

THESIS

COMPOSITE TABLE OF CONTENTS

L L M - LAW IN DEVELOPMENT PROGRAMME

1. Take-home Examination Paper.
2. Dissertation - The Role, Nature and Authority of Zambia's Legislature in the Zambia's One-Party System of Government.
3. Essay - The Legal Aspects of Corruption in Zambia in the context.
4. Essay - Parliament and Public Enterprise: Zambian Experience.

Course Examination: March 1985

LAW IN DEVELOPMENT CORE COURSE

Candidates must answer ONE question. Please write your answer legibly on separate sheets, using only one side of each sheet. You should number each page and write your name on each page of your answer.

This is a TAKE-HOME examination, and you have TWENTY-FOUR (24) HOURS to complete your answer. You may use any necessary materials, including the course materials. The examination is expected to be based entirely on your own work. You should not, therefore, consult any other person, and any part of your answer which is based directly on a written source should give appropriate references.

This examination counts 40% of the total mark for the Law in Development Core Course.

Please submit your completed answer together with the question sheet to Margaret Wright, the Law School Postgraduate Secretary, Room S2.03 by 12 NOON, WEDNESDAY, MARCH 13 at the latest. Late papers, unless accompanied by a medical or other excuse deemed sufficient by the Board of Examiners, cannot be accepted.

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1. "In order to acquire an adequate understanding of law, legal institutions and legal processes in the third world, one must begin by rejecting decisively the conceptual framework of "law and development" and its principal assumptions concerning the state, law and society."

Discuss.

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2. The President of the People's Republic of Legalia has recently come to power. She wishes to undertake a long-term programme designed to meet the basic needs of Legalia's population, especially with regard to food, health and shelter. Knowing you to be a specialist in third world legal studies, she asks you to prepare a memorandum which will consider the theoretical and other questions involved in such a programme and thus provide a foundation for further analysis and discussion. She requests you specifically to concentrate on one central issue: To what extent may law be used as an instrument of state policy to promote social change? The President realises that much of the relevant, necessary social, economic and political information on Legalia is not easily available to you at the present time. She asks you, therefore, to make any such assumptions as may be necessary for your purposes, but also to make these assumptions clear in your memorandum. Prepare the memorandum.
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THE ROLE, NATURE AND AUTHORITY OF THE LEGISLATURE IN ZAMBIA'S
ONE-PARTY SYSTEM OF GOVERNMENT.

BY

Ludwig Sanday Sondashi, FILGA, LL.B. Advocate.

A Dissertation Submitted in part fulfilment of the requirement of the
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School of Law,
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he is - we want him home ". Indeed, it will take some time for her to realise and appreciate that I was not all that cruel by leaving them alone for a year, after all!

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SUMMARY

This Dissertation attempts to analyse and evaluate the effectiveness of the Zambia's one-party Legislature within its life time of Ten years from 1974 to 1984. The focus is on the concept of the Legislature and the one-party system of government, to try and discover whether Parliament is being used as an instrument of progressive social change and thus contributing to the enhancement of the rule of law and democratic human values.

The subject is presented and analysed within its operational context, that is analysing law in the context of the historical, social and political setting of Zambia, so that it is assessed on its relevance to the objective requirements of that state.

Chapter 1 being an introductory chapter examines the arguments for and against the introduction of one-party states, especially Zambia's. It takes note of the persuasive reasons advanced in support of the introduction of the single party system in Zambia as being compatible with the theory of one-party states.

Chapter 2 explores the nature, form and content of Zambia's Parliament. This basic understanding is necessary for the analytical evaluation to be made in the next chapter. This chapter reveals that the character and law applicable to this organ, including freedom of speech and parliamentary privileges, are similar to those of Westminster model. On the other hand, it is discovered that the power of the Executive as entrenched in the constitution are designed to make that organ independent of the Legislature without correspondingly altering the powers and functions of Parliament. The source of conflict, therefore, begins from here.

Chapter 3 examines the roles of the Speaker and MPs in their collective and individual capacities, and the role of Parliament in relation to the Party and the Executive. The chapter discovers that Parliament faces many constraints mainly arising from internal and external factors, including the principle of supremacy of the Party and Presidentialism and the fact that the Executive is not responsible to Parliament in Zambia legally. The chapter concludes that the Legislature is not very effective, it appears to be symbolic.

The Dissertation concludes by confirming the notion for the insubordination of the Legislature in a one-party state. It makes an observation that despite the apparent ineffectiveness of Parliament, the Legislature, nevertheless, plays an important educational role and contributes to the political consciousness of the general public and in many instances it has made the government change its course of actions etc. The treatise recommends a review of the role of Legislature in the longrun to enable it to play a meaningful role in nation building.

The writer has used both theoretical and empirical methods in his research. The work is no doubt intended to contribute to the knowledge of law on this subject.

THE ROLE, NATURE AND AUTHORITY OF THE LEGISLATURE IN ZAMBIA'S ONE-PARTY SYSTEM OF GOVERNMENT.

CHAPTER 1 - INTRODUCTION

1. Brief Historical Note.

Zambia, formerly the British protectorate of Northern Rhodesia, attained its independence as a Republic within the Commonwealth of Nations on the 24th October, 1964. The Independence Constitution was entrenched and contained most of the typically conventional characteristics of the Westminster model, such as the fundamental freedoms and rights of the individual, a supreme unicameral legislature, the independence of the judiciary, and so on.

One important feature of the Constitution was that the President was to be Head of State and Head of the Executive at the same time. As Head of the Executive, he enjoyed similar status to that of the British Prime Minister and as Head of State he enjoyed the equivalent status of the United States President. His relationship with the Legislature was not very clear. By definition Parliament included the President and the National Assembly. He was not elected by it and so not responsible to it. (1) On the other hand, the Legislature was modelled on the British House of Commons with power, privileges and immunities obtaining under the Westminster model.

As Ghai and McAuslan point out, in the process of decolonization in Africa, " independence has usually meant more than just the removal of external sovereignty. It has also included the establishment of a democratic system of government " (2) In this process, provisions in the Constitution for an elected democratic Legislature, which was intended to give a country a high moral authority was prerequisite to the attainment of a democratic state. (3)

It is worth noting that the Independence Constitution which the British Government gave to Zambia was framed and designed to serve a multi-party style of government, the nature, character and role of the Legislature was based, as I have already said on the British model, aimed at making the government responsible and answerable to Parliament.

After Independence, the only and major opposition party was (African National Congress) - ANC led by Harry Nkumbula, but it never expanded to become an officially recognised opposition party, in the sense that its membership was always below the quorum of the House. (4)

At the time of the introduction of one-party state in 1973 in Zambia, the ANC was actually on the verge of withering away, if it had not been for the internal friction and division within the United National Independence Party UNIP - the ruling Party, which resulted in Nalumino Mundia and Simon Kapwepare and their followers to defect from UNIP, and thus provided ANC with loose and at other times strong alliance by the splinter small Parties from UNIP. Nevertheless, the Choma Declaration (5) although it came after the single-party system had been legislated for was a starting point from which peace and unity in Zambia could be traced. The former opposition leaders and their members were assimilated into the UNIP structure, some were offered political posts and yet others found their way as elected UNIP local party leaders.

2. The Background to the Introduction of One-Party State.

As a result of the growing disunity and the threat to the political stability of the Nation, the National Council of UNIP meeting from 1st - 3rd October, 1971 passed a resolution urging the Central Committee of UNIP " to work towards the achievement of one-party Democracy, in which the liberties and welfare of the commonman will be paramount," so as to ensure, " the

fundamental need to preserve unity, strengthen peace and accelerate development in freedom and justice." (6)

This demand was followed up by President Kaunda, after the Central Committee had accepted the National Council resolution, on 25th February, 1972 by the announcement that one-party participatory Democracy will be established in Zambia and that practical steps should be taken to implement the decision.

By Statutory Instrument No.46 of 1972, President Kaunda appointed a Commission of Inquiry under the provisions of Section Two of the Inquiries Act 1967, of 20 members drawn from various walks of life. The Commission was to be headed by Mainza Chona, then Vice-President of the Republic with Humphrey Mulemba formerly Minister of Mines and Mine Development and out-going Party Secretary-General as its Vice-President. The Commission's terms of reference were restricted inter alia, to consider: " The changes in the Constitution of the Republic of Zambia; the practices and procedures of the Government of the Republic and the constitution of the United National Independence Party; necessary to bring about and establish one-party Participatory Democracy in Zambia." (7) In other words, "the Commission was not charged with finding out whether the people wanted a one-party state - that decision had already been made." (8)

It was due to this restrictive nature of the terms of reference of the Commission that the opposition Leaders of ANC Harry Nkumbula and Nalumino Mundia declined office as Commissioners, because in their view, the Government had already decided to bring about one-party system without the consensus of the people of Zambia. Meanwhile the ANC President Harry Nkumbula sought to challenge the decision to bring about a one-party system in the High Court, - in Nkumbula v Att. General (C.A) No.6 of 1972. that:

(i) The freedom of Assembly and Association guaranteed by the Constitution would be infringed in relation to him, by the introduction of one-party system; (ii) The appointment of the National Commission was ultra-vires, because it was against the spirit of having a Commission, because its terms of reference precluded it from hearing evidence and arguments on the desirability of the single-party system and limited it to the consideration of the mechanics or means of implementation. It was further argued in the Court of Appeal that the President had no powers under S.2 of the Inquiries Act Cap.181 to appoint the Commission, because it cannot be for the public welfare within the meaning of those words as used in the said section, in law, to arrange to deprive the people of the power of assembly and association; these powers being their fundamental rights and freedoms.

Notwithstanding the pursuance of this stand against the introduction of a single-party system, Mr Nkumbula lost his case in both the High Court and the Court of Appeal. The Court observed that (i) a declaration by the Court that the appointment of the Commission was ultra-vires and the Appellant's rights are likely to be infringed would be valueless to either the Appellant or anybody else. (ii) That the words under S.2 of the Inquiries Act, do clearly make the matter one of the subjective decision of the President and the decision could only be challenged if it could be shown that the person vested with the power, in this case the President, acted in bad faith; or from improper motives; or on extraneous considerations; or under a view of fact of the law which could not reasonably be entertained, (iii) That Section 28 (1) (now Article 29 (1)) of the Constitution, has no application to the proposed legislation of any kind, far less to a proposal to amend Chapter III itself, (iv) That a locus standi should exist; to seek redress, there must be an actual or threatened action in relation to the appellant; and (v) That the Appellant has no right to stop the Legislature from changing the law. (9)

Owing to the inability of the Commission to hear evidence and submissions against the introduction of the one-party system, people coming to give such evidence and submissions were refused and denied audience by the Commission. Meanwhile the Commission toured the whole country to gather evidence for the establishment of a single-party state, form, structure and mechanism with which the one-party state should take, and on the 15th October, 1972, the Commission submitted its findings and recommendations to the President.

As if to confirm the allegation and suspicion that the introduction of a one-party system was arrived at in haste and in fear arising from the political conflict and split within UNIP, (10) barely a month later, the Government having considered the Commission's submissions produced a white paper on the 14th November, 1972, summarising its decision arising out of the Commissions submissions. The Government accepted most of the recommendations, made modifications to some of them and rejected others. (See infra).

In December, 1972 the Bill to amend the Constitution - "The Constitutional (Amendment) (No.5) Bill 1972 was introduced in Parliament. The Bill was heavily debated. In order to allow for the second and third stage of the Bill to be read the same day on the 8th December, 1972, relevant standing orders had to be suspended. (12) The question that the Bill be read the second time was put and the House voted, 80 in favour and 16 against. But during the third reading ANC members withdrew from the Chamber in protest, and on the questions being put, 78 voted in favour and there were no Noes. Thus the majority of 2/3 required to amend the Constitution was obtained. Five days later the President assented to the Bill, thus the Second Republic came into being.

Before proceeding further, it is important to show where the problem of conflict between Parliament and the Executive originated. This understanding will assist in appreciating the role of the Legislature in the Chapters that follow. As already indicated above, among the recommendations of the National Commission which the Government either modified or rejected were mainly those which were intended to make the Government accountable to the Legislature. In refusing to accept these recommendations Parliament's role and power were reduced to that of a watchdog and an instrument of Party and Executive decisions and policies. The following were the recommendations. First, On the election of President, the recommendation by the Commission to empower Parliament to elect the President in the event of the electorate under the universal franchise failing to confirm a nominated Presidential Candidate by a simple majority was not accepted.

Secondly, The Commission's recommendation to restrict the maximum period of tenure of office of a President to Ten years, thus he could only attempt to stand again for the office of President after a period of Five years had elapsed from the time he held the office of President was not supported by the white paper, on the ground "that there should be no limit on how often a man or woman can serve his or her country in the office of President."

(13)

Thirdly, The Government did not accept the recommendations by the Commission that there should be a Prime Minister who will be "the Head of the Government and chief spokesman on Government matters... and Head of Cabinet and to preside over Cabinet meetings." That he should be appointed by the President subject to the approval of Parliament, and he can be removed from office either by the President or by Parliament as the case may be. As the Head of the Cabinet, the Prime Minister had to appoint Ministers on consultation with the President, and Ministers' tenure of office was to be at the pleasure

of the Prime Minister. (14) In this way, the Prime Minister and Cabinet were going to be responsible to Parliament.

It should be pointed out, however, that in making these recommendations of transporting the nature, role, authority and structure of the Westminster parliamentary model to a country whose policies were socialist, under a single-party structure was a great error on the part of the Commission.

It was an error because as Wallerstein argues, this contradicts the theory that the Party and the Executive under socialist single-party regimes must be supreme over Parliament, so as to enable the Party programmes and policies to be effectively interpreted into action. This theory is ably argued that one-party system is indispensable to national integration: "The Party should run the Government, not vice versa, because the Party, not the Government, is the emanation of the people, that is, holds their loyalty and ties them to the state. The Party integrates the nation and allows the integration to be accomplished by a method that maximises the opportunity of every citizen to participate on a regular and meaningful basis in the decision-making process." (15)

Let us now turn to a different issue. The question is, what sort of Government did Zambia at Independence strive to achieve? There are three theories on democracy prevailing in Africa today. The first theory advocates western parliamentary representative democracy. The second, views the first theory as a luxury in countries where economic development is the greatest need and could only be achieved by a strong Government, and that this can only come about on communist lines. The third theory is that authority and democracy "are both desirable in developing countries, but in Africa they must take an African form." (16) It is the last theory which Zambia and quite a number of other countries proposes to follow.

3. Criticisms and Justifications for the Single-Party System.

Notwithstanding the Zambian Government's good intentions to establish a one-party system of Government, some political and academic commentators do not agree with the reasons and justifications given by Zambia and indeed many other countries for the introduction of single-party states. The criticisms given for the establishment of a one-party system are given below.

(a) Criticisms.

Firstly, there is a very strong assumption that the one-party state was introduced from the fear and "dangers of fragmentation and loss of control in UNIP", thus calling into question, "the underlying assumptions of the existence of broad national unity." (17). This proposition is carried further by Morgan and Pettman, they state that the formation of United Progressive Party - UPP and United Party - UP as breakaway groups from UNIP "provided UNIP with its most serious challenge since independence," which precipitated the decision to introduce a single-party state "by legislation rather than through the natural weathering away of all opposition parties, the previous policy." (18)

During the debate on the Bill to introduce a one-party state, Harry Nkumbula, Leader of ANC argued that a one-party state was being introduced because UNIP had lost its support. (19)

The reason behind this argument is that a one-party state constitution would "entrench the Party into the government process," causing the authority of Parliament to decline over its control and criticism of the Executive, bringing more problems to the competence of the Legislature. (20)

Secondly, it is asserted that the one-party state does not provide the machinery for the checks and balances necessary for safeguarding the rights

and freedoms of the individual. Unlike multi-party systems, the Legislatures in single-party regimes are not best suited to promote and preserve the democratic values and rule of law. Further more, that the rule in such regimes are not by consensus but by coercion and Legislatures in this respect have no influence over government policies and programmes, thus concluding that regimes under one-party state are synonymous to dictatorship.

The former colonial powers critics, in this regard, are only too happy to point to the "restrictions" claiming that there was less freedom under the new regimes, than they did under the old colonial regimes, forgetting that the colonial regimes were more oppressive and had no "Bill of Rights" nor Constitutions for their entrenchment. (21)

Thirdly, while acknowledging the economic problem which Zambia faced at Independence, which, among others, was characterised by underdevelopment and the country's economically dependence on copper, gross urban-rural imbalance; land-locked dependence on apartheid South Africa for trade and its threatened security problem, being a front-line state to the oppressive regimes of South Africa and, at that time, Southern Rhodesia which unilaterally declared its Independence in 1965, (22) Gertzel nevertheless maintains that the Government's "idealism of socialist rhetoric," which is not coupled with practice and its lack of appreciation and diversification policy at independence from copper to agriculture and the admiration for white collar jobs were the contributing factors to Zambia's economic crisis. (23)

Fourthly, Alexander Chikwanda (24) advances one argument that one-party state system is an "imbalanced type of system." It can be precarious because there are no institutional arrangements built into the system in order to create the necessary controls. He further asserts that the one-

party system does not necessarily foster unity, unity is fostered by the leader as individuals. He attributes the basis for unity to the structure of the society and goodwill of the people of Zambia, and not necessarily to the system. He says, one of the weaknesses of the system is that there is no proper system of changing office. People always want outlets for change. He admits that the system in Zambia was working well and democratically mainly because of President Kaunda as an individual. Thus the system, he says, has worked rather more on a personal basis than due to institutional factors.

On the other hand, speaking during the debate on the second reading on the Bill seeking to introduce one-party state in Zambia, Harry Nkumbula challenged the Government front bench to deny that the "Bill was intended to entrench the positions of 'the' Members opposite in government perpetually."

(25)

Lastly, The Times of London, in its leading article on Zimbabwe and commenting on African states and one-party regimes, deplored the African countries' disregard for political and social rights. It regretted that "not once in the 25 years space of the independence era had African government been voted out of office - and gone." And that "when they do decide to hold elections, voters are rarely offered a choice of candidates or policies or leaders, all that happens is that a ruling clique is confirmed in power."

(26)

(b) Reasons and Justifications.

On the other hand, the reasons and justifications advanced by the Government for the introduction of one-party state are enumerated as follows:

Firstly, although it may be true that the mounting tension in UNIP which

led to the split posed a threat to the stability not only within the Party but to the Zambian society as a whole, the introduction of a single-party system, as a matter of fact, was not merely due to "fears and danger of fragmentation," as postulated by Gertzel and Mubako (supra). (27)

It should be appreciated that the idea in UNIP to establish a one-party participatory democracy of government was visualized and it was an overt commitment with which UNIP was associated as far back as prior to that country's independence in 1964. (28) Further more, the fears and dangers which the split posed were more related to the breakdown of "law and order" in the countryside which resulted into clashes, fighting among the opposite groups with tremendous loss of life and property than to fears of loosing office. It appears to the writer that it was unfortunate that a referendum was not used. If a referendum had been held to determine the question, there is no doubt that an overwhelming majority would have voted for a single-party system, so as to bring the strife, violence and lawlessness to an end. In asserting that the one-party system was being introduced to bring about peace, national unity and stability, the Government was acting as the people wanted, including the House of Chiefs who urged it earlier on to introduce a single-party democracy. (29)

As regards the second argument that the introduction of one-party state would weaken the Legislature's authority, the answer to this question is really one of priority. Lest it is forgotten, Zambia inherited a system of government and administration in 1964, as we have already seen "which was illsuited to the tasks of political development to which her new leaders were 'politically' dedicated. The national unity and understanding and mobilisation which was achieved through the freedom struggle to remove 'the common enemy' declined. Lack of agreed rules and precedents to use to contain conflict in the nation and lack of adequate instruments for the implementation of its policies, including external security threat brought

about by the apartheid regimes in the South compelled Zambia to search for a more suitable political system which would ensure not only state security and stability but also national unity and development. (30)

These were not the only problems, to make the matter worse, all the Parties that splintered from UNIP, including ANC were based along the lines of cleavage - on tribal or regional support which if allowed would have undermined the new nation. Secondly, the belief that multi-party systems were not only a colonial relic with little or no relevance to African contemporary needs, and realisation that systems are prone to party squabbles and reversing progressive policies left no alternative for Zambia but to take the course of action it did.

Secondly, as Wraith and Simpkins have shown, surely, "rival political parties in the developing countries are not based to a large extent on opposing programmes, based on different social and economic beliefs; they are in varying degrees tribal, regional or religious, and extraordinarily little is said in election campaigns - about policies." (31)

President Nyerere put it very clearly when he said of Tanganyika, (now Tanzania): in a country like his own, "one-party government accords with common sense, because where all problems are elemental there is nothing for parties to disagree about (except who should wield power), and there seems little is gained by pretending that there is..... for the power sought is the power to rule in general and not according to particular policies or beliefs as to how society should be organised; power more over which is not, as we have already seen, subject to the criticism of an informed electorate." (32)

The above argument is as a matter of fact also very relevant to Zambia. As Tordoff and Molteno clearly shows, in Zambia, the multi-party legislature was ineffective. Apart from the fact that no opposition member ever intro-

duced a private members bill, the National Assembly lacked critical and constructive debate on government policies and Bills and "more than half of the Bills passed without amendment." They conclude that neither the Legislature as an institution nor MPs as individuals played a crucial and meaningful role in Zambian political system. (33) In this case the multi-party system was merely symbolic because, as Jan Pettman says, UNIP and Kaunda "dominated the entire political scene..... the opposition parties were precarious, their operations were hampered and their legitimacy was undermined by UNIP's image as a national builder." (34)

As a matter of fact, my random sample reveals that all the 20 Zambians I personally interviewed, apart from one, favoured the introduction of the one party state. In this context the principle that multi-party system ensures the promotion of development and freedom and rights of the individual than single-party systems is of psychological value and not real.

