enactment of an Advisory Council to assist the Administrator. The Advisory Council comprised of five elected unofficial members.

The Advisory Council as its name suggests did not have any legislative powers as all the laws for the territory were made through proclamations by the High Commissioner for South Africa who was still a supervising authority. The Administrator for the territory could make decisions without the consent of the elected representatives of the Council.

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<sup>10</sup> Section 16 of the Foreign Jurisdiction Act, 1890.

<sup>11</sup> Section 17 of the Foreign Jurisdiction Act, 1890.

<sup>12</sup> Section 2, Barotseland (North-Western Rhodesia) Order-in-Council, 1899.



Despite the Advisory Council having no legislative authority, it provided the settlers of Northern Rhodesia with a platform where they could voice their grievances and opinion against the administration. Therefore, the Council stood as the genesis or foundation of today's Zambian Parliament.

### **The Legislative Council of Northern Rhodesia (1924-1964)**

The rising cost of administering the territory forced the BSA Company to cede control of Northern Rhodesia to the Crown in 1924. Northern Rhodesia at this stage became a British protectorate. The Northern Rhodesia Order-in-Council of 1924 set up a legislative Council. The Council was empowered by constitutional provisions to:

“establish such ordinances as may be necessary for the administration of justice, the raising of revenue and generally for the peace, order and good government of Northern Rhodesia”<sup>13</sup>.

The Legislative Council consisted of the Governor as President, nine officials (that is five Ex-officio Members and four Nominated official members) and five elected unofficials (these were elected from ordinary citizens, that is why they were called unofficial members). But it was not a Parliament in the generally accepted sense of that term. The full authority to legislate for Northern Rhodesia was retained by the British government. This view was confirmed by the Governor, Sir Hirbert Stanley in his inaugural address to the Legislative Council:

“It is hardly necessary for me to emphasize that a Council like ours is not a Parliament in the generally accepted sense of that term. It is constituted on a different basis, which obviously places the government in a position to exercise effective control. The object of having unofficial members on this council is that they should ventilate the opinions, and

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<sup>13</sup> Article 20 Northern Rhodesia Order-in-Council.

represent the views which are held in various parts of the country, and bring before the government consideration which otherwise might escape the notice of the government”<sup>14</sup>.

However, the elected unofficial members saw themselves in a different light. According to Mr. Leopold Moore: “The difference between a Parliament and this Council are small and ..... should not be emphasized. It is more like a Parliament than it is unlike a Parliament. We are to all intents and purposes a Parliament and likely to become a Parliament”<sup>15</sup>.

The Governor presided over the meetings of the Legislative Council until 1948 when the first speaker was appointed by the Governor himself. The Governor’s dominance of the Legislative Council was assured by provisions which empowered him to appoint the majority of its members, to suspend erring members, to dissolve or prorogue the Council, to have the casting vote, and to assent to Bills. Moreover, only the Governor was authorized to propose any Bill, whose object or effect was to impose any tax or dispose of or charge any part of the public revenue.

Northern Rhodesia was one of the three territories which made up the Federation of Rhodesia and Nyasaland. The Federation was created by Federation of Rhodesia and Nyasaland (Constitution) Order-in-Council of 1953. The idea of the Federation was as a result of a desire by the British Government to foster closer association between the two Rhodesia (Southern Rhodesia and Northern Rhodesia) and Nyasaland.

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<sup>14</sup> Northern Rhodesia Legislative Council Debates – Hansard 23<sup>rd</sup> May 1924, Col. 3.

<sup>15</sup> Ibid, Hansard, 20<sup>th</sup> May 1925, Cols. 102-3.

The executive powers of the Federation were vested in her majesty but were exercised on her behalf by the Governor-General. The Governor-General was assisted by the Executive Council comprised the Prime Minister and other Ministers, all appointed by the Governor-General.

The legislative powers of the Federation were vested in the Federal Legislature although Her Majesty reserved the right to legislate for the Federation<sup>16</sup>. The Federal Assembly consisted of the Speaker and 59 members, 44 of whom were elected. Of the 44 elected members 24 were from Southern Rhodesia, 14 from Northern Rhodesia and 6 from Nyasaland. At its inception the Federal Assembly comprised 35 members only but this was raised to 59 in 1957.

However, Northern Rhodesia retained its Legislative Council. The arrangement during this period as regards the relationship between the Legislature of a Territory and the Federal Legislative was that if any person was elected a member of the former, he was not to take his seat in the latter until he ceased to be a member of the former. Likewise if an elected member of the Federal Assembly became a member of the Legislature of a territory, he was thereupon to vacate his seat in the Federal Assembly<sup>17</sup>. If any provision of a law of the Legislature of a territory was inconsistent with any provision of the law of the Federal Legislature which the Federal Legislature was competent to enact, then the

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<sup>16</sup> Article 8 of the Constitution of Federation of Rhodesia and Nyasaland.

