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## *Parliamentary Committees in Zambia's Third Republic: Partial Reforms; Unfinished Agenda\**

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*This article critically examines the contribution of Parliamentary committees in Zambia to democratic government. Several committees are of long-standing including the Committee on Government Assurances and Committee on Delegated Legislation; others, notably committees involved in departmental oversight were refashioned, expanded and given additional powers in 1999. They have worked hard to make government more open and accountable. Additional proposals for reforms to the committee system are currently being studied by a committee of Parliament. Although measuring the 'effectiveness' of such committees is not easy due to conceptual and methodological difficulties, their ability to influence policy and administration is found to be severely limited due to the absence of effective mechanisms to enforce their recommendations. The article maintains that this situation is unlikely to alter significantly unless there are wider changes in the party system, the institutional balance of power between executive and legislature, and the political culture more generally.*

### **Introduction**

In Zambia, according to one prominent former Member of the National Assembly who is now Secretary General of the Southern African Development Community Parliamentary Forum, Parliament's work is 'shrouded in mystery and myth'.<sup>1</sup> This observation might seem unsurprising. Zambia's Parliament has never enjoyed a high reputation, not least because of an enduring presidential bias to the political system. Moreover between the mid-1970s and 1990 it was the country's declining economic fortunes not its political institutions that formed the principal object of attention, once social scientists became disillusioned with the failure of President Kaunda's seemingly innovative attempt to make 'humanism' the governing credo. Furthermore there is now a consensus that parliaments the world over are generally in decline, as political power is shifting to executives and as it leaks away from governments to other institutions such as economic actors and increasingly global forces - in Zambia's case to

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international donors for example. However, the Third Republic in Zambia and the election of a new party to government and new president in 1991 stimulated expectations that the country could be about to cross the threshold of western-style liberal democracy. Zambians too believed that power would be redistributed from the executive to the people and their representatives in the legislature. By lifting the veil on an important feature of today's Parliament, especially the scrutiny or oversight committees, this article makes a contribution to assessing how far those initial expectations have been met, and the reasons for the present mood of disappointment.<sup>ii</sup>

The study argues that the parliamentary committees have minimal effect in making government accountable, notwithstanding their hard work and the commencement of a programme of modernising reform in 1999. Effective accountability demands not just that the executive is required to give an account of its conduct (*answerability*) but that the strictures of bodies that should hold government to account are *enforceable*. It is in the matter of enforceability that the committees are most deficient. However, this defect is a weakness in the totality of executive-legislative relations as determined by Zambia's constitution; it is embedded in a cluster of institutional relations, whose reform is long overdue.<sup>iii</sup> The committees by themselves are relatively powerless to change that. But that fact does not make them irrelevant. On the contrary, the article suggests that the committees actually and potentially perform some very useful functions, in particular exposing the operations of government to a critical light - in a country where much political debate is of a polemical and personally-charged nature and pays too little attention to careful presentation of the evidence. After a brief introduction to the political context, the article proceeds by presenting detailed evidence about the performance of these little known institutions in Zambia, before drawing inferences about their effectiveness by reference to a checklist of functions or roles against which parliamentary committees can be assessed.

In Zambia there is a programme of reforms to modernise Parliament, but will they help the committee system, in principle one of the leading agents of accountability, to fully realise its potential? Here the argument is much less sanguine. The article agrees that constitutional reforms like allowing the National Assembly to pass motions censuring individual ministers would represent an advance, in so far as ministers were then less likely to be captured by the

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narrow agendas of the presidency or selfish interests. But not even the advocates of 'new institutionalism' who argue that the organisation of political life makes a difference,<sup>iv</sup> assert that institutional tinkering is a panacea - not in Zambia, not in any of the new and emerging democracies, and not even in the established democracies, where there is much evidence of an erosion of public confidence in government and in the legislators. In Zambia the formal political institutions cannot be divorced from such environmental factors as the informal patterns of neo-patrimonialism and clientelism (which undermine the distinction between public and private spheres and inject particularistic values into public service), the predominant party system and the extreme poverty of the people.<sup>v</sup> The United Nations Development Programme's Human Development Index places Zambia 143 out of 162 countries; around 90 per cent of the population are reckoned to be trying to survive on the equivalent of less than two dollars a day. These contextual matters have profound political significance and occupy a big canvas. They have been explored elsewhere and are not the primary focus here. For the presumption that a *comprehensive* understanding of the parliamentary committees cannot be gained in complete isolation from the broader issues does not mean we should spurn more focused attempts at uncovering the 'mystery and myth'. After all, it would be absurd to pretend that nothing valuable can be discovered about something unless something is said about everything - an impractical proposition, anyway.

### **Political Context**

Zambia's constitution provides for a hybrid form of government that combines a strong executive presidency with parliamentary characteristics and traditions inherited from the Westminster system. Parliament consists of the President, who is both head of state and head of government and is elected directly by the people, and the National Assembly, which comprises 150 elected seats and up to eight seats appointed by the President. According to Article 87 of the constitution the laws and customs of the Parliament of England shall apply to the National Assembly, with such modifications as Parliament itself has authorised. The President and Parliament both serve five-year terms, which run concurrently. The government is made up of the President and cabinet ministers and other ministers and deputy ministers - a total number approaching 70 - appointed by the President from the members of the House. The constitution states that cabinet shall formulate the policy of the government and shall be responsible for advising the President on policy. It also says that cabinet and deputy ministers shall be accountable *collectively* to the National Assembly. But the notion that ministers should be individually so accountable has been resisted by the executive, on the grounds that

they are appointed by and answerable to the President.<sup>vi</sup> Apart from the special and limited grounds on which the President may be removed on grounds of incapacity, or impeached for violation of the constitution or gross misconduct, the chief means open to the assembly to enforce governmental accountability is by dissolving itself, which requires a two-thirds majority. This triggers general elections for Parliament and the Presidency. The National Assembly can also be dissolved by the President. Thus, unlike purely presidential systems the two branches are not mutually independent. Since October 1991 the Presidency and a large majority of seats in Parliament have been held by the Movement for Multi-party Democracy (MMD), which won 125 and 131 of the elected seats in the 1991 and 1996 general elections.

The assembly is best described as a reactive, not proactive body. Although MPs have the power to initiate both private members bills and private bills (to promote or benefit the interests of some particular person or group, not the general benefit), in practice the executive has monopolised the introduction of new legislation. Parliament enacts rather than makes law, and for this reason, according to Shugart and Carey, the term 'assembly' is a better description than 'legislature'.<sup>vii</sup> Although this state of affairs is not unusual - indeed the conventional view of 'legislatures' is that their decline is 'commonplace, such decline being peculiarly severe in systems of parliamentary government'<sup>viii</sup> - it draws attention none the less to the relative importance of Parliament's powers of scrutiny and oversight of the executive. These are important areas where it can at least try to maximise its contribution to democracy. The powers are exercised by the Parliamentary committee system; in the words of a popular textbook a strong committee system is what largely defines a 'working' as opposed to a merely 'talking' assembly.<sup>ix</sup> The extent to which in Zambia the committees' activities translate into real power and influence, and what that reveals about the conduct of government in the Third Republic since the MMD took office (1991), are the focus of this inquiry.

The inquiry audits two General Purpose Committees whose brief ranges over all departments, namely the Committee on Government Assurances and Committee on Delegated Legislation (the third General Purpose Committee, the Public Accounts Committee is examined elsewhere<sup>x</sup>). It also examines the record of the departmentally-oriented committees, especially since the reforms in 1999 that refashioned, expanded and gave additional powers to these oversight committees. Finally the survey examines the ad hoc select committees set up for the purpose of ratifying official appointments that are supposed to enjoy independence of the executive. The account is not concerned with the House-Keeping Committees, namely the

Standing Orders Committee (SOC) and the Committee on Privileges, Absences and Support Services, although the former, chaired by the Speaker, is a powerful body that selects the members of the sessional and ad hoc select committees. The seven members of the SOC include the Vice President, government Chief Whip and the Minister Without Portfolio (Michael Sata, who is also the MMD's National Secretary). The audit here draws on evidence from several years of reports of the committees and the government's written responses. It concludes with an account of the reasons why even further improvements to the committee system along lines that have already been agreed by the parliamentarians will not produce a quantum leap in their effective contribution to democratic government. However, before proceeding to the details it is necessary first to introduce the question of yardsticks for assessing performance.

### **The Effectiveness of Parliamentary Committees**

It is widely recognised that Parliaments or assemblies can serve the interests of good government and democracy in a number of ways other than as law-making bodies, and the same point is true of committees. Some possible functions range from putting information in the public domain and holding government to account, to contributing to policy formation and taking government closer to the people. The variety of possibilities creates methodological difficulties for assessing how successful committees are. The problems of measuring effectiveness are well known, not least that we can never know the counterfactual.<sup>xi</sup> Different standpoints give rise to different judgments, especially where choices have to be made among multiple criteria and different rank orders of functions. The impact of committees can in any case be hard to identify and impossible to quantify in any strict sense. But this does not in itself mean committees fail to influence a government's thinking or conduct in ways both agreeable and disagreeable. Because different committees specialise in different tasks any attempt at an aggregate assessment can be misleading. Moreover, the risks of cultural relativism in devising performance indicators are ever present and there are dangers in applying inappropriate yardsticks to alien settings. For all these reasons, a logical place to start is with the aims and objectives as formally laid down by the instruments of authorisation. But of course these may not encapsulate the full range of effects or consequences, formal and informal, intended and unintended, some of which could be very significant for the democracy.

