

7  
(i)

THE SECURITY OF TENURE OF STAFF IN THE LOCAL GOVERNMENT SERVICE

By

NOAH KAPEZA

A dissertation submitted to the University of Zambia  
in partial fulfilment of the requirements for the award of a  
Degree of Master of Laws

The University of Zambia,  
P.O. Box 32379,  
LUSAKA.

JUNE 1988

ABSTRACT

The aim of the study is to analyse the security of tenure of staff in the Local Government Service. This study has been prompted by the numerous complaints from the staff, the Zambia Local Authorities Workers Union, Members of Parliament and Councils themselves about delays in the processing of appointments, confirmation, transfers, secondments, terms and conditions of service and disciplinary cases. There have also been complaints about unfair treatment in the way disciplinary cases have been handled. The aim of the study is therefore to find the reasons for the delays and unfair treatment and find some solutions to these problems. It is an admitted fact that for Council to operate efficiently the staff need to be motivated in their work and one of the ways to motivate them is to offer them security in tenure of office by seeing to it that appointments, confirmations, promotions, transfers, secondments, terms and conditions of service and disciplinary cases are dealt with expeditiously. Further that there is fair treatment in the way disciplinary cases are disposed off.

In order to have a proper perspective of the issues involved in the problem being analysed this will entail the examination of Local Government Service from pre-independence days to date to determine how secure the staff are in their tenure of office.

In the study the term staff will encompass both officers and employees serving in the Local Government.

The study is divided into three parts constituted of six chapters.

Part one comprised of chapter one gives the historical background to the evolution and development of Local Government in Zambia. It also studies the Local Government Service as administered by Councils, Township Management Boards in urban areas and Native Authorities in rural areas and whether the staff employed under these institutions had security of tenure.

Part two dealing with Local Government Service from independence to date is comprised of four chapters namely chapters two to chapter five. Chapter two studies Local Government Service between 1963 to 1974. The Local Government (Officers) Ordinance of 1963 which created the Part-Time Local Government Service Commission and the Provincial Service Boards so as to allay the fears of the expatriate staff about their security of tenure is discussed in this chapter. Also discussed in this chapter are the failures and successes of the Part-Time Local Government Service Commission and the Provincial Service Boards. Chapter three focusses on the Local Government Service between the period 1974 to 1980. The Local Government Act of 1974 which established the Full-Time Local Government Service Commission is analysed. The reasons for the creation of the Full-Time Local Government Service Commission and the failures and successes of the Commission are discussed. Chapter four is concerned with Local Government Service between the period 1980 to 1986 which saw the enactment of the Local Administration Act No. 15 of 1980, which established an integrated district council which combined and replaced the tripartite local

government structure (township, rural and municipal council, the district development committees) and incorporated the party organisation. Under this Act the employees in the Local Government Service and Local Authority Service were "seconded" to the Public Service. The meaning of "secondment" is discussed with reference to decided cases. The role of the Public Service Commission in guaranteeing the security of tenure of staff is also discussed. Chapter five discusses Local Government Service between the period 1900 to date. This chapter is devoted to analysing the recent amendment to the Local Administration Act with the enactment of Act No. 21 of 1966 which gives Councils power to hire, transfer, second, discharge or dismiss staff and whether under the provisions of this amendment the staff have safeguards in their tenure of office.

Part three comprised of chapter six is the conclusion of the study and in this chapter a summary of the conclusions drawn from the study is made and recommendations necessary to enhance the security of the staff are advanced.

## APPROVAL

This dissertation of NOAH KAPEZA is approved as fulfilling part of the requirements for the award of the Master of Laws Degree by the University of Zambia.

Signed: Bojwa .....

Date: 14/3/89

Signed: El .....

Date: 26/10/89

Signed: .....

Date: .....

Signed: .....

Date: .....

DECLARATION

I ...NOAH KAPAZA..... do solemnly declare  
that this dissertation represents my own  
work which has not previously been  
submitted for a degree at this or another  
University.

Signed..........

Date...27/10/89.....

ACKNOWLEDGEMENTS

In writing this thesis I received valuable assistance from numerous people. But I would like in particular to extend my gratitude to the following persons:

Prof L.S. Shimba for ably supervising me in presenting this dissertation. I owe him a lot for having imparted his immense scholarly knowledge to me in this research topic. I also wish to thank the following Lecturers in the School of Law: Mr Deyani and Mr Chanda who greatly encouraged me to bear with the impediments which accompany thesis writing. I also extend my gratitude to my sponsors Ndola Urban District Council for affording me the opportunity to enhance my academic standing. Lastly but not the least I wish to extend my special appreciation to my wife for having looked after the family during my absence, for typing this manuscript and for the encouragement she gave me, especially, during those periods I felt like giving up as I thought the task was insurmountable.

(viii)

DEDICATION

This work is dedicated to my wife,

Jean, my son Jacob, and my late

parents Mr. and Mrs Kapeza for

making me what I am.



## TABLE OF CONTENTS

<u>PRELIMINARIES</u>	<u>PAGE</u>
<del>INTRODUCTION</del>	i
ABSTRACT	ii
APPROVAL	v
DECLARATION	vi
ACKNOWLEDGEMENTS	vii
DEDICATION	ix

### PART ONE

#### INTRODUCTION

#### CHAPTER ONE

<u>HISTORICAL BACKGROUND TO THE EVOLUTION AND DEVELOPMENT OF</u>	1
<u>LOCAL GOVERNMENT IN ZAMBIA</u>	
Introduction	1
(1) The British South Africa Company Rule (1895 to 1924)	1
(A) Local Government in Urban Areas Under the British South African Company Rule	3
(B) Local Government in Rural Areas Under the British South Africa Company Rule	5
(2) Protectorate Rule (1924 to 1963)	9
(A) Local Government in Urban Areas Under the Protectorate Rule	10
(i) The Municipal Corporations Ordinance of 1927	11
(ii) Local Government Service under the Municipal Corporations Ordinance	14
(iii) <b>Townships Ordinance of 1929</b>	15
(iv) Local Government Service under the Mine Townships Ordinance	18
(v) Urban African Housing Ordinance	19
(vi) Local Government Service under the Urban African Housing Ordinance	23
(vii) Mine Township Ordinance	24
(viii) Local Government Service under the Mine Townships Ordinance	37

(B)	Local Government in Rural Areas under the Protectorate Rule	27
(i)	Native Authority and Native Courts Ordinances	29
(ii)	The Barotseland Native Authority and Native Courts Ordinances	32
(iii)	Local Government Service in the Rural Areas under the Native Authority Ordinances	35
CONCLUSION		36

## PART TWO

### LOCAL GOVERNMENT SERVICE FROM INDEPENDENCE TO DATE

#### CHAPTER TWO

<u>LOCAL GOVERNMENT SERVICE BETWEEN THE PERIOD 1963 TO 1974</u>		43
Introduction		43
(1)	Local Government (Officers) Ordinance of 1963	46
(2)	The Local Government Service Commission established under the Local Government (Officers) Ordinance	53
(3)	The Local Government (Officers) Ordinance of 1964	58
(4)	Local Government Service Boards Established under the Local Government (Officers) Act of 1964	61
(5)	Evaluation of the Local Government Service Commission and Local Government Service Boards	63
(6)	Local Government Act of 1965	67
CONCLUSION		67

#### CHAPTER THREE

<u>LOCAL GOVERNMENT SERVICE BETWEEN THE PERIOD 1974 TO 1980</u>		73
Introduction		73
(1)	The Local Government Act of 1974	73

(2)	The Local Government Service Commission established under the Local Government Act of 1974	76
(3)	Evaluation of the full-time Local Government Service Commission	87

CONCLUSION	93
------------	----

#### CHAPTER FOUR

<u>LOCAL GOVERNMENT SERVICE BETWEEN THE PERIOD 1980 TO 1986</u>	102
Introduction	102
(1) The Local Administration Act of 1980	104
(A) District Council	105
(B) District Committee	112
(C) Provincial Council	113
(D) Provincial Secretariat	114
(E) Provincial Committee	114
(2) Local Government Service Under the Local Administration Act of 1980 between the Period 1980 to 1986	115
(3) Evaluation of the Public Service Commission	122
CONCLUSION	128

#### CHAPTER FIVE

<u>LOCAL GOVERNMENT SERVICE BETWEEN THE PERIOD 1986 TO DATE</u>	136
Introduction	136
(1) The Local Administration Act of 1986	137
(2) Provincial Service Boards Established Under the Local Administration Act of 1986	140
(3) Local Administration Service Regulations	144
(4) Evaluation of the Local Administration Act of 1986	157
CONCLUSION	160

## PART THREE

### CONCLUSION

#### CHAPTER SIX

168

#### CONCLUSION

168

##### (1) Summary

(A) Local Government Service Between  
the period 1895 to 1963

169

(B) Local Government Service Between  
the period 1963 to 1974

169

(C) Local Government Service Between  
the period 1974 to 1980

171

(D) Local Government Service Between  
the period 1980 to 1986

175

(E) Local Government Service Between  
the period 1986 to date

177

##### (2) Recommendations

180

#### BIBLIOGRAPHY

PART ONE

INTRODUCTION

## HISTORICAL BACKGROUND TO THE EVOLUTION AND DEVELOPMENT OF LOCAL GOVERNMENT IN ZAMBIA

### INTRODUCTION

The historical background of Local Government in Zambia can be discussed in two stages, namely:-

- (1) the period of British South Africa Company rule in Northern Rhodesia from 1895 to 1924 and
  - (2) the period of protectorate rule by the British Government from 1924 to 1963
- (1) The British South Africa Company (1895 to 1924)

The British Government in the late 1880's and 1890's acquiesced in the Northwards expansion of British influence in Southern Africa<sup>1</sup>. The prime mover behind this northward expansion was Cecil Rhodes whose motives were the prospect of profits plus a belief in the desirability of spreading British rule. The obvious historical model for a suitable instrument, given this mixture of commercial and political motives was the old East India Company which had ruled large areas of India on behalf of the British Government and had made handsome profits in the process - during the 17th and 18th centuries.<sup>2</sup> The British Government accepted, in 1889, Cecil Rhodes's suggestion that a

Chartered Company on the East India lines should be set-up and the bill setting up the British South Africa Company under Royal Charter was finally signed by Queen Victoria on October 29th 1889<sup>3</sup>. Under its Charter the company had wide powers to "make treaties, promulgate laws, preserve the peace, maintain a police force and acquire new concessions" and it was further empowered "to make roads, own, charter ships, engage in mining or other industry, establish banks, make land grants and carry on any lawful commerce or trade or pursuit or business"<sup>4</sup>. The company's sphere of operations was defined as north of Bechuanaland, north and west of Transvaal and west of Mozambique with no northward geographical limit being set. The only notable restrictions were those which precluded the company from entering into any monopolistic agreement and which laid down that its agreements, treaties and concessions must subsequently be sanctioned by the British Government<sup>5</sup>.

On 30th June 1895 the company assumed the administration of Northern Rhodesia<sup>6</sup>. However, the territory was not treated as a **single unit**, the Eastern and Western portions were administered separately and known respectively as North-Eastern and North-Western Rhodesia.<sup>7</sup> Statutory powers of administration were conferred on the company by the North-Eastern Order in Council of 1899 and the North Western Order in Council of 1900, in which year a treaty or alliance between the Barotse nation and the Imperial Government finally regulated relation with the Barotse nation.<sup>8</sup> In 1911 North-Eastern Rhodesia and North-Western Rhodesia were amalgamated by the Northern Rhodesia Order in Council which had the effect of revoking the North-Eastern and North-Western Orders in Council.<sup>9</sup> The British South Africa Company's rule in Northern Rhodesia was terminated in 1924.

(1) (A) Local Government in Urban Areas under the  
British South Africa Company Rule

The British South Africa Company had as one of its objects the expansion of the railway and telegraph system northwards in the direction of Zambezi.<sup>10</sup> The railway line reached Livingstone in 1905. In laying tracks for further progress of the railway line the railway engineers established sidings at intervals of approximately ten miles.<sup>11</sup> At many of these points small communities began to develop which initially consisted of railway workers but as farms producing maize and cattle were established adjacent to the railway line shops and stores came about around the sidings and in the course of time small townships grew.<sup>12</sup> This local government in embryo is the basis upon which local government in the urban areas was founded.<sup>13</sup>

Under its charter the company was required, inter-alia, to promote 'good government'. This was established by a series of proclamations including one which authorised the Administrator to lay down Village Management Boards.<sup>14</sup> By proclamations No. 6 of 1911 and No. 11 of 1913 Village Management Boards were formally established. The Village Management Boards dealt with the maintenance of health, streets and buildings. The local government based on the Village Management Boards were entirely in the hands



of the Europeans. At this stage there were few Africans permanently settled in the Europeans settlements as most Africans were migrants and the policy of the government was to discourage Africans from permanently settling in the European areas. The Europeans believed that:-<sup>15</sup>

"The African would never be anything but a semi - nomadic labourer who would never wish to live permanently in town where he might acquire property, a vote and a European standard of living".