<sup>17</sup> Ibid Article 10(3) and (4)

federal law was to prevail and the territorial law was to the extent of the inconsistency void.<sup>18</sup>

Therefore, the Northern Rhodesia legislative Council under the Federation still had power to legislate on all matters except constitutional ones which did fall under the federal control. Under the 1959 constitution which the British government hoped would encourage politics to develop on party as opposed to racial lines as the case was before, the Legislative Council was made up of a total of 30 members, that is, six official members (excluding the Speaker), two unofficial nominated members, and twenty two elected members.<sup>19</sup>

Although the Constitution was meant to encourage, the development of “non-racial” politics, it was certain that the racial composition of the Legislative Council’s elected members would be 14 Europeans and 8 Africans. The 22 elected members were divided as follows:

- (a) Twelve from the “Ordinary” constituencies comprising mainly urban areas of Europeans settlement.
- (b) Six from “special” constituencies covering mainly rural areas where African voters were in a majority.

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<sup>18</sup> Ibid Article 67(1)

<sup>19</sup> Northern Rhodesia (Legislative Council) Order-In-Council, 1959.

- (c) Two Africans from “Reserved” constituencies covering the same area as the “Ordinary” constituencies.
- (d) Two Europeans from “constituencies covering the same area as the “Special” constituencies.

The devise of the reserved constituencies avoided a situation in which African and Europeans members represented separate areas of the Territory.

Due to the dissatisfaction of both Africans and whites with the 1959 Constitution, a Commission was appointed to review the Constitution which resulted in the 1962 Constitution. Under this Constitution the Legislative Council comprised of Ex-officio members of the Executive Council plus the elected members. In 1963 the Federation of Rhodesia and Nyasaland was dissolved after campaigns from UNIP and ANC and a new Constitution was drafted. Under the new constitution the Legislative Council was renamed the Legislative Assembly.<sup>20</sup>

The Legislative Assembly created under the 1963 Constitution had an increased membership of 75 unlike the case in 1962 when its membership was only 45. Out of the 75 members of the Assembly, 65 were to be elected by African voters and 10 by European voters. The Executive was collectively responsible to the Legislative Assembly and the Governor was no longer a member of the Legislative Assembly.

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<sup>20</sup> Northern Rhodesia (constitution) Order-in-Council 1963, Article 32.

### **The National Assembly in the First Republic (1964-1972)**

On 24<sup>th</sup> October, 1964 Northern Rhodesia became an independent state of Zambia under the 1964 Independence Constitution which named Dr. Kenneth David Kaunda as the first President. The Constitution further provided that the Legislative power of the Republic was vested in the Parliament of Zambia.<sup>21</sup> This meant that the Legislative Assembly was renamed National Assembly. The National Assembly was composed of 75 elected members and 5 nominated by the President. The elected members were increased to 105 in 1968 by the Constitution (Amendment) No. 2 Act of 1968. The same Act stated that the Speaker and his deputy were to be elected. Parliament was made up of the National Assembly and the President.<sup>22</sup>

This was an important turning point in the development of the Zambian Parliament. It became an independent institution forming part of the three wings of government; namely the Executive, Judiciary and the Legislature. This marked another watershed in that previously the Speaker was an appointee of the Governor but on 14<sup>th</sup> December, 1964, the National Assembly elected its own Speaker.

### **The Parliament in the Second Republic (1973-1991)**

Zambia became a single party system of government on 13<sup>th</sup> December, 1972 after an amendment to the Constitution providing that the United National Independence Party

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<sup>21</sup> Section 57 of the Constitution of Zambia, 1964.

<sup>22</sup> Ibid.

(UNIP) shall be the sole and only party. It became unlawful to form or belong to or sympathize with any political party.<sup>23</sup>

Under the One-Party Constitution, the legislative power of the Republic was vested in the Parliament of Zambia which consisted of the President and National Assembly. The National Assembly was composed of 125 members including 10 nominated members.<sup>24</sup> The legislative power was exercised through Bills passed by the National Assembly and assented to by the President.

Parliament in the Second Republic was subordinate to the Party (i.e. UNIP), as this was affirmed by Article 8 of the Party Constitution:

“The Party ... shall have supreme authority over all state organs.”

The then President of Zambia, Dr. Kaunda said that Parliament was the highest legislative organ in the country, but it derived its authority from the Party, like any other institution, hence, there could be no doubt at all about the supremacy of the Party.<sup>25</sup> Despite the warnings and guidelines from the Party, the backbenchers in the National Assembly continued to exercise their role of controlling and scrutinizing the administrative actions.

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<sup>23</sup> Constitution (Amendment) No. 5 Act 1972.