It is interesting to analyse and evaluate the rights and freedoms of an individual in the African context. When one talks about freedom, what freedom has a villager in a remote district of Zambia? As President Nyerere points out, he relies on scratching the soil for his livelihood, provided the rains does not fail, his children work at his side without schooling, no medical care, not even good food. Of course, he may have freedom to speak village tales in his community, freedom of movement to visit his relatives and to go and buy soap and salt at the nearest district centre, and freedom to vote for a candidate whom he does not know very well and whom he will not even have chance to talk to and who will go to Parliament to promote his own interests and that of his family. As President Nyerere puts it, these freedoms are not real than freedom to be exploited. To him, (a villager) meaningful freedom is reducing his poverty, ignorance and disease, so that he can enjoy his right to human dignity. Why should it therefore be surprising and questioned for a single-party state to sub-due

some of the entrenched capitalist fundamental rights and freedoms for the purpose of ensuring accelerated uplifting of the standard of living of all its people in all the corners of the country?

In any case, this argument aside, the International Commission of Jurists at their symposium held in Tanzania Dar es Salaam from 23rd-28th September, 1976, acknowledged the fact that democracy and the rule of law can prevail in a single-party system as well, provided certain essential elements were fulfilled. They said: "the one-party system was fully consistent with the preservation of fundamental human rights and the maintenance of the rule of law, provided that its political form was a truly democratic one. To achieve this, the ideal of government by and for the people should be realized by the provision through the electoral process of a genuine choice between alternative candidates to the legislatures. Where such a choice existed, democracy could flourish to as great or even greater an extent than in a multi-party system where choice was, in practice, confined to the nominees of rivalling parties in whose selection the people as a whole had little, if any say." (35) It is my opinion that Zambia is one of the few countries in Africa today, which has so far upheld the freedom of speech and expression, the independence of the judiciary, observance of the rule of law and human rights. (36)

Thirdly, Gertzel's criticism that the economic crisis in Zambia is aggravated because the government did not take practical steps immediately after Independence may be correct depending on how you look at the matter. But one thing is worth noting. At independence succeeding regimes find a lot of problems as to what policies and course of actions to take due to inexperience and back-up personnel to implement the new and revolutionary changes, bearing in mind that the civil service for quite a number of years after independence was dominated by white colonial seconded officials, who

were interested in maintaining the status quo. Secondly, there is nothing wrong in my view, in running the government with conviction as long as public interest is taken into account. What appears to be politics of idealism without practical interpretation is the fact that as we have already seen, at Independence the colonial civil servants hindered the implementation of the new Government's policies; after the nationalisation of the bureaucracy, the Zambians who took over the jobs were not only ill-equipped but lacked the experience of implementing radical decisions which had no precedents. Thus the situation between a politician and his civil servant was like that of "the blind leading the blind." Anyway things appear to be changing for the better now. Emphasising the need for freedom, President Nyerere says: "Freedom and development are completely linked together as chickens and eggs. Without chickens you get no eggs; and without eggs you soon have no chickens. Similarly without freedom you get no development and without development you very soon lose your freedom."

(37)

Fourthly, the argument raised by Chikwanda is difficult to appreciate taking into account what I have said above in support of a strong system suited for rapid development. The argument really is best suited for countries with developed economics. On the other hand it is not entirely correct to assert that there are rigid provisions in Zambia in respect of elections to offices, as will be shown later in the next Chapter. Here it suffices to point out that (i) the election to Parliament under the one-party state is more competitive and there is a greater choice of candidates than under the previous multi-party system or indeed even any other multi-party system in the West; (38) (ii) Removal of a President from office is possible either by universal franchise by voting 'No' where an incumbent President seeks re-election or by impeachment for the violation of the constitution, gross misconduct or inability to discharge

the functions of the office due to physical incapacity; and (iii) In similar way Members of the Central Committee can be outvoted at the UNIP General Conference. (39)

It is important to realise that multi-party systems are established to facilitate capitalism and the status quo under the guise of the welfare state. Their structures and style are expressions of this basic aim. "The result is that one found bureaucracy as a substitute for government, or to put it slightly different, administration (took) the place of politics"

(40) The issue then faced by a post colonial state is one of establishing a relevant and responsive socialist and democratic political structure not necessarily based on the Westminster model.

Lastly, the answers to the criticism by the Times of London have been adequately made in the preceding paragraphs. Here I would like to re-emphasise the fact that it is not correct and it is an over-statement to say that in Africa a government cannot change and that there are no competitive elections in those regimes. In any case the period of 25 years which Times uses as a yard-stick is too short a time in which to make a constructive evaluation of any political system. It has taken Britain 500 years to reach the stage its political system has reached. It is therefore not fair and logical to expect an African system to reach the Western countries' standard in 25 years time. In any case, Klaus Von Beyme has shown how analytically minded scholars have found out that parties in the western developed countries, did not matter very much in correlation to policy output, therefore "the idea that parties do matter is a basic myth of pluralist democracies."

(41) It appears to me therefore that one-party state in Zambia does rest upon the voluntary choice of the people.

In conclusion while supporting the need for a one-party system in Zambia,

it appears to me that there has been very little time and debate allowed on one-party system in Zambia, hence it is not all that easy to disregard certain criticisms on the one-party system in that country. There is a need for the re-examination of the system to see whether peace, unity, justice and development are present in the system, thus answering the requirement of democracy. There is no doubt that multi-party system created animosity, squabbles and fighting. But the one-party system also assumes that it is efficient without being effectively accountable. Unless we can be assured that everybody in the system is efficient and that the system is running efficiently and effectively, it would be difficult to defend it. This is the greatest challenge of the one-party state in Zambia. Society is dynamic and therefore one cannot conclude that the one-party system would not change.

CHAPTER 2 - NATURE, POWERS AND FUNCTIONS OF PARLIAMENT.

1. General Characteristics of Parliament.

The Zambian Parliament, like most Commonwealth Legislatures, has power, privileges and freedoms similar to the Westminster system.

Under the Westminster model, "the authority of Parliament over all matters and persons within its jurisdiction was formerly unlimited" until the twentieth century. "A law might be unjust and contrary to sound principles of government; but Parliament was not controlled in its discretion, and when it erred, its errors could only be corrected by itself." According to Erskine May, (1) Of late, the British Parliament has accepted the qualification of its unlimited legislative authority in two important respects, namely; "under the Statute of Westminster 1931, Parliament formally recognised its limitations on its power over the Dominions, and later after the Second World War it conferred independence on other countries and territories within the Commonwealth." Secondly, under the 1972 European Communities Act, it extended the authority of European Institutions to adopt measures which would carry the force of law in the United Kingdom.

In this respect, the principle of unlimited legislative competence of Parliament in UK is modified. In that country, the authority of Parliament over all other government institutions is commonly referred to as "parliamentary sovereignty." This means that Parliament can "make or un-make any law whatsoever on any matter whatsoever and no UK court is competent to question the validity of one Act of Parliament." (2)

There is authority in the UK to the effect that Parliament cannot effectively deprive itself of power to legislate on any matter or otherwise predetermine

the future content of its own legislation: Vauxhall Estates Ltd. v. Liverpool Corp. (1932) 1KB 733. This means that Parliament can, while recognising a few provisos, (3) do anything except bond its own future action.

With regard to the question of the privileges of Parliament, however, this has raised a lot of problems between the Judiciary and Parliament in the UK. It is, however, outside the scope of this Dissertation to outline the historical account of this relationship. It suffices here to point out the present position of the understanding between these two important and independent organs. The present situation has been for the courts to insist that it is within their jurisdiction to determine all questions of privileges in the cases before them, while paying due regard to parliamentary privileges. The courts have recognised unequivocally the "exclusive jurisdiction" of either House to punish for contempt a transgressor of its privileges and the right of either House of Commons or Lords over "its own internal proceedings." (4) Although, it cannot be said affirmatively that either House has given approval to the Courts' stand, Erskine May argues that "the absence of any conflict for over a century may indicate a certain measure of tacit acceptance" (5) of the assumption of jurisdiction by the Courts.

The nature, authority and role of the British Parliament just described was during the attainment of Independence of most countries in the Commonwealth transferred to those countries, without due regard to what sort of system of government that country was going to pursue. It is not surprising therefore to find Legislatures in most of commonwealth Africa with typical Westminster model, whether or not the style and system of government is socialist or marxist. The principle of the supremacy of the Legislature in the UK transferred with the granting of Independence to these countries

has been a source of a lot of problems to those countries including Zambia. Not surprising that we do have in Commonwealth Africa Legislatures which refer to themselves as "supreme" or "sovereign." Not long ago, Zambia's Legislature has referred to itself as being 'supreme'. This will be a subject of discussion later in this and the next Chapters.

Having looked at the authority and character of Parliament, we now turn to the subject of the 'role of Parliament'. Martin spells out what he refers to as traditional roles of Parliament as being, supreme law-making authority, with the ability to criticise the actions of Government. (6) Using an extended definition, Ghai and McAuslan state that the role of the legislature differ from one country to another, "but the two commonest of its functions are the making of laws and the control of government," "and in most commonwealth countries it has a special role in the raising and expenditure of public money." etc. (7) As Ghai and McAuslan clearly show; the exercise of these powers by Parliament is on the understanding that as people's elected representatives, they express the will of the nation. They continue to argue that these powers are usually qualified in many respects. For instance, making of laws may simply mean giving legal approval to executive policy; and control of Government can mean, more or less, asking the Government embarrassing questions.

Indeed Parliaments in Africa cannot claim to have the same authority and role as that of their 'mother' Parliament in Britain. Ghai and McAuslan put it more precisely, that such theory "overlooks the effect on the working of a legislature of one of the key developments in this country - political parties - which distorts both its representational and control functions..... and it takes no account of the control exercised over the legislature by the executive, which sometimes reduces the former to the role of the handmaiden of the latter. All these factors result in the legislature's function being in practice mainly related to the legitimization

of government policy, and in this respect it takes a secondary place to the executive." (8)

This assertion of the role of Parliament in Commonwealth Africa, brings us to the question of trying to categorize the Legislatures functionally. Martin states that there are three approaches to be discerned, two traditional and one recent on the study of public law in Africa (9) as follows; The first approach which Martin refers to as the nostalgic approach, is favoured by English writers on constitutional law in Africa. This theory assumes that the developed liberal democratic English type of democracy introduced into the Commonwealth Africa along with colonisation, was the only suitable form and that its rejection is seen as arising from "incompetence or bad faith or both, of this precious heritage." (Supra)

The second approach is called the objective approach. Under this approach the writer is more objective and understanding, he appreciates the contradictions in the colonial legal system and takes note of the problems facing the post-colonial regimes etc. But nevertheless, the conclusion is similar to the above, that "unless a state possesses all the functioning institutions of the Western liberal democratic theory, it is inevitably tyrannical." (p.xxi supra).

The last approach, which is more recent and relevant approach comes from Ghai and McAuslan (Public Law and Political change in Kenya) "where public law in a particular African state is analysed within the historical context of that state. The only standard by which the public law of a given state is to be assessed is that of its relevance to the objective requirements of that state." (10)

In analysing the role of the legislature in Zambia, the writer intends to

use the last approach because, it is my opinion that it is only by evaluating and analysing the role of the Zambia's Legislature taking into account other prevailing social, political and economic forces within and without Zambia, that we would be able to understand and appreciate the role of that Institution.

2. Zambian Government Policy on Parliament.

The philosophy of "Zambian Humanism" does not precisely spell out the role of Parliament in Zambia's one-party system. This appears to me to be by design rather than omission. It is by design because Chapter Three - "our new goals," of Zambia's Humanism, while acknowledging the policy and existence of Parliamentary Democracy, it states categorically that "parliamentary democracy" in Zambia is to be taken "a stage further," by ensuring that "citizens participate not only through their freely elected representatives but also by their own direct involvement in the decision - making process."

(11) This clause may be interpreted to mean that Government is accountable to the people directly through various institutions of the party of which Parliament is one. Such construction is strengthened by the clause which states that villages and sections in towns ought to be re-organised as important and effective units for self-expression by the people and for the people. (12) This construction can only be meaningful if read in conjunction with Article 1 (2) of the Party Constitution, which lays down "fundamental principles": "The Party guided by the Philosophy of Humanism.... shall exercise supreme authority over all state organs." (13) The implications of this construction are obvious: it is intended to subordinate Parliament to the Party and to turn it into one of those institutions in the Party like the National Council, Provincial Council and so on.

It was, therefore, the Government's failure to interpret and apply the above provisions during the consideration of the National Commission on

one-party state, which led to a preposterous result as far as freedom of speech and parliamentary immunities etc. are concerned, as we shall see later. The role of Parliament within a single-party system was re-formulated by and traces its origin from the Report of the National Commission on the Establishment of one-party participatory democracy in Zambia (hereinafter simply referred to as the Commission or simply as Chona Commission, named after the name of its Chairman.) In that Report, the Commission was aware of the control of freedom of speech of MPs in multi-party systems by way of party discipline and party parliamentary caucuses, but erroneously concluded that under one-party there was no need for such controls, and thus recommended the absolute freedom of speech and the right to vote as MPs liked (except Ministers) and that there was no need for parliamentary caucus meetings. (14) The recommended enhanced freedom and effectiveness of Parliament was again unfortunately accepted by the Government in their white paper without modification. (15) The acceptance of Chona Commission recommendations by the Government, culminated in the entrenchment of the Republican Constitution with Articles 87 and 91, (freedom of speech and privileges and immunities of Parliament respectively) in the manner they now appear.

The confusion appears to have arisen in the interpretation of a single-party system by the Chona Commission. It appears that the Commission applied a literal understanding of the relationship between Parliament on one hand, and the Executive/Party on the other hand. It assumed that in the one-party state MPs and members of the Party and the Executive were a single family and therefore the relationship between these organs would be cordial. This was a great mistake, a fact which was only to be realised through practice. The Commission overlooked one of fundamental theories of the one-party state system, which advocates the primacy of the Party over all other Institutions in the nation including Parliament, instead, it recomm-

ended the reverse. Wallerstein, in reference to the Government puts the general point clearly that, "the Party should run the Government, not vice versa, because the Party not the Government, is the emanation of the people, that is, holds their loyalty and ties them to the state. The Party integrates the nation, and allows the integration to be accomplished by a method that maximizes the opportunity of every citizen to participate on a regular and meaningful basis in the decision-making process." (16)

The one-party theory underlines the primacy of the Party and the Executive organs, the conception, according to this theory is that "the Party embodies the whole people, not just a section of it. As the embodiment of the nation, the party is (according to the conception) above the organs of the Government, since Government is only an instrument or agent and not an embodiment of the people; and an agent must necessarily be subordinate to his principal." (17)

Coming back to the recommended "absolute powers" of Parliament by the Chona Commission, which formed its way into the body of the constitution, it is interesting to note the interpretation of the nature and role of Parliament by the Speaker of the National Assembly. The Speaker of the National Assembly, (18) asserted that "the Government of Zambia is politically responsible to and controlled by Parliament,"..... that the Members of Parliament "address themselves to legislative proposals oblivious of the discussions in other party organs," and that "Parliament is the supreme depository of authority of the nation." (19)

With due respect to MR. Speaker and without the intention to violate the parliamentary privileges and immunities, the Government of Zambia, is not politically responsible to Parliament, neither is Parliament the supreme depository of authority in that country but the Party. This construction of the role of the Legislature is undoubtedly against the party policy and

the doctrine of party supremacy as we have seen above, and as will be made more clear in the following discussion. The confusion in which the Speaker finds himself is arising, as we have already seen from the failure to take care in framing the Constitution in a manner that would make and show clearly that Parliament was subordinate to the Party and the Executive.

Notwithstanding this anomaly, however, the President of the Republic of Zambia has, on a number of occasions, adequately spelt out the role and authority of Parliament. Speaking at the official opening of the National Council of UNIP in 1975, President Kaunda gave guidelines, he said: "the UNIP is supreme over all institutions in our land, because the Party was the "father of the Government and all related institutions." Parliament, he said, was the highest legislative organ in the country, but it derived its authority from the Party, like any other institution. There could be no doubt at all about the supremacy of the Party." (20) President Kaunda said that UNIP's supremacy was founded in its overriding responsibility for the well-being of the people of Zambia. He recognised that loop-holes existed in the Republican Constitution on the role of Parliament to which he said, the Party intended to seal such loop-holes.

Taking the opportunity to guide Parliament over its "cynicism and unconstructive criticism" on the Party and Government leaders which characterised the 1st National Assembly under the one-party system, President Kaunda warned MPs against the misuse of parliamentary privileges to further "their personal interests and those of their counter-revolutionary master." He said that MPs had made unfounded allegations of tribalism and corruption against the Members of the Central Committee, Ministers and other Party and Government leaders without substantiating these allegations. He charged that this was not only unfair but undemocratic. He pointed out that it appeared to him that the back-benchers were seeking to become an opposition

party in a single-party system. He further directed the Speaker to ensure that the standing orders of the House were amended accordingly to provide for disciplinary action of MPs who abuse the party-disciplinary code under the umbrella of parliamentary privilege. He warned against "using Parliament as a centre of subversion." (21)

Following upon these important guidelines made in 1975 to Parliament, MPs continued to attack the Party organs and unconstructive criticism continued. Thus it became clear that there was further a need to spell out the role of Parliament in the one-party system. In three Addresses to Parliament, the President has spelt out the role of a Member of Parliament as being a custodian of the people, fostering unity, being an agent of the Party and to legislate. Thus in 1981 in his official opening Address to the Nation Assembly, he told Parliament that, it was, like other organs of the Party a custodian of the democratic way of life and other political ideals of the Zambian people, and that in doing so, Parliament "must reflect and express the wishes and aspirations of the people and be the defender of the Party's policies and programmes," because he said, "the cause of the Party was the cause of the people." (22)

On unity, he said the medicine for peace was unity, he charged the House to be "an embodiment of the unity of the people." He told MPs that people sent them there "to further national causes such as unity and not to promote personal glory or gains." He said that Parliament should be the real symbol of unity. (23) On legislating and being an Agent of the Party, he had these to say; "this House has a crucial role to play in the development of our country. That role is to legislate, that is to put into law, those decisions of the Party that require such an action. Outside this House each MP has a great role to play among the electorates. He or she is an Agent of the Party and its Government for development..... to motivate people for self-help schemes, such as the building of dams, the construction

of roads and bridges and encouraging people to work hard on the land and helping them to solve their problems." (24)

In 1985 after Ten years from the time when he first rebuked MPs or Twelve years after the establishment of the one-party state, the problem continued, thus during his official opening of Parliament this year, he warned MPs against abusing the freedom of speech by attempting to divide the nation. He pointed out to them that the right which was conferred on them to speak freely also imposed on them a corresponding duty to build unity and not "sow the seeds of disunity." He said that "some MPs.....seem to think that they (were) wearing two hats;" one that belongs to the Party which they can conveniently tuck away when they are in this House, and the other one that belongs to this House. Let me make it abundantly clear that we in UNIP recognise only one hat and that is the UNIP hat. That is the hat which honourable Members wear when they are in the National Council as well as when they are in this House. The implications of this are clear. All genuine Members of UNIP must defend the policies of the Party irrespective of where they are." He again reminded them that their role was to mobilize the people for national development. (25)

Answering the critics who take the President's guidelines to MPs and his castigating them as an attempt to subdue the freedom of speech of the House, President Kaunda has replied that it was not his intention to muzzle the House or anyone else, but wanted responsible and constructive debate in the National Assembly, so that MPs can "engage in debate with dignity that befits its status." (26)

The question of Parliament asserting the right to freedom of speech is not without difficulty. MPs and on a number of occasions the Speaker of the National Assembly, have asserted their freedom of speech and parliamentary

privileges as a matter of absolute necessity so as to enable the MPs to articulate their electorates' needs. One can see innuendoes being made that whereas the Party caters for the interests only if its Party card carrying members, Parliament represents the interests of all the people of Zambia, UNIP members and non-UNIP members alike. With the greatest respect to the House, it is a misconception to allege that UNIP serves only the interests of its members. This is because the preamble to the Party Constitution and Chapter One - fundamental principles - of the said Constitution categorically declare to serve the interests of every Zambian whether he is a UNIP card-carrying member or not. For instance Article 2(2) of the said Constitution declares "to improve the living conditions and 'to' ensure greater benefits to the people of Zambia," as a whole. Further, the above stated principles of intention have over a long period of time been followed in practice strictly, where development programmes have been distributed evenly without regard to party membership. Similarly, no individual in Zambia is discriminated against on the ground of his non-party membership.

Having made the above points, a question arises as to whether UNIP lives up to its constitution. The answer is that, there have been instances where the Central Committee and President Kaunda have intervened to stop local party militants from depriving non-party card carrying members of the general public to enter the markets for purposes of selling or buying food-stuffs. Similarly, the sale of party cards by use of force and picketing is banned. It can also be pointed out that the absence of complaints from the general public of being discriminated against goes to show that the Party is trying to uphold the principles and goals it has set for itself.