### **Committee on Government Assurances**

The Committee on Government Assurances is mandated to scrutinise all assurances, promises and undertakings made by cabinet ministers and deputy ministers on the floor of the house, usually at question time or during the budget presentation, with the objective of ensuring that they are implemented. The committee quizzes the ministries concerning action taken and seeks clarification of issues not adequately dealt with in the *Action-Taken* reports that the government is obliged to make and which it is the responsibility of the Vice-President to present to the House. Once the committee takes the view that the government has satisfactorily discharged its obligation the committee announces closure of the issue (departments can appeal against non-closure but the committee can resolve to keep the assurance open). Thus in the course of 13 meetings in 2000 for example, the committee reviewed 143 assurances from 21 ministries, the Zambia Revenue Authority, Office of the Vice-President and Public Service Management Division (Cabinet Office). The assurances vary enormously in scale and complexity, from for instance the Public Service Reform Programme (a major retrenchment exercise in the bureaucracy) to the building of a local post office. The assurances that are investigated can refer to matters as different as the formulation of a promised new policy, steps to implement a policy, and the attainment of concrete results from implementation. Because of the all-embracing nature of this remit and the great diversity of the assurances the committee's capacity to produce impressive results is questionable, which in turn must colour any meaningful analysis of its performance.

Furthermore the assurances can and often do go back several years, for example the 2000 report went as far back as 1984 and itemised 17 assurances from the 1980s, 37 from the years 1990-1995 and 89 since 1985. In terms of effecting accountability there seems to be little point in chasing issue from former administrations. Moreover the scope to add new assurances is governed by the rate of closure. Given the slow pace at which the older items are closed some of them simply have to be quietly abandoned, if the entire process is not to be overwhelmed by an increasing backlog. However, it is not just the pre-1991 backlog but the fact that the committee continues to identify fairly recent assurances where it feels unable to announce closure that suggests the procedure is not wholly effective. The system has certainly not caused government to make only assurances that it knows it can and does keep. In the 1997 report for instance, out of 135 assurances there were no closures and many requests to be kept informed of progress; 1998 saw 15 closures out of 169 assurances; 1999 saw seven closures out of 153 assurances.<sup>xii</sup> In 2000 a quarter of all assurances were closed, the majority

of them dating from after 1995. While this was a major improvement, it is too early to conclude there is an upward trend.

The reasons why assurances remain unfulfilled could be more significant but are harder to discern. The reason cited most often by the government is lack of money, which crops up in a third of the cases. Although this looks plausible - the state is as financially distressed as the nation's economy is depressed - the committee has in fact repeatedly rejected this explanation. The explanation is that a deeper and more varied range of forces are at work, which reflect ill on the government: obstructive behaviour by the cabinet; bureaucratic inertia; confusion of responsibility between departments; financial mismanagement; slowness of government agencies to pioneer other ways of raising funds than by appealing to the Ministry of Finance and Economic Development (MOFED); and, when ministers make promises on the floor of the House, amnesia about the financial constraints or a failure to cost all the resource implications first. The unpredictable behaviour of foreign donors is another factor; and the government in its *Action-Taken* reports is occasionally able to report progress as a result of donor initiatives to 'adopt' a spending item. A conscious intention to mislead the House when making assurances cannot be discounted. But where the main problem is MOFED's refusal to release funds to departments - something that is within its legal powers even when the expenditure has received Parliament's approval - there is not much the assurances committee can do or expect to see done. At best it can lend support to recommendations from the Public Accounts Committee and Estimates Committee that address the larger budgetary picture, in particular the sway of particularistic and personalised influences on spending allocations and actual disbursements.

### **Committee on Delegated Legislation**

The Committee on Delegated Legislation scrutinises whether the powers to make orders, rules, sub-rules and by-laws delegated by Parliament are being properly exercised. The instruments must be in accordance with the constitution or with statute law, and must not trespass unduly on personal rights and liberties or cause rights and liberties to be at the whim of administrative decisions. They must be concerned only with administrative details and not amount to substantive legislation. The committee, whose members usually include at least one MP with professional legal qualifications, meets around eight times a year. The number of Statutory Instruments (SIs) examined ranges from around 40 to a high of 88 (in 1994). The reports



include consideration of the government's *Action-Taken Reports* on the committee's previous report and recommendations.

If the committee is of the opinion that an instrument should be revoked or amended and reports such an opinion and the grounds to the House then the National Assembly has the opportunity to vote on the matter. In practice the committee's reports have tended to conclude with an overall judgment that the SIs did indeed comply with the requirements of the law, notwithstanding concern about some individual items such as poor legal drafting or the government's failure to respond appropriately to previous recommendations. The reports are relatively slim not least because many of the government's responses have been perfunctory. They have frequently passed comment on the government's habit of issuing SIs before Parliament has voted on the bill that would give authorisation, especially in matters relating to the budget. They also deplore the consistent failure by government to submit Explanatory Memoranda to the committee (as in respect of no less than 48 SIs in 1994 and 30 of the 74 SIs in 1997).<sup>xiii</sup> Although on some occasions the government has taken corrective action to assuage the committee on others it has been defiant and simply restated its case. In short, government appears to believe it can ignore the committee's findings where it chooses to do so - not a particularly unique disposition, but in the Zambian context yet another sign of an underinstitutionalised state.

### **Departmentally-oriented Committees**

In 1999 the seven departmentally-oriented 'watchdog' or investigatory committees were replaced by 11 new committees with the objective that for the first time all ministries and departments would be included in the arrangements for regular scrutiny and without overlap of responsibilities.<sup>xiv</sup> The package of reforms was born of a realisation that other parliamentary systems were making innovations to help strengthen the legislative branch vis-à-vis the executive.<sup>xv</sup> Also it was intended to create opportunities for public participation in the legislative process, by making the committee proceedings more open, thereby taking Parliament closer to the people. Thus the duties of the departmentally-oriented committees are, first, to study, report and make recommendations to the government through the House on the management and operations of executive bodies; second, to carry out detailed scrutiny of certain activities undertaken by government; third, to make, if deemed necessary, recommendations to the government on the need to review certain policies and/or legislation;

and fourth, to consider any Bills in committee stage that may be referred to them by the House. It was believed this last would lead to more thorough scrutiny of legislative proposals.

The committees decide their own programme of work for the year. They are empowered to require witnesses from inside and outside government to provide information and to appear in person. The committees 'will be allowed to conduct public inquiries and the press should comment and report on their activities during their proceedings'.<sup>xvi</sup> Interested members of the public may submit written comments and may thereafter be invited to attend as witnesses. Once a committee report has been adopted by the House the government should reply within 60 days in the form of an *Action-Taken Report* tabled in the House. The executive is not required to implement committee recommendations providing it gives a convincing reason. This is nothing unusual especially in parliamentary systems that draw on Westminster traditions: in the UK 'select committees are, and can realistically only aspire to be, in the business of scrutiny and exposure, not of government'.<sup>xvii</sup> As with the other committees the departmentally-oriented committees are serviced by a member of the Clerk's Office, who can call on the specialised knowledge of a research staff of nine.

The membership of the committees is usually eight, appointed on an annual basis (usually at least half are re-appointed from the previous year) and in theory with regard to party and gender balance, although the dominance of the National Assembly by men from the ruling party is a major constraint. The committees elect their own chair, drawn from the previous year's members and in some cases from outside the ruling party. Although the 1999 reforms are still very recent, and operational difficulties in the initial stages of implementation are only to be expected, it is still possible to make some assessment of the new committees' performance, against the background of their predecessors. But some important aspects of the reform agenda have not yet been implemented, such as allowing press attendance at meetings. One suggestion is that there is a concern that journalists could easily misrepresent the discussions, in advance of a final report being agreed.<sup>xviii</sup> A realistic assessment is that the government is suspicious of the independent press, which it regards as partisan and unfairly critical of the government. It is wary of committee investigations being reported in the media before there is an opportunity to suppress the findings by persuading the House to agree that a report should not be adopted. The executive also resists the idea of taking the committee stage of legislation in the departmental committees and away from the floor of the House. It prefers the existing practice whereby the assembly is given very little notice of forthcoming legislative

initiatives, where debate can be controlled by containing it within the formal rules of the House, and where the construction of a tight timetable may permit only minimal opportunity for detailed external scrutiny and public discussion.

That said, in respect of their oversight responsibilities all 11 committees have met on a regular basis - up to 16 times a year in some cases - and taken evidence from Permanent Secretaries (only rarely Ministers) from a range of departments and other public sector bodies and outside organisations. They have produced at minimum annual reports for 1999 and 2000, some of them long and very weighty. The reports have included consideration of *Action-Taken* reports by the government (which can occupy as much as a quarter of a committee's report before it gets round to 'topical issues'). There is a pattern to the principal findings of the committees, summarised under four main points below. They tell us a good deal about how the government actually functions; but space constraints allow only a few illustrations to be cited.