<sup>24</sup> Article 64 and 66 of the Constitution of Zambia.

<sup>25</sup> Speech to the 6<sup>th</sup> National Council of UNIP, officially entitled “The Watershed Speech,” Mulungushi Hall, 30<sup>th</sup> June – 3<sup>rd</sup> July, 1975, p. 2-3.

## **The Zambian Parliament in the third Republic**

The Multi-Party System was ushered back on 30<sup>th</sup> November, 1990 after the Zambian Parliament passed the Constitution of Zambia (Amendment) Bill which allowed the formation of opposition parties. Under the 1991 Multi-Party Constitution, the legislative power was vested in Parliament which consists of the President and National Assembly.<sup>26</sup> The National Assembly was composed of 150 elected members, not more than 8 nominated members and the Speaker of the National Assembly.<sup>27</sup> This is the arrangement which is prevailing even today.

Parliament in the next chapters should not be understood in its legal sense but merely as a National Assembly. Therefore, it is important to make a distinction between Parliament and National Assembly. It is apparent from the wording of Article 62 that Parliament is constituted only in two ways, thus: Firstly, during the legislation process. The National Assembly, not Parliament, deliberates and passes Bills. Later on, a Bill is assented to by the President. This process of assenting to a Bill constitutes Parliament.<sup>28</sup> Secondly, Parliament is constituted when the President is physically present in the House.<sup>29</sup>

In concluding this chapter on the historical development of the Zambian Parliament, it is important to state that the whole period from 1911 when the Advisory council was formed to 1964 when a responsible Parliament was born, what existed was more of an advisory institution to the Northern Rhodesia administration than a Parliament in a

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<sup>26</sup> Article 62 of the Constitution of Zambia, 1991.

<sup>27</sup> Article 63 of the Constitution of Zambia, 1991.

<sup>28</sup> Article 78 of the Constitution of Zambia.

<sup>29</sup> Article 82 of the Constitution of Zambia.



generally accepted sense of that term. During that period “parliament” was constituted in such a way that the government was placed in a position to exercise effective control over it. It was difficult at that time for this institution to control administrative actions.

However, after 1964 Parliament became an independent institution with an obligation to oversee government administration as demanded by the doctrine of checks and balances. Parliament has been, over the years, a watchdog of the electorate over government activities through its control of government’s financial administration; scrutinize Presidential appointments to public offices, control delegated legislation; and also it ensures good policies on the part of government through Parliamentary debates.

## **CHAPTER TWO**

### **THE CONTROL OF GOVERNMENT'S FINANCIAL ADMINISTRATION**

The Constitution of Zambia in Part X deals with the system of National Finance. This Part demands that in administering the country's finances the executive remains effectively accountable to Parliament. This is done in two important respects. In the first instance only Parliament has the legal authority to sanction public expenditure and revenue. Secondly, it is the ultimate responsibility of Parliament to ensure that any expenditure which has been sanctioned is both properly and efficiently spent. It is therefore, the task of this chapter to elaborate how these mechanisms provide an adequate opportunity for the Zambian Parliament to call the executive to account for its control of national finance.

#### **Budget Presentation**

The Minister of Finance is under an obligation to give information to the National Assembly about the general economic condition of the country and the general financial policy of the government. In addition, the Minister responsible for finance is obliged to present before the National Assembly within three months after the commencement of each financial year estimates of the revenues and expenditure of the Republic for that financial year<sup>30</sup>. The process of giving this information to the National Assembly is known as Budget Presentation. The Budget Estimates of Revenues and Expenditures are

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<sup>30</sup> Article 117(1) of the Constitution of Zambia.

based on the figures of estimated expenditures and expected revenues which the various Ministries and government departments send to the Budget office in the Ministry of Finance.

### **Committee of Supply**

After the Minister of Finance has presented the Budget to the National Assembly, then Members of Parliament scrutinizes the government proposals. This is done by allowing them to debate the Budget. The Budget debate resumes after the National Assembly has resolved into the Committee of supply<sup>31</sup>. The committee of supply involves the whole Assembly (that is all the 150 Members of Parliament) debating and examining the level of expenditure proposed in the budget.

The task of the Committee of Supply is to control estimates of public expenditure by the government. Estimated expenditure means expenditure to be incurred in the public service and all enterprises owned wholly or partially by the government. What the National Assembly examines at this stage (Committee of Supply Stage) is the Annual Estimates of Expenditure.

All the Ministries and government departments have individual votes (estimated expenditure) in the Budget. Members of Parliament in the Committee of Supply discusses the vote of each Ministry or department and thereafter they will proceed to approve or reject the vote.

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<sup>31</sup> I. Mwanawina, et al, Transparency and Participation in the Budget Process. Zambia: A Country Report, (2002) p.10.