Secondly, Parliament cannot claim to represent the entire Zambian population, in theory, yes they can, but in practice, it is disheartening to show that MPs are only elected by a small percentage of the Zambia's population. For

example, in 1973 General Elections, only 39.4% of registered voters voted and in 1978 Elections only 66.7% of registered voters voted. (27)

The figures for 1983 are not yet out, but one would not be too far by estimating 68%. The percentages quoted exclude the number of unregistered persons. And out of those who voted when you subtract those voters who voted for the opposite candidates, plus the percentage of spoiled papers, and a percentage of those not registered voters but still would have not voted for the MPs if they had the opportunity of doing so, a total representational percentage of votes cast of the incumbent MPs could be a mere 5 - 10%. Can Parliament representing the population of 10% claim to be national in character?

The Party stands in a stronger position of being a peoples' representative organ than Parliament, because for instance in 1983, the President who is the principal Agent of the Party and whose votes people associate with the Party, received not less than 89.8% of votes in all the nine provinces of Zambia. (28)

The argument in favour of the Party supremacy, therefore, is not that it is not representative of the people it assumes to represent, but rather that "an institution's representative character is determined not by the way it is constituted, but by the degree to which it objectively embodies the will of the people." (29)

In the presidential elections, it appears to me that when voting, people who vote for Kaunda do also vote for UNIP at the same time. In other words Kaunda represents the Party, just as the Party represents him. Further, people's involvement in the Party is also ensured by the election of Ward Chairmen, who are by virtue of office also Councillors of District Local Authorities, and the election of other Ward Committee Members, Branch and Village/Section Committee Members. The Committees' responsibilities are to monitor the

welfare of the people at local level and to be a link between the people and the Government.

In asserting the supremacy of the Party in the manner the writer is doing, it should not be mistaken that I am doing so for the sake of placating the Executive - far from the truth. If anything, this investigation and analysis is being made in the context of which the Legislature is part and parcel of the prevailing forces. The power of primacy of the Executive is intended, in my view, to ensure that the President exercises control over all other organs of the Government on behalf of the Party, because the Party is as we have seen all embracing. For instance, "Kwame Nkrumah likened his Convention Peoples Party (CPP) to a mighty tree with many branches." (30) It should be clear that in emphasising the supremacy of the Party, President Kaunda or indeed this paper is not in any way reducing the freedom of Parliament and its immunities. As a matter of fact even the International Commission of Jurists, has acknowledged the necessity of the subordination of the Legislature to the Party in a single-party system. (31)

Even in Britain itself as in Zambia, parliamentary privileges are derived from the Crown or the Head of State in case of Zambia. According to the tradition, the Speaker presents himself accompanied by MPs at the beginning of each Parliament immediately after his election for presidential approbation and to take and subscribe the Oath of Allegiance to the President and the Constitution, and requesting freedom of speech and right of access to the President, which the President grants. Thus, literally speaking, if that right is abused, the same right could be withdrawn or the President could caution the House against its misuse. It is therefore not correct to state that reprimanding MPs on the irresponsible utterances they make in the House, was contrary to the Constitution. This conclusion brings us to another question and the question is, how then is the Independence of the

Legislature in Zambia's one-party system maintained?

In view of the approach which I have taken in this Dissertation, the question which should concern constitutional lawyers, in a one-party system, is not how is the Independence of the Legislature maintained, but rather, how is the control of the Legislature by the Party and Executive exercised in their co-ordinating role, so as to prevent these organs from making it almost impossible for the Legislature to function? This question is not without difficulty. For, on one hand, as we have already seen, the theory of the one-party socialist system, which Zambia is pursuing, and as clearly brought out by Immanuel Wallerstein and Robert Martin, favours the supremacy of the Party over the Legislature in order to ensure the ideological spirit of accelerated "progressive social change" in developing countries. (32) On the other hand, there is a need to provide some amount of Independence to Parliament in order to enable it to perform its functions properly. It is important to note that although Parliament is an instrument of the Party, its Law-making function is very important. Although, according to Humphrey Mulumba, "parliament was simply an enabling institution - a conduit to be used to formalise party policies and programmes." (33) If, however, it refused to sanction a Bill, nothing can take place, there can be no law.

In the multi-party parliaments, "opposition MPs seek to expose the Government's weak points and thereby, over a period of time, swing public opinion to their side. This is the practical political meaning of Parliaments constitutional role of exercising control over the Executive." (34) In the absence of official opposition, however, opposition can only come from the back-benchers. If abused then it can be a disadvantage. (35) The basis upon which constructive criticism should be allowed, as one of the distinguished commentators has written elsewhere, is based on the understanding that the ban of political parties does obviously prevent

the exploitation by rival political parties of the jealousies, conflicts and differences between the various social groups, but does not abolish these things, if anything, these jealousies and conflicts are directed inwards within the one-party. Hence the need to allow constructive oratory in the Assembly. This indeed is in accordance with the "rights of a member," under the Party constitution, which affords every member of the Party the right, "to request the Party to penalize any member who suppresses constructive criticism or victimises a fellow member for such criticism." (36)

The problem I have discovered in Zambia is that there is no clear policy guideline indicating what is unconstructive criticism, perhaps this is not difficult to discern, but the major problem is that even His Excellency the President's guidelines have not isolated the criticism on policies from criticism on the implementation of those policies. There is a need to differentiate between these, because, the latter acts as feedback to the policy decision-making process. (37) Such criticism can easily be checked through the feedback coming from the Party channels. What I am aiming at, is that MPs criticisms or contributions either in the National Assembly or outside the House ought to be classified either as "constructive" or "unconstructive," "positive" or "negative" criticism. Positive criticism is aimed at stimulating, encouraging, facilitating and inducing productivity generally, whereas, negative contribution on the contrary, is meant to prevent or limit the Party or Government effort by means of bullying, blustering, insulting, reproaching and ridiculing and not offering any alternatives. In Tanzania, this problem has been overcome by clarifying the limits of MPs freedom of speech. As Martin points out MPs may offer constructive criticism but may not oppose. The following is a list indicating the boundary of MPs detailing the things which MPs in Tanzania cannot do:

- " - they may not be contemptuous of the Party principles and Party ideology.
- they may not speak with cynicism of Tanzania's socialist goals.
- they may not criticise a policy decision of the (National Executive Committee) NEC.

- they may not criticise a Government Policy on principle, only on practical grounds.
 - they may not question whether TANU should have authority over them."
- (38)

Similarly, there is a need in Zambia to examine this matter very closely with a view to amending the Constitution in order to spell out the role of Parliament in relation to their freedom of speech and as we shall see later the Parliamentary privileges. At the same time striking the balance to allow some measure of freedom of constructive criticism, especially on the implementation of the Party and Government programmes. This understanding, is underlined by the fact that in "a young, largely illiterate country where public opinion is underdeveloped and slow to form and to articulate," a legislature with some amount of speech can influence the governments, and act against dictatorship. The members of Parliament due to their standing in society and education "are eminently well placed to act as the articulators and guardians of the nations ethic, and the Assembly provides them with an excellent platform from which to try to mobilise public opinion against abuse of power by the Executive." (39)

The writer observes that the change of attitude by President Kaunda against absolute parliamentary freedom of speech is a recent move, it is against the style of administration with which President Kaunda has been associated. As a social Democratic he firmly believes in and encourages criticism in all the party forums. It appears to me, therefore, that this change has been brought about by cynicism, unconstructive criticism and irresponsible and unfounded utterances by MPs against the Party and its Government policies and leadership and also by a desire to ensure the conclusiveness and supremacy of the Party. The writer speculates that, the change in his traditional dress in 1985 during the opening of Parliament to which he has always adhered by wearing a toga, (a sign symbolizing the achievement of self-rule through the freedom struggle) to a mere cream safari jacket and

dark trousers, is probably a sign of protest and displeasure of the misuse of the House by MPs in turning it into a cheap House of propaganda and unfounded attacks on the Party and Government.

In conclusion, it should be noted that in the whole, it is a myth to "dream" of absolute freedom of speech. Looking back to Britain in 1593, in reply to the usual petition of the Speaker for freedom of speech and access to the Crown by the Commons, Sir Edward Coke, the Lordkeeper, speaking on behalf of the Crown, had this to tell the Speaker:

"Liberty of speech is granted you, but you must know what privilege you have; not speak everyone what he listeth, or what cometh in his brain to utter; but your privilege is "aye" or "no" . (40)

Notwithstanding the above quotation, we are no longer in the Sixteenth Century era nor is there any guarantee that single-party systems will bring the advocated changes, a need thus arises to allow the Legislature to enjoy certain amount of freedom of expression to ensure responsible government and administration of the affairs of the State.

3. The Composition, Structure and Power of Zambia's Legislature.

(a) The Composition.

The Composition of Zambia's Legislature is derived from the constitution of Zambia. (41) It is important for the purpose of this treatise to point out that there is a distinction between Parliament and the National Assembly at the outset. This will be made clearer later.

Article 63 establishes the Parliament of Zambia, the Article provides that: "the legislative power of the Republic shall vest in the Parliament of Zambia which shall consist of the President and a National Assembly." On the other hand, the composition of the National Assembly as provided by Article 64

consists of the following:

- (a) 125 elected members, as provided by Article 65.
- (b) Such a number of nominated members by the President under Article 66 who should not exceed ten in all.
- (c) The Speaker of the National Assembly, who is elected by members of the National Assembly from among persons who are not members of the National Assembly: Article 69.

This brings the total members of the National Assembly to 136. This figure includes the Deputy Speaker who is elected from among members of the National Assembly - Article 70.

The tenure of office of MPs depends upon the length of a Parliament which normally runs for a five year term - except for the Speaker who remains in office until his successor is elected. (42) Among the reasons for which a member of the National Assembly shall vacate his seat is if he ceases to be a member of the Party.

One of the major criteria in judging the effectiveness of back benchers in a one-party state is whether they are in a majority or not to enable them to oppose a government measure or legislation by voting 'No'. In Zambia the front bench comprises Cabinet Ministers, Ministers of State - Junior Ministers and from 1978 for the first time the President appointed five members of the Central Committee - MCCs to be among the nominated MPs, and later seventeen members of Parliament were appointed as District Governors while holding positions as MPs. (43) Thus, this exercise increased the number of front bench drastically to sixty-two members, against 73 back-benchers. The required number of MPs to form a quorum is one-third of the total members, that is 45 members. According to Mumba, (44) the appointment of MCCs and District Governors was intended to exercise control over the back benchers and not merely to ensure that party policies were properly articulated to the MPs. Whatever theories or arguments may be advanced in this regard, it appears to me that the question of ensuring that the

Government policies should pass through the House without much problem is similar principle applied in multi-party systems. There a Party in power requires to have sufficient majority for it to rule. Even under the colonial administration of British protectorate countries, the Governor created majority of Government Officials to ensure the passage of Bills and his Government's programmes. It is argued by some people that in anycase, in Zambia, the back bench are still in a majority of about 11 members.

Members of Parliament are elected under a universal franchise. Any aspiring candidate so long as he is a member of UNIP and he is qualified to stand, can do so if he likes. This has provided a unique opportunity of choice resulting in elections in Zambia being "more stiff and difficult than in most multi-party systems." (45)

Commenting on the new one-party Legislature, Gertzel observes that the new "MPs to a far greater degree than in the past were local men returned from constituencies to which they belonged by birth, although not all of them had lately been resident there." She further states that over 40% of MPs "had business interests of one kind or another." And the newcomers, she says "were generally better educated than their predecessors overall the new Parliament had within its ranks, therefore, a good deal more professional and administrative expertise than its predecessors, particularly on the back bench." (46)

Let us go back to our discussion of the distinction between Parliament and National Assembly. It is clear from Article 63, that Parliament is constituted only in two particular instances: Firstly, during the legislation process. The National Assembly, not Parliament, debates and passes a Bill. After this has been done, the President in the process of asserting to a Bill, constitutes Parliament. Secondly, Parliament is constituted when the

President is personally present in the House, especially when he is there addressing the Housing. Otherwise when the Legislature is sitting, it meets as a National Assembly and not as Parliament. In other words, Parliament exists in theoretical and presumptive sense and not in practical sense. When a member of the general public or the press criticises the Legislature or MPs utterances in the House in the manner Samson Mukando (47) and the press did, it was not legally correct for the Speaker to assert that the contempt of the House included the President because he was part of Parliament. Such interpretation is logical and persuasive, but not legally and it is practically incorrect.

The inclusion of the President in the definition of Parliament, apart from being a traditional formulation, is significant in two ways. Firstly, it is enshrined to provide for his role in law-making of assenting or dissenting to a Bill, when in his opinion such a Bill may be in public interest if enacted or for any other reason open to him. Secondly, it implies that the National Assembly's powers in law-making are qualified. In other words, the National Assembly has no absolute power to legislate and should not pretend that it has, because although the President has no absolute right of veto, he still can make it difficult or impossible for a Bill to become law by withholding his assent and if he wishes he could dissolve Parliament if the Assembly insists.

(b) The Structure and Organisation.

The structure and organisation of Zambia's Legislature was fully discussed in another Essay in this programme, thus to avoid the repetition, I will here simply state briefly that there are eleven sessional committees in Zambia, which can be divided into what is commonly known as Housing Keeping Committees and Watchdog Committees. The Housing Keeping Committees are: The Standing Orders Committee. Parliamentary Procedure, Customs and Traditions Committee; Housing Committee; Library Committee and Committee on absence of

Members from Sittings of the House. The Watchdog Committees are as follows: Committee on Foreign Affairs; Delegated Legislation Committee; Committee on Government Assurances - (responsible for making a follow-up on the assurances made by Ministers on the floor of the House); Public Accounts Committee; Committee on Parastatal Bodies and Committee on Local Government Administration.

Like most Commonwealth Parliaments, the Zambian Parliament exercises its function of a peoples watchdog in three different ways namely, by way of debate, by committee system and by questions. The effectiveness of the Legislature in applying these methods of control over the Executive will be analysed later in Chapter 3.

For the purpose of clarity, I intend to discuss the powers, functions, privileges and immunities of Parliament into two distinctive categories of Powers and Functions and Privileges and Freedoms. This will make it easier to understand the character of the Legislature in the Chapters that follow.

(c) Powers and Functions.

As we have seen earlier on, the powers or functions of the Legislature in Zambia can only be derived from the Constitution, thus, Article 63 endows Parliament with legislative function. Article 79 amplifies that the legislative functions shall be exercised by Bills passed by the Assembly and assented to by the President. Where the President withholds his assent to a Bill, such Bill may be returned to the National Assembly and if within six months the Assembly passes the same Bill with two-thirds majority votes the Bill is again presented to the President. At this time the President has choice either to assent to a Bill or to dissolve Parliament.

Under Article 80 Parliament has power to amend the Constitution or even to

replace it entirely with a different Constitution, provided the special procedure outlined under Clauses (2) and (4) are complied with. Article 81 gives Parliament power to confer on any person or authority power to make subsidiary legislation. Article 90 provides Parliament with power to determine its own procedures. This is where the power to make Standing Orders are derived from. This provision, it is important to emphasise, allows Parliament to make its own internal procedures and cannot be used to frame procedures which can be used to affect outsiders.

(d) Privileges and Freedoms.

The Freedoms and Privileges are the instruments which enable Parliament to exercise its powers and functions. In this way, they are different from the powers and functions themselves.

Article 87 provides for the freedom of speech and voting, it says: "Members of the National Assembly shall be free to speak and vote on any issue in the Assembly." And Article 91 provides for the privileges and immunities, thus: "The National Assembly and its members shall have such privileges and immunities as may be prescribed by an Act of Parliament." Under the powers conferred by Article 91, Parliament enacted the National Assembly (Powers and Privileges) Act Cap.17. Under its long title, the objects of this Act are, "to declare and define certain powers, privileges and immunities of the National Assembly..... and to secure freedom of speech, to regulate..... to precincts of National Assembly etc." The Act among other things provides for such things as power to order attendance of witnesses before the Assembly or any Committee (S.10); examination of witnesses (S.12); penalty for giving false evidence (S.16); penalty provision (S.21) and the ousting of courts jurisdiction (S.34).

I have difficulty in construing the provisions of this Act in relation to

the Constitution and particularly Article 91. Article 91 is very clear it did not envisage granting extra powers to Parliament by way of this Act apart from allowing Parliament to provide for its immunities and privileges. The Legislature has instead given itself "powers" in addition to "privileges and immunities" contrary to the constitutional provisions. This obviously appears to me to be unconstitutional.

The problem is that the said Cap.17 was enacted in 1956 by the colonial Legislative Council and has since been amended seven times, the last amendment being in 1965, one year after Independence. This explains why this anomaly exists. It is a problem of adopting colonial legislation without proper scrutiny. When analysing the role of the Legislature in relation to the Judiciary, it is clear that S.34 of this Act has brought problems to the administration of justice by the courts, by ousting the constitutional original jurisdiction of the High Court.

The writer in an interview with the Clerk of the National Assembly (48) enquired from him what the sources of Zambian Parliament's powers and privileges were. The Clerk stated that in addition to the powers and privileges contained under Cap.17, supra, Parliament of Zambia derived its powers and privileges from the following sources: (i) its Standing Orders, which have been modified to suit Zambia's situation; (ii) from Parliamentary case law on precedents of various speakers; (iii) Mr. Speaker's own Rulings made from time to time, and (iv) from the general practice of Parliaments esp. in the Commonwealth of Nations.

With due respect to my learned colleague, I have difficulty in appreciating the stated four sources. Apart from Parliament's own internal consumption, I do not see how these rules, precedents and rulings could be enforced against outsiders in Zambia. I would go with Professor Mvunga who asserts

that the only British Law which Zambian Parliament can apply is as follows:

(i) the Law governed by the Common Law of England and Equity and any statute of general application enforced in England prior to 17th August 1911 (being the commencement of the Northern Rhodesian order in Council), as per English Law (Extent of Application) Act Cap.4; and (ii) the British Acts Extension Act Cap.5, appends in the schedule thereto a number of British Acts which could apply in Zambia. This means that an Act passed prior to 1911 may apply, but only if there is no local legislation. Some of these and some conventions have been substantially enshrined in the Cap.17., otherwise there is no basis for the Parliament of Zambia to go out looking for laws outside its own area of jurisdiction.

CHAPTER 3 - THE ROLE OF ZAMBIA'S ONE-PARTY LEGISLATURE.

1. The Roles of the Speaker and Individual MPs as Legislators.

The exercise of powers and functions by any institution, as long as it is run by human-beings can never be perfect. Similarly the role of the Legislature in Zambia is likely to be probamatical due to many factors, but mainly those problems will be associated with the members holding posititions in this organ. In this respect it becomes necessary to start investigating the offices of Speaker and Members of Parliament first. It is hoped that in this way, we shall be able to understand the institution of Parliament better and the role it is playing or it is expected to play in the following Chapters.

(a) The Speakership.

The Speaker of the National Assembly derives his appointment, authority and powers from the Constitution of Zambia. Article 69 provides that a Speaker shall be elected by members of the National Assembly from persons who are qualified to be elected as members of Parliament, but that he should not be an MP himself. It is interesting to note that one of the qualifications for a person to be nominated as a member of Parliament is that he should be a member of UNIP. (1) It follows, therefore, that one cannot become Speaker unless he is a paid up member of the only Party, UNIP.

The constitutional function of Speaker of the National Assembly is to preside in the House during the sittings of the National Assembly: (Art.69 (3)) The constitution further provides that, no business can be transacted in the Assembly when the office of Speaker is vacant. In other words, the Deputy Speaker, who is elected from among persons who are MPs (Art.70) cannot act as Speaker or preside at the sittings of the House when the

office of Speaker is vacant. He can only do so when the Speaker is granted leave of absence by the House or when his absence is unavoidable or where the Speaker himself authorises the Deputy Speaker to chair the sitting. (2)

In practice, however, the Speaker has always been nominated by the Government Chief-Whip, and so far this nomination had not been contested by the back bench.

On 12th December 1973 during the introduction of the one-party state in Zambia, and in nominating the present Speaker to the office of Speakership, the Chief-Whip and then Minister of Local Government and Housing, Peter Matoka quoted the President when he addressed a mass rally in Kitwe on 30th September 1973 that: "Mr. Nabulyato has brought dignity to the House which we are proud of." Mr. Matoka continued, "I therefore feel Mr. Clerk, that this enlarged House, having several new faces, we need a man who at one time was nicknamed "Mr. Discipline." (3)

Speaker of the National Assembly in Zambia, has similar authority and powers to those enjoyed by the Speaker of the House of Commons. "The chief characteristics attaching to the office of Speaker in the House..... are authority and impartiality," (4) derived from the manner in which he conducts himself as Speaker, and not necessarily as a disciplinarian, as the former Minister indicated, because he is chairman of articulate and mature members and not school boys. The Speaker's position is complex. In multi-party systems, "he has to hold an evenhand between Government and the opposition, and afford all a fair hearing." (5) This of course equally applies to single-party legislatures, where he is required to strike the balance between the front-bench and the back-bench. The Speaker's rulings are final and subject only to the Court's decision and interpretation of the

Constitution. (6) His rulings and conduct can only be debated on moving a substantive motion. Reflections, therefore, upon his character or actions are punishable as breaches of privileges.

The Speaker is the custodian of parliamentary privileges and dignity of the House and he is the only spokesman of the National Assembly. As such he symbolizes the autonomy and authority of Parliament and has to ensure that proceedings in the House are fruitful and orderly.

