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LEGAL ASPECTS OF CORRUPTION IN ZAMBIA IN THE CONTEXT.

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

Submitted in partial requirement of the core-course: Law in Development for
the degree of Master of Laws (LL.M.).

School of Law,

UNIVERSITY OF WARWICK,

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DEDICATION

TO PRESIDENT KAUNDA of the Republic of Zambia in appreciation and recognition of his firm stand to wipe out corruption and opulence in Zambia.

"Corruption is in a sense a product of the way of life of an acquisitive society where 'money talks', where that which 'works' is justified, and where people are judged by what they have rather than what they are. The growth and consolidation of American business into ever larger units have increased the pressures of private interests upon public servants. But even more important is the fact that they have created a society in which pecuniary values are dominant. In such a society prestige is measured in terms of wealth. Successful grafters and corruptors become respected, and a million dollars cover a multitude of sins."

(John B. Monteiro: "Corruption", (P.C. Manaktala and Sons - (Pvt) (1966)

"....One may be less guarded on the question of the cost of corruption which many wealthy countries can afford to carry without noticing it, but which developing countries can hardly afford at all. The sums involved in some of the proved cases of corruption in Africa would have brought considerable benefit to people for whom under-privileged is too mild a word, if they had been properly spent."

(Ronald Wraith and Edgar Simpkins: "Corruption in Developing Countries" (George Allen and Unwin Ltd) (1963)

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S U M M A R Y

This Essay is an attempt to investigate corruption in Zambia in the context of other prevailing forces. It seeks to ascertain whether corruption exists in Zambia, if it exists, the measures which the Government has adopted to combat this crime.

Chapter One as an introductory Chapter attempts to define the word "corruption". It is discovered that the definition as read with Zambian Act is wider in application than the "offering and accepting of bribes". Zambia's policy on corruption is further discussed and exposed. The Chapter concludes by outlining certain important theoretical concepts and assumptions with such questions as: Why should corruption be controlled; The causes of corruption, and why many countries have failed to control corruption?

Chapter Two carries out a critical analysis and evaluation of the Corrupt Practices Act 1980 of the Laws of Zambia, which the Government is using as a weapon to fight corruption. The background which necessitated the bringing about of such legislative reforms is spelt out. In addition to this, certain specific sections of the Act are highlighted, discussed and analysed in relation to the Constitution of Zambia and other related general principles of fundamental common law.

Chapter Three concludes by presenting a number of findings:

- i) that the law reforms on corruption enacted in Zambia are a progressive attempt;
- ii) that these law reforms in Zambia are basically the brain-child and product of that country's Head of State, and that hence the success of reforms which are dependent on one individual is questionable;
- iii) that there is too much reliance on law by the Zambian Government to prevent and control corruption;
- iv) Lastly it is observed with regret that the Government failed to take into account the root causes of corruption in Zambia,

The Chapter concludes by recommending a review of the Act, so as to make further provisions for combating corruption, using a strategy of mass intervention where ideology is used as the base.

1. Definition of corruption.

It appears to me that the word "corruption" has no single and clear definition.

Smith and Hogan (1) define "corruptly" as follows: "like 'fraudulently' this word in its natural sense seems to imply dishonest." But dishonest relates to cheating, deceiving or misleading. This definition does ^{not} tell us who deceives who, and with what intention?

On the other hand, Monteiro (2) defines "corruption", thus: "In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office due to the special position one occupies in public life." (3) "Political corruption is the misuse of political power for private profits. The test is whether the merits and demerits of an act, are that the act represents a sacrifice of public trust for private benefit, it must be held to be corrupt." (4) He continues: "corruption (and bribery) exist in different forms in different countries depending, among other things, on the stages of economic and political development." (5) Monteiro's definition appears to be one-sided, it concerns itself with the dealings of a public officer, leaving out, as is usually the case, the other party who may be an outsider, a private citizen.

Simpkins' definition of "bribery, corruption and nepotism" is that it "may involve no more than simple avarice,....the acquisition, exercise and delegation of authority according to self-interest rather than merit"...."if you give me power, I will give you money, or will you give me a peerage, if I contribute to party funds?" (6) This definition appears to be wider in application than Monteiro's, but it does not cover personal temptations or inducements, such as gratifications unilaterally offered to an innocent party.

The Oxford Advanced Learner's Dictionary offers a better and more refined definition. It defines "corruption" as "corrupting, or bribing," and "corrupt" is defined as follows: "immoral, depraved, dishonest (esp.) through taking bribes; Corrupt

practices:- the offering and accepting of bribes." The word "bribe" on the other hand, is defined thus: "Something given, offered or promised to somebody in order to influence or persuade him (often to do something wrong) in favour of the giver." (7) This definition is better than those by Smith and Hogan, Moteiro and Simpkins, because it is double-sided and defines corruption as involving, the 'offering' and 'accepting' of a bribe.

The Zambian Penal Code, (8) section 94, referring to "official corruption," closely follows the provisions of the Prevention of Corruption Acts 1889 to 1916 of the United Kingdom. In the said code, official corruption is committed when a person employed in the "public service", "corruptly asks, receives or obtains or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done..... in the discharge of the duties of his office,.... or corruptly gives, confers, or procures, or promises or offers to give or confer or attempt to procure, to, upon or for any person employed in the public service....."

The defects of this provision are that the word 'corruptly' was not defined. Secondly the crime of corruption was restricted to the transaction between a public official, whereas the Corrupt Practices Act, 1980 covers the private sector as well. Lastly, the definition of 'public service' was restricted to statutory boards or companies in which the Government had majority interest or control.

The Corrupt Practices Act, enlarges this definition to cover any parastatal body, board, commission etc. appointed by the Party or Government or established by or under any written law. The definition of the offence of corruption in the New Act, despite its broader application, also provides for the commission of this offence unilaterally. These aspects were not catered for in the repealed Penal Code provision or the Prevention of Corruption Acts 1889 to 1916 of the United Kingdom, which applied in Zambia by virtue of the British Acts Extension Act Cap. 5.

The Corrupt Practices Act, (9) (hereinafter referred to simply as "the Act") defines "corruptly" as: "in relation to the soliciting, accepting or obtaining; or to the giving, promising or offering, of a gratification, means the doing of any of the aforementioned things by way of a bribe or other personal temptation or inducement." "Gratification" is defined as follows: "any corrupt payment whether in cash or in kind, and includes any rebate, bonus, deduction or percentage, discount, commission, service, forbearance, assistance, protection or any other material gain, benefit, amenity, facility, concession of favour of any description, and any loan, fee, reward, advantage or gift, other than a casual gift." (10) It is thus clear from these definitions that bribery has been extended to include any personal temptation and inducement. In addition, the meaning of bribe has been widened to cover "gratification" of any description, except a casual gift or an entertainment (see the definitions of casual gift and entertainment under s.3 of the Act) When read in conjunction with Ss. 51(c) and 61 of the Act, it makes any offering or accepting of a gratification, apart from a casual gift and an entertainment, whether offered intentionally or innocently, an offence. The implications of this reformulation are that it is now easier to proceed successfully against a person who offers, solicits, or attempts to offer or solicit, or accepts a gratification without proving the accused person's state of mind.

It appears that the definition of "corruptly" as read in conjunction with the definitions of "entertainment", "gratification" and "casual gift" and Ss. 46 (2) and 51 (c) are not without difficulties. The object appears to be to overcome the principles of law applicable in the English cases of Cooper v. Slade (1858) HLC 746 and Regina v. Smith (1960) QB 423; (1960) 1 All ER 256. In the case of Regina v. Smith, Lord Parker CJ. (P. 427) in trying to define the word "corruptly" asked the following question: "What does the word corruptly, give or offer mean?" He then answered: It "means with intention to corrupt. In other words, if I offer you a reward in order that you should do something which may help me, or if I am offering and hoping that the offer will induce you to act in the way in which I want you to act, I am doing it corruptly." He went on, "corruptly" here used is used.....namely, that it denotes that that person making the offer does so deliberately.

and with the intention that the person to whom it is addressed should enter into a corrupt bargain." And Willes J. in Cooper v. Slade, supra (P.429). said, as one of majority judges: "the word "corruptly" in this statute means not "dishonestly" but in purposely doing an act which the law forbids as tending to corrupt voters."

The construction of the Zambian Act has therefore by-passed the interpretation in the leading case of R.V.Smith by not only creating a presumption of "corruptly receiving" etc. but also by making the intention irrelevant. This will be expounded on later in chapter two. The result is important, because the intention to corrupt is normally difficult to prove, since it is reached with the acquiescence of both parties. This provision has also made it possible for the unilateral action of a single person, who solicits or offers a gratification to lead to a conviction for corruption. The difficulties which the law faced in Zambia, those of proving that bribery and corruption has ever taken place have been overcome.

2. The causes of corruption.

There are many different causes of corruption in every country. Because of this I only intend to point out a few of a general nature which, in the writer's view are common in third world countries, with special reference to Zambia.

For example, the ascendance to political power by the indigeneous nationals in former colonial territories has tended to be the starting point of corrupt practices by the new bureaucrats. Zambia is no exception in this. Like many emerging African countries at Independence in 1964, Zambia had barely one hundred indigeneous graduates and about one thousand secondary school leavers. Thus, it can be seen that the economy and public administration were in the hands of foreign expatriates and businessmen. Both government and public enterprise were firmly in the hands of the white settlers. At the stroke of a pen, indigeneous Zambians found themselves compelled to take over from the foreign bureacrats in the government, and later, after the 1968 and 1969 Economic and Mining Reforms, in the private and mining sectors as well as in the parastatal sector. The attainment of independence, thus marks the start of the formation of the propertied classes in Zambia.

As Szeftel shows, from 1963 to 1968 there was an increase from 1,357 to 7,509 in the number of Zambians employed in the Central Government. This occured through Zambianising existing positions and also, the expansion of the civil service. The economic reforms of 1968/69 increased state "intervention in the economy and created a large parastatal sector, in the process opening up industrial jobs to political access."(//) In addition to this, the 1968 economic reforms made it possible for Zambians to take over the trading groceries and shops of non-Zambians in rural areas. This exposure of Zambians to power and status led them to emulate the luxurious and exotic life of their predecessors - the foreign bureucrats and capitalist bourgcoisie. This favourable economic climate did not, however, last for a long time. For, as Gertzel, has shown, after 1975, the effects of recession had serious consequences for the Zambian people, causing urban unemployment and rural stagnation. Similarly, scarcity and economic crisis contributed to an increase in corruption just as the late aggravated high rate of crime and violence.(/2:)

Power and status create wealth, which sometimes can be genuinely appreciated; and sometimes dishonestly accumulated. This is because corruption responds "to varied opportunities for misuse of power created by particular governmental institutions, to psychological drives present in the contemporary culture milieu, and various pressures arising under the existing scheme of economic arrangement." (13)

Monterio exemplifies this point by quoting the Indian example. He shows that Independence in India created "unscrupulous elements" in the public service and public life because "the transfer of power into the hands of Indians in 1947 gave rise to a newer section of indiscreet public men and officials who flouted all rules and regulations with impunity." (14)

The second cause of corruption is the lust for quick riches and wealth-worship. This is a very big problem, especially in countries where bribery and corruption have been institutionalised. In such a situation, it becomes a way of life for everybody to want to be rich, because if one's colleagues have become rich using dubious methods one is tempted to do the same. For example, corruption in Nigeria has reached endemic proportions where people have accepted it as a way of life. In such a country, "most people including the innocent ones and strangers tend to follow suit as failing to do so would be acting out of step and may only cause anguish and strain on one's life." (15) Reacting against this trend, President Kaunda on 24th April, 1985, lashed out at the "lust for quick riches" in Zambia. He revealed at the press conference that more than 10 people had been detained by him in connection with mandrax trafficking, and that he had withdrawn diplomatic privileges and immunities from Geoffrey Lubinga - a London based diplomat - so that he could be charged with heroin smuggling. (16)

Thirdly, the inadequate remunerations paid to politicians, civil servants and parastatal cadres also contributed to bribery and corruption. This fact has been advanced by Szeftel, (17) as being one of the causes. Another cause of corruption in Zambia is insecurity of office, (18). It should be recalled that after Independence Zambia, unlike Zimbabwe, took the deliberate decision to reduce the salaries and emoluments of public officials from the levels of those inherited from colonial powers, it was a decision which was to be regretted afterwards. After their

accordingly their standard of living changed with the status which they now enjoyed. Their traditional responsibility to the extended family system increased, while insecurity of office was aggravated by lack of professional qualifications upon which a leader, civil servant or parastatal official could rely after leaving employment.

Fourthly, an unwillingness on the part of the entire leadership and a lack of popular vigilance retards the stamping out of this evil; rather it contributes to it. Probity can not exist in isolation within the nation, unless the entire political system and civil service are behind the fight against corruption.

Fifthly, according to Simpkins and Wraith's (17) "uneducated democracy theory," the argument is advanced that democracy promotes freedom, and this freedom turns out in practice to be a freedom "to do wrong as well as to do right." They further postulate that in a country where most of the population is illiterate, as is the case in developing countries, "many governments and local authorities" lack the discipline imposed by an educated electorate," thus they tend to choose to do wrong "because they know that the voters either will not care, or will not understand, or will not find out." This argument that democracy breeds corruption, is not normally accepted by politicians in capitalist countries. Its assumption can surely be justified, by simply observing that corruption under the marxist regimes is a very rare phenomenon. Might the answer therefore lie in restructuring our organisation to the marxist model? Some consolation lies in the unquestionable belief that as democracy and education are closely linked, education will flourish under a stable system and then the quality of democracy will improve.

Sixthly, it is, in the writer's opinion important to review and acknowledge the contribution of the concept of "economic determinism" advanced by Karl Marx and Frederick Engels in as far as the concept relates to corruption. According to this concept, "the mode of production of material things, i.e. material forces, conditions the social, political and intellectual life process," (20) In support of this postulation, it would appear that the changed economic climate in Africa today which has shifted the life style of people from a subsistence to cash economy is the major cause of corruption in Zambia and else where in the world.

(8)

Seventhly, the failure to start tackling bribery and corruption immediately after the attainment of self-rule and independence by third world countries is another course which has contributed to the cancer of corruption. The problem is that at Independence the colonial regimes left behind ineffective legislation, which was typically protective of capitalist economies. Their laws were weighted heavily in support of individual liberty and other fundamental rights. Thus, as we have seen earlier in this chapter, it became very difficult to prosecute an offender for the crime of corruption successfully, owing to the technicalities inherent in this legislation. This ineffectiveness of legislation on corruption in ^{the} emerging common-wealth countries and western industrialised economies is a phenomenon that has continued to exist up to the present day, and no government, particularly in the capitalist west, has come up with a positive law reform to tackle this crime. The only explanation available and persuasive to the writer is that advanced by Frederick Engels; (21) the state has the tendency to reflect, maintain and reproduce the economic interests of the dominant class; little attention is paid to the crime of corruption, because this is a crime committed by affluent people. If, on the other hand, this crime was mainly committed by the have nots, the propertied class interests would have received state attention a long time ago. For example, in Britain the 1723 Black Act was enacted in haste and provided initially the death sentence for those pillaging the English Royal forests. (22)

Finally, there is a school of thought which advances a theory that corruption in the third world countries is transitional and will disappear when these countries attain the stages of development obtaining in the western capitalist economies. This school of thought asserts that corruption is not peculiar to Africa; as a matter of fact, even the so-called developed countries went through the same shameful phase. It further goes on to justify its theory of the existence of corruption by arguing that what is happening there, is what happened in Britain and that what Britain achieved over a period of 500 years, Africa in particular is determined to do in 50 years of independence. (23)

With greatest respect to the proponents of this theory, I would argue that it is no right to compare Africa with Britain on the question of corruption. The circumstan

(9)

and conditions which prevailed in Britain 500 years ago differ fundamentally from the situation in Africa at any given time. Secondly, if Africa is proud to achieve its economic development within the shorter period of fifty years then, it should in like manner achieve the stamping-out of corruption within 50 years of its independence. Africa needs leaders of great probity and pragmatism, suited to carry out the enormous responsibilities of shouldering the burden of bringing the urgently required progressive economic change.

3. Why should corruption be controlled?

There are many reasons advanced for the control of corruption in all societies generally. The most prominent reasons are as follows. One of the most distinguished writers on the subject of corruption(24) argues for the stamping out of corruption on the grounds that if not controlled, it is a cancer which fast destroys the economy and the nation's morale. This argument has received credence in Zambia, where, as we have seen above, corruption is regarded as one of the evils - "a cancer which if not controlled can not only eat into the moral fabric of the nation, but can hinder the intended "progressive social change." (25) In introducing a Bill against corruption in Zambia, the Minister of Home Affairs said, for example that "apart from the obvious havoc that corrupt practices may wreak on the economy, just as important is their effect upon moral standards in our nation.....corruption is the epitome of the exploitation of man by man corruption, therefore, must never be allowed to gain hold in Zambia. It must be eradicated ruthlessly." (Daily Parliamentary Debates: 21st August; Col. 1081).

Secondly, it is asserted that public confidence is badly shaken when corruption is rampant in the nation. Thus it becomes imperative for any nation to restore public confidence by fighting corruption vigorously. In return, this will ensure legitimacy for the government. The question of legitimacy is very important; If it is not ensured, the consequences will be very serious; For example, Monteiro shows how by the Fifth century, the Greek citizens' "interest in their government gradually waned, and attendance at public meetings had to be ensured by cash payments." (26) In Sierra-Leone, it is alleged that corruption is getting out of hand. As a result, the towns are going without water because the government can not pay for petrol and diesel. (27) Similarly, the governments

of Nigeria and Ghana lack credibility because of the failure of the successive regimes to honour the promise of eradicating corruption. Instead, every regime coming to power, military and civilian alike, has fallen victim of the very cancer, it promised to root out. (22) Thus it is a common phenomenon in West African countries to regard every Government Minister as being corrupt.

Thirdly, class corruption tends sooner or later to become institutionalised, as in Nigeria, Ghana and Zaire. As Monteiro rightly puts it: "Those who have tried to live as moral men in an immoral society can be forced to give way sooner or later, under agonizing pressures of legitimate ambition which can only be achieved through illegitimate means - the pressure from family obligations, the slow insidious pressures of a society in which material success is adulated and where material failure is ruthlessly mocked, the pressure of increasing defeatism, of realisation that public opinion stigmatizes the transgressor so lightly, and that so little seems to be gained by trying to swim against the tide." (29)

Fourthly, corruption and maladministration do not only impose a great strain on democracy, but they also give rise to discontentment within the body politic which usually comes to the surface in the form of revolutions. The post-war history of military dictatorship apart, Latin America, Asia and Africa, according to Simpkins and Wraith have had their share of "military take-overs upon the pretext of fighting corruption," thus, in the process, disturbing the structure and organisation of democratically elected governments. These undemocratic and violent revolutions have over-stretched the principles of constitutional law to allow the principle of "necessity" to accommodate and give legitimacy to military constitutional regimes. Indeed, it is with this realisation that President Kaunda warns against allowing the law of the survival of the fittest in economic affairs, since the privileged few could grow richer at the expense of the vast masses of the population. According to him, this would be a temporary gain, because the have-nots, have "potential power to rise against exploitation in defence of their rights to self-determination. In the final analysis people win." (30)

Lastly it can be asserted, that corruption is economically wasteful and it distorts the redistribution of income toward the rich.

4. Why have many countries failed to control corruption?

The reasons advanced as to why many countries have failed to control corruption are as follows:

Firstly, they have only paid lip-service to it. Using ~~Lava~~ Mulimba's phrase: "to have the political will" to implement what is being put into law (Hansards 22nd August, 1980 Col. 1289). Corruption is a very complex and sophisticated crime and therefore requires any given political regime to be determined to wipe it out. It can be seen how the discussion on corruption centres round the men at the top i.e politicians, senior civil servants and so on. This emphasis implies that the men on top are corrupt, and thus are not interested in rooting-out corruption(31). This has been the case in many African countries and India. Fortunately for Zambia, as we shall see later a number of top politicians, civil servants and parastatal Executives have been exposed and their cases taken up by the Anti-corruption Commission. For, unless this is done there is no way of tackling corruption successfully.

Secondly, the problem of corruption, "becomes complex when it has its roots and ramifications in society as a whole." (32) It is also advanced that unregulated capitalism bequeathed to the third world by its colonial history leads to ostentation. This in turn makes it difficult for moral values to take root. On local bourgeois interests in Tanzania, Leys, for instance, advances the argument, that "the penetration of Tanzanian society in all its dimensions by capitalism was far too advanced to be checked, let alone prevented by juridical measures." (33) In other words, this explains why ineffective laws and improper machinery to control corruption were left unattended. The states have not only been lacking in interest in this area, but have been hopelessly ill-equipped, as in India, to tackle the scourge. No strategies for anti-corruption have been envisaged. (34) The Minister of Affairs in Zambia, when introducing the law reform Bill on corruption in the National Assembly in explaining the reason why it was being proposed to establish the Anti-Corruption Commission, instead of simply having the enforcement aspect in the same hands of the Police, said that experience of other countries had shown that "the most appropriate unit to deal with this most heinous crime is one that is directly under the control of the highest authority. In our case the highest authority is the President." He further pointed out that in view

of the complicated nature of the cases to be investigated, there was a need for a body which could specialize in corruption cases.

Thirdly, as regards the United States of America, the unenviable reputation of that country for its failure to control corruption, is, according to Monteiro, partially due to the entrenched system of the separation of powers, which according to him, complicates, "the governmental process and accountability," and so proper vigilance becomes impossible. (35) It is true that it is difficult to stamp-out corruption under a system of separation of powers, with a multi-party arrangement also for whose inertia, unlike single-party systems, hinders the implementation of vigorous, ruthless and consistent programmes and law reforms designed to wipe-out corrupt practices.