(1) (B) Local Government in Rural Areas under the British  
South Africa Company Rule

During the period when Northern Rhodesia was in the hands of the British South Africa Company the main consideration of the company in the field of African affairs was the maintenance of peace and order. For general administrative purposes the company divided the territory into nine districts (fore-runners of the present Provincial headquarters<sup>16</sup>) each under a European District Commissioner sub-divided into sub-districts (fore-runners of present districts<sup>17</sup>) under European Native Commissioners (later re-named District Commissioners) and to secure the execution of administrative orders the simple and expedient method of working through the tribal chiefs was adopted<sup>18</sup>. However Barotseland was an exception to the rule, the measures adopted for its administration being at every step subject to an agreement between the Barotse Government headed by the Paramount Chief and the Imperial Government (the company acting as its agent)<sup>19</sup>. The policy of the British South Africa Company towards African affairs was of direct rule and the chiefs and headmen were only used as agencies of the government. The idea was to secure the execution of administrative orders through the tribal chiefs but retaining power in the Administrator and the legislation used for this was through the enactment of the Administration of Natives Proclamation of 1916. Thus under section

14 of this Order, every chief was responsible, inter alia, for the general conduct of natives in his tribal area, aiding in the apprehension and securing by all means in his power of offenders and the carrying out of the lawful orders of the magistrate or native commissioner and for the due performance of such other duties as from time to time were imposed upon him by rules made under the proclamation. Similarly under section 15 of the proclamation the headman with regard to the area, village or villages placed under his control was charged, inter-alia, with the good order of the village, the arresting and handing over to the proper authority of any native committing a crime or offence in the village and the due carrying out of lawful orders of the magistrate or native commissioner and the due performance of such further and other duties as were imposed upon him from time to time by rules made under the proclamation.

However the exercise of real power lay in the hands of the Administrator. He exercised over all natives political power and authority subject to such powers as were reserved by Order in Council or Proclamation to the Secretary of State or to the High Commissioner<sup>20</sup>. Be that as it may the Administrator could exercise the powers and functions which may have been or were assigned to the Secretary for Native Affairs<sup>21</sup>. Subject to confirmation

by the High Commissioner the Administrator could appoint in a district one or more chiefs of any native tribe or tribes in that district and could determine whether and to what extent any chief was to be subordinate to or independent of any other chief and whether and to what extent any particular chief was to be in charge of a tribe or a section of a tribe and could determine that tribal area of a tribe<sup>22</sup>. The Administrator further had the power, with the approval of the High Commissioner, to dismiss any chief and could suspend any chief pending the decision of the High Commissioner as to his dismissal or re-instatement<sup>23</sup>. The Chief in charge of a tribe or a section of a tribe held office during pleasure and contingently upon good behaviour and good fitness<sup>24</sup>. The Administrator could with the approval of the High Commissioner call upon chiefs to supply men for the defence of the territory and for suppression of any disorder and rebellion within its borders and could call upon chiefs personally to render such service<sup>25</sup>.

The policy of direct rule exercised by the British South Africa Company in rural areas was summed up by Lord Hailey as follows:-<sup>26</sup>

"The policy of the Chartered Company, save in respect of the Treaty State of Barotseland, was one of direct rule using the existing chiefs as agencies of government, upholding their privileges

so far as these were not incompatible with the company rule; little or nothing was done towards amalgamating petty authorities to enable more effective administrators to develop; and the general effect of the policy was to preserve the outward form of the indigenous system; but to undermine the authority of the chiefs both by making them dependent on the administrative officer and by taxation which obliged large numbers of men to leave their village for considerable period for work."

At first the Company confined itself to the preservation of inter-tribal wars, the collection of tax and the removal of administration of justice from the hands of the chiefs, in 1903 rules for the administration of natives defined the relation between the government and the natives. The amalgamation of North-Eastern Rhodesia took place in 1911 and the former rules were replaced by the Administration of Natives Proclamation of 1916. The Proclamation made provisions for appointments and dismissal of recognised chiefs by government and defined their duties, but the administrative officer was responsible for the general control of his district, and failure to carry out his 'lawful' orders were punishable in the case of chiefs and headmen; natives were required to carry out 'reasonable' orders or requests of both the chief and the native commissioner, and under the provision chiefs were able

to exercise a considerable amount of control over their people in exacting customary free labour in their gardens and even in recruitment of paid labour for government, chiefs were paid a small subsidies by government."

The British South Africa Company was contented with collecting taxes, preventing wars and punishing crime as regard its policy towards Africans.<sup>27</sup>

(2) PROTECTORATE RULE (1924 TO 1963)

In 1924 the British Government took over the Administration of Northern Rhodesia and established it as a Protectorate with a full panoply of colonial institutions - a Governor, Legislative and Executive Councils.<sup>28</sup> The status of Northern Rhodesia became that of a Protectorate by virtue of the foreign Jurisdiction Act, 1890.<sup>29</sup> The Northern Rhodesia Order in Council of 1924 provided the legal order for effecting Protectorate rule in Northern Rhodesia.

In place of the Administrator the Northern Rhodesia Order in Council established the office of the Governor as the Chief Executive Officer and empowered him to exercise on his Majesty's behalf all powers wielded by His Majesty in Northern Rhodesia.<sup>30</sup> These powers enable the Governor to:

"Subject to any directions of the Secretary of state, on behalf of his Majesty constitute and appoint or authorise the appointment of such public officers for the administration of the territory and under such description as he may think fit and prescribe their duties and all such public officers, unless otherwise provided by law shall hold their offices during his Majesty's pleasure".

(2) (A) Local Government in Urban Areas under the Protectorate Rule

The Village Management Boards remained the general pattern of urban development until the 1920s. As earlier stated the Village Management Boards formed under the Proclamations of 1911 and 1913 created the basis for Local Government in urban areas. However, when the British Government took over the administration in 1924 the new government turned its attention to the problems arising from the rapidly developing urban areas.<sup>31</sup> The development of towns was boosted by the discovery of rich copper ores in 1925 which changed the whole economic prospect for the country. The exploitation of rich copper ores required many workers, Europeans and non Europeans. Consequently by 1930 the European and African population working on the mines (Copperbelt) had risen to 4,000 and 22,000 respectively.<sup>32</sup> Further the development of the mines attracted other industries which either depended on or

subject to the approval of the Governor in Council.<sup>37</sup> The Governor in Council, according to section 5 (b) of the ordinance, had powers over the council to declare any township to be a municipality, assign a name to such Municipality, define and alter the boundaries of such municipality, sub-divide or re-sub-divide any municipality into wards not exceeding six and alter the boundaries of or abolish the sub-division existing in any municipality. Under the same provision the Governor in Council had power to determine the number of councillors to be elected to the Council of a municipality being not less than six and not exceeding eighteen and in case a municipality was divided into wards such number was not to exceed three councillors for each ward. He was also empowered to appoint as additional councillors a Government Medical Officer and not more than two other Government Officers to hold office during his pleasure and nominate councillors to office for a period not exceeding one year pending a first election of councillors.

Pursuant to the provisions of the ordinance Livingston Municipal Council was declared in 1928 and Ndola was declared a Municipal in 1932.<sup>38</sup> Livingston Municipal Council consisted of six elected councillors and a district commissioner appointed by the Governor. Ndola Municipal Council consisted of nine elected Councillors and three



government officials (including a district Commissioner) appointed by the Governor.<sup>39</sup> Though district commissioners were part and parcel of urban local authorities they did not perform major administrative functions as they did under the Native Authorities (to be discussed). The urban local government system was instead handed by a Mayor elected from amongst councillors.<sup>40</sup> Urban local authorities were administered by a system of committees as stipulated in section 17 of the ordinance. Under this provision the council could appoint from amongst its members committees of a general or specific nature to examine and report upon any matter or to perform any act which would conveniently be performed by a Committee.<sup>41</sup>

The effect of the Municipal Corporations Ordinance was to introduce a qualitative form of franchise on local government based on the value of property.<sup>42</sup> This put the voting power firmly in the hands of persons owning property and as few Africans owned property they were excluded from participating in local affairs and as a result the voters were entirely Europeans. According to section 33 of the Ordinance persons entitled to be enrolled to vote and to have one vote were every person not being under the age of 21 years who either during the whole period of the six months preceeding the first day of November in any year had been the occupier of land or premises situate within the

municipality which had been assessed at a value of not less than £360.00, or on the first day of November in any year was the owner of land or premises which had been assessed at a value of not less than £300.00. In addition every person not under the age of 21 years who during the whole of the six months immediately preceding the first day of November in any year had been the occupier or on the first day of November in any year was the owner of land or premises in any Municipality in respect of which all the rates imposed on it and then due and payable had been paid was entitled to be enrolled as having additional votes in respect of such land or premises according to the following scales: if such land or premises had been assessed at a value of £1,500 and not exceeding £3,000 one additional vote and if such land or premises had been assessed at a value over £3,000 two additional votes.

(ii) Local Government Service under  
The Municipal Corporations Ordinance

Under section 44 of the ordinance the council had power from time to time to appoint such officers as were necessary except officers whose appointments were governed by the law relating to public health and pay such salaries and allowances to such officers as it determined subject to the provisions of section 24 (relating to the requirement for councils to prepare and forward to the Governor a yearly

budget of revenue and expenditure) and unless it was stipulated otherwise in the contract with or in the appointment of an employee the council could at any time remove such an employee upon notice of not less than one month or in the case of misconduct immediately. Since in the main the councils had independent powers to hire and fire its employees, stipulate terms and conditions of service and to determine salaries to be paid to the employees one can safely say that the Municipal Corporations Ordinance did not provide any security of tenure for the staff.

(iii) TOWNSHIP ORDINANCE OF 1929<sup>43</sup>

Section 10 of the ordinance provided for the establishment of a Township Board of Management and such a board established under the provisions of the ordinance was a body corporate in its name to acquire and hold property movable and immovable, to sue and to be sued in its name, to take criminal proceedings, to execute deeds using an official seal, to enter into engagements and to do other acts necessary or expedient to be done in the exercise of its office but such board had no power to sell, mortgage, alienate or lease any immovable property, without the consent of the Governor.

Under section 5(1) of the ordinance the Governor could by notice in the Gazette appoint a Board of Management as the

Local Authority for any township and the Governor could in a like manner dissolve any board. In the absence of any regulation for that purpose the board consisted of such number of persons residing or having official duties in or near the township as the Governor would appoint and such persons held office during the governor's pleasure.<sup>44</sup> However by Ordinance No. 21 of 1936 the Governor was given power to determine the number of members of the Board to be elected to the Management Board of the Township and also to appoint such additional members as he thought fit provided that the number of additional members was not to exceed the number of elected members. Persons entitled to vote for members of the Board had to have similar qualifications as under the Municipal Corporations Ordinance i.e. being over 21 years of age, owned/occupied land or premises etc.

The Governor in Council according to section 3 of the Ordinance, could by notice in the Gazette declare any area or place to be a Township and declare that all or any parts or sections of the Townships Ordinance should apply to it, define the limits of a Township, direct that any areas or place declared to be a Township should cease to be a Township, declare any area adjacent to a Township to be an Urban District, authorise and require the Local Authority of a Township to exercise and perform within the limits of the Urban District, all or any of the powers and duties which the Local Authority was

authorised or required to exercise or perform within the limits of the Township and apply all or any of the regulations in force in any Township to any Urban District.

Under section II the Governor in Council had further powers to make regulations for the nomination, election, resignation or removal of members of a board and generally for facilitating the exercise of powers and duties conferred upon the board. A local Authority on its own, subject to the approval of the Governor, had power to take all measures necessary for the proper conservancy, lighting and public health of the township and to provide and maintain public latrines, washing places, wells, water supplies, drains, tank ponds, streets, public recreation grounds and open spaces and any other works and conveniences and was charged with the duty of carrying out in the Township the provisions of the Ordinance and regulations made under it.<sup>45</sup>

The Governor was also empowered to appoint any member of the board to be a Chairman and if no appointment was made or in the absence of the appointed Chairman the Senior official of the board would act as the Chairman.<sup>46</sup> Except with the consent of the Chairman no question could be debated or resolution moved which was not concerned with the health, order or good government of the Township or the performance or execution of any powers or duties vested or imposed on the board.<sup>47</sup> Instead of a board the Governor

could by notice in the Gazette appoint and in a like manner determine the appointment of any public officer to be the Local Authority for any township and in the absence of such appointments or when the appointed person was absent from the Township or for any other reason was unable to perform his duties, the Senior District Officer in the Township was the Local Authority for the Township.<sup>48</sup>

(iv) Local Government Service under the Township Ordinance

Initially Section 12(1) of the Townships Ordinance stipulated that a board could appoint a fit and proper person not a member of the board to be the Secretary of the Board and such officers and servants as could be required and could at any time subject to any agreement entered into with such officers or servants discontinue their services and under section 12(2) that a board could subject to the approval of the Governor determine the remuneration to be paid to their officers or servants and could require any officer to give security as the board could think proper for the due execution of his work. Later an amendment made a proviso affecting certain categories of employees to the effect that before any person was appointed to or dismissed from a post involving duties governed by any law relating to public health, the prior approval of the Commissioner to such appointment or to such dismissal had to be obtained.<sup>49</sup>

Initially therefore boards like councils established under the Municipal Corporations Ordinances had independent powers to hire and fire, determine the terms and conditions of service on which their officers served. Boards, however had limited latitudes in these matters as the approval of the Governor and later Native Commissioner had to be obtained when determining terms and conditions of service and with regard to appointments and dismissals of persons to or from posts governed by the Public Health Laws. One can however conclude that on the whole Townships Ordinance did not provide any security of tenure to most of the staff except for the few employees falling under the category cited above.

(v) Urban African Housing Ordinance <sup>50</sup>

From the early days of local government to 1963 participation in local affairs was extended to whites only who were in accordance with the law qualified to vote or were appointed by the Governor. Direct representation on the councils or Township Management Boards was not made possible to the fast growing African population in and around the town. This resulted in disparity in development areas occupied by whites and those occupied by Africans. <sup>51</sup>

This disparity in development brought about discontentment among the African population with the Government gradually becoming aware that the plight of the urban African was a serious one and as a result of this, two Commissions of Inquiry, the Brown Comaittee<sup>52</sup> and Coleman Committee<sup>53</sup> which were charged with task of examining and recommending ways and means by which Africans resident in Municipal Township areas should be entitled to take an appropriate part in the administration of these areas were appointed.