The first Zambian Speaker, under the multi-party Legislature, who at that time also represented a constituency and belonged to the ruling Party, had this to say in reassuring MPs, who were not used to a Speaker who belonged to a political party: "The nature of Speaker's job is such that if the dignity and prestige of the House are to be maintained, the Speaker must discharge his duties sincerely, devotedly and impartially." (7)

As the Presiding Officer of the House, the Kenyan Speaker defined his responsibilities as follows:

"It will be my duty to all of you to enforce strict compliance with your own rules of procedure, and to ensure that the voice of the minority is always given a fair hearing; but, in doing so, I shall only be giving effect to what you yourselves really desire. In all other respects, I shall always consult and bow to the will of the majority or such special majority as the Constitution may require for special occasions." (8)

As can be seen from the quotation of the Kenyan Speaker, the position of Speaker is a very difficult one. He must always be balanced, so that he can satisfy both the front bench and the back bench. The worst thing to experience in Parliament is when members stop respecting the Chair. If the Speaker is not respected and if his rulings cannot be obeyed, then the Speaker is finished and it means you have no House.

The former Speaker of the National Assembly feels that it would be to the

advantage of the Speaker, if he had a legal background. (- 9 -)

Admittedly, having a legal background may assist quite a lot, but it appears that the most important qualities for a Speaker are his sense of impartiality, reasonableness, truth, justice and fair-play. These charismatic qualities are not common.

It can be argued, that it is not possible for the Speaker in Zambia to be independent of the Executive because his loyalty to the Party and the Executive derives from his Party membership and because his election to the office is in practice made by the Executive. The theory goes further that as a result of the preservation of parliamentary autonomy against Executive "arbitrariness " could not be achieved.

Although the preservation of parliamentary values against the Executive "arbitrariness" is a difficult task to achieve, in Zambia the Speaker appears to have no problem in this regard. On the other side of the coin, there has been no arbitrariness on the side of the Executive. The Speaker himself has said on a number of occasions that, "freedom of speech and expression in Parliament has been more enhanced under the one-party state than it was when Zambia had a multi-party system. I now feel more comfortable in the chair than before," he said, adding that this was because he now presided over the House than belonged to one family. (10) Unlike Kenya where the Speaker tended to rely on Government advice and interpretations for his rulings, (11) in Zambia's one-party Legislature, the Speaker usually relies on his own office. It appears, therefore, that in Zambia, the Speaker operates independently without the Executive trying to use him as an instrument of the Party and to try to control the Assembly through him, as it happened in Ghana under Nkrumah where on one or two occasions the Speaker was directed "on what ruling to give, and the Leader of the House had sometimes given a ruling over the Speaker's head." (12)

In the circumstances, therefore, the "impartiality of Speaker in a one-party state is judged by the extent to which he avoids being identified with the Executive or any interest group within or outside the House. In a multi-party 'state' his impartiality is recognised when he keeps out of politics." (13) In a one-party state, he loses credibility if he shows visibly that he is biased and prejudiced against the Party and the Executive in preference to back benchers. The Speaker should therefore show that he is there to serve the interest of the House and no other. In a one-party state, the impartiality of Speaker does not mean that he should make rulings which are contrary to the Party policy and ideology, because in this system the National Assembly is simply one of the organs of the Party. His doing so can mislead the House and lead him into losing credibility among the Party and Government leaders, and eventually make it more difficult for him to discharge the functions of his office.

The discussion that follows is an attempt to show how the Speaker in Zambia's single-party Legislature has tried to discharge his functions impartially. The Speaker has on a number of occasions cautioned and reprimanded MPs, the front and back benchers alike. For instance on one occasion he reprimanded the back benchers for using the House as a platform for campaigning. (14)

Secondly, in March 1981, the Speaker reprimanded all MPs for having not turned up in time on two occasions when the Deputy Speaker was in the Chair as Chairman of the Committee of Ways and Means on the 12th and 26th February, 1981. (15) The Chairman had to suspend the business owing to lack of quorum. On the 26th February, 9 Cabinet Ministers, 16 Ministers of State and 25 back benchers were absent. The Speaker warned that such an attitude did not only delay the approving of Estimates of Expenditure, resulting in retarding the implementation of development projects, but gave a very bad example as representatives of the people, therefore it was his duty to protect

the tax-payers, adding that in future he would not hesitate to recommend appropriate punitive action from the appointing authorities, who are the President in case of Ministers and the Party Headquarters and their constituencies in case of back benchers. (16) Similarly, earlier on in 1978, having observed that the attendance at Parliament was not improving, the Speaker again reprimanded the "truant" Ministers and back benchers against absentism without permission, on false pretext, in case of Ministers that they were attending State House functions or undertaking tours. He demanded they resign in order to give room to the ones who would take their parliamentary work seriously. "I am afraid, my patience is running out," he remarked. (17)

Thirdly, as regards to the Speaker's reaction against the front bench, two instances stand as a test case. The first happened when the Minister of State for the Ministry of Higher Education Mbambo Sianga, in debate in answer to the back bencher's criticisms of the Party and Government policies, made reference to the House as a wrong forum for discussing such issues. In a temper and vividly angry, the Speaker rose up from his seat and shouted: "will you sit down, we are here debating the Constitution and what else can you explain."....'the remarks are' "most insulting indeed" (18)

An interesting case for study took place in February, 1981, during the time when Daniel Lisulo now MCC, and Chairman of the Legal and Political Committee of the Sub-Committee of the Central Committee, a lawyer by profession, was Prime Minister and Leader of the House. Many commentators in Zambia have referred to this period as a period characterised by intense misunderstanding and personality clashes between the Speaker and the Leader of the House. The matter was sparked-off by a point of order raised by the Member of Parliament for Choma. (19) He sought the Chairman's ruling as to whether the Prime Minister was in order in making reference to the National

Assembly as an institution which "does not accept apologies."

The Speaker in his Ruling, said that he had checked the text of the Prime Minister's speech when he was winding up the debate, in which he said interalia; "when we are criticised, we come and apologise, but the apology is never accepted. What sort of House is this? An institution which does not accept an apology! A man comes begging on his knees - 'I apologise, Sir,' and you just say, 'get off.' That is not it. It is outrageous. It is not in line with Zambian culture. When a man comes crawling pleading for mercy, he must be forgiven.....Even among us, individuals, there are lapses, but what I hear in Parliament here is that there are no bona-fide mistakes... here; everything is wrong in so far as the Government is concerned....."

(20) The Speaker said that he had compared carefully the submissions of the Member for Choma with the remarks of the Prime Minister, he went on; "I am convinced beyond reasonable doubt that the remarks were directed at the Chair resulting from the rulings and pronouncements that have been made since the beginning of the current session." He went to inform the House that the "authority of Parliament was absolute" and "uncomparable" and its powers were "transcendent." He said that the impartiality of the Chair would be destroyed if he had to show preference on account of positions held by members in the House. He went on, "the Chair would not like to be made a scape-goat for current political and economic problems being faced by this country." He concluded by finding that the Prime Minister had committed a contempt of the House, and thus appealed to Members "not to take any further action nor pursue this matter despite the obvious contempt of the House..... committed by the.....Prime Minister." (21) This however was not the only time when the Chair clashed with the Prime Minister as Leader of the House, earlier on, the Speaker, in uncomprising mood, spoke against the declining standards in Parliament following the Government's (Prime Minister's) rejection of his request to extend the debate on the Budget Speech, saying;

this, "caused alot of frustrations among MPs who wanted to contribute to the debate and that he had no power to extend the debate himself." (22) This obviously was understood as a reference made directly against Prime Minister Daniel Lisulo.

The apparent misunderstanding appeared to have started taking root even with the successor Prime Minister Nalumino Mundia. This happened when the Minister of Labour and Social Services Basil Kabwe had given a Ministerial statement in the House on the alleged tribal practices in the Zambia National Provident Fund, whereupon the Prime Minister rose on a point of order to make remarks against the Ministerial statement. The Speaker looking unhappy on this interjection indirectly told the Prime Minister to be consistent, observing that, it was difficult for the Chair to guide the House when a Minister makes a Ministerial statement and the Prime Minister comments on the statement. (23)

I have the following comments to make in respect of the above case-studies. Firstly, with greatest respect to Mr. Speaker and the House, in Zambia, as we have already suggested in the preceding Chapter, the authority of Parliament is not "absolute, uncomparable and transcendent." Legally the authority of Parliament is subject to the Constitution and the laws made there from and particularly from Parts III, V and VIII of the Constitution. The argument on these provisions will be developed later on when discussing the role of the Party and the Executive. Secondly, in practice, Parliamentary powers are circumscribed in a one-party state, the point which was clearly acknowledged in the Speaker's Ruling on collective responsibility of Ministers. (24) Thirdly, it is not clear in my mind, and I do not see how the National Assembly could if it decided to admonish a Prime Minister at the Bar of the House or indeed impose any other stiffer punishment, do so, in that the Prime Minister is not only the Leader in the

House, but the Head of Government administration and the President's left-hand man and his direct representative on Government affairs.

Indeed, the authority or precedents for the Speaker to take action in accordance with the will and decision of the House are numerous, among these the most striking one is the statement of Speaker of the House of Commons Lenthall delivered on 4th January, 1644 in the Commons when Charles I made the characteristically foolish and impulsive decision in going in person to the House to try to seize five MPs who allegedly committed treason; he said;

"May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here, and I humbly beg Your Majesty's pardon that I can't give any answer than this to what Your Majesty is pleased to demand of me." (25)

No doubt as we have seen, any reflection, whether indirect or not on the character, rulings or pronouncements of the Speaker will be viewed as a breach of privilege. Thus applying the principle in the above example, there is no reason why the Speaker in a single-party Legislature, could not use parliamentary privileges to punish a Prime Minister if the President does not intervene. These are the immunities claimed out of the rights to the British ancient privileges. This is because no attempt has been made in Zambia to reform the law on parliamentary privileges. But the extent to which the Speaker can punish the Prime Minister or indeed the Secretary-General of the Party in a Zambia's single-party system is doubtful and remains to be seen.

It is interesting to note that the National Assembly has on a number of occasions used its parliamentary privileges to punish, reprimand or admonish a good number of people, especially the Party and Government Officials, the Press and the general public who question or criticise its deliberations. I would not go into details about this, because it is outside the scope of

this Dissertation, but my interest is to question the validity of the use of these powers on the general public. It appears to me that it is against the concept of one-party participatory democracy to deprive the electors from questioning what their representatives in Parliament do or say. It is all right for MPs to enjoy freedom of speech and immunity from being sued for what they say in Parliament, but in my opinion the general public should be free to criticise their representatives, just as their representatives have freedom to criticise any authority or person. It is against the principle of participatory democracy for Parliament to use the privileges as "a sword and a shield" at the same time. This prevents the electors from exercising the additional checks on MPs in addition to the ballot.

As regards the argument that the system of appointment of the Speaker by the Government could tend to the appointment of a person who would be sympathetic to the Executive and its policies and that the impartiality of the Speaker in a single-party system would therefore be diminished, the answer to these arguments is that much depends on the tact and character of the man in the Chair, and most importantly on the tolerance of the Executive and the Party. In Zambia, as we have seen, the Party and Government have been quite tolerant thus making it possible for the Speaker to perform his duties with utmost impartiality.

(b) A Member of Parliament as a Legislator and Representative.

According to Momba, (26) the role of an individual member of Parliament is complex to analyse. This is because one has to take into account many factors, such as the educational background of an MP, examine the social group he comes from and his profession (whether he is a businessman, lawyer, professor or politician). The social dynamics of society have also got to be taken into account. Hence, he says, issues which MPs are likely to articulate relate more to the groups to which they belong. In a one-party

system, he says, MPs do articulate the interests of various groups: sectional interests, geographical and non-geographical interests and so on. At the same time the Party takes a keen interest in articulating the needs of the people at grass-roots level.

This argument is confirmed by de Smith, (27) who points out that the work of MPs could be influenced by pressure groups which fall into two categories, namely the "sectional or interest groups" and the "promotional or cause groups." He cites examples that the former are such as Trade Unions, the Federation of Employers, the Farmers Union, the Zambia Medical Association, Law Association of Zambia etc. The latter, he says, exist to promote a cause, such as the Zambia Council for the Blind and Handicapped etc.

The official policy on the role of MPs is as we have already seen spelt out in Chapter 1 as that of promoting unity, being an Agent of the Party and co-ordinating and mobilizing the masses for development. (28) In similar language to that of President Kaunda, President Kenyatta emphasised the role of MPs as being "a bridge between Government and people.....unless this bridge is maintained the national well-being suffers". (29)

What discretion is then available for a Member of Parliament to act in the manner he likes? de Smith argues that MPs are representatives and not delegates and as such, they "ought to act in the way they think best in the general interests of the country." (30)

Let us first look at the role of a Member of Parliament outside the House. What is a member expected to do? Obviously his role has been spelt out for him by the Executive, as we saw in Chapter 2. But there are obvious problems which an MP confronts in his constituency. A Member of Parliament for Katete South, (31) complains that there is a misconception among the

electorate on the role of an MP. In his constituency he said, people looked to him to identify local projects, talk on their behalf in all the forums including Party forums, find the money for the projects and ensure that the projects were executed. They did this, he said, notwithstanding the fact that other Party and Government agencies were there to undertake some of these tasks. He pointed out that the work of an MP is made more difficult because Government planning was haphazard and ineffective and that there was no effective co-ordination between the district, province and Lusaka. He revealed that what made MPs to talk a lot and to criticise the Government was because the electorate psychologically tended to support a Member of Parliament who talked a lot in the House, thinking that such Member is likely to get funds for development projects allocated to his area more than those who did not talk a lot.

On the other hand a Member of Parliament for Liuwa, observes that a Member of Parliament in Zambia has a fundamental problem of satisfying two masters at the same time, these being his constituents on one hand and the Party and the Executive on the other. He argues that if he did not talk much in Parliament in order to satisfy the Party, he is likely to lose support from his constituency and if he talked a lot on behalf of his electors he is likely to face displeasure from the Party and the Executive. This problem of "alternativedangers", he confesses, remains a greatest problem of an MP.

(32) He related the problem of relationship between MPs and local Party cadres, especially at district level, he revealed that clashes of personality tended to occur because local party officials were in the habit of influencing voters against a local MP by telling lies that their area lacked development because of their Member of Parliament who did not exert pressure on the Government. Similarly in his view, he did not see the reason why an MP ranked behind the Provincial and District Party officials in the order of precedence. It was also disheartening, he said, in that a Member of Parliament is required

always to get official permission from the District Party Office and a Police Permit to address a public meeting in his constituency, whereas this did not apply to the Party Officials and Ministers.

An example of conflict between an MP and a local Party Official took place in Keembe constituency. In this incident the MP for Keembe Robin Chukimo Mwanza visibly annoyed, nearly exchanged blows with, Constituency Treasurer, who was also Chairman of the Party Committee at place of work at Nampundwe Mine where the MP went to investigate allegations that a woman gave birth in a village and thereafter lost her child because of the refusal by the Mine authorities to allow the ambulance to transport non-mine employee patient to the clinic. (33)

It is probably correct that the role of MP at district level, apart from being an ex-officio member in various forums at district and provincial level requires re-examination, so that an MP should not feel isolated; instead he should be used fully, if he has to fulfill the task of being an agent and mobilizer of the people on behalf of the Party. Apart from this observation, however, the relationship between him and the local Party cadres depends to a large extent on an MP himself and on how he behaves himself among the community in which he lives. Even in the existing framework opportunities of exerting influence on local matters and development are many. A Member of Parliament is an ex-official member in many committees and bodies, such as being a local authority Councillor by virtue of office, he is also a member of the Local Council of Education and District Party Conference. And at provincial level, he is a Member of the Provincial Council Provincial Conference, Regional Council of Education and so on. An effective member can make use of these forums to the benefit of his constituency and the province as a whole.

For instance, in the North Western province, a Member of Parliament for Solwezi East, notwithstanding that he was a front bencher exerted pressure in the Provincial Council meetings and on the North Western Province Co-operative Union, (NWPC) (the body responsible for distribution and marketing of agricultural inputs and produce) to remove its Chief Executive who was appointed irregularly, unqualified for the job and who was unable to take care of the Union's funds. He insisted, despite false and unfounded allegations against him, that the people in the province would not benefit and the province will not develop in agricultural terms unless the NWPC was run efficiently and effectively by qualified men and women. He said this was the only way villagers could benefit from their hard won Independence. He continued to fight on and insisted that the Auditor General be requested to audit the books and accounts of the Union. The matter took four years, without the MP giving up, and in 1985 the Report of the Auditor-General on the Accounts of the Union corroborated the allegations of financial irregularities and misuse of public funds made by the MP, and thereupon the NWPCU Board of Directors had no alternative but to suspend the General Manager pending his removal.

Rendering assistance to the electorate takes many forms. There are some MPs who have assisted the people in their constituencies by organising them to carry out self-help projects of schools, clinics roads etc. In return for this MPs go out to private organisations and companies appealing for donations which if given are used to buy the materials which cannot be obtained locally, such as corrugated asbestos or iron sheets, window and door frames, doors, cement and so on. While the people can mould the bricks and fetch crushed stones and water for building and even building the structures themselves on self-help basis. For instance, an MP for Mwinilunga West, John Kalenga, being financially well-off built a self-help Secondary School in his constituency. And the writer saw him taking a large quantity of hoes to give people in

encouraging them to grow more food. It is understood that there were such self-help projects which he assisted financially. It is, therefore, not surprising that John Kalenga in the 1983 Parliamentary General Elections, he obtained the highest percentage of votes of 92.7% in the whole country. This shows how people in villages are in desperate need of development projects such as schools, roads, clinics etc. This to them is a priority. This is what an ordinary person expects from his Party and Government.

Having analysed the role of MP outside the National Assembly, let us now come to another question, and this is, what is the quality of Members of Parliament? There is no single answer to such a question because there is no universal yardstick with which the quality of all MPs can be measured. Therefore, it cannot be surprising that the quality varies from individual MP to another. My interest, however, is to review the performances of MPs so that we can have an idea of how MPs in this Legislature discharge their functions.

Generally speaking, it appears to the writer that the quality of back-benchers and Ministers has been improving since the introduction of one-party state. (34) Notwithstanding this good trend, however, there are some MPs who are below par. They are unable to comprehend reports and speak effectively. To make matters worse the procedural rules in the House and standing orders appear cumbersome to many. The Rulings of the Speaker are also not reduced to a booklet to enable newcomers to know them in time. Few MPs understand the legal language including the Constitution and the Bills which come their way for passing. It is therefore not surprising to find that three quarters of MPs when debating Bills, they actually debate generally and do not make any progressive suggestions which could help the Government. This incapacity of many MPs has meant that too much work falls on the shoulders of a few persons, who may not cope, as they may be engaged

with other sessional Committee burdens. Further, judging from the way they debate, it becomes apparent that MPs do not do their homework of researching. Even the Research Department of the National Assembly is not only inadequately equipped with qualified staff, but you can rarely get accurate and reliable information from there. These problems do contribute to making the job of MP difficult.

The ineffectiveness and irrelevance of some MPs, however, is simply as a result of their own carelessness and irresponsibility. Take an example of a Member of Parliament for Keembe, Robin Chivumo Mwanza, who absented himself without leave from the Sittings of the House for 17 days in 1982 and 15 days in 1983. On the recommendation of the Committee on Absence of Members from Sittings of the House, the MP was made to stand at the Bar and was admonished and reprimanded by the Speaker, resulting into the Member to shed tears publicly. (35)

It is difficult to understand the reason MPs who have no political appointments should absent themselves from the Sittings of the House frequently. For front benchers, it is understandable because at times they require to attend to their official duties at their offices, in view of the fact that the Sittings of the House take a whole full day on Tuesdays, Wednesdays and Thursdays - from 10.30 hours - 1800 hours. On Friday the Assembly sits from 9.00 - 13.00 hours, only allowing one and a half hours for lunch. Each parliamentary session, which is an equivalent of one calendar year is divided into three Sittings, as follows: January to March, August and December. In August and December the House sits for about 10 to 14 days, thus bringing the total sitting days in each session to about 85 - 100 days. For instance, in 1981 the House sat for 85 days including Saturdays, Sundays and Mondays when the House does not sit. Taking 85 days out of 365 days in a year, it means that an MP has 280 days in which to attend to his personal affairs and

constituency duties. Even when a Member of Parliament attends to Sessional Committee work, it appears to me that he still remains with sufficient time in which to attend to other duties apart from the Sittings in the House. Touring and addressing meetings in a very large rural constituency may take about 30 days, and MPs normally tour their constituencies twice a year. This will still leave an MP with 220 days in a year to attend to other meetings and personal matters.