First, the committees reveal evidence of policy shortcomings - not so much policies that are not working successfully, as gaps where there is a policy vacuum, policy confusion and absence of clarity. For instance the government has 'not had a coherent policy framework on transport for a long time'.<sup>xix</sup> But although the committee that reported this observation administered a clear rebuke, the attempts to assign responsibility for policy delays are generally quite problematic, and this frustrates the need for answerability. The departmental submissions tend to put the onus on the cabinet, whereas the *Action-Taken Reports* assign the blame to the departments.<sup>xx</sup> In this game of 'buck passing' probably both are at fault: a minister will wait for clear signals from the leadership before finalising a policy document for cabinet approval. The reason why there is no clear steer from cabinet can be opaque; one could be that in recent years the President, who chairs the meetings, has been greatly involved in foreign affairs including playing a mediating role in the war in the neighbouring Democratic Republic of the Congo. But committees have at least flagged up some serious consequences of policy inertia, as in for example the reluctance of foreign investors to invest in telecommunications. A second illustration is the concern voiced in committee over the inadequate regulatory framework for the commercial banking system, underscored by a succession of seven bank failures between 1995 and 1999 followed by an eighth in April 2001. The devastating social and economic consequences of the spread of HIV/AIDS is yet another area where the government's slowness to seize the magnitude of the problem and formulate a

clear official response has been highlighted, although so far the official response has been unimpressive.

Second, the committees disclose that political interference in policy implementation is a major problem that both distorts the policies and undermines performance. This was found to be responsible for the failure of the 'visionary reforms' pioneered in the health sector, for example. Ministerial interference in matters that should be the province of the Central Health Board produced centralisation, not the decentralisation envisaged by the reforms. Hospital Executive Directors were said to live in constant fear because the Directors were changed every time a new Minister was appointed.<sup>xxi</sup> In this instance the Minister, Nkandu Luo, was moved to another portfolio two weeks before the Committee presented its report. The foreign affairs committee noted the politicisation of appointments in the diplomatic service, where preference was given to MMD cadres who lacked the necessary qualifications. The legal affairs committee noted there is much interference by government in the operations of the Anti-Corruption Commission 'especially in high profile cases'.<sup>xxii</sup> The transport committee seized on politicisation as being responsible for the bad management of the Tanzania-Zambia Railway Authority. Possibly most damaging of all was the high-level political interference in the privatisation of the state-owned Zambia Consolidated Copper Mines (ZCCM), a disposal that was critical to the economy. The Zambia Privatisation Agency (ZPA) was marginalised from the decision-taking. The Committee on Economic Affairs and Labour, chaired by an MMD MP, first raised serious issues in 1999 and, judging the government's response to be unsatisfactory, returned to them again in 2000. It claimed to find evidence not simply of procrastination but illegal conduct, procedural irregularities and corruption, all of them costing the treasury and the country dearly in a number of ways. The report's contents were very damaging. The findings were mentioned frequently in the political campaigns against President Chiluba and the MMD government that began to stir early in 2001, an election year for parliament and the presidency.

Third there are claims that some weakness of policy implementation owe to failure by the government to adequately consult with stakeholders. The transport minister's (Nkandu Luo) decision that all minibuses be painted blue (the MMD party colour, incidentally) may look trivial, but as the communications committee (2000) observed, the decision and the short time allowed to comply with it caused much resentment. More serious is the government's failure to consult organised labour over the privatisation of ZCCM; it was always likely that

many workers would become unemployed as a consequence of sale agreements, even where retrenchment was not a condition demanded by prospective purchasers. In fact organised labour argued in its evidence to the economic affairs committee that the government has no labour policy. Similarly other committees have indicted the government for failing to consider development issues on a longer-term basis and in a more consultative mode than just the annual budget preparations, which exhibit a hand-to-mouth approach to policy-making.

Fourth there is much evidence of inertia, non-implementation and failure to take action to implement decisions. This criticism applies especially to promises made in *Action-Taken* reports. Many of the government's replies there are of a 'holding' nature: they do not inspire confidence that a problem has been adequately addressed. The trail often goes cold once the government has made its report, even where a committee persists in revisiting an issue or raising the same concern time and again. While there may sometimes be truth in the government's claims that the problem is a shortage of funds, there are also cases where it is undoubtedly political reasons that predominate, as in the failure to take steps to implement the recommendations of the Media Reform Committee (1993). In 2000 the minister treated the Committee on Information and Broadcasting Services to an unconvincing defence. He failed to explain why for instance no moves had been made to incorporate press freedom in the constitution or to take action on the committee's recommendation in 1999 to remove the many legal infringements on free expression (such infringements range across ten different Acts plus the Penal Code). After all, in November 1999 the minister advised the House that a task force to review the legislation had already met and finished its work and that its proposals simply needed cabinet approval.<sup>xxiii</sup> He made clear, however, that government would *not* privatise the government-controlled daily newspapers, which are heavily loss-making and desperately need new capital investment.

Similarly the Committee on Legal Affairs, Governance, Human Rights and Gender Matters discovered that the Gender and Development Division of Cabinet Office misdirected its energies, by giving preference to attendance at international conferences rather than reach down to the grass-roots at home. The same committee exposed the severe constraints under which governance institutions like the Electoral Commission, Anti-Corruption Commission, Drug Enforcement Commission and Human Rights Commission operate, due to gross underfunding. The monies that are denied to these bodies by MOFED's habit of reducing their budget requests and then releasing only part of the money voted by Parliament contrast with

the regular overspending and excess (unauthorised) spending on administration elsewhere in the government, such as the Office of the President. Thus there is a perception of a 'lack of political will to ensure that human rights are respected and promoted'.<sup>xxiv</sup>

In sum the committees have exposed many causes for concern about the conduct of government. A plausible response might be 'well, they would do, wouldn't they?' Their mandate to carry out scrutiny and oversight contains a bias towards the negative - something that is likely to be accentuated further in the representation of their findings by political scientists, who are trained to be critical. However, it would be difficult to argue that the reports are unreasonable in any sense. And it is unusual for reports to be deemed so flawed or inaccurate by the government that it urges the House to send them back to the committee. Moreover the reports are not so unbalanced as to be completely devoid of examples of commendation for the government, including for actions taken in response to committee recommendations. But the positive findings are far outweighed by the negative.

### **Ad Hoc Select Committees**

The constitution and subsidiary legislation require that certain presidential appointments must be ratified by Parliament, and for this reason select committees of Parliament - usually ten members - are appointed from time to time to scrutinise nominations and make recommendations to the House.<sup>xxv</sup> The process should ensure that the correct procedures have been followed and that nominees have the necessary qualifications and experience, all of which should protect the manner of appointment from improper political interference.

In some cases, notwithstanding the fact that they are made by the President the appointments relate to institutions to check executive power and help prevent abuse of that power - instruments of horizontal accountability that are supposed to complement the vertical accountability to society that the National Assembly should effect. Thus since November 1991 there have been at least 24 such committees established to consider the following appointments: the Puisne Judges; Attorney-General; Solicitor-General; Director of Public Prosecutions; Secretary to the Cabinet; the Permanent Human Rights Commission (granted autonomy in 1996); the Director-General of the Anti-Corruption Commission; the Electoral Commission (granted autonomy in 1996); the Auditor-General; the Governor of the Bank of Zambia; Board of the ZPA; Board of the Regulators for the Communications Authority. During the MMD's second administration (1996-2001) almost all the committees were chaired

by Vernon Mwaanga, one of President Chiluba's oldest and closest allies. This suggests the executive became increasingly aware of the political importance of such appointments and adds to other compelling evidence pointing to the abandonment of the liberal enthusiasm shown in the MMD's very early days.

The fact that the committee reports have only very infrequently objected to a nomination or, even more rarely signalled rejection (in July 1992 a nomination to the ZPA Board was rejected) does not necessarily mean they are no more than a 'rubber stamp'. The same raw data could instead be evidence that the executive, wary of being tripped up by the committee, has usually exercised its powers of nomination and appointment with due care. But some of the appointments have incurred political comment in the House, such as over a nomination to the Human Rights Commission in 1998. An objection grounded on the nominee's former role in government was countered by a speaker for the government who claimed the appointment would add a 'moderating factor' to a commission that had already exceeded its powers (the Commission was alleged to have briefed the media about its early findings of rights abuses, before first informing government).<sup>xxvi</sup> There was also a difference of opinion over the suitability of Justice Bwalya's appointment as chair of the Electoral Commission, given that he was a card-carrying member of the MMD. At least one member of the committee wanted to oppose the nomination; some opposition politicians took (and still take) the view that the Commission should comprise representatives of all main parties, if it is to acquire a reputation for impartiality.

