



Institute of Social Studies

GRADUATE SCHOOL OF DEVELOPMENT STUDIES

**"BEYOND THE GOVERNMENT AND THE PARTY; EXPLAINING
CONSTITUTION FAILURES IN ZAMBIA"**

A RESEARCH PAPER PRESENTED BY:

Nalukui Milapo

(Zambia)

In partial fulfilment of the requirements for obtaining the degree of

MASTERS OF ARTS IN DEVELOPMENT STUDIES

SPECIALIZATION: GOVERNANCE AND DEMOCRACY

MEMBERS OF THE EXAMINING COMMITTEE

Dr Karim Knio (supervisor)

Jeff Handmaker (2nd reader)

THE HAGUE, DECEMBER 2007

Disclaimer

This document represents part of the author's study programme while at the Institute of Social Studies; the views stated therein are those of the author and not necessarily those of the Institute. Research papers and theses are not made available for outside circulation by the Institution.

Inquiries

Postal address: Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Location: Kortenaerkade 12
2518 AX The Hague
The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

DEDICATION

I dedicate this work to my husband Chrispin Muyangana; our son Genemmor Muyangana and my mother, Maureen Mushimbei Mbindo.

ACKNOWLEDGEMENTS

Writing an academic paper requires clarity of ideas and mind that does not come easy. I will forever be indebted to Dr. Karim Knio, my principle supervisor, for sharpening my ideas on the topic and together seeing that these ideas were translated into an interesting piece of work. With patience, anything is possible and I can not thank Karim more on this note. Jeff Handmaker worked alongside Karim and I appreciate the legal and practical experience on African constitutional matters that he brought to the fore.

I wish to thank those who came before, the people who got me interested in issues relating to governance and democracy. The first person that comes to mind is Brenda Tambatamba Liswaniso, who I worked with at Pact Zambia. Brenda probably has no idea how she shaped my career path, but it was through her that I got interested in engaging fully with what was happening in the Zambian political arena. The skills that she passed on to me became my rallying point when I moved to the Oasis Forum Secretariat whose main focus was to advocate for constitutional reform in Zambia. Working with Reverend Japhet Ndhlovu, Mr. Michael Musonda, Ms Grace Kanyanga, Ms Laura Miti-Banda, Mr. Mumba Malila, Father Ignatius Mwebe and Mr. William Mweemba at the Oasis Forum Secretariat was not only challenging but a time of learning and reflection – for these men and women challenged the status quo. I will forever cherish the ‘strategising meetings’ and the countrywide outreach programmes - for knowing the politics in my country has helped me to make informed comparisons with other countries.

Although I experienced emotional distress during my 15 months stay away from home, I think my husband endured worse circumstances than me. I want to thank him, together with my mother for taking care of my son who was only 11 months old when I left. A phone call to my mom became a 'fix' throughout my stay in the Netherlands.

Lastly, I want to thank my course mates in the Governance and Democracy specialisation who were 'my family' away from home. Special gratitude to my friend Wies Maria Maas, for being my friend, anytime and anyhow.

Nalukui Milapo

December 2007

TABLE OF CONTENTS

DEDICATION	III
ACKNOWLEDGEMENTS	IV
LIST OF ABBREVIATIONS	VII
LIST OF TABLES	VIII
CHAPTER ONE: INTRODUCTION	1
1.1 THE PROBLEM	1
1.2 AIMS AND OBJECTIVES.....	6
1.3 RATIONALE FOR THE STUDY	6
1.4 METHODOLOGY.....	7
1.5 LIMITATION OF THE STUDY	8
1.6 CHAPTER OUTLINE	8
CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK.....	10
2.1 DEFINITION OF CONCEPTS.....	10
2.2 THE THEORIES.....	13
2.2.1 <i>Historical Institutionalism (HI)</i>	13
2.2.2 <i>Rational Choice Institutionalism (RCI)</i>	16
CHAPTER THREE: INTRODUCTION TO ZAMBIAN POLITICS	18
3.1 ZAMBIA'S RULING PARTIES: UNIP AND MMD.....	18
3.1.1 <i>UNIP</i>	18
3.1.2 <i>The MMD</i>	19
3.2 HISTORICAL BACKGROUND TO ZAMBIA'S CONSTITUTION: INDEPENDENCE AND THE 1964 CONSTITUTION AND RELATED POLITICS.....	21
CHAPTER FOUR: INDIGENOUS CONSTITUTION MAKING.....	23
4.1 THE MAKING OF THE 1973 CONSTITUTION.....	23
4.2 THE MAKING OF THE 1991 CONSTITUTION	30
4.3 THE MAKING OF THE 1996 CONSTITUTION	36
CHAPTER FIVE: ANALYSIS	41
5.1 READING ZAMBIA'S CONSTITUTION MAKING FAILURES FROM HISTORICAL INSTITUTIONALISM (HI) PERSPECTIVE.....	41
5.2 READING ZAMBIA'S CONSTITUTION FAILURES FROM RCI PERSPECTIVE.....	44
5.3. HI AND RCI READINGS INTERPRETED	48
CHAPTER SIX: CONCLUSION	50
REFERENCES.....	51

LIST OF ABBREVIATIONS

CA- Constituent Assembly
CMP - Constitution Making Process
CRC- Constitutional Review Commission
MMD - Movement for Multi Party Democracy
UNIP - United Nations Independence Party
ZCTU- Zambia Congress of Trade Unions
NGOs- Non Governmental Organisations
UFP- United Federal Party
ZANC- Zambia African National Congress
ANC- African National Congress

LIST OF TABLES

Table 1: The Process of Constitution Making in Zambia in 1973, 1991, and 1991

Table 2: The Alternative to the Constitution Making Process: "The People's Choice" as proposed by the Zambian NGOs, Churches, Professional Associations etc.

Table 3: The Actors In Constitution Making: The "Recognized" And "Unrecognised" In The Zambian Constitution Failure Debate

Table 4: The 1991 Zambian Cabinet

APPENDICES

Table 3: The Actors In Constitution Making: The “Recognized” And
“Unrecognised” In The Zambian Constitution Failure Debate

Table 4 : The 1991 Zambian Cabinet

Guiding Questions for Interview

CHAPTER ONE: INTRODUCTION

1.1 The Problem

In Africa, Zambia is one country that has been faced by an unprecedented number of constitutional failures. In 1996, Ndulo and Kent (1996:256) commented on the situation as forth: “Four constitutions in 32 years hardly represent a settled state of affairs and an end, or even a stopping place of long duration, does not appear in sight”. This is what they meant: a constitution in 1964, 1973, 1991 and 1996 and as they had predicated, there is another constitutional review process since 2003. Constitutional failure in this case means that these constitutions or Constitution making processes did not stand the test of time¹. As a result, the churches, the NGOs, professional associations and in some instances opposition political parties have been lobbying the government to put an end to these “short-term constitutions” or “constitution making processes” due to the various costs involved that a poor developing nation such as Zambia can not afford². These groups are equally concerned that the issues that matter in the governance of a country such as separation of powers among government institutions, fair electoral laws, financial accountability in public office, etc have to a large extent remained unchanged since Zambia’s independence in 1964. .

But how can these failures be explained? The discourse on the reasons for recurrent constitutional failures in Zambia is saturated with analysis that focuses and limits itself to the Government and its Party. In fact, government and party responsibility has often been reduced to the President citing the “power” that the President has over the institutions of constitution making such as the Inquiries Act and the CRC respectively, as illustrated below in Table 1. Due to this, Habasonda concludes that in Africa “constitutions are seen less as constraints on the abuse of power and more as instruments that the Presidents can

¹ I discuss the characteristics that a Constitution must meet in the Conceptual framework in Chapter two

² Here I refer to groupings such as The Civil Society Action Committee on the Constitution (CSACC) that was active in the 1990s; and after 2000, the OASIS FORUM, a coalition of the three Church mother bodies (the Evangelicals, the Pentecostal and Catholic Coordinating organs in Zambia), the Law Association of Zambia and the Non-Governmental Organizations Coordinating Council. I also recognize the work of the recently founded Consultative Group on the Constitution (CGC),

amend and write to suit their own agendas”³. Mvunga (2001:1) has equally blamed Zambia’s constitution failures on the President and has evoked the term constitutionalism or “the culture and habit of living with and being regulated by the constitution” to explain his position. His claim is that those in political leadership, especially the presidents, have not internalised the importance of adhering to the constitution with its emphasis on protecting the rights and interests of the masses above those of the government and party. Organizations working on Constitutional reform in Zambia such as the Oasis Forum have a similar position which is reflected in their insistence to have the president out of the constitution making process, as shown in Table 2 below.