One major problem among some MPs, is that they make utterances which are either unsubstantiated or totally contrary to the political ideology and policy of the Party. For example, in 1978 an MP for Bahati, who was at the same time Chairman of the Committee of Parastatal Bodies of the National Assembly, in referring to the economic crisis in the country, said; "the capitalists are the only people who can bail us out.....socialism..... has ditched us as a country economically." (36) Similarly, at the official opening of the Civil Servants Union of Zambia meeting at the Natural Resources College, Lusaka, the MP charged without substantiation that some Civil Servants owed their loyalty to individual political leaders and members of their tribes and not to the State. (37)

Sometimes utterances in the House are made emotionally and arrogantly and unconstructively. Let us take a few examples. Starting with an accusation of MP for Choma, Daniel Munkombwe, who said; "This political system which we all support, allows democracy. But democracy Sir, cannot work, if it is only the interests of a group of people which are advanced at the expense of the rest of the people." He went on; "UNIP which in the past offered hope to the majority of the people of Zambia, now appears to me to be oppressive.....sometimes people are labelled as dissidents and are thrown into detentions or jailed. They are then released after two years without any explanation or apology." He further stated, "No economic growth is

possible if Zambians continue to live in a state of instability as they do not know what will happen to them tomorrow.....It is surprising that the people who are No.7 in the population ratio come to No.1 and No.1 comes to No.7 in political appointments." (38)

Let us turn and examine the criticisms of another Member of Parliament for Malambo, Whitson H. Banda, made during his contribution on the motion of thanks to the official opening Address of His Excellency the President. He said: "I know that all governments in the world which fail to plan properly always end up milking the people.....The suggestion I am going to make..... is that there should be sufficient foreign exchange provided by the Ministry of Finance and sufficient cash flow and funds with which to carry out development projects in the rural areas....." I am sure that the people of Malambo are happy with me." (39)

In 1977, the Member of Parliament for Mwansabombwe, Peter Chanshi, charged in Parliament that the country was being run by people from "one section of the country.....To get a job in Zambia, today one has to be a Zulu, a Phiri, a Tembo, a Banda. It does not matter what you know but who you know and how powerful they are. One has only to look at the Secretary-General of the Party, the Secretary to the Cabinet, Chairman of the Public Service Commission to know who is running the country." (40)

Commenting on the proposed scheme to redirect the unemployed to the land, Members of Parliament for Masala and Mazabuka, Cosmos Chibanda and Franklin Malawo respectively, demanded that the redirection of superfluous employees to the land as directed by the President should start from MCCs, Ministers and MPs, the people who have tested power and not the sweepers. Franklin Malawa, said the ineffective leaders should be the first to be repatriated. And the MP for Mpika West, Oterma Musuka, called for the removal of some

leaders who had "outlived their usefulness in their offices, and 'were' more interested in monetary gains than service." (41)

Of great interest is a statement made by the current Prime Minister Musokotwane in 1976, when he was a back bencher charging that; "the fiscal problems facing Zambia were a result of the short-sightedness of its political leaders," saying, "even at Independence we knew that the price of copper fluctuates. So there is no need to excuse the increases on the fall in the price of copper. Steps should have been taken at that time. Instead much of the time was spent on theories..... The increase in the price of mealie meal is very alarming and must be reduced." (42)

My comments on these allegations made by MP for Choma are simply that; it is not true, that the state of political instability existed or indeed does exist in Zambia. If anything Zambia is one of those remaining countries with a stable democratic system. Secondly, there has been no proof that the Government was protecting a class of people in power. Governments record in establishing the Ombudsman, the Anti-corruption Commission and occasional Commissions of Inquiry speak for itself. Thirdly, there has to my knowledge been no detentions made without grounds being furnished as stipulated by law. Where that happened my recollection is that Government was made to pay compensation. And finally, this statement appears to be tribally motivated. This is against the role which President Kaunda spelt out of promoting unity.

With regard to the allegations and criticism of MP for Malambo, all I have to say is that examination of the contribution closely reveals lack of substance in the criticism offered. This is because, it is due to the lack of foreign exchange and funds that has made it impossible for the Government to carry out development projects at the required scale. How can a person, by any means, suggest that the Government should have sufficient foreign

exchange? What a misunderstanding and confusion! On the other hand, the MP despite his assurance to the House that people of Malambo were happy with him, in fact lost elections in the General Elections that followed.

As regards the allegations made by MP for Mwansabombwe, any immediate observation is that those are very serious and sensitive allegations. If ever there was some truth in what he said, my suggestion would be to refer in writing or in person such issues to the Head of State for his attention, on the ground that such allegations are likely to divide the nation.

Finally, I do not regard the contributions by MPs for Masala and Mazabuka as being serious and helpful to the Government. How can all the leaders be redirected to the land? - Who could undertake the responsibility of running the country?

On the other hand, MP for Kantashi, McDonald Mtine for instance made a very useful and constructive criticism, when he called upon the Government to discourage the mounting of several road-blocks on the same route to inspect public transport carrying passengers, saying such exercise did not achieve the desired purpose because the criminals instead made use of Zambia Railways where there were no check points. Thus, he said, in the end, it was only the innocent women who were fond of travelling by public transport, who suffered, encountering several checks on one route with their babies on their backs. (43)

Although the Members of Parliament could talk in any way without being asked to substantiate their allegations, it was obvious that such unconstitutive utterances could not be allowed to continue unabated. On two occasions President Kaunda had to summon MPs to State House in order to enlighten them on matters pertaining to foreign policy, defence and security because, in his view, it was apparent from the statements made in the House, that MPs

made them out of ignorance. (44)

The major problem which finally results to bad relationship between the Central Committee and the Executive and MPs is due to the fact that MPs have tended to shun the use of Party forums for airing whatever grievances they have emanating from their constituencies, instead they wait to do so only in the National Assembly. As the Parliamentary Secretary and MP for Solwezi East, (45) rightly made a point when he was answering back the misgivings made by MPs on the debate on Local Administration Bill 1980. He urged MPs to make use of the National Council of UNIP to discuss any issue including matters of policy with which they were sceptical about. The National Council, he said, offered unique opportunity for the three organs of state ie. the Executive, the Party and Parliament, to meet together to exchange views. "This in itself is quite important and unique. Lest we forget, here is where national unity and understanding begin." He said MPs should work towards improving these Party forums instead of shunning them and calling them names. He cited an example of MP for Choma, whom despite his cynicism had used the National Council to speak his mind and had not been harassed or intimidated. (46) He went on; "Let us as honourable Members of Parliament not start fearing our shadows. Let us be effective. We have an important task to accomplish without fear or favour. It is not honourable for MPs to fear putting across their electors views in any forum of the Party," instead of waiting to do so only in this Parliament. He further cautioned the House, and said; "It 'was' very easy to talk and criticise - which 'was' the function of the House, but Sir it is different and difficult thing to plan, to co-ordinate and to govern." He observed that MPs constituted 30% of the total National Council membership. This, he said, was a large number, enough for them to make an impact in the National Council, as they had an advantage of being more educated and articulated than most of the Party cadres in the National Council. (47)

Notwithstanding what I have said in the preceding paragraph, it is quite possible for a matter to be introduced in Parliament without first being taken for discussion in any of the Party forums, in this case it is obvious that an MP ought to be given chance to debate such issue.

Although from this brief analysis, it is apparent that Zambia's one-party Legislature has a reputation of having vocalist MPs, on the whole, there is a good number of MPs with good reputation, For instance, Prime Minister Mundia in his winding up on the adjournment of the House sine-die, in 1984, paid tribute, and he said, that he was impressed with the manner in which deliberations were held. He observed that MPs had maintained unity, patriotism and commitment throughout and were determined to assist to solve national problems. (48)

At one of the briefings of MPs by the President at State House, mentioned above, the Chief Whip and Minister, Elexander Chikwanda earlier on told the President that, the "fact that Zambians were able to criticise themselves freely was a sign of strength and not weakness as some people thought."

(49) Similarly, the observation by the Speaker that in one-party legislature, "back benchers were more free to criticise and make suggestions while Ministers were also quick to act on those suggestions because they all realised that they were working for the same cause," (50) is to a large degree correct. This is a good development. The argument raised by MP for Liuwa, Namushi Namuchana, therefore, that although freedom of speech was in Zambia's Legislature available, the Government did not bother to make a follow up of resolutions and motions passed by Parliament, is not without explanation. (51) It appears that those resolutions or motions which require expenditure by the Government and those which are against the Party and Government policies are the ones which Government finds unable to implement due to shortage of funds and on the latter, because they are

contrary to the philosophy and Party policies.

While accepting the principle that MPs tend to articulate issues which are prevalent in their interest social groups of origin, it appears to me that quite a number of them simply offer unconstructive criticisms and so on for the sake of being a back bencher and thus trying not to be seen falling out of step in the effort of championing the cause of a "common man," and not necessarily because they do not agree with the Party and Government policies. It also appears that a good proportion of MPs do criticise Government only because of having been left out from being appointed as Ministers or District Governors etc. This theory is supported by the fact that quite a number of MPs who were regarded as cynical have on appointment to the Party or Government post kept completely quiet and feel extremely happy in their new roles, thus giving the impression that such criticisms might not be real, after all!

I would like to conclude by recalling and emphasizing the justification for change in the role of a Member of Parliament in Zambia's one-party Legislature as spelt out by President Kaunda and in accordance with the Government policy, that an MP is an instrument of development. This concept of the changing role of an MP is not only advocated for single-party systems. The changing role of an MP is also being recommended in Britain's multi-party system. Leonard and Herman, for instance, refer to the principle of the British Constitution which regards Members of Parliament's role as Legislators and critics of the Executive as a "wide spread myth," and old-fashioned belief, which was suited to "the late nineteenth and twentieth centuries when issues of deep principle were held to divide the parties." Today they say: "when differences - in office at least - are frequently of highly technical nature and speeches about principles are less relevant, it is morally appropriate for an MP to devote his attention to detail and

the actual effect of Government on people's lives." (52)

2. The Role of Parliament in Relation to the Party and the Executive.

This subheading is intended to review and evaluate the role of Parliament in relation to the Party and the Executive and their existing relationship. The idea of wanting to discuss the role of the Party separately from the Executive is because, in Zambia's one-party system of Government, some of the Party's activities are not only entrenched in the Republican Constitution, but have far reaching consequences in the operations not only of the Legislature, but of other organs of Government as well. This entrenchment of the Party in Zambia has almost turned the Party into an independent organ of the State. For instance, it is provided in the Constitution, inter alia, that the role of the Central Committee of the Party, shall be that of formulating policy.

(53) The Cabinet's role has been modified as being that of implementation of the Party policies. Looking at the Party from this angle, one is likely to argue that in Zambia, the traditional doctrine of "separation of powers", between the Executive, the Legislature and the Judiciary has been extended to include the Party. So that instead of having three organs of state as propounded by Montesquieu there are instead four organs.

(a) The Legislature and the Party.

The composition, structure and organisation of the United National Independence Party, UNIP, is embodied in the Party Constitution which is an Appendix to the Republican Constitution. UNIP is a mass Party and membership to it is merely voluntary, renewable yearly.

The structural organisation of the Party starts from grass roots, beginning in villages with village Committee and in urban areas with Section Committees, then going up with Branch, Ward, District and Provincial Committees respectively. At the national level, there are National Council and lastly the General Conference. The National Council which meets once a year is the

highest policy-working body. The General Conference meets once in five years. At the Headquarters of the Party, which is normally referred to as "Freedom House," there is established a full time Central Committee. This Committee is composed of 26 Members, including the President, the Secretary-General of the Party, the Prime Minister, 20 elected and 3 appointed Members. The three are appointed by the President. (54) The functions and powers of the Central Committee are, among others, to undertake the general responsibility of ensuring that the Party policies, programmes and decisions are being implemented. (55) It is again the Central Committee's responsibility, during Parliamentary elections, to screen candidates aspiring for elections to the National Assembly as we shall see later. (56)

The legal position of the Central Committee is further entrenched in the Constitution of Zambia, whereby Article 47C provides that the Central Committee "shall formulate the policy of the Government and shall be responsible for advising the President with respect to the policy of the Party and the Government..... (and) where a decision of the Central Committee is in conflict with a decision of the Cabinet, the decision of the Central Committee shall prevail."

On the other hand, the legal status of the Party Constitution immediately after the one-party state was introduced and before 1975, was that the Party Constitution was annexed to the Constitution of Zambia as a schedule for information only. This as Nwabueze argues, did not give the Party Constitution the required force of law beyond the "legal force it 'had' in contract. (57) Thus, in order to overcome this anomaly and at the same time maintaining the independence of the Party, the Constitution was amended in 1975 to provide that the Constitution of the Party annexed to the Constitution was authentic and should be taken for the purpose of interpreting or "construing any provision of the Constitution of Zambia or any written law

or for any other purpose...." (58)

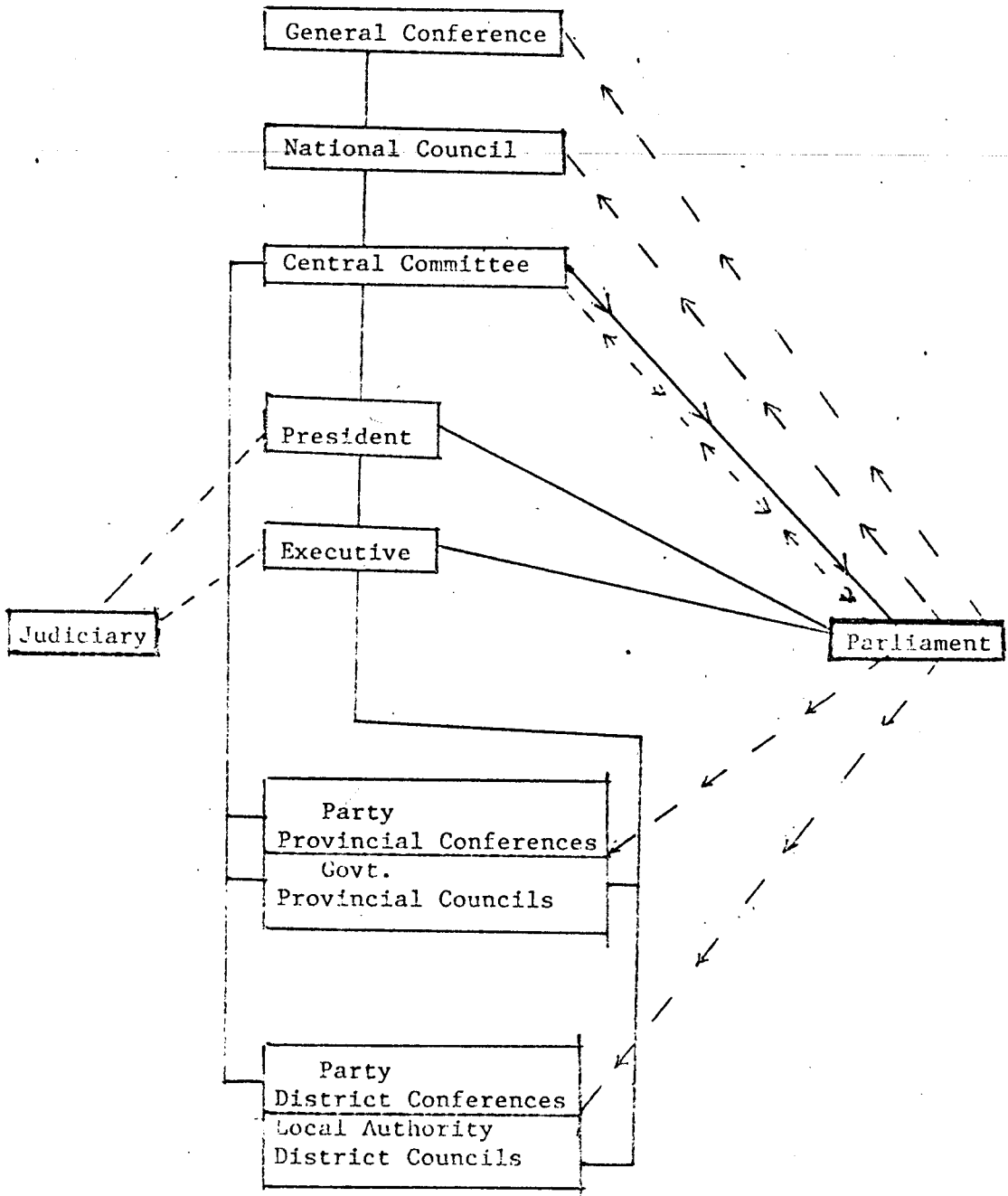
The legal status of the United National Independence Party, was later affirmed in a test case of Harry Mwanga Nkumbula and Simon Mwansa Kapwepwe v. The AttGeneral and all other Members of UNIP (1978) SCZ/8/228.

Briefly, this is a case in which the Appellants moved the High Court for Zambia and later appealed to the Supreme Court of Zambia, among other reasons that the amendment to the Party Constitution by the UNIP General Conference at the time when they indicated their preparedness to contest as candidates in the Presidential and General Elections was ultra-vires and therefore the elections were null and void. Only in as far as this paper is concerned, the Courts on the arguments deposed by both the Appellants and the Respondent in relation to the Party status ruled that: (i) the United National Independent Party, although it as a Society, cannot be likened to a mere ordinary 'club' because of its special role in the affairs of state which enables it to a special legal identity, (ii) that the Party could sue or be sued in its representative capacity and not in its own name, and (iii) that the Att. General could represent the Party as a Respondent because the Government of the Republic had an interest in the proceedings.

Let us now examine the role of Parliament and its relationship with the Party. In order for us to understand this relationship more accurately, I have decided to provide a functional diagram showing the direct and indirect relationships between the two organs. Table 2 below, as the key to the table illustrates, how each organ is affected by the functioning of another organ. For instance, there is no direct relationship or coordination between the General Conference, National Council, Provincial Conference and Council and District Conference and Council apart from the membership of these bodies by MPs as ex-officio members. Similarly the Central Committee does not have a direct relationship with Parliament, apart from the membership of 4MCCs who

are appointed MPs by the President. There are also some MPs who are appointed Members of some sub-committees of the Central Committee, etc.

Table 1: Organisation Chart Depicting the Relationship and Channels of Communication and Influence between the Party, the Executive and Parliament, and Vice Versa.



KEY
and

ILLUSTRATIONS:

_____ Direct relationship and controls.

----- Indirect relationship. Arrows indicate that
an organ exercises influence over another organ by way of ex officio
membership, etc.

→→→→→ The relationship between the Central Committee
and the Legislature of covert controls eg. by suspension of MPs from
Party membership and disapproval of former MPs to stand in the General
Elections.

MPs are ex-officio Members of both Party and Government Provincial and
District bodies.

SOURCE:

Diagram drawn from the writer's own perception and study of the system.

As far as the role of Parliament in relation to the Party is concerned, one would say that the two have specific and different functions and powers. There is therefore no overlapping of functions or responsibilities. The conflict between the two organs, however, arises mainly when MPs in discharging one of their responsibilities as Legislators, start to question and to criticise the Party policies. Conflict also arises when the Party exercises its functions, namely, (i) that of conducting and supervising Election Campaigns during the Presidential and General Elections, which directly and indirectly affects MPs; (ii) when it exercises its right to screen and veto those aspiring candidates to Parliament who are believed to be inimical to the interests of the State; (iii) when exercising the powers to suspend a Member of the Party, who may be an MP from Party membership, and lastly clashes as we have seen already do occur at grass roots level between the Party Cadres and Members of Parliament in their respective areas in the field. This paper is therefore designed to analyse these issues to try to discover how the Legislature is affected by the Party in this exercise of its role. It can be recalled that a Party in a single-party state assumes formidable and numerous responsibilities of state. In Zambia, for instance, even the administration of provinces is headed by Members of the Central Committee and not Ministers or Civil Service Administrators. Its activities are found all over and do affect not only MPs alone but every citizen's life. The Chairman of the Sub-Committees of the Central Committee or indeed the Party's Secretary-General have on a number of occasions summoned not only Cabinet Ministers but also Chief Executives of Nationalised Industries - Parastatals - to Freedom House to give them direct and specific administrative instructions on how to go about undertaking their respective administrative duties, and Parliament has simply been an interested spectator and has done nothing about it, even where Parliament clearly delegated the supervision of a Parastatal company in an Act of Parliament to a Minister. The sacrosanct status of the Party in a single-party structure

of Government should therefore be of great interest and concern to Constitutional lawyers. It is because of this reason, that I have decided to carry out independent evaluation and analysis of the Party from the Executive.

Let us now analyse how the relationship between Parliament and the Party is affected in both theory and practice. It can be recalled from the preceding discussion that the Party policy of its supremacy is intended to make all other organs in the State subordinate to it. The then Att.General and later Prime Minister Daniel Lisulo, in 1978, in clarifying the implications of President Kaunda's reference to Parliament as one of the Committees of the UNIP - National Council, said that that was so because of the Party's inclusiveness; (59) and if I may add, because Parliament is the creature of the Party. It is not only this reason that necessitates the supremacy of the Party, but it becomes clear from the functions and role of the Party, that one of its responsibilities is that, like Parliament, of representing the interests of the people in all directions. Morgan puts it more clearly when he says; "UNIP is viewed as a channel of communication in two directions: it is to mobilise the people for developments, providing the dynamic element while the bureaucracy supplies the static component. And in the other direction, the Party transmits needs and wants, opinions and information upwards from the masses." (60) The question in this respect is not whether the Party does play the role of articulating the peoples' interests, because it does, but it should be to what extent are the people's interests and needs given adequate attention. If the Party proves that in this role adequate and proper attention to the people's needs is being given, then the role of Parliament in this direction becomes unnecessary, duplication and superfluous. If on the other hand, it is proved that no adequate and proper attention is given to the needs of the masses, then the role of Parliament of being the people's watch-dog becomes an absolute

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necessity. It appears that in practice, it is not all that easy for the Party to perform this role effectively, thus the need for Parliament to complement the Party's efforts becomes essential. Unfortunately, these matters are so involving that they could not genuinely be evaluated and analysed in a limited treatise like this one.

Let us now analyse how the relationship of the Party and the Legislature is affected in practice:

(i) The Function of the Party to Supervise Election Campaigns.

The law regulating the conduct of Elections is governed by the Electoral Act Cap.19 and the Electoral (General) Regulations 1983, (61) as amended from time to time. The law in Zambia in connection with Elections in my opinion can be regarded as one of the best in Commonwealth Africa, although there are certain loop-holes which require sealing off. Apart from this law, however, the Central Committee of the Party have devised certain Party Rules and Procedures to be followed in the conduct of Election Campaigns, which are intended to provide equal opportunities to the parliamentary candidates. For example, the prohibition of candidates from carrying out individual campaigns, instead all the candidates are driven in one Land Rover and taken around to address the electorates at various centres under the supervision of a District Party Official. Each candidate is given the same length of time to address a meeting on topics already selected by the Party.