Chapter 2 - ZAMBIAN POLICY AND THE CORRUPT PRACTICES ACT, 1980.

1. Zambia's policy on corruption.

Zambian Government policy on corruption can be extracted from a number of publications by the Party and Government, especially the 1962 U.N.I.P (United National Independence Party) Manifesto, the Party Constitution, the book Zambian Humanism by President Kaunda, the National Policies for the decades 1964-74 and 1985-95 and the speeches of President Kaunda. Let me highlight briefly these publications, because they form the basis for the law reform on corruption.

The 1962 UNIP Manifesto, which was framed immediately before the attainment of Independence in 1964, can be considered in general terms, to have laid down the terms for the establishment of an egalitarian welfare state in Zambia. It can, therefore, be asserted that it is from here that UNIP commitment to wipe out corruption started although this was not specifically spelt out in that document.

Since 1962, the Party Constitution has been revised from time to time, to take account of the socio-economic and political changes taking place. For instance, the pledge to eradicate corruption was strongly advocated in the amended 1973 Party Constitution. Article 4 (c) of the UNIP. Constitution, dealing with objectives, provided for the stamping out of "all forms of corruption, exploitation of man by man, and intimidation. Later on in 1983, the Constitution was further revised, and made clear among other things the following fundamental principle: "Article 4 - The Party shall wage a relentless struggle against all domestic and international forces of reaction. It shall fight for the eradication of capitalism, with its offshoots of Imperialism, colonialism, neo-colonialism, Zionism, Facism, Racism and Apartheid, on one hand; and poverty, with its offshoots of Hunger, Ignorance, Disease, Crime, Corruption and the exploitation of Man by another, on the other hand."

Further, in "Zambian Humanism" part II, (/) it is stated that the Party shall "work to eliminate from the face of Zambia the exploitation of one man by another. We fight to eliminate all forms of evil. These includecapitalism and its offshoots of imperialism, colonialism.....and on the other hand, we fight to

eliminate poverty, with its offshoots of hunger, crime, CORRUPTION, disease and exploitation of man by man." It goes on to define exploitation of man by man as: "making self-interest the driving force of one's life at what ever cost to others."

Having ensured that his thoughts on the establishment of an egalitarian society were accepted and adopted by the Party, President Kaunda, for instance in 1968, reiterated that Zambia was "fiercely determined to build a humanist society which 'was' Man-centred"(2) In 1970's speech to the National Council,(3) he specifically referred to "corruption", saying that "corruption is basically a child of insecurity and yet," as the Latin saying has it: "The Corruption of the best is the worst" or 'The fallen Saint is the worst kind of sinner.' Similarly, a fallen leader is the worst kind of failure." He strongly warned against allowing the rise of a "strong group of exploiters, be they a political, economic or a racial class" He categorised "a political ruling clique, a racial group and an economic class" as forms which exploitation takes on.(4)

He further cautioned the Nation and said: "we will not tolerate the creation of a society of beggars with a handful of millionaires. Ours must be a nation of equals and equal opportunity." Speaking against poverty, he said: "In a humanist society, we must not share poverty but wealth. Personally, I am totally against poverty. It is not a commodity I wish to share.....At the same time we can not have a free enterprise economy. Our conditions are different.....it will quickly lead to the rich exploiting the poor, it will lead to inequality and thus destroy the very foundations of this nation"(5) He cautioned against the affluence of Zambians and said that: "a small percentage of our population have very expensive tastes-tastes which even the majority of the people in Europe, for example, cannot afford."(16)

As a follow-up to the Government policy on corruption, the Government in 1973 included a section on 'corruption' in the booklet entitled "National policies for the next decade 1974 - 1984." It began with the Party declaring war on "the obnoxious cancer of corruption," by: educating "the masses to detect and identify corruption where ever it rears its ugly head and to socially ostracise the corrupt; by enforcing "more vigorously measures to prevent" it; and by stiffening the sanctions against corruption and confiscating "all ill-gotten property and all other forms of wealth."

This therefore appears to be the Government's policy on corruption. The next subject to discuss is the background to the legislation.

2. The background to the Legislation.

What prompted the Zambian Government to take the bold decision to reform the law on corruption? The decision to reform the law on corruption appears to have been dictated by three factors. The first is the increase in the degree of bribery and corruption since independence. Secondly, as a consequence of the above reason, the Government was dismayed at the number of unsuccessful prosecutions of those who had committed this crime, due to the legal technicalities necessitated by the ineffective legislative provisions in the Penal Code and the British Acts of 1889 to 1916.(7) The last factor is the Party and Government's deliberate policy and stand on corruption. I would like to discuss these factors in more detail, beginning with the last one.

Zambia's policy on corruption has already been clearly spelt out. It is this policy of the Party, coupled with President Kaunda's stand on corruption, that made the (United National Independence Party) UNIP's National Council in November 1977 adopt and pass the following resolution:(8)

"The Party and Government initiate a law which will require persons who amass a lot of wealth through unscrupulous means to account as to how they got it, failure to do so, the property and wealth should be confiscated by the state."

The Party was thus prompted by an alarming increase in opulence in the Nation. During the first ten years of independence, President Kaunda and his Party were preoccupied with the consolidation of political and economic power and, most importantly, with learning the intricacies of running a government,(9) thus they had hardly any time to check on issues like corruption. It was only after a decade that the President made a 'U' turn to check on the implementation of policies and Party programmes. For instance, speaking at a press conference recently, he affirmed his commitment to wiping out corruption and recalled the time in 1980 when he threatened to dissolve Parliament when Members of Parliament were resisting the formation of the Anti-Corruption Commission.(10)

The second factor, the increase in the degree and extent of bribery and other corrupt practices in the nation no doubt had great bearing on the decision by the Party to reform the law. During debates, Members of Parliament pointed out the danger of corruption and urged the Government to control it. During the presentation of the Corrupt Practices Bill, for instance, the then Minister of Home Affairs told the House that during the first half of 1979, 17 cases of corruption were reported to the Police, but during the first half of 1980, 85 cases were reported. (11) This represented an increase of 500 per cent of cases reported to the Police. And from 1968 to 1978 only four cases were reported and referred to various Commissions of Inquiry. These cases involved a number of prominent public officers, including three Cabinet Ministers, a Permanent Secretary, a Senior Police Officer, a City Mayor, Senior Civil Servants and Parastatal Managers, with complaints and allegations against them ranging from abuse of office, misuse of public funds and power, bribery, nepotism, tribalism, favouritism and corruption. (12)

These cases mentioned represent only a tip of iceberg; there could still be more examples given sufficient room to do so. For instance, it can be seen that the Anti-Corruption Commission has since its formation investigated a lot of cases, which has led to the suspension of public officers by President Kaunda pending the outcome of investigations against them. These are as follows: A former Minister of Mines was not reappointed Minister after elections after having allegedly received a car from a contractor company. The case is now in Court and the trial is still continuing. A former Director-General of the Postal and Telecommunications Corporation has been charged under S. 59 of the Act with accepting the job as Chairman of Ericson (Z) Ltd within two years of his resignation without the President's consent. (13) Three Parastatal Executives, the Managing Director of the National Commercial Bank Ltd, Managing Director of the National Building Society and General Manager of National Agricultural Marketing Board were being investigated by the Anti-Corruption Commission. (14) Further, President Kaunda, at the swearing-in ceremony recently of the Secretary-General and Prime Minister, revealed that a Member of the Central Committee and two Zambia Industrial Mining Corporation Ltd (ZIM) executives were being investigated for corruption. (15)

In May 1985 President Kaunda ordered the detention of 15 persons in connection with mandrax trafficking, and the combined teams of Police, Customs and SITET (Special Investigation Team on Economy and Trade) seized over 20 foreign-registered vehicles at homes, offices and clubs in Lusaka. Investigations were being made as to who owned them, how they were acquired, whether 'legitimate' foreign exchange was used to buy them and whether tax and duty were paid on them etc. (4) This is an instance where the Preservation of Public Security Regulations have been extended to complement the ineffectiveness of criminal law. This shows how seriously President Kaunda takes opulence and improper amassing of wealth.

The third factor is that the Minister of Home Affairs again stated in Parliament, that there was a need to reform the law in order to provide for effective measures which lead to proper detection, prosecution and conviction. He said at the time that the detection and prosecution of offenders against corruption was extremely difficult, for the reasons already advanced else where: (Debates: 21st August Col. 1081).

Reading through all the documents pertaining to the introduction of the Bill, there is no evidence that either the National Council; Parliament or any other body considered in depth the root causes of corruption. Reading through the Daily Parliamentary Debates, it is equally surprising to see that Member of Parliament for Kafue, Bathsheba N'gandu^{above,} addressed herself to finding out the root-causes of this crime, taking sociological reasons into account. For instance, in her deliberations she posed the following question: "In bringing up this Bill, has the Government thought sufficiently of the root-causes of corruption? (47)" This question is very important. In the writer's view the Party should have taken the responsibility to conduct research in order to find the root-causes, so that proper "treatment" could be administered instead of using law per se to prescribe the remedy for corruption (see for instance, causes of corruption supra chapter one). This question leads us to another question, namely, what is the degree of corruption in Zambia in relation to corruption in other third world countries?

Before answering this question, I would like to point out that apart from those cases highlighted above, there are also instances of bribery taking place all the time at lower levels of the hierarchy. It is common to hear of the practice of paying "speed money" particularly in matters affecting the granting of import licences,

foreign exchange allocations, trading and liquor licences etc. Payment is normally made to speed up the movement of files or consideration, and not necessary intending that something be done illegally. Added to this are payments made to customs officials to facilitate the clearing of smuggled goods in or out of the country, the spurious substitution of seized goods, the over-valuing of goods in the case of exported goods and the under-valuing of imported goods, so that exporters can secure higher import licences in order to circumvent the foreign exchange regulations etc. (✓) Allegations have from time to time been made, against contractors who obtained contracts by under-cutting their competition, by delivering inferior goods or seeking approval for sub-standard works e.g tarring or maintenance of roads. The rejection of the lowest bidder on unjustified and flimsy grounds, overinvoicing of commodities such as food-stuffs etc. In the department of taxes, there are allegations of tax evasions in matters of assessments, refunds, appeals, tampering with records and the inability of tax inspectors to prosecute for default and breach of income tax Regulations. There are also instances where policemen have been bribed as consideration to stop them from proceeding with a criminal offence. On road-blocks, it is understood that people use a code language such as "ponya ntole" and "sunga mulomo", meaning, "drop the money on the ground, I will pick it up later" and "do not disclose

(19)

Some Members of Parliament, particularly Rex Natala and Francis Nkhoma, described SITET as being "full of corruption" and that "its history was tragic" (20) On political corruption, although this type of corruption is difficult and subtle to prove, innuendoes have always been made by the general public and parliamentarians on the Members of the Central Committee and Cabinet Ministers. This came out very clearly during the debate on the Corrupt Practices Bill in Parliament in 1980. For instance, the Member of Parliament for Masaiti, Dawson Lupunga, stunned the House when he made allegations that he knew of a good number of leaders that received gifts in the form of suits, wines, vehicles and even emeralds. (21)

From this catalogue of events one has to make up one's mind as to the degree of corruption prevailing in Zambia. It may be correct to say that some of the allegations are humbug, but the fact still remains, and this has been proved, that corruption in Zambia has been getting out of hand. Although it can ^{not} be denied that, corruption in Zambia exists, the truth of the matter is that "rampant corruption

has not gained root,"(22) as is the case in most West African countries and Zaire. This conclusion is supported even by Szeftel who says: "clearly graft occupies varying levels of significance in different African cases. In Zambia, it appears to be fairly common without being endemic, and the frequency of exposure and punishment indicates that it remains a risky undertaking."(23)

3. General overview of the Act.

When presenting the Bill to Parliament, the Minister for Home Affairs said that the "aim of the Bill was to prevent corruption in the country by comprehensively defining acts which may constitute corruption and by providing in the Bill very severe penalties for anyone who would be found guilty of these acts." He further stated that the Bill sought to remedy the situation by the enactment of changes to augment the powers of investigation, to codify the various offences in logical sequence, to create some new offences, to modify the existing rules of evidence," and so on.(24)

Part I of the Act mainly provides for the interpretation of certain words. Part II establishes a Commission known as the Anti-Corruption Commission, whose duties are to undertake measures designed to prevent corruption and to investigate instances in which corruption is alleged to have been committed. Part III provides for the functions of the Commission and powers of investigation by the Commission's officials. Part IV, as already stated above, creates new offences and streamlines the offences of corruption which already obtained in the Penal Code.

Part V provides for additional powers of the commission relating to the recovery of gratification.

Part VI empowers the Director of Public Prosecutions (D.P.P.) to exercise a fiat in cases of corruption. This provision can probably be seen as creating the necessary checks and balances in the administration of the prevention of corruption.

Part VII of the Act concerns evidence and presumptions. This is intended to strengthen the hand of the prosecution by shifting the burden of proof from the prosecution to the accused person.

Part VIII deals with supplementary provisions. It deals with such issues as removal

the element of intention from the crime of corruption, giving credibility to the evidence of an accomplice, ensuring the protection of informers. It also deals with false, frivolous or groundless complaints etc.

Having given an overview of the Act, I would now like to show how backbenchers debated the Bill, leading to its adoption. The following is a summary of how Members of Parliament deliberated.

TABLE: Summary of how MPs debated, reasons advanced etc. during the second-reading of the Bill.

How MPs debated the Bill	Those who said the Bill was unconstitutional.	Those who rejected certain provisions on ideological grounds.	Those who were afraid that the Bill would be used unfairly e.g. Turning Zambia into a Police state.	Those who said that the top leaders were the ones who were corrupt, thus the Bill should be aimed at them.	Those who gave other reasons against the Bill eg. arrest without warrant, evidence of spouse etc.	Total MPs who debated
Those who supported the Bill	-	1	4	5	6	9
Those who supported the Bill with reservations.	2	1	4	2	4	4
Those who did not support the Bill	1	3	6	4	5	6
TOTALS	3	5	14	11	15	19

ANALYSES:

1. Total % of MPS who supported the Bill = 13 ie. 56%
2. % of MPs who did not support the Bill = 6 ie. 26%
3. Those finally who voted AYES - 82 = 81%
4. Those finally who voted NOES - 19 = 19%

EXPLANATION:

1. Four Ministers who debated on the Bill are not included in the above figures, except in computing the percentage.
2. Two MPs - Nkhoma and Zimba who spoke strongly against the Bill, w voting, they voted in favour of the Bill.
3. Every MP who spoke admitted the existence of corruption and the need to get it eradicated, differences - were in the mechanism and strategy to be used to stamp-out corruption.

SOURCE:

Calculation from the National Assembly Parliamentary Debates of 21st 22nd August 1980.

The above Table is self-explanatory. Here it suffices to point out that in principle, MPs, who debated the matter in the House were in support of taking measures to control corruption, but it was the severity of the provisions of the Bill which they were again (25) But it is also clear from the records that many MPs did not comprehend the legal provisions of the Bill, and found themselves in the welter of confusion, probably due to the legal complexity of the statute (26) Others lacked sufficient time in which to carry out comprehensive research, (27) and yet there were others like the MP for Malambo who made serious allegations without substantiating them. (28)

4. Review of certain statutory provisions.

Under this sub-heading, I intend to highlight and review six sections of the Act, which I have chosen because they are crucial to the task of preventing corruption. These are sections 10, 35, 46, 48, 51, 53 and 61. Let us now consider these sections in more detail.

Section 10 provides for the functions of the Commission. Broadly speaking, its function is to prevent corruption in public bodies and the private sector. The words: "take necessary measures for the prevention of corruption," appear to me to be broad enough to carry out many more measures than those particularly mentioned under clauses (a) to (c) (see Appendix 'A'). At the same time, it is clear from the way the section is framed that the Party, the draftsman and the Legislature's intention was that the Anti-Corruption Commission was going to prevent corruption through acts of specific intervention in the functioning of institutions in the public and private sector. It was to review and tackle specific cases in the public service, commerce and industry. In other words, the policy-makers took a narrow approach to the magnitude of the problem of corruption, without first of all finding out what the root-causes of corruption, as Mrs N'gandu put it. (29) It is the writer's view that if this had been done, the Government would have come up with a comprehensive provision which would have tackled corruption by way of "mass intervention" in all areas of human endeavour: including, as we have already seen (in chapter one - causes of corruption), a person's moral, religious and ideological life.

Further, clause (c) of sub-section (1) of the same section is difficult to understand. It gives the power to the Commission to investigate any conduct of a "public officer" which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to the President." It is not clear what the drafters of the clause had in mind. Does this provision empower the Commission to recommend to the President that the officer concerned be punished administratively? Can the accused officer demand as of right that he be afforded time to be heard and to exculpate himself? Further, can the accused officer who has been punished by the President appeal against the punishment? Article 20 (1) of the Zambian Constitution provides for the right to the protection of the law in cases of people who appear to be charged with criminal offence. The Article reads: "If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time."

by an independent and impartial court established by law." obviously the Constitutional provision quoted is very clear: it does not envisage a situation where an Act of Parliament would indirectly create a criminal offence which would oust the jurisdiction of ordinary courts of law. The Act here appear to establish a "diminished criminal liability" and indirectly, contrary to Article 20 (1) of the Constitution creates judicial tribunals of the Commission and President to hear and determine such cases. The reservation is not that the President may exercise these powers capriciously but that the provision appear to be unconstitutional and further contravenes the rules of natural justice, particularly the 'audi alterem partem' rules' (30).

Section 35 of the Act provides for the penalty for those found guilty of the offence of corruption. Where a person is a public officer, the prison sentence meted out could not be less than 5 years and upto 12 years. On the other hand in the case of offences committed under Ss. 27 and 28, by persons who are not public officers and against private bodies, the ~~term~~ of imprisonment could not exceed 5 years or ~~a fine of~~ K5 000 or both. In presenting the Bill to Parliament, the Minister for Home Affairs urged deterrent sentences if corruption were to be controlled. No doubt each country has evolved its own method through trial and error, to combat this problem of corruption. For instance a certain writer states, how in England in 1931, a Member of Parliament was made to resign his seat on the mere misuse of a railway pass. "in the Egypt of Hammarab, judges who accepted bribes were executed". "In Russia, corruption of any kind is punished by the firing squad (of the person); whereas in Japan, mere demotion in office may be considered sufficient punishment," and so on. My only criticism, however, is the fixing of a minimum penalty of whatever number of years. As I understand it, this principle offends the concept of retribution - which, according to me, means apportioning punishment according to the crime committed. Indeed, I appreciate that this was more of a political than legal judgement. But I hold the view that it is the judge deciding the case who knows how serious the offence is. It is common for a judge to come across instances of a border-line case where, for instance one week's imprisonment or a suspended sentence may be more than a suitable punishment. Cases of this nature are bound to occur, particularly in the administration of this Act. I would find it outrageous for a person who received, offered or solicited a gratification without corrupt intention to be imprisoned for 5 years. Again, this is a situation where the regime is using the law to fill in the

political-failure-gap of finding out, and thereafter remedying, the causes of corruption.

Let us now consider the provisions of S. 46 of the Act. Since the legal consequences in the said section cannot be considered in isolation, I intend to discuss Ss. 51 and 61 jointly with S. 46.

S. 46 (1) creates a presumption that a gratification received by a third party on behalf of the accused person is presumed to have been received by the accused person. Sub-section 2 states that a gratification solicited, received etc. is received corruptly; and Sub-section 4 shifts the burden of proof on to the accused person. For the accused person to succeed under S. 46 (2) he requires or he must show that the gratification has not been solicited or received corruptly i.e. dishonestly, for example, that no such transaction took place or that he had no intention to bribe, (although the latter is not a defence as we shall see later). For instance, in the case of R. V. Millray Window Cleaning Co. Ltd. (1962) Gim LR. 99 CCA, it was held that "a consideration which is corruptly given may be innocently received." I will discuss the burden of proof later, but first, let us examine another area of difficulty. S. 46, when read with S. 51, particularly clause (c), raises many problems. Clause (b) of S. 51 is straight forward. It appears to have been framed from the authority of the case of R. V. Carr (1956) 3 ALLER 979, wherein it was held that "a person who corruptly accepts a bribe is guilty of this offence, although in fact he does not do what is required." On the other hand Clause (c) creates "strict liability" in that it is not a defence to show that he did not actually commit any act to induce the gratification, or he did not have the intention of doing so. In other words, what this means is that so long a public officer solicits or receives a gratification, he is presumed to have committed an offence. In actual fact what the Sub-section has done is to overrule the principle rule in the case of R. V. Millray, supra. The problem which is apparent where S. 46 is read with S. 51 (c) is that even if the accused person successfully shifted the onus of proof under S. 46 that the gratification was not received corruptly, he will be caught up by S. 51 (c) whereby proof against complicity in a crime of corruption and probity is irrelevant. In other words, this Section 51 is in direct conflict with S. 46 and they have to be reconciled as reasonably as possible. But when you take S. 61 into account, it becomes clear that the

only valid defence under the Act is a gratification offered or accepted as 'an entertainment' or as 'a casual gift.'

The interpretation of entertainment and casual gift are not without difficulty. Supposing someone received a gift in the form of money, on humanitarian compassionate grounds, to enable him or his wife to pay for a specialist cancer operation, could this fall under casual gift? The interpretation of casual gift is not very clear. A humanist judge could probably hold that such a gift was a casual gift. But to avoid doubt, the interpretation of casual gift requires amendment so as to take into account such gifts offered on purely compassionate, charitable and humanistic grounds, including such things as sponsorship for educational purposes and so on. Unless this amendment is made, the Corrupt Practices Act on this point is not only harsh but it also contradicts the avowed principles entrenched in the Zambian ideology of Humanism. This ought not to be allowed.