More generally, the committees have not been shy of commenting on the procedural issues. They have complained when the executive has not made adequate consultations before making the nominations, or has left vacancies unfilled (as with five of the 12 positions on the ZPA Board at the time of the ZPA's *1999 Progress Report*, some of them vacant for more than two years). They have complained where the executive failed to submit names for Parliamentary approval, made reappointments after the expiry of the initial term without consulting Parliament or reappointed members who had previously been dismissed for contravening the regulations (ZPA Board, again). They have also complained when committees have been allowed insufficient time to perform their investigations and when appointments appeared to have taken effect or been announced even before the committee could begin its work. This last illustrates the very nature of the problem the select committees are there to check, namely an executive inclination to exceed its powers. As committee chair,

Mwaanga expressed concern in the House at the government's failure to respect a previous committee's reminder that Parliament's power is to *ratify*, not merely to 'confirm'.<sup>xxvii</sup> The committees have on other occasions used the opportunity to criticise the terms of the Act that authorise an appointment for being vague or ambiguous. For example on the appointment in 2000 of the Governor of the central bank it pointed out that the Bank of Zambia Act contravenes accepted norms of transparency and accountability, by making the Governor both responsible to the Board of Directors and chairman of the Board. In July 1997 the committee on the appointment of Supreme Court Judges used the opportunity to express deep concern at the funding arrangements for the judiciary, which it believed compromised judicial autonomy and undermined the separation of powers. The same concerns were expressed in the House on the occasion of accepting a report ratifying nominations to the High Court, in March 2001. In sum, although Parliament has not in practice frustrated presidential appointments the institution of select committees has offered a platform for parliamentarians to raise wider issues of concern relating to governance.

### **Assessment**

What do we learn from the audit so far? Clearly institutional arrangements are in place to help combat executive dominance. But their performance, while not so weak as to warrant calling Parliament a 'useless house',<sup>xxviii</sup> has been disappointing, notwithstanding the high level of commitment and seriousness of purpose of some MPs. There is a systematic pattern to the weaknesses and limitations. Their origins date from well before the Third Republic - not just in the one-party state of the Second Republic (1972-91) but as far back as independence (1964) and the period of British rule before then, as studies of those periods clearly show.<sup>xxix</sup> The contemporary audit is best elaborated in the form of a checklist of functions or roles against which effectiveness can be assessed. These roles of information-gathering, informing debate, contributing to policy and policy agendas, holding government to account, and bringing Parliament closer to the people, together with their influence on the parliamentarians themselves, are drawn from the generic literature on parliamentary committees. That literature is particularly but not exclusively focused on the British experience of select (scrutiny) committees.<sup>xxx</sup> Although that source might be considered too ethnocentric, in practice a very similar roster of objectives features in the Zambians' own recent *Report of the Parliamentary Reforms Committee on Reforms in the Zambian Parliament* (November 2000).



However, it is worth noting first that whatever shortcomings we find in Zambia, evidence from Westminster suggests that expectations should not be set unreasonably high. It is said that the select committees in Britain, which were expanded from a small handful only around 20 years ago, have been subservient and unwilling to confront the executive. They are judged to have failed to exert influence over government policies at large or even to make a major impact on opinion in the House of Commons. They are 'only operating at the margins of power'; added to which, Parliamentary scrutiny of secondary legislation ranges from 'weak to virtually non-existent'.<sup>xxxii</sup> The Labour government's initial response to a recent report by MPs for the Hansard Society decrying the limited impact of select committees and urging the executive to stop influencing the selection of chairs and allow more time for the Commons to discuss committee reports, was typical. It removed the robust chairpersons of two important committees.<sup>xxxiii</sup> Even in the United States, which arguably has the world's most powerful legislature - truly a *law-making* body - most commentators agree that the Congress performs its functions of oversight poorly. It tends to wait for disasters to happen, causing it to exercise oversight retrospectively ('fire alarm' surveillance) rather than endeavour to avert policy failures in the first place through exercising 'police patrol' oversight.<sup>xxxiii</sup>

### *Information and debate*

First, there is the role of information gathering, which in turn should help raise the level of debate and promote the objective of more open government. In the judgment of a keen observer of Britain's select committees 'Probably the greatest beneficiaries are those seeking knowledge and information. The minutes of evidence ...are goldmines in this respect.'<sup>xxxiv</sup> Zambia's parliamentary committees have indeed shed light on some dark places. For example, would we have known about the collapse of 3000 local courts in Zambia's Eastern Province (described as a disaster in the administration of justice at that level) if this finding had not surfaced in the 1999 report of the Committee on Government Assurances? Over time the accumulated reports and the government's written replies contribute a substantial amount of empirical detail on the workings of the government - on what it has and has not done. This is especially valuable given that, unlike in Britain or the United States other sources of information, both primary and secondary, are threadbare.

However, there is also the question of the information that is not revealed by these reports, most notably where government has withheld information, where committees have not asked the most searching questions or have lacked the resources to probe deeply. Readers

familiar with Zambia can easily identify a number of very sensitive issues where many Zambians, not just MPs, would like to learn more, and yet committees have not shed illumination. The answers are more likely to lie in government-commissioned reports of inquiry, whose findings are withheld for fear of acute political embarrassment. An example dating from early on in the first MMD administration is the circumstances of the Gabon air disaster, 27 April 1993: who gave the order that the national soccer team should be flown in a Zambian military aircraft that was known to be defective and which then crashed, killing all on board? More recent examples concern instances of high level corruption or, at minimum incompetence in respect both of public procurement and income-raising, such as the large sum that appears to have been lost to the treasury through an exclusive cobalt marketing deal that ZCCM managers agreed with intermediaries in the Bahamas, prior to privatisation.<sup>xxxv</sup>

Moreover, information is only valuable in so far as it is easily accessible and comes to the attention of relevant constituencies - the parliamentarians, the wider policy communities, opinion-formers and society at large. Does the information-gathering lead to 'informing' where and when it can most make a difference? Alas, there are major reservations. Committee reports are often placed in the MPs' pigeon-holes only the day or evening immediately prior to being formally presented to the floor of the House, which minimises the chance that MPs will be familiar with the contents. The potential of the committees' work to inform and raise the quality of parliamentary debate is limited accordingly. In fact the debates on the reports are often monopolised by members of the relevant committee and those few ministers who are obliged to respond. For example the debate on the first report of the governance committee, whose remit straddles highly political issues directly relevant to the autonomy and complexion of the House, attracted just 11 substantive contributions from the floor. These included three by members of the committee, three by ministers and only three by MMD back-benchers. Evidence from a committee report is not often referred to in debates or question time on occasions other than when the report is first presented and formally considered for adoption. In fact participation overall in the assembly is very uneven: attendance is sometimes poor and the records show that in any one sitting up to 30 MMD back-benchers will make no verbal intervention of any description.<sup>xxxvi</sup>

As for the chances of informing public debate outside Parliament, coverage of the proceedings of the National Assembly in the government-controlled media has been described by an MMD MP as 'very pathetic and a calculated move by the official controllers of these

public media to embarrass this House'.<sup>xxxvii</sup> The two government-controlled dailies (*Times of Zambia; Zambia Daily Mail*) present brief 'highlights' of the debate of a committee report on the front page of the following day's copy and very occasionally will make it the lead story. The accounts, while reproducing critical remarks about the government, are factual and devoid of comment, interpretation or analysis.<sup>xxxviii</sup> It is left to the independent papers (primarily *The Post*, and the weekly *The Monitor*) to follow up stories in the manner of investigative journalism and revisit the issues on subsequent occasions, building up a more sustained picture and reminding readers where the government has not taken corrective action.<sup>xxxix</sup> But even these are constrained by legislation inhibiting media reporting and debate. The National Assembly (Powers and Privileges) Act that is supposed to secure absolute freedom of speech inside the Assembly has served to inhibit free speech by MPs outside the House, where they risk charges of breach of privilege and immunity. An MP will be sanctioned by the Speaker if he is reported saying outside the assembly that Parliament is a 'rubber stamp'. Irrespective of how true the claim is, it constitutes an offence to 'the dignity of the House'. Similarly a critical commentary on the President's address to the state opening of Parliament is also likely to attract censure from the Speaker. The penal code gives a wide-ranging construction to the notion 'seditious material' and allows the President to ban any publication deemed inimical to public interests. In particular the 'catch-all' nature of the State Security Act 'has a considerable deterrent effect' that inhibits civil servants from supplying information of the sort that would enable the media to elaborate on findings noted in parliamentary reports.<sup>xl</sup>

The public has virtually no access to the committee reports. MPs are not given extra copies they can distribute. And as the Committee on Education, Science and Technology has made clear, the complete absence of public funding of research at the universities or any other institute means there is very little research activity apart from what foreign donors take an interest in and choose to finance. Often they employ their own researchers, and typically they get to keep the results. Thus the committee's view is that the country 'did not know itself well enough because data was not readily available'. The accumulation of committee reports will in time offer a fascinating primary source. But the chances that it will fuel policy-relevant analyses by third parties and feed into official deliberations in that way, are not promising: the government is 'at the periphery of research activities' and looks set to remain there.<sup>xli</sup>

*Policies and policy agendas*

Although MMD ministers often complain that opposition MPs should not just denigrate their policies but propose constructive alternatives, like governments the world over they are shy of admitting that any of their policy initiatives are borrowed from their critics. Even in Britain it is said that the observable effect of select committees on policy making is at best 'indirect and marginal, contextual rather than substantive'.<sup>xlii</sup> Zambia's parliamentary committees have focused more on the details of policy and especially implementation than undertake a responsibility for overall policy advice. Even so they have sought to place issues on or higher up the policy agenda, by drawing attention to existing weaknesses and shortcomings. While the concerns may have been in circulation already, they were given extra prominence and so stood more chance of catching the government's attention. An example is the dawning realisation that post-privatisation monitoring of agreements with foreign investors is essential to ensure that at least some of the profits made in Zambia are reinvested in the country. This issue, flagged up by several committees, came right to the fore in January 2001 when not the committees' prescience but the accelerating adverse impact of the externalisation of capital on the national currency drove President Chiluba to seek an understanding on exchange retention, with the business community.

Other issues where more than one committee has given attention and also reinforced the exposure given elsewhere, especially the Public Accounts Committee, include the manner of privatisation - strongly criticised by the business sector - and the Public Service Reform Programme. However there are few identifiable cases of new legislative initiatives being made by the government in response to specific recommendations from committee. An exception could be the tightening of the regulatory framework for the commercial banking sector, in 2000. But even here procrastination over legislating against money-laundering continues to raise significant problems, in the view of not just the Drug Enforcement Commission but the Secretary to the Treasury as well. In another example, in March 2000 the cabinet adopted a national gender policy after being pressed to do so by the legal affairs committee. The three female members of the committee included the chairperson - Inonge Mbikusita-Lewanika, an ex-MMD MP who campaigns strongly on gender issues. However the policy has been criticised for not setting clear targets and goals, and there has been no concrete action.<sup>xliii</sup>

### *Holding government to account*

The question of how government responds to the committees' both when they are issuing demands for information and when advancing recommendations is critical to the objective of

accountability. In Britain it has been said that the taking of evidence can be valuable in its own right as a means of holding ministers and others to account.<sup>xliv</sup> It is not essential to produce a really damning report by a committee in order to show that it made its mark. Neither should the effectiveness of a committee be inferred from the degree of hostility shown towards its findings, any more than it can be equated to the number of its recommendations the government accepts. That said, the Committee on Economic Affairs and Labour can be singled out for discomfiting government over its allegations concerning the privatisation of ZCCM core and non-core assets. In December 1999, following a lively debate during which no less than five ministers and deputies felt obliged to defend the government, the Vice-President advised the House that it would be difficult to produce a meaningful *Action-Taken Report* in response to the committee's report. Almost 12 months later the government mobilised its majority in the House to throw the 2000 report back to the committee, through a 'vote by acclamation'.<sup>xlv</sup> On both occasions the government claimed errors and inconsistencies detracted from the report's validity. Critics claim the government is running scared.

Elsewhere there have been a few examples of committees feeling slighted by the failure of a witness to appear or, much more often, by witnesses appearing not to take a committee's inquiries seriously.<sup>xlvi</sup> On the one hand there are many instances where government voiced agreement to specific recommendations in committee reports. Just as common, however are the recommendations where the government is subsequently judged to have failed to take adequate action, often compounded by failure to provide a satisfactory explanation. Not every ministry or department has complied with the legal requirement to produce an *Action-Taken Report* within 60 days of the House adopting a committee's report; their responses have come only after repeated reminders by the Clerk. Equally the Committee on Government Assurances has not obviously inhibited the government from making assurances that it later proves unable or unwilling to keep. So, although the requirement on government to respond with *Action-Taken* reports is excellent in principle it breaks down in practice; as one committee observed, the government had not taken any action at all 'apart from making promises to take action. Your committee recommends that government submits to them what it has done and not what it will do on the concerns of your committee'.<sup>xlvii</sup>

In some cases the primary reason lies with external constraints that are beyond the government's control, such as unpredictable behaviour by the donors. And perhaps it is unreasonable to speculate whether ministers and officials will from now on attach more weight

to the possibility of being 'exposed' in a committee report, in consequence of the 1999 reforms exerting a lagged effect. But the evidence from the 1990s as a whole is not encouraging. The conclusion is inescapable that reports and *Action-Taken* responses provide a formal procedure of *answerability* but without *enforceability*, the last being necessary to establish an *effective* instrument of accountability. Indeed, one suspicion is that the committees' work is viewed inside the government almost as an end in itself, as tangible evidence of democracy, or something that reduces the need for government to adjust its own behaviour. This is an unhappy conclusion, although arguably less dismal than where just the opportunity to hold debates in the House is argued to be proof of democratic accountability and is used as a ploy to suffocate potentially superior mechanisms of scrutiny, such as specialised 'watchdog' committees.<sup>xlviii</sup> But in the circumstances the oversight committees look more like a token display than a serious contribution to democratic governance.

### *Parliament and the people*

Access to MPs in the House by members of the electorate is 'extremely difficult', according to Bonnie Tembo, Executive Director of the Anti-voter Apathy Project, a Zambian civic association.<sup>xlix</sup> The new committees have not yet brought Parliament closer to 'the people', not least because vital components of the 1999 reforms have yet to be implemented. The physical location of the National Assembly on Manda hill and the security arrangements there impose a degree of separation even from the rest of Lusaka. From outside the capital Parliament looks very remote; in the eyes of MPs its role, function and procedures are not widely understood by the people.<sup>l</sup> Moreover there is no strong tradition of MPs representing sectional interests, which owes much to the longstanding domination of vertical cleavages in society over horizontal functional ties,<sup>li</sup> the latter being reduced even further by the industrial and economic decline. And compared with Britain the absence of academics, experienced politicians and other individuals belonging to relevant knowledge communities from the lists of witnesses and other sources of evidence consulted by parliamentary committees is very noticeable. Even so the committees have provided some opportunities for organised groups to be consulted and represent their views and interests direct to Parliamentarians. This may provide a 'safety valve' of sorts. But the enthusiasm is likely to wane if the exercise comes to be viewed as rather pointless, a mere charade.

The proportion of submissions that committees have invited from the private sector especially in respect of economic affairs, communications, transport, and agriculture has

accelerated. This is an inevitable consequence of liberalisation of the economy and privatisation of parastatals: government figures claim that more than 240 of 280 state enterprises have been privatised since 1991, the great majority since 1995. Private enterprise has used the opportunity to communicate demands like more public spending on internal security in order to promote a safe investment climate, and faster processing of leasehold title to land, as well as warning against substituting private monopolies for state monopolies. Also, in health and education where non-governmental organisations (NGOs) make a major contribution to service delivery, the submissions have favoured NGOs and professional groups. For example the health committee has provided organisations fighting HIV/AIDS with a forum to lobby for increased attention and funds from government. But with regard to topical issues covered by ten of the departmentally-oriented committees (the local governance committee is an exception because of its unique focus on audit), the summoning of witnesses still privileges the public sector (Permanent Secretaries, chief executives, heads of governance institutions) over others in the ratio 4:3. Access by 'cause' groups (as distinct from 'interest groups' like peak organisations representing business and labour) has been mainly restricted to the Committee on Legal Affairs, Governance, Human Rights and Gender Matters. In 2000 representatives of the independent news media declined to give evidence to the information and broadcasting committee (early evidence of lack of confidence in the value of the proceedings), although the committee still went on to make 27 recommendations aimed at strengthening autonomous media. The government's suspicion of the press and prominent NGOs whose agendas it finds too challenging creates a negative climate. It has inhibited MMD MPs from constructing potentially mutually beneficial relations with civic actors, and serves to limit the direct access those actors have to ministries and departments.<sup>lii</sup>

### *Impact on MPs*

What impact have the committees had on the parliamentarians themselves and on how they view their role in relation to the governing process? The practice of rotating the membership of committees has not helped MPs to develop individual expertise in specialised policy areas, which is one theoretical advantage. But the inter-party or cross-party nature of the committees' work is more worthy of note, given the party-based system of political representation. We are unable to say how many divisive issues relating to policy have been deliberately avoided by committees so as to maintain internal harmony and avoid 'rocking the boat'. But a number of reports including some drafted under MMD chairs have been hard-hitting while showing no signs of serious rifts. It seems that committee work has encouraged at least some MPs to avoid

the strict confines of party discipline and to value their role as members of the assembly sharing a common interest in pressing the executive to improve its performance. Also, MMD members of committees have joined in voicing their support in the House for their committees' recommendations to strengthen institutions of governance like the Auditor General, judiciary and quasi-judicial bodies, that should perform as horizontal checks on the executive. Recommendations that such institutions should be given greater powers, that they should report direct to the National Assembly and not to the President first, that they be allotted more resources and that control over funding should be transferred from the executive to the Assembly, have been typical.

When asked to explain this independence of spirit by some MMD MPs within the committee setting a non-MMD MP suggested that the committee environment provided an opportunity for MPs to 'get things off their chest' without seriously impairing their relations with the Chief Whip. MMD MPs know that, for the time being anyway the government can (and probably will) ignore the burden of the reports and calculate that it will not pay a heavy political price. Such is the confidence of the leadership in the superior persuasive power of patronage and clientelistic-based political appeals. Yet some MMD MPs also sincerely believe that their committee's recommendations would actually help policy delivery and so could benefit the standing of the ruling party, themselves included. Prospective MMD chairs allow their colleagues to take part in criticising the executive in return for support for their candidature for the chair - an appointment that carries with it valuable extra allowances.<sup>liii</sup> And although MPs do not themselves credit the committees with the capacity to inflict wounds on the government, there is a perception that the oversight committees are at least much bolder now than in the Second Republic (1972-91).<sup>liv</sup>

Thus, although different committees have performed differently, it would be premature to say they have fallen into the trap of being 'foot soldiers' of the government - a fate that might seem all too possible given that the ruling party dominates the membership.<sup>lv</sup> Indeed committees with highly sensitive portfolios like economic management or governance have been distinguished by their robust approach, as have the Public Accounts Committee and the Estimates Committee. Of course by pleading poverty of resources as the reason for their inertia departmental spokesmen will intend that the MPs then communicate the case for better funding to MOFED, but in many instances committees have shown impatience with this explanation. One of the more explicit examples of ministerial lobbying was the appeal by the



Minister of Information and Broadcasting Services to the scrutiny committee to note that financial constraints prevented him extending satellite-based radio and television coverage throughout the country. However the unfulfilled commitment was not a priority set by Parliament but a pledge made by the President! In general terms the committee that has behaved least like a fierce watchdog and has been least inclined to summon evidence from outside the public service, so denying everyone the benefit of independent advice, is the Committee on National Security and Foreign Affairs. National security is one area where the executive can legitimately refuse to submit evidence. And the infrequency with which foreign affairs provide the subject matter of questions in Parliament suggests this area of policy is regarded as an executive, and specifically presidential, prerogative, rather than being the business of Parliament.<sup>lvi</sup>

In conclusion, the principle that a clear demarcation exists between responsible government and organs whose function is to keep government responsive and accountable is both long established and logically tenable. It counsels against arrangements to share executive powers with parliamentarians who are not members of the government. The principle is well understood by senior ministers in the MMD government, who from time to time remind the back-benches that it is not their job to direct the government. Even so, the performance of Zambia's committees legitimately charged with ensuring that government has done properly and within bounds what it said it would do and has carried out Parliament's wishes as enacted in law, bears out a familiar adage: 'powers do not necessarily mean power'. In that respect the Third Republic differs very little from its predecessors. What, then, are the future prospects?

### **Future Prospects**

MPs and officers of the National Assembly are aware that improvements in the legislative component of democratic governance are desirable if only in order to catch up with other African countries where the delegation of parliamentary business to committees has increased. A set of 73 recommendations was encapsulated in the *Report of the Parliamentary Reforms Committee on Reforms in the Zambian Parliament: Phase 1*, which was submitted to the Speaker in November 2000. They had been agreed by a special plenary session of Parliament. By April 2001 a further committee of eight MPs (three ministers, the Chief Whip, two MMD back-benchers and two non-MMD MPs) was appointed to consider the modalities of 'modernisation'. 15 of the 73 recommendations involve the committee system (eight being

judged inexpensive and 12 capable of being implemented in a short period), including the sending of bills to the departmentally-oriented committee after the first reading and the holding of budget hearings there as well. Another recommendation is that committee meetings should be broadcast live when considering issues of substantial national interest. These ideas together with press attendance at meetings and the holding of public hearings on issues outside Lusaka are among the priorities identified by the Clerk of the National Assembly.<sup>lvii</sup> A considerable expansion in the staff and research capabilities of the National Assembly has also been identified as vital to support increased committee responsibilities and activity.<sup>lviii</sup> More generous funding would enable committee members to carry out tours of inspection and fact-finding missions especially outside the capital.<sup>lix</sup> A few of the recommendations are already under way but most await more determined efforts. One of the major challenges here will be to develop external links with organisations that can bring outside expertise and experience to bear.

However, although on paper the reform programme looks impressive there can be no guarantee that any of the recommended changes, not even more ample funding, will dramatically alter executive-legislative relations unless there are changes to the constitution and in the party system and political culture. As Weaver and Rockman have argued, there is no 'institutional fix' to policy problems; moreover the functioning of institutions is 'influenced by the historical and societal contexts in which they developed, evolved and have operated'.<sup>lx</sup> A well-established view of select committees is that not only will they reflect the weaknesses (as well as strengths) of Parliament more broadly but legislatures in turn tend to be influenced by the executive to which they spend most of their time responding. Thus, generally speaking the way that a committee functions cannot be understood in isolation from their wider institutional environment<sup>lxi</sup> - and that means not only formal organisational structures but also the informal practice of customs, conventions, norms and mores. The Zambian situation is illustrative. Five groups of points will be made.

First, at the heart of executive-legislative relations there is confusion over collective and individual responsibility that in practice allows both the cabinet and ministers individually to hide behind one another. This weakens answerability and takes away enforceability. The legislature has few effective sanctions against a minister's failure to produce a satisfactory response to committee recommendations. The powers to refuse to pass a bill (or threaten to do so) and to reject a department's budget after the annual debate on the Estimates are not

vacuous but they are inflexible and inappropriate. Indeed it is precisely the issue of inadequate sanctions that caused much heated argument over the proposed reforms to the committee structure when they were first put to a special meeting of the assembly on 4 December 1999. That particular meeting had to be abandoned as a result.<sup>lxii</sup>

Constitutional provisions to enable legislators to invoke motions of censure or no confidence in ministers individually (as well as collectively) would add a measure of enforceability to the current arrangements for accountability, even if the effect worked mainly through anticipatory action taken against ministers by the President. Such a provision could require a two-thirds majority of the House; possibly it could be made non-binding. But a significant extra dimension would be added if the President was obliged to remove a minister who received an adverse vote, or if the Vice-President and entire cabinet had to be replaced when the government lost a confidence vote. It could well be true that in legislatures that draw heavily on the Westminster model there is no way of 'forcing' a government to implement committee recommendations.<sup>lxiii</sup> But as Shugart and Carey show, 'there is a huge variety of institutional arrangements for assembly-executive relations in systems generally grouped together as presidential',<sup>lxiv</sup> and there is plenty of scope for Zambians to recalibrate their own institutional balance. In fact Olson's observation that the place and functioning of legislatures 'are by no means settled in established democracies, much less in the newer ones'<sup>lxv</sup> is particularly apposite to Zambia today. Eventually enough Zambian people may see that the legitimacy of government would be enhanced by institutional arrangements that made the executive visibly more accountable.

Second, whatever the formal powers of sanction the government will not feel threatened by the assembly so long as the dominant party continues to enjoy an overwhelming majority (made more likely by the president's constitutional power to appoint up to eight nominated members, not subject to ratification). The 'payroll vote', where the government can count on securing the votes of ministers and their deputies through the doctrine of collective responsibility, presently numbers 68. In the MMD the National Executive Committee controls the nomination of parliamentary candidates and its organisational and financial support is often critical to a candidate's chances of winning the seat. Similar arrangements have existed in other parties. In these circumstances the passive attitude many MMD MPs show towards their government's failings needs little explanation. Nor is it unique: in Britain Weir and Beetham hold party discipline responsible for their judgment that the idea that the Commons

'is an agent of scrutiny and accountability is entirely subverted'.<sup>lxvi</sup> Thus Zambia's political opposition may well have to look more to extra-parliamentary instruments of accountability like the judiciary to provide security against abuse of executive power. If, however, the ruling party was challenged by a strong opposition party or if increasing factionalism made it highly fragile (the issue of a presidential third term for Chiluba provoked major splits in the MMD, early in 2001), then the agencies of parliamentary accountability would gain more leverage. At minimum the burden of giving the committees a sharp edge, which so far has been borne by just a handful of opposition and Independent MPs, would be more evenly shared. The effective power of committees might be enhanced even more in a situation where the President did not represent the dominant party and was obliged to operate some form of *cohabitation* with the assembly. But there is an important caveat. An increase in the government's insecurity and, even more so a direct role for committees in the legislative process, could introduce a much firmer determination to impose party discipline on MPs in committee. That would endanger the benefits of the current willingness of committee members to reach a consensus on critical reports. Moreover there are reasons for believing that even a more competitive party system and greater insecurity of government would not be a sufficient condition for the Parliamentary committees to have considerably greater impact.

Third, then, it is customary to admit that the principal underlying determinant of the extent to which legislatures perform as checks on the executive is the political will of the legislators.<sup>lxvii</sup> On balance the political culture in Zambia reinforces the executive dominance sanctioned by the constitution and weakens the powers of the assembly. In part this refers to the traditional combination of deference and fear exhibited towards State House. The President's constitutional position as head of state - the symbol of national unity - as well as head of government encourages this, as does the fact that he possesses his own electoral mandate. It has been accentuated by the authoritarianism associated with the country's first two presidents, although it is worth noting that a 'malaise of the spirit' has also been found responsible for the British Parliament's habit of deferring to the executive's interpretation of conventions governing their relations.<sup>lxviii</sup> In part also, and rather more special to Zambia (though widespread in Africa) is the neo-patrimonial and clientelistic basis of political relationships that is ingrained within both the political and the administrative spheres. It undercuts attempts to make sound policy performance and competent governance for the betterment of the whole society the determining yardsticks for assessing governmental performance and rewarding success/penalising failure. As the recent campaign for a

presidential 'third term' demonstrates, money has the power to buy political support, particularly when it is in short supply, even though the objective is not always attained. The widely shared perception that Parliament is just a 'rubber stamp' is another historical fact that continues to militate against the chances of it being taken more seriously. When it undermines efforts to make a sustained attempt at reform, a sense of impotence will beget impotence.

Fourth, high levels of public apathy and low levels of political participation, which show up in weak figures for voter registration and electoral turnouts, are a pronounced feature of the political culture among the general populace<sup>lxix</sup>. Of course once again we should beware of simplistic judgments. The limitations of the Electoral Commission have contributed to the ineffectiveness of voter registration drives, and the responsibility for this lies with the government's refusal to provide adequate resources. In addition there must be doubts about the electoral process, not so much because of ballot-rigging but because the pre-poll circumstances prevent a level playing field. For instance the police force has been thoroughly politicised. The police proscribe political meetings and demonstrations where they claim they could not guarantee public safety, but do so in a highly partisan fashion. They have consistently disallowed events planned by parties and NGOs opposing the government, and given a virtual *carte blanche* to the MMD, even where it has not observed the proper procedures, and they have turned a blind eye to violence by MMD supporters. All these factors can only serve to blunt the effectiveness even of a moderately strong opposition party in its endeavours to make government accountable. And against such a background arguments about the potentially negative electoral consequences of ignoring the recommendations of parliamentary committees or of being compelled by Parliament to replace ministers will not cause the government much anxiety or compel it to reform its behaviour. Here, the development of a more secure and vibrant private media - radio and television as well as press - would offer a positive force for change especially by giving more sustained publicity to committee findings and providing independent commentary and analysis. That said, the widespread poverty and weak economic conditions will continue to pose major barriers not just to the flourishing of independent media but a highly participatory form of politics, for some considerable time to come.

Finally, the committee reports create an indelible impression that within the public service the substitution of professional norms and an ethos of personal responsibility for inertia and indiscipline are essential but unlikely to be achieved without a reworking of the

incentive structures. Strengthening the political accountability of the government to the legislature is hardly worthwhile if the persistence of old patterns of behaviour among civil servants means there is little administrative accountability. The same is equally true if the bureaucratic component is incapable of responding to the directives the political executive sets after listening to Parliament and the people, because of a shortage of resources.

In conclusion, in Zambia fundamental change in the formal and informal institutions of politics has tended to proceed slowly. For example the 1999 reform establishing parliamentary committees to oversee every department was first suggested in 1990, in the *Report of the Constitution Commission*. The full benefits of that still seem some way off. Right now there is a political ferment that might place Zambia on the threshold of an accelerated process of political reform. But only a confirmed optimist would bet that Parliament's committees will soon be making a much more effective contribution to democratic government.

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- ii. See P. Burnell, 'Taking Stock of Democracy in Zambia', in J. Haynes (ed.), *Democracy and Political Change in the 'Third World'* (London, 2001), pp. 132-51) and P. Burnell, 'The First Two MMD Administrations in Zambia: Millenium Dawn or Millenium Sunset?', *Contemporary Politics*, 7, 2 (2001), pp. 95-111.
- iii. See P. Burnell, 'Legislative-Executive Relations in Zambia: Parliamentary Reform on the Agenda'. Bibliog. details to be advised.
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- v. On the first of these see P. Chabal and J. Daloz, *Africa Works. Disorder as Political Instrument* (Oxford, James Currey, 1999); on the second, P. Burnell, 'The Party System and Party Politics in Zambia: Continuities Past, Present and future', *African Affairs*, 100, 399 (2001), pp. 239-63; and on the third, P. Burnell, 'Does Economic Reform Promote Democratisation? Evidence from Zambia's Third Republic', *New Political Economy*, 6, 2 (2001), pp. 191-212.

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- vi. A recommendation of the Constitutional Review Commission (1996) that the National Assembly be given powers to pass a vote of no confidence in individual ministers was rejected by the government. The principle that individual ministers must not be singled out was reaffirmed in, for instance, interventions by the Deputy Speaker on the floor of the House, 28 February 2001 and the Speaker on 9 March 2001.
  - vii. M. Shugart and J. Carey, *Presidents and Assemblies* (Cambridge, Cambridge University Press, 1992).
  - viii. T. Bergman, W. Müller and K. Strom, 'Introduction: Parliamentary Democracy and the Chain of Delegation', *European Journal of Political Research*, 37, 3 (2000), p. 256.
  - ix. R. Hague, M. Harrop and S. Breslin, *Comparative Government and Politics. An Introduction* (Basingstoke, Macmillan, 1998), p. 188. There is a long-held view that the central role of the House of Commons in Britain is 'watchdog': see for example P. Norton, *The Commons in Perspective* (Oxford, Martin Robertson, 1981), p. 75.
  - x. P. Burnell, 'Financial Indiscipline in Zambia's Third Republic: the Role of Parliamentary Scrutiny', *The Journal of Legislative Studies*, 7, 3 (2001), forthcoming. Also examined there are the Estimates Committee - a new committee charged with overseeing budgetary affairs - and the Committee on Local Governance, Housing and Chiefs' Affairs, which audits the accounts of local government.
  - xi. See for example G. Drewry (ed.), *The New Select Committees* (Oxford, Clarendon Press, 1989).
  - xii. The apparently poor rate of closures could partly be an artefact of inconsistent record-keeping by the committee for there have been assurances where it did not announce closure but commended the government on its action.
  - xiii. In its 1998 *Action-Taken Report* the government appended a copy of a Cabinet Office circular minute to the Secretary to the Treasury and all Permanent Secretaries reminding them of previous circulars dated June 1993 and December 1995 conveying the 'important requirement' that Ministers submit Explanatory Memoranda to the committee on time. Although disciplinary action against Controlling Officers was threatened in the event of non-compliance, no evidence of such action was found by the writer.
  - xiv. The new committees are: Agriculture and Lands; Economic Affairs and Labour; Communications, Transport, Works and Supply; Energy, Environment and Tourism; Health, Community Development and Social Welfare; Information and Broadcasting

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- Services; National Security and Foreign Affairs; Education, Science and Technology; Local Government, Housing and Chief Affairs; Legal Affairs, Governance, Human Rights and Gender Matters; Sport, Youth and Child Affairs.
- xv. Apart from visits to India and elsewhere by Mr. N. Chibesakunda, Clerk of the National Assembly, the following international exchanges of ideas were held in Lusaka: Inter-Parliamentary Union Seminar for Parliamentarians of Southern Africa (June 1995); Southern Africa Commonwealth Parliamentary Association (CPA) Parliamentary Workshop (June 1996); First Southern African Development Community Intra-regional Parliamentary Workshop (December 1998); Southern Africa CPA Parliamentary Workshop (July 2000). The appointment of Amusaa Mwanamwambwa from the ranks of MMD MPs as Speaker in 1998 boosted the momentum of reform.
- xvi. 'Reforms to the Committee System in the Zambian Parliament', mimeo.(Lusaka, Clerks Office to the National Assembly, n.d.), p. 13.
- xvii. G. Drewry (ed.), *The New Select Committees* (Oxford, Clarendon Press, 1989), p. 426.
- xviii. Clerk of the National Assembly, interview 5 February 2001.
- xix. Evidence from Permanent Secretary, Ministry of Communications and Transport, in *Report of the Committee on Communications, Transport, Works and Supply* (1999), p. 11.
- xx. The Ministry of Legal Affairs also supports the latter interpretation by claiming 'indecision and inertia in the client Ministries hampered the Legislative Drafting Department's work'. *Annual Report 1999* (Lusaka, Government of Zambia), p.9. At the same time the Ministry acknowledges its own 'chronic shortage of qualified professional and support staff' (there were only ten trained draftsmen), *ibid.*, p. 5.
- xxi. *Report of the Committee on Health, Community Development and Social Welfare* (1999), p. 45.
- xxii. *Report of the Committee on Legal Affairs, Governance, Human Rights and Gender Matters* (2000), p. 41.
- xxiii. *Parliamentary Debates*, No. 114, 9 November - 9 December 1999, col. 726.
- xxiv. *Report of the Committee on Legal Affairs, Governance, Human Rights and Gender Matters*, p. 49, submission by the President of the Foundation for Democratic Process. Afronet notes that government always seems 'to find the money for things it considered important, even if these were of questionable value to the nation', in *Zambia Human*



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- Rights Report 2000* (Afronet, Lusaka, 2001), p. 93. On over-spending see 'Public Finance and Parliamentary Accountability'.
- xxv. The committees routinely seek evidence from for example the Inspector-General of Police, Investigator-General, Anti-Corruption and Drug Enforcement Commissions, Secretary to the Cabinet, national security agencies and, of course, the nominees themselves. In addition to these select committees the Standing Orders also contain provision for select committees to be appointed to consider private bills following a Second Reading in the House
- xxvi. *Official Verbatim Report of the Parliamentary Debates (hereafter Parliamentary Debates)*, No.109, 16 Jan. - 3 April 1998, col. 2448 (Lusaka, National Assembly of Zambia).
- xxvii. *Parliamentary Debates*, No. 109, 16 Jan. - 3 April 1998, cols. 916-7.
- xxviii. The term used by an editorial in *The Post* 16 January 1998 and cited in *Parliamentary Debates*, No. 109, 16 January - 3 April 1998, col. 32. Although the Standing Orders Committee condemned *The Post* journalists for gross contempt and committed them to custody the High Court ruled against their indefinite detention. The Speaker should have referred the matter to the Director of Public Prosecutions, not the SOC.
- xxix. The weaknesses of Parliament in earlier years were well documented by W. Tordoff, 'Parliament', in W. Tordoff (ed.), *Politics in Zambia* (Manchester, 1994), pp. 197-241, W. Tordoff, 'Residual Legislatures: the Cases of Tanzania and Zambia', *Journal of Commonwealth and Comparative Politics*, 15, 3 (1997), pp. 235-49, and C. Gertzel, 'Dissent and Authority in the Zambian One-Party State', in C. Gertzel, C. Baylies and M. Szeftel, *The Dynamics of the One-party state in Zambia* (1984), pp. 79-115. Tordoff for instance notes an unbroken tradition of executive dominance going back to the colonial model of Governor's rule, in W. Tordoff (ed.), *Administration in Zambia* (Manchester, Manchester University Press, 1994), p.7.
- xxx. Drewry, *The New Select Committees*; Select Committee on Procedure, *The Working of the Select Committee System*, Session 1989-90, HC 19-I (London: House of Commons, 1990); G. Barnhart (ed.), *Parliamentary Committees: Enhancing Democratic Governance. A Report of the Commonwealth Parliamentary Association Study Group on Parliamentary Committees and Committee Systems* (London, Cavendish, 1999).

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- xxxi. S. Weir and D. Beetham, *Political Power and Democratic Control in Britain* (London, Routledge, 1999), pp. 437 and 389, see also *ibid.*, pp. 409-11. 'Serious concern' over the British Parliament's lack of control over delegated legislation is also noted by G. Peel, *Governing the United Kingdom*, 3<sup>rd</sup>. edn. (Oxford, Blackwell, 1995), p. 167.
- xxxii. The government's insensitive timing occasioned much resentment even among its own MPs, and its manoeuvre was defeated in a vote in the House, in July 2001.
- xxxiii. N. Bowles, *Government and Politics of the United States*, 2<sup>nd</sup>. edn. (Basingstoke, Macmillan, 1998), p. 271.
- xxxiv. Drewry, *The New Select Committees*, p. 392.
- xxxv. The efforts of Dipak Patel, MP to get clarification of the Gabon tragedy on the floor of the House are routinely obstructed by the government. 'Cobalt-gate' came to light following a European Union-funded audit of accounts which revealed a discrepancy of at least \$65 million in 1998 and 1999. Chief actors representing the government withheld co-operation in the audit performed by a Mauritian firm of accountants. *The Monitor* (2-8 March 2001), pp. 12-13.
- xxxvi. The *Times of Zambia* 11 November 2000 reported the Deputy Speaker thus: 'Only the same people are talking. You were not elected by the people from your constituencies just to come and be glued to your seats'. This had little effect, for he felt obliged to repeat the observation in the next session, according to *Zambia Daily Mail* 28 February 2001.
- xxxvii. Major Kamanga, *Parliamentary Debates*, No. 111, 12 November - 4 December 1998, col. 493.
- xxxviii. Usually about five or six pages of the *Zambia Daily Mail's* 12 pages and 7 of the *Times Zambia's* 16 pages are devoted to news as distinct from advertisements and entertainment. Parliamentary reports occupy 150-350 words, often substantially less than some advertisements placed alongside. Opposition and Independent MPs gain disproportionate publicity for they are the most inclined to voice their committees' critical findings in the House. The daily print run of the newspapers is probably not much over 10,000 each, serving a population of over 10 million. The state-run Zambia National Broadcasting Corporation transmits a brief digest of proceedings, 'Inside Parliament', after the 2200 hours television news bulletin.
- xxxix. Hicks Sikazwe, Chair of the Press Association of Zambia, emphasised the short attention span of newspaper coverage as a major weakness, addressing journalists at a

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- seminar on election reporting, organised by the Commonwealth Press Union, 10 February 2001 (Lusaka).
- xl . A.Chanda and M. Liswaniso, *Handbook of Media Laws in Zambia* (Lusaka, Zambia Independent Media Association, 1999), p. 75.
- xli. *Report of the Committee on Education, Science and Technology* (2000), p. 28. The Clerk's guidance (interview 5 February 20001) to committees to produce briefer, 'bullet point' reports might increase the chances that MPs will digest the contents prior to debate but seems bound to harm the potential contribution of researchers outside Parliament to public debate.
- xlii. Drewry, *The New Select Committees*, p. 376.
- xliii. Afronet, *Zambia Human Rights Report 2000*, p. 68.
- xliv. Select Committee on Procedure, *The Working of the Select Committee System*, p. xviii.
- xlv. See *Parliamentary Debates*, 7 December 1999, col. 910, and *Zambia Daily Mail* 25 and 29 November 2000. The government pressed for the presentation of the 2000 report to be postponed to give it time to organise and instruct a caucus meeting of MMD MPs to vote against adoption.
- xlvi. On the rehabilitation of the local courts in Eastern Province, the committee were 'appalled at the reply from the Permanent Secretary. He does not address the query from your committee about submitting the report they ask for'. *Report of the Committee on Government Assurances* (1997), p. 49.
- xlvii. *Report of the Committee on Communications, Transport, Works and Supply* (1999), p. 38.
- xlviii. 'It is a useful rule of thumb that the more time a body like a legislature spends in plenary sessions, the less influential it is'. N. Ornstein (ed.), *The Role of the Legislature in Western Democracies* (Washington, DC, American Enterprise Institute, 1981), p. 85.
- xlix. Cited in *The Monitor* No. 149 (9-15 March), p. 6.
- l. Interviews with MPs, Lusaka, February 2001.
- li. P. Chabal and P. Daloz, *Africa Works*
- lii. See for example submission by Women for Change's Executive Director in *Report of the Committee on Health, Community Development and Social Welfare* (1999), p. 66. Additional evidence from interviews, February 2001, Lusaka.
- liii. Interview, Lusaka, 15 February 2001.

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- liv. For example D. Patel, MP on the occasion of the presentation to the House of the first report by the Committee on Economic Affairs and Labour: 'I am aware that Parliament or this report has no teeth to bite, but, it has teeth to tell the Government what is going on. If you do not resolve these issues then, they will keep on coming back. Zambia has changed since 1991. Have you already forgotten that? Mr. Speaker, I took the liberty of going through the pre-1991 reports. Your Committee found it very difficult to write such reports. They did not come out as open as this'. *Parliamentary Debates*, No. 114, 9 November - 9 December, 1999, col. 868. As a cabinet minister Miss E. Nawakwi confirmed 'eight years ago, a report like this would have been unthinkable'. *Ibid.*, col. 884.
- lv. 'The worst fate which can befall any Select Committee is to be used by the Department it is supposed to be monitoring'. Select Committee on Procedure, *The Working of the Select Committee*, p. xli.
- lvi. The three ministerial portfolios covered by the Committee on National Security and Foreign Affairs, namely defence, home affairs and foreign affairs, were all held by President Chiluba's most loyal supporters, Chitalu Sampa; Peter Machungwa; Keli Walubita respectively. They remained firm during the events surrounding the debate over the presidential third term in April 2001, when several cabinet and deputy ministers were dismissed.
- lvii. Interview with Mr. N. Chibesakunda, Lusaka, 15 March 2001.
- lviii. *Report of the Parliamentary Reforms Committee on Reforms in the Zambian Parliament, 2000*, in *Report of the Parliamentary Reforms Committee on Reforms in the Zambian Parliament. Phase 1*, mimeo. (Lusaka, November 2000), p. 14.
- lix. Colonel Nawa, MP, of the Committee on Communications, Transport, Works and Supply: 'We went and sat in the Committee Room and were told the programme but when we said we wanted to go into the field, we were told there was no money. So, we sat back and drank tea for seven days'. *Parliamentary Debates*, Vol. 114, 9 November - 9 December 1999, col. 444.
- lx. R. Weaver and B. Rockman (eds.), *Do Institutions Matter? Government Capabilities in the United States and Abroad* (Washington, DC, The Brookings Institution, 1993), pp. 467 and 463. 'In any given setting, it is hard to prove that proposed reforms would improve governmental effectiveness because claims must be either counterfactual or

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- based on evidence from other countries that lack exactly equivalent social and political conditions'. Ibid., p. 466.
- lxi. K. C. Wheare, *Government by Committee. An Essay on the British Constitution* (Oxford, Clarendon Press, 1955), pp. 2-3.
- lxii. See 'MPs Indaba Flops over Presidential Powers' in *The Post*, 8 December 1999, where an MP is reported as saying 'it is clear that the members want to reform Parliament to give it teeth to bite the executive if it does not implement the recommendations on various reports of the Committees as Parliament is supposed to be a watchdog of the Executive'.
- lxiii. Barnhart, *Parliamentary Committees*, p. 20.
- lxiv. Shugart and Carey, *Presidents and Assemblies*, p.129.
- lxv. D. Olson, *Democratic and Legislative Institutions* (Armonk, New York, M.E.Sharpe, 1994), p. 10.
- lxvi. Weir and Beetham, *Political Power and Democratic Control*, p. 481.
- lxvii. For example P. Dunleavy *et al.*, *Development in British Politics. 6* (Basingstoke, Macmillan, 2000), p. 117.
- lxviii. Weir and Beetham, *Political Power and Democratic Control*, p. 495.
- lxix. For evidence see for example M. Baylies and M. Szeftel, 'The 1996 Zambian Elections: Still Awaiting Democratic Consolidation', *Review of African Political Economy*, 24, 71 (1997), pp. 113-28; P. Burnell, 'The Significance of the December 1998 Local Elections in Zambia and their Aftermath', *Commonwealth and Comparative Studies*, 38, 1 (2000), pp. 1-20.