Although there are advantages in this system, for instance a candidate without a car could benefit since it would be practically impossible for him to cover the vast distance, especially in rural areas, there are also disadvantages which tend to affect mentally an elected MP who would have suffered as a result of this procedure. Apart from certain Rules and Procedures being in conflict with the existing Law and Regulations, supra

the Party, they cannot tell the party political line, because they do not owe their loyalty to the Party.

Under Article 75, as amended, of the Constitution of Zambia, the Central Committee is empowered to scrutinize the aspiring candidates with a view to disapproving those persons it believes to be "inimical to the interests of the State," from contesting elections. The problem about this provision is that the term "inimical to the interests of the State," is not defined. MPs as a result have on various occasions argued that such provision was subject to abuse and that the Central Committee had used it to vet former MPs on account of criticism of the Government.

In the absence of the definition of this term, we are left with no alternative but to infer from the conduct of the Central Committee, examining closely the type of people and former MPs who have been ^{by the Central} disapproved Committee. The meaning of the word "inimical," however, is quite simple to understand. Oxford Advanced Learners Dictionary, defines the word as: "unfriendly or harmful." (65) Applying this interpretation to the Party policy on Parliament and President Kaunda's guidelines to Members of Parliament, it can be assumed that a Member of Parliament who is cynical and who utters unconstructive criticism against the Party socialist policies and one who uses the National Assembly as a platform for self-seeking publicity and causing division in the Nation can be regarded as being inimical to the interest of the State and barred by the Central Committee accordingly.

The Member of Parliament for Kalete South, referred to above, has a view that many former MPs were excluded because of exercising the freedom of speech in the House. While the Member of Parliament for Kafue, who was excluded once in 1978 and allowed to stand in 1983, welcomed the principle

of vetting of candidates, but cautioned the mechanism used, as it appeared to him that a candidate could be barred purely on personal dislike of a candidate by a Member of the Central Committee, who may see him as not having respect for the Authority. He thought that considerations based on "personality clashes" could not be ruled out. He pointed out that, there was something wrong with the way the vetting was carried out, because, he said, normally the electorates tended to be sympathetic to those barred. In support of this argument, he pointed to the results of the 1983 Parliamentary Elections which according to him all those excluded in 1978 who stood and were allowed to contest the elections were re-elected. (66) He suggested that the procedure could be improved, by informing a barred candidate in confidence about the grounds upon which he was disapproved, to enable those barred to reform.

Meanwhile the number of former MPs who were disapproved to stand in the elections were: in 1973 twenty-six and in 1978 thirty. The number for those vetted in 1983 is not yet known by me, but it appears that the number was less than those barred in 1978. My observation is that since the disapproval of candidates does not correspond with the electorates choice, public opinion will, in the long run, influence the vetting system to the extent that these powers will be used by the Central Committee in very rare and exceptional cases.

(iii) Suspension from Membership.

Since, as we have already seen, one of the qualifications for being allowed to contest the Elections is Party membership, it follows accordingly, that when the Party in terms of Article 20 imposes a disciplinary sanction of suspending or expelling a person who is a Member of Parliament from the Party membership, an MP automatically, after this information has been communicated to the Speaker of the National Assembly loses his Seat. (67)

It appears that the same principle applies to the Speaker, once the Party suspends or expels the Speaker from being a Party Member, he automatically ceases to be Speaker.

The following are instances when Members of Parliament lost their Parliamentary Seats, after being deprived of their Party membership. The first MP to be suspended by the Party for 9 months for allegedly insulting a Member of the Central Committee Frank Chitambala was Alfred Musanda Chambeshi, MP for Roan. This took place in 1978, having insulted the MCC, the MP was quoted by a newspaper to have boasted that he insulted the MCC and that "he deserved the insults." (68) After the communication was made to the Speaker on the suspension the MP immediately lost his Seat in Parliament. (69)

The second MP who lost his Seat in the House after being expelled from the Party membership together with other Union Officials on a charge not connected with parliamentary duties, but rather when they as Zambia Congress of Trade Union (ZCTU) insolently confronted the Party in January, 1981 was Chifubu, Member of Parliament and Secretary-General of the ZCTU, Newstead Zimba. (70)

The MP for Bwacha, Richard Banda, who was at that time also a Deputy Chief-Whip almost lost his Seat when he was suspended for 6 months by the Kabwe Urban Party District Disciplinary Committee for "violating the Party Constitution" in that as a Member of Parliament for the area, he falsely implicated the District Governor for that area, of "having connived with three residents in a land scandal with the Commissioner of Lands to evict other residents" from one of the resettlements, and also for alarming the Nation in a press statement that "mortality rate at Kabwe General Hospital was abnormal and attributed it to the poor performance of the hospital staff."

(71) The case was, however, irregularly handled by the said Committee and on appeal to the Provincial Disciplinary Committee, the suspension was set aside and the appellant won his case. It is not clear on what grounds the case was won. But what is clear is that according to the Party Regulations, a District Disciplinary Committee has no powers to discipline Members of Parliament, a function which can only be exercised by the Provincial Disciplinary Committee or the Appointments and Disciplinary Committee. (72

The third Member of Parliament to lose his Seat after having been suspended from the Party indefinitely with effect from 24th January, 1983 for what was described by Freedom House as a "very serious offence," was Rodgers Chaiwa, former MP for Ndola Central. Later, the MP was quoted to have apologized afterwards saying, "I feel sorry about what happened." (73)

What is of interest to us is that the Party has only used these powers when a Member of Parliament commits a breach of Party Disciplinary Rules in the exercise of his freedom of speech outside the Assembly. There has been no instance when the Party has suspended or reprimanded a Member of Parliament for utterances made in the Assembly, in this respect the Party has honoured the freedom of speech of MPs inside the House as provided by the Constitution. Because not doing so would definitely be a violation of the Constitution.

(74) On the other hand, however, it is alleged that some MPs had been barred on account of having misused and abused their freedom of speech in the Assembly. If this allegation is substantiated, can it be argued that the exercise of power by the Central Committee to vet was unconstitutional, and therefore null and void because it intended to deprive MPs their freedom of speech as entrenched by the Constitution? The answer lies in reconciling Article 75 which empowers the Central Committee to vet "inimical" candidates with Article 87 which gives absolute freedom of speech to MPs. Having examined the Article already and the meaning of the word "inimical,"

it is my view that barring of an MP for the irresponsible, reckless and unconstructive utterances in the Assembly by the Central Committee would be intra-vires and thus not null and void.

In this respect, the Party has already sufficient machinery for dealing with reckless MPs, and therefore there was no need for the National Council to direct the Speaker to ensure that the National Assembly's Standing Orders were amended to provide for powers to discipline insolent MPs. The amended Standing Order reads as follows: "The Standing Orders Committee is empowered to enforce the relevant disciplinary rules of the UNIP for breaches of the rules within the precincts of Parliament." (75)

Careful examination of this amendment reveals the following. First, the amendment does not appear to answer the directive of the President as confirmed by the National Council. The directive was aimed at amending the Standing Order, so as to make Members of Parliament answerable and disciplined for reckless and irresponsible utterances against the Party policies and the leadership in Parliament, and not simply the extension of the Party Disciplinary Rules to Members. (76) In this way, the directive has been carefully and cleverly sub-dueled by the National Assembly.

The second point is that even if the Standing Order clearly spelt out powers to discipline Members of Parliament, it would not have been possible for the Members themselves who constitute the Standing Orders Committee to discipline their fellow members for exercising their absolute freedom of speech. It is not surprising, therefore, that since the Standing Orders were amended, no such disciplinary case has been presented to the Committee. In the circumstances, it appears to me that the amendment is superfluous and does not serve any meaningful purpose at all.

(iv) Cautioning and Reprimanding of MPs.

The Party does also control Members of Parliament at UNIP meetings, such as at the General Conference, National Council, Provincial Council, District Councils and sometimes even at Branch or Constituency level and at public meetings. Using these forms, it is not uncommon for the Senior Party Officials like the Secretary-General, MCCs, Provincial Political Secretaries (PPS) and District Governors to ^{reprimand} and give directives to MPs. in the manner they should discharge their responsibilities. An example in point, is as we have already seen, the President of the Republic in his "watershed speech" used the Party platform to reprimand insolent Members of Parliament.

Another example is when MP for Chiengi, Samson Mununga used the mass media to criticise the Party and the activities of MCCs and PPSs, calling for the scrapping of the positions of MCCs and PPSs on account of duplication of work and in view of the economic situation the country 'was' going through."

The attack on the Party bosses was received with mixed feelings in the Country. Those who knew how the Party leaders waged the freedom struggle to bring about self-rule and independence, harmony and development in the Country were totally against the "outburst" by the MP, (77) while other people were in favour of the appeal made by the MP. The Secretary-General of the Party, Grey Zulu, immediately reacted sharply against the allegations, describing the allegations as "baseless malicious erosion of (freedom) of expression." (78) The Secretary-General went to pains to put the picture right and observed that certain people were at the verge of misusing the freedom of expression to the extent of ruining the future of Zambia.

It can be seen that the Secretary-General, used one of the less effective weapons to discipline the MP. If he wanted to use a more effective weapon

he would have simply referred the matter to the appropriate disciplinary Committee to suspend or expell Mununga from the Party. Such expulsion from the Party would have automatically disqualified him from holding office as a Member of Parliament.

What we have been looking at are how the powers and function of the National Assembly are affected in practical terms by the existence of the single-party in Zambia. I would now like to turn and see how the parliamentary privileges and freedoms are also affected or exercised in relation to the Party.

It appears that as far as the National Assembly's privileges and immunities are concerned, the Party's interference is minimal, although, the distinction I am making between Powers and Functions and Privileges and Freedoms is in practice difficult to discern. For, it is through the exercise of these powers and functions by the House, which raises the breaches of parliamentary privileges, when an outsider questions or criticises Parliament or a Member. But for our purpose, it is of academic interest to divide the two.

A test case on parliamentary privileges by a senior Party official is that of Samson Mukando, Provincial Political Secretary, at that time stationed in one of the Provincial Headquarters (Kabwe). On 8th February, 1975, Mukando reacted sharply to the criticisms made by some MPs during the debate in the Assembly, alleging that there was indiscipline among the Members of the Central Committee. Particularly Chilufya Mulule in an indirect reference to the Party leaders, charged that they were operating indiscreetly using innocent people to confuse the Nation. On indiscipline, which the President earlier and later on commented upon and declared 1975 to be a year of discipline in the Nation, the MP ironically asked; "when it comes to discipline, I am bound to ask, who can discipline who?" He maintained that "he had supporting evidence..... of tribalism and nepotism among a few power hungry leaders." (79

Perturbed at such serious allegations, Mukando warned that the MPs concerned will be called upon to substantiate their allegations at the next National Council Meeting. Thereupon, Mukando was summoned and reprimanded by the Standing Orders Committee and made to apologize. (80) Immediately after the apology, Mukando denied, using the mass media, that he had ever apologized and repeated his warning against the "irresponsible" MPs. It became obvious at this stage, that the National Assembly would, due to constant affront of the House, demand a stern disciplinary action against Mukando. But before this was allowed to take place, the President immediately stepped in, by suspending Mukando for a month and banned any remarks on the functioning of Parliament. In the same vein, he later remarked during the National Council Meeting that there were a few individual MPs who were misusing the House's privileges "to further their own personal interests and that of their counter-revolutionary masters." He further defended the allegations made by Mukando, but said he suspended him not because he was not telling the truth but because of the manner and channels he used against MPs. (81)

The second incident when Parliament defended its parliamentary privileges is when the MCC for North Western Province, Maxwell Beyani, reacted angrily to the claims made in Parliament by William Chipango, MP for Kabompo, that "Solwezi District Council was giving its workers chickens etc. instead of salaries, "because it was financially bankrupt." The MCC took exception to the allegation, saying that the council referred to by the MP was outside his constituency and that the allegation was not true, he called upon MPs to do "their homework before making statements, because those who listen to them take what they said as gospel truth." (82)

On a point of order raised by Liuwa MP Namuchana, the Speaker promised to study the statement made by the MCC and that he would make a ruling later.

(83) Unfortunately the writer has not been able to obtain the Speaker's Ruling on this matter.

There have been numerous instances where MPs have used their freedom of speech and at the same time shielding under the umbrella of parliamentary privilege. And on many occasions MPs have used the House to embarrass the Party top leadership. One of these instances happened when MP for Bwacha, Richard Banda, raised an issue in Parliament asking the reason why the Secretary-General of the Party, Mainza Chona, was given the sum of K250, (approximately £78 Sterling) by Simon Mwewa the Zambia National Building Society - ZNBS Managing Director using public funds and never made use of the money for the purpose it was given, and why a lavish party was organised for him as a guest of honour to entertain the people at the official opening of ZNBS - Monze Branch. The allegation received wide publicity in the mass-media, and yet, as the Party Chief explained later, that when the money was brought to his office, he was not present and did not know the purpose for which it was brought. On various occasions, he said, he failed to contact the Managing Director in order to find out whether the money was intended as a gift or not. He only discovered that it was not, after the matter had been raised in Parliament. (84)

The issues analysed above show that the effectiveness of Parliament over the Party is non-existent, this is because the MPs, including the Speaker, are in the final analysis subject to the overriding powers of the Party. On the other hand, however, the Party does tolerate the freedom of speech and parliamentary privileges of the House, despite a clear policy that MPs should not criticise Party and Government policies. It is always pleasing to see that the Party uses its power to bar parliamentary candidates with the sole purpose of allowing those barred to reform. The case in point are a number of MPs who were disapproved in 1978 and allowed to stand in the elections of 1983.

Among these are Peter Chanshi, Francis Matanda and Michael Sata, who have been appointed to political positions of Minister of State and District Governors respectively. This is as it should be. This is the advantage of a one-party system where as in a multi-party system, an aspiring candidate has to effectively belong to the same Party to become an MP. Though one has a choice, of course. In view of the great demand for people wanting to stand in the elections, it is rare that an MP who was cynical to his Party, could be offered another chance to stand in the elections, as is practised in Zambia's one-party system.

The existing tension, between the Party and Parliament in my view could only be narrowed if, as I have already observed, Members of Parliament made the full use of the National Council and other Party forums to air-off their grievances, instead of waiting to do so only in the National Assembly. Surprisingly, it can be seen that even the Speaker of the National Assembly does not speak or contribute in the National Council despite his full membership. At least the writer has observed that for ten years, from 1974 to 1984, he has not seen the Speaker commenting or contributing even when the National Assembly is being attacked in the National Council. This is probably due to the observance on the part of Mr. Speaker, to the British convention which he may be following strictly, where Speaker, "takes no part in debate either in the House or in Committee," in order to not only ensure his impartiality, but so that his impartiality is generally recognised. (85)

(b) The Legislature and the Executive.

We have already noted that the traditional role of Parliaments is to legislate and to criticise the actions of the Executive. Under this sub-heading, I will attempt to show how Zambia's single-party Legislature exercises this power in relation to the Executive organ.

The Executive in Zambia, is composed of the President. Article 37 of the Constitution of Zambia, states that "there shall be a President of the Republic of Zambia who shall be the Head of State." Article 53 spells out the functions of the President as follows: "The Executive power of the Republic shall vest in the President, and..... shall be exercised by him either directly or through officers subordinate to him." The Article further provides; "In the exercise of any function conferred upon him..... the President shall..... act in his own deliberate judgement and shall not be obliged to follow the advice tendered by anyother person or authority." It can be noted that these are very wide powers given to the President by the Constitution. As a matter of fact, the President himself constitutes the Executive organ. The Constitution provides for the Prime Minister and Cabinet, but these are subservient to the President, as we shall see later.

The Constitution provides that, "appointment to the office of Prime Minister shall be made by the President from among the Members of the National Assembly." (86) Similarly, the President appoints Ministers and Junior Ministers "after consultation with the Secretary-General of the Party, Prime Minister, Secretary of State for Defence and Security." (87) This consultation is a mere formality. In the similar manner, the President has power to remove from office the Prime Minister and Ministers without being answerable to Parliament. Article 55 defines the functions of Prime Minister as that of being; "the Head of Government administration, the Leader of Government business in the National Assembly and responsible, under the directions of the President for such other business of the Government as the President may assign to him." Similarly, the Constitution provides that the "Cabinet shall be responsible for advising the President with respect to the execution of the policy of the Party by the Government and with respect to such other matters as may be referred to it by the President." (88) It is, therefore, clear from this account that the Prime Minister

and Cabinet, unlike in Britain, are not responsible to Parliament but to the President. The Constitution is also quite clear, it ousts parliamentary scrutiny of the Executive by providing that the President in his Executive role shall not be subject to any control or advice tendered by any person or authority. (89)

Notwithstanding the Constitutional restrictions analysed above, the Legislature has asserted that it has power to scrutinize Government actions and call upon the Executive to be answerable to it. Let us, therefore, examine closely how Parliament has gone in exercising this power in practice.

As far as the powers of breach of parliamentary privileges and immunities are concerned, legally and in practice, it is not feasible that the National Assembly can hold the President liable for the breach of its privileges and therefore being in contempt of the House, for whatever action or statement he may make against MPs; the Assembly and the Speaker. He is not only privileged but as we have already seen, he is the fountain of parliamentary freedoms and immunities in both theoretical and practical terms. Because of this difficulty the House can only go round in holding his Prime Minister or Ministers guilty of breach of its privileges. But even this depends on the President himself, because if he so wishes, he could make it impossible for the Speaker or the House to make any sanction on his Prime Minister or Minister.

Let us now turn to examine the effectiveness of the Legislature in its exercise of powers and functions. The powers of the Legislature in scrutinizing the activities of Government can be divided into three categories, i.e. Legislative role, scrutiny of Government and criticism and lastly financial control. The Legislature exercises these powers by using the mechanism of Committee procedure, debate and lastly questioning. Due to lack of space,

it will not be necessary to examine the effectiveness of these procedures in detail, consequently I propose to use the conclusions made on these methods from elsewhere. For now, let us examine the functioning of Parliament with regard to the legislative scrutiny of the Government and financial control.

(i) Legislative Powers.

The power of Zambia's Legislature to make law is one of its most important and fundamental functions. Subject only to the provisions of the Constitution, the Legislature has overriding powers to make laws for the peace, order and good Government of Zambia. (90). Even the Constitution can be amended as long as the laid down procedure in the Constitution is properly followed. Being a "flexible" Constitution, Parliament, in order to amend the Constitution should ensure, that a Bill introduced to amend the Constitution is published in the Government Gazette 30 days before its first reading, and the Bill has to be supported by two-thirds majority during both second and third reading. (91) On the other hand, an ordinary Bill only requires simple majority for its passage in the House. Members of Parliament have power to introduce Private Members Bills in Zambia, except Finance Bills which can only be promoted by the Executive. (92) In addition to this, the Legislature has power to delegate to Ministers or other Bodies, powers to make subordinate legislation, in form of Regulations, Rules, Orders etc. (93)

The role of Parliament, however, under this function can be said to be absolute. So far no Member of Parliament has promoted a Private Members Bill. MPs are inhibited by the elaborate procedure and expenditure involved. Many more find difficulties with technicalities and legal language. Thus its role here becomes insignificant and passive and usually its "criticism do not result in changes in the legislative proposals." (94)

As regards its role on subsidiary legislation, this is made by the Executive and the Committee on Delegated Legislation's role is to scrutinize it with the ultimate aim of disallowing subordinate legislations which are in conflict with the Constitution or the enabling statute. But the Executive overcomes this problem normally by drawing up watertight statutory instruments.

The National Assembly has on some occasions on points of order raised issues regarding the illegalities of certain statutory Instruments, thus using the Speaker to make Rulings instead of leaving the matter in the hands of the Committee on Delegated Legislation. For instance, in February, 1980, on a point of order raised in the House, the Speaker under a ruling that the prices of some essential commodities, ie. cooking oil, wheatflour, bread, margarine, fats and candles announced by an official in Cabinet Office, which was an imposition of taxation on the members of the public without the necessary statutory Instrument was illegal, and called upon the Government to follow the laid down procedure. (95) After this ruling, steps were immediately taken and statutory Instruments issued and backdated accordingly.

Similarly, on a point of order made by MP for Liuwa, the Speaker ruled on 29th November, 1984 that measures introduced by some District Governors to allow only people with permits issued from their offices to buy essential commodities was unconstitutional on the ground that the administrative arrangements that had been made had not been legalised. He called upon the Government to take steps either to legalise the arrangements or to increase the supply and widen the distribution of the commodities, since people, he said, were "awfully getting inconvenienced." (96) Within days, the Government again under the hand of the President issued the necessary Rationing of Essential Commodities Regulations. (97)

In the final analysis, it is the Executive which dominates. Apart from

policy-making and drafting of the Bills, it also takes the leading role and dominates the debate in the Assembly because Ministers do have the background information and data supporting the introduction of Bills which MPs lack. The alternative would have been allowing Parliaments to employ their own Draftsmen. But this would not only be expensive but duplication of the scarce resources in the country.

The law-making power of Parliament looks authentic, but in fact it is qualified, it is subject to the concurrent approval of the Executive. Where the President withholds his Assent to a Bill, such a Bill is blocked, unless the National Assembly again by a resolution of two-thirds majority directs that the Bill should be presented to the President the second time. Even after this, the President could resist assenting to the Bill by dissolving Parliament. (98) In practice, the President may not even go to pains of dissolving Parliament, because of the adequate number of front-benchers, who could make it impossible for the back-benchers to secure a two-third's majority. In this respect, Parliament is reduced merely to a rubber-stamp, or using Ghai and McAuslan terminology, "handmaiden" of the Executive.

The powers of the Legislature to act independently and impartially from any interference of the Executive or any other body or authority, was put to test in a case where the two prominent persons, the former High Court Commissioner and prominent Lawyer and the former Secretary to the Cabinet, who were under detention on a charge of Treason, (99) petitioned the National Assembly of Zambia, praying that the National Assembly uses its power to revoke by resolution the proclamation of the State of Emergency powers, then prevailing in the country, which powers enable the President to detain the two - plus ten others - pending the hearing of the Treason Case to overthrow the Zambian Government.

Briefly, the position was as follows. The Governor, in 1964 immediately before Independence, declared the State of Emergency by proclamation intended to quell the dangerous and explosive situation in which a lot of lives were lost and continued to be lost by the fanatic 65,000 members of the Lumpa Sect which went on killing innocent people, damaging property in a complete situation of lawlessness. (100). The State of Emergency Act and Regulations were enacted by a virtually white Legislature to deal with African Nationalist Movements. On 17th October, 1967, the National Assembly by Resolution further extended the Emergency for another six months, this time to enable the Government contain with the explosive political situation brought about by the racist Smith regime in Southern Rhodesia (now Zimbabwe) after the declaration of UDI - Unilateral Declaration of Independence in that country. In 1969, the Government introduced a Bill (No.33 of 1969) Constitutional (Amendment) No.5 Act of 1969, which was to amend S.29 in order to overcome the problem of bringing the matter to Parliament for resolution every time for renewal of the Emergency. The amendment to the State of Emergency Statute, provided, inter alia, that the existing or indeed any other State of Emergency could come to an end either by act of the President himself or by the Resolution of the National Assembly. It was this power which the petitioners wanted the National Assembly to evoke by resolving to end the state of emergency. It was reliably heard that a substantial number of MPs were behind the petition and ready to vote for the resolution. But before the petition was tabled in the House, the Executive under the power conferred on the President by the Penal Code, (101) made a Statutory Instrument declaring the prohibition of that publication and banning it completely as an illegal document. (102) Thereupon the National Assembly became powerless and there was nothing the Speaker or MPs could do.

A question, however, arises; can it be argued that the prohibition of such

publication which turned the petition into an unlawful publication could not affect the petition which was already in the hands of the Speaker and tabled in Parliament on the ground that the documents were privileged?

Members of Parliament have since exerted pressure on the Government, and on two occasions, had managed to have Bills withdrawn and amended before re-introducing them again. The first happened when MPs were against the Local Administration Bill 1980 and showed that they would vote overwhelmingly against it. This Bill sought to introduce decentralisation of administration by giving local authorities more power than before. On 21st August, 1980 the Government withdrew the Bill before the second Reading in an attempt to accommodate the back bencher's views, and was later re-introduced.

Similarly, the National Parks and Wildlife (Amendment) Bill 1982, which sought to increase the penalties for poachers of elephants and rhinoceroses to 15 years minimum imprisonment was heavily criticised by back benchers.

They argued that the Bill was unhumanistic because it protected animals more than human beings and that it was dictatorial and undemocratic. The Bill was later, before the second Reading, withdrawn to substitute a penalty of 10 years instead of 15 years and re-introduced in the House. Back benchers still opposed the penalty clause, but Government insisted to go on, thus on its second Reading the back benchers walked out of the Chamber, but still there was sufficient majority formed mainly by the front bench, which enabled the Bill to go through on the second and third Reading. (103)

My comments and observations regarding the two Bills are as follows: With regard to the Local Administration Bill, it appears to me that MPs did not understand the implications and reasons behind the introduction of the decentralised administration. On the other hand, however, their criticism

against having a politically appointed Chairman of a local authority and the need for Councillors to be elected by the all eligible voters instead of Party Officials alone were justified. As regards the National Parks and Wildlife (Amendment) Bill, MPs opposition to the minimum penalty of 15 years imprisonment could be justified, when one takes into account that some criminals who commit homicide end up being imprisoned only for 5 years or even 6 months on the ground of manslaughter. Similarly, the law on armed robbers favours criminals in the sense that it is very difficult to convict a criminal. The argument on the side of the Government is also pertinent. when you consider the rate at which the elephant and rhinoceros are being exterminated.

So far, during the life-time of the one-party Legislative system in Zambia, two Bills have been completely defeated, and thus making it impossible for the Government to bring them back. These were the National Sports Council of Zambia Bill 1976 and the Electoral (Amendment) Bill 1982, which in the case of the former, sought to give the Minister of Labour and Social Services more power to direct and guide the development of sport in the country. And in case of the latter, sought to regulate more election offences regarding the conduct of elections in the country. Both Bills were defeated on the second Reading by 31 Ayes against 58 Noes and 45 Ayes against 59 Noes respectively. (104)

I have not been able to get the reasons which led to the defeat of the National Sports Council of Zambia Bill. With regard to the Electoral (Amendment) Bill, however, its defeat was due to the fact the Bill was directed at MPs. It sought to create offences for various activities related to elecioneeering. Thus, it threatened the existence of MPs generally.

(ii) Financial Control.

The powers of the National Assembly to control Government finance are laid down in the Constitution of Zambia. Essentially, these are as follows:

The imposition of taxation, apart from the provisos, can only be done through the Act of Parliament; (105) Parliament has to approve the Estimates of Revenue and Expenditure for the current year including Supplementary Estimates, if any; (106) and the Minister of Finance is required, not later than nine months after each financial year to lay before the House a Financial Report. (107)

In addition to the use of debate to control Government expenditure when the above matters are being considered by the House, the National Assembly uses the Auditor-General, who prepares annual Reports which before they are introduced in the House for debate are first considered by the Public Accounts Committee.

As a matter of fact, for instance, Gertzel reveals that Public Accounts Committee was normally not taken seriously by the Civil Servants. (108) This is probably due to the reason that there are no sanctions available for financial irregularities to be meted by the National Assembly apart from the Executive. (109) For instance, Parliament had problems with Permanent Secretary Peter Siwo: on two occasions he is alleged to have deliberately avoided appearing before the Public Accounts Committee to give evidence. Hence, the Speaker had to report to the House recommending a disciplinary action for "gross contempt of the House and its privileges." (110)

MP for Katete South, (111) approves that, the Government does not respond to the Public Accounts Committee's recommendations. He said, "they normally liked buying time, so that the issues could be forgotten, thus turning Parliament into a talking chamber." On the incurring of unconstitutional expenditure by Government, he attributed this not specifically to the

Controlling Officers, but rather to what he referred to as a "unilateral and unrealistic budgeting systems", because the controlling officers budgeted figures of expenditure in the Estimates are unilaterally cut down by the Budget Office, thus making it impossible for Ministries to function, apart from incurring an estimated expenditure.

Close examination of these powers reveals, that there are entrenched provisions in favour of the executive action. For instance, the National Assembly cannot introduce a Money Bill or Motion which imposes taxation or charge, except through a Minister with Presidential authority. No doubt, "Parliament plays an important but not exclusive role." (112)

(iii) Criticisms of Government

The function of Parliament to criticise the Government does overlap with the other functions already discussed. It is being introduced here so that other general issues not falling strictly in the last two categories can be analysed. This is a traditional function which the Legislature claims to derive from Articles 87 and 91 of the Constitution. (113).

The National Assembly uses this power to criticise national policies and programmes, to scrutinize the activities of the Executive, and in limited capacity, as we saw with regard to the Petition, procuring the redress of individual grievances.

One form of criticism which the Zambian Parliament has used to exert its influence on the Executive has been by MPs moving substantive motions. Table I below, is a sample of some of the motions which the House moved between 1980 and 1984. The table shows that out of the six motions moved, one motion moved by the Prime Minister to shorten the time in which to complete the business was defeated. The other remaining five motions were moved by backbenchers. Four went through the House without division. Motion Number 3 attracted a division because it involved expenditure.

Table 2: Summary of a sample of Motions introduced in the House between
1980 and 1984.

<u>Date</u>	<u>Type of Motion</u>	<u>Resolution</u>	<u>Whether passed</u>
1.84	To suspend S. Orders 16 and 17 (1) and 94	To enable the House to complete all business on the order paper and all matters arising therefrom.	Ayes 45 Noes 62
2.84	Private. Moved by Landson Hantuba	House deplores failure of Coop.Unions to haul all the maize and other produce to main depots before the rains begin.....	Motion passed No Voting
2.80	Private Members Motion Rev. Zulu	House deplores the failure by Gvt. to lay on the Table of the House within six months from the date of the end of the financial year..... the Annual Reports of every Gvt. Ministry, Statutory Board, Company.....	Motion passed No Voting
2.80	Private Members Motion S. Phiri.	That this House urges the Gvt. to re-introduce the Miners' contributory Pension Scheme discontinued by Gvt. in 1966.	Motion passed No Voting
3.83	Private Members Motion N. Namuchana	House urges the Gvt. to provide emergency funds with which to construct additional classrooms in existing schools etc. for the purposes of Educational Reforms announced by Gvt.	Government defeated in a Vote.
-	Private Members Motion N. Namuchana	Gvt. takes steps to reform the Zambia Police in order to combat the rising crime wave by introducing police training in criminology.	Motion passed No Voting

EXPLANATION:

(i) Calculated from the Daily Parliamentary Debates.

(ii) Some resolutions had to be amended at the instance of Government by, for instance, substituting "deplores" with "take note," "urges" with "congratulates" etc.

(iii) Motions picked especially because of their representative nature, and also because they are the only ones I came across.

The interesting thing about these motions is that, according to MPs even if motions are passed the Government normally does not take action to implement the resolutions.

(114)

The matter which MPs fail to appreciate is that, the Government in most cases needs money to implement most of the resolutions. In the circumstances in which Zambia is

at the moment it is financially difficult if not impossible to implement some of these motions and recommendations.

Although I do not have information on the total number of Private Members Motions moved and so on, I am aware however that quite a good number of motions are usually moved. Most of these motions are representative in character and in most cases the Government in the House does not object to their being moved. On certain occasions, the Government has been defeated. This, therefore, shows that most of the motions introduced by the backbench have the interest of the general public in mind, and therefore ought to be encouraged.

Before we can draw any conclusions, on the effectiveness of Parliament in its specific roles of legislating, financial controlling and criticising, I would like to look briefly on the methods with which Parliament uses to scrutinize executive actions. These are parliamentary questions, committee system and debate. The evaluation and analysis of these methods as shown in another Essay on this programme (115) reveals as follows: On parliamentary questions, 50% of questions asked by MPs were of trivial nature and did not relate to matters of importance and policy. This means that 50% of the parliamentary time on questioning was spent on issues not worth the attention of the House.

On Committee system, the research reveals that 57% of the time was spent on minor and administrative issues. On the other hand, about 60% of the policy recommendations made to Government were ignored by Government or were not responded to. On Debate in the Assembly, the research reveals that back-

benchers were very critical and at times cynical against the executive performance. And that they did at times influence the Government, but this was only when such issues appealed to the public opinion and did not affect substantial changes in the Party and Government Humanist/Socialist Policies.

Although this analysis affects the functioning of Parliament in relation to the public Enterprises, there is no evidence to suggest to the contrary regarding the Legislature's role in other areas.

A conclusion to be drawn from this analysis is that MPs effectiveness in Zambia's one-party Legislature is circumscribed. Parliament's power to control the Government lies in the provision of a vote of no confidence (which does not exist in Zambia) with an ultimate aim of removing the Government in power. Without this power Parliament is reduced simply to a paper tiger. As a watch dog, it can bark, but it cannot stop the Government from governing.

The above discussion has shown how Parliament functions in relation to the Executive and its ineffectiveness in the control of the Executive. The account which follows is primarily intended to show how the principle of separation of power is affected by the constitutional provisions and also to show clearly the legal constraints which contribute to the subservience of the Legislature vis-a-vis the Executive. The question to begin with, therefore, is does the doctrine of separation of power in Zambia exist?

The ideal structure of State, is that the Legislature is intended to be separate from the Executive and the Judiciary. But the Legislature in the traditional theory is that it is a device for protecting the individual from state abuse of power and arbitrariness. The 1964 Independence Constitution as we have already seen, was an embodiment of this doctrine, for obvious

reasons. The problem is that during the establishment of one-party state, no measures were taken to modify the parliamentary institution to suit the modern socialist theory. This is because, the liberal democratic theory of separation of powers and its functions, "are essentially negative, that is, they are seen as brakes or checks on the Executive," (116) whether or not the Executive is efficient and progressive enough. This is where the problems arise. As Martin rightly puts it, "in a State where the prime emphasis is on the political, cultural and economic development of the people, institutions which perform a negative or perhaps reactionary role can have little validity." (117) Ojo, also develops an argument that, "the doctrine of separation of powers as developed by Montesquieu and Locke is more complex and it has many dimensions. Since a complete separation is neither practicable nor desirable for effective government, what the doctrine can be taken to mean is the prevention of tyranny by the conferment of too much power on any one person or body and the check on one power by another." (118)

Thus, it is not only a mistaken belief but, a misconception to claim that Parliament in Zambia should enjoy separate existence, a claim which is continuously being made. For instance, in 1974, a former Cabinet Minister argued that in his political experience nothing that came before that House "was subject to the authority outside it except in the case of Financial Bills." (119) Obviously, there is no such a thing as "absolute" separation of powers, as one of the distinguished authors put it, separation of powers, he said, "whilst it entrenches separateness, it insists on interdependence. While it provides for autonomy, it defers to reciprocity.... what is needed to make the new system work is the determination of all those who will operate it to demonstrate public spirit." (120)

The problem with the Zambia's system is that if the Legislature continues

to exert its claim of Independence, the Executive would similarly claim to protect its Independence, which according to the Constitution is more profound than that of Parliament. Let us see how Independence of the Executive is legally justified in Zambia.

First of all, let us start the examination of the election of the President. Article 38 (3) (121) is the starting point. Under the Party Constitution, a person wanting to contest the Presidential elections, indicates his intention to do so, to the Secretary-General of the Party to stand as President of the Party. The Secretary-General, then submits the name or names to the Central Committee for consideration. If there is more than one name, the Central Committee indicates support for one of the candidates, and that supported name is submitted to the Party's National Council for approval or disapproval. The name approved by the National Council, will be the one to be submitted to the General Conference of the Party for election to the office of President of the Party. Where there is more than one candidate, all these file nominations with the Returning Officer (Chief Justice) and thereafter Members of the General Conference vote for one candidate of their choice. The person who wins the elections, is then declared President of the Party. This is the person who is later presented to the general public as a sole candidate for election as President of the Republic. During the Presidential and General Elections, members of the public are then made to vote for 'YES' or 'NO', while at the same time voting on a separate ballot for a Member of Parliament.

It can be seen from this account that Parliament as an institution plays no role in the election of President, except for the insignificant and minority role which Members of Parliament play at the National Council and General Conference levels as members of those organs. In that capacity, they are unable practically as we have seen to exert influence on those fora.

Let us now consider the role, if any, which Parliament plays in the removal of President from Office. The Constitution provides that the President can be removed from Office in two specific ways, namely, when he is mentally and physically incapacitated, and for the violation of the Constitution or gross misconduct. (122) Where the President is suspected of being physically or mentally incapacitated, it is in the powers of the Central Committee and Cabinet to resolve by majority of the members of each body and thereupon the Chief Justice appoints a Board of Medical Practitioners of not less than three to investigate and to report thereafter to the Chief Justice, who under his hand shall certify accordingly. Where the certificate is in the positive, the President ceases to hold office. Where, on the other hand, a joint Central Committee and Cabinet together resolve that the President should be investigated for physical or mental incapacity, the President immediately hands over Office to the Secretary-General of the Party, pending the outcome of the Medical Board of Inquiry.

The role of Parliament only comes into effect when the President is alleged to have violated the Constitution or to have committed gross misconduct. Gross misconduct in this case includes the breach of the Leadership Code. (123) The procedure is for at least one-third of the number of Members of Parliament to give notice to the Speaker that the President has violated the Constitution or that he has committed a gross misconduct. The Speaker causes the motion to be considered without debate, and if the House resolves with two-thirds majority, then the Chief Justice has to appoint a judicial tribunal of not less than three persons who are holding or have held before a high judicial office. Where the tribunal reports in the affirmative to the National Assembly, the House may proceed to vote again and three-quarters of majority vote is required by this time, for the motion of impeachment to succeed. If the motion goes through, then the President after three days ceases to hold Office, unless he dissolves Parliament sooner. If on the

other hand, the Tribunal reports that the allegation is not substantiated, then no further proceedings can be taken against that motion.

There is a practical problem in the manner Clause 5 of Article 41 of the Constitution is framed. When does the President decide to dissolve Parliament, is it before the said resolution or even after the resolution, as long as he does so within 3 days after that resolution? The way the clause is framed, it appears to me that the President can dissolve Parliament even after the second resolution has been passed by the National Assembly.

Assuming I am right, then it is submitted that the powers of the Legislature to remove the President is subject to his veto, and therefore superfluous and meaningless. Because if he dissolves Parliament, the same President could stand a chance of being re-elected as President of the Party and of the Republic, so long as he enjoys the support of the Party faithful and the general public. In developing countries where public opinion is difficult to form due to illiteracy, it cannot be said with certainty that the electorates will be able to understand what "the violation of the Constitution and gross misconduct" mean, in order for them to appreciate exercising their vote against the person who had been impeached by the National Assembly.

Further more, the examination of the powers of the Legislature to impeach the President reveals that the procedure is not only cumbersome, but the Constitution is entrenched in such a way that it is almost impossible to impeach the President by Members of Parliament. In this way, the position of President is not in any way threatened by his removal from Office by the National Assembly, thus he owes no loyalty to it nor is he responsible to it legally, politically and psychologically.

The subservience of Parliament to the Executive was early this year demonstrated in an interesting encounter between the National Assembly and the

he "demanded a public apology from them in Parliament or outside." He further stated, that he would not "entertain wild allegations by MPs which were intended to make people doubt the credibility of their political leaders."

(127)

This case shows clearly that the National Assembly in a Party-Presidential democracy cannot dictate to the Executive on what to do. The Executive is at liberty to take what course of action it feels like taking. This, as we have already seen, is not contrary to good Government, it is a constitutional privilege given to the President to manage the affairs of State as he wishes, according to Article 53, and he is not obliged to follow the advice or order tendered by a person or organ like Parliament.

As a matter of confirmation, the Speaker of the National Assembly has on numerous occasions ruled against bringing the President into debate on the floor of the House. This is not only self-defeating, but it shows just how complicated it is in a one-party Legislature, for Parliament to criticise the Executive, because in doing so, they will be indirectly criticising the Head of State, who is legally the Executive himself, who is not only above Parliament, but the fountain of parliamentary freedoms and privileges.

Against this complex background, the question: What is the constitutional role or functions of Parliament? becomes altogether too ambiguous and confusing. The answer relates to other questions. How far does Parliament or the Party encourage some type of popular participation of the general public in Government? How far and which organ enables ordinary people to think of the Government as an "us" and not a "them"? As Morgan asserts, this is the only test for a system which claims to be a participatory democracy. (128) If answers indicate that both institutions are contributing to the democratisation of the system, then a need arises to undertake a study with a view to reconciling the conflict between the Party and

the Legislature. It is no doubt clear that the deliberations of the National Assembly do serve an educational purpose among the members of the general public when reported in the press. The publications of the debates, apart from being educational, also assist the general public in the formation of public opinion against the Government's incompetence, maladministration and authoritarianism. My own observation is that people in Zambia tend to buy more newspapers during the Sittings of Parliament than when Parliament is not Sitting. This in itself shows how important its role is in a one-party system, and no doubt acts to make ordinary people to think of Government as "us" instead of as "them".

It is similarly a myth to think that the Party cannot go wrong. Any institution which is manned by human beings can make mistakes. The only real safeguard in the long run is an alert public opinion, which can resist arbitrary and misuse of power and inability to provide the essential means of livelihood to the people, when measures are taken by the Government which are not reasonably justifiable in a democratic society.

CHAPTER 4 - CONCLUSION.

Having examined, analysed and evaluated the role, nature and authority of the Legislature in Zambia's single-party state, here are my findings, conclusions and recommendations: Firstly, I have taken note of the reasons advanced for the introduction of the one-party state in Zambia as being compatible with the socialist-humanist ideology with which Zambia is pursuing. It is clear that the introduction of one-party state was not exclusively mandated by universal franchise, the argument that the system has nevertheless proved to have brought unity and peace among the 73 tribes of Zambia, which is being used as a basis for progressive social change is persuasive.

Secondly, the picture which seems to emerge in relation to the Legislature is that Zambia appears to evolve towards a system of fairer and democratic ideals, in as far as freedom of expression and criticism of the Government are concerned. The Government's tolerance to criticism is an indication of its willingness to shift towards the strict adherence to the rule of law and democratic values. Thus giving an impression of legitimacy on the Executive's initiative in establishing the one-party state.

Thirdly, although generally speaking, there is unity and peace in Zambia, the relationship between the Party/Executive on one hand, and the Legislature on the other, has not been sound. There has been a tendency for technocrat MPs to talk in the National Assembly as if the Party does not exist.

According to Gertzell, the criticism and dissent offered is more on the preservation of bourgeois interests, (1) which are obviously in conflict with the ideology. The House is thus not fully used as a forum for articulating the interests of the peasants and working class.

The dissent by Members of Parliament is also related to the following factors. The loyalty of an MP in Zambia's single-party system is in practice paid to the electors more than the Party, the external threat and economic crisis

produced fundamental disagreements between the Legislature and the Executive, and egocentrism. (2)

It has, however, been found that the major contributing factor of this conflict between Parliament and Executive stems from the fact that Parliament has maintained the structure, organisation and content which is simply a trans-
plantation of the Westminster model, which was entrenched in the Constitution without taking into account the concept behind the one-party system which dictates the subordination of all the institutions in the land, including Parliament. The mistake appears to have begun with the Chona Commission, whose recommendations for a supreme legislature with absolute freedom of speech and parliamentary privileges similar to the Westminster model were accepted by the Government without modifications. On the other hand, extensive modifications on the recommended responsive structure, powers and functions of the Executive were made by the white paper, without in a similar manner harmonizing the structure, powers and functions of Parliament. The result is that you have in Zambia a constitutionally independent and powerful Legislature which cannot control the Executive because constitutionally the Executive is supreme in its own right and independent of any other organs including Parliament in the exercise of its Executive functions.

The other equally important omission by the Chona Commission and later followed by the Government, is the failure to clearly spell out in detail the role of the ubiquitous mass party in relation to such institutions as Parliament. The relationship between the Party and Parliament and indeed all other organs of state should have been entrenched in the Constitution in such a way as to show that Parliament's responsibility was to implement Party policies and programmes. As Morgan points out: "the most fundamental argument against Executive responsibility of any type to the Legislature flows from the one-party-state itself. For the concept on which the new system of

Government seems to be based is that of a gas rushing into every institution and filling it with the spirit of the Party. How can one body be said to control another when they are each the subservient agents of the "Party".

(3) In practice and constitutionally, the primacy of the Executive has emerged against that of Parliament, on the understanding that the Executive exercises such power on behalf and for the Party as its principal Agent.

With regard to the effectiveness of Parliament, this paper makes a finding that the Legislature in Zambia is effective in the areas of criticism of the Executive and parliamentary privileges but it is ineffective in relation to the control of the Executive. Parliament has on a number of occasions persuaded the Government to take certain causes of action, but this has been so only when the Government is itself willing to do so. This has drastically reduced the role of the Legislature to that of a watchdog and to scrutinising the administration. In terms of the Party policy and according to Professor Crick, one is likely to argue that perhaps this is the rightful role of the Legislature in Zambia. For, in reference to control, he states that "control means influence not direct power; advice not command; criticism not obstruction; scrutiny not initiation and publicity not secrecy." (4) Parliament, however, has a role, in addition to devoting its attention and time to detail and the actual effect of the Government on people's lives, because in practice no adequate and proper attention is given to the needs of the masses by the Party. It has the characteristic of influencing the degree to which policies of Government would gain legitimacy.

In addition to this, the coverage of parliamentary debates by the press has an effect of serving the educational purpose among the general public. This contributes to their political awareness and the formation of public opinion which in turn encourages popular participation of the general public in Government.

While accepting an ideological bias, it is important at the same time to be cautious of the dangers of turning ideology into a mere rhetoric, which could be manipulated by the politicians to legitimate their own actions, hence in the long long turn the state apparatus into, (to use a term Galbraith has coined for India,) "functioning anarchies." (5) While it may be true to say that the subordination of Parliament is likely to give room for the arbitrariness and infringement of human rights and freedoms by the "Party dictatorship," the commitment of Government to progressive social change would be a consolation, in that progressive development will in turn bring about the formation of public opinion and consciousness among the people which will make it possible for the Rule of Law to thrive. At the present time, these human rights and Rule of Law which are intended to protect the ownership of property are abstract, in the sense that due to ignorance, hunger, poverty and disease with which Zambian society is associated, the Rule of Law and human rights mean very little, if any to a villager. Thus "by putting the needs of individuals above the needs for independence and development of the mass of the people, a Government would forfeit the right to be called democratic." "The aim of socialist state administration then should be the diffusion of power from artificial hierarchies into the minds and hands of actual people." (6) It is an interesting development that Zambia's theory of the single-party system is similarly for the ordinary Party Member to control or at least have some chance of influencing the Central Committee and in return, for the Central Committee to control not only Parliament but all other state organs as well, so as to impress the views and wishes of the people on Government policy.

As regards the question of parliamentary privileges, it is my humble opinion, that there is a need for the Government to take a critical review of these powers and immunities. These powers have not only outlined their usefulness and unrealistic but are unfairly used against the officials and general

public under the pretext of breaches of privileges. Parliament has used parliamentary privileges as both a "sword and a shield" against the members of the public. MPs in a democratic society like Zambia obviously do require immunities against legal actions on what they say on behalf of their electors, but on the other hand, members of the public and the press should be allowed to question, criticise and comment on what MPs say in the House without necessarily being held in contempt, because doing so entitles MPs to tell a lot of lies under the umbrella of these privileges.

Lastly, there is a need, in the light of practical experience and problems with which Zambia has gone through with regard to the relationship between Parliament and the Party and Executive, to carry out a re-examination of the role of the Legislature with a view to finding out specific policy of the role of the Legislature in Zambia's one-party system of Government. This has to be clearly entrenched in the Constitution so as to avoid conflicts and clashes which have characterised the system. There is no doubt, that the Legislature has still got a role to play in Zambia's single-party structure if democracy has to prevail not only theoretically but practically. What is needed is the modification of the legislative structure to conform with the new ideological concept of Government.

CHAPTER 1

1. See David G. Morgan, "Zambia's one-party state Constitution" (1976) Public Law P.42.
2. Y.P. Ghai and J.P.W.B. McAuslan, Public Law and Political change in Kenya, (Oxford University Press) (1970) P.310
3. Ibid.
4. In the case of the People v The Speaker of the National Assembly, exparte Nkumbula, 1970, The Speaker of the National Assembly refused to recognise ANC and Mr Nkumbula as an official opposition Party and Leader of the opposition respectively. The Speaker stuck to his decision despite the High Court Judgement directing the Speaker to recognise the Party and its Leader.
5. The Choma Declaration was an 'Accord' signed by leaders from UNIP and ANC, where by ANC voluntarily acceded to end its political party and to join UNIP and UNIP undertook to extend a hand of friendship to the former members of ANC.
6. Report of the National Commission on the establishment of a One-Party Participatory Democracy in Zambia, (Lusaka) (October 1972), P.1
7. Ibid, pp. vii - viii.
8. Jan Pettman, "Zambia's second Republic", No. 12 (1974) Journal of Modern African Studies, p. 235.
9. L.S. Sondashi; LL.B. Research Essay, "The One-Party System: Problems related to the Legislative and Election Procedures", pp.2 - 3.
10. At least this is the argument advanced by Cherry Gertzel, The Dynamics of the One-Party state in Zambia, Manchester University Press, (1984) pp. 7; 13 - 14, and Simbi Mubako, "Zambia's Single-Party Constitution - a search for unity and development", (unpublished) - University of Zambia Library (sup. 1051)
11. Entitled Report of the National Commission on the Establishment of one-party Participatory Democracy in Zambia: "Summary of Recommendations Accepted by Government," Government Printer (Lusaka) Government Paper No. 1 of 1972.
12. Standing Orders 16. 17(1) and 94.
13. Government Paper No. 1 of 1972, op. cit. p. 5
14. Report of the National Commission, op. cit. pp. 11 - 14.
15. B.O. Nwabueze, Presidentialism in Commonwealth Africa, quoting "Immanuel Wallerstein in his book, Africa: The Politics of Independence, pp. 97 - 8;" (1974) p. 231
16. Simbi v. Mubako, "Summary of Zambia's Single Party Constitution - a search for unity and development." in Human Right in a One-Party State, International Commission of Jurists, (Search Press, London) (1977) p.50.
17. Cherry Gertzel, The Dynamics of one-party state in Zambia, p.1
18. David G. Morgan (1976) Public Law, op. cit. p. 43, and Jan Pettman, "Zambia's Second Republic" (1974) Journal of Modern African Studies, (No.12) pp. 231 - 39

9. Daily Parliamentary Debates, 6 December 1972 Col. 70.
10. See for instance Ghai and McAuslan, op. cit. p. 312
11. R.W. James and F.M. Kassam, Law and its Administration in a one-party state, (1973) p. 45
12. Cherry Gertzel, op. cit. p. 5
13. In a personal interview with Professor Gertzel on 10th May 1985.
14. In a personal interview on 27th December 1984; Alexander Chikwanda is former Minister of Local Government and Housing, Minister of Finance and Minister of Agriculture and Water Development respectively.
15. Daily Parliamentary Debates, 6 December 1972 Col. 61.
16. The Times (London) 12 June 1985.
17. It is interesting to note that Simbi Mubako is now Minister of Justice in Zimbabwe. The Government there has declared to introduce a one-party system against the Independence Constitutional Provisions, and also inspite of an effective opposition to the single-party system.
18. See for instance, Legislative Assembly Debates, 20 March, 1964 Col. 420; also Speech of President Kaunda at Chifubu on 17 January 1965 quoted in Colin Legum, Zambia Independence and Beyond: "The Speeches of Kenneth Kaunda," (1966) pp. 108-9
19. For further reading on this subject see the following: Vice President Mainza Chona contribution in Parliamentary: Daily Parliamentary Debates 6 December 1972 col. 39. Full text of President Kaunda's Press statement appended to the National Commission Report as Appendix 1: and Simbi Mubako, "Zambia's single-party constitution - a search for unity and development," in ICJ. Human Rights in a one-party state, op. p.52.
20. Jan Pettman, op. cit. p. 231
21. Ronald Wraith and Edgar Simpkins, Corruption in Developing countries, (1963) p.
21. Robert Martin, Personal Freedom and the Law in Tanzania, (1974) p. 46.
23. William Tordoff, Politics in Zambia, (University of California Press) (1974) pp. 228 and 241.
24. Jan Pettman, op. cit. p. 231
25. International Commission of Jurists, Human Rights in a one-party state, (search Press London) (1977) p. 110.
26. See the recommendatory comment on Zambia by one of the ICJ participating Jurists Simbi Mubako, ICJ, op. cit. p. 32
27. Robert Martin, Personal Freedom and the Law in Tanzania, Oxford University Press, Nairobi, (1974) p. 33.
28. See for instance Cherry Gertzel, op. cit. pp. 29-30
29. Articles 38, 41 and 40 respectively of the Constitution of Zambia
40. Robert Martin, op. cit. quoting Hannah Arendt, pp. 19-20.
41. Klaus Von Beyne, "Do Parties matter? The impact of parties on key decisions in political system" (1984) Government and opposition, vol. 19, pp. 5-29.

1. Erskine May, Parliamentary Practice, (20 ed) (1983) p.55
2. de Smith, Constitutional and Administrative Law, (4 ed.) (1981) p.73
3. e.g. Freedom once conferred can not be revoked: Ndlwana v. Hofmeyr (1937) A.D. 229.
4. Erskine May, op. cit. p. 183
5. Ibid.
6. Robert Martin, Personal Freedom and the Law in Tanzania, (1974) p. 48
7. Ghai and McAuslan, Public Law and Political Change in Kenya (1970) p.312
8. Ibid.
9. Robert Martin, op. cit. p. xxi.
10. Ibid.
11. President Kaunda, Humanism in Zambia: and guide to its implementation, Part II, (1974 ed.) pp. 9 - 11.
12. Ibid, p. 10
13. Constitution of UNIP. Article 1(2), p. 2
14. Report of the National Commission on the Establishment of a one-party participatory democracy in Zambia, (Lusaka, October 1972) p. 19.
15. Summary of Recommendations accepted by Government, Government Paper No. 1 of 1972 - pp. 8-9.
16. B.O. Nwabueze, Presidentialism in Commonwealth Africa, quoting "Immanuel Wallerstein in Africa: The Politics of Independence pp. 97-8;" 1974 p.231.
17. B.O. Nwabueze, op. cit. p. 242
18. Robinson Nabulyato, in his speech delivered to Parliamentarians in Harare, Zimbabwe entitled: "The role of and changes in the Zambian Parliament since Independence", 17 April 1984.
19. Ibid, pp. 2-3.
20. Speech to the 6th National Council of UNIP. officially called "The Watershed Speech" Mulungushi Hall, 30 June - 3 July 1975. pp. 2-3.
21. Ibid, pp. 20-24
22. President Kaunda's Address to Parliament, 16 January 1981, p.1
23. President Kaunda's Address to Parliament, 11 November 1983, p.2
24. Ibid, p.6; et. seq. President Kaunda's Address, 15 January 1982 p.9
25. President Kaunda's Address to Parliament, 11 January, 1985, p.2
26. Speech to the 6 National Council, op. cit. p. 39.

27. See Cherry Gertzel, The Dynamics of the One-Party State in Zambia, (1984) pp. 43-4
28. The percentage is calculated from the Presidential and Parliamentary General Elections - provisional official results, Electors' Office 1985.
29. Robert Martin, op. cit. (sorry the page number is missing)
30. B.O. Nwabueze, op. cit. p. 249
31. International Commission of Jurists, Human Rights in a one-party state, (1977) p. 112.
32. With regard to the definition of "Progressive social change", see Francis Siyder, "Law and Development in the Light of Dependence Theory," Law and Social Review, citing John H. Merryman, comparative Law and Social Change: on the origins (25 American Journal of comparative Law 463n, 16, 481) Vol. 14, No. 3 1980.
33. In a personal interview on 20 December, 1984: Humphrey Mulemba at that time was Secretary-General of the Party.
34. As per William Tordoff, Politics in Zambia, (1974) p. 228.
35. B.O. Nwabueze, op. cit. 256.
36. Article 15(e) of the Party Constitution, op. cit.
37. See for instance, ICJ, Report, op. cit. p.25
38. Robert Martin, op. cit. p. 52.
39. B.O. Nwabueze, op. cit. p. 256; quotation modified to suit the writer's opinion on the role of the Legislative.
40. Erskine May, op. cit. p.79
41. Chapter I of the Laws of Zambia, Part VI of the Constitution.
42. Article 71, Ibid.
43. In 1983, 4 MCCs were appointed: See Gazette Notice No. 1340 of 1983.
44. In a personal interview with Dr. Mumba, Lecturer, School of Law, University of Zambia, on 21 December, 1984.
45. Dr. Jonathan C. Mumba, Lecturer of Political Science, University of Zambia, in a personal interview on January 3, 1985.
46. Cherry Gertzel, op. cit. p. 83.
47. Mukando, former Provincial Political Secretary, on 8 February 1975 reacted through the mass media to criticism made by MPs in the House, there upon he was reprimanded and later after that he repeated the attack until the President suspended him. see Daily Parliamentary Debates of 19 February 1975 Col. 1477; et. al.
48. Mwelwa Chibesakunda in a personal interview on 3 January 1985.

CHAPTER 3

1. Articles 67(c) of the Zambian Constitution.
2. See Standing Orders 6, 7 and 7A
3. Daily parliamentary Debates, 12 Dec. 1973 Col. 2
4. Erskine May, Parliamentary Practice, (20 ed) (1983) p. 234
5. Ghai and McAuslan, Public Law and political Change in Kenya, (1970) p. 327
6. Ibid.
7. R.N. Nabulyato, (NO. 59) (1978) The Parliamentarian, p. 16: The first Zambian Speaker was Wesley Nyirenda.
8. Ghai and McAuslan, op. cit. 327.
9. In the interview with Ridgeway Liwena: Sunday Times of Zambia, 2 December 1984.
10. Robinson Nabulyato; Zambia Daily Mail and Times of Zambia, 23 May 1984; See also the Exchange of Views between Ugandan and Zambian Parliamentary Groups, (Government Printer, Lusaka), 22 May 1984.
11. See Chai and McAuslan, p. 328.
12. B.O. Nwabueze, op. cit. citing H. L. Bretton, "The Rise and Fall of Nkwame Nkrumah and T.P. Omari, "Kwame Nkrumah: The Anatomy of African- Dictatorship;" p. 275.
13. R.M. Nabulyato, The Parliamentarian, op. cit. pp. 16-17.
14. Zambia Daily Mail, 26 March 1977.
15. See Daily Parliamentary Debates, 12 February 1981, Col. 1339 and 26 February 1981 col. 2136.
16. Daily Parliamentary Debates, 3 March, 1981, cols. 2275-6.
17. Times of Zambia, March 1978.
18. Times of Zambia, 25 February, 1983.
19. Daniel Munkombwe, see Daily Parliamentary Debates, 19 February, 1981, cols. 1575-1576.
20. Daily Parliamentary Debates, 19 February 1981, cols. 1703-08.
21. Ibid.
22. Zambia Daily Mail, 2 February 1980.
23. Times of Zambia 11 August 1982.
24. Speaker's Ruling reduced into a pamphlet, 9 December 1982, p. 4
25. Erskine May, op. cit. p. 236.

26. Dr. Jonathan C. Momba, Lecturer in School of Political Science, University of Zambia, interviewed on 3 January, 1985.
27. de Smith, op. cit. pp. 275-6.
28. As per the following: The Watershed Speech, 30 June-3rd July 1975, President Kaunda's Speeches to Parliament 16 January 1981, 15 January 1982, 11 November 1983 and 11 January 1985, supra.
29. Ghai and McAuslan, quoting President Kenyatta, 14 December 1964 House of Representatives Debates vol. IV, col. 4.
30. de Smith op. cit. p. 103
31. Joseph Chikuta Mbewe in a personal interview on 22 December 1984.
32. Namushi Namuchana in a personal interview on 15 December, 1984.
- 3313 Times of Zambia, 13 February 1979.
34. Cherry Gertzel, op. cit. has a similar view, see for instance pp. 29-53, 79-115
25. Zambia Daily Mail 22 July 1983.
36. Valentine Kayope, Daily Parliamentary Debates, 13 March 1978 col. 2926.
37. Ibid, Times of Zambia, 29 June 1977.
38. Daily Parliamentary Debates, 20 January 1982 cols. 155-7; 162.
39. Daily Parliamentary Debates, 19 January 1982 col. 86.
40. Zambia Daily Mail, 2 December, 1977.
41. Zambia Daily Mail, 13 October 1977.
42. (No. 57) (1976), The Parliamentarian, p. 133
43. Daily Parliamentary Debates, 19 January 1982.
44. Zambia Daily Mail, 11 March, 1980.
45. Ludwig Sondashi. Parliamentary Secretary in the Ministry of Legal Affairs.
46. Daniel Munkombwe has now been appointed as Minister of State in the Ministry of Agriculture and Water Development
47. Daily Parliamentary Debates, 21 August 1980, cols. 1077-8 and 1976; See also Times of Zambia, 22 August 1980.
48. Zambia Daily Mail, 8 December 1984.
49. Zambia Daily Mail, 11 march 1980.
50. Zambia Daily Mail, 25 May 1984.
51. In a personal interview with him, op. cit. 15 December, 1984
52. Dick Leornad and Valentine Herman, The backbencher and Parliament, (Macmillan St. Martins Press) (1972) pp. 46-48.

53. Articles 47c and 56 respectively.
54. Article 49 of the Party constitution.
55. Article 54, *ibid*.
56. See the Constitution of Zambia Article 67.
57. Nwabueze, *op. cit.* p. 238.
58. Constitution of Zambia, Article 4.
59. Times of Zambia, 8 March 1978.
60. D.G. Morgan, "Zambia's one-party Constitution," (1976) Public Law, p. 56.
61. Statutory Instrument No. 77 of 1983.
62. Professor Mvunga, the Director of Law Development Commission and during that time Acting Director of Public Prosecutions supports this, that there is a conflict; interviewed on 27 December, 1984.
63. Joseph C. Mbewe, *op. cit.*
64. In a personal interview on 14 December, 1984
65. By A.S. Hornby, (1984 ed.) p. 438
66. The MPs referred to are: Peter Chanshi, Mwansabombwe; Zilole Mumba, Nyimba; F. Chanda, Matero; Michael Sata, Kabwata; Roy Banda, Chipangani and Francis Matanda himself, Kafue.
67. In terms of Article 67(c) of the Constitution of Zambia.
68. Zambia Daily Mail, 10 May, 1978.
69. Times of Zambia, 4 August, 1978.
70. Times of Zambia, 10 February, 1983.
71. Zambia Daily Mail and Times of Zambia, 27 May 1982.
72. See Regulation 100 of the Party Regulations.
73. Times of Zambia 10 May 1983.
74. Article 87 of the Constitution of Zambia.
75. Standing Order 137(4)
76. As per the "Watershed Speech", *op. cit.*
77. L.S. Sondashi, Essay, *op. cit.* p. 24, citing the Times of Zambia 7 December 1976.
78. See for instance, the Times of Zambia's Editorial opinion of 10 December 1976 which was against the MP's call and supported in total the existence of the Party
79. Times of Zambia, 7 December 1976.

- William Saidi, (No. 57) (1976) The Parliamentarian, pp. 26-28; and also Times of Zambia 22 January 1975.
- Ibid, pp. 207, and also The "Watershed Speech," op. cit.
- Times of Zambia, 15 February 1984.
- Zambia Daily Mail, 16 February, 1984.
- Ibid., 3 March 1980.
- Erskine May, op. cit. p. 235.
- Article 48 (2) of the Constitution of Zambia.
- Article 48(3), ibid.
- Article 56(1), ibid.
- Article 53(2), ibid.
- See Articles 63, and 79, ibid.
- Article 80, ibid.
- Article 82, ibid.
- Article 81, ibid.
- Ghai and McAuslan, op. cit. p. 338
- The Speaker's ruling was made on 26 February 1980, thereafter the S.I. Nos 30-33 of 1980 were made and Gazetted on 21st February 1980, but back-dated to 19 Feb. 1980.
- Times of Zambia, 30 November, 1984.
- Standing Instrument No. 139 of 1984 of 4 December 1984.
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CHAPTER 4

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