Another criticism which is apparent in construing these sections is that the offence of strict liability is created notwithstanding the accused person's innocent state of mind. This is against an avowed principle of law which states that "an act does not make a man guilty of a crime unless his mind be also guilty." This principle was held in the case of Haughton V. Smith (1973) 3 All ER.1109 (per Lord Hailsham L.C.)

As regards the burden of proof (see S. 46 (3)), the general rule which is abrogated by this Act is that advanced by Lord Chancellor Sankey in the famous and celebrated case of Woolington V. D.P.P. (1935) AC. 462, pp. 481-482, in which he held that in criminal cases, the burden of proof is on the prosecution to prove the guilty of the accused person "beyond reasonable doubt ... No matter what the charge no attempt to whittle it down can be entertained." In Zambia, in corruption cases and by virtue of S. 46, this rule is ousted by shifting the burden of proof on to the accused person. This is because of the difficulties with which the prosecution is faced in such cases. The burden of proof, however, when laid on the defendant is less onerous than that resting on the prosecutor as regards proving the offence. It may be discharged by satisfying the court of the probability, or rather the preponderance of probability, of what the defendant is called to prove: R. V. Carr-Briant (1943) KB.607 (65). In this case, it was held

that. "where, either by statute or at common law, same matter is presumed against an accused person, unless the contrary is proved, the jury should be directed that the burden of proof on the accused is less than that required at the hands of the prosecution in proving the case beyond reasonable doubt, and that this burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called on to establish." Being a legal burden and not evidential, in order to be acquitted, the balance of probability in favour of his being innocent, should not only be left in doubt at the close of the case, but should establish a balance of probability in favour of the version he is putting forward e.g. by calling his witnesses to prove that the facts are different or by destroying the credibility of the witnesses called by his opponent. (32) The shifting of the burden of proof on to the accused person is not a problem. There is nothing wrong with that. In fact, it is a clean game. If one did not commit a crime, one should be able to prove it. But the problem is that the Act has taken away the only element which is available to the defence to use to prove that he did not commit the offence, and this is by showing that his state of mind was free from corruption, and that he did not intend to corrupt by doing what he did. The Act, I am afraid, demands the highest behaviour of moral conduct which human beings have not yet reached.

S. 48 provides for the evidence of an accomplice and that of a spouse. Sub-section one makes an accomplice a competent witness. It is sub-section (2) which during the debate of the Bill received a lot of misgivings and criticisms from the backbenchers in Parliament. The objection of allowing the spouse to give evidence by MPs was based on the grounds that marriages would be wrecked, (33) that a husband and wife were one and same flesh (34) etc; and thus MPs warned the Government against bringing "cheap politics into families in allowing wives to give evidence against their husbands." (35)

With due respect to the honourable Member of Parliament, it is clear from their contribution that they were not aware of the legal position with regard to the tendering of evidence by any spouse, and not only the wife. The legal position is this: the common law rule of law is that a spouse is an incompetent witness against the other spouse. But this general rule of law has in Zambia, as it is in

Britain, been modified by statutes. The position in Zambia, at the time, was that (Criminal Procedure Code, Cap. 160, provided under S. 151, that) a spouse was a competent witness for the prosecution in a number of cases such as in offences against morality and against the family property. At the same time, Sub-section (1) (a) enabled any legislation to be passed which could make a spouse a competent witness. Under this provision, and in accordance with the decision of the Supreme Court of Zambia in re: Joseph Mushaikwa (1973) SC., a spouse is a competent witness for the prosecution, but not compellable. On the other hand, the Criminal Procedure Code S. 157 gives comprehensive provision for the spouse as a competent witness for the defence. There it is provided that a spouse is a competent but not a compellable witness except upon his or her own application. What this means is that assuming a wife or husband is an accomplice and is called to give evidence for the prosecution under S. 48, Sub-section one, against the other spouse, that spouse still is not a compellable witness, thus, he or she can refuse to give evidence if he/she wishes to do so. In other words, S. 48 of the Act has not changed the law on the evidence of a spouse, apart from extending it to cover corruption offences.

I would now like to discuss S. 53 of the Act. The said section, under Sub-section one provides for the accused person charged with an offence, not to give an unsworn statement, in his defence if he chooses not to do so. Sub-section two, on the other hand, provides for the asking of any question in cross-examination, notwithstanding that the answer would tend to incriminate him as to the offence charged. Sub-section two is simply a restatement of S. 157 (v) of the Criminal Procedure Code of Zambia and thus is of no consequence. It is Sub-section one which raises questions of constitutionally fundamental importance. In the recent High Court case ⁱⁿ Thomas Mumba v. The People HNR/438/1984, the question of S. 53 (1) of the Corrupt Practices Act No. 14 of 1980, was brought before the court for ruling, with the argument that that sub-section contravened the provisions of the Constitution of Zambia, in that the said section compels the accused person, if he elects to say something in his defence to give evidence; whereas Article 20 (7) of the Constitution says that one, in a criminal matter, should not be compelled to give evidence. On the other hand, the Counsel for the Respondent submitted that the Act was not in conflict with the Constitution, in that that section did not compel the accused person to give evidence his right to remain silent was maintained.

All the section said was that if the accused elected to say something, he had to do so on oath.

In his Ruling, Honourable Mr. Justice D. K. Chirwa observed that it was a criminal common law rule that an accused person in a criminal trial had the following choices: either to remain silent, or to say something. If he elected to say something, he either had to say it on oath (giving evidence) or say something by way of unsworn statement; he further observed that this common law rule is enshrined in the C.P.C. S. 207, and further entrenched in the Constitution under Article 20 (7). Consequently the court agreed with the Appellant and ruled that the Corrupt Practices Act S. 53 (1) was in direct conflict with Article 20 (7) of the Constitution, thus S. 53 (1) was unconstitutional, therefore null and void and it should be severed from the Act. It is understood that the state have appealed to the Supreme Court of Zambia against the decision in this case. At the time of writing, the case was still pending in the Supreme Court. My own understanding of the law and legal issues involved is that the Act, in compelling the accused person to give evidence, did what the Constitution did not allow to be done. I therefore concur with the decision of Justice Chirwa and hope that the Supreme Court will in similar manner re-affirm that decision.

Chapter 3 - CONCLUSION

Having sufficiently evaluated and analysed the subject of corruption and its legal aspects in Zambia, these are my findings, observations and recommendations:

A finding has been made to the effect that the causes of corruption are numerous, and that in order to tackle this problem successfully, Governments must take on board and understand the root-causes of corruption first. Only then can measures be directed towards, and designed to tackle all aspects of the problem. It has been found that it is important to control corruption because of the damage it can cause to society, economically, socially, politically, spiritually, morally and so on. It has been found that the failure of most countries to control corruption stems from a lack of seriousness and determination to wipe-out this crime. We have seen that in the effort to wipe-out corruption from its soil, Zambia introduced an ambitious programme of law reforms in 1980, in which quite a number of fundamental rules of criminal procedural law were repealed and a Body to deal with corruption set up. However, the success of this Commission in this area still remains to be seen.

A finding has been made, that there is corruption in both public and private sectors in Zambia, but that this is not as endemic as is the case in certain third world countries where crass corruption has been institutionalised and has become a way of life. Although Zambia is not a Cesspool of corruption, there is no cause for since the degree of corruption in that country is of concern and should be tackled furiously without delay.

It is clear, however, from the research, that Zambia has adopted a firm policy and stand against corruption. This stand has been influenced by the President of that country himself, who is committed in waging a relentless struggle against all domestic and international forces of reaction, capitalism, imperialism, colonialism and so on. Indeed, to fight corruption, Africa needs honest and progressive leaders in its pursuit of progressive social change from the servitude of underdevelopment and dependence on capitalist economies.(/)

There is no doubt that the legal reforms which Zambia has enacted are revolutionary by third world standards and that they are likely to have far-reaching consequences in the society. It is however, too early to judge the outcome of this legislation. We will have to wait and see how the society will respond to these reforms.

One very important defect in the implementation of these reforms, however, requires highlighting. This is the inability of the statute to provide for a retrospective application of the law, particularly S. 33 so as to take care of those persons who amassed wealth corruptly which is disproportionate or not commensurate with their present or past official or other legitimate emoluments. For, it is not uncommon to see former public officers living ostentatious lives. Lest it be forgotten, the increase in corruption in Zambia has been caused by these same people who were living beyond their means; other Zambians had to follow suit, even the honest ones, because not doing so would not only be out of step, but would be swimming against the tide. Hence, there is no justification for not making them explain how they found themselves rich overnight. The failure to provide for retrospective application in the Act defeats the very purpose which the Act was intended to serve. . Although retrospective legislation in criminal cases is contrary to the 'Bill of Rights' and the Constitution of Zambia, the problem of corruption is fundamental, thus the reasons of public interest outweigh the protection of the rights of few individuals which would have made it necessary to amend the Constitution accordingly. It should be remembered that protective provisions such as these were formulated in the capitalist world to protect the propertied class, thus ought to be examined critically by a country like Zambia, whose ideological base is socialist - Humanism.

With regard to the changes in the rules of Evidence and criminal law, my immediate reaction is that there is nothing wrong in changing the law, but the most important thing is to ensure that an equilibrium is drawn between the public interest - the need to secure successful prosecution, and personal interest - the need to safeguard personal liberty and integrity. This would ensure that the speedy course to justice does not sacrifice unduly the rules of law and the cultural way of life of the Zambian people. There is therefore a need to review these legal provisions to take account of what has been pointed out in this Essay.

The establishment of the Anti-Corruption Commission under the Act entirely responsible for the crime of corruption is welcome because it facilitates specialisation in the detection of the offences leading to successful prosecution of offenders. However, I am not optimistic, I do not see that the Commission will be a panacea for all corrupt practices in Zambia, and I urge the need for supplementary and complementary actions in several directions. This is for the simple reason that Nader brings out,

in her discussion of "law and society": that there is a tendency by some people to place undue reliance on law, without taking into consideration the "possibility that law is ultimately derivative," and thus the provision of an adequate social, cultural and political back-up is indispensable if it has to succeed. (2.) What it means, is that this Essay offers a warning against placing too much emphasis on law, because law on its own cannot be an effective instrument to eradicate corruption, unless, as we have already seen, it is supported by other instruments and measures. In any case, there is a tendency for the law on corruption to deal with symptoms instead of the causes. If corruption in Zambia is to be eradicated, this will mainly be due to President Kaunda's efforts and determination. But one man alone cannot succeed in wiping out corruption; however determined and hardworking, he needs the assistance of the entire body politic to succeed. This is a prerequisite, - for a system of legal reforms which should "transcend orthodox disciplinary" legal principles based on "the frame-work of Marxist Political economy". (3) It will be not surprising, therefore if the present legislation in Zambia proved inadequate to the task of wiping out corruption or making a substantial contribution towards the control of the crime.

What I am saying is that corruption can be controlled only if tackled in relation to the entire system of moral values and the social economic structure of the society, in other words, by resorting to the strategy of mass intervention. Ideology is thus paramount, especially the inculcation of moral principles in the minds of the young. There is a need to refine and inspire the nation and the young with the ideology of Humanism, so that a stage is reached where the Philosophy and its principles are clear, illuminating and made part of the national life of the people, "in which the direction is definite and positive and policies effective and creative. (4.) The prime need is for a common standard of morality-by far the most important corrective. This implies the acceptance by the society as a whole of high standards of Governmental morality, "(Moteiro Supra P. 97) most developing countries are vulnerable because they do not have the high standard of morality. The acceptance generally of religious doctrines dealing with morality does not correspond with the application of these moral values to Governmental activities, hence the need to strengthen and reinforce the leadership code and General Orders, in order to ensure the highest possible standards of probity, conduct, ethics and

behaviour in public officials.

To combat exploitative capitalism and corruption, Zambia needs administrators and managers who understand the short comings of its social, economic and political systems and who appreciate Zambian values and priorities. If they are cynics and "worship systems which sound good in theory but which have in practice failed to meet the basic needs of human development" in those countries, the country is not likely to succeed in its efforts to develop.

Adequate and effective channels for airing of grievances is an essential, prerequisite to the control of corruption. Zambia is infact lucky to have an independent and free press, impartial judiciary and democratic Parliament. In addition to this, the establishment of the Commission for Investigations (ombudsman), the Auditor-General and the appointment of Commissions of Inquiry from time to time make it possible for the aggrieved to air their grievances. A free press, with publicity it brings, is the greatest single deterrent against corruption. This, however, in a developing country, ought to be used cautiously and sparingly for fear of irresponsible reporting which is likely to injure other people's reputation and character unduly.

Further it is to be hoped that the partisan form of excitement which Zambians felt at Independence, whereby politics and public office were regarded as centres for enrichment, will gradually disappear through the spread of education. This will enable people to understand more about politics, which will help also in the development of a scientific approach to the problems of Government and administration." It is likewise to be hoped that "the passage of time, during which, given steady economic progress, loyalties will gradually move from family, clan and tribe to the nation." (5).

It is anticipated that public opinion will evolve following the expansion of education and that it will counteract corruption on understanding that it is scientifically inefficient and morally wrong. Thus, the need for a vast expansion of educational facilities is essential for ensuring the observance of law and rules through habit, custom and early training. It is important "to the stability and efficiency of modern societies. Where these habits and customs are less strong, the law will depend more on actual force for its implementation, and under these circumstances both social and political stability may break down." It is not only

cowed for any length of time. This is why coups d'etat recur in the third world. (6)

Finally the growth of commerce and industry eventually strengthens the hand of the middle class, "which is at present weak, and which, historically, has been 'associated to oppose' corruption." (7) It is further argued that the growth of a professional class like lawyers, accountants, auditors, economists specialising in international trade, industry and commerce, and high-calibre Journalists who are professionally qualified will ensure the continued adherence to non-corrupt professionally ethics through well regulated associations.

From this systematic treatise, it is clear that the crime of corruption is indeed a complex one to comprehend. Because it is difficult to understand, is why it is also problematic to combat. Although it is not an easy task to root-out corruption completely from any given society, the truth is that it can be controlled.

The dreadful picture of corruption in Africa and Asia highlighted in this Essay should make Zambians more determined to tackle corruption. Zambians must take it as a challenge and thus fight on until they succeed. For as Simpkins and Wraith have shown, in Britain, for instance, there was no time in the history of corruption when powerful forces sat back without fighting it. As a result, in the end they won the battle, thus restoring the public integrity of statesmen, civil servants, the police, councillors, and so on. If the British under their system of capitalism can manage to control corruption, mainly by enforcing high standards of moral behaviour and ethics, I do not see why Zambians can fail where a number of factors are in their favour. What is most important if Zambia is to succeed, is political will, determination and perserverance.

3. Speech entitled: "Take up the Challenge", Mulungushi Hall 7 - 10 November 1970, P. 36.
4. Ibid, PP. 39, 35
5. President Kaunda in "a Nation of equals: The Kabwe declaration", Address to the UNIP National Council at Hindu Hall, Kabwe, 1 - 3 December, 1972 P.7
6. Ibid, P. 23
7. The British Acts Extension Act Cap.5 of the Laws which gave effect to the Prevention of Corruption Acts 1889 to 1916 of the U.K. to apply to Zambia.
8. Eleventh National Council meeting held at Mulungushi Hall from 12th to 15th November, 1977..
9. President Kaunda's own confession: "Address to the National Council of UNIP at Mulungushi, 9 November, 1968, "Zambia's guideline for the next decade", p.43
10. Times of Zambia, 25th April, 1985.
11. Wilted Phiri, Daily Parliamentary Debates, 21st August, 1980, Col. 1079.
12. These cases were publicly reported as follows. (i) The 1968 Lusaka City Council Commission of Inquiry; (ii) The dismissal of Minister of Lands in 1977: (iii) The African Farming Improvement Scandal, 1970, (iv) The Zambia Railways Commission of Inquiry 1978.
13. Times of Zambia, 29th March, 1985.
14. Times of Zambia, 29th April, 1985
15. Ibid.
16. Ibid, 11th and 4th May, 1985 respectively.
17. Daily Parliamentary Debates, 22nd August, 1984, Col. 1290.
18. As regards smuggling of goods, see the relevation in Parliament by Denny Kapandula, MP for Chingola, D.P.D. 21st August, 1980 Col. 1141. With regard to forex allocations and detection of bogus application for foreign exchange; see the statement in the Times of Zambia of 7 May 1985 by Essau Nebwe, Permanent Secretary, Ministry of Commerce and Industry.
19. Citing MP for Keembe Robin Mwanza, Daily Parliamentary Debates, 21st August, 1980, Col. 1101.
20. Daily Parliamentary Debates, op . cit. Cols. 1095 and 1151 respectively.

- 4.
21. Ibid, 22nd August, 1980, Col. 1294.
 22. Quoting Wilted Phiri, Minister of Home Affairs, Daily Parliamentary Debates, 21st August, 1980, col. 1081.
 23. Morris Szeftel, op. cit. p. 4
 24. Daily Parliamentary Debates, op. cit. Col. 1079 and 1082.
 25. For example, MP for Minga, Shadrack Chembe referred to the Bill as a "Witch-hunting" Bill; Daily Parliamentary Debates, 22nd August, 1980, col. 1248.
 26. Inability to comprehend and confusion is attributed to MPs like MP for Luampa Kenneth Musanga, see for instance, Daily Parliamentary Debates, ibid, Col. 1303.
 27. Like MP for Petauke, Lavu Mulimba who raised cogent economic arguments: D.P.D, ibid, Col. 1281.
 28. Whitson Banda, D.P.D ibid, Col. 1262
 29. Daily Parliamentary Debates, op. cit. Col. 1290.
 30. As per Ridge V. Baldwin (1964) AC. 40
 31. See also Halsbury's Statutes of England Vol. 8 (3rd ed.) P. 291
 32. Richard Eggleston, Evidence, Proof and Probability, (1978) P.91
 33. Robin Mwanza, op. cit. col. 1097.
 34. Paul Lubunga, D.P.D. op. cit. Cols. 1246-7
 35. Francis Nkhoma, op. cit. Col. 1152; For Benard Nakonde and John Chalwe's comments see Cols. 1132 and 1230 respectively.

CHAPTER 3

1. Francis G Snyder citing "Leys (1977: 93, Girvan 1973: also Dos Santos 1973b: 76, 1970d: 231- On the further discussion of underdevelopment and dependence.
2. See Francis G. Snyder, op. cit. Foot Note No. 13, P. 731
3. Francis G. Snyder, ibid, P. 780
4. President Kaunda, "A Nation of equals", op. cit. (1972) P. 8

5. Simpkins and Wraith, op. cit. P. 208
6. P.S. Atiyah, Law and Modern Society, (1983) P. 55
7. Simpkins and Wraith, op. cit.

THE CORRUPT PRACTICES ACT, 1980

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*Single copies of this Act may be obtained from the Government Printer,
P.O. Box 30136, Lusaka, Price 80n.*

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GOVERNMENT OF ZAMBIA

ACT

No. 14 of 1980

Date of Assent: 24th September, 1980

An Act to provide for the establishment of the Anti-Corruption Commission; to repeal the provisions of the Penal Code relating to corrupt practices; to make comprehensive provision for the prevention of corruption; and to provide for matters connected with or incidental to the foregoing.

[*]

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

Short title
and com-
monement

Application

Cap. 160

Cap. 100

Interpre-
tation

1. This Act may be cited as the Corrupt Practices Act, 1980, and shall come into operation on such date as the President may, by statutory order, appoint.

2. (1) Save as otherwise provided, the provisions of this Act shall apply notwithstanding anything to the contrary contained in the Criminal Procedure Code or in any other written law.

(2) Subject to subsection (1), all offences under this Act shall be inquired into, tried and otherwise dealt with in accordance with the provisions of the Criminal Procedure Code.

3. In this Act, unless the context otherwise requires—

“agent” means any person not employed by a public or private body who acts for or on behalf, or in the name, of a public body or a private body or any other person, and includes a trustee, an administrator and an executor;

“This Act shall come into operation on such date as the President, may by statutory order, appoint.”

"casual gift" means any conventional hospitality on a modest scale or unsolicited gift of modest value offered to a person in recognition or appreciation of his services, or as a gesture of goodwill towards him, and includes any inexpensive seasonal gift offered to staff or associates by public and private bodies or private individuals on festive or other special occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under Part IV;

"Commission" means the Anti-Corruption Commission established under section four;

"Commissioner" means the person appointed under section five to be the Commissioner of the Commission;

"corruptly", in relation to the soliciting, accepting or obtaining; or to the giving, promising or offering, of a gratification, means the doing of any of the aforementioned things by way of a bribe or other personal temptation or inducement;

"Deputy Commissioner" means the person appointed under section seven to be the Deputy Commissioner of the Commission;

"entertainment" means the provision of food or drink for consumption on the occasion when it is provided, and any other entertainment connected with, or provided at the same time as such food or drink;

"Government" includes any Ministry, Department, service or undertaking of the Government;

"gratification" means any corrupt payment, whether in cash or in kind, and includes any rebate, bonus, deduction or percentage, discount, commission, service, forbearance, assistance, protection or any other material gain, benefit, amenity, facility, concession or favour of any description, and any loan, fee, reward, advantage or gift, other than a casual gift;

"local authority" means a district council established or deemed to have been established under the Local Administration Act, 1980;

"parastatal body" means any company, association, statutory corporation, body or board or any institution of learning, in which the State has a financial interest;

"principal" includes an employer, a beneficiary under a trust, and a trust estate as though it were a person, and any person beneficially interested in the estate of a deceased person as though the estate were a person; and, in relation to a public officer, a public body;

"private body" means any person or organisation not being a public body; and includes a voluntary organisation, charitable institution, company, partnership and a club;

"public body" means the Party or the Government, and includes any Ministry or Department of the Government, a local authority, parastatal body, or any board, council, authority, commission or other body appointed by the Party or the Government, or established by or under any written law;

"public officer" means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, and "public office" shall be construed accordingly;

"superior police officer" means any police officer of or above the rank of Assistant Superintendent.

PART II

ESTABLISHMENT OF COMMISSION

4. (1) There is hereby established a Commission to be known as the Anti-Corruption Commission which shall consist of the Commissioner, the Deputy Commissioner and such other officers of the Commission as may be appointed under section nine.

(2) The Commission shall be a Government Department under the control and supervision of the President, and the working expenses of the Commission shall be charged to the general revenues of the Republic.

5. (1) The President may, on such terms and conditions as he thinks fit, appoint a Commissioner who shall be responsible for the administration of the Commission, subject to any specific or general directions of the President.

(2) The Commissioner shall not be subject to the direction or control of any person other than the President.

(3) The Commissioner shall not, while he holds the office of Commissioner, discharge the duties of any other office of emolument in the Republic.

6. (1) No person shall qualify for appointment as Commissioner unless he is qualified to be appointed a judge of the High Court.

(2) A person appointed Commissioner may be removed from office for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except by or in accordance with a resolution passed by the National Assembly pursuant to subsection (3) calling for an investigation into the question of the removal of the Commissioner.

Establishment and composition of Commission

Appointment of Commissioner

Qualifications and tenure of office of Commissioner

(3) If the National Assembly, by resolution supported by the votes of not less than two-thirds of all the members of the National Assembly, resolves that the question of removing the Commissioner ought to be investigated, the Speaker of the National Assembly shall send a copy of such resolution to the Chief Justice who shall appoint a tribunal consisting of a chairman and two other persons to inquire into the matter.

(4) The chairman and one other member of the tribunal shall be persons who hold or have held high judicial office.

(5) The tribunal shall inquire into the matter and report on the facts thereof to the President.

(6) Where a tribunal appointed under subsection (3) advises the President that the Commissioner ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove the Commissioner from office.

(7) If the question of removing the Commissioner from office has been referred to a tribunal under subsection (3) the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the Commissioner ought to be removed from office.

(8) For the purposes of this section "misbehaviour" includes a breach of the Leadership Code.

7. The President may appoint a Deputy Commissioner on such terms and conditions as he thinks fit:

Provided that no person shall qualify for appointment as a Deputy Commissioner unless he is qualified to be appointed a Judge of the High Court.

Appoint-
ment of
Deputy
Commis-
sioner

8. (1) If the office of the Commissioner is vacant or the Commissioner is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Commissioner shall, save where the President otherwise directs, act as Commissioner.

Acting
Commis-
sioner

(2) If both the Commissioner and the Deputy Commissioner are absent from duty or unable for any other reason to perform the functions of their office, the President shall appoint another person to act as Commissioner.

9. (1) The Commissioner may appoint investigating officers and such other officers of the Commission as the President may deem necessary to assist the Commissioner in the performance of his functions under this Act.

Appoint-
ment of
officers of
Commission

(2) The Commissioner may, if he is satisfied that it is in the best interest of the Commission, terminate the appointment of any officer of the Commission without assigning any reason therefor, subject to any directions by the President.

(3) The terms and conditions of service of officers of the Commission shall be subject to the approval of the President, who may vary such terms and conditions as he thinks fit.

(4) Subject to the provisions of this Part, the Commissioner, the Deputy Commissioner and other officers of the Commission shall be employed subject to such Government regulations as apply generally to public officers.

PART III

FUNCTIONS OF COMMISSION

10. (1) The functions of the Commission shall be to—

Functions of
Commis-
sion

(a) take necessary measures for the prevention of corruption in public bodies and private bodies, including, in particular, measures for—

(i) examining the practices and procedures of public bodies, and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which, in the opinion of the Commission, may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices.

(iii) disseminating information on the evil and dangerous effects of corrupt practices on society;

(iv) enlisting and fostering public support against corrupt practices;

(b) receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute for offences under this Act;

(c) investigate any conduct of any public officer which, in the opinion of the Commission, may be connected with or conducive to corrupt practices, and to report thereon to the President.

Does this provision
empower the
Commission to
request the public
officer to take an
action in relation
to the prosecution
has not been
passed? Further
can this action
be applied
against?

(2) The Commission may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with any investigation if the Commission is satisfied that—

(a) the complaint is trivial, frivolous, vexatious or not made in good faith; or

force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he deems necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(4) Notwithstanding anything contained in subsections (2) and (3), the Commissioner, the Deputy Commissioner or other officer of the Commission shall not have access—

- (a) to any books, records, returns, reports or other documents, or to enter upon any premises of any component of the Defence Force or the Zambia Security Intelligence Service; or
- (b) to any books, records, returns, reports or other documents, or to enter upon any premises other than those mentioned in paragraph (a), if in the opinion of the President such access or entry is likely to—
 - (i) prejudice the security, defence or international relations of the Republic; or
 - (ii) involve the disclosure of any matters or deliberations of a secret or confidential nature of the Central Committee or the Cabinet or any sub-committee of the Central Committee or the Cabinet.

(5) Any person who accompanies or assists the Commissioner, the Deputy Commissioner or other officer of the Commission to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section twenty-three upon the Commissioner, the Deputy Commissioner or other officer of the Commission.

12. (1) The Commissioner may, by order in writing, authorise any officer of the Commission to investigate any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank.

(2) An order made under subsection (1) shall be sufficient authority for the disclosure or production by any person of all or any information, accounts, documents or articles as may be required by the officer of the Commission so authorised.

(3) Any person who fails to disclose such information or to produce such accounts, documents or articles to the officer of the Commission so authorised shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand kwacha, or to both such imprisonment and fine.

Special powers of investigation

(b) the investigation would be unnecessary, improper or futile.

(3) In any case in which the Commission declines to conduct an investigation, or to proceed further with any investigation, the Commission shall inform the complainant in writing of its decision, but shall not be bound to assign reasons therefor.

Powers of Commissioner

11. (1) For the performance of the Commission's functions under this Act, the Commissioner may—

- (a) authorise in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;
- (b) require any public officer or other person to answer questions concerning the duties of any other public officer or other person, and order the production for inspection of any standing orders, directives or office instructions relating to the duties of such public officer or other person;
- (c) require any person in charge of any Department, office or establishment of the Party or the Government, or the head, chairman, manager or chief executive officer of any public body, to produce or furnish within such time as may be specified by the Commissioner, any document or a certified true copy of any document which is in his possession or under his control and which the Commissioner considers necessary for the conduct of investigation into alleged or suspected offences under this Act.

(2) In the performance of his duties under this Act, the Commissioner, the Deputy Commissioner or other officer of the Commission shall have—

- (a) access to all books, records, returns, reports and other documents relating to the work of any Government Department, public body or private body;
- (b) access at any time to the premises of any Government Department, public body or private body, or to any vessel, boat, aircraft or other vehicle whatsoever, and may search such premises or such vessel, boat, aircraft or other vehicle if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.

(3) In the exercise of his power of access and search under subsection (2) (b), the Commissioner, the Deputy Commissioner or other officer of the Commission may use such reasonable

Resisting or obstructing the Commission, etc.

13. Any person who assaults, resists or obstructs the Commissioner, the Deputy Commissioner or other officer of the Commission in the execution of his duties, or who unlawfully hinders or delays him in effecting entry into or upon any premises, boat, aircraft or other vehicle shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding seven years or to a fine not exceeding seven thousand kwacha, or to both such imprisonment and fine.

False reports to Commission

14. Any person who knowingly—
 (a) makes or causes to be made to the Commission a false report of the commission of any offence under this Act; or
 (b) misleads the Commissioner, the Deputy Commissioner or other officer of the Commission by giving any false information, or by making any false statements or accusations;

shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years, or to a fine not exceeding ten thousand kwacha, or to both such imprisonment and fine.

Powers of Commission's officers to arrest

15. The Commissioner, the Deputy Commissioner or any officer of the Commission authorised in that behalf by the Commissioner may arrest a person without warrant if he reasonably suspects that such person has committed or is about to commit an offence under this Act.

Identity card

16. The Commissioner may issue to an officer of the Commission an identity card which shall be *prima facie* evidence of the officer's appointment as such.

Impersonation and procurement of Commission's officers

17. Any person who falsely pretends that—
 (a) he is an officer of the Commission or has any of the powers of such officer under this Act, or under any authorisation or warrant issued under this Act; or
 (b) he is able to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of such officer;

shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding seven years, or to a fine not exceeding seven thousand kwacha, or to both such imprisonment and fine.

Standing orders

18. (1) The Commissioner may, subject to any specific or general directions of the President, make standing orders providing for—
 (a) the control, direction and administration of the Commission;

(b) the discipline, training, classification and promotion of officers of the Commission;
 (c) the duties of officers of the Commission;
 (d) the financial regulations of the Commission;
 (e) such other matters as may, in his opinion, be necessary or expedient for preventing the abuse or neglect of duty and for upholding the efficiency and integrity of the Commission.

(2) The Commissioner may, with the prior approval of the President, by standing order modify the application to officers of the Commission of Government regulations.

(3) No standing order made by the Commissioner shall be inconsistent with any provision of this Act.

Estimates

19. (1) In each financial year, the Commissioner shall, on or before a date appointed by the President, forward to the President, for his approval, estimates of the expenditure of the Commission for the next financial year.

(2) The estimates shall be in such form and contain such information as the President may require.

Accounts

20. (1) The Commissioner shall maintain proper accounts of such expenditure by the Commission as the President may require.

(2) As soon as may be after the end of each financial year, the Commissioner shall cause a statement of accounts covering the operations of the Commission during the previous financial year to be prepared.

Audit

21. (1) The Auditor-General shall, at any time, have access to all accounts maintained under section twenty, and may require such information and explanation thereon, as he thinks fit.

(2) The Auditor-General shall audit the statement of accounts prepared under section twenty and report thereon to the President.

Annual report

22. (1) The Commissioner shall, on or before the 31st December of each year, or by such later date as the President may specify, submit to the President a report on the activities of the Commission during the previous year.

(2) The President shall cause the report mentioned in subsection (1) to be laid before the National Assembly as soon as may be after receiving such report.

Immunity of Commissioner, Deputy Commissioner and Commission's officers

23. No action or other proceeding shall lie against the Commissioner, the Deputy Commissioner or other officer of the Commission in respect of any act or thing done or omitted to be done in good faith in the exercise of his duties under this Act.

Restriction on disposal of property, etc.

24. (1) The Commissioner may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Commissioner.

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Commissioner is satisfied that such person cannot be found, or is not in the Republic, be served on or brought to the knowledge of, such person in such other manner as the Commissioner may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of twelve months or until cancelled by the Commissioner, whichever is earlier.

(4) Any person who, having been served with, or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Commissioner, shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand kwacha, or to both such imprisonment and fine.

(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) An application under subsection (5) shall give to the Commissioner such notice of the day appointed for the hearing of the application as a judge of the High Court may order.

(7) On the hearing of an application under subsection (5) the High Court may—

(a) confirm the directive;

(b) reverse the directive and consent to the disposal of or other dealing with any property specified in the notice, subject to such terms and conditions as it thinks fit; or

(c) vary the directive as it thinks just.

PART IV

OFFENCES

25. (1) Any public officer who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or for bearing to do, or for having done or forborne to do, any thing, in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence. *Corrupt practices by or with public officers. 1. Corruptly. 2. Accepts etc. 3. Inducement or reward.*

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forborne to do, any thing in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

26. (1) Any public officer who, being concerned with any matter or transaction falling within, or connected with, his jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for himself or for any other person any gratification in relation to such matter or transaction, shall be guilty of an offence. *Corrupt use of official powers and procuring corrupt use of official powers*

(2) Any person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification, whether directly or indirectly, to such public officer either for himself or for any other person shall be guilty of an offence.

27. (1) Any person who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forborne to do, or for having done or forborne to do, any thing in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned, shall be guilty of an offence. *Corrupt transactions by or with private bodies*

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forbore to do, any thing in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned, shall be guilty of an offence.

28. (1) Any agent who corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forbore to do, any thing in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forbore to do, any thing in relation to his principal's affairs or business, or for allowing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(3) Any person who gives to an agent, or any agent who, with intent to deceive his principal, uses any receipt, account or other document in respect of which the principal is interested or which relates to his principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge or belief is intended to mislead the principal, shall be guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting, accepting or obtaining of any gratification by his agent shall constitute a valid defence.

29. (1) Any person who being a member of any public body by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for—

- (a) his voting or abstaining from voting at any meeting of such public body in favour of or against any measure, matter, resolution or question submitted to such public body; or
- (b) his performing, or abstaining from performing, or for his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public body; or

Corruption of members of public bodies in regard to meetings, etc.

Corrupt transactions by or with agents

(c) his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person;

shall be guilty of an offence.

(2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to a member of any public body in any such circumstances as are referred to in subsection (1) shall be guilty of an offence.

Gratification for giving assistance, etc., in regard to contracts

30. (1) Any public officer who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution, or procurement of—

(i) any contract with a public body or private body for the performance of any work, the provision of any service, the doing of any thing or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid;

shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any public officer as an inducement or reward for or otherwise on account of such public officer giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution or procurement of; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in;

any such contract or sub-contract as is referred to in subsection (1) shall be guilty of an offence.

Gratification for procuring withdrawal of tenders

31. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive, or obtain from any person for himself or for any other person,

any gratification as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private body for the performance of any work, the provision of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

32. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any sale by auction conducted by or on behalf of any public body or private body, shall be guilty of an offence.

Gratification in regard to bidding at auction sales

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction as is referred to in subsection (1) shall be guilty of an offence.

33. (1) The Commissioner, the Deputy Commissioner or any officer of the Commission authorised in writing by the Commissioner may investigate any public officer where there are reasonable grounds to believe that such public officer—

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments;
- (b) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or
- (c) is in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under the provisions of subsection (1) is found to—

- (a) maintain a standard of living above that which is commensurate with his present or past official emoluments;

- (b) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

- (c) be in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act;

shall be charged with having, or having had under his control or in his possession pecuniary resources or property reasonably suspected of having been corruptly acquired or, as the case may be, with having received the benefit of services reasonably suspected of having been corruptly received; and shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or into his possession or, as the case may be, how he came to enjoy the benefit of such services, be guilty of an offence.

(3) Where a court is satisfied in proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration, from the accused, such pecuniary resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

(4) In this section—

- (i) "official emoluments" includes a pension, gratuity or other terminal benefits;
- (ii) "public officer" includes any person who has held a public office on or after the 24th October, 1964.

Certain matters not to constitute offences

34. (1) If, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any gratification, believing or suspecting or having reasonable grounds to believe or suspect that the gratification was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the gratification without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section of this Part, it is proved that the accused offered or toward for or otherwise to any other person as an inducement or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forbore to do, any act referred to in that section, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Penalty

35. Any person who is guilty of an offence under this Part shall, upon conviction, be liable to imprisonment for a term of not less than five years and not more than twelve years:

Provided that a person who is guilty of an offence under section twenty-seven or twenty-eight shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand kwacha, or to both such imprisonment and fine—

(i) where the principal in relation to whose affairs or business the offence was committed is not a public body;

(ii) where the person to whom the gratification was given, promised or offered is not a public officer or an agent of a public body.

Attempts, conspiracies, etc.

36. Any person who attempts to commit, or who aids, abets or counsels, or conspires with, any person to commit an offence under this Part, shall be guilty of committing that offence and shall be punished accordingly.

Public officer's powers of report, etc.

37. (1) A public officer to whom any gratification is corruptly given, promised or offered shall make a full report of the circumstances of the case to a police officer or officer of the Commission within twenty-four hours of the occurrence of the event; and if he fails to do so without reasonable cause he shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand kwacha, or to both such imprisonment and fine.

(2) Any police officer or officer of the Commission may arrest without warrant any person in respect of whom a report is made under subsection (1).

(3) Any police officer or officer of the Commission may search any person arrested for an offence under this Part and take possession of all articles found upon him which the

police officer or officer of the Commission believes upon reasonable grounds to constitute evidence of the commission of an offence by him under this Part:

Provided that no female person shall be searched except by a female police officer or female officer of the Commission or by any female authorised in that behalf by a police officer or officer of the Commission.

PART V

ADDITIONAL PENALTIES AND RECOVERY OF CORRUPT GRATIFICATION

38. Where any person is convicted of any offence under Part IV, the court shall in addition to the sentence that it may pass under section thirty-five, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any gratification actually received by him; and such order shall be deemed to form part of the sentence:

Provided that where, after reasonable inquiry, the rightful owner cannot be ascertained or traced, or where the rightful owner is himself implicated in the giving of the gratification, the court shall order that the amount or value thereof shall be paid into the general revenues of the Republic.

39. Any fine imposed under the provisions of Part IV and the amount or value of any gratification ordered to be paid under section thirty-eight may be recovered in accordance with the provisions of sections three hundred and eight and three hundred and nine of the Criminal Procedure Code by distresses and sale of the movable and immovable property of the person sentenced.

40. (1) Where any gratification has been given by any person to or for or on account of an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such gratification from the agent, and the acquittal of the agent or such person in respect of an offence under Part IV shall not operate as a bar to any proceedings for such recovery.

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

41. Any person convicted of an offence under Part IV shall, by reason of such conviction, be disqualified for a period of five years from the date of such conviction from being elected or appointed to, or from holding or continuing to hold any office or position in any public body.

Penalty additional to other punishment

Recovery of gratification by distresses, etc. Cap. 160

Principal may recover gratification corruptly received by agent

Effect of conviction of an offence under Part IV

42. In any proceedings under this Act, a certificate by a Government Valuation Officer or other specialist valuer with respect to the value of any gratification or of any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

PART VI

POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

43. (1) No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Director of Public Prosecutions.

(2) Notwithstanding the provisions of subsection (1), a person may be charged with an offence under Part IV and may be arrested therefor or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which he is charged has not been obtained, but no such person shall be remanded in custody or on bail for a period longer than seven days on such charge unless in the meantime the written consent of the Director of Public Prosecutions aforesaid has been obtained.

(3) When a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against him is obtained, the charge shall be explained to the person accused but he shall not be called upon to plead.

44. (1) If, in the course of any investigation into or proceeding relating to any offence under Part IV, the Director of Public Prosecutions is satisfied that it would assist or expedite such investigation or proceeding, he may, by notice, require—

- (a) any suspected person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by him, and specifying the date on which every such property was acquired and the consideration paid therefor, and explaining whether the same was acquired by way of purchase, gift, bequest, inheritance or otherwise;
- (b) any suspected person to furnish a sworn statement in writing of any moneys or other property sent out of Zambia by him during such period as may be specified in such notice;
- (c) any other person with whom the Director of Public Prosecutions believes that the suspected person had any financial transactions or other business dealing, relating to an offence under Part IV to furnish a

Power of Director of Public Prosecutions to obtain information

sworn statement in writing enumerating all movable or immovable property belonging to or possessed by such other person at the material time:

Provided that the Director of Public Prosecutions shall not require any such other person to furnish such sworn statement unless he has reasonable grounds to believe that such information can assist in the investigation or proceedings;

- (2) the Commissioner of Taxes to furnish all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person, which is in the possession or under the control of the Commissioner of Taxes;
- (3) the manager of any bank to furnish any information or the originals, or certified true copies, of the accounts or the statements of account at the bank of any suspected person.

(2) Every person on whom a notice is served by the Director of Public Prosecutions under subsection (1) shall, notwithstanding any oath of secrecy, comply with the requirements of the notice within such time as may be specified therein, and any person who wilfully neglects or fails to so comply shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding five years, or to a fine not exceeding five thousand kwacha, or to both such imprisonment and fine.

Bail where suspect or accused person is about to leave Zambia

45. If any person, against whom investigations or proceedings for an offence under Part IV are pending, is preparing or about to leave Zambia, whether temporarily or permanently, the Director of Public Prosecutions or any officer authorised by him in that behalf, may apply to any court for an order requiring such person to furnish bail in any sum, or, if he has already been admitted to bail, in such greater sum and on such additional conditions, as the case may be, with or without sureties; and in any such application the court may make such order as it deems fit.

PART VII

EVIDENCE AND PRESUMPTIONS

Presumption of corrupt intention

46. (1) Where, in any proceedings under this Act, it is proved that any gratification has been received by any person with the knowledge and acquiescence or consent of the accused person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that such person has received the gratification for or on behalf of the accused person, or otherwise on account of or in connection

with the office or duties of the accused person, the gratification shall be presumed to have been received by the accused person.

(2) Where, in any proceedings for an offence under Part IV, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances set out in the relevant section under which he is charged, then such payment shall be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained, corruptly.

(3) For the purposes of subsection (2) "payment" means any corrupt payment, whether in cash or in kind.

(4) In any proceedings for the determination of any matter under subsection (1) or (2), the burden of proof to the contrary shall lie on the accused person.

Corroborative pecuniary resources or property

47. (1) In any proceedings in respect of an offence under Part IV, the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in such proceedings that the accused person accepted or obtained or agreed to accept or attempted to obtain the gratification and as showing that such gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

(2) For the purposes of subsection (1), an accused person shall be deemed to be in possession of pecuniary resources or property, or to have obtained an accretion thereto, notwithstanding that such pecuniary resources or property is held, or such accretion thereto is obtained, by any other person as to whom there is reason to believe, having regard to his relationship to the accused person or to any other circumstances, that he is holding such pecuniary resources or property or has obtained such accretion thereto in trust for, or for or on behalf of, the accused person, or as a gift from him unless the contrary is proved.

Evidence of accomplices

48. (1) Notwithstanding any rule of law or written law to the contrary no witness for the prosecution in any proceedings in respect of an offence under Part IV shall be presumed to be unworthy of credit by reason only that he himself committed an offence under that Part (whether or not he has been prosecuted for or convicted of such offence) in the same matter or transaction in respect of which the accused person is being tried.

(2) In any proceedings against any person for an offence under Part IV, the spouse of that person shall be a competent witness for the prosecution.

49. For the purposes of any proceedings in respect of an offence under Part IV, the court may at any stage of the proceedings direct that any specified fact may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination.

Affidavit evidence

50. (1) In any proceedings for an offence under Part IV, it shall be no defence that any gratification solicited, accepted or obtained or agreed to be accepted, given, offered or promised, is customary in any profession, business, trade, vocation or calling.

Evidence of custom inadmissible

(2) Notwithstanding the provisions of subsection (1), no entertainment or casual gift offered or accepted under such conditions as may be prescribed in regulations made under this Act shall constitute an offence under Part IV.

PART VIII

SUPPLEMENTARY PROVISIONS

Absence of power, authority or opportunity, no defence

51. Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any gratification, it shall not be a defence in any trial in respect of an offence under Part IV—

(a) that the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or

(b) that such public officer or any other public servant did not have the power, authority or opportunity of doing or of forbearing from doing the act, favour or disfavour to which the gratification related; or

(c) that he did not actually do any act, favour or disfavour to induce the gratification, or never had the intention of doing so.

Evidence of co-accused

52. (1) Whenever two or more persons are charged with an offence under Part IV, the court may require one or more of them to give evidence as a witness or witnesses for the prosecution at the separate trials of such persons.

(2) Any person required to give evidence under subsection (1) who refuses to affirm or be sworn or to answer any lawful question put to him by the court shall be dealt with in the same manner as witnesses in a criminal trial so refusing may be dealt with.

(3) Every person so required to give evidence who, in the opinion of the court, has made a true and full disclosure of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the judge stating that he has made a true and full disclosure of all things

as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

Evidence by
accused in
defence

53. (1) An accused person charged with an offence under Part IV shall not, in his defence, be allowed to make an unsworn statement, but may give evidence on oath or affirmation from the witness box.

(2) An accused person giving evidence in his defence in accordance with the provisions of subsection (1) may be asked any question in cross-examination notwithstanding that the answer would tend to incriminate him as to the offence charged.

Protection
of Informers

54. (1) In any trial in respect of an offence under Part IV, a witness shall not be obliged to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) Where any book, document or paper which is in evidence or liable to inspection in any civil or criminal proceeding under this Act contains any entry or passage in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is held shall cause any such entry or passage to be concealed from view or to be obliterated in such a manner as, in the opinion of the court, may not disclose the identity of the informer.

(3) Where, after full inquiry into the case, the court before which any person is tried for an offence under Part IV, is of the opinion that any informer willfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or where in any other proceeding under this Act the court before which such proceeding is held is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

Tender of
pardon

55. (1) The Director of Public Prosecutions may at any time, with a view to obtaining at a trial the evidence of any person directly or indirectly concerned with or privy to an offence under Part IV, tender, or by writing under his hand, authorise any court named by him to tender, a pardon to such person on condition that he makes a full and true disclosure of all the facts or circumstances within his knowledge relating to the offence and to every other person involved in the commission thereof, whether as principal or in any other capacity, together with the delivery up of any document or thing constituting evidence or corroboration of the commission of the offence by the person to be charged or the accused person, as the case may be.

(2) The court shall record in the manner prescribed by the Criminal Procedure Code the evidence on oath of every person accepting a pardon under subsection (1) and shall transmit the record of such evidence to the Attorney-General.

Cap. 100

(3) Every person accepting a tender of pardon under this section shall be examined as a witness at the trial.

(4) Where a person who has accepted a tender of pardon under this section has, either by willfully concealing anything material to the case, or by giving false evidence, not complied with the condition on which the tender of pardon was made, he may be prosecuted for the offence in respect of which the pardon was tendered or for any other offence of which he appears to have been guilty in connection with the same matter.

(5) A person to whom a tender of pardon has been made under subsection (1), who in the opinion of the court, has made a true and full disclosure of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Director of Public Prosecutions stating that he has made a true and full disclosure of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

Corrupt
practice
coming to
the notice of
a commis-
sion.
Cap. 1
Cap. 181

56. Where any commission established by or under the Constitution, or appointed under the Inquiries Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission concerned shall, subject to any prohibition, restriction or restraint imposed upon it by or under the Constitution or any other written law, communicate its opinion to the Director of Public Prosecutions, together with the particulars of the person concerned and such other facts of the case as the commission may deem necessary.

Cap. 1

False,
frivolous or
groundless
complaints
or allega-
tions

57. (1) Where, at the conclusion of the trial of a person charged with an offence under Part IV, the court is of the opinion that any person has willfully, and with intent to harm or injure the accused person in any manner made a false, frivolous or groundless complaint or allegation against him, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions.

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit, any offence under Part IV, shall be guilty

of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand kwacha, or to both such imprisonment and fine.

Alternative convictions and ascending particulars

58. (1) If, on the trial of any offence under Part IV, it is proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part IV, the accused may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

(2) If, on the trial of any person for any offence under Part IV, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is *prima facie* evidence of the commission of that offence; and in such a case the court may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall thereupon be allowed to recall and examine on matters relevant to such amendment any witnesses who may have been examined and, subject to the provisions of subsection (3), to call any further witnesses.

(3) If an amendment is made under the provisions of subsection (2) after the prosecution's case is closed, no further witnesses may be called by the prosecution other than a witness on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

Post-resignation employment

59. (1) No public officer of or above the rank of Assistant Secretary or of a comparable rank in any parastatal body shall, without the written consent of the President, accept within two years of his resignation or retirement from the public service any employment in any business—

- (a) which has contractual relationship with the Party or the Government;
- (b) which is in receipt from the Party or the Government of subsidies, loans, guarantees, subventions, grants or any other form of financial assistance;
- (c) with which Ministries or Departments of the Government are in a special financial relationship; or
- (d) established by the Government under any written law.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable

upon conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand kwacha, or to both such imprisonment and fine.

(3) The provisions of subsection (1) shall not apply to any public officer who has accepted employment in any business mentioned in the subsection after his resignation or retirement from the public service prior to the commencement of this Act.

(4) Nothing in this section shall prohibit the inter-departmental transfer of public officers or their secondment from a public body to a parastatal body in the public interest, or the resignation of public officers from the service of one public body to the service of another public body.

60. (1) Save as is provided in this section, nothing in this Act shall require the disclosure by a legal practitioner of any privileged information, communication, book, document or other article.

Legal practitioners and privileged information

(2) Subject to subsection (3), a legal practitioner may be required by notice under the provisions of paragraph (c) of subsection (1) of section forty-four—

(a) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connection with—

- (i) the transfer by such person of any moneys out of Zambia; or
- (ii) the investment by such person within or outside Zambia of any moneys; and

(b) if so, to furnish information in his possession with respect thereto, being information relating to—

- (i) the date of the transfer or investment;
- (ii) the amount of the transfer or investment;
- (iii) in the case of a transfer, the name and address of the bank and the name and number, if any, of the account to which the money was transferred;
- (iv) in the case of investment, the nature of the investment;

notwithstanding that the effect of compliance with such requirement would be to disclose any privileged information or communication.

(3) Nothing in subsection (2) shall require a legal practitioner to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which

92	No. 14 of 1980	Corrupt Practices	Corrupt Practices	[No. 14 of 1980	93
	came to his knowledge for the purpose of any proceedings, begun or contemplated, before a court or to enable him to give legal advice to his client.				
	(4) The protection conferred by this section on a legal practitioner shall extend to a clerk or servant of, or employed by, a legal practitioner.				
Defence	61. In any proceeding for an offence under this Act it shall be a valid defence that the gratification offered or accepted is an entertainment or a casual gift, but the burden of proof thereof shall lie on the accused person.				
Liability of citizens of Zambia for offences committed outside Zambia	62. (1) The provisions of this Act shall have effect, in relation to citizens of Zambia, outside as well as within Zambia; and where an offence under this Act is committed by a citizen of Zambia in any place outside Zambia, he may be dealt with in respect of such offence as if it had been committed within Zambia. (2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against him, under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.				
Regulations	63. (1) The Commissioner may, subject to any specific or general directions of the President, by statutory instrument, make regulations generally for the effective carrying out of the provisions of this Act. (2) Without prejudice to the generality of the foregoing provision, the Commissioner may make regulations for— (a) the prevention of corruption generally; (b) the disclosure by public officers of interest in contracts or proposed contracts; (c) governing internal review procedures of Government Ministries and Departments; (d) giving protection to informers and complainants; (e) the disposal of recovered gratification and gifts.				
Repeal and savings. Cap. 148	64. (1) Sections ninety-four, ninety-five, ninety-six, three hundred and eighty-four, three hundred and eighty-five, three hundred and eighty-six, three hundred and eighty-seven and three hundred and eighty-eight of the Penal Code are hereby repealed.				

PARLIAMENT AND PUBLIC ENTERPRISE: Zambian Experience

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

Submitted in satisfaction of the requirement of the optional
course: Law of Public Enterprise, of the Degree of LL.M. in
Law in Development.

University of Warwick,
School of Law,

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SUMMARY

This Essay is an attempt to examine and analyse the role and effectiveness of Parliament in Zambia to control the Parastatal Companies. The writer has discovered that Parliament faces surmountable problems in this exercise, arising partly from operating in the changed political single-party system using the outdated Westminster model.

Zambia is one of those countries which at independence took steps to nationalise a good number of private companies, resulting in the formation of a conglomerate: ZIMCO Parastatal Companies. The establishment of these public enterprises has entailed the extension of state power and is intended to use these for economic development of the country. These parastatals have however, brought about problems of control caused by the shoddy performance, inefficiency, misuse of funds/property, spasmodic corruption, management incompetence and so on. This necessitates among other things, Parliamentary scrutiny of Parastatals in order to ensure that these companies fulfill the role for which they were created. The research reveals that parliamentary scrutiny of parastatal bodies is regrettably excessive, but, uncorrespondingly, not very effective.

The writer, however, concludes by justifying the need for parliamentary intervention in the affairs of parastatal companies and the requirement for an effective Parliament, in order to create the checks and balances necessitated by the entrenched single-party system. And he recommends that in the long run, the nature and scope of the National Assembly ought to be reviewed if it is to be strengthened in its task not only of controlling the parastatal sector but also of ensuring the sound and harmonious relationship with the executive whose responsibility it is to supervise the day to day running of these parastatal companies.

It is hoped that this treatise, will not only contribute to the understanding of the relationship between Parliament and Parastatals/Government in Zambia, but will also contribute to the academic knowledge of law and politics on this subject.

CHAPTER I - INTRODUCTION

The "Public Enterprises" in Zambia are officially and generally recognised as "Parastatals." (1) Taken broadly (2) and as a whole, the parastatal sector embraces organisations of distinct kinds, namely: the Statutory Corporations established by specific Acts of Parliament and the private liability companies incorporated under the provisions of the Companies Act Cap. 686 of the Laws of Zambia.

The Parastatal Companies are as a rule administered by a Board of Directors established in accordance with the Memorandum and Articles of Association of each Company, but included under the general supervision and control of the holding company ZIMCO, (Zambia Industrial Mining Corporation Ltd). At the same time, statutory corporations have their powers and duties specified in their enabling Acts of Parliament. Each Company as a general rule, has similar provisions. Each responsible Minister is empowered under the law to appoint Directors, who in turn administer the Corporations through their respective managements. The Boards are subject to the control of a particular Minister, who may give directions of a general nature, mainly on matters of national interest and importance, as to the conduct of its affairs. ZIMCO, however, assumes added responsibility from time to time. The changed policy of the Government has been to turn those loss-making commercial statutory corporations into companies by the use of the company format, thus enabling those enterprises concerned to fall under ZIMCO. For instance in 1982, Zambia Airways and Zambia Railways were made the subject of dissolution by Acts of Parliament, so that they could fall under ZIMCO. It was hoped as a result of this that the parastatals concerned would be run on commercial lines and hence make profits.

In introducing a Bill in Parliament to convert the Zambia Railways Corporation into a limited liability company, the Minister (3) said the Government's decision was based on the following objectives:

(i) to streamline decision-making, so that the Board and Management were in a position to take decisions without referring them to the Ministry "as has hitherto been the case under the existing laws," and

(ii) to "simplify the chain of command and accountability." I have referred to Zambia Airways Ltd and Zambia Railways Ltd as being "hybrid parastatal companies" (See Foot-note No.2) because of the manner in which the dissolution of the corporation charter was carried out. For instance, the Zambia Railways (Dissolution) Act 1982, while dissolving the Board and vesting its assets and liabilities in the Company to be established under the Companies Act, did also, in a peculiar way, provide for additional statutory powers and duties to the said company to be established. Part IV of the Act, for instance, confers upon the company power to enter upon any land for railway purposes and to prevent accidents, power for compulsory acquisition of land for railway purposes, etc. There are also regulations laying down the procedure which aggrieved parties may use to claim compensation from the company and the right of appeal to the High Court. Part VI empowers the Minister to appoint Railway Inspectors. Part VII empowers the Minister to conduct inquiries into the causes of accidents and the general handling of accidents, and so on.

Having described the categories of public enterprises in Zambia, I now propose to discuss in brief terms what prompted the Zambian Government to decide on nationalisation of the industrial and mining sectors. This introduction is necessary for the clear understanding of the relationship between Parliament and the Executive in relation to the role of the Legislature in scrutinizing the activities of the parastatal organisations in Zambia.

A substantial number of writers appear to associate nationalisation of industry with the following two theories: "a conventional wisdom of profitability and ideological concept of meeting social needs." (4) As Turok argues, in Zambia, in addition to the concepts of profitability and social goals, the fact that the state of the economy was determined by external forces contributed to the nationalisation on "security and strategic grounds." (5) In his first speech in which the Government decided to nationalize the industry, it is clear that President Kaunda had the three stated goals in mind. In relation to the profitability of the industries to be nationalised, he said: "several times before, I have declared in very clear terms that political independence without matching economic independence is meaningless. It is economic independence that brings in its wake the social, cultural and scientific progress of man. No doubt political independence is the key, but only the key to the house we must build." (6) Conversely, in relation to humanist-socialism ideology, he had this to say: "I shall be the first to congratulate and admire a businessman who has managed to create a very large enterprise. It shows initiative and ability. But at the same time, I want entrepreneurs to see my point of view that when they get very big then they must come and work for the state, for the benefit of Zambia as a whole. I do not want to create capitalism here." (President Kaunda's own italics). Reading the President's speech as a whole it is clear that nationalization was intended as Turok has shown, to break the hold of private foreign ownership on the means of production; to overcome social inequalities; to disengage from racist regimes of the South; to foster Zambianisation in industry and employment generation, economic diversification and rural development. These, among others, were reasons why the parastatals were created.

It is important to note that parastatals in Zambia were created on the initiative of the Executive and not of Parliament. Parliamentary scrutiny of Parastatals inevitably attracts the attention of the Executive, who fears that its policies and programmes might be upset. Thus, a conflict often arises between these two organs, making it difficult for the parastatals to know exactly to which organ they are accountable.

I would now like to turn to the question of the authority and power of Parliament to control the Parastatals. The Power of Parliaments to scrutinize the actions of the executive is generally divided into three categories: (i) to legislate, (ii) to scrutinize and authorise public expenditure, and (iii) to scrutinize specific actions of the executive. (8) In Zambia, (9) in view of the fact that that country has a written Constitution, the authority and powers of Parliament to review the actions of parastatals and government are derived from the Constitution of Zambia and the National Assembly (Powers and Privileges Act Cap 17 of the Laws. (10) In addition to these, the Zambian Parliament, like all other Commonwealth Parliaments, claims to derive further jurisdiction from "the general practices of Parliaments, especially from parliamentary case law on precedents of various Speakers in the Commonwealth and from Standing Orders." (11) The discussion of the jurisdiction of parliament in this chapter is also based, as Ghai points out, "on the notion of a representative character of the legislature. Its claim to moral and political authority arises from its election by the people, which in a democratic system invests it with an unquestioned mandate to decide on matters of fundamental policy." (12) The Zambian Parliament is a unicameral legislature; as such a decision is carried when it receives a majority of the votes of the members

present and voting, (13) and takes effect immediately it is passed.

The next question to deal with concerns the reasons as to why Parliament should control the parastatal bodies. It is a generally accepted principle that public enterprise is simply an extension of state power. If it is an extension of state power, then Parliament will definitely be interested to see how these enterprises are performing. For there is a school of thought which agitates for the parliamentary scrutiny of parastatals on the understanding that "the nation has become the owners of the enormous assets involved in these industries, and it is widely felt that there should be means of enquiry and criticism."

(14) This argument is based upon the understanding that the beneficiaries of the parastatals are members of the general public who ought to be encouraged to participate in the performance of these enterprises. But since it is practically impossible for them to do so directly, their representatives in Parliament should have the right to exercise authority over these parastatals. The Parastatal sector according to President Kaunda represented 80 per cent of the nation's economy in 1980. (15) At the same time, the President regretted that the parastatal sector accounted for 20 per cent only of Government company tax revenues. He said this showed that some of these parastatals were not being run efficiently. As a matter of fact as at 31st March, 1982, the Government's investment in all ZIMCO group of companies was K522 million. After taking into account the losses etc, the group made net profits totalling K172 million during the period 1976 to 1981. Although the group paid the total sum of K215 million in duties and taxes during the same period, the conglomerate failed to declare and make payment of dividends to the shareholder - (The Government) and to pay interest on long-term loans to the Government (16). It is true that the parastatal sector was not being run efficiently. The Parastatal Committees probe attributed this

to lack of proper planning and control, losses of cash and stock and poor financial accountability. (17) In the circumstances, Parliamentary scrutiny if used properly can, in my view, assist the Executive in propping up these enterprises to perform efficiently and profitably and also to ensure that their funds are spent on useful official purposes.

The other reasons to be advanced in favour of Parliamentary scrutiny are that such interventions would ensure fairness and efficiency in the operations of parastatals. Similarly, it is only Parliament among all the organs which appears to be competent to question the irregular exercise of powers by the executive over the parastatal enterprises. In a One-Party system like that of Zambia, the executive tends not only to be powerful but also to be authoritative. This therefore increases the importance of parliament to control the activities of both the parastatals and the executive.

But with what degree of success can parliament exert its influence in this manner? It is difficult to say, bearing in mind, as we shall see in the coming Chapters, that a single-party government promotes not only Presidentialism but Party-dictatorship as well, which (with minor exceptions, if any), tends to make parliamentary democracy illusory.

The other school of thought against parliamentary control of Parastatals argues that Public enterprise activities "involve commercial transactions on a large scale, and it is desirable that they should not be unduly hampered by external influence." (18) In any case, it is further asserted that Parliament as a repository of power should eschew scrutiny of those functions which it has already delegated (in case of statutory corporations by Acts of Parliament and in case of Parastatals with a company form, under the Companies Act). The argument put forward is that no clear distinction can be drawn between the scrutiny of Parastatals for the purpose of accountability only and that of control proper.

This argument comes out clearly in case of Zambia. There Parliament does not observe the principle generally observed in Britain, that "the executive is only responsible to Parliament in respect of matters in which it is authorised to give directives to the enterprise or for which the statute empowers or requires the executive to make a determination." (19) The Zambian Parliament has, despite this precedent, taken advantage of the failure to adhere to this principle and has literally speaking taken upon itself the function of control over the parastatals.

The other argument against parliamentary intervention in parastatal industries is that Parliament is not best suited and does not have the personnel to deal adequately with issues of administration requiring detailed consideration and examination such as bribery, corruption, financial mismanagement, breach of foreign exchange regulations etc.

The question of whether or not parliament should exercise control over parastatals can not be answered in a conventional 'yes' or 'no' method. It involves evaluating the pros and cons of many issues and the system under discussion. Although it is an accepted principle in the British House of Commons that accountability of public enterprises is necessary only in as much as it ensures that the enterprises concerned conform to the policies and objectives for which they were established, this may be different in another country. This question is fully analysed in the following chapters and a conclusion is reached which takes into account various factors applicable to Zambia.

CHAPTER 2 - PARLIAMENTARY CONTROL

This chapter aims to discuss the following questions: How does Parliament exercise control over parastatal organisations, and what mechanisms or institutions have been used to enable Parliament to exercise supervision over the parastatal companies?

Before entering into further discussion of this subject, it is necessary to set the parameters within which parliamentary control of parastatals would be exercised, by restating the government policy on parastatals. It is apparent from Chapter one, that in creating the parastatals, the government wanted them to be run primarily on commercial lines. This understanding was made even more explicit in the Third Year National Development Plan, wherein it was emphatically stated that "parastatals will be allowed to operate as economic or commercial business organisations." (20) To avoid doubt with regard to the National ideology, the Plan went further and elucidated: "The fundamental role of the parastatal sector is to act as the main agent of the state in fostering economic development of the country along socialist lines. The parastatal sector, therefore, must become the main vehicle for establishing sound socialist relations in the economy." (21) Parliament, therefore, is expected to exercise its control of parastatals within this framework of mixed economic planning.

Parliament exercises control over parastatal enterprises using, what I would like to refer to as "formal" and "informal" control methods. Formal control is that type of control parliament exercises in accordance with the parliamentary rules, practices, customs and conventions. These take the form of committee procedure, question time for oral and written answers and general debate time, especially on the speech after the official opening of Parliament by the President, on the consideration of ways, means and supply, on the private members' motions etc.

Informal control, on the other hand, is that type of control which the House and especially Members of Parliament as individuals exercise as a matter of course. This may be done, by Members of Parliament, through their letters of enquiry etc. to parastatal organisations, and through the attendance of meetings in their respective areas of administration on such bodies as the Provincial Council and District Council (22) It has been the government's policy in Zambia to compel the Parastatal Organisations' Executives to attend local Provincial Council meetings just like the Provincial Government heads of departments, and to be answerable in certain respects to the Provincial Council on the performance of their respective companies. In this way, a skilful Member of Parliament can bring pressure to bear on the activities of a parastatal by raising issues affecting particular parastatal in the Provincial Council as well as in the District Council (23) For instance, the Member of Parliament for Solwezi East used the Provincial Council to expose the maladministration and financial mismanagement of the North western Cooperative Union. As a result, on the Provincial Council's request, the Minister of Cooperatives asked the Auditor-General to carry out an audit of accounts of the said Cooperative Union. The audit revealed financial irregularities, misuse of public funds etc; The Board of Directors was subsequently requested to take the necessary action.

Formal controls as already spelt-out can be exercised in one of three ways, namely: Committee procedure, question time, and debate. I would like to give an overview of these procedures before giving a detailed discussion on each one.

In Zambia, the Committee responsible for scrutinizing the activities of parastatal companies is known as "the Committee on Parastatal Bodies. This Committee was set up by the Third National Assembly in 1973.

Before that, the only sessional committees were: Standing Orders Committee; House Committee and Library Committee (24) The tenure of office of this Committee on Parastatal Bodies is that the Committee is for each session of the National Assembly, which is a period of one year. The terms of reference (25) of the Committee on Parastatal Bodies are as follows:

- "(a) to examine the reports and accounts of parastatal bodies;
- (b) to examine the reports of the Auditor-General on parastatal bodies;
- (c) to examine in the context of the autonomy and efficiency of the parastatal bodies, whether the affairs of the parastatal bodies are being managed in accordance with sound business principles and prudent commercial practices; and
- (d) to exercise such other functions vested in the Public Accounts Committee as are not covered by paragraphs (a), (b) and (c) above and as may be allotted to the Committee by the Speaker from time to time."

Careful examination of these terms of reference which Parliament made and adopted for itself, reveals the absence of the fact that these parastatals should be run on "socialist lines," the policy which the Government has made very clear. This shows how parliament can skilfully by-pass a government policy when the Government Front Bench does not carefully scrutinize the actions of the National Assembly.

The other method of control is by way of questions. Parastatal organisations could be controlled in their activities by way of questioning in the House on their performance. Questioning can be sub-divided into three categories: firstly, those falling under standing order 27. These require notice to be given; replies to

these oral questions should be given by Ministers responsible within twenty-one days from the date of despatch. The second category of questions falls under Standing Order number 28. This standing order allows a member to ask a question without notice on any day, provided the Speaker certifies that it is of urgent character and relates to a matter of public importance. The question of how important the matter should be is decided subjectively, thus, it is up to the Speaker to exercise his own discretion. Such questions are normally filed with the Clerk's office by Members of Parliament and directed to Ministers under whose jurisdiction a parastatal organisation falls. In the case of those parastatals falling under the administration of ZIMCO, questions are directed to the Prime Minister who is at the same time Leader of the House. The third category can not strictly be referred to as questions, but I would rather treat it as such. An ingenious member of parliament could, by raising a "point of order", in fact ask a question indirectly. Alternatively, while on the floor, he could raise pertinent points and ask questions which a Minister may, during his winding up, find himself compelled to reply to.

The third method which Parliament may use to control parastatals is by resorting to debate during the sitting of the House. Parliamentary debates can, strictly speaking, be sub-divided into four groups, namely (i) debate on the motion to adopt the Report on the Committee of Parastatal Bodies; (ii) debate on the Presidential speech (26) preceding the official opening of Parliament by the President; (iii) the debate on the Estimates of Revenue and Expenditure presented by the Minister of Finance during the First Session of Parliament. The debate under this heading is restricted to matters of policy and public importance, and (iv) a debate following the moving and secondment of a motion brought up whether by the front-bench or the back-bench.

I would now like to consider in detail the committee system, question time and debate as mechanisms of control of the parastatal organisations.

(i) The Committee System.

It would appear that the establishment of the Committee on Parastatal Bodies was precipitated by the Kayope Commission, which was appointed to investigate anomalies in the parastatal organisations. "The members (at that time) found numerous cases of misappropriation and other irregularities, but nothing happened to improve the mechanisms of public control which might have led to greater efficiency and honesty." (27) Thus as we have seen, in 1978 Parliament established the said committee to monitor the activities of the Parastatal

The membership of the committee has always been restricted to ten back-bench members. To enable some evaluation of the members to be made, including the members' orientation, Table I is provided below: The Table shows that members of this parliamentary committee with business interests dominate, followed by the non-professionals. No doubt, it is possible that even under the remaining professional and non-professional categories, one is likely to find Members of Parliament with business interests. Gertzell, for instance, states that in the Third National Assembly (1973-78) over 40 per cent of Members of Parliament had "business interests of one kind or another."

(28) Due to this factor, it is likely, as will be seen later, that the decisions and recommendations of the Parastatal Bodies Committee will be influenced by and based on capitalist principles, with their concept of free-enterprise. The procedure of enquiry adopted by the Committee follows both formal and informal methods: that is to say, by calling witnesses from parastatals to appear before it, by conducted visits to the company offices and through the grape-vine.

Table 1: Parastatal Committee:- membership, orientation etc.

Year	Profession of Chairman	Members			Total
		1. Businessmen	3. Professionals	2. Non-Professionals	
1979	Socialist Orientation	7	2	1	10
1980	Professional/Journalist and	5	4	1	10
1981	former Permanent Secretary.				
1981	"	3	5	2	10
1982	Professional/Municipal Accountant	1	2	7	10
1983	"	3	1	6	10
TOTALS	5 Yrs 3 Chairmen	19	14	17	50

Source: Information based upon my own observations and experience in public life.

In Zambia there are more or less 500 parastatal companies in operation. It is therefore not possible to review their activities in a limited Essay of this type. Accordingly, I have chosen to focus attention on four parastatals during the period 1978 to 1983. The parastatals concerned are: (i) ZNCB - Zambia National Commercial Bank Ltd, (ii) UBZ, - United Bus Company of Zambia Ltd, (iii) ZNPF, - Zambia National Provident Fund, and (iv) ROP, - Refined Oil Products (1975) Ltd. ZNCB deals in banking business. UBZ is involved in road transport activities. ROP deals in the production of edible fats and oils, detergents and soaps. ZNPF is a statutory service corporation responsible for providing old age pensions or provident fund schemes.

All ZNCB, ROP and UBZ are subsidiaries of ZIMCO and are registered companies falling under the Companies Act Cap. 680. I would categorise ZNCB and ROP as purely commercial enterprises. UBZ and ZNPF have the dual purpose of being commercial enterprises and at the same time providing social services to the general public.

According to the Report of the Parastatal Bodies Committee for the First session of the Fourth National Assembly appointed on 16th January, 1979; the committee in 1979 held forty-one meetings at Parliament Buildings and at various Parastatal companies which they visited. Twenty-nine parastatals were visited during this time, which included the four which I have selected as samples. Bearing in mind that this was a Second Committee since the establishment of this Sessional Committee, it is not surprising that the committee faced problems in its initial dealings with ^{the} Executive and parastatals. The problems it faced in its work were: (i) a delay in the Action-taken-Report on the recommendations of the previous committee, thus making it difficult to know how the Executive had responded to those issues, (ii) Non-presentation of Annual Reports by Parastatal Companies to Parliament, (iii) the victimisation by management of employees who gave evidence to the Committee, (iv) lack of understanding of the Committee's terms of reference and office by management, and (v) the problems faced by the Committee in scrutinizing the parastatal financial activities, since the Auditor-General was not empowered to audit the accounts of parastatal companies until 1980, after an Act of Parliament had been passed for the purpose. (29) Despite these problems, the Committee has since 1976 been extremely active in its efforts to scrutinize the activities of parastatals. At the end of every parliamentary year a report is produced and tabled before Parliament for debate and subsequent adoption. The Reports contain voluminous information on the irregularities and shoddy performance of the parastatal enterprises, with recommendations to Government. The Committee has succeeded in

digging up a number of issues, despite the fact that it spends considerable time in following up matters contained in the previous Reports and Action-taken-Reports (1981 Report P.1). For instance, the Committee has among other matters discovered the following:

At City Radio Ltd, a subsidiary of Zambia State Insurance Corporation, the Committee disapproved the system of selling goods to employees at a discount. Upon this recommendation, the Board accordingly discontinued the practice (1981 Report P. 1). In its 1983 Report (pp. 55-6) the Committee observed the anomalous situation where some people were appointed Directors of too many parastatals. For instance the Managing Director of INDECO, a holding company of a certain group of ZIMCO companies, was a member of 31 parastatal companies. This, the Committee observed could result in overworking him and thus lead to poor performance. On the other hand, the Committee also revealed and recommended against the appointment of certain Chief Executives of some parastatals as Directors on other parastatals and vice-versa. This, the Committee said, leads to inefficiency, in that some Chief Executives are reluctant to point out mistakes in the organisations where they are members as Directors for fear that their counterparts would in return point their mistakes in their own organisations as well, thus jeopardising the decision-making and planning process.(30)

In order to understand clearly the work of this Committee, Table 2 is produced below. I propose to analyse Table 2 to see how effective the said Committee is in controlling the parastatal organisations.

The above analysis of the Committee's recommendations extracted from the four Parastatal Companies reveal the following facts: That out of the total recommendations made by the Committee only 24 per cent of these recommendations fall under the group of policy. 19 percent are recommendations of public importance but not necessarily of policy. 43 percent are minor and insignificant, such as recommendation numbers 11, 12, 15 and 21. On the other hand, recommendation number 5, inspite of being a major recommendation, is purely administrative. Besides, the Committee was actually very aware that the Government had no funds to maintain rural roads, but insisted on urging it to do so. On UBZ, it should be noted, that the Committee also went into (great) details of administration, such as, ensuring that spare wheels, jacks and spanners were carried by the crew. The only reasonable explanation the writer can give to this is simply that the Committee members had an interest in this matter, arising from the complaints against poor service provided to their constituents. The other explanation is that the Committee gets interested in matters of detail when they come across a company run as inefficiently as was the case with this parastatal. This assumption can be proved in relation to ZNPF where, as a result of the efficient administration of that parastatal, only one unimportant query was raised (recommendation No. 15): Apart from these comments, it can be seen from the Government response that all the recommendations made by the Committee were accepted by Government, with an assurance to implement them where necessary. Secondly, the answers provided were specific, except for the first recommendation which was not actually answered.

With regard to ZNCB, recommendation number one attracted the attention of the mass media, and received wide press coverage after it had been tabled in the House. Of special interest was the revelation that the persons whose amounts were written-off included top officials in the Party and Government and well-to-do businessmen.

The publicity embarrassed the leadership, whose political system stood and advocated the creation of a classless society which was to be achieved through the "eradication of capitalism, ...corruption, and the exploitation of one man by another." (31) The Committee's work on this parastatal was well done, thus pressure was brought to bear on the Government and ZNCB to ensure that the top officials concerned paid in full their debts to the bank, which was done. The Action-taken-Report by the Government made in response to this and other issues raised by the Committee confirms this.(32) Notwithstanding this achievement, it is clear from the Committee's Report that the ZNCB Management declined to release the list of names to the Committee of these debtors who included "top party and government officials."

The Committee's probe on ROP reveals the following anomalies. For example, its recommendation number 19 was not properly investigated. This is clear from the reply made by the Executive in column 4. On recommendation number 17, it is difficult to understand why the Committee cautioned the Government on its policy to urge ROP to buy locally produced raw materials instead of imported raw materials, bearing in mind the foreign exchange shortage faced by Zambia at the time, and the economic and social consequences which would befall the nation if locally produced raw materials were not purchased.

Having examined in detail the activities of the committee, I have the following general comments to make. First, besides a few anomalies here and there, the committee's findings were pertinent and, as can be seen, the Government or Management concerned (with minor exceptions) did agree with its recommendations. Secondly, the Government does not take extreme care and interest in preparing the Action-taken-Reports, and in ensuring the follow-up action on the recommendations. Table 2 shows that 28.5 percent of the recommendations made by the Committee and adopted by Parliament were not attended to. The Action-taken-Reports

should not have been written showing that it was a Parastatal concerned which was replying to a recommendation by the Committee. Instead, it should have been up to the Government to make replies to the House on behalf of the Parastatals. It is only through this method that accountability to Parliament of the Executive can be ensured. Thirdly, it is evident that the Committee wastes much of its time investigating ~~minor~~ administrative details. Table 2 shows that 42 per cent of its recommendations were of a minor nature and not worth the committee's attention. Infact, when one adds the major administrative recommendations, the number of recommendations not worth the committee's attention rises proportionately to 62 per cent. No wonder, therefore, that the percentage of recommendations not attracting the government's attention is 53 per cent. As regards the investigation of important policy issues, my observation is that the Committee appears to be influenced by the 'profit-making' concept, to the extent of disregarding other social and economic factors. For instance, this argument comes out clearly in the example already given of ROP in Table 2 No. 17. This, however, should not be construed as a discouragement. I am quite aware of the difficulties which the committee faces in this task. The Committee appears to be influenced by the concept of improving the performance of parastatals, which in turn should be a good source of revenue for government requirements, including the provision of social needs. I do appreciate this strategy. This assumption, however, becomes difficult to believe in the wake of utterances such as those made in 1978 by the former Chairman of the Committee on Parastatal Bodies, Valentine Kayope, in a debate to Parliament in which he said, and I quote: "the capitalists (are) the only people who can bail us out ...socialism...has ditched us as a country economically."(33)

It is outside the scope of this paper to go into details to show that socialism per se, especially the degree of socialism adopted in Zambia, could be the only cause of Zambia's economic crisis. What a misguided opinion! Surely, apart from external economic factors, such things as

corruption, (34) financial mismanagement, incompetence in politics, civil service and parastatal sectors resulting in improper planning and mismanagement could be some of the major causes. Infact, even outsiders like Turok (supra) have acknowledged that the external factors "such as price falls in copper and rises in oil as well as the war in Zimbabwe have had a catastrophic effect which few economies or government could withstand." Unless reckless utterances like that of Kayope are eradicated, the estrangement between the Executive and the Legislature is likely to ensue, and the losers are likely to be Members of Parliament, when the Executive decides to take firm action against the parliamentary committee on Parastatals. It is important for the Members of Parliament to understand that parliamentary control (of parastatals) is mainly emotive in character, where: "Emotive Control depends on personality and politics. It is concerned with the degree to which policies can be "influenced and" accepted and objectives achieved by persuasion, argument and personal influence." (35) On the whole it is a public relations exercise..

The committee system as a method of parliamentary control has been described in this Chapter, and the detailed activities of the Committee on Parastatals analysed. I have also commented on the Committee's detailed operations. One question, however, remains unanswered, and this is: to what extent does the Parastatal Committee control these parastatal companies? The extent to which this Committee controls the Parastatals in such a way as to enable them to increase and achieve economic efficiency is uncertain. Using Table 2 as a guide, however, it is clear that (the Committee's) 60 per cent of the Committee's major policy recommendations were not responded to by the Government. It is also clear from the Summary that the Committee spent about 43% of its time on trivial matters and 62 per cent of its time is spent on routine matters of administrative nature. If I had to base my argument on the strength of this analysis, and on the argument

much control of parastatals by Parliament could stifle the initiative and smooth running of these bodies, (36) my answer would be in favour of not having such a Committee.

The arguments in favour of the Committee's scrutiny which appeal to the writer are based on the following understanding: First, in view of what has been brought to light from time to time by the Committee - glaring incompetence, carelessness and inefficiency on the part of parastatal management - it is ridiculous to claim that such control would "stifle initiative and the smooth running" of the parastatals, since there is no "initiative" to stifle nor the "smooth running" of companies to preserve. It is the writer's considered opinion that the impact of the parastatal committee on these companies has in some way contributed to the improvement in performance of the parastatal sector.

Second, it is argued that as long as the Management of parastatals continue to be lax and ineffective to the extent that they inconvenience the consumers unnecessarily e.g. by their failure to carry spare wheels etc., it will be in the public interest for the Committee to intervene. The questions of expertise and lack of time by the Committee does not arise, since it has managed to carry out appreciable work within its limited means.

Third, it is argued that there has been very little control coming from ZIMCO and /or Ministries concerned, so the Committee should step in to fill the gap. It is stressed that in a system where the civil service is too weak (37) and always trailing behind the politicians in their rapid development programmes, parliament is the only sure way of propping up the laissez-faire administrative bureaucracy. In certain cases even the politicians such as Members of the Central Committee and Ministers have let the system down due to their incompetence and inability to ensure that the administrators and managers were accountable.

Fourth, it is the writer's submission that the Committee has proved to work to the advantage of Zambia's economic development. It was born at the right time and its work is proving a success, bearing in mind that the government system has allowed itself to 'function by criticisms'. While it is true that the one-party state promotes "unity and peace", it can be argued that it also promotes and protects authoritarianism (38) and that parastatals are used to entrench political power (39), giving rise to a need for an equally authoritative organ to check on the activities of the executive. In this way, the Committee system appears to be very effective. It has turned out to be a more effective mechanism than the question and debate methods, especially in a weak and underdeveloped economy like Zambia. Its disadvantages are outweighed by its advantages.

(ii) Parliamentary questions.

As I have already shown above, Parliamentary questioning is another form of control which Parliament exercises to control the parastatal organisations. Table 3 below provides a simple breakdown of oral questions asked by Members of Parliament in parliament on parastatals.

There follows an analysis of how Parliament exercises control through this method.

Table 3: Summary of questions asked during the last sitting of the First Session of the Fifth National Assembly of the year 1984.

	No. of questions asked	Percentage of parastatal questions	Percentage of all parliamentary questions
Policy and public importance questions	41	54%	11%
Minor and purely administrative questions	35	46%	9%
TOTAL	76	100%	20%

- Note: 1. Total number of questions asked in all were 369.
2. Total number of questions asked on the activities of parastatals were 76.

The summary tells us that the total percentage of questions asked in relation to parastatal organisations is 20 per cent. Of these, 54% were questions relating to policy and public importance, and 46% were questions of trivial nature, such as questions numbers 312, 323 and 373. The summary therefore shows that about 50 per cent of the parliamentary time spent on parastatal questions is spent on matters which are not worthy of the attention of the House. An examination of questions 312, 323 and 373 makes it apparent that such questions may not pass the test enunciated in the House of Commons, as they relate to day to day running of parastatals, viz:

*"312 Mr. Sata - to ask the Minister of Power, Transport and Communications when electricity which was disconnected two years ago will be provided in Chisengalumbwe Ward in the Kabwata parliamentary constituency."

*"323 Mr. Muwowo (Chief Muyombe) - to ask the Minister of Cooperatives what measures his Ministry is taking to seal loopholes through which some drivers at the Northern Cooperative Union pilfer packets of fertilizer and re-sell them at a cheaper price."

*"373 Mr. Mwewa - to ask the Minister of Power Transport and Communications when UBZ will introduce a local service from Mansa to Chipili."

In Britain a rule has been established on what type of questions should be allowed to be asked on the functioning of public enterprises. The Select Committee on Nationalised Industries recommended that "questions must be confined to matters for which the appropriate Minister is responsible.

In the case of the Nationalised Industries, a large amount of responsibility has been vested by statute in the Boards."(40)

The rule which excludes questions on matters "outside Ministerial responsibility" was first introduced in the principal statement to the House of Commons by Herbert Morrison, (41) and confirmed by Speaker Clifton-Brown, as we shall see later. The argument against asking questions of routine nature is asserted as follows: "It would be contrary to this principle and to the clearly expressed intention of parliament, in the governing legislation, if Ministers were to give replies in parliament or in letters, informing about day to day matters. Undue intervention by the Minister would tend to impair the boards commercial freedom of action. The boards of socialized industries are under the obligation to submit the annual reports and accounts which are to be laid before Parliament. In the Government's view, it is right that Parliament should from time to time review the work of the Boards, on the basis of the reports and accounts presented to parliament." (42) The Speaker Clifton-Brown, made it clear that a refusal by a Minister to answer a question would according to normal practice, prevent such a question being put on the paper a second time. He proposed to leave the Rule which excludes questions on matters outside Ministerial responsibility unchanged, on the understanding that he could exercise his discretion to require a question to be answered on account of "public importance" (43) It is shown in Table 3 that 46 per cent of questions asked by Members of Parliament in the Zambian National Assembly were purely administrative and trivial. It is also shown in Table 2 that 43 per cent of the recommendations made by the Parastatal committee were of a purely administrative and minor nature. The percentages of 46 and 43 made are quite high. If we had to apply the principle in Westminster, all these recommendations and questions would be unwelcome by the Government there, given that they infringe the administrative autonomy and independence of the companies concerned.

But why can't this same principle be applied in Zambia? Why shouldn't the Committee be restricted to matters of policy and public importance? The Zambian Parliament appears to be in an awkward position. In a single-party Legislature, the Party is against criticisms of its party policies and programmes in parliament by Members of Parliament who are regarded as its members. This point has been made quite clear by President Kaunda in his Addresses to the House in which he warns Members of Parliament against the "wearing of two hats" and criticising the policies and programmes of the Party and Government(44) This places a Member of Parliament in Zambia in a dilemma. It also probably explains the reason why the Zambian parliament spends most of its time on trivialities. Does this therefore mean that the Zambian Parliament fulfills a merely symbolic function and thus it is not worth its existence in its present form? This is the question which has to be evaluated and answered later in this Essay.

In Zambia, it appears as if the test as enunciated by Clifton-Brown has not so far been applied either by the Prime Minister or the Speaker of the National Assembly. Similarly, the writer has not so far experienced a time when a Government Minister in Zambia declined to answer a question on the understanding that such a question affected the day to day administration of the parastatal concerned. Bearing in mind that the Zambian parliament is privileged in having an effective and thorough-searching Committee on parastatal Bodies, as we have already seen, there is no reason why Ministers cannot take advantage of this rule, considering that they are very busy people and most of the questions asked were indeed of administrative detail. For example; in my view on question No. 323 (Supra): the Member of Parliament should have raised the issue with the Cooperative Union in his area and at the same time reporting the matter to the Police, since the matter is of a criminal nature; on question No. 312: a letter should have been written by the Member of Parliament to the Management, requesting information or action

as necessary; and on question No. 373: the Member of Parliament ought to have raised the matter directly with UEZ head office either in writing or verbally.

Since it is almost an accepted practice for Ministers to answer any oral questions, it is not clear whether the Speaker would be receptive to the principle of "Ministerial responsibility". The only case on record which the writer has come across is an instance where the Prime Minister(45) rose and blocked questions of clarification on the Ministerial statement made by the Minister of Labour and Social Services (46). The Speaker in reply said: "It becomes a little involved and difficult to guide the House when an Hon. Minister makes a Ministerial statement and then the Prime Minister, who is above Ministers, makes comments on it. It becomes very involved, if not impossible to proceed normally....Perhaps we go to questions for oral answer." Thus points of clarification were skipped. It would appear that in the same manner the Speaker, if this rule was brought up, would be likely to exercise his discretion in favour of "Ministerial discretion"(47)

The use of parliamentary questioning in Zambia can be evaluated further. The arguments in favour of questions are as follows:- (i) Question time is usefully used by Members of Parliament to remind Ministers of matters of importance on which Ministers made assurances to the House; (ii) The time is used to make Ministers aware of the issues or matters of public importance prevailing in the country; (iii) Question time could be used to censure and criticize the Government; (iv) a pertinent question makes "officials aware of the need to be able to justify decisions; it emphasizes the importance of consistency and fairness; it keeps senior officials constantly in touch with the details of administration and it makes ministers and officials sensitive to those issues which arouse the interest - hostile or otherwise- of Members

of Parliament;"(48).

Considering that almost all parastatals falling under ZIMCO are enterprises with a company form; according to Ghai, (the conclusion which I also accede to) this change of form and character of such companies does in fact mean that the executive assumes more direct control than the control it exercises on the statutory corporations. In view of this, it becomes in my view, necessary for parliament to exercise scrutiny by way of questions and indeed by way of many other methods.

On the other hand, the critics of parliamentary control assert as follows: firstly that the privilege of questioning Ministers on parastatal activities is sometimes abused by Members of Parliament as they tend to ask questions in which they have direct or indirect pecuniary interest, contrary to Standing orders 57 and 60. This argument was evident when one of the Members of Parliament, who was an economic consultant to a private paper milling company, asked the following question No. 290 (49)" to ask the Minister of Commerce and Industry:-

- (a) how much money in foreign currency was spent on importing paper in Zambia in 1981, 1982 and 1983; and
- (b) how much foreign exchange was provided to (name of the company omitted) to bring in raw materials and spares over the same period;" Secondly, they also assert that some of the questions, (as I have already shown) hinge on matters of triviality, thus reducing the prestige of the House. This admittedly appears to be "part of the price paid for the existence of questions that a lot of time has to be devoted to relatively trivial matters by people who may have much more important problems on hand;" (50) Thirdly, it is asserted that as in Britain, Members of Parliament in Zambia should try as far as possible to utilize the use of letters and inquiries by

writing directly to the parastatals concerned. In Britain this method is used and appears to achieve better results still. For instance, Hanson states that a Chairman of a Transport Corporation revealed that in the 1950s he was dealing with about 1700 letters per year; (51) Fourthly, the argument that parliament should exercise scrutiny through questioning as far as possible on companies falling under the umbrella of ZIMCO, on the understanding that after all these companies are wholly administered under the control and supervision of the executive (see (v) Supra) is replied to by asserting that as long as these companies fall under the Companies Act, parliament should respect and honour the legal requirements pertaining to the "non-disclosure of certain information" in accordance with the law and the Memorandum and Articles of Association.

My general reaction on this matter is, however, neutral. The system of scrutiny through questioning of parastatals by parliament appears to be functioning well. There has been no crisis or complaint raised by the executive on this method of control. It is to be hoped that improvements in this method will evolve as a matter of course.

debate and sometimes generally to those raised in the Committee's report. Thereafter, the government is required to produce the Action-taken-Report on the implementation of the recommendations. (54)

The question of implementation of Committee recommendations has already been sufficiently dealt with under the Committee system above.

The procedure followed on the adoption of private members' motions and on their implementation is similar to the one discussed above. By way of debate, Members of Parliament raise a lot of issues which the government takes into account. The effectiveness, however, of these control mechanisms lies in the fact that such debates are given a wide press coverage which exposes the government to the general public. It is partly because of this exposure that the government feels compelled to take action so that it legitimizes itself in the eyes of the general public. Apart from taking action due to the aroused public opinion, it appears to me that the effectiveness of parliament on the private members' motions and perastatal committee's resolutions adopted is uncertain. The Government appears to take action of its own volition and not because of pressure from Parliament. Most Members of Parliament interviewed (55) are of this view and have complained that "Government does not take Parliamentary resolutions and recommendations seriously." The following incident will probably throw some light on this allegation, even if it is not specifically related to perastatal sector as such. The incident is, however, generally applicable to every parliamentary business.

In March, 1985, a Private Member's Motion was moved by David Nkata, M.P for Kantanshi, urging the Government to withdraw its agreement to sell the 20,000 hectares of land near the Kafue-Zambezi confluence to New AG. Ltd., a Company owned by a British and a Kenyan citizens, whose stated intention was to spend K68m on agricultural development.

Back-benchers supported the motion on account that "land was a national heritage" and thus should not be given at random, especially to aliens. Infact one Member claimed that the Applicants wanted to use the land not for farming purposes, but for mining precious stones. When put to the vote, the Government was defeated by 55 votes to 42 and the motion was carried. Later on it was revealed in the House, that, despite the defeat, the Prime Minister Mr. Nalumino Mundi later commented to the press that although Government was defeated in its intention to hand over the land to a foreign investment company, the deal would still go ahead. The Member of Parliament for Bwengwa Rex Natala raised a point of order, urging the Speaker to make a ruling on the "status of our resolutions in this House under majority (single party) rule. Are they useless and mean nothing to the Government? If so why are we here?" (56) On 27th March, the Speaker Dr. Robinson Nabulyato, made a ruling on the matter to the effect that the Prime Minister "acted contrary to the majority of the House" when he told the Zambia News Agency (ZANA) that despite a defeat for the Government the deal would still go ahead. "Have we now reached a stage where we begin to deface our own designated one-party democracy?" he asked. (57) It appears that that is as far as the House can go under Zambia's one-party legislature. Or is it not? This is the question which should be answered in chapter three of this Essay.

Debates on the opening speech to the House and on the Estimates of income and expenditure is also another way of ensuring the scrutiny of parliament on the parastatals. An ingenious Member of Parliament is likely to make use of this opportunity to achieve some control of a parastatal's actions. For instance, a Member of Parliament for Kawambwa Titus Mukupo on 9th March, 1982, when Parliament was considering the Ministry of Labour and Social Services Estimates, alleged that there were tribal practices in the ZUPF. This allegation

being so serious, the Minister Basil Kabwe promised to investigate and to make a reply to the House at a later date. The investigation was carried out, although no specific case of tribalism was found. Nevertheless the investigation revealed glaring traces of lack of application of some senior officials to duty, favouritism and nepotism in ZNPF (58)

What I have just discussed is full of the mixture of successes and failures. The question as to whether the scrutiny of parastatals by parliament through the medium of committee system, questions and debate is achieved depends very much on the individual's subjective test and on what one expects from this interrelationship between parliament, the Executive and parastatals. For instance, some Members of Parliament, (59) interviewed were not satisfied on the implementation of recommendations generally submitted to government. They said that Government did not respond to the recommendations adequately, and normally "liked buying time, so that the issues could be forgotten" (60) While the said criticism can not be denied, the fact remains that the system is actually paying dividends, implementation of recommendations does take place although at a snail's pace. In other words, it is a matter of degree of implementation rather than policy. Referring back to the Prime Minister's example, it is true to say that there is a tendency in the Government by certain politicians and officials to treat parliamentary actions which are contrary to the Party and Government programmes with disfavour. This attitude appears to be tolerated by the Party's Central Committee, although it is not yet institutionalised. The adoption of such policy requires amendment to the Constitution, otherwise it would be unlawful and unconstitutional. For instance, in the recent years, the Committee on Parastatal Bodies has observed the improvement in the relationship between it and the Parastatal Managers. This is an encouraging trend, and one hopes that the Executive will also fall suit. This, therefore, leads me to consider the mechanisms and or institutions enabling Parliament to

exercise control over the parastatals.

The institutions which enable parliament to exercise control, or which complement the work of parliament in exercising control on parastatals, in the writer's view, are as follows: The Anti-Corruption Commission; Special Investigation Team on Economy and Trade (hereinafter referred to as SITET); the Commission for Investigations; Commissions of Inquiry; the Auditor-General; Consumers Association; Trade Union Movement and the Mass Media.

The Anti-Corruption Commission (61) in its performance of duties to stop and prevent corrupt practices in the country, has so far investigated and brought to court a good number of cases affecting parastatal officials. (62) Apart from this, the committee on parastatal bodies could if it so wishes refer to the Anticorruption Commission cases which comes to light on the exercise of its functions. SITET is a team of specialized police investigators on trade and economy, especially on matters of contravention of Exchange control Regulations, import and export licensing offences, government and parastatal contracts etc. The Parastatal Committee has in the past made use of this Institution whereby the Team has in certain cases been requested to investigate a parastatal suspected to have contravened foreign exchange or import and export regulations.

The Parliamentary Committee on parastatals do sometimes refer certain cases of maladministration and misuse of office to the Investigator-General (Ombudsman), whose work has proved beneficial to the country as a whole.

Under the Inquiries Act, the President has power to appoint a Commission of Inquiry to carry out investigations on any institution, including parastatal organisations. Recently, the prolonged grievance between

the ZNPF workers and ZNPF management was referred to the Commission which the President appointed on 25th October, 1984 to investigate the cause of the strike by ZNPF workers and various allegations against the Management by the workers. It can be recalled that this was the same issue which Member of Parliament for Kawambwa raised alleging that there was tribalism in ZNPF. But unfortunately owing to the intervention by the Prime Minister the matter was not carried any further, since the problem was not solved, it later resulted in the appointment of the Commission of Inquiry. In this the Commission of Inquiry will be dealing with a matter which the National Assembly raised but had no internal machinery to handle it at that time.

The other institution which helps directly and indirectly the House to control the parastatals is as we have already seen are as follows: (i) the office of the Auditor-General. It is in many instances this office which feeds the Committee of the House on Parastatals on financial irregularities etc. Likewise, the Committee does request the Auditor-General in many cases to carry out audits on those parastatals the Committee has reasonable grounds to suspect that all is not well. The Finance (Control and Management) Act, S.8 empowers the Auditor-General to audit statutory corporations accounts. And the Public Audit Act No. 8 of 1980, on the other hand empowers the Auditor-General to carry out audits on the parastatals with company form. Under this Act, the Auditor-General has immunity against any action in respect of the findings of any audit or inspection carried out. (63) Similarly S. 8 compels all parastatals to include in any contract or agreement with other parties a provision empowering the Auditor-General to have access to, and examine all books, records, papers, reports and other documents relating to such contract. In the exercise of his duties, the Auditor-General is not subject to the direction or control of any other person or authority. (64) In the circumstances, the Auditor-General's office is not only an enabling

institution to the House, but it can be said affirmatively that the House relies on Auditor-General's office more than it does with any other institutions.

(ii) The Consumers Association of Zambia which is led by a lawyer and former University of Zambia lecturer as its Chairman is in its embryonic stage. At one time its Chairman gave a press statement to the effect that his organisation was going to request the Government to give it statutory recognition and status. It appears to be arousing public interest and consciousness of the consumers.

(iii) The role of Trade Unions in Zambia can be mentioned as an organisation, though not directly, enabling parliament to control parastatals, which on its own bring pressure to bear on the government and parastatal operations. On certain occasions, it is alleged that Members of Parliament do get briefs through the grape-vine from those trade unions officials working in certain parastatals on the maladministration, misuse of funds etc. by officials in the public enterprises. And such information has enabled those Members of Parliament to use it in debates and the Committee on Parastatals.

(iv) The Mass Media is one of the institutions which is used by Parliament indirectly to expose to the general public shoddy performance of parastatals and indeed government in the handling of parastatals. As we have already seen, the revelation by Parliament of scandals, corruption and so on, taking place in the parastatal organisations during the debate hits the headlines of Newspapers, Radio and Television. It is a fact, although certain politicians may not like to accept it, such publicity is not liked by governments because it exposes the system to ridicule and loss of legitimacy. In the circumstances, the government remains with no alternative but to put the things right. In this way, the mass media plays an effective role

and thus complement the efforts of the legislature. This discussion, therefore leads us to examine the extent and quality of parliamentary supervision.

The extent and quality of parliamentary supervision is not easy to assess. This is because it will depend on a number of factors, including; the powers statutorily assigned to a responsible Minister and his manner of exercising them, the degree of satisfaction or dissatisfaction felt by members of parliament with the performance of a particular industry, the amount of information that the House has at its disposal, the time made available by 'Parliament' for debating matters relevant to the public sector (65) And indeed the effectiveness of parliamentary supervision whether through question, debate or 'sessional' committee investigation, will largely depend on the quality of the Annual Reports which parliament receives from the nationalised industries. (66) Most of these issues have been dealt with above. Perhaps it may be of assistance, in examining this question to examine it in conjunction with the other question similar to this; and this is: How far should parliament become involved in the operations of public enterprises? This question appears to have been resolved in the House of Commons in favour of giving a large degree of independence to the boards on the understanding that "their activities involve commercial transactions on a large scale, 'thus' it is desirable, that they should not be unduly hampered by external interference, since the nationalised industries under their existing constitution are not subject to any direct control by emphasizing that nationalised industries "should not be involved in party 'political' controversy". (68)

In Zambia, however, no official policy has so far been categorically made on the extent and how far should parliament control the parastatals. Notwithstanding this, probably the following statement which the Prime Minister made in his reply to the debate on the Report of the Committee on Parastatal Bodies would show the state of mind of the Government:

"Sir, while I accept that there is need for Government to control these parastatals, we would rather limit such control to the making of policy and the laying down of terms within which these companies should operate. I do not accept the following up of companies up to their typing desks. I take this to be not only contrary to the principles of prudent commercial practice but also an infringement of technical ethics."(69)

The Prime Minister's argument, appears to stress the fact that overstrict control of parliament runs counter to the avowed principle of decentralization of power in Zambia, which means giving power to the people themselves in industry to control their own enterprises(70)

The Prime Minister's argument is obviously a replica of the Westminster policy on nationalised industries in that country. Through forceful and persuasive, it should not be taken at its face value. It is the writer's humble view, that "parastatal autonomy" should surely carry with it corresponding duty to manage efficiently the affairs of the enterprises, otherwise it would be very difficult to persuade parliament to withdraw from the grip it has held on the said industries. Where as the argument may be in order in the United Kingdom this may not be necessary so in Zambia owing to the reason which I have already advanced, with regard to the argument of decentralisation, the writer would like to assert that decentralisation does not necessarily entail ousting of scrutiny, especially the one coming from the people representatives. The answer therefore to these questions is simply that the extent and degree of parliamentary control mainly depends on the performance of the parastatals themselves. Parliament would not be in order to loosen the grip on the parastatals when their performance is below what is expected of them by the nation.

Let us now consider two more issues, and these are: the influence of parliament over the Executive or vice versa and the receptiveness and

insensitiveness of the Executive. A study of parliament and executive functions in practice in Zambia, appears to show that both organs of state have tremendous influence on each other's actions, thus creating the necessary framework for the checks and balances to thrive. We have as a matter of fact seen how the Executive is sensitive to exposure and criticism. It would appear on the other hand that the Executive is getting more and more concerned about the 'utterances' of Members of Parliament. For instance, it is clear from President Kaunda's Address to Parliament on the opening of the National Assembly in January 1985 that the Party policy is shifting towards absolute control of Parliamentary freedom of speech. He has emphasized the fact that Members of Parliament should not criticize the policies and programmes of the Party (71) He reiterated that the function of Parliament was to put into law those decisions of the Party that require such an action." (72) He further stresses the point: "Let me make it absolutely clear that we in the United National Independence Party (UNIP) recognise only one hat and that is the UNIP hat. That is the hat that Honourable Members of this House 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 defer the policies of the Party, irrespective of where they are." (73) It is outside the scope of this Essay to analyse the constitutionality of those pronouncements. It suffices, here to point out that these pronouncements from the Head of State have relative effect on the policy criticisms with which Members of Parliament may want to make with regard to parastatals.

Chapter 3 - CONSTRAINTS OF PARLIAMENTARY CONTROL

In this chapter, the constraints affecting parliamentary control will be reviewed from the following angle: The independence or autonomy of the parastatals has already been sufficiently dealt with in the preceeding chapter. The reaction of management to the parliamentary

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control will be probed into, and the question; how would you strengthen parliament's capacity to exercise supervision over parastatals will be delved into also.

Although it is now clear that the Parastatal Parliamentary Committee is no longer experiencing rebuffs from parastatal management, the fact still appears to remain that given a choice, parastatals would certainly opt for autonomy. It was, for instance, clear from the discussion with the Director-General of ZIMCO (74) that although he welcomed the scrutiny of parastatals by parliament, he was at the time of the view that the machinery of control does already exist. He cited the controls by the Boards, Auditors and holding companies as serving the same purpose like that of the Sessional Committee. He pointed out to the fact that an establishment of ZIMCO companies under the companies Act format entailed that such companies should not only be managed autonomously but should also enjoy the privileges with which the Companies Act provides. He showed that quite a number of companies under ZIMCO were doing quite well and did make substantial profits and did not get government subvention, which reason normally attracts the House in ensuring how the money was spent. He defended the Management of parastatal companies that the misuse of public funds, corruption etc, were not restricted to those companies alone, pointing out that infact those vices were generally a state of mind of an individual concerned, that such a person is likely to commit such vices wherever he could be. He tried to justify his theory by pointing out that 1969 when nationalisation took place was not too far away, realising the fact that at independence in 1964 Zambia had less than 100 graduates and only about 1000 secondary school leavers who were indigenous. He further made reference to companies like UBZ which according to him made losses as a result partly of political considerations since UBZ runs most of its bus-fleet on un economic routes which a private company could not risk

Examining the area of control by the Sessional Committee, it can be seen that holding companies and subsidiaries like ZIMCO and INDECO (Industrial Development Corporation Ltd) do not attract the Committee's attention. This is probably owing to the understanding that these are mainly managerial in character. On the other hand, it is not clear why those companies which are joint ventures with multinationals such companies as the Pamodzi Hotel, Duncan, Gibey and Matheson.

Intercontinental Hotel etc. which are jointly owned by the British Caledonian, Duncan, Gilbey & Matheson and Intercontinental Hotels of America respectively are not probed into by the Sessional Committee. The reason is probably due to the service agreements which provide for their exclusion from the parliamentary and other scrutinies because the Government owns less than 51% share holding. No wonder a Member of Parliament for Kapoche complained in passing when he said: "RCM (Roan Consolidated Mines Ltd) was an 'Untouchable' parastatal organisation because the Parastatal Bodies Committee has never visited the company and has from 1977 to 1980 failed to produce an annual report."

(75) It is a pity that these joint ventures with multinationals cannot be probed, because if they were, a lot of under dealings such as cheating the Government in form of transfer pricing, manipulation of service and unfavourable management contracts and so on, would have been exposed from time to time, (76) in the interest of the state, thus creating conditions for the proper control and utilization of the country's economy.

The other constraints affecting the control mechanism of the House on public enterprises is according to Shai, (77) the unsystematic debates of broad and general nature which characterises most commonwealth countries. Similarly, Hugh Holson (78) shows the familiar defect of National Assembly debates on wide topics dealing with diverse matters where there is often no thread of continuity nor even a meeting of minds: one speaker may discuss foreign exchange problems, the next

may expatiate upon some new device in industry which he thinks should be compulsory, the next may criticise the government's "adoption of socialism/Humanism as ideologies for Zambia," and yet the other one may discuss about the "Leadership Code" etc. (79)

The other constraint which makes it difficult for Parliament to exercise effective control of parastatals is the calibre of certain Members of Parliament which is generally low, despite the presumption that a Member of Parliament is always knowledgeable in all respects, but nevertheless some Members of Parliament are unable to read and understand the accounts of a company, the intricacies of pricing policies and so on. Thus as Ghai has properly observed, they tend to focus on the interests of their constituencies and that of pressure groups. (80)

The other constraint relates to the Annual Reports. Having examined the annual reports from parastatals, it is evident that most of these reports do not contain the necessary information which can enable a Member of Parliament to understand whether or not the company concerned is being run in accordance with sound business principles and prudent commercial practices. Standing order No. 79 (2) compels every parastatal company in which the state has a majority controlling share or any other interest to lay reports to Parliament. Unfortunately apart from shoddy reporting, the reports are also normally in arrears, (81) thus making a mockery of why they are produced. Examining closely these reports, it can be seen that most of these reports from ZIMCO parastatals are not intended for the parliamentary use, but are produced for the Boards and Members of Companies consumption. This is evidenced by the fact that these reports contain such information as Notice of General Meetings by Company Secretaries etc. I am of the view that Reports to Parliament should contain the necessary information as follows, and writer of the report ought to

have the audience to whom the report is being made in mind: (i) Policies and programme guidelines for a particular parastatal should be clearly spelt out; (ii) Target setting: Answering the objectives of what is going to be achieved; (iii) Worker participation e.g. Trade Union and industrial relations; (iv) Training and Zambianisation programme forecast and achievements (v) Social/Political Considerations e.g. that a loss was made because of political interference or due to pricing system or price control mechanism (vi) Is the company operating in the rural area, if not why not? (vii) Import substitution - How far is company striving in this area and how much imported goods or raw materials did it bring in the country (viii) Technology - value added: How much and how far has the company used local technology (ix) Utilization capacity. Is the company being fully utilized or not, why? etc. The reason for shoddy reporting is probably due to lack of format with which the parastatals should use. This is so because even the Circular from the Clerk of the National Assembly, (82) on the Annual Reports is not detailed enough to provide this guideline, in fact it is surprising to find that the Circular did not provide for the profit and loss account and Balance sheet, (in case of commercial companies) to be included in the reports. On the other hand according to Gondwe, the Prime Minister and Secretary to the Cabinet have tried and written to Ministries and Parastatals warning against failure to produce in time Annual reports to Parliament; (83) despite all these efforts however, reports are still in arrears up to today. The problem of late reporting is easily explained: in most companies (for example in Namboard) people whose responsibility it is to compile these reports are quite junior in the hierarchy normally falling under the Public Relations department. They are not made to understand the importance of these reports and why they are written. It is important therefore to ensure that annual reports are expedited and improved in order to assist Members of Parliament to be effective.

There is yet another constraint which makes it difficult for Parliament to exercise control over the parastatal bodies. This is the fact that all Managers of Parastatal organisations in Zambia are appointed and removed at the pleasure of the President and not their respective management boards. The Boards are there simply to formalise by endorsement the action of the President with respect to the appointment and removal of a Chief Executive. This therefore means that the Executive has inbuilt controls of Parastatals with respect to ownership, political, operational and technological controls. On the other hand the President of the Republic is the Chairman of ZIMCO, the holding company. This means that any criticism of ZIMCO group of Companies is indirectly or directly a criticism of the Chairman. Any decision or recommendation which Parliament may pass in respect of a parastatal management attracts the attention of the President as Chairman. To what extent therefore could Parliament or indeed the Sessional Committee influence the Head of State's thinking in the reorganisation of parastatal companies remains unclear. It is however possible to assume that it is not an easy task for Parliament to bring pressure to bear on the President, unless he himself is willing to take the proposed course of action.

The other constraint faced by parliament in the effort to control parastatals is due to the lack of power to approve the budgets of parastatal companies. The organisation and administration of parastatal companies with a company format with regard to budgetary matters is that their Estimates of Income and Expenditure are approved by their respective Boards and ZIMCO and not parliament. Capital funds for investments are normally guaranteed by Government alone. It is very rare that Parliament is asked to approve the funds for parastatal companies, and this only happens when the Government wants to lend some money from the Treasury to a parastatal. In view of this handicap, there is no way Parliament could exercise effective control

on Parastatals without appealing to the Executive for assistance. This constraint does not however affect the scrutiny on statutory corporations.

Finally, and most importantly, it ought to be noted that the ineffectiveness of Parliament lies in its lack of effective sanctions to be meted out to the erring parastatal company. Its sanctions are limited to passing of resolutions and motions of censure or urging the parastatal or government to take the necessary action against the erring parastatal or individual concerned. But as we have already observed, such resolution/recommendation can be implemented by a parastatal concerned or indeed the Government only if the executive is itself willing to implement the recommendation concerned. In other words, the sanction of Parliament is limited to persuasion, agitation and ridicule and nothing else. The above sanctions are not effective instruments of parliamentary control especially in Africa's one-party systems because public consciousness and opinion are underdeveloped and the Party enjoys political supremacy which in practice effects parliamentary supremacy. In a multiparty system, the opposition strives for a vote of no confidence or bringing up issues for debate in parliament so as to raise public opinion against the party in power. In a single-party system, on the other hand, a vote of no confidence in government does not have the same effect and if successful only effect the re-election of Ministers, who could be substituted easily by the President from among the newly elected Members of Parliament, since they belong to the same Party. In certain cases the Party may even consider appointing the most vocal and cynical back-benchers as Ministers (84) The election of President is not easily affected by public opinion, because of the party machinery which plays active role in legitimating the President. On the other hand changes of Members of the Central Committee (who are more crucial to the system) can neither be influenced by public opinion nor voting since these are

generally appointed/elected under the method which excludes the general public. (85) The major problem of a one-party legislature is that this organ has remained static using the Westminster model which is outdated to answer the modern devolved unanticipated single-party system problems. Thus, it has found itself into unprecedented difficulties and has to function by crisis. The last question under this chapter is how would you strengthen Parliament's capacity to exercise supervision over parastatals? As I have already stated, parliamentary capacity to exercise supervision over parastatals can only come about through the changes being made to the nature, character and powers of Parliament, and secondly, by finding a suitable formula for parliamentary participation under the one-party participatory democracy. For, we have already seen how parliament is struggling to control the parastatal companies to the extent that at times it has even overstepped the powers constitutionally given to it.

Chapter 4 - CONCLUSIONS AND RECOMMENDATIONS

Having examined the role of Parliament in relation to public enterprise in Zambia, the character, nature and the performance of parastatal organisations etc. these are my conclusions: Firstly, a finding has been made that most parastatals in Zambia are not running those enterprises according to sound business principles and prudent commercial practices. And secondly, that the degree of parliamentary scrutiny of parastatals in Zambia is more than the generally accepted degree under the Westminster model. But to the disappointment of the parliamentary protagonists, there is little to indicate that parliament, as a result of this severe scrutiny, has exerted any significant control over the parastatals and the executive. Parliament tries and has persuaded government on a number of occasions to improve the performance of parastatal companies but has failed to effect any major change of policy. In this respect the National Assembly appears to be a merely symbolic chamber enjoying little authority of its own because

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Back-Benchers could not prevent government from governing, since ultimately the National Assembly turns out to be a recommendary body. The poor performance of the parastatal industries has been attributed to many factors. It is worth acknowledging that the worsening economic climate in the country coupled with ever-increasing cost of imports and a lack of foreign exchange resulting from the depressed copper prices, has restricted the importation of vital commodities required for the running of the organisations. (86)

It is my view, however, that the poor standard of performance of these companies is aggravated by rampant managerial abuse, financial mismanagement, maladministration, corruption, nepotism, favouritism and fraud. (87).

It is this managerial abuse which has prompted Parliament to take a keen interest in the affairs of these industries. In this respect Parliamentary intervention becomes necessary, with a sole view to obtaining the best results from the nation's investment.

The justification for parliamentary scrutiny of parastatals in Zambia can therefore be asserted. Similarly, my argument in this matter is strengthened by Ghai who says that Parliament should control public enterprises because the Public Sector is growing at an alarming rate; it "represents a tremendous extension of state power, and if the present trends continue the economies of many developing countries will be dominated by public enterprises before the end of the century. A reassertion of the rights of the legislature, democratically elected over the public sector is an important element in attempts to reverse the shift towards the erosion of the rights of the people?" (infra cit)

This argument is very relevant to Zambia's situation. There, ZIMCO probably the biggest conglomerate in Africa, has a turnover of around US \$2.5bn. and it thus controls about 70 - 80% of the national economy. In this way it definitely represents tremendous extension of state power as

it is a good source of revenue and can be used to balance up the unfavourable economic effects of capitalist manipulations in the private sector. Thus Parliamentary interest in ensuring its success becomes a crucial matter. The nationalisation of industries in Zambia came about as a matter of public policy and was carried out in the public interest. It can therefore be said that "the general public are now owners of these industries" and control over them is exercised by their representatives democratically elected in Parliament. "Parliaments' claim to moral and political authority arises from its election by the people which in a democratic system invests it with an unquestionable mandate to decide on matters of fundamental policy." (88) The assumption of proportionate control over parastatals, to the dismay of the protagonists of the "autonomy principle" is in Zambia's context justifiable, taking into account the surrounding inefficient climate under which these companies operate. The lack of proper and clear-cut guidance from the Government etc. are all issues of great concern to Parliament. It becomes necessary, therefore, for the legislature to ensure that the sector is "not used for narrow partisan or other unauthorised purpose by a group in executive power." (89)

The proper role of parliament in relation to public enterprise, and the extent to which parliament should be involved in the supervision of parastatals are as relative as they are debatable. In my view there should not be a yardstick set to determine these questions. While emphasizing that the legislature is entitled to "greater parliamentary accountability" without acquiring responsibility which properly belongs to Ministries, 'nor' encroaching on the independence of these commercial enterprises," it is my humble view that in the main too much depends on the performance of these industries for the question to be ignored. When public enterprises run their affairs efficiently and effectively, the chances are that there will be less need for parliamentary scrutiny. If they are inefficient, then Parliament is

obliged to intervene in the national interest.

What I am saying, in other words, is that the Westminster concept of autonomy of public enterprises should not be allowed to apply to Zambia indiscriminately, without taking into account the conditions in Zambia and the circumstances prevailing at the time. The degree of parliamentary scrutiny in Zambia of parastatals appears to be in order for the time being. In the long run, however, the people of Zambia should re-examine their political system closely with a view to restructuring Parliament so that it can assist in playing a positive and effective role, not only in parastatal matters but other matters of national development as well. This conclusion stems from the fact that in Zambia's one-party state system, where the Executive is dominant, it is equally necessary to have a greater degree of parliamentary scrutiny of public enterprise, so as to balance up power. (99)

I am certainly not agitating for parliamentary hegemony and the usurpation of executive power, and I would likewise detest entrenched executive power, because these would be detrimental to the smooth functioning of the democratic system. What I am trying to suggest is an equilibrium between the Executive and the Legislature upon which checks and balances could be set in motion for the better administration of the public sector.

FOOT NOTES

1. Some order in terminology was established by the Mwanakatwe Commission of Inquiry into the Salaries, Salary Structures and Conditions of Service of Zambia: Vol. 1, "The Public Service and Parastatal Sector" (Lusaka, 1975). P. 130.
2. "Broadly" in the sense that it is possible to find "hybrid" parastatal companies in Zambia established under the Companies Act, with extra rights and duties bestowed on them by an Act of Parliament, as we shall see later. Zambia Railways Ltd and Zambia Airways Ltd are examples.
3. Elijah Kunda, Minister of Power, Transport and Communications, Daily Parliamentary Debates 10th August, 1982, Col. 3937
4. Atleast Fortman, Faber and Potter in my view appear to fall under this category. Cf. their works in B. de Gasy Fortman, After Mulungushi, East African Publishing House (1969) and I.L.O Faber and J.G. Potter, "Papers on the Nationalization of the copper Industry in Zambia", Towards Economic Independence. Cambridge University Press (1971).
5. Ben Turok, "Control in the Parastatal sector of Zambia", The Journal of Modern African Studies, Vol. 19 No. 3 (1981) P. 428.
6. President Kaunda: Speech at the National Council of UNIP at Mulungushi on 19th April 1968; As produced in B. de Gasy Fortman After Mulungushi, East African Publishing House, (1969).
7. Ibid, P. 59
8. John P. Mackintosh, The Government and Politics of Britain, 5th ed. (1982) P. 133.

9. Cf. In Britain the extent of legislative authority of Parliament is generally unlimited, subject only to the Statute of Westminster 1931, European Communities Act 1972 and its limited powers over the Dominions: As per Erskine May, Parliamentary Practice, 20th ed. (1983) P. 55.
10. The Constitution of Zambia Cap. I Articles 63 and 91 as read with Ss. 10-20 of the National Assembly (Powers and Privileges) Act Cap. 17.
11. As per Mwelwa Chibesakunda, Clerk of the National Assembly of Zambia, interviewed on 10th January, 1985.
12. Yash Ghai, "The Legislature and Public Enterprise," in Ramanadham and Ghai, Parliament and Public Enterprise (1981) P. 24.
13. In accordance with Article 88 (1) of the Constitution. Except for the passing of a Bill by the National Assembly which requires a cocurrent Assent of the President as per Article 79.
14. A.H. Hanson, "Report from the Select Committee on Nationalised Industries 1952," Nationalization, (1963) P. 310.
15. In a speech to the official opening of Parliament on 11th January, 1980, pp. 5 and 6.
16. Committee on Parastatal Bodies Report, (Lusaka), 1983, P. 2
17. Committee on Parastatal Bodies Reports, (Lusaka) 1981 PP. 1, 28, 29 and 1984 P. 57
18. A. H. Hanson, *Supra*, P. 310
19. Yash Ghai *OP. Cit.* P. 29
20. The Third National Development Plan (Lusaka) 1979 - 1983 P. 410

22. In Zambia due to the decentralised government administration, Members of Parliament are ex-officio members of many Committees in their respective provincial and district areas of jurisdiction including being local authority Councillors by virtue of office as Members of Parliament - see S. 10 (1) (e) of Local Administration Act No. 15 of 1980.
23. The Chairman of a District Council, who is at the same time District Governor, can use his powers under S. 15 (b) of the Local Administration Act against a parastatal concerned. S. 15 (b) reads: "Every Chairman of a Council shall be responsible for the overall administration of the council and, in particular, for - the efficient and proper operation of all public institutions and parastatal organisations in the District;"
24. At the time of writing this Essay the Committees have proliferated to eleven including: Public Accounts Committee; Committee on Parliamentary Procedure, Customs and Traditions; Committee on Absence of Members from sittings of the House; Committee on Delegated Legislation; Committee on Parastatal Bodies, and the Committee on Foreign Affairs.
25. As per Standing Order 144 (2)
26. There is no particular provision for this in the Constitution. But this takes place as a matter of tradition on the first day of each session.
27. The Kayope Select Committee was appointed by Parliament: Ben Turok, The Journal of Modern African Studies, Vol 19 (No. 3) (1981) P. 429.
28. Cherry Gertzel, The Dynamics of the One-Party State in Zambia, Manchester University Press (1983) P.83
29. Public Audit Act, 1980.
30. Parastatal Bodies Committee Report, *ibid*, 1983 P. 55

31. Article 4 of the Party Constitution and Zambian Humanism Part II, by President Kaunda, PP. XIII and 13.
32. Action-taken-Report on the Parliamentary Committee on Parastatal Bodies for the 4th Session of the Fourth National Assembly appointed on 20th January, 1982, Lusaka January, 1983 P. 18.
33. V.W.C. Kayope, Daily Parliamentary Debates, (Lusaka) 13 March 1978 Col. 2926: See also the Report of the Committee on Parastatal Bodies for the Fifth Session of the Third National Assembly, appointed on 31st January, 1978.
34. Wide spread corruption in Parastatals is acknowledged by Cherry Gertzel The Dynamics of the one-party state in Zambia, Manchester University Press, (1983) PP. 82 and 92.
35. M. L. O. Faber and F.G. Potter, "Papers on the Nationalisation of the Copper Industry in Zambia," in Towards Economic Independence, Cambridge University Press, (1971). P. 102.
36. This was the argument of Prime Minister Mr. Nalunipo Munda: See Parliamentary Debates (No. 58), 9th December, 1981. Col 406. And also A.H. Hanson, "Select Committee on Nationalised Industries-Recommendation 11," Parliament and Enterprise, P. 309.
37. M.L.O. Faber and J.G. Potter, op. Cit., P. 101, criticise the system that it "needed a relatively sophisticated and constructive civil service attitude, knowledge of mining operations and a well defined Government policy."
38. See for example: Cherry Gertzell, op. Cit, P. 237.
39. Yash Ghai, "The Legislature and Public Enterprise," in Remanadham and Ghai, Parliament and Public Enterprise, (1981) P. 23.
40. A. H. Hanson, op. Cit. p. 306.
41. Hansard 445C 566 on December 4, 1947; et seq. A. H. Hanson, ibid.,

42. Herbert Morrison, in A.H. Hanson, *ibid*, p. 308.
43. A.H. Hanson, *ibid*. p. 308: The Speaker's statement was made on 7th June, 1948
44. President Kaunda; Address to Parliament on 11th January, 1985 p.2
45. Mr. Nalumino Mundia: See Daily Parliamentary Debates (No. 60e) Tuesday 10th August, 1982, Cols 3904-06.
46. Mr. Basil Kabwe: Daily Parliamentary Debates, *ibid*. Cols. 3893-3404.
47. Regarding supplementary questions, the Speaker has on a number of occasions ruled that these were not binding on Ministers, thus Ministers may not reply if they so wish. See for instance his rulings in the Daily Parliamentary Debates (No. 57) (1981) Cols. 62 and 68.
48. Public Administration (periodical) Vol. 39 (1961) P. 140
49. This was one of the Notice of Questions - supplement to the votes and proceedings of Tuesday 20th November, 1984.
50. Public Administration, (Journal), *ibid*. p. 133.
51. *Ibid*, p. 136.
52. A. H. Hanson, *ibid*, p. 314.
53. Erskine May, *ibid*. p. 717.
54. As per Circular from the Clerk of the National Assembly No. NAS/11/15 dated 28th December, 1978 entitled: "Procedure for the Production of Action-taken-Reports of the Parastatal Committee on Parastatal Bodies."

55. For example: Francis Matanda, Member of Parliament for Kafue, Namushi Namuchana, Member of Parliament for Liyuwa and Joseph G.C. Mbewe, Member of Parliament for Katete South.
56. Times of Zambia 15th March, 1985.
57. Times of Zambia, 28 March, 1985.
58. See Daily Parliamentary Debates (No. 60 e), 19th August, 1982: "Ministrial Statement to Parliament", Cols. 3893 - 3906.
59. Foot-note number 55 op. Cit. interviewed on 14th, 15th and 22nd December, 1984 respectively.
60. Joseph G.C. Mbewe, ibid.
61. Established under S. 4 of the Corrupt Practices Act No. 14 of 1980: It is responsible for corruption prevention and control.
62. At the time this Essay was being written, it was alleged that a substantial number of Perastatal heads were being investigated. Three have already been suspended by President Kaunda on undisclosed reasons. The Chairman of the Anti-Corruption Commission confirmed in one case of the ZNBS (Zambia National Building Society) Managing Director that he was being investigated: Times of Zambia 19 December, 1984.
63. S. 12 Public Audit Act, op. cit.
64. S. 4 ibid.
65. A. H. Hanson op. cit. P. 305.
66. "The improvement of these Annual Reports is a subject of an Article by Raymond Nottage, Director of the Loyal Institute of Public Administration P. 306."
67. A.H. Hanson: "Select Committee on Nationalised Industries" op. cit. P. 309.
68. Hugh Molson, "Select Committee to secure Parliamentary Control", Nationalised Industries, The Times publishing Co. Ltd. 1949.

69. Prime Minister Nalumino Mundia, (No. 58) Parliamentary Debates, 9th December, 1981, Col. 406.
70. President Kaunda, Humanism in Zambia, Part II, PP. 97 - 101
71. President Kaunda, Address to Parliament on the opening of the second session of the 5th National Assembly, 11th January, 1985 P. 2; See also the Address to Parliament of 16th January, 1981 P.1.
72. President Kaunda, Address to Parliament on 11th November, 1983 P. 6, et Seq: ibid. 15th January, 1985 P. 2
73. President Kaunda op. cit. 11th January, 1985. P. 2
74. In an interview with Mr. James Mapoma on 10th January, 1985.
75. Rev. Ben Zulu (No. 58) Parliamentary Debates, Col. 341
76. Detailed study on how multinational corporations use their technology and expertise to exploit developing countries can be obtained from the following treatise, among others: Sylvain Plasschaert, Transfer Pricing and Multinational Corporations (1979); Y. Ghai, Public Economy; Aki Sawyer, Multinational Corporations and Development: "The case of the Rubber Industry in Ghana P. 267; I.G Shivji, Capitalisms unlimited: "Public Corporations in partnership with Multinational Corporations."
77. Yash Ghai, "The Legislature and Public Enterprises," in Ramansdham and Ghai, op. cit. Parliament and Public Enterprise, PP. 23 - 42.
78. Hugh Molson, op. cit. P. 4
79. See for example the Debate on the Report of Parastatal Bodies (No. 58) Parliamentary Debates Cols. 295 - 356.
80. Yash Ghai, op. cit. P. 34
81. See (No. 58) Parliamentary Debates op. cit. Cols. 340 - 341.
82. N. M. Chibesekunda:- Circular No. NAS/7/2 dated 9th August, 1984.

83. Michael M. Gondwe: Paper on Government Control of Public Corporations in Zambia presented to the conference on Law and Economy in Africa (ICOLEA) (Unpublished) PP. 22 - 3; quoted Cabinet Circular No. 14 of 1981.
84. In Zambia three Members of Parliament who were very critical and vocal against the Party and Government found themselves appointed as Ministers of State - Viz: Daniel Munkombwe, M.P for Choma, Cosmas Masongo, M.P for Nchanga and Peter Chenshi M.P for Mwanabombwe.
85. As per Article 53 of the Party Constitution.
86. Michael M. Gondwe *ibid* p. 30; Also Cf. J.C.M. Nyirongo's debate in Parliament: (No. 58) Parliamentary Debates Col. 325.
87. For instance, Member of Parliament for Kalulushi Mr. Lamba related a story where a General Manager kept his girlfriend in a company rented house incurring an expense amounting to K3,000. Which was not paid for: See Parliamentary Debates (No. 58) (1981) Col. 353.
88. Yash Ghai in Ramanadham and Ghai: Parliament and Public Enterprise, *ibid*. P. 23
89. *ibid*.
90. This appears to be the reasoning behind the National Commission set up to bring about the establishment of a one-party state in Zambia: See for instance recommendation 70 (1) Viz: "We therefore recommend:- that Members of Parliament be free to speak and/or vote as they like on any issue in the National Assembly:" dated October, 1972 P. 19. Note that Government in its white paper accepted this recommendation, thus: "(a) that Members of Parliament be free to speak and/or vote as they like on any issue in the National Assembly;" - Government Paper No. 1 of 1972.

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B. PERSONAL INTERVIEWS

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2. Francis Matanda, MP for Kafue Constituency.
3. Joseph G.C. Mbewe, M.P. for Katete South Constituency.
4. Namushi Namuchana, M.P. for Liuwa Constituency.
5. James Mapoma, Director-General of (ZIMCO), Zambia Industrial and Mining Corporation.

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