What makes the Zambian constitution case interesting and therefore worth exploring is the fact that the political sphere has changed in terms of ideologies, actors and other underpinnings and yet the constitution making process is undertaken under similar mechanisms and institutions leading to the same outcome - which in this case has been “failure”. To be precise, Zambia’s political life is outlined in three phases: the first republic, from 1964 to 1972 (from multipartyism and independence to the formation of a one party state or dictatorship); second republic, from 1973 to 1991 (from a one party state or dictatorship to the introduction of multipartyism and “democracy”⁴) and the third republic, 1991 to the present (multipartyism and “democracy”). A further dichotomy could be made in terms of ideology in that from 1964 to 1991, the government and its party, UNIP, was inclined towards socialist policies while from 1991 to the present, the government and its party the MMD has embraced neoliberal policies.

The proposition of this author, informed by literature from the “new Institutionalism” is that Zambia’s constitution failures can be better understood when a thorough review of the constitution making process is undertaken⁵. An in-depth analysis of the institutions, actors and other social forces over time is necessary while the party and government could serve as building blocks in the analysis.

³ Habasonda Lee, ‘ Presidentialism and Constitutionalism in Africa: ‘Third Term’ phenomenon/extension of tenure; the Zambian experience’, a presentation made at the ZESN Regional Stakeholders Conference on Elections and Democracy, Monomotapa Crowne Plaza Hotel, 15- 16 March, 2007

⁴ The MMD came into office in 1991 during what has been referred to as “the third wave of democratisation” by Samuel Huntington. This was the time of the collapse of the Soviet Union and US interests in building democracies all over the world was at its peak.

⁵ The “ New Institutionalism is explained in detail in Chapter 2

Although the 1964 constitutional amendment is highlighted in this paper, the focus however is on the constitutional making processes leading to the 1973, 1991 and 1996 constitutions as this was the time that constitution making was undertaken as an 'indigenous' project. The difference between the 1964 constitution and the subsequent constitutions of 1973, 1991 and 1996 respectively is that the 1964 constitution was part of the "handover package" from the British while the later were initiated by the local political leadership without any "formal" interference from the former colonialist or "other western countries"⁶.

⁶ "Formal" and "other western countries" in the sense that the British just like many other western countries have been accused of indirect interference in the domestic affairs of former colonies and non- former colonies alike.

TABLE 1: THE PROCESS OF CONSTITUTION MAKING IN ZAMBIA: 1973, 1991 AND 1996

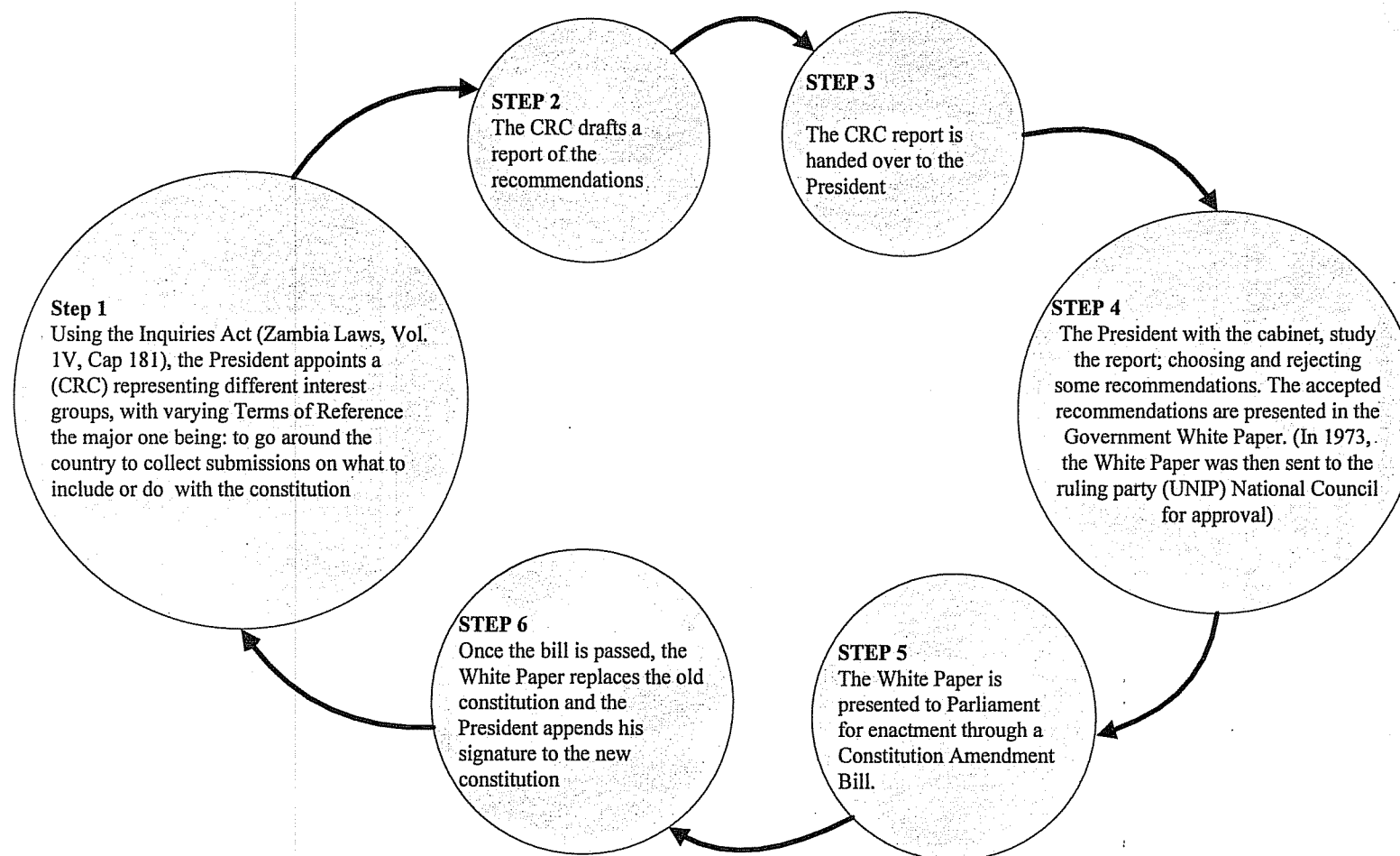
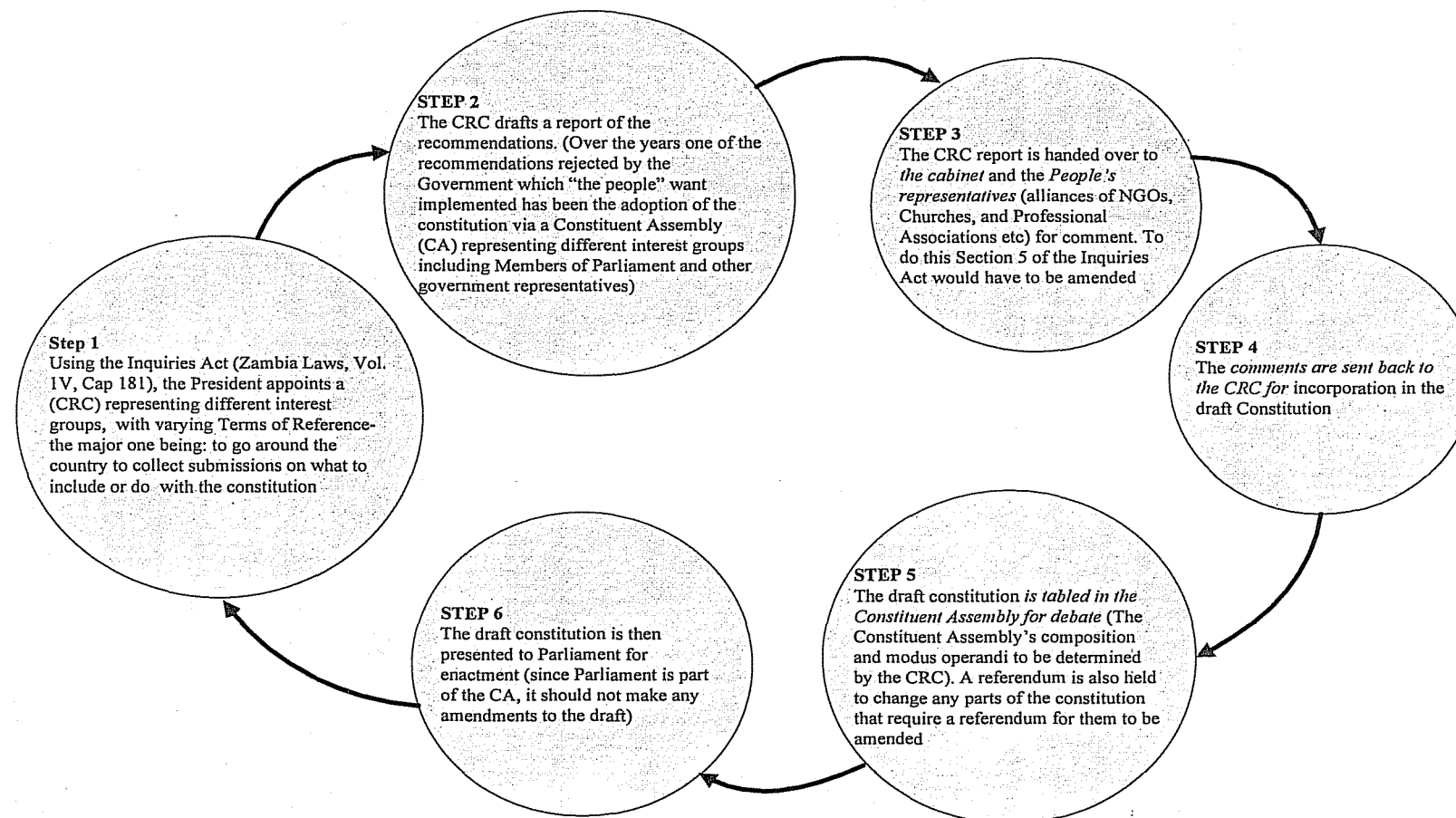


TABLE 2: THE ALTERNATIVE TO CONSTITUTION MAKING: “THE PEOPLE’S CHOICE” AS PROPOSED BY THE ZAMBIAN NGOS, CHURCHES AND PROFESSIONAL ASSOCIATIONS (SOURCE: Oasis Forum (2003) “Roadmap on the Constitution Review Process”



1.2 Aims and Objectives

Bearing in mind that a constitution is an institution that defines the constraints and capabilities of individuals within a given state –both those in and outside government, the dichotomy between the losers and the winners in the processes of constitution making can never be clear cut⁷. This study therefore aims to address this gap. Burnell (2001:12) captures this line of thought in discussing electoral competition in Zambia -emanating from the introduction of multi-party politics in 1991 as translating into patron- client relationships in the political system that penetrate across entire communities. Further, the logic behind maintaining and excluding certain actors in the constitution making process needs to be understood in varying contexts (political, economic, social) and time periods.

A review of the process will allow for the understanding of Zambia's constitution failures not only from what is 'visible' but the 'invisible', in that although institutions such as the Government and the Party can be easily underpinned there could be more to their emergency, maintenance and therefore existence, which ultimately affects the outcomes of constitution making.

1.3 Rationale for the Study

Undertaking a study to explain constitutional failures in Zambia by focusing on institutions in order to juxtapose why the constitution making process remains almost invariable despite changes in regimes, actors and other social forces adds to scholarly work on the emergency, maintenance, change and continuity in institutions and therefore political outcomes in varying contexts. Political scientists and economists in the new institutionalism school have shown through in-depth research the critical role that political institutions play in explaining political behaviour and social change (Douglas, 1987; Hall and Taylor, 1996; Thelen and Steinmo, 1992). The assumption is that institutions "shape behaviour; the logical extension of this chain of causality is that behaviour then shapes attitudes (which then shape political outcomes)" (Bratton, 2005: 40). There has so far been no study undertaken to review Zambia's constitution making process from this angle and

⁷ Table 3 in appendix shows the "recognized" and "unrecognized" actors in the Zambian constitution failure debate.

this piece of work will therefore bring out new ways of thinking and understanding the intricacies of Zambia's constitution failures.

This piece of work should be able to inform the churches, the NGOs and other interests groups that work on constitutional reform in Zambia to consider other factors and actors, other than just focusing on the Government and the Party, in their advocacy for a better Constitution-which might be one way to their success. The success of Constitutional reform in Zambia would entail a number of positive things, but especially that the resources spent on recurrent Constitution making could be channeled to other developmental ventures, given the high poverty levels in Zambia.

The study will also enlighten the general debate on Constitutional failures in Zambia and perhaps also in other African States that have shared similar experiences.

1.4 Methodology

The study employed both primary and secondary data collection methods. For primary data collection, a total of ten semi- structured interviews were conducted: Interviewees were carefully selected to represent the various levels of analysis. Those at the Party level were to provide an insight into what their party stands for, the role of the different policy organs and how the party links up with other sectors of society in policy making and law reform among other things. At government level, even though Ministers are "recycled" in Zambia, I deliberately decided to interview those that had been left out of the current government due to various reasons. The assumption was that these would be objective in giving out information about the government and other sectors have been and the issues that were prominent during the processes leading to the 1973, 1991 and 1996 constitutions.

I also interviewed one of the people who were tasked, by the government, to chair the CRC for the 1996 constitution in order to understand the role of the CRC and other related issues. At the NGO level, interviews were conducted with a representative from the Consultative Group on the Constitution (CGC), who was part of the Civil Society Action Committee on the Constitution (CSAC) during the 1996 constitutional reforms and had also followed the 1991 CMP. This gave me insight into the activities of non- governmental actors and an understanding of these actors' position on constitution making in Zambia.

From the media, I had an interview with the managing editor of one of the leading private newspapers in Zambia who had been part of the 1991 multiparty movement. He is also a leading businessman and has been keenly following Zambia politics especially after 1991. From the business sector, I interviewed one businessman involved in selling mining equipment who had also been involved in the advocacy for constitutional reforms through linkages with non-governmental groups. An interview was also conducted with a representative of the private sector consortium representing the Zambia National Farmers Union, the Chamber of Commerce, the Tourism Council, and chamber of mines, Association of Manufacturers, Bankers Association and the Indigenous Business Association. These interviewees gave me an idea of the private sector views and interests in Constitution making.

Secondary data was derived from various sources which included journals, books, party documents etc. The internet also provided valuable information. I have also relied on my four years work experience with the Oasis Forum, a loose alliance comprising the Churches, the Law Association of Zambia and the Non- governmental Organizations Coordinating Council, that has been spearheading the advocacy for constitutional reform in Zambia.

1.5 Limitation of the Study

A constitution is a legal document which can only be adequately read into when one has some legal background. For instance having a clear idea of how some articles favoured some sectors of society at the expense of others was not easy and this implied having to rely on experts. With this in mind, there is a possibility that not all that should have been captured was. Further, the number of interviewees is low, due to time and financial limitations, which could make generalizations far much difficult to make.

1.6 Chapter Outline

The paper is divided into five chapters. Chapter one, above, is an introduction mainly outlining the aims, objectives and rational for undertaking this study. Chapter two, deals with the key concepts employed in the paper, including the theories that this case will be analyzed from. Chapter three sets out to introduce Zambian politics and the institutions

involved in constitution making by giving an insight into the ruling parties and democracy trends. This is meant to provide an understanding of the political arena within which societal actors operate to arrive at political decisions regarding constitutional reform or otherwise. The chapter also gives a background to Zambia's independence constitution of 1964 and related politics, to lay a foundation to what I term "Indigenous Constitution Making" which birthed the 1973, 1991 and 1996 Constitutions. Chapters four therefore gives the story of indigenous constitution making in 1973, 1991 and 1996 which allows for analysis and therefore explain the reasons for the failures which are made in Chapter five. Chapter six is a conclusion.

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Definition of Concepts

There are various terms that are prominent in this study whose usage needs elaboration and clarity. I first deal with the concepts that are in the title such as the *Government*, the *Party*, and the *Constitution*. The first chapter has also brought out concepts such as *Constitution Making*, *Institutions* and *New institutionalism*.

The first term that I deal with is the *government*. In most of the political analysis, government has often been used in similar manner as the state, which makes its study difficult -for the state itself is a contested term (Collier, 1991: 782). In the African case, the definitions become even more complicated; for instance, let me deal with the definition of the state as 'an independent and autonomous political structure over a specific territory, with a comprehensive legal system and a sufficient concentration of power to maintain law and order (Rejai and Enloe, 1969:143). This definition becomes a challenge when applied to the state in Africa where it has been argued that the state does not exist, has failed or collapsed⁸. The argument for the non-existence or murkiness of the state in Africa is predominantly based on the fact that the state has no resemblance to the original Westphalian model, but instead is an imposition from the west and therefore subject to external influence and domination (Rejai and Enloe, 1969). This line of thought has been further augmented by the fact that the state in Africa has failed to live up to the expectations that the indigenous people had in attaining independence from colonial rule which translated into a critical assessment and breakdown of the state led-development paradigm (Hyden, 1996:29). Although the disintegration of the state led development model and its replacement by the "economistic" paradigm that focuses on the market has been a neoliberal agenda, the reasons advanced for this shift resonates with that of Marxists whose concern is to lacerate the 'rent-seeking' behaviour of state officials in Africa- the 'comprador' or 'bureaucratic bourgeoisie'.

How then can government be conceptualized in Zambia? A few scholars have argued that the state exists in its own form in Africa and one way of conceptualizing it is to reconsider

⁸ See Hyden, Rethinking Theories of the State: An Africanist Perspective', *Africa Insight* 26: 26-35

the universalist approach and focus instead on the context⁹. This context demonstrates that there has been a gradual disintegration of the public institutions that make up the state which has since opened a window for analysis of socioeconomic and political issues through other lens and this has often translated into focusing on non-state institutions and actors (Hyden:30). The other way has been to empirically examine whether the failure of development through these public institutions has led to the loss or reconfiguration of power in relation to these other non-state actors or institutions¹⁰.

It is from this array of ambiguities that when discussing government in this paper I focus on the 'head of state and the immediate political leadership that surrounds the head of state' (Collier, 1991: 782). In this regard, I refer to elected bodies such as the Executive and the Legislature. Though incapacitated or not, empirical evidence shows that in Africa, these institutions still have a monopoly of the instruments of coercion over the rest of society¹¹.

The channel through which the government gets to power is a *political party* and a political party in this paper represents 'a political group that presents candidates in elections to public office; or a political group that would do so but is unable to, either because it is proscribed or because elections are not held' (Collier, 1991: 787). The "basic" objective of a political party is to form government in order to 'serve' the interests of citizens of a particular country, a service conducted through laws such as the *constitution*. Defining the constitution has its own ambiguities and I therefore take the formulation that the constitution is a 'higher law, authorizing and governing ordinary law' and that 'in its broadest sense a constitution represents the basic structure of any organized society. Formal or informal, written or unwritten, its existence is inevitable' (Ndulo and Kent, 1996:256). Implied here is the fact that a constitution outlines the rules of engagement among the different interest groups in a given society. The *constitution making process* i.e. the process of crafting the constitution is therefore a complex venture given the various interests at stake and there is no agreed standard practice except that the process through which the final content is agreed upon needs to be *democratic* or have the consent of the majority while protecting the rights and freedoms of the minority. Critical

⁹ See Hyden, Rethinking Theories of the State

¹⁰ See Pratt, Nicola (2004) 'Bringing politics back in: examining the link between globalization and democratization', Review of International Political Economy, 11:2, 311 - 336

¹¹ See Pratt (ibid)

therefore is its adoption – for while ordinary law may be “adopted and altered by legislative majorities of whatever size, the adoption of a constitution and its amendment requires much more, widespread participation by the citizenry and the achievement of a broad-based consensus” (Ibid:257). The constitution as the highest governing law should be stable and be able to stand the test of time.

In Zambia constitution making has been undertaken through *institutions* such as the CRC appointed by the President through the powers enshrined in the Inquiries Act. Some scholars such as Bratton (2005: 250) have been critical of the usage of the term institution as they feel that it has been “abusively overstretched into one of the loosest in the social science lexicon”. The term has been employed in referring to “the rules of a political and economic game (like constitutions and contracts) to organizations that link individuals into larger systems (like bureaucracies and firms) or even “stable, valued, and recurring patterns of behavior”¹² (Ibid). For the sake of this research, however, these broad formulations are meaningful and therefore taken in entirety. However, it is important to understand that the rules, organizations and patterns of behaviors all operate in a context and Sven Steinmo (1991) summarises how institutions structure politics when noting that they “... define who is able to participate in the particular political arena, shape the various actors’ political strategies, and (more controversially) influence what these actors believe to be both possible and desirable (i.e. their preferences)”.

On the other hand, the new institutionalism, which I turn to when studying these institutions and their political outcomes, “connotes a general approach to the study of political institutions, a set of theoretical ideas and hypotheses concerning the relations between institutional characteristics and political agency, performance and change” (March and Olsen, 2005: 3). The new institutionalism, is a successor to the “behavioural approach” which was criticized for being utilitarian since it “...aims at stating all phenomenon of government as an observed and observable behaviour of men”¹³. The focus on the president in Zambia’s constitutional debate falls into this behavioural thinking. The new institutionalism instead is of the view that political behaviour is what

¹² The quote is from Samuel Huntington (1968) “Political Order in Changing Societies” New Haven, CT: Yale University Press, p12

¹³ Truman, David (1951) “The Implications of Political Behaviour Research,” Social Science Research Council, *Items*: P 37-9, cited in Dahl, R (1961) “Behavioural Approach in Political Science: Epitaph to a Successful Protest,” *American Political Science Review* p.767.

reveals individual preferences and therefore wish to make a distinction between the “real” (potential) and “expressed” preferences (choice among alternatives) in political behaviour. New institutionalism suppose that “there may be any number of reasons why, under one particular set of circumstances, someone may make a political choice that deviates from the choice the same individual, with the same preferences, would make under other circumstances” (Immergut, 1988:7).

Further, by focusing on actors’ interactions under the confines of institutions, the new institutionalism addresses the problems that the aggregation of individual behaviour into collective phenomena poses as Dahl stresses “...analysis of individual preferences cannot fully explain collective decisions, for in addition (there is)... need to understand the mechanisms by which individual decisions are aggregated and combined into collective decisions.”¹⁴

In this study, I employ two threads of the new institutionalism; Historical Institutionalism and Rational Choice Institutionalism.

2.2 The Theories

2.2.1 Historical Institutionalism (HI)

HI considers institutions both as organisations and assimilated patterns of behaviour or norms¹⁵, which act as filters that “selectively favour certain interpretations either towards goals that political actors strive for or of the best means to achieve these ends” (Immergut, 1998: 20). Historical Institutionalists therefore “... generally see institutions as intervening variables (or structuring variables) through which battles over interest, ideas and power are fought”¹⁶.

¹⁴. Dahl, Robert. A. (1961), “ Behavioural Approach in Political Science: Epitaph to a Successful Protest,” American Science Review, p.770

¹⁵ See also Skocpol, 1995; Kloppenborg, 1995; Mahoney James, 2000; Jeffrey Haydu, 1998.

¹⁶ Steinmo, Sven (2001) “The New Institutionalism” in “The Encyclopedia of Democratic Thought”, Barry Clark and Joe Foweraker, (eds.) London: Routledge, found at : <http://stripe.colorado.edu/~steinmo/foweracker.pdf>

Below I discuss the notions that HI considers as feeding into the formative period of institutions, their sustenance and the catalysts for their transformation.

Formation of Institutions in HI

According to Kloppenberg (1995: 125), an institution is formed when a collision between people with new ideas and an already existing world “with people who have other ideas already institutionalized in a variety of formal and informal networks” occurs. Implied in here is the fact that the creation of an institution is never authentic or is there anything that could be referred to as “authentic institutional crafting”, for the actors involved would have already been socialized consequently carrying with them varying perspectives. Apart from the ideas, Kloppenberg (ibid) notes that resources or each individual’s capabilities play a critical role in ensuring that these ideas are concretized. A simple analogue of this could be a group of people forming a political party. The idea to form the party would have been conceived by some group members based on what they know from their past interactions and dependent on their objective. However, party success is about numbers and in this case, these individuals will co-opt other people who bring along their thinking, originating from their diverse interactions. The ideas coupled with the capabilities will then lead to this party formation.

HI and Institutional Change

Unique to HI is the thought that since the formative period of an institution is informed by the past, institutional change can only occur when there is an “extraordinary” moment or a “critical juncture” precipitated by “exogenous shocks that disrupt previously stable arrangements and open the door again for institutional innovations” (Thelen, 2003: 212). A critical juncture is however not easy to identify and some scholars have based their choice through “considerable discretion”; others on antecedent conditions or baselines as they view the critical juncture as being deeply imbedded in these conditions while yet others through the analysis of societal “cleavages” or “crises” that lead up to the critical juncture¹⁷. The timeframe for the juncture varies as it can be brief in some cases while extended in others.

¹⁷ Quote from Collier, R.B (1991) “Shaping the political Arena: Critical Junctures, the Labour Movement and Regime Dynamics in Latin America” Princeton, New, Princeton University Press.
p27

Noting the analytical problems that such varying criterion poses, Collier (1992:30) came up with three components that a critical juncture should contain; "the claim that a significant change occurred within each case, the claim that the change took place in distinct ways in different cases and the explanatory hypothesis about its consequences".

Persistence and Sustenance of Institutions in HI

HI puts a caveat to the possibilities for institutional change even when critical juncture takes place and applied in here is the notion of path dependency. Path dependency characterises those historical sequences or "punctuated equilibrium" in which contingent events set into motion institutional patterns or event chains that have deterministic properties (Mahoney, 2000: 507). In short, 'history matters' for the "impact of decisions made in the past persists into the present and defines the alternatives for the future" (Karl, 1997:11). The insight into how past history shapes future outcomes can only be understood when a thorough historical study of a particular situation is undertaken. Three features define path dependency according to Mahoney (2000:510): the first is that "path-dependent analysis involves the study of causal processes that are highly sensitive to events that take place in the early stages of an overall historical sequence". HI scholars such as Pierson (2000 :263) have noted that "in a path-dependent pattern earlier parts of a sequence matter much more than later parts, an event that happens 'too late' may have no effect, although it might have been of great consequence if the timing had been different." Secondly, what one identifies as historical events should be "isolated incidences" that can not be explained on the basis of prior events or "initial conditions" and since these "early historical events are of decisive importance for the final outcome of the sequence, this criterion rules out the possibility of predicting a final outcome on the basis of initial conditions" (Mahoney, 2000:511). As Jack Goldstone (quoted in Mahoney, 2000:511) notes, path dependence "is a property of a system such that the outcome over a period of time is not determined by any particular set of initial conditions. Rather, a system that exhibits path dependency is one in which outcomes are related stochastically to initial conditions."

The third feature of path dependency is that "once contingent historical events take place, path-dependent sequences are marked by relatively deterministic causal patterns or what can be thought of as "inertia" - i.e., once processes are set into motion and begin tracking a particular outcome, these processes tend to stay in motion and continue to track this outcome" (Mahoney, 2000: 511)

Thelen (2003: 209) notes that “ ...one reason (Historical Institutionalists) are drawn to the study of institutions is precisely that, frequently, particular institutional arrangements are incredibly resilient and resistant even in the face of huge historic breaks (revolutions, defeat in war)...exogenous shocks of just the sort that one would expect to disrupt previous patterns and give rise to institutional innovation”.

2.2.2 Rational Choice Institutionalism (RCI)

Formation of Institutions in RCI

RCI considers institutions as simply “rules of the game” which are created from “scratch” and we can only know the origins of the institution through its functions¹⁸. RCI equally assumes that actors enter institutions on “tabula rasa” i.e. without any intrinsic ideas, values, norms etc except for their capabilities. Further, this theory argues that since the rules act as constraints on actors’ interactions, as rational beings, the actors make rational calculations under “conditions of interdependence”, “bounded rationality” or “unanimity” with other actors in order to adjust to their rational expectations¹⁹. To understand the outcomes of this interaction, RCI proposes studying “the game and its design” which entails “uncovering the laws of political behaviour and action from which models that ultimately help to “predict political behaviour” can be constructed (Steinmo, 2001). In essence research via RCI begins by “looking to the real world” to see if (the) proposition is right [testing the proposition] “rather than “look to the real world and then search for plausible explanations” for the phenomenon observed (ibid).

Persistence and Sustenance of Institutions in RCI

It has been said that institutions do not change easily “no matter what the analytic perspective” and this applies to RCI as well²⁰. RCI holds the view that institutions rarely change as they are often maintained by equilibrium that sets in due to the actors’ learning of the rules which consequently causes alteration of their strategies. The alteration of the actors’ strategies is often undertaken with the aim of maximizing their utilities (usually self interest) and therefore continuous change of laws, once they are stable, is often avoided given that this would entail altering strategies as well. Significant to this thinking

¹⁸ See Weingast, B. 1996; North, D. 1990; Hall, P. and R. Taylor, 1996

¹⁹ See Immergut, E.M (1998)

²⁰ Immergut (ibid)

is the fact that in the absence of a guarantee that the outcome of the new structure would favour the actor's interests, stability occurs as a consequence of avoiding uncertain outcomes. As Shelpé (1986, quoted in Steinmo, 2001) notes, "...the amount of uncertainty implied by a new institutional structure makes actors unwilling to change the structure". Despite the fact that not all actors would have their interests served in a given institution, the stability of an institution is possible once the interests of a "significant coalition" or "agenda setters" are served²¹.

RCI and Institutional Change

RCI explains the shift of equilibrium within an institution as arising from situations when actors are squeezed by the rules of the game into making choices that deviate from their ideal preferences²². The choice that actors have in the event of being squeezed is to change the rules of the game to suit their preferences or come up with "institutional set ups" to maximise their interests²³.

²¹ See Immergut, "The Theoretical Core of the New Institutionalism".

²² Ibid, p14

²³ Quotes from Buchan and Tulloch (1965).

CHAPTER THREE: INTRODUCTION TO ZAMBIAN POLITICS

3.1 Zambia's ruling Parties: UNIP and MMD

Zambia has only had two parties forming government since independence: UNIP lasted from 1964 to 1991 and the MMD has been in power since 1991.

3.1.1 UNIP

UNIP, a successor to ZANC came into existence in 1959 with the aim of demanding for independence from British rule. This goal was achieved in 1964, with Kenneth Kaunda as President of both the party and government. Forming government entailed that the party had to be "formalized". The Party Congress is the party's supreme policy organ and its major function is the election of top ranking party officials which include the President and members of the Central Committee, an equivalent of the cabinet in government. Since the congress ordinarily meets after five years, in between, the National Council undertakes its functions and the Secretariat also serves as a resource for day to day management of the party.

A discussion on UNIP structures can never be over for UNIP was present in all the corners of country and functioned like a government itself. However, I turn to the Central Committee which I mentioned briefly above. The Central Committee is one of the organs which has received a lot of criticism, due to its encroachment on the functions of the bureaucracy and the cabinet when UNIP was in power. The Central Committee directed the activities of all organs of the party and the state within the framework of the principles and resolutions passed by the National Council and Party Congress. The organ was also responsible for the review, consideration and approval of the annual national budget as well as the national development programmes. It comprised the president of the Party, 40 members elected by the party congress, seven members appointed by the president of the party and not more than 20 cabinet ministers appointed by the President. The number of cabinet members is meager compared to that of ordinary party members which resulted in successive defeat when a decision had to be put through a vote. Cabinet ministers therefore loathed this arrangement especially that they were the most educated citizens at the time.

As one former cabinet Minister recalled, “most party members were illiterate and did not understand the workings of Government and yet they controlled us - sometimes to frustrating levels”²⁴.

Although membership to the party was voluntary and open, ascendancy to key positions was dependant on loyalty and upholding the party’s principles of humanism- the pursuit of justice and equity in the treatment of all humankind and socialism. Rewards of belonging to the party were many. Between 1968 and 1972, the government “enacted a programme of nationalization, acquiring a controlling interest in many of the most important private sector enterprises, including the copper mining companies”, the backbone of the Zambian economy (Craig, 2000:357). By the mid-1970s, most of the main enterprises in the economy were “under state ownership and were held within a hierarchy of state holding companies, at the summit of which was the Zambia Industrial and Mining Corporation (ZIMCO)” (ibid). Opportunities to serve in these state enterprises were reserved for party loyalists, including opportunities to pursue further training abroad for would be recruits. Loyalty to the Party by the heads and deputies of these enterprises was not only expressed through the purchase of party cards but also involved monthly contributions equal to 2.5 % of their allowances²⁵. Also Included on the list of contributors were heads of the civil service and other service organisations. Over the years the party and government were almost merged such that “the party reined supreme over all other organs” (Simutanyi and Mate, 2006:7). UNIP was defeated by the MMD in 1991 and is now one of the many opposition parties in Zambia.

3.1.2 The MMD

The MMD succeeded UNIP in October 1991. The MMD began as a movement, in 1990, comprising students, trade unions, the church, businessmen, the intelligentsia and other interest groups “claiming” that they wanted to see an end to the UNIP governments’ mismanagement of national economic and political affairs²⁶. Implied in the party’s name- Movement for Multiparty Democracy- was the concern for the lack of multipartyism and democracy in the country especially after the country was reverted to a one party system in

²⁴ Interview with John Mwanakatwe, August, 20, 2007. Mwanakatwe served as Minister of Educations and later Finance in the UNIP government

²⁵ The 1998 Constitution of the United national Independence Party, Article 69(1f)

²⁶ I say claiming because some of the motives behind these actors prove otherwise as will be elaborated later.

1973. The MMD's constitution of 1991 is not precise on what kind of economic policies it would embrace but nonetheless made clear in its 1991 and subsequent manifestos and their application. Upon coming into power the MMD undertook neoliberal economic reforms such as market liberalization, price decontrol and creation of a competitive environment through privatization of State Owned Enterprises (SOEs). The privatization programme started as early as July 1992, only nine months after the MMD's victory. The former President Chiluba and many other former cabinet ministers in the MMD government are facing corruption charges over privatization scandals.

The MMD's organizational structure comprises: the Convention, the Secretariat, Parliamentary Liaison Committee, Provincial, District and Constituent Conferences and Provincial, District, Constituent and Branch Executive Committees. The Convention is the supreme organ of the party with the power of policy making and reviewing of overall performance of the development of the party. The Convention also elects the executive wing of the party known as the National Executive Committee (NEC) almost an equivalent of the "Central Committee in UNIP) which comprises the President, Vice President; the National Chairperson, Secretary and Treasurer; Chairpersons of committees that to some extent match government ministries such as committee for Legal Affairs, Commerce and Industry and industry, Finance and Economic Affairs etc. The people elected in these party positions in most cases end up being appointed to the matching positions in cabinet once elected to parliament or when appointed by the president as nominated Members of Parliament²⁷. The NEC also appoints the secretariat, which works closely with the NEC's committee of chairpersons to ensure survival and sustainability of the party for instance, in mobilizing party funding.

The MMD holds three types of membership; the individual, affiliate and associate. Individual membership is open to anyone sympathetic to the party objectives. Affiliate members are bonafide organisations that support the party's objectives. These affiliate organisations can be requested by the party to make financial contributions towards party funds as may be agreed between the party and the organisation. Unlike the individual membership, affiliate organisations are only admitted to the party once approved by the NEC. Associate membership is reserved for people who are not citizens of Zambia but are

²⁷ The 1996 Zambian Constitution, Art (68) (1) allows for the President to nominate up to eight members of parliament.

either established residents or persons owning long term established business institutions in Zambia and any organisation which elects not to be or which the NEC in its discretion considers should not be an affiliate organisation²⁸. Party funding is therefore realized from membership subscriptions including donations, fundraising ventures etc

Since the MMD intended to make a separation between the party and government in order to break away from the UNIP way of conducting national affairs, the rewards for party members have been termed rights and are general in nature such as: the right to participate in fora and meetings of party organs to discuss policies and activities of the party, demand for the fulfillment of what is enshrined in the party constitution etc. Nevertheless, there are rewards that party members get that are obvious and in line with the national constitution such as the fact that a member can be elected to contest local, parliamentary, presidential and other elections which if won often entails access to government resources and other privileges. As noted earlier, the constitution also provides for the republican President to nominate eight MPs who can subsequently be appointed to cabinet and these have mostly been members of the party. Moreover, the line between government and the party is very blurred and practices from the UNIP era such as one party dominance and Government and party linkages are still pronounced giving party members an advantage in many regards as will be discussed below.

3.2 Historical Background to Zambia's Constitution: Independence and the 1964 Constitution and related politics

When Zambia gained its independence in 1964, a few changes were made to the colonial constitution in order to facilitate this shift. The new constitution "like its colonial forbear" provided minute details on the structure of government and therefore "gave it the look of ordinary legislation, which being a Constitution is not" (Ndulo and Kent, 1996:259). The leaders of the political parties that were involved in the independence negotiations decided that Kaunda, having been exceptional in the liberation struggle should be named president in the independence constitution. Presidential elections were therefore not held except for parliamentary elections which saw UNIP emerging with an overwhelming majority.

²⁸ MMD 1991 Constitution, Art. (7) (b) (6)

Equally, constitution making was not a priority at the time since the leadership had opted to focus on development and nation building (Phiri, 1973:323). The context at the time needs to be elaborated: the literacy rates among the population were low to the extent that frantic efforts had to be made at independence to prepare for the inevitable changes. The “colonial powers had to groom, in an almost total policy vacuum, elites that would respectively represent the colonial effort after independence”(Baker, 1991: 354). The infrastructure was poor including other basic services. On the other hand, like all other African countries, Zambia was “artificially” created by the Berlin conference of 1884. This was later followed by a further division of the country by the colonialists into nine administrative provinces representing different tribes and ethnicities, with 72 different languages and dialects. The nine provinces have had dominating tribes, for instance the Bemba dominate the Northern and Luapula provinces, the Lozi dominate western provinces, etc. In politics, it plays out that each major tribe wants its own people to be in government for prestige and as a guarantee for their region’s development while the politicians “play the tribal cards” for political mileage.

Confronted with these situations, it was “rational” then for the government to place priority in these areas and not constitution making. However, one would reason that there was even more need then to adopt a constitution that would deal with the new dispensation and lay a foundation for the future. Without major constitutional reform, the very powers that the colonial masters had exercised over the locals, which powers were “the reason for the struggle” had now been taken over by the local leadership. The powers of the Presidency, equivalent to the powers of the British Governor during the colonial period, were immense in relation to the other arms of government. As Ndulo and Kent (1996:261) observes “it is no exaggeration to describe the powers of the President under the 1964 Constitution as enormous”.

Nonetheless, the first three years after independence were politically stable and government institutions enjoyed autonomy although the situation began to change after the 1967 UNIP General Conference, which is discussed in Chapter four.

CHAPTER FOUR: INDIGENOUS CONSTITUTION MAKING

4.1 The Making of the 1973 Constitution

Indigenous constitution making was first undertaken nine years after independence, in 1973. According to one former cabinet minister in the UNIP government, within 5 years of independence, the government had put up one secondary school in each of the 72 districts and it was not only in the education sector that progress was recorded but in all other sectors such that the new leadership deemed it necessary to protect the newly acquired assets from any internal or external threat²⁹. The “colonialists” though defeated at independence remained a threat, as Mwanakatwe recounted “we knew that they could destroy the little that we had achieved by using fellow politicians (and) so we had to tighten up our constitution”. The fact that neighbouring states, such as Southern Rhodesia, (now Zimbabwe) were still colonised, made the threats real.

Although those in government were proud of their achievements post independence, these achievements were not recognised nor shared by all. Many people had continued to live in squalor, making them an easy target for recruitment by opposition political parties who blamed the slow pace or lack of development in some parts of the country on the absence of regional balancing in the President’s appointment of people to serve in top government positions. Slowly, the unity of purpose that had existed among all the regions during the independence struggle began to wane even within the ruling party. The Lozi from the western province were the first to act on their grievances as they formed a break away party, the United Party in 1966, just two years into independence. The Party was however banned in its infancy by the UNIP government.

The worst for the ruling party came the following year in 1967 when it held its General Conference to elect members of the Central Committee. The Central Committee as mentioned in Chapter 3 was an important organ and as Mwanakatwe (1994: 54) observes, after independence the Central Committee brought in “a revolution in power, status and income among party political leaders”. Competition for posts was therefore expected and this was reflected in the bitterness which pervaded the elections. The top three posts that each region wanted their members to get elected to (excluding the President) were the

²⁹ Interview with Mwanakatwe

National vice Presidency, the National Secretary and National Treasurer. The Lozi from Western Province and the Nyanja from Eastern province were in one camp while the Bemba from Northern Province and the Tonga from Southern Province in another. The former were under the leadership of Simon Mwansa Kapwepwe while the later under Reuben Kamanga and both leaders were vying for the vice presidency. It however turned out that Kapwepwe won the election and his victory was further augmented by the fact that his camp won most of the lower rank positions as well.

This losing camp rejected the results causing a stalemate- which would eventually change the course of Zambia's history. In order to forestall a crisis within the party President Kaunda, as leader of the party dissolved the controversial Central Committee and replaced it with an interim Executive Committee which was thought to be more regionally balanced and representative.

At the time of resolving the Central Committee, Kapwepwe had already resigned his position as vice president citing marginalisation of "his Bemba tribesmen" and accused President Kaunda of dictatorship. Kapwepwe later formed a new party - the UPP in 1970. The events of 1968 and the defection of Kapwepwe who had been President Kaunda's closest ally almost forced the President to resign but rescinded his decision after persuasion from party members who claimed to be worried about the security of the nation four years after independence.

However, having survived these crises, both the party and government were now equipped with a different strategy. Gone were the "negotiating tactics" and slowly came the "dictatorship tendencies"³⁰. The party's General Conference decided that President Kaunda should assume "supreme powers over UNIP" by occupying the two top party positions- that of party president and Secretary General in order to be able to adequately deal with crisis situations. Equally in 1969 a referendum was held to end all referenda, which was in itself the first step to the formation of a one party state. Opposition parties such as ANC protested the holding of the referendum but the government still emerged victorious.

³⁰ Mwanakatwe (1994: 57).

There was also a realisation that economic progress had been slow and there was need to put in place an economic scheme to address this. The economic scheme which began in April 1968 would involve "state participation in business" to ensure that distribution of wealth was not left to a few individuals. This scheme was in line with the philosophy of humanism which the government had decided to institutionalise since its introduction in April 1967. Humanism was intended to give "meaning to politics" as capitalism was loathed in the UNIP leadership. A Leadership Code or code of conduct was also introduced in November 1972, to discourage materialistic tendencies among those in public, by placing a limit on what one could own and keeping a check on the measures employed to acquire their property,. With such interventions it was hoped that the "ordinary person" would recognise the government's efforts towards their well being.

Throughout this period, apart from the sectionalism, the opposition had not been a major challenge to UNIP at the ballot box. This would however change in 1971 when by-elections were held in twelve constituencies. UNIP managed to win eleven of the twelve constituencies but lost one to Kapwepwe, leader of the UNIP break away party the UPP. Kapwepwe had not campaigned adequately for the Mufulira West seat as UNIP had done and his victory was only as a result of his party's rising popularity. This popularity became a threat to the entire UNIP leadership to the extent that the UPP was outlawed in the same year and its leadership detained except for Kapwepwe. The rank and file of UNIP were now advocating for a new system that would deter any more sectionalism in UNIP and the absolute extraction of any elements of the UPP then or in the future.

Many scholars and observers have cited, and rightly so, that the threat posed by the UPP, a party led by the dynamic Mwansa Kapwepwe was the reason for the review of the constitution in 1972 which led to the introduction of a one party state³¹.

The Constitution Review in details

The announcement for the review of the Constitution and therefore introduction of a one party state was made on 25 February 1972 by the President. In March 1972, at the opening of the UNIP National Council, president Kaunda had declared that "The One-Party Democracy will help us to weed out political opportunists ...It has been fashionable in the past for any Party member... to threaten to quit, or indeed quit, the Party to join the

³¹ See Simutanyi and Mate (2006); Mwanakatwe (1994); Hamalengwa (1992)

opposition; for any civil servant ...to threaten to quit ...for any businessman denied a licence or a loan on perfectly legal grounds to run to the opposition, in the hope that if they formed the Government, he would be favoured. This era in which the politics of patronage has been a feature of life is gone" (Gertzel, et al, 1984 Quoted in Baylies and Szeftel, 1992:79).

The government and party had decided that the constitution would be reviewed through a Constitution Review Commission which would be appointed by the President by the powers conferred on him through the Inquiries Act. The Inquiries Act is a piece of legislation that was introduced by the colonial government (and is still in existence up to now) to allow for the Governor to appoint a commission of inquiry to investigate any matter of public concern. The Inquiries Act gives the appointing authority powers to decide on the course of action once the commission's report is handed over to them. The Inquiries Act was preferred as the mechanism for undertaking the review of the constitution despite the fact that the constitution of 1964, under which the government was acting provided that "the legislative power (power to make laws) of the republic shall be vested in the parliament of Zambia which shall consist of the president and a national assembly." In addition, the fact that there had been a referendum in 1969 to end all other referenda meant that the clause in the constitution that sanctioned the constitution to be subjected to a public vote via a referendum had been removed.

The Chona CRC (named after its chairman Mainza Chona) was appointed in 1972. Mainza Chona, a lawyer, had been vice president at the time, replacing Kapwepwe who had resigned his position to form the UPP. Chona had a track record of being loyal to the party, for he had served as UNIP President when the party's vibrant leader Kaunda was incarcerated by the colonialists but relinquished the position voluntarily immediately after his release. The Terms of Reference for the commission could be summarised as forth; "to consider and recommend changes in the Constitution of the Republic of Zambia, the Constitution of the United Independence Party and matters related thereto necessary to bring about the establishment of a One- Party Participatory Democracy in Zambia" (Mwanakatwe, 1994:89). Chona worked with twenty one other commissioners representing a wide spectrum of society. The leader of the opposition party, the ANC and his deputy turned down the offer to serve on the commission and sought recourse in the courts of law to overturn the decision to turn the country into a one party state but was unsuccessful.

Nonetheless, by the time the new constitution was out, his party had been cleverly co-opted into UNIP and its members were offered government positions.

The Chona commission conducted country wide public hearings during which time the citizens expressed their views on what they wanted to be included in the constitution, except that there was no chance for an option on the introduction of the one party state given the terms of reference. Upon completion, the CRC compiled their report and handed it over to the President who together with his cabinet then deliberated over the recommendations and chose the ones that they approved and rejected others, including modification of some. The amended version, referred to as the "white paper" was then submitted to the National Council of UNIP for approval before final submission to Parliament for enactment in august 1973.

Rejected and Accepted Recommendations

Here I deal with some of the critical recommendations that were rejected and accepted in order to understand what was at stake. Even though the Chona Commission was provided with narrow terms of reference, a number of other submissions relating to how Zambians wanted their national affairs to be conducted were made particularly by the "educated liberals and entrepreneurs" who formed the bulk of the petitioners (Gertzel et al, 1984). The recommendations of the Chona commission were thus informed by such views and most notable was the fact that many were against the formation of a one party state although not reflected in the report. To guard against arbitrary powers and dictatorship tendencies by the President, it was recommended that a Prime Minister should be appointed to be head of Government (with powers to appoint his cabinet) including parliamentary business and that the President's term of office should be limited to two five year terms. Still in line with keeping the powers of the President in check and the allowance of citizen's political and civil rights, the following were recommended: first, that there should be no detention without trial, second that whoever was detained or in a restricted position should be availed a written statement detailing how long they would be in that situation including the reasons behind that course of action, and thirdly, within a period of two weeks, the government gazette should have carried a notification of their status. The Commission also recommended that there should be three Presidential candidates' for each election so that electorates could have a choice even within a one

party framework. To forge ahead with the spirit of “putting man at the centre”, it was recommended that the “philosophy of humanism” should be incorporated in the constitution to aid in its institutionalisation.

The response from the party and government was as follows: The one party system would proceed as planned. The limit on the terms of office for the President was rejected, consequently leaving it open and there would be only one Presidential candidate for the republican seat. This candidate would only be eligible for election after preliminary elections at the UNIP General Assembly. The General Assembly would not be the only key player; the Central Committee would equally play an important role of reviewing all candidates vying for parliamentary and other key posts after the preliminaries at the Provincial level. The powers of the Prime Minister were modified in essence defeating the reasons advanced for the introduction of such an office. In fact, the powers that the President had prior to independence were maintained and to some extent increased given his extended authority in the party. As Gertzel (1984:102, quoted in Baylies and Szeftel, 1992: 79) noted “the dominant institution in the one-party state was not the party but the presidency, in which resided enormous power”. Proposed mechanisms for controlling the abuse of detentions and restrictions were rejected and as a result Zambians lived under a state of emergency from 1964 to 1991 when a new government was ushered into power.

The philosophy of humanism was approved and as (Baylies and Szeftel, 1992: 76) notes humanism would later be used as a tool for “rhetorical Puritanism, which depicted the government steadfastly defending the Zambian people against opportunistic enemies outside and inside the country” However what was clear among the entrepreneurs was that humanism rejected capitalism by implication.

Politics after the 1973 Constitution

For the next eighteen years until 1991, UNIP and its government were in charge, continuing with the philosophy of humanism and state led economic policies. These policies were not received well by the business class and opposition began to brew within and outside. The Leadership Code compounded the matter especially that “its application

was loose as there were exceptions at the President's pleasure"³². Radicals both in the party and the labour movement which had become instrumental in condemning the government particularly following its poor economic performance were "marginalised and banished into the diplomatic service". (Baylies and Szeftel, 1992: 79).

Although opposition to UNIP was stifled, some political activity continued. Simon Kapwepwe had begun to proclaim his opposition to the philosophy of humanism and declared that "although his government would be socialistic he would introduce a capitalist economy in the country in order to have something to share among the people" (Southall, 1980:104). His position on political issues were in line with those from the right whose attacks on government were "more firmly grounded" in their "own class position and aspirations" (ibid). In 1977, this alliance of "likeminded position" expressed their grievances and proposals to a Parliamentary Select Committee chaired by the Finance Minister, John Mwanakatwe³³ and ex Minister and Chairman of the Zambia National Council for Commerce and Industry Author Wina³⁴. Some of the proposals included "...steps to encourage private investment,... a relaxation of the leadership code to allow holders of political and civil office more easily to enter business,...cuts at the highest level of the bureaucracy including a reduction in the powers and position of the UNIP Central Committee, the Party's highest constitutional authority" (Times of Zambia, 2 August, 1978; quoted in Southall, 1980). The report accompanying these proposals was ignored and buried by the government soon after despite the fact a special session of Parliament had been called to discuss the report.

The push for political and economic liberalisation was ongoing since the introduction of the one party system and the leadership code but the opportunity for reversal only came in 1991 and this was not before another constitution review process which began in 1990.

³² Quote from Interview with Akashambatwa Lewanika, on August 20, 2007

³³ Mwanakatwe, a lawyer and educationist was later appointed chairperson of the 1996 Constitutional Review Commission by President Chiluba

³⁴ Author Wina was contender against Chiluba for the Presidency of the MMD in the 1991 intra-party elections

4.2 The making of the 1991 Constitution

The Collapse of the UNIP government and the formation of the MMD

There are different theories that have been put forward to explain the downfall of the UNIP government thus leading to the 1990 constitutional reforms and subsequent electoral victory of the opposition MMD. There is a convergence of minds however on the fact that the catalysts to this change were political, economic and social in nature.

The Zambian economy had deteriorated soon after independence, especially in the 1970s with the rise of oil prices and a drop in copper prices, the highest earner for Zambia's economy. The UNIP government sustained the economy by borrowing from multilateral institutions and received support from the Soviet Union although this was not sufficient as it turned to the World Bank and the IMF as early as the 1970s. The government then had declined to adhere to the IMF/World Bank policies, including suspending debt repayments and the two institutions withdrew their support in 1986. To recover from this, in 1987, the government put in place the New Economic Recovery Programme which was 'home made' and based on import substitution. Two years later, in 1989, with support from the Soviets dwindling, this initiative was abandoned "without public consultation and IMF-guided policies of structural adjustment, economic liberalization and privatization, were renewed" (Barlett, 2000:431). The Chairman of the Economic Association of Zambia (EAZ), Akashambatwa Lewanika and other members, felt that this turn and lack of consultation by the government could not be sustained given the effects of the policies on local livelihoods and it was this issue that re-ignited the political pluralism debate, only this time it was no longer a preserve of the politicians (Ibid). The literacy levels had risen as a result of the UNIP government's free education policy and many other citizens benefited from the goodwill of western countries that had committed to helping the Zambian government to educate its nationals. Local and foreign trained graduates were now in charge of most of the institutions in the country, including institutions of higher learning. The academicians together with the students were a formidable part of non-governmental groups that had begun to be critical of the government's economic performance.

Despite the poor economic position, the government continued to subsidize the local farmers and 'food coupons' were available to those who could not bear the costs. Party loyalists were kept in check by ensuring that they were given jobs in the parastatals. By the time the government was reverting to the IMF/ World Bank for support in 1989, the treasury was near empty, Soviet support had completely run out and the leverage that had been exercised in abandoning the Programme earlier could not be applied this time. Without 'coupons', the ordinary person could not survive and the urban dwellers resorted to riots and were thus ripe to be drawn into the political liberalization struggle. By June 30, 1990, Lt. Mwamba Luchembe and other army officials had attempted a coup to overthrow the regime (Sichone, 1996:1). The mood soured around the country and everyone including the 'all powerful catholic church', seemed to agree that twenty seven years were enough³⁵. Even though the peasants, the students, church leaders were involved, it was as Sichone (1996:2) describes them, the 'intelligentsia, the business class and the trade union movement' that decided on the course of action: on the constitution, the formation of the new party etc and below I illustrate.

Akashambatwa Mbