

**PRESIDENT AND PARLIAMENT IN ZAMBIA**

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## **PRESIDENT AND PARLIAMENT IN ZAMBIA**

In October 1991, Zambia experienced its first competitive elections in 23 years.<sup>1</sup> These elections for both the presidency and the National Assembly were expected to mark the end of one-party rule and the beginning of a new regime of multi-party politics. In the aftermath of the elections, some also expressed the hope or expectation that the transition starting to take place in Zambia would inspire a movement elsewhere in sub-Saharan Africa away from authoritarian regimes or regimes effectively immune from electoral accountability. In fact, even some Zambians drew hopeful comparisons between what was occurring in Lusaka and the democratic transformations that had begun several years earlier in Central and Eastern Europe.

From independence in 1964 until the 1991 elections, Zambia was ruled by President Kenneth Kaunda and his United National Independence Party (UNIP). Constitutionally, Zambia was a multi-party state until 1973, although Kaunda and UNIP came to exercise a de facto one-party monopoly of power. The First Republic ended in 1973 when constitutional doctrine was brought into line with the obvious facts of political and civic life; Zambia became a one-party state in principle as well as practice. Kaunda and UNIP ruled under the 1973 constitution until they accepted a 1990 amendment that again legitimized a multi-party system and made possible the 1991 elections at which UNIP and its long-time leader were defeated resoundingly by a new umbrella opposition party, the Movement for Multiparty Democracy (MMD), and its presidential candidate, Frederick Chiluba.

As its name implies, the MMD built its electoral campaign around the promise of multi-party democracy, and the election results certainly gave it the opportunity to transform Zambia's political system. The MMD received three-quarters of the parliamentary vote and, because of the bonus that typically accrues to the winning party in single-member-district elections, it captured fully 125 of the 150 elective seats in the National Assembly. In the presidential election, Chiluba defeated Kaunda by a comparable margin, ending his 27-year reign.

In short, President Chiluba and the MMD were empowered to implement the institutional and constitutional reforms necessary to fulfill their campaign commitment to transform Zambia's political system. During the three years that followed, the new government invested more time and energy in economic change than in political reform. Zambia's Third Republic may yet become a multi-party state in which the rulers submit themselves regularly to the will of the electorate in open and competitive elections. Alternatively, Zambians may find that they only have exchanged their old one-party system for a newer model.

The prospects for democratization in Zambia depend first of all on the intentions of its current rulers. However, a successful democratic transition requires more than good intentions, and even more than a willingness to engage in an open competition for power through elections. It also requires a careful review of formal constitutional arrangements and informal institutional practices in order to identify the reforms necessary to permit that government to function effectively and to enable the electorate to hold it accountable for its actions and inactions.

In the case of Zambia, there is a serious lack of congruence between its constitutional design and the capacity of its political institutions, especially the National Assembly. Zambia's current constitutional arrangements are roughly similar to those of some reasonably successful democratic regimes. Similarly, the capacity of its National Assembly is not all that different from that of parliaments in other regimes that most

observers would credit as being reasonably democratic. The problem lies in the incongruence between the two, in an institutional capacity that is ill-suited to Zambia's constitutional design.

Zambia's first post-independence constitution adapted the regime that had been in place at the end of British colonial rule to create a regime with a powerful and autonomous presidency. At the same time, the British model of parliamentary government unwittingly encouraged and justified the development of a passive and largely ineffectual National Assembly. It was in the political interests of President Kaunda and UNIP to preserve and, in some respects, even accentuate this imbalance of power during the period of de jure one-party government, and it remained essentially unchanged by the constitutional reforms of 1991. Unless this condition is addressed through constitutional or institutional reforms, or a combination of the two, it can jeopardize the long-term success of even the most well-intentioned political reformers and ultimately undermine the democratization process on which Zambia embarked, however tentatively and uncertainly, at the end of 1990.<sup>2</sup>

### ***THE TRANSITIONAL COLONIAL CONSTITUTION***

Less than a year separated the promulgation in 1963 of the last constitution of Northern Rhodesia from the adoption in 1964 of the first constitution of the Republic of Zambia. The 1963 charter was intended to establish a transitional regime; it was drafted with the understanding that Northern Rhodesia soon would become Zambia and in preparation for that development. The result was a mixed regime that provided for what was essentially a Westminster-style parliamentary system over which the colonial Governor, as a surrogate President, retained ultimate control.

Generally speaking, the 1963 constitution sought to create a parliamentary regime in a colonial context. It provided for a Prime Minister and Cabinet who were expected to receive and maintain the confidence of a majority in the colonial Legislative Assembly--the hallmark of a parliamentary system. All ministers were required to be or to become members of the Legislative Assembly.<sup>3</sup> The Governor formally appointed the Prime Minister, but the latter was not his agent and the Governor was not free to appoint whomever he might have preferred. "The Governor, acting in his discretion, shall appoint as Prime Minister the member of the Legislative Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers..." (Section 69).<sup>4</sup> Although the Governor's authority in this regard was not wholly ministerial, it was essentially comparable to the discretion that is exercised by contemporary presidents and monarchs in many parliamentary regimes.

The Legislative Assembly also had effective control over the fate of governments appointed with its support. The Northern Rhodesian constitution provided for votes of no confidence. As befits a colonial legislature, the Assembly did not have the formal authority to bring down the Government; that power rested ultimately with the Governor. However, the constitution specifically listed two circumstances in which he might remove the Prime Minister from office: if the Legislative Assembly passed a vote of no confidence in the Government, or if the results of a general parliamentary election satisfied the Governor that "in consequence of changes in the membership of the Assembly resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly" (Section 70). All other ministers served at the pleasure of the Prime Minister; they could be dismissed by the Governor "acting in accordance with the advice of the Prime Minister."

Although the Governor had discretionary authority to prorogue or dissolve the Legislative Assembly at any time, the constitution specifically noted three circumstances under which he might agree to

a dissolution: (1) if the Prime Minister recommended it; (2) if the Prime Minister failed to resign after the National Assembly passed a resolution of no confidence in the Government; or (3) if there was no Prime Minister and the Governor concluded that "there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly" (Section 62). Again, the clear implication is that the Governor was not expected to exercise his discretion to suit his own preferences; he was to do so in the service of responsible parliamentary government.

In sum, the Legislative Assembly of Northern Rhodesia had constitutional ways and means by which it could hold the Prime Minister and Cabinet accountable for their policies and decisions. These lines of authority and control gave practical meaning to Section 71 which explicitly provided for collective Cabinet responsibility: "The Cabinet shall be collectively responsible to the Legislative Assembly for any advice given to the Governor by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office."

The office of Governor was more than a titular position, but the constitution assumed and expected that the daily administration of affairs would be delegated to the Prime Minister and the other members of the Cabinet of Ministers. Section 75 directed that, as a general matter, "[i]n the exercise of his functions under this Constitution or any other law the Governor shall act *in accordance with* the advice of the Cabinet or a Minister acting under the general authority of the Cabinet" (italics added). Although this directive was accompanied by various exceptions and provisos, it does indicate that the locus of policy-making and implementation was expected to lie within the Cabinet, not in the Governor's office. The Cabinet and, by implication, its ministers individually were to function independent of immediate gubernatorial supervision and control.<sup>5</sup>

Clearly, then, the 1963 colonial constitution was designed to institute a parliamentary regime that would resemble if not mimic the Westminster system. But until independence arrived, the Governor would retain a kind of ultimate, residual authority on behalf of Her Majesty's Government. Just as legislative sovereignty in Great Britain formally resides in "the Queen in Parliament,"<sup>6</sup> the 1963 charter provided that "[t]here shall be a "Legislature for Northern Rhodesia which shall consist of Her Majesty and a Legislative Assembly" (Section 32),<sup>7</sup> with the Governor acting on behalf of the monarch. Specifically, he had the exclusive authority to propose bills to initiate or increase taxes or spending (Section 57), and he enjoyed an absolute veto power over legislation (Section 56). More generally, he remained the final political authority in what, after all, remained a colony.

### ***THE ZAMBIAN CONSTITUTIONS***

Much of the transition to independence already had taken place in 1964 before the formalities were completed. Kaunda became prime minister of a UNIP-dominated government in January 1964; "[e]xcept for the change to republican status and the departure on 24 October of the Governor, Northern Rhodesia's transition was completed by early 1964."<sup>8</sup> As President, Kaunda effectively succeeded the Governor. There were essentially two paths from which Zambia could choose as it formulated its first independent constitution. It could reduce the constitutional role of the Governor's successor to a largely honorific head of state, or it could empower the President by giving him effective powers more akin to those that colonial governors had exercised before the 1960s.

Especially because taking the former path would have required Kaunda to choose between becoming head of state or remaining head of government, it is not surprising that Zambia chose the latter.

There is a striking degree of continuity between the last constitution of Northern Rhodesia and the constitutions of independent Zambia. In many respects, the 1963 colonial constitution became a model for its Zambian successors. Perhaps the most important difference, however, is that in its 1964 constitution, Zambia rejected enforceable cabinet responsibility, and then moved progressively further in the direction of increased de jure and de facto presidential power until the recent end of Kaunda's regime.

Zambia's first constitution was not imposed unilaterally as a parting colonial legacy. Instead, it was the product of negotiations at which UNIP insisted that a presidency be included in the resulting mixed system.<sup>9</sup> Consequently, the 1964 charter established an institutional structure of legislative and executive powers that combined features of a Washington-model presidential system and a Westminster-model parliamentary system. But in comparison with the 1963 document that it replaced, its net effect unquestionably was to increase presidential authority. The President became the master, not the agent, of the National Assembly.

Like a Washington-style system, Zambia's 1964 constitution provided for a popularly-elected President who was the de jure head of state (Section 31) and the de facto head of government.<sup>10</sup> Like a Westminster system and some other parliamentary regimes, all ministers were required to be members of the National Assembly (Section 44). However, this was the only significant respect in which the new political system resembled a Westminster-style regime.

Unlike Northern Rhodesia, Zambia had no Prime Minister. Instead, the President selected a Vice President from among the members of the Legislative Assembly. The President also appointed all the ministers who constituted the Cabinet of Ministers; they too were drawn from the National Assembly. None of these appointments, individually or collectively, was subject to approval by the Assembly. Although the Vice President and ministers may have been members of the National Assembly, in no sense did it select them or confirm them in office. By the same token, the constitution made no provision for the National Assembly to dismiss the Cabinet or any of its individual ministers, nor even to recommend dismissal. The 1964 document makes no reference to, or even intimation of, individual or collective ministerial responsibility to the National Assembly, which is essential to parliamentary government. It was the President and the President alone who was empowered to remove ministers (Section 44) and the Vice President (Section 41).

Tordoff and Molteno observed in 1974 that "[t]he procedure of the Zambian Cabinet follows the Downing Street model."<sup>11</sup> More important, however, was the President's uncontested control over the Cabinet which, in practice, made it much more akin to a U.S. presidential cabinet than to a cabinet of collective parliamentary responsibility.<sup>12</sup> With respect to presidential authority over the Government, the 1964 constitution was unambiguous: "The executive power of the Republic shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him" (Section 48). So the President was just as clearly the head of government as he was the head of state.

Unlike the Governor of Northern Rhodesia, the President was empowered to preside over the Cabinet. Ministers were subject to presidential direction as well as appointment and removal. Individually, "[a] Minister shall be responsible, under the direction of the President, for such business of the government of Zambia (including the administration of any department of Government) as the President may assign to him," and collectively, "[t]he Cabinet shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President" (Section 51).

There were no corresponding provisions for ministerial or Cabinet accountability to the National Assembly, nor did the constitution make any presidential appointments subject to legislative confirmation. With very few exceptions, the President was empowered to appoint, discipline, and dismiss all public officials.<sup>13</sup> The sole constitutional control that the National Assembly had over President and Government was its ultimate authority to remove the President from office on grounds that could include "gross misconduct" (Section 36). However, the National Assembly could exercise this authority only by a three-fourths vote of its entire membership, and with the support of a special judicial tribunal that the President could influence, if not control, through his appointment powers.<sup>14</sup> And even in the unlikely event that three-fourths of the members voted to remove the President from office, he had the option of compelling new presidential and parliamentary elections rather than accepting removal from office.

From the perspective of presidential power, therefore, the 1964 constitution clearly intended to establish a separation-of-institutions system. But it did not also include corresponding sharing-of-powers provisions, such as confirmation by the National Assembly of high-level appointments and unilateral National Assembly control over presidential impeachment, that characterize the U.S. separation-of-powers regime. What of the other side of the coin: the constitutional powers assigned to the National Assembly and the constitutional role of the President in the law-making process? The National Assembly was not empowered to be equally dominant and autonomous within its assigned constitutional domain.

Formally, the 1964 constitution vested legislative power "in the Parliament of Zambia which shall consist of *the President* and a National Assembly" (Section 57, italics added). As this formulation suggests, the constitution was asymmetric. It created an almost absolute separation of powers with respect to executive authority but a significant sharing of powers with respect to legislative authority.

The President enjoyed a veto power that the National Assembly could override by a two-thirds vote of the entire membership. However, there were two exceptions to this general rule. First, the President did not have to return a vetoed bill if a tribunal, selected by the Chief Justice whom the President had appointed, reported that some or all of it was inconsistent with the constitutional protections of fundamental rights and freedoms of the individual. And second, even when the National Assembly attempted to override a presidential veto, the President had the option of dissolving the National Assembly and triggering new presidential and parliamentary elections, rather than having the bill become law (Section 71). The recognition that the President might exercise this option surely would have given legislators second thoughts before voting to override a presidential veto.

The President also was granted other important powers vis-a-vis the National Assembly. For example, he could attend and address the National Assembly at any time, not when invited to do so. The "leader of government business in the National Assembly" was the Vice President, whom the President appointed, rather than an Assembly member elected by his or her colleagues (Section 50). Furthermore, the constitution gave the President added leverage over MPs by authorizing him to appoint, without National Assembly approval, the members of Electoral Commissions that could re-draw constituency boundaries (to the disadvantage of recalcitrant incumbents).<sup>15</sup>

The President enjoyed two additional powers that undermined the National Assembly's control over national fiscal and budgetary policy--the "power of the purse" that so many observers have placed at the heart of Congress' power in the American constitutional system. First, like the Governor of colonial Northern Rhodesia, only the President could initiate most taxing or spending proposals. And second, the President could authorize the expenditure of funds without prior National Assembly concurrence if he

"considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay" until the National Assembly could approve it (Section 107). The National Assembly would have had little choice but to accept, if not enthusiastically approve, the expenditure of funds already spent.

Finally, the President could declare states of emergency, and in fact, Kaunda imposed a state of emergency in 1964 that remained in effect throughout all the years of UNIP rule, until Chiluba cancelled it a week after the November 1991 elections. Although the National Assembly was supposed to approve a state of emergency and re-confirm its approval every six months, a 1969 constitutional amendment permitted a state of emergency to remain in effect indefinitely, unless and until the National Assembly acted affirmatively to terminate it (or until a new President took office). Even more important, nowhere did the 1964 constitution define the effect of a state of emergency: what rights were or could be curtailed, and what authority and discretionary powers the President could exercise that were otherwise denied to him.

In sum, the 1964 constitution established a Parliament but not a parliamentary system. The Parliament included the President but the National Assembly neither elected him nor controlled his Government. The President was required to select his ministers from among the members of the National Assembly, but that was virtually the only respect in which it was involved in selecting, directing, or removing Government officials. In fact, the President enjoyed greater unilateral executive power than does the American president. On the other hand, the National Assembly was not equally well-protected against presidential influence and intervention. The distribution of formal authority strongly favored the President and failed to give the National Assembly the constitutional leverage necessary for it to effectively restrain the exercise of presidential power.<sup>16</sup>

It was under these constitutional arrangements that Zambia was governed until the end of the First Republic, and they remained essentially unchanged until 1991 when the Second Republic came to an end. Although the primary purpose of the 1973 constitution was to establish a "One-Party Participatory Democracy,"<sup>17</sup> it did nothing to strengthen the National Assembly at the expense of the Presidency.<sup>18</sup>

The one-party constitution did replace the Vice President with a Prime Minister, but it made him subordinate to the Secretary General of UNIP as the second-in-command to the President. Although Article 55 designated the Prime Minister as "the head of Government administration," the President remained the de facto head of government as well as the de jure head of state. The Prime Minister was expected to be an administrator--a chief of staff, not the chief policy-maker in the national government--who was to be subordinate in all respects to the President in order to ensure "a unified command under an Executive President."<sup>19</sup> Although the President was expected to consult with the Prime Minister before naming or replacing other ministers and the Attorney General, the Cabinet and all its ministers, including the Prime Minister, finally remained accountable solely to the President. There continued to be no constitutional provision for individual or collective responsibility to the National Assembly, nor any obvious constitutionally-sanctioned device by which it could require ministerial accountability.<sup>20</sup>

The National Assembly's marginal role in national policy-making was legitimated and perpetuated. If its authority was not explicitly reduced, its relative position was weakened by new or expanded grants of presidential authority and by the subordination of the Government to the Party. Even more than before, the Assembly lacked the constitutional powers necessary to effectively restrain the exercise of presidential power that now was acknowledged to rest at least as much on the President's position within UNIP as on his elective office. It soon became common to refer to "the Party and its Government."

The 1964 and 1973 constitutions created formally separated legislative and executive institutions,

but with one glaring exception: all ministers, including the Prime Minister under the 1973 regime, were required to be members of the National Assembly. On the other hand, the constitutions did not provide equally well for a *balanced* sharing of powers by these largely separated institutions. Specifically, the President was virtually autonomous in his authority over the selection of Government officials and over the organization of the Government and the implementation of the laws. The National Assembly did not share in these powers to any significant degree. On the other hand, the President did have significant constitutional means by which he could share in the law-making power by either influencing or circumventing the National Assembly.

In September 1990, President Kaunda responded to growing public discontent by announcing that his party was prepared to renounce its constitutional monopoly and that Zambia should prepare for multi-party elections. Two months later, the National Assembly unanimously approved a constitutional amendment to permit other political parties to present candidates for election to both the National Assembly and the Presidency, with new elections to be held late the following year. The elections at which Kaunda and UNIP were defeated so decisively took place at the end of October 1991. However, a new constitution under which President Chiluba assumed office already had been adopted in August 1991, several months before the elections.<sup>21</sup>

The new charter embodies a clear, though ultimately modest, change in constitutional direction. Whereas the net effect of the 1973 constitution was to preserve or even strengthen effective presidential power, the 1991 constitution moves in the opposite direction--on paper at least, toward some strengthening of legislative powers. Compared with the importance of ending all constitutional references to UNIP and the one-party regime, the changes in legislative and executive powers were largely incremental.<sup>22</sup> On balance, though, these changes tend to favor the National Assembly by giving it enhanced opportunities to assert itself if it chooses to do so.

The National Assembly must renew its approval of a state of emergency at thirty-day intervals, though the new constitution again fails to specify what powers are triggered and what rights are affected when a state of emergency is in effect.<sup>23</sup> In the unlikely event of a severe political deadlock, the National Assembly can, by a two-thirds vote, compel new presidential and parliamentary elections. The National Assembly also must approve certain government reorganization proposals; and for the first time, it is empowered to confirm some presidential nominees, such as the Attorney-General, the Solicitor-General, the Chief Justice and certain other judges.<sup>24</sup>

On the other hand, the National Assembly's new confirmation powers do not extend to the Vice President and Ministers of the Government. (The position of Prime Minister was abolished and that of Vice President re-established.) Although the current constitution accepts the value of parliamentary confirmation of some appointments, it does not apply this requirement to precisely those officials who, with the President, are primarily responsible for policy formulation and execution. Nor may the National Assembly remove any of these officials from office, even by the procedures by which it may impeach and remove the President himself.

Thus, although the constitution does state that "[t]he Cabinet shall be accountable collectively to the National Assembly" (Article 51), it is difficult to envision what operational meaning this assertion is intended to have. The Ministers of Government (and the Vice President) must be members of the National Assembly but they are not at all responsible to it in any way that defines the fundamental features of parliamentary regimes. The National Assembly of Zambia has the potential to be a stronger institution under the current constitution than under either of the earlier charters. Nonetheless, it clearly remains a part

of what is essentially a presidential system. If it is to fulfill its constitutional potential, therefore, it must have the institutional capacity to engage effectively in the recurring contests for power that typify this kind of regime. The record indicates, however, that it has not done so. A charitable interpretation would be that the National Assembly always has thought of itself as a parliament within a presidential system.

### ***THE NATIONAL ASSEMBLY IN PRACTICE***

Zambia's constitutional history would lead us to expect either that the National Assembly has been relatively weak and ineffectual or that it has had to assert itself vigorously, and equip itself well, in order to carve out and maintain an influential place in successive constitutional systems that clearly favored presidential power. In fact, the most striking thing about scholarly analyses of Zambian government and politics during the First and Second Republics is how little is said about the National Assembly. It usually is mentioned in passing, if at all, as an institution of little more than incidental importance for the practical process of national policy-making. Even so, what emerges is a picture of an inactive and ineffectual institution that has done little to change that condition.

In the most thorough examination of the National Assembly in operation, Tordoff and Molteno wrote in 1974 of that its imposing building epitomized its position in the polity and society:<sup>25</sup>

Zambia's new National Assembly building occupies a dominant position some four miles from the commercial centre of Lusaka. Costing over one million kwacha, with the external walls of its four-sided chamber sheathed in copper, it reflects the scale and source of the country's opulence. Yet the building is in use for only a small part of the year. Its visitors' galleries are seldom full. No throngs of constituents toil up the hill to see their representatives. The very newness and quietness of the building, and the polished sophistication of its interior, symbolize the limited part which the National Assembly plays in the Zambian political scene.

The formal confirmation of one-party rule only institutionalized a condition of weakness that had been evident almost from the beginning of the First Republic in 1964. It was from the combined dominance of President and Party that the infirmity and irrelevance of the National Assembly derived. As head of both "the Party and its Government," Kaunda often exercised power unilaterally, without any semblance of collective cabinet decision-making and certainly without deference to the National Assembly.<sup>26</sup> Tordoff aptly captured the condition of the National Assembly during the First and Second Republics when he characterized it as a "residual legislature."<sup>27</sup>

Ironically, the one respect in which Zambian constitutional design has reflected the practice of many parliamentary systems has been a source of weakness, not strength, for the National Assembly. The requirement of all three national constitutions that ministers must be drawn from the ranks of MPs has had the perverse effect of removing large numbers of MPs from effective parliamentary service and making them dependent on continued presidential favor. In 1972, roughly 80 percent of MPs (all UNIP members, of course) were Cabinet Ministers, Ministers of State, or senior diplomats; "this left a mere twenty or so UNIP back-benchers."<sup>28</sup> As recently as 1990 only 15 of the more than 120 MPs did not hold appointive (and, presumably, time- and attention-consuming) government offices.<sup>29</sup> The enormity of this "payroll vote" can only have seriously undermined the National Assembly's institutional capacity by distracting most of its members from concentrating on their parliamentary responsibilities and by giving them a vested interest in supporting the government, if necessary against the legislature in which they served.

As we would expect under these circumstances, the Party, Cabinet, and especially the President have dominated the formalities of the legislative process--a process in which the National Assembly and its members appear not to have played much of an independent part. The UNIP-controlled government monopolized the legislative initiative even under what was ostensibly the multi-party regime of the First Republic; "not only has no private Bill been passed by the Assembly, but no back-bencher has even introduced a private Member's bill."<sup>30</sup>

Recognizing that policy decisions actually were made within the Party, often in concert with the affected ministries, MPs quite reasonably concluded that it would be both safer and more productive to try to influence this de facto legislative process. The executive's monopoly over legislative proposals persisted throughout the years of the UNIP regime.<sup>31</sup>

Furthermore, no observer has suggested that the National Assembly scrutinized legislation very carefully on its way to enactment. UNIP MPs were expected to ratify the proposals of the "Party and its Government." The lack of prolonged critical or constructive debate on government Bills was reflected in several ways. First, the average number of days it took for a Bill to pass through all its stages in the National Assembly was low, while a few Bills were rushed through the Assembly in one or two days only. In the second place, more than half of all government Bills were passed without amendment; back-benchers almost never moved amendments to such Bills and, on the rare occasions when opposition MPs did so, their amendments were rejected. Finally, it became customary for no debate at all to be held at the committee stage and third reading of a Bill. Thus the second-reading debate covered both the principle of the Bill and detailed criticism--if any--of its clauses.<sup>32</sup>

The constitutional provisions for presidential vetoes were almost entirely irrelevant because there was no likelihood that President Kaunda ever would have to exercise them.

This characterization is not particularly unusual for parliaments, which are not bodies primarily engaged in initiating legislation or even refining bills proposed by the Government that enjoys its support. However, there is not much more evidence that the National Assembly actively engaged in more characteristic parliamentary activities: debating national issues and scrutinizing the performance of the Government.

During the First Republic, when the National Assembly met for an average of roughly 50 days per year, the role of UNIP backbenchers "was almost non-existent. They had a strong tendency not to participate. They were reluctant to make speeches in debate. With only one exception..., no UNIP back-bencher ever put a question between January 1964 and December 1968."<sup>33</sup> In her study of the later one-party regime, Gertzel reports that UNIP MPs sometimes did criticize government policy, but she finds no evidence that they regularly were able to effect noteworthy policy changes. "The significance of the National Assembly lay...less in its control of the executive than in the opportunities it provided for an independent forum where political debate could be conducted outside the structures of the party...."<sup>34</sup> But, Tordoff concludes, the Assembly's contribution to policy-making was "incidental."<sup>35</sup>

Parliaments often rely on committees to monitor and review Government activity, such as a Public Accounts Committee with authority to review audits of Government expenditures. Writing of the First Republic, Tordoff and Moltano found that this was the only committee that scrutinized the actions of the Government but even it usually issued only one report each year; "in the field of committees which watch the activities of the executive, the Zambian Assembly has almost none."<sup>36</sup> Despite the permanent state of

emergency that prevailed throughout the First (and Second) Republic, the National Assembly of the pre-1973 multi-party regime lacked a committee on statutory instruments to review and monitor the regulations and decrees that were promulgated without the need for prior legislative approval.

Between 1971 and 1992, the National Assembly created only six select committees to conduct inquiries and investigations, and most of them worked for no more than one to three weeks each. There are "sessional" committees with continuing responsibilities, but these responsibilities far exceed their capacities. For example, an eight-member committee is expected to examine all statutory instruments, and committees of ten members each are charged with reviewing the activities of more than 200 parastatal entities and checking on all expenditures made by the Government, with or without the National Assembly's prior approval. Furthermore, there are no more than a dozen professional staff members to serve these and all other committees.<sup>37</sup>

These conditions are not simply indicative of the conditions in which parliaments of relatively poor countries must work. They also are indicative of the extent to which the National Assembly and its leaders have been willing to defer to the Government and even subject themselves to its control. In its review of the national budget, the Assembly does not even have the power to increase its own budget above the estimate provided by the Ministry of Finance.<sup>38</sup>

One reason for such deference, of course, has been the one-party system that has tied members of the National Assembly to the President and his Government. It is the thesis of this analysis, however, that the condition of the National Assembly also has been shaped by the power of the British example, which has affected both the forms and the formalities of its parliamentary practice.<sup>39</sup>

Despite the incorporation of Zambian traditional culture in the internal architecture of the chamber--its murals, its woodwork, and the presidential chair framed by two huge elephant tusks--much of Westminster's formal ceremony and custom is also reproduced. A costumed serjeant-at-arms, bearing a splendid copper mace, precedes Mr. Speaker, himself gowned and bewigged, into the chamber. The formal rules of procedure follow those of the British Parliament closely and, in cases of doubt, the Standing Orders (1967) of the National Assembly are to be interpreted in the light of the relevant practice of the House of Commons.

Many of the National Assembly's Standing Orders continue to be taken verbatim or clearly derived from those of the British House of Commons. The Zambian code even provides for a "debate on a Motion of Thanks to His Excellency's Address," which almost certainly derives from the British "Debate on the Address thanking her Majesty for her Speech." In short, it is to Westminster that the National Assembly has looked and, to a considerable degree, continues to look for its model, even though it may no longer be appropriate to Zambian constitutional and political experience.

### ***IMPLICATIONS FOR THE DEMOCRATIC TRANSITION***

The constitutional inheritance of Zambia's new Third Republic is a political system that retains some formal elements of British parliamentarism, but that much more closely resembles, in theory as well as in practice, American presidentialism. On the other hand, the National Assembly has not demonstrated the independence and assertiveness that is required of a legislature if it is to effectively balance and control presidential power in a separation-of-powers system. And not only has the Assembly acquiesced to

presidential dominance, both before and during the one-party regime, it has failed to develop the organizational structure and institutional resources that a more autonomous role in policy making and policy review would require. The result is a striking lack of congruence between Zambia's constitutional design and the institutional capacity of its key institution of representative democracy.

If the Government in Lusaka were the agent of the parliamentary majority, the institutional weaknesses of the National Assembly would matter far less. The responsibility for initiating legislation and largely controlling the Assembly's agenda and decisions would rest with the Government, as it typically does in parliamentary regimes, but the Assembly would retain the final recourse of unmaking a Government that lost its support. But lacking this ultimate power, the National Assembly has been, and evidently remains, a weak parliament in a strong presidential system. This situation does not bode well for the development and institutionalization of a democratic regime in which there are effective protections against excessive concentration of power in one person or institution.

Political systems do not always behave the way that political analysts would predict, so democracy may flourish in Zambia under the constitutional and political arrangements that have been described here. But it will remain at risk because there are not built into the system effective controls on presidential power. A political system that combines a president with a parliament is inherently unstable.

If Zambians accept this analysis, they could institute constitutional changes that would strengthen the National Assembly at the expense of the presidency. Ironically, however, the very success of the Movement for Multiparty Democracy undermines the incentives for constitutional reform. In the 1991 elections, the MMD took 125 of the 150 seats in the National Assembly and President Chiluba won roughly 80 percent of the presidential vote. UNIP was decimated as an effective political force and no coherent and organized opposition party has yet emerged to take its place. Instead of transforming Zambia from a one-party state into a multi-party state, the events of 1990-1991 may result in a transition from one single-party regime to another.

At a minimum, the temptations of power suggest that it would be unwise to rely on the beneficence of the Chiluba government or any other to voluntarily undertake constitutional changes that will seriously reduce presidential power vis-a-vis the National Assembly. However, changes in constitutional design are not the only potential protection against unfettered presidentialism. There is room within the current constitutional order for the National Assembly to grow--to redefine its responsibilities and its relationships with the President and his Government, and to give itself the institutional capacity it would need to assert itself more actively and effectively within the existing constitutional context. If the National Assembly succeeds in transforming itself from a parliament into a legislature, it then can take the initiative to promote constitutional change, but there will be much less need to do so.

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2. This analysis is concerned only with selected aspects of the successive constitutional regimes: only those aspects that affected, more or less directly, the legislature and executive and the relations between them. In particular, it does not address the relationships between these two institutions and the judiciary, especially the opportunities for judicial review of the legality and constitutionality of legislative and executive actions.

3. Ministers who did not come from the ranks of the Legislative Assembly apparently were expected to join them as soon as possible. Section 70 permitted a minister to serve in office for only six months unless he was "a Minister appointed from among the members of the Legislative Assembly or who, while holding office as a Minister, becomes a member of the Assembly." The Northern Rhodesia (Constitution) Order in Council, 1963, to which the constitution is attached as a Schedule; Statutory Instruments, 1963, No. 2088, published on January 1, 1964.

4. Parenthetical references are to sections or articles of the 1963 and successor constitutions.

5. The Governor was not a constitutionally-designated member of the Cabinet (Section 71), nor was he expected to attend its meetings. Instead, the Prime Minister was directed to inform the Governor in advance of each Cabinet meeting and the agenda for it, and then to inform him after the fact about what had transpired (Section 76).

6. J.A.G. Griffith and Michael Ryle, *Parliament: Functions, Practice and Procedures* (London: Sweet & Maxwell, 1989), p. 4.

7. Chapter V also established a House of Chiefs that was somewhat akin to the House of Lords.

8. David C. Mulford, *Zambia: The Politics of Independence, 1957-1964* (London: Oxford University Press, 1967), p. 338.

9. William Tordoff and Robert Molteno, "Introduction," in William Tordoff (ed.), *Politics in Zambia* (Berkeley and Los Angeles: University of California Press, 1974), p. 197, pp. 11-12.

10. All references to, and quotations from, the 1964 constitution are taken from Amos J. Peaslee, *Constitutions of Nations, Volume I - Africa*, Revised Third Edition prepared by Dorothy Peaslee Xydis (The Hague: Martinus Nijhoff, 1965), pp. 1024-1099. See also the Zambia Independence Act of July 31, 1964, and the Zambia Independence Order of October 15, 1964.

11. William Tordoff and Robert Molteno, "Government and administration" in Tordoff, *Politics in Zambia*, p. 249.

12. Morgan argues that UNIP intra-party politics constrained the President's selection of Cabinet members

and his ability to impose his will without regard to Cabinet opinion. "In fact, in the multi-party state, the President probably required the support of some, at least, of his Cabinet before a particular policy went ahead. His position in regard to the Cabinet may have been stronger than that of a modern British Prime Minister's but it was not as commanding as the United States President's." David Gwynn Morgan, "Zambia's One Party State Constitution," *Public Law*, Spring 1976, p. 59. Even so, any such constraints remained extra-constitutional.

13. The sole exception to the President's removal power was the Auditor-General, whom the National Assembly could remove by majority vote without any presidential involvement (Section 119). With respect to certain appointments and disciplinary actions, Section 115 did require the President to consult with a public service commission, but that commission was to consist of members whom he could appoint and remove (Section 114). Presidential control over personnel did not extend to the Clerk of the National Assembly and his subordinates (Section 70).

14. The tribunal was to be selected by the Chief Justice whom, in turn, the President appointed and could remove upon recommendation of a tribunal he also appointed (Section 99).

15. The President also enjoyed total immunity from civil proceedings in his private capacity and total immunity from criminal proceedings in *both* his official and private capacities (Section 43). In short, the President literally was above the law. By contrast, the 1964 constitution included no corresponding immunity protections for members of the National Assembly, even for statements made in debate.

16. As Morgan aptly put it, "Zambia's Independence Constitution...possessed a feature which was only acquired by other anglo-phone African countries through later amendment. Not only was the President Head of State and Head of the Executive, but as Head of the Executive he enjoyed the strengths of the British Prime Minister and the United States president without the weaknesses of either." David Gwynn Morgan, "Zambia's One Party State Constitution," p. 42.

17. All references to, and quotations from, the 1973 constitution are taken from Neville Rubin, "Zambia," in Albert P. Blaustein and Gisbert H. Flanz (eds.), *Constitutions of the Countries of the World* (Dobbs Ferry, NY: Oceana Publications, Inc., 1974).

18. "The Constitution does not constitute a sudden swerve from what went before. The Independence Constitution was amended over 30 times and the tenor of these changes was to remove fetters from the executive, a trend which is certainly not reversed in the new Constitution. More important, though, the new Constitution is in many respects a codification of practices and tendencies which had grown up under, and sometimes in spite of, its predecessor and which had given rise to the use of the term, 'the dominant-party State.'" Morgan, "Zambia's One Party State Constitution," p. 44.

19. Republic of Zambia. *Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia. Summary of Recommendations Accepted by Government.* Government Paper No. 1 of 1972. p. 4.

20. The 1973 charter granted the President two potentially important new powers. First, Article 62 gave him authority to create offices and make appointments to them outside of the civil service. And second, Article 117 created an ombudsman of sorts in the form of a Commission for Investigations that the President could direct to investigate (or refrain from investigating) the conduct of virtually all public officials and

employees. The President himself was explicitly exempted from the Commission's scrutiny; members of the National Assembly were not.

21. To make recommendations for the new constitution, Kaunda appointed the Constitution Commission of Inquiry chaired by Professor M.P. Mvunga. The Commission submitted its report on April 25, 1991. Republic of Zambia. *Report of the Constitution Commission*. (April 1991). The Government responded with a White Paper that addressed each Commission recommendation point by point, indicating whether or not the Government was prepared to accept it, with or without amendments. Republic of Zambia. *White Paper: Government Reaction to the Mvunga Commission Report*. Government Paper No. 2 of 1991.

22. One change may become important in the future: a President now may serve for only two five-year terms (Article 35).

23. All references to, and quotations from, the 1991 constitution and the Constitution of Zambia Act, 1991 (Act No. 1 of 1991) are taken from Timothy Ferguson, "Zambia," in Albert P. Blaustein and Gisbert H. Flanz (eds.), *Constitutions of the Countries of the World*. Dobbs Ferry, NY: Oceana Publications, Inc., 1992.

24. However, the President is empowered to appoint a nominee to office without National Assembly approval if the legislature already has rejected his first two nominees for that office. Although this provision protects against an office remaining vacant because of a political deadlock, it also requires Assembly members to think carefully before rejecting a presidential nominee; a subsequent nominee to that office may be even less appealing but may not be subject to parliamentary approval.

25. William Tordoff and Robert Molteno, "Parliament," in Tordoff, *Politics in Zambia*, p. 197.

26. Kaunda took advantage of his exclusive power over ministerial appointments by using them to recognize, satisfy, and balance the ethnic, regional, and other factions that developed within UNIP. But perhaps precisely because he often selected ministers for such reasons, he chose not to involve the Cabinet collectively in decision-making. "The Zambian Cabinet functions according to Kaunda's personal will, and he does not necessarily seek ministers' advice on major issues....The Cabinet is a poor third to the President and UNIP's Central Committee as a policy-making instrument." Jan Pettman, *Zambia: Security and Conflict* (New York: St. Martin's Press, 1974), p. 45. Clearly, then, Kaunda made no persistent effort to mimic the practices of collective Cabinet deliberations and decision-making that are characteristic of Westminster-style parliamentary systems.

27. William Tordoff, "Residual Legislatures: The Cases of Tanzania and Zambia," *Journal of Commonwealth and Comparative Politics*, v. 15, n. 3, November 1977, pp. 235-249.

28. Tordoff and Molteno, "Parliament," p. 212.

29. Robert H. Bates and Paul Collier, "The Politics and Economics of Policy Reform in Zambia." Manuscript, February 1, 1992, pp. 27-28.

30. Tordoff and Molteno, "Parliament," p. 228.

31. "Even today, all legislative proposals emanate from the executive branch, usually through the cabinet.

Although MPs may introduce 'private members' bills', the requirement that legislators personally cover all costs means that this provision is seldom, if ever, exercised." James Wunsch, Michael Bratton, and Peter Kareithi, "Democracy and Governance in Zambia." Manuscript. June 15, 1992, p. 26.

32. Tordoff and Molteno, "Parliament," pp. 228-229. According to their data, the National Assembly passed a total of 427 bills between 1964 and 1970; 158 (or 37 percent) of them were amended in committee. However, "[t]he great majority were government amendments. Private Members almost never moved amendments and, if they did, they were rarely accepted." Ibid., pp. 226-227.

33. Tordoff and Molteno, "Parliament," p. 235.

34. Cherry Gertzel, "Dissent and authority in the Zambian one-party state 1973-80," in Gertzel, et. al., *The Dynamics of the One-Party State in Zambia* (Manchester, U.K.: Manchester University Press, 1984), pp. 83-84.

35. Tordoff, "Residual Legislatures," pp. 241-243.

36. Ibid., pp. 200-201.

37. Wunsch, Bratton, and Kareithi, "Democracy and Governance in Zambia," p. 27.

38. Ibid.

39. Tordoff and Molteno, "Parliament," p. 199.