Prior to the appointment of these two Committees the Africans residing in Municipalities and Townships were governed under the provisions of the Urban African Housing Ordinance. An African Housing Area was defined as an area set aside within a municipality or township exclusively for the housing of Africans working and residing in such Municipality or township and included housing commonly known as locations and African suburbs.<sup>54</sup> The Ordinance provided also that any person who employed an African within an urban area should at his own expense provide housing for the employee's wife.

The Urban African Housing Ordinance laid down that the Urban Local Authority must appoint an African Housing Area Board which was representative of the householders of each housing area.<sup>55</sup> The composition of the board as prescribed



in the Urban African Housing (Area Boards) Regulations was that the board would consist of a Chairman (who could either be an African or European) appointed by the Local Authority who held office during the Local Authority's pleasure and an even number of members not less than six (the number to be decided by the Local Authority) who were elected by the householders of the area.<sup>56</sup> Voters had to be over 21 years of age and be householders, that is persons occupying housing for which their employer paid rent, who had lived in that housing area for at least 12 months before election.<sup>57</sup> To be elected to the board a person had to be a voter who owed no money to the local authority in respect of rent or fees, who had not within three years before the election committed any crime involving a sentence to imprisonment without the option of a fine, without freedom and who had not within the eleven months preceding the election forfeited his seat on the ward.<sup>58</sup>

The extent to which Africans could participate in the affairs of the municipality or township was by:-

- (a) representation on the Local Authority African Affairs Committee.<sup>59</sup>
- (b) as members of African Housing Area Boards established under section 19 of the Urban African Housing Ordinance

Although under regulations 11(4) and 12(5) of the Urban African Housing (Area Boards) Regulations, the Local

Authority could delegate powers of Control and revenue collection to African Housing Area Boards very little use was made of these provisions and the boards generally sat in an advisory capacity only.

The Brown Committee even though admitting that the arrangement of local government in urban areas was unsatisfactory as far as the Africans were concerned and that arrangements should be made to allow Africans to participate to a greater extent in local government administration nevertheless ruled out the question of direct representation by the Africans on the local authority as it considered that this would not be in the best interest of the Africans as they had no experience and had first to prove themselves capable in positions of executive and financial responsibility, by serving under the African Housing Area Boards.<sup>60</sup>

The Coleman's Committee (a later Committee) did however recommend that it would be in the best interest of the territory at that stage if the African population in Municipal and Township areas were represented on the Local Authority.<sup>61</sup> The Committee whilst it recommended that Urban African Housing Boards should remain in the local government areas to which the Urban African Housing Ordinance applied nevertheless advocated that Section 27A of the Municipal Corporations Ordinance and Section 8D of

the Townships Ordinance (which called for the appointment of African Affairs Committees) be repealed. The Committee also took note of paragraph 24 of the Report of the Advisory Commission on the Review of the Constitution of Rhodesia (the Honckton Report) which read as follows:-

'Urban Local Government'

- 224: "The present system whereby elections for Municipal and other local councils are limited to rate payers results in inadequate representation of African interest. Even where Africans are elected, this is at present limited to Advisory bodies. We think that Africans should be able to qualify for the vote in Municipal and other Local Council elections. We also think that they should be directly represented on the councils themselves and not merely on Advisory bodies associated with them".

Finally the Government accepted the principles of direct African representation by passing the Local Government (Elections) Ordinance of 1962.

(vi) Local Government Service Under the  
Urban African Housing Ordinance

The Local Authority appointed a full-time Superintendent for each African Housing Area within its jurisdiction. When the number of the residents was very high, Assistant Superintendents could also be appointed provided that the Minister approved. Each hostel under the control of a local authority had an officer appointed to take charge of it.

As earlier observed as regards the local government service under the Municipal Ordinance and the Townships Ordinance the employees had in the main no security of tenure. Since the Local Authority which employed the persons to serve in the African Housing Area was either a Council constituted under the provisions of the Municipal Corporations Ordinance or a Township Management Board constituted under the provisions of the Townships Ordinance, similarly, the staff in the main had no security of tenure as the Councils and Management Boards had independent powers to hire and fire staff, determine salaries, terms and conditions of service.

(vii) Mine Townships Ordinance<sup>62</sup>

The rapid development of the mining industry was responsible for the introduction of a novel form of local authority outside the scope of the Municipal Corporations and Townships Ordinance.<sup>63</sup> The companies developing the mines were obliged to provide houses for their employees and services for the township because there was no other authority capable of doing so.<sup>64</sup> The Mine Townships Ordinance of 1932 made special provision for these new units of administration which were formally established by the Governor at the request of a mining corporation.<sup>65</sup>

Right from the start it was the intention of the government to establish Mine Township Boards as the local authorities for the maintenance of public health and the preservation of good order and government with powers and duties similar to Township Management Boards set up under the Township Ordinance because this would relieve the government of any financial responsibility since the funds would be provided by the mining companies. The Mine Townships Ordinance provided the government with adequate safeguards in that the Governor (and later the Minister of Local Government) could direct that an area cease to be a Mine Township,<sup>66</sup> he could refuse to accept the mining Corporations nominations of a member of a board<sup>67</sup> and since the Public Health Ordinance made the mining township a Health Authority<sup>68</sup> the board had certain statutory obligations to maintain a reasonable standard of public health. The mining corporations similarly accepted the financial responsibility but the amount provided to the management boards was at their discretion and services could be developed at whatever pace suited the corporations, profitability of mining operations being the determining factor. The Management boards were expected to conduct their business along orthodox local government lines, for example, they adopted bye-laws for the conduct of their meetings identical in form to the standing orders of municipalities and townships. However

there were significant differences. For example the Mine Township Boards were not concerned with the raising of revenue or collection of rates and personal levy; the amount they could spend depended on the size of the grant from the mining corporations; the membership of the boards was not representative and they had no responsibility to the electorate.<sup>69</sup> The boards could not take a decision which would not have the approval of the corporations. The main services, such as water, electricity, roads and sanitation were the direct responsibility of the mining corporations through their professional and technical staff.

The main concern of the boards was chiefly in the field of the mine employees - community development recreation facilities, clubs and liquor undertakings.<sup>70</sup> These concerns encouraged the mine management to introduce a degree of local worker-management communication in the mine township through the establishment of 'township councils' elected through wards. These 'councils' were unofficial bodies whose functions were merely to advise the management on various township affairs.<sup>71</sup>

(viii) Local Government Service Under  
The Mine Township Ordinance

Under section 8 of the Mine Township Ordinance the board could from time to time appoint a Secretary and such officers and servants as were required and could agree upon the remuneration to be paid to such officers and servants and the terms of their employment or could terminate such appointments.

It is quite clear that the Mine Township Ordinance did not provide security of tenure for staff as the boards had independent powers to hire and fire employees, determine terms and conditions of service and salaries.

(2) (B) Local Government in Rural Areas under  
the Protectorate Rule

In 1924 responsibility for the administration of Northern Rhodesia territory passed to the British Government. The recommendations of the Commissioners appointed to advise on the delimitation of Native Reserves attracted attention to the importance of allowing the natives a larger measure of self-government in their tribal areas.<sup>72</sup> The appointment of Sir James Maxwell whose previous experience had been in the West Coast paved the way for the introduction of a policy of native administration in accordance with that which was already existing

in other countries under the Colonial office. A conference of administrative officers convened in 1927 made recommendations regarding the introduction of a system of indirect rule and was followed by ordinances constituting Native Authorities and Native Courts introduced in March 1929 and put into effect the following year.<sup>73</sup>

The theory of indirect rule in Africa was peculiarly British. In contrast the French saw as their duty while developing the potential of their colonies to strengthen the links with metropolitan power and turn Africans into Frenchmen.<sup>74</sup> The Portuguese and the Belgians had somewhat similar notions but from before the First World War the British administration had been feeling their way towards another conception; 'For two or three generations we can show the Negro what we can do; then we shall be asked to go away. Then with the feeling that they have better friends in us' thus it was summed up by Sir Frederick Lugard, author of The Dual Mandate in British Tropical Africa.<sup>75</sup> The Imperial power would stay while it could, impart what it felt was good for the indigenous people then retire gracefully - but keeping her trade after her flag had been lowered. Implicit in this philosophy was the development of 'indirect rule' which would guide Africans towards running their own affairs.<sup>76</sup>



(i) Native Authority and Native Courts Ordinances

The two ordinances enacted to foster this policy were the Native Authority Ordinance<sup>77</sup> and Native Courts Ordinance.<sup>78</sup>

The Governor was empowered by the Native Authority Ordinance to appoint chiefs by notice in the Gazette<sup>79</sup> and also to declare the establishment of Native Authority for any given area.<sup>80</sup>

The Governor was empowered by the Native Courts Ordinance to establish a Native Court for a given area.<sup>81</sup>

It was the duty of Native Authorities to maintain order and good government in their respective areas.<sup>82</sup> A Native Authority could issue orders which had to be obeyed by all natives within their area of authority for all or any of the following purposes: - controlling the sale of liquor, controlling gambling, prohibition of acts likely to cause a breach of peace, preventing the pollution of water in any stream and controlling the cutting of trees, preventing the spread of disease, suppression of crime, engaging of public labour for essential public work and services, controlling the migration of natives, registration of births and deaths, controlling the movements of livestock, providing food for travellers, suppression of prostitution, making inter-village roads, assisting in tax collection, controlling the burning of grass or bush, extermination or prevention of tsetse flies and other similar pests, requiring natives to cultivate sufficient land, prohibiting, restricting, regulating or requiring to be done any matter or thing which the native

authority by virtue of any native law or custom for the time being in force and not repugnant to morality or natural justice had power to prohibit, restrict, regulate or require to be done and for any other purpose whether similar to those enumerated above or not, which would, by notice in the Gazette, be specifically sanctioned by the Governor, either generally or for any particular area.<sup>83</sup>

Under the Native Courts Ordinance the native courts had power to exercise over natives such jurisdiction in civil and criminal matters as the Governor in Council granted and such jurisdiction was to be exercised in accordance with rules made by the Governor in Council.<sup>84</sup>

Some definite progress was made under these two ordinances especially on the judicial side but the results were limited by the absence of any training of the chiefs in financial responsibility.<sup>85</sup> Further no provision was made for the establishment of Native Treasuries and chiefs continued to be paid by direct subsidies.<sup>86</sup>

In 1936 new ordinances were enacted<sup>87</sup> following the pattern of Tanganyika (now Tanzania) and Nyasaland (now Malawi) laws and providing for recognition by government of native authorities and native courts to be in accordance with native law and custom but except for the fact that the provision was now included for the establishment of Native

Treasures, the Native Authorities Ordinance of 1936 did not differ materially in substance from the ordinance of 1929.<sup>88</sup> The revenue of native authorities was only sufficient for them to pay their small staff and provide skeleton local government service.<sup>89</sup> The need for change in the functions and financial resources of native authorities was recognised after the Second World War. In the 1950's re-organisation was undertaken on the lines of the Cartmel Robinson Committee appointed by the Governor in 1949. The native authorities then ceased to be purely traditional bodies consisting of chiefs and their traditional elements and were enlarged to include non-traditional elements - senior authority departmental officers, new members nominated or appointed by the chiefs and a sprinkling of elected members chosen by popular vote.<sup>90</sup> These and subsequent changes, however, did little more than bolster a system which was incapable of meeting the growing demands placed on it. The most obvious was the presence of settlers, who were quite resolved that when power was to be handed over to any one they would be the ones to receive it.<sup>91</sup> Then there was the weakness of tribal organisation in many areas, combined with illiteracy and poverty - offering very little to which responsibility (as interpreted by Western minds) could be transferred with assurance.<sup>92</sup> The development of the Copperbelt in the 1920s accentuated these conditions, by provoking a new exodus of

more capable men from their home areas.<sup>93</sup> There was the uncertain response of the few educated Africans; they looked with disfavour on what was regarded 'as a reversion to tribal rule.'<sup>94</sup> Finally the Native Authority financial structure was too weak to make possible any significant expansion of local government services and the native authorities therefore never became effective local government bodies.<sup>95</sup>

(ii) The Barotseland Native Authority and  
Native Courts Ordinances

The Government of the protectorate passed Barotseland Native Authority<sup>96</sup> and Native Courts Ordinance<sup>97</sup> in 1936. The Barotseland Native Courts Ordinance was practically in the same form as the Native Authority Ordinance of 1936 relating to the rest of the Protectorate but it also provided that there should be previous consultation with the Paramount Chief, for example, where the powers of sub-chief were to be cancelled or their orders revoked.<sup>98</sup>

The Barotse Native Courts Ordinance was in the same form as Native Courts Ordinance No. 10 of 1936 relating to the rest of the Protectorate, save that it provided that the access of administrative officers to the proceedings of Native Courts and the power of revising their decisions should be limited to criminal cases.<sup>99</sup> This ordinance

similarly contained a provision that in certain cases, for example the suspension of a member of a Native Court, action should be taken only on the recommendation of the Paramount Chief.

The main backbone of the local government administration during the time of indirect rule was the Provincial and District Administration. These were field stations of the Department of Native Affairs headed by the Secretary for Native Affairs, who had an ex-officio seat in both the Executive and Legislative Councils. The Provincial Commissioner was in charge of the Province and the District Commissioner of the District. In fact more responsibilities lay in the hands of the District Commissioner. The District Commissioner (or District Officer) was a field officer who spent most of his time touring his district to inspect villages, giving advice to and listening to complaints from chiefs and headmen, attending to roads and bridges, collecting taxes and generally keeping in close touch with the native population in his area. As Taylor observes:-<sup>100</sup>

"The whole concept of the old Provincial Administration assumed that the man in the district would get things done on the spot, in light of his own resources and his knowledge of legal and procedural norms. He was not expected to seek higher authority on anything except in most unusual situations. He was expected to take the necessary decision himself and to take responsibility for it."

In fact even though the District Commissioner was junior to the Provincial Commissioner their powers were similar as regards action they could take against the Native Authority. For example, under Section 15(2) of the Native Authority Ordinance of 1929 whenever a Provincial Commissioner or an Administrative Officer (i.e. District Commissioner) was of the opinion that any order issued by a Native Authority ought not to have been issued or ought not to be enforced he could direct the Native Authority to revoke such order or to refrain from enforcing such order or he himself could revoke such order. In some respect the District Commissioner had identical powers with the Native Courts. For example, according to section 10(2) of the Native Authority Ordinance of 1929 a Native Authority knowing of a design to commit an offence by a Native within the area of its authority could arrest or direct the arrest of the native so designing if it appeared to the Native Authority that the Commission of the offence could not be prevented. Any native so arrested, was, unless he was released within 24 hours of his arrest, to be taken forthwith before an Administrative Officer or a Native Court having jurisdiction over him. Section 10(3) stipulated that every Native Authority receiving information that any native who had committed an offence for which he was liable to be arrested without a warrant or for whose arrest a warrant had been issued, was within the area of its

authority, was to cause such native to be arrested and taken forthwith before the Administrative Officer or a Native Court having jurisdiction over him. According to Section 10(4) every Native Authority upon receiving information that property of any description which had been stolen, whether within or without the area of its authority, was within such area, was to cause such property to be seized and detained pending the order of an Administrative Officer or Native Court having jurisdiction in the matter and had to forthwith report such seizure and detention to such officer or court.

(iii) Local Government Service in the Rural Areas under the Native Authority Ordinance

The policy of indirect rule saw the replacement of ex-British South Africa Company staff by experienced District Officers from other territories and by newly recruited graduates with a full Post-graduate training in diverse skills of colonial administration. By this process the point of contact between the government and the governed was increasingly occupied by better educated, specifically trained and generally more professional administrators. They were no longer servants of a commercial company but members of a public service with long traditions and high standards.<sup>191</sup> The District Commissioner

seconded to the Native Authority staff from the main civil service stream.

Section 15 of the 1924 Order in Council stipulated that these officers held office at Her Majesty's pleasure. This very fact meant that the officers did not have security of tenure as their service could be dispensed with at any time. Their terms and conditions of service were also stipulated independently by the Governor. The Native Authorities Ordinance remained operational until 1965 when the local Government Act was passed.

#### CONCLUSION

Local Government in Zambia between the period 1895 to 1963 developed along two separate lines, that is Urban Local Authority and Rural Local Authority.

In the Urban areas local Government service was administered through Councils, Township Management Boards and Mine Township Boards. In the rural areas the service was administered through Native Authorities. It has been revealed in this Chapter that the staff in the Local Government Service in the urban areas had no security of tenure as the employing agencies, Councils, Township Management Boards and Mine Township Boards had a free hand in engaging and dismissing staff and in determining terms and



conditions of service. In the rural areas the staff was seconded from the main civil service stream and they also did not have security of tenure as they held office at Her Majesty's pleasure.

It is worth noting that the ten year period of the Federation of Rhodesia and Nyasaland did not affect the basic form of local government as described above.

REFERENCES

1. Northern Rhodesia: The British South Africa Company's Claims to Mineral Royalties in Northern Rhodesia (Lusaka: Government Printers 1964) p. 6
2. ibid.
3. ibid.
4. ibid p. 7
5. ibid.
6. Zambia: Decentralised Government: Proposals for Integrated Local Government Administration (Lusaka: Government Printers, 1979) p. 3
7. Rita Hinden (E): Local Government and the Colonies: A report to the Fabian Colonial Bureau (London: Bradford and Dickens 1950) p. 168
8. ibid.
9. Chaloka S. Beyani: The Legal Framework for the Decentralised System of Local Government in Zambia (Lusaka: University of Zambia 1984) Master of Laws thesis.
10. V.W. Hiller (E): The Story of Cecil Rhodes Rhodesia Centenary Exhibition 1953-1953 (Glasgow: Manchester University Press 1980) p. 163
11. A. Greenwood and J. Howell: 'Urban Authorities' in W. Tordoff (E) Administration in Zambia (Manchester: Manchester University Press 1980) p. 163
12. ibid.
13. Chaloka S. Beyani: po. cit p. 12
14. Proclamation No. 1 of 1907
15. L.H. Gann: The Birth of a Plural Society (Manchester: Manchester University Press 1958) p. 162
16. Zambia: Decentralised Government: Proposals for Integrated Local Government Administration op cit p. 3

17.     ibid.
18.     Rita Hinden (E): op cit p. 170
19.     ibid. p. 171
20.     Administration of Native Proclamation of 1910 S3
21.     ibid. S3
22.     ibid. S4
23.     ibid. S6
24.     ibid. S5
25.     ibid. S7
26.     Rita Hinden (E) op cit quoted from Lord Haileys  
          An African Survey 1938 pp 452-3
27.     J.W. Davidson: The Northern Legislative Council  
          edited by Margery Perhan (London:  
          Maffield College 1947) p.26
28.     Alan Greenwood and John Howell: op cit p. 163
29.     Chaloka S. Deyani: op cit p. 12
30.     Northern Rhodesia Order in Council S6 and S6
31.     Alan Greenwood and John Howell: op cit p. 163
32.     Andrew Roberts: A History of Zambia (London: Heinemann  
          1976) P.106
33.     George H. Pelekanoyo: Local Autonomy and Central Control  
          in Zambia Urban Authorities  
          (Lusaka University of Zambia, 1977)  
          Master of Arts Thesis in Political  
          and Administrative Studies p. 26
34.     ibid.
35.     Ordinance No. 16 of 1927
36.     ibid. S3
37.     ibid. S57 and S59
38.     Rita Hinden (E): op. cit pp 182-183
39.     ibid.

40. Ordinance no. 16 of 1927 S7(3)
41. Chaloka S. Beyani: op cit p. 17
42. George H. Pelekamoyo: op cit p.27
43. Ordinance No. 53 of 1929
44. ibid. S5(2)
45. ibid. S14
46. ibid. S5(3)
47. ibid S7(1)
48. ibid. S13
49. See Amendments No. 18 of 1939 and No. 3 of 1951  
By then Cap 26 was re-numbered Cap 120
50. Chapter 234 of the Laws of Northern Rhodesia
51. George Pelekamoyo M: op cit p. 25
52. Northern Rhodesia: Committee Appointed to Examine  
and Recommend Ways and Means by which Africans resident  
in Municipal and Township Areas should be enabled  
to take an appropriate Part in the Administration of  
these Areas (Lusaka: Government Printers 1957)
53. Northern Rhodesia: Committee Appointed to Inquire into  
the Participation of Africans in Local Government in  
Municipal and Township Areas (Lusaka: Government  
Printers 1960)
54. H. Mitchell: Basic Information of the Structure of  
Local Government in Northern Rhodesia at 31st December 1962  
(Salisbury: University of Rhodesia and Nyasaland 1963) p. 15
55. ibid.
56. ibid.
57. ibid.
58. ibid.

59. See S25(2) of Municipal Corporations Ordinance
60. See P.5 of the report
61. See p.19 of the report
62. Ordinance No. 11 of 1932
63. Alan Greenwood and John Howell: op cit p.164
64. ibid
65. Ordinance No. 11 of 1932 S3(1)
66. ibid. S3(2)
67. ibid. S6
68. ibid. S17
69. Alan Greenwood and J. Howell: op cit p. 165
70. ibid.
71. ibid. p. 166
72. Rita Hinden (B) : op cit p. 171
73. ibid. p. 172
74. Richard Hall: Zambia (London: Pall Mall Press Limited 1965) P. 104
75. ibid.
76. ibid.
77. Ordinance No. 32 of 1929
78. Ordinance No. 33 of 1929
79. Ordinance No. 32 of 1929 S(3)
80. ibid. S7
81. Ordinance No.33 of 1929 S7
82. ibid. S8
83. ibid. S12
84. Ordinance No. 33 of 1929 S3(5)

85. Lord Hailey: Native Administration in the British African Territories (London: Her Majesty's Stationery Office 1950)  
Part II p. 83
86. ibid.
87. Ordinance No. 9 of 1936 Native Authority Ordinance  
(to prescribe the powers and duties of Native Authorities which applied to all the Protectorate except Barotse and Ordinance No. 25 of 1936 (An Ordinance relating to Native Courts) which also applied to Barotse Province.
88. Lord Hailey: op cit p. 183
89. W. Tordoff: 'Local Government in Zambia' in Local Government in Southern Africa by W.D. Vosloo, E.P. Katze' and W.J.C. Jeppe (Cape Town: Rand R. Academic (PTY) Limited 1974) P. 273
90. ibid.
91. Richard Hall: op cit p. 105
92. ibid.
93. ibid.
94. ibid.
95. W. Tordoff: op cit p. 273
96. Ordinance No. 25 of 1936
97. Ordinance No. 26 of 1936
98. Lord Hailey: op cit p. 90
99. ibid.
100. P. Lawrence Tayl : District Administration The Colonial Pattern and Post Colonial Pattern  
(Lusaka: National Institute of Public Administration 1972) p. 14
101. ibid p. 6

PART TWO

LOCAL GOVERNMENT SERVICE FROM INDEPENDENCE

TO DATE

## CHAPTER TWO

### LOCAL GOVERNMENT SERVICE BETWEEN THE PERIOD 1963 TO 1974

#### INTRODUCTION

By 1963 self-government had been granted to Northern Rhodesia by the Imperial government in Britain. The attainment of self government left many Europeans apprehensive as to what the future held in store for them. These fears heightened when it became clear that Northern Rhodesia would become independent under majority rule and with an enfranchised African population.

In the Main civil service where it had been decided by 1959 to establish local conditions of service in an effort to set up a single civil service it had been hoped that many European civil servants as well as Africans would transfer to local conditions of service. However, this was not to be case for the apprehensions on the part of Europeans about working for an African dominated government was reflected in the small number of Europeans transferring to local conditions.<sup>1</sup> Given the prospect of African political domination most Europeans were unwilling to make the commitment to permanent residence and the life-time career in Zambia that the acceptance of local conditions implied.<sup>2</sup>



The Europeans in the Local Government Service suffered under similar apprehensions as the following case illustrates. In Howard and Others Vs The City Council of Lusaka<sup>3</sup> the Court of Appeal<sup>4</sup> had to consider whether a contract between a local authority and certain of its employees providing for certain terminal benefits was within the powers of the Council to enter as being something which was incidental to the powers of the council to engage staff. The facts of the case were as follows:-

A number of officers of the Lusaka City Council, fearing for their jobs as a result of the expected re-organisation of local government administration in Zambia which was to follow the break-up of the Federation of Rhodesia and Nyasaland in 1963 negotiated an agreement with the Council under which they were to receive very lucrative benefits in addition to those they were already entitled to under the then existing legislation, if they were prematurely retired. This agreement was not approved by the Minister as was required under section 76(1) (2)<sup>5</sup> of the Municipal Corporations Ordinance. When the appellants sought to enforce the agreement against the Council, the High Court held that in the absence of the approval of the agreement by the Minister, the payments claimed would be ultra-vires the statutory powers of the Council.

On appeal, the appellants tried to avoid the complications occasioned by the absence of the approval<sup>6</sup>. They instead advanced the argument (among others) that the matter for which the Council had contracted was incidental to the matters for which the Council had express authority under section 61 of the ordinance, which provided:

"The Council shall from time to time appoint such officers as may be necessary and pay such salaries and allowances to such officers as it may determine"

After a lengthy review of the legislation ~~Justice~~ Baron J.P. held that "salaries and allowances" did not include the benefits which had been contracted for and in the light of the legislation, it could not even be said that the power to pay the benefits under the agreement was reasonable incidental to the power to engage staff. The only way the agreement could have been valid in the sense of being intra-vires the Council to contract was if it could be brought under Section 75(1) (2). On a proper construction of this section it is obvious that, apart from the approval of the Minister, the Council had power to enter into the agreement. However, in the absence of the approval, the conclusion was inevitable that any payments the Council would have made under the agreement would have been ultra-vires its powers.<sup>7</sup>

As a result of the apprehensions of the Europeans in the Local Government Service there were calls that measures to be introduced in the Legislative Assembly to re-assure officers in the Local Government Service about their future. The fears were also compounded by the fact that each Local Authority had its own terms and conditions of service. This was the situation which prevailed before the coming into effect of the Local Government (Officers) Ordinance No. 71 of 1963.

1) The Local Government (Officers) Ordinance of 1963

The preamble to the ordinance read that it was:-

"An Ordinance to make provisions for the appointment of officers and engagement of employees of local authorities, qualifications for office, terms and conditions of service, tenure of officers terms and functions of officers, the establishment of the Local Government Commission, its functions and power---".

When introducing the Bill in the Legislative Council, the then Minister of Local Government and Housing Mr. K.D. Kaunda (as he then was) had this to say<sup>8</sup>:-

"Honourable members have already made reference in this house to measures necessary to re-assure local authorities officers about their future and stabilise their position. Government does realise that local authority officers have a feeling of insecurity and doubt about their future in the

local government service. These officers fear that under the newly established local authorities they may be dismissed without reasonable excuse. Sir, I feel that this fear is to a large extent unfounded but I recognise that it exists and I wish to allay it".

One of the reasons behind the enactment of the ordinance which only applied to Municipalities and Townships established under the Municipal Corporations Ordinance and the Townships Ordinance respectively was to allay fears of European officers about their future in the Local Government Service. However, even African officers were covered under the provisions of the Ordinance as long as they held positions intended to be protected by the legislation. As a measure of forestalling this fear there was established the Local Government Service Commission which, it was hoped, would provide a sound basis for the future in redressing problems relating to local government staff.

Under section 4(1) of the ordinance it provided that subject to the provisions dealing with qualifications and disqualifications of officers, every City Council, Municipal Council and Municipal Board could appoint fit persons to fill the Offices of Town Clerk, Treasurer, Engineer and Medical Officer of Health (including their deputies) and could also employ such other Officers as were necessary for the efficient discharge of the functions of the council or board, as the case may be, and could subject to the provisions

of section 32 of the Municipal Corporations Ordinance (relating to the requirement of council to prepare and forward to the Governor a yearly budget of revenue and expenditure for approval) pay to those Officers such salaries or on such salary scale and such emoluments as it may, with the approval of the Commission under section 35, determine.<sup>9</sup>

Similarly, every Management Board subject to the provisions dealing with qualifications and disqualifications of officers could appoint a fit person to fill the office of Secretary and could employ such other Officers as was necessary for the efficient discharge of the functions of the board and could subject to the provisions of section 16 of the Townships Ordinance (relating to the requirement for a local authority to prepare and forward to the governor a yearly budget of revenue and expenditure for approval) pay to those Officers such salaries or on such salary scale and such emoluments as it may, with the approval of the Commission under section 35 determine.<sup>10</sup>

According to Sections 4(2) and 5(2) a vacancy in the office of Town Clerk, Treasurer, Engineer, Medical Officer of Health or Secretary had to be filled within six months of its occurrence and section 22(1) set out that where a local authority failed to make an appointment to fill a

vacancy in the office of Town Clerk, Treasurer, Engineer, Medical Officer of Health or Secretary within the specified period of 6 months the Local Government Service Commission after serving a notice in writing on the local authority of its intention to do so, could be entitled to make the appointment itself.

The Local Government Service Commission nearly exercised this option with regard to the office of Town Clerk for Lusaka City Council as the Council had failed up to 30th September 1967 to appoint a Town Clerk after the dismissal of Mr. Eric Dixon on 31st March 1967. The Commission, however, decided not to make an appointment until the findings of the Commission of Inquiry into the affairs of the Lusaka City Council had completed its findings.<sup>11</sup>

Every appointment to fill the office of Medical Officer of Health or the office of health inspector was subject to the approval of the Minister.<sup>12</sup>

Section 15(1) stipulated that a local authority could at any time terminate the appointment of an officer upon giving not less than one month's written notice unless it was otherwise stipulated in the contract with or in the terms of appointment of the Officer and under section 15(2) a local authority could at any time suspend or dismiss an Officer without notice for misconduct notwithstanding anything contained in the contract with or in the terms of

However Section 15 above was subject to the provisions of section 16 and 17 which were meant to safeguard the tenure of office of the Officers. Thus under section 16(1) a specified Officer, who in this case meant a Town Clerk, Treasurer, Engineer, Medical Officer of Health, Secretary and such other Officer of similar status as may with the approval of the Commission be designated by a local authority could not be removed from office until and unless two conditions were satisfied. Firstly, the removal had to be decided upon by a majority of the councillors or members present at a meeting of the local authority convened for that purpose and the number of councillors or members voting in the majority was not less than a majority of the whole local authority. Secondly the Commission, after considering any representations made to it by the Officer and the local authority had notified the local authority which appointed such Officer of its approval of the removal of such Officer.

As was noted by the Commission of Inquiry into the affairs of the Lusaka City Council<sup>13</sup> the termination of the appointment of Mr. Eric Dixon as Town Clerk of the City Council of Lusaka on 30th March 1967 was completely irregular. The resolution to terminate his services was unlawful and ultra-vires the Council. It contravened the provisions of section 16 of the Local Government (Officers) Ordinance as in the first place it was not a meeting 'specifically

convened' for the purposes of removing Mr. Dixon from office, nor was there a proper majority present. Secondly it could not terminate the services of Mr. Dixon with effect from the 31st March 1967 nor indeed at all until his removal had been approved by the Local Government Service Commission after due consideration of any representations made to the Commission by Mr. Eric Dixon and the Council and the Commission had notified the Council of its approval. Although subsequent steps were taken to regularise the dismissal, it is extremely doubtful if his services as Town Clerk were lawfully determined.

According to section 16(2) before approving the removal from office of a Medical Officer of Health the Commission had to consult the Minister. An officer holding the office of Deputy Medical Officer or Health Inspector could not be removed from office unless and until such removal had been approved by the Commission after consultation with the Minister.<sup>14</sup>

Under section 16(4) (a) pending the granting or refusal of any approval required by sections 16(1), 16(2) and 16(3) for the removal of any officer mentioned in these sections the Local Authority could suspend the Officer from the duties, salary and emoluments of his office for misconduct and the local authority suspending any Officer from the duties and emoluments of his office was required to forthwith report such suspension together, with the reasons to



Commission.<sup>15</sup> Where such approval as was required was granted for the removal of an officer suspended such Officer was deemed to have been removed from his office from the date of his suspension<sup>16</sup> but where such approval was not granted for the removal of the Officer suspended such Officer was immediately entitled to the salary and emoluments for the period of the suspension as if he had never been suspended

Section 17(1) of the ordinance stipulated that subject to the provisions of section 17(3) and 26(3) where the appointment of an Officer of a local authority other than a specified Officer or a Deputy Medical Officer of Health or a Health Inspector was terminated for any reason, he could appeal in writing to the Commission against such termination of his appointment. The Commission would after consideration of an appeal made and of any representation thereon made by the local authority either confirm or set aside the decision of the local authority terminating the appointment and where such decision was set aside the local authority was obliged upon being notified by the Commission, retrospectively to the date of termination, to reinstate the Officer concerned in his former office **on the same terms and conditions as those on which he was employed at the time his appointment was terminated.**<sup>17</sup>

However no appeal could be determined by the Commission unless it was lodged with the Chairman of the Commission within one month of the receipt by the Officer of notice of termination of his appointment or such longer period as the Chairman of the Commission would in any particular instance allow.<sup>18</sup> Appeals were set down for hearing by the Commission within fourteen days of the date of being lodged or within such longer periods as the Chairman of the Commission determined.

As regards employees, by virtue of section 29 a local authority could engage such employees as were necessary for the discharge of its functions and pay to them salaries, wages and allowances as it determined (as long as the revenue and expenditure was approved by the Governor). The Local Authority had a free hand in hiring, dismissing, determining terms and conditions of service for its employees.

2) The Local Government Service Commission established under the Local Government (Officers) Ordinance

The Local Government Service Commission established under section 30 of the Ordinance consisted of five members, namely a Chairman who was appointed by the Governor, two other members appointed by the Governor, one member to represent local authorities appointed by the Governor from nominees submitted by the local authorities or associations

thereof and one member to represent Officers of local authorities appointed by the Governor after consultation with such other persons or associations of persons as appeared to the Governor to represent the interest of such Officers. The members of the Commission held office for a period of three years from the date of appointment<sup>19</sup> but however, a person who ceased to be a member of the Commission was eligible for re-appointment.<sup>20</sup> Whenever it appeared to the Governor that a member had contravened the provisions of Section 51(B) (being absent from all meetings of the Commission held during a period of three consecutive months without leave of the Governor) or that he was unable or unfit to discharge the functions of the Commission or was unable to continue as a member the Governor could remove him from office as a member of the Commission.<sup>21</sup> A member could by notice in writing addressed to the Governor resign his office as a member of the Commission.<sup>22</sup>

The Commission was empowered to appoint after consultation with the Governor a Secretary whether full-time or part time and could also appoint such other staff as they could from time to time consider necessary for the discharge of the functions of the Commission.<sup>23</sup> The Secretary of the Commission was not a member of the Commission nor did he have any vote in its deliberations.<sup>24</sup> According to section 55 the functions of the Commission were to consider terms and conditions of service including salaries or scales

and emoluments on or at which it was proposed by a local authority that Officers should serve in that local authority. The Commission had the power to approve such terms and conditions or to reject them and once rejected no such terms and conditions would have any force or effect. The Commission had also power to hear and determine any appeals brought before it under the provisions of sections 17 and to consider and determine any dispute referred to it under section 28 that is where they arose a dispute between a local authority and any officer in its service connected with his employment and if not otherwise determined was referred to the commission by any party and if any party was dissatisfied with the determination he could within 30 days of such determination appeal to the High Court on a question of law but not a question of fact. The distinction of the Commission powers under sections 17 and 28 of the Ordinance was given legal effect in the case of Chipulilo V3 Lusaka City Council<sup>25</sup>.

In this case the appellant was dismissed from his employment by Lusaka City Council. Instead of appealing to the part-time Local Government Commission he twice wrote to the Minister of Provincial and Local Government. The two letters were forwarded to the Commission. Unfortunately it was by then already out of time for the appellant to file an appeal. The Commission nevertheless requested the

appellant to file an affidavit giving the reasons why he should be allowed to appeal out of time. The affidavit apparently had no merits and was therefore unsuccessful. On 10th December 1970 the Minister wrote to the Commission on behalf of the appellant. The Chairman of the Commission then permitted the appellant to file a second affidavit after which he was allowed to appeal against the dismissal despite the fact that the time for appeal had long since expired. The appellant based his appeal to the Commission on section 28 instead of section 17 of the Ordinance. Section 17 read in part:-

"(1) Where the appointment of an Officer of a local authority ----- is terminated for any reason, he may appeal in writing to the Commission".

Section 28 on the other hand, read in part:-

"(1) If there arises between a local authority and any Officer in its service any dispute connected with his employment the dispute if not otherwise determined, may be referred by any party to the dispute to the Commission for determination".

Quite clearly section 28 was a wrong section for Chipulilo's appeal. The Commission declined to consider the appeal on the ground that it was filed under a wrong section. Chipulilo appealed to the High Court. A rather ingenious argument was advanced on behalf of the appellant

to the effect that if the appellant was wrongfully dismissed, then the appellant could be regarded as still being an Officer in the service of the Council and therefore the appeal to the Commission was properly filed under section 20. Justice Cullinan saw some merits in the argument but however, since in the earlier unreported case of Brantley Vs Lusaka City Council 1970/HP/9 a Deputy Registrar had said appeals of this type had to be brought under section 17, he held that on the basis of precedent the appeal to the Commission ought to have been filed under section 17. However, he went on to decide that this procedural irregularity did not deprive the Commission of its jurisdiction as it had in one respect, appeared to have considered Chipulilo's case to fall under section 17. (The Commission had no power to extend the time within which appeals had to be filed under section 20. This power only existed under section 17.) The judge said:-<sup>26</sup>

"The Commission were ill-advised not to overlook a procedural irregularity and continue to deal with the appeal. Not only must justice be done it must be seen to be done. At the eleventh hour of the proceedings before the Commission it was not seen to be done".

He therefore ordered the Commission to hear the appeal. The Commission was also empowered to perform such other functions for the purpose of the Ordinance. Further it was empowered to conduct examinations, interviews and investiga-

tions it might have considered necessary for the proper discharge of its functions under the Ordinance.<sup>27</sup> Subject to the concurrence of the Governor the Commission was also empowered to make such rules as related, amongst other matters, to appointment to any specified office, the procedure and practice for hearing disputes and appeals but before doing so the Commission was obliged to consult with the Local Authorities affected by such regulation.<sup>28</sup> The Ordinance also provided for matters relating to offences for giving false information to the Commission<sup>29</sup> or to any member thereof, the disclosure of communication without the consent of the Minister,<sup>30</sup> the protection of the members from action or other proceedings which arose from the exercise of their powers under the Ordinance,<sup>31</sup> the prohibition of disclosure of information to unauthorised persons<sup>32</sup> and certain offences of attempting to influence the members.<sup>33</sup>

3) The Local Government (Officers) Ordinance of 1964<sup>34</sup>

When the bill in respect of the above amendment was presented in the Legislative Assembly for second reading the Minister of Local Government observed that one of its aims was to make provisions for the staff of rural local authorities constituted under the Native Authorities Ordinance to be given the same protection as the Officers of Urban local authorities by means of

establishing provincial boards to deal with them.<sup>35</sup> It had become apparent that the staff of native authorities had been omitted when the Local Government (Officers) Ordinance of 1903 was passed.

The other reason for the amendment was to forestall the development of a wages spiral which it was feared was imminent due to local authorities' stiff competition against one another for the services of qualified Officers who were in short supply in the country. It was envisaged that the development of wages spiral already started by local authorities and which might eventually have the effect of unbalancing the wage structure both in the private sector and public sector of the national economy could only be stopped if one body became responsible for the determination of salaries, wages and other conditions of service. Wages determination would therefore be used in establishing a national pattern of wages for a great number of people of all races.<sup>36</sup>

The amendment changed the role of the Local Government Service Commission. Instead of playing the passive role limited to approving or disapproving matters initiated by the local authorities it became the initiator. It was empowered to:-<sup>37</sup>

Establish the salaries or salary scales and other conditions of service relating to offices held by Officers employed by local authorities and the Commission may in the exercise of the foregoing function



establish salaries or salary scales and conditions of service generally or may establish different salaries or salary scales and conditions of service in relation to a single authority or a group of local authorities or in relation to a single Officer or group of Officers or in relation to an individual Officer or group of Officers and may establish alternative salaries or salary scales and conditions of services as aforesaid and may do so from time to time as the Commission sees fit and any determination of the Commission made or in pursuance of this paragraph may be made with retrospective effect to a date not later or earlier than the 19th of June, 1964".

As was said by Stanley:-<sup>38</sup>

"It is a derogation from the autonomy of local authorities, something, Sir, which I and those who served on local authorities have been trying over the years to avoid, indeed we have been going the other way trying to persuade Government that local authorities should have increased autonomy. There is little left now for local authorities to do; they are not even able to determine the conditions under which their own staff will serve".

"I believe it would have been possible for the Commission to have established salary scales and conditions of service for the more senior Officers who are generally professional or technical men, but the Hon. Minister, in his definition of "Officer" has now widened the field so that the only people who are not covered, as I understand it, are those who are on daily pay and those are comparatively few as a class of persons. I believe the Hon. Minister has with the passage of the bill destroyed almost entirely the National Union of Local Authority Workers because the union will only be able to negotiate with the employers on daily pay, everybody else can and probably will fall in the definition of either

managerial, professional, technical or clerical, particularly when one has regard to the words "technical and clerical".

(4) Local Government Service Boards established under the Local Government (Officers) Act of 1964

The functions of the Local Government Service Boards were to exercise the powers of the Commission in relation to personnel employed by the native (later re-named rural) authorities. In the case of Joseph Gereta Chikuta VS Chipata Rural Council<sup>39</sup> which was decided on other issues, the Supreme Court of Zambia held that under the Local Government (Officers) Act Chapter 477 of the Laws of Zambia the Respondents could only dismiss the appellant (a specified Officer) if their recommendations to that effect was accepted by the Eastern Province Local Government Service Board and further that the board had no inherent power to dismiss the appellant in the absence of a resolution from the respondents.

The Minister would, after consultation with the Chairman of the Commission, by order published in the Gazette, establish such number of Local Government Service Boards as he deemed necessary or expedient<sup>40</sup> but a board was not authorised to exercise its functions in respect of any city or Municipal council<sup>41</sup>. While the Commission would exercise its functions in respect of urban areas, for administrative convenience the boards were organised on provincial lines.

In addition to establishing the salaries or salary scales and other conditions of service relating to offices held by Officers employed by local authorities<sup>42</sup> the boards were required to consider, confirm or disallow all appointments, promotions, transfers, dismissals and discharges of Officers employed by local authorities and no such appointments, promotions, transfers, dismissals or discharges of Officers would have effect unless confirmed by the boards.

The senior staff of the native (later renamed rural) authorities were appointed by the Provincial Local Government Service Boards.<sup>43</sup> The Boards operated independently of employing authorities in handling disciplinary actions and working out conditions of service affecting the Officers and therefore gave the latter some sense of security.<sup>44</sup>

The Provincial Local Government Service Boards like the Local Government Service Commission had a membership of five persons. However its members were appointed by the Minister instead of the Governor. The composition was namely, a Chairman appointed by the Minister after consultation with the Chairman of the Commission, one member to represent the local authorities to which such board related appointed by the Minister from nominees submitted by such authority and one member to represent Officers and employees of the Local authorities to which such board related appointed

by the Minister after consultation with such persons or associations as appeared to the Minister to represent the interests of such Officers and employees.

The provisions as regards the tenure of office of members of the boards<sup>45</sup> appointed of Secretary and staff of the boards<sup>46</sup> and exercise of powers of the boards<sup>47</sup> were identical to those relating to the Local Government Service Commission.

(5) Evaluation of the Local Government Service Commission and Local Government Service Boards

Even though the provisions of the Local Government (Officers) Ordinance contained adequate safeguards to ensure confidence in the staff of the local authorities as regard their security of tenure however the above two bodies which were watchdogs in seeing to it that these provisions were abided by or implemented failed in their task. Since the commencement of the Local Government (Officers) Ordinance on the 19th June, 1964 the power to determine local authority salaries, salary scales and conditions of service had been vested in the Local Government Service Commission and Local Government Service Boards. The Local Government Service Commission and Local Government Service Boards did not seem to have applied themselves diligently to the determination of the salary and salary scales. Even the determination of conditions of service was hardly done. As was noted by the

Commission of Inquiry into the salaries, salary structures and conditions of service relating to among other bodies, staff of Local Authorities chaired by J.M. Mwanakatwe:-<sup>48</sup>

"It is, unfortunately, the case that despite the fact that a Local Government Service Commission has been in existence since 19th June 1964 - no concerted effort has yet succeeded to introduce standard conditions of service for local authority personnel.

The Commission, as originally constituted does not appear to have felt any immediate impetus towards this end and its first report, issued on the 28th December 1964 reserved a number of conditions of service to the discretion of individual local authorities, pending further consideration at a later stage. But the Commission is a part-time body only and although it has issued fifty or more circulars advising local authorities of new determinations or of amendments to existing new ones, no standard conditions of service have yet appeared. We believe that there is urgent need for these to be prepared and issued on the same lines as the General Order for the Civil Service and we recommend, as a priority task, for the new Full-Time Commission, that this be done. We understand that a preliminary draft is already in existence and it has, indeed been declared policy since 1972 that such a document should be prepared (joint circular LGH4/72 and GD2/72, page 2 para 5 issued by the Ministry of Local Government and Housing and the Local Government Service Commission on the 14th April 1972 refers). Meanwhile the picture remains a confusing one and while some conditions of service are the same as those applicable to the Civil Service there are differences in various others".

Further the Part-Time Commission and Provincial s proved incapable of handling the large number disciplinary cases presented to them: among the ills there were wide disparities of staffing levels recruitment procedures with 'local politics and nal connections influencing decisions'.<sup>49</sup> As was ed by the Chairman of the Full-Time Local Government ce Commission some employees had no qualifications in the government service and were employed to represent in interests. He further said that he did not know one of these Officers were employed but observed the decisions were made by Councils themselves and imes local politics and personal connections took ity when employing staff.<sup>50</sup>

The Local Government (Officers) Act was repealed 74 and with it saw the demise of the Part-Time Government Service Commission and Provincial Boards.

The Local Government Act of 1965

presenting the bill in the National Assembly the ter of Local Government and Housing said:-<sup>51</sup>

"The object of the Act was to consolidate as far as possible the various provisions relating to local authorities contained in the Municipal Corporations Ordinance, the Townships Ordinance, the Native Authority Ordinance and the Local Government (Elections) Ordinance and thus bring into one Act the law relating to all local authorities in Zambia except 'ine Township'".

It was possible to provide in the bill for the repeal of the Native Authority Ordinance and the Barotse Native Authority Ordinance but it was not found possible at that time to repeal completely the Municipal Corporations Ordinance or the Townships Ordinance in as far as the provisions relating to street works, rating and valuations and fire services which were peculiar to urban authorities were concerned. Those provisions were retained under existing legislation.

Under the Native Authority Ordinance about 75 Native Councils were created.<sup>52</sup> The 1965 Act formerly repealed the Native Authority and Kindred ordinances and recognised as a rural council every council which had been constituted as a native authority immediately prior the commencement of the Act.<sup>53</sup> The existing native authorities were reduced and re-grounded into some thirty rural councils.<sup>54</sup> Under this Act the local authority structure was a one tier structure with each authority autonomous in its own area and no local authority subordinate to another.

There was adult suffrage and the franchise was not limited as in the colonial days to a property qualification or other selective rights.

## CONCLUSION

Local Government Service between the period 1963 to 1974 was administered through the provisions of the Local Government (Officers) Act.

This Act was initially enacted to allay the fears of European Officers about their future in the Local Government Service with the advent of African majority rule. However, even African Officers were covered under its provisions. The Act contained adequate safeguards to protect the officers in their security of tenure of office.

The Act provided that a local authority could at any time terminate the appointment of an Officer upon giving him not less than one month written notice unless it was otherwise stipulated in his contract with or in the terms of the appointment of the Officer.

However, an Officer could be suspended or dismissed without notice for misconduct notwithstanding anything contained in the contract with or in the terms of appointment of the Officer.



Be that as it may have been in the case of a specified Officer (ie Town Clerk, Treasurer, Engineer, Medical Officer of Health, Secretary) a proviso made provisions that no such officer could be removed from office unless and until such removal had been decided upon by a majority of the councillors present at a meeting of the local authority specifically convened for that purpose and unless the number of councillors voting in the majority was not less than a majority of the whole local authority. In addition before the Officer was removed, the matter was to be submitted to the Commission which was required to give the matter careful consideration. Once the Commission had given its approval only then could the Officer be removed. The removal of the Medical Officer of Health was further subject to the approval of the Minister of Health.

There were further provisions for appeal to the Commission by Officers other than specified Officers which appeal was to be in writing.

These were adequate provisions to ensure confidence in the Officers of the local authorities. But as revealed in this chapter the bodies which were charged with the task of seeing to it that these provisions were adhered to and further in determining salary scales and salaries, terms and conditions of service failed to do this.

This was because the Local Government Service Commission and Provincial Boards operated on Part-Time basis and hence did not handle the large number of disciplinary, salary and condition of service cases presented to them. In addition local politics and personal connections among the councillors themselves influenced decisions.

REFERENCES

1. Dennis L. Dresang: The Zambia Civil Service (Nairobi: East African Publishing House 1975) P. 40
2. *ibid*
3. [1975] Selected Judgements of Zambia p.40
4. Replaced by the Supreme Court of Zambia
5. Which read as follows: "council shall have power to establish ----- any fund approved by the Minister, and to grant pensions and gratuities from any such fund to Officers on their retirement".
6. S.K.C. Mumba: Judicial Control of Administrative Powers in Zambia: With Comparative Reference to English Law. Thesis for the Degree of Doctor of Philosophy submitted to Faculty of Law. University of Birmingham 1983 P.144
7. *Ibid*
8. Northern Rhodesia: Legislative Council Debates Hansard No. 109 (Lusaka: Government Printers 1963) August Column 431
9. Local Government (Officers) Ordinance No. 71 of 1963 S.6
10. *Ibid* S5(1)
11. See Zambia: Report of the Commission of Inquiry into the Affairs of the Lusaka City Council (Lusaka: Government Printers 1968) pp43 - 50
12. Ordinance No.71 of 1963 S5(3)
13. *Op cit* pp 51-55
14. Ordinance No.71 of 1963 S16(3)
15. *Ibid* S16(4)(b)
16. *Ibid* S16(4)(c)
17. *Ibid* S17(2)

18. Ibid S17(3)
19. Ibid S31(1)
20. Ibid S31(5)
21. Ibid S31(4)
22. Ibid S31(2)
23. Ibid S31(1)
24. Ibid S32(2)
25. 1971/HR/8 unreported
26. Ibid p.4
27. Ordinance No.71 of 1963 S36(1)
28. Ibid S.37
29. Ibid S38
30. Ibid S39
31. Ibid S40
32. Ibid S41
33. Ibid S42
34. The Local Government (Officers) Amendment Ordinance  
No. 47 of 1964
35. Northern Rhodesia: Legislative Assembly Debates  
Hansard No.3 (Lusaka: Government Printers 1964)  
Column 1310
36. Ibid columns 1310-1311
37. Ordinance No. 47 of 1964 S35(1)(a)
38. Northern Rhodesia: Legislative Assembly Debates  
Hansard No. 3 (Lusaka: Government Printers 1964)  
Columns 1315-1316

39. 1983/ Zambia Law Reports P.26
40. Ordinance No. 47 of 1964 S43A(1)
41. Ibid S43A(2)
42. Ibid S43F(a)
43. W. Tordoff: op cit p.272
44. Ibid pp.279-280
45. Ordinance No. 47 of 1964 S43B
46. Ibid S43C
47. Ibid S43G
48. Zambia: (Lusaka: Government Printers 1975)pp 68-69
49. Alan Greenwood and John Howell: op cit P.170
50. Times of Zambia 22nd October 1976 Column 7
51. Zambia: National Assembly Debates Hansard No. 4  
(Lusaka: Government Printers 1965) Columns 1613-1614
52. A.J.F. Simmance: 'The Structure of Local Government  
in Zambia' in Local Government in Zambia Nigel R.  
Hawkesworth (E) (Lusaka: Lusaka City Council 1974)  
P.5
53. Ibid P.6
54. Ibid

### CHAPTER THREE

## LOCAL GOVERNMENT SERVICE BETWEEN THE PERIOD 1974 TO 1980

### INTRODUCTION

The United National Independence Party in its Manifesto entitled "National Policies for the Next Decade 1974-1984"<sup>1</sup> stated that it was committed to the establishment of a strong Local Government System to achieve maximum decentralisation in order to ensure that the Local Government accorded with the principle of Humanism and to promote maximum initiatives in development. In this respect the Party promised, among other things, to strive towards the achievement of a meaningful unified Local Government Service, to improve employment opportunities and stabilise the staffing position in all Local Government institutions through uniform conditions of service. In order to achieve the above aim the Government enacted the Local Government Service Act No. 33 of 1974.

#### (1) The Local Government Service Act of 1974

The preamble to the Act read that it was:-

"An Act to provide for the establishment of a unified Local Government Service and of a Local Government Service Commission; to provide for the composition, functions and powers of the Local Government Service Commission; to repeal the Local Government (Officers) Act; and to provide for matters

connected with or incidental to the foregoing".

The Local Government Service Act No. 33 of 1974 was based on Article 130 of the Constitution of Zambia which provides for the creation of a Commission to operate a Local Government Service. It was argued in favour of the bill when it was presented for the second reading in the National Assembly that a Unified Service under a Commission set up to operate it will have many advantages over the existing system:-<sup>2</sup>

Firstly every system will be unified. The condition of service will be standardised, employment opportunities will improve, the staffing position will be stabilised, transfers between councils will be possible, secondments and transfers from and to other Service Commissions will also be possible, training programmes will be more meaningful, recruitment efforts will cost less and generally all persons concerned will be in a happier relationship.

Secondly every Commissioner will be full-time. Unnecessary and often very inconvenient and costly delay that had been experienced in the past will be reduced to a minimum. The Commission will be able to devote more time to improving systems and programmes for training, conducting examination and promoting Zambians to replace expatriates.

Thirdly, as the proposed Commission will be in a different situation compared to the existing Service Commission in that it will be catering for over fifty independent local authorities it was essential that it performed in the context of local government the equivalent functions of the Public Service Commission, the Establishment Division and the Directorate of Civil Service Training. This would have the effect of cutting out a lot of red-tape.

It was argued and hoped that the creation of the Commission would solve the problem of negotiating with Trade Unions over salaries, terms and conditions of service etc as at that time there was no existing body which legally had the mandate to negotiate salary, terms and conditions of service etc. Each Council was independent in this respect and so it could accept or reject any agreement informally reached between Trade Union Executives and say Local Government Association of Zambia or the Ministry of Local Government and Housing.<sup>3</sup>

It was also hoped that since the decision of the Commission would be impartial and objective and based on evidence the concern the Ministry had in the increasing number of cases where individual councillors had persuaded the Councils to suspend, discharge or dismiss employees for the most trivial reasons or for reasons arising out of a clash of personality or the converse where inefficient or



dishonest employees had continued to retain their jobs because of their contacts with councillors would be eradicated.<sup>4</sup> Thus it was hoped that before an employee was subjected to suspension, discharge or dismissal his side of the story would have received an impartial hearing as opposed to the system which existed then where the Part-Time Commission only appeared on the scene after the employee had suffered the humiliation of being suspended, discharged or dismissed.<sup>5</sup> The underlying factor was to safeguard the interests of the staff from the Councillors who tended to be dictatorial, vindictive or at the very least - unpredictable.<sup>6</sup>

Equally it was envisaged that the creation of the Commission would eradicate the conflicts between Councils arising from accusations of 'poaching' each time one council got an employee from another council as transfers between Councils was now possible.<sup>7</sup> In addition it was hoped that Commission would help, more especially, small authorities which did not have in the past capacity to recruit or go overseas to recruit personnel.<sup>8</sup>

- (2) The Local Government Service Commission established under the Local Government Service Act of 1974

The Local Government Service Commission was established under Section 3(1) of the Act and it consisted of a Chairman and not less than three or more than six members. The members who were appointed by the President served on a full-

time basis.<sup>9</sup> A person was not eligible for appointment as a member if he held the office of President, he was a member of the Central Committee of the United National Independence Party, he was a member of the National Assembly, or he was a Councillor.<sup>10</sup> A person who was employed in the local government service or in any local authority or who was a member of any staff association of a local authority, the Zambia Congress of Trade Union, a trade union or other similar organisation was also disqualified from appointment as a member.<sup>11</sup> Equally a person who was not a citizen of Zambia, who had not attained the age of 21 years, who was under any law in force in Zambia adjudged or otherwise declared to be of unsound mind was ineligible for appointment as a member.<sup>12</sup> Another class of ineligible members were persons sentenced to a term of imprisonment exceeding six months, persons declared bankrupt under any law in force in Zambia or persons whose freedom of movement had been restricted or were detained under the authority of any law in force in Zambia.<sup>13</sup>

The members of the Commission held office for a term of two years or for such further term and served on such conditions as the President determined.<sup>14</sup> The office of a member became vacant in any of the following ways, that is, at the expiration of the term for which he was appointed or re-appointed, if any circumstances arose that if he were

not a member would cause him to be disqualified for appointment as such (ie failure by the holder of a specified office to comply with the leadership code) if he died and if he resigned his office as such.<sup>15</sup>

A member could be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour<sup>16</sup> and a member was not to be removed from office except in accordance with the provision of this section.<sup>17</sup> According to Section 4(6) a member was not eligible for appointment to any post in the local government service for a period of twelve months after he had ceased to be a member. A member could resign his office by writing under his hand addressed to the President and the resignation took effect when it was accepted by the President.<sup>18</sup>

According to Part III of the Act dealing with the functions of the Commission, power to confirm appointments to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office vested in the President.<sup>19</sup> However, the powers of the President to make appointments to any office in the Local Government Service and to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office was exercised by the Commissions acting

in the name and on behalf of the President<sup>20</sup> and the Commission could by writing and subject to such conditions as it thought fit delegate any of its functions to any person.<sup>21</sup> The President could still require the Commission or any person to whom the functions of the Commission were delegated to refer any matter relating to the functions of the Commission which was under consideration by the Commission or that person, as the case may be, to the President and the President could, in such a case, himself exercise any of the powers conferred on the Commission or that person.<sup>22</sup> Interpretation of this section was given in the case of Kangombe vs The Attorney-General.<sup>23</sup> in respect of the powers of the Teaching Service Commission which were identical to those of the Local Government Service Commission and hence an analogy can be made. The facts of the case were that Kangombe had been a teacher for many years and had risen to the position of Headmaster of a Secondary School. After certain undisclosed events in 1971, he incurred the displeasure of certain senior officers in the Ministry of Education, who then sought to have him removed. The Permanent Secretary in the Ministry of Education, in his capacity as Kangombe's responsible officer recommended to the Teaching Service Commission that he be dismissed. The Commission found no "justifiable cause for his dismissal" but recommended that the applicant be transferred from the 'mixed' school where he was to an all-boys school. On 8th November 1971 the

Permanent Secretary requested the Commission to re-consider its decision but the latter re-affirmed its earlier decision but suggested that as Mr. Kangombe had obviously become unacceptable in the Ministry of Education he might be transferred to another Ministry without prejudicing his status.

On 27th January 1972 the Secretary General to the Government addressed a minute to the President stating that in his opinion Mr. Kangombe had "reached the end of his road in the public service". He recommended to the President that the decision of the Teaching Service Commission be set aside and that instead Mr. Kangombe be discharged. The President obliged and directed the dismissal of the applicant with effect from 5th November 1972. Mr. Kangombe then sought a declaration from the High Court that his dismissal was null and void and of no effect having regard to Section 115A and 115B of the Constitution (now Articles 132(1) and 132(2) respectively) and the Teaching Service Regulations of 1971.

Briefly Section 115B(1) now Article 132(1) is the provision which formally bestowed the powers of appointing and dismissing Officers in, among others, the Teaching Service upon the President. Section 115(B)(2) now Article 132(2) enacted, however that this power was to be exercised by the Service Commission. Section 115A(10) now Article 113(10) empowered the President to request that any matter which was

"under consideration" by any Commission be surrendered to him to enable him to exercise the Commission's power in respect of such matter.

It was held by both the High Court and the Court of Appeal that the President had acted ultra-vires his powers because the matter of Mr. Kangombe was no longer "under consideration" by the Commission when it was referred to him. The Court of Appeal added that if the President wished to exercise the functions of a Commission under the provision cited above, then his request to the Commission had to be clear and unambiguous in this respect. Furthermore the Court of Appeal held that once a Commission disposes of a matter, it became functus officio in relation to that matter. The matter could not be revived simply by some interested party (such as the President or in this case, a Permanent Secretary), requesting the Commission to reconsider its decision.

Under Section 5(1) the President would give to the Local Government Commission or to any person to whom the functions of the Commission were delegated general directions as he considered necessary. It is submitted, however, that this did not empower the President to direct the Commission or any person to whom the functions of the Commission were delegated to discipline or dismiss any particular servant. That would not be a general direction.

The Commission had power subject to the approval of the Minister to make regulations conferring power or imposing a duty on any person affected by the provisions of the Act.<sup>24</sup> The regulations made by the Commission could also provide for among other things, the determination of salaries and conditions of service, the creation or abolition of any post in the local government service, the secondment of any persons employed in the local government service to the service of any other service, the qualification for appointment to local government service posts and any matter relating to the employment of persons in local authorities.<sup>25</sup>

The Local Government Service Commission in exercise of the powers contained in Section 7(3)(a) of the Local Government Service Act 1974 and in consultation with the Zambia Local Authority Workers Union and with the approval of the Minister made the Local Government (Conditions of Service) Regulations 1978. The regulations were quite detailed in conditions relating to appointments, acting appointments, promotions, transfers, termination of appointments, resignations, retirements and failures to take up appointments, and disciplinary procedures in the local government service.

The Minister in exercise of the power conferred on him by Section 7(1) of the Local Government Service Act of 1974 equally made some regulations pertaining to the Local Government Service through Statutory Instrument No.191 of 1975.

In this statutory instrument every meeting of the Commission was to be presided over by one of the members present at the meeting.<sup>26</sup> A record was to be kept of the members present and the business transacted at every meeting of the Commission.<sup>27</sup> Decisions by the Commission were taken either at a meeting by a majority of votes of the members present and voting or unless any member demanded consideration of the matter at a meeting, by circulation of relevant papers among the members and expression by them of their views and vote in writing, in which case a decision was taken by the vote of not less than two thirds of the total number of members of the Commission.<sup>28</sup>

If upon any question the votes of the members were equally divided the Chairman had a casting vote.<sup>29</sup> A member of the Commission was entitled to dissent from the decision of the Commission and to have his dissent and the reasons thereof set out in the records of the Commission.<sup>30</sup> Two thirds of the total number of the Commission constituted a quorum for a meeting of the Commission.<sup>31</sup> The Commission could with the approval of the Minister appoint a Secretary to the Commission who was not a member of the Commission and such other staff as the Commission from time to time considered necessary for the proper discharge of its functions.

The Local Government Act 1974 also provided for matters relating to offences for giving false information to the Commission or to any member,<sup>32</sup> the disclosure of communication



without the consent of the Minister,<sup>32</sup> the protection of the members from action or other proceedings which arose from the exercise of their powers under the Act<sup>34</sup> the prohibition of disclosure of information to unauthorised persons<sup>35</sup> and certain offences of attempting to influence the members.<sup>36</sup>

According to regulation 95(a) of the Local Government Service (Conditions of Service) Regulations 1973 the Commission could impose the following punishments for misconduct on any officer found guilty under the provisions of the regulations, that is dismissal, discharge,<sup>37</sup> reduction in rank, reduction in salary, deferment of increment, severe reprimand, and retirement on disciplinary grounds. The above mentioned punishments were imposed by the Commission acting in the name and on behalf of the President. Those which were imposed by other disciplinary authority on delegation from the Commission were contained in the Local Government Service Regulations 1975. According to the 1975 regulations a Principal Officer<sup>38</sup> was empowered to impose any one or more of the following punishments, that is, deferment of increment, stoppage of increment, withdrawing of increment, temporary reduction in salary, severe reprimand and reprimand.<sup>39</sup>

A Chief Officer<sup>40</sup> could impose the punishment of deferment of increment, stoppage of increment, withholding of increment, severe reprimand and reprimand in the case of an Officer other than a Chief Officer or a Deputy Chief Officer.<sup>41</sup>

A Chief Officer was obliged to submit a report to the Principal Officer of all disciplinary proceedings instituted and determined by him<sup>42</sup> and the Principal Officer was supposed to review all disciplinary proceedings reported to him and could if he considered that the punishment imposed was too severe or too lenient or that no punishment should have been imposed or that a punishment should have been imposed where no punishment was imposed refer the matter to the Chief Officer for further report as he could direct.<sup>43</sup>

The Principal Officer was to submit a report to the Secretary of the Commission of every case where disciplinary proceedings were determined by him or by the Chief Officer.<sup>44</sup> Except in the case of punishment imposed by the Commission, any Officer could appeal to the Commission against any punishment other than severe reprimand imposed on him under the regulations.<sup>45</sup>

It is worth noting that the Local Government Service Regulations 1975 did not apply to National Joint Council employees and Part-Time Junior Employees.<sup>46</sup>

With the commencement of the Local Government Service Act a person who was employed in the Service of a local authority on a contract for a specified period of service had within six months of coming into operation of the Act to elect to join the local government service or to remain

in the service of the local authority concerned and had within this said period of time to inform such local authority in writing of his election and if he did not he was considered after the expiry of the said period to have elected to join the local government service on the basis of his contract of service with the local authority.<sup>47</sup> Where a person elected not to join the local government he continued to be employed by the local authority in question under the existing terms and conditions of his contract with that local authority.<sup>48</sup>

A person other than a contract officer who immediately before the commencement of the Act was employed in the service of any local authority had within six months of the coming into operation of the Act to elect to join the local government service or to remain in the service of the local authority concerned and had, within the said period, to inform such local authority in writing of his election and if he did not so inform the local authority he was deemed after the expiry of the same period to have elected to join the local government service and his terms and conditions in the local government service were not to be less favourable than those he enjoyed in the service of the local authority in question immediately before the commencement of the Act.<sup>49</sup> Where he elected not to join the local government service he continued being employed by the local authority in question under the existing terms and conditions of his service with the

local authority but he was not eligible for any appointment or promotion in the local government service.<sup>50</sup>

(3) Evaluation of the Full-Time Local Government Service Commission

The Local Government Service Act No.33 of 1974 was brought into operation on the 1st of September 1975 through statutory instrument No. 125 of 1975. The Full-Time Local Government Commission created, as observed, by the above mentioned Act worked under difficult circumstances.

Firstly there was a general unfavourable response by the local authorities, particularly, the large municipalities. The councils raised the money for the training of the staff, revenue from which salaries were paid and indeed they were the ultimate employers but had no final say in deciding on matters relating to appointments, confirmations, promotions, transfers, or dismissals of the staff as this power was now vested in the Full-Time Local Government Service Commission. The councils argued that the removal of these powers from councils to the Commission bred indiscipline in the staff and created a crisis of allegiance. The Councils thought that the staff now owed their allegiance to the Commission as it was the body which now exercised the power of appointments, confirmations, promotions, transfers and dismissals of staff.

The Councils also accused the Commission of transferring people at random without looking at the cost aspect. Even members of parliament supported the councils on this point.

51

Mr. Munkombwe whilst on this subject said:-

"The Commission is transferring people unjustifiably from one corner of the country to another for no apparent reason at all. Officers are very insecure".

In fact members of Parliament thought that the powers of the Commission were enormous and needed to be curtailed.

Mr. Munkombwe had this to say on this aspect:-<sup>52</sup>

"If the government does not bring up some proposals to reduce the powers of the Local Government Commission we will be forced to exercise our constitutional right and bring up a Private members Motion by proposing amendments to the Act and I want to assure the government that should that solution arise, we the backbenchers will be victors".

"Some of those people on the Commission, I think, have become extremely powerful - more powerful, I think, than they are supposed to be. They are bull-dozer".

Some councils even resisted the transfers of staff which were made by the Commission. The Kitwe City Council, for example, 'temporarily' rejected the Commission's appointment of a Deputy Town Clerk, Mr. Kampengele claiming there was a stronger candidate already working in the council, until the Chairman of the Commission had to invoke the authority of the President.<sup>53</sup>

Even some decisions of the Commission on disciplinary matters were challenged. The case of Lusaka City Council vs Andrian Mumba<sup>54</sup> is quite illustrative on this point. The facts of the case were that Mumba and his colleagues were employed in the liquor undertaking department of Lusaka City Council. They were alleged to have used a lot of the council's funds for their personal benefit. The Establishment Committee of the Council after an inquiry into the allegations contained in an anonymous complaint dismissed the Respondent and others who were employees of the council. The Respondent appealed to the Local Government Service Commission and the appeal was upheld on the basis that the Respondent had not been given a hearing as the charges against him were vague. The City Council appealed to the High Court and the decision of the Local Government Service Commission was upheld. The Lusaka City Council then appealed to the Supreme Court. While the Court did not agree with the Commission's findings that the anonymous complaints against the Respondent were vague nevertheless it found that the Respondent was called upon to answer charges which were not referable in any way to the specific charges set out in council's letter. The allegations in the anonymous letter raised suspicions of theft and the Respondent put up a defence to these allegations. There were, however, no findings by the Committee on these allegations. The charges in the councils letter

were so wide that they did not embrace any of the allegations in the anonymous letter of complaint and although the Respondent was given the opportunity of being heard and was represented by a lawyer he could not, in the view of the Court, be said to have had an opportunity to prepare a defence to meet those specific charges raised in the council's letter.

Secondly the Commission itself was inadequately staffed to deal with the massive number of cases related to appointments, confirmations, promotions, transfers and disciplinary matters presented to it. As was admitted by the Prime Minister:-<sup>55</sup>

"Sir. Chairman, Sir, as regards why it sometimes takes a long time for the Commission to make a determination on matters referred to it by the Town Clerk or Secretary, the Commission, Sir, has been facing teething problems since its establishment. The Commission's problems are quite many, Sir, and they range from lack of adequately trained staff to lack of public funds. Sir, the Commission is doing a commendable job. It had been able to carry on with a few officers looking after sixty-seven councils. Sir, the delay in dealing with some of these matters, therefore, Hon. Members will agree is very unavoidable."

"As for delays in promotion in the Local Government Service, a number of factors contribute to the unavoidable delays. Firstly the Commission does not have adequate staff to process the files and recommendations. Secondly the personnel functions of the local authorities has to be strengthened. The Commission, Sir, above all must have basic information on the merit and seniority of the officer before it makes a decision. The quality of some of the recommendations also invite delays, because of additional information which the Commission has to ask for, in

order to make a good decision. The Commission and the Ministry are aware of this problem and are finding ways and means to improve the situation".

According to Faustip Muma,<sup>56</sup> former Secretary of the Commission, the pace of the Commission towards personnel matters, which had been effectively pursued, slackened when the Commission's Chairman started campaigning for a parliamentary seat which kept him away from the Commission's work for the greater part of 1978.

Thirdly, the Ministry of Local Government and Housing was concerned with the operations of the Commission and this concern was reflected in the disappointing recruitment record of the Commission and problems of morale created by the frequent transfers.<sup>57</sup> On its part the Commission justified the transfers in that many Officers had grown stale in the employment of a particular council and would benefit from a move, some had been immersed in local politics.<sup>58</sup> In fact the Ministry itself was accused of interfering in the affairs of the Commission. Mr. Makumbi had this to say on this matter:-<sup>59</sup>

"Sir, another point of interest is that there has been some sort of interference in the operations of these Commissions, particularly the Local Government Service Commission. I am appealing to the government that some Government Officials in the Ministry who are die-hards, should refrain from interfering in staff matters, because staff matters strictly fall under the Commission".



According to Faustin Muna the Ministry of Local Government and Housing wanted the Commission to assume the role played by the Establishment Division in relation to the Public Service Commission, that is the Ministry itself having a final say in staff matters.<sup>60</sup> The Commission rejected this approach hence the end result was that there was friction between the Commission and the Ministry. For example, the Commission issued the Local Government Circular No. 27/77 dated 2nd December 1977 outlining new salaries and salary scales in the service. The Ministry of Local Government and Housing rejected the determination but instead of challenging the Commission directly it sought to subvert the determination made by the Commission by threatening with surcharging any Principal Officer who would implement the new determination.<sup>61</sup> The Commission stood by its circular and parrying the accusation that it had misunderstood the Party's Policy took the attack to the Ministry accusing it of attempting to reverse the Party and Government Policy on the Unified Service. Where the Ministry wanted to retain its former grading schemes, which differentiated between different types of authority according to size and resources, the Commission argued that since administrators of all authorities received the same training and had identical qualifications, they should be given the same rate of pay, tied to Civil Service, irrespective of the size or wealth of the authority.<sup>62</sup>

The Local Government Service Act was repealed when the Local Administration Act No. 15 of 1980 was ushered in. The repealing of the Local Government Service Act saw the abolition of the Local Government Service Commission. The following Acts were also repealed by the Local Administration Act that is the Local Government Act, the Municipal Corporations Act, the Townships Act and the Mine Townships Act.<sup>63</sup>

### CONCLUSION

Local Government Service between the period 1974 to 1980 was administered through the provisions of the Local Government Service Act No. 33 of 1974. The United National Independence Party in its manifesto entitled "National Policies for the Next Decade 1974 to 1980" stated that it was committed to the establishment of a strong Local Government System to achieve maximum decentralisation in order to ensure that Local Government accorded with the principle of Participatory Democracy under the Philosophy of Humanism and to provide maximum initiatives in development. In this respect the party promised, among other things, to strive towards the achievement of a meaningful Unified Local Government Service to improve employment opportunities and stabilise the staffing positions in all local government institutions through uniform conditions of service. To achieve this goal the government created the Local Govern-

ment Service Commission. It was argued that a Unified Service under a Commission set up to operate it will have many advantages in that:-

Firstly every system will be unified. Conditions of service will be standardised, employment opportunities will improve, the staffing position will be stabilised, transfers between councils will be possible, secondments and transfers from and to other Service Commissions will be possible, training programmes will be more meaningful, recruitment efforts will cost less and generally all persons concerned will be in a happier working relationship.

Secondly every Commissioner will be full-time. Unnecessary and often very inconvenient and costly delays that had been experienced in the past will be reduced to a minimum. The Commission will be able to devote more time to improving systems and programmes for training, conducting examinations and promoting Zambians to replace expatriates.

Thirdly as the proposed Commission will be in a different situation compared to the existing Service Commission in that it will be catering for over fifty local authorities, it was essential that it performed in the context of Local government the equivalent functions of the Public Service Commission, the Establishment Division and the Directorate of Civil Service Training. This would have the advantage

of cutting out a lot of 'red-tape'.

It was also hoped that the creation of the Commission would solve the problem of negotiating with the Trade Unions over salaries, terms and conditions of service etc. Each Council was independent in this respect and so it could accept or reject any agreement informally reached between Trade Union Executives and say Local Government Association of Zambia or the Ministry of Local Government and Housing.

It was further envisaged that since the decision of the Commission would be ~~impartial~~ and objective and based on evidence the concern the Ministry was having in the increasing number of cases where individual councillors had persuaded the councils to suspend, discharge or dismiss employees for the most trivial reasons or for reasons arising out of a clash of personality or the converse where inefficient or dishonest employees had continued to retain their jobs because of their contacts with councillors will be eradicated. Thus it was hoped that before an employee was subjected to suspension, discharge or dismissal his side of the story would have received an impartial hearing as opposed to the system which existed then where the Part-Time Commission only appeared on the scene after the employee had suffered the humiliation of being suspended, dismissed or discharged. Equally it was

Equally it was envisaged that the creation of the Commission would eradicate the conflicts between Councils arising from accusation of 'poaching' each time one Council got an employee from another council as transfers between Councils was now possible. In addition it was hoped that the Commission would help, more especially, small authorities which did not have in the past capacity to recruit or go overseas to recruit personnel.<sup>64</sup>

As observed in this Chapter the Local Government Service Commission failed to guarantee the security of tenure of staff in the Local Government Service because of the following reasons:-

(a) There was random transfers of staff from one Council to another without looking into the most aspect of the matter. The frequent transfers of staff created insecurity in the minds of the staff as related to their tenure of office.

(b) The Commission itself was inadequately staffed to deal expeditiously with the massive number of cases related to appointments, confirmations, promotions, transfers and disciplinary matters presented to it.

(c) The Ministry of Local Government and Housing interfered in the operations of the Commission as it wanted to have a final say in staff matters contrary to the powers bestowed on the Commission and

hence there was friction between the Commission and the Ministry to the detriment of the staff in their security of tenure.

REFERENCES

1. (Lusaka: Freedom House 1973) pp 41-42 See also Nigel R. Hawkesworth (E) Local Government in Zambia op cit pp 2-3
2. Zambia: National Assembly Debates Hansard No. 37 (Lusaka: Government Printers 1974) Columns 70-71
3. ibid. Column 72
4. ibid. See also the Report of the Commission of Inquiry into the Affairs of the Lusaka City Council op. cit pp 33-36 which is quite revealing on this aspect
5. ibid. Column 73
- Stanley Dryden: Local Administration in Tangania (Nairobi: East African Publishing House 1969) p.107
7. Zambia: National Assembly Debates Hansard No. 37 Supra Column 74
8. ibid.
9. Act No. 33 of 1974 S3(2)
10. ibid. S3(3)
11. ibid.
12. ibid.
13. ibid.
14. ibid. S4(1)(a)
15. ibid. S4(1)(a)
16. ibid. S4(2)
17. ibid. S4(3)
18. ibid. S4(7)
19. ibid. S6(1)
20. ibid. S6(2)

21. *ibid.* S6(3)
22. *ibid.* S5(2)
23. /1972/Zambia Law Reports p. 177 (High Court case)  
and /1973 Zambia Law Reports p. 114  
(Court of Appeal Case)
24. Act No. 33 of 1974 S7(2)
25. *ibid.* S7(3)
26. Statutory Instrument No. 191 of 1975 Regulation 37
27. *ibid.* Regulation 38
28. *ibid.* Regulation 39
29. Act No. 33 of 1974 S7(4) (i)
30. Statutory Instrument No. 191 of 1975 Regulation 40
31. *ibid.* Regulation 41
32. Act No. 33 of 1974 S12
33. *ibid.* S13
34. *ibid.* S14
35. *ibid.* S15
36. *ibid.* S16
37. Refer to Statutory Instrument No. 191 of 1975  
Regulation 33(1)(6). Note that this punishment  
does not appear under Regulation 95 (a) of the  
Local Government (Conditions of Service) Regulations  
1978.
38. "Principal Officer" meant in relation to a Municipal  
Council the Town Clerk, in relation to a Township  
Council or Rural Council, the Secretary.
39. Statutory Instrument No. 191 of 1975 Regulation 33(2)
40. "Chief Officer" meant a Deputy Town Clerk, a Deputy  
Secretary, a Treasurer, a Medical Officer of Health,  
a Director of Housing and Social Service or such other  
person as the Minister could by notice in the Gazette,  
declare to be a Chief Officer.



41. Statutory Instrument No. 191 of 1975 Regulation 33(3)
42. *ibid.* Regulation 34(1)
43. *ibid.* Regulation 34(2)
44. *ibid.* Regulation 34(3)
45. *ibid.* Regulation 35(1)
46. *ibid.* Regulation 3
47. Act No. 33 of 1974 S11(1)
48. *ibid.* S11(2)
49. *ibid.* S11(3)
50. *ibid.* S11(4)
51. Zambia: National Assembly Debates Hansard No. 44  
(Lusaka: Government Printers 1977) Column 1875
52. *ibid.* Column 1874
53. Alan Greenwood and John Howell: op cit p 171
54. Supreme Court Judgment No. 44 of 1977. Unreported but case appears in Lusaka City Council's Reports submitted to the Committees during the Month of August 1978. See Report of the Town Clerk to the Finance and General Purposes Committee meeting held on 23rd August, 1978.
55. Zambia: National Assembly Debates Hansard No. 48  
Part I (Lusaka: Government Printers 1978)  
Columns 1733-1734.
56. Based on a discussion I had with him
57. This fact was alluded to by Mr. Sinyangwe a legal officer at the Ministry of Decentralisation (formerly Ministry of Local Government and Housing) during a discussion I had with him.
58. William Tordoff: 'Rural Administration' Mr. W. Tordoff  
(E) Administration in Zambia op cit p. 201
59. Zambia: National Assembly Debates Hansard No. 48  
Part I *supra* Column 1647
60. But this was contrary to the Minister's Speech in the National Assembly when he introduced the bill, see footnote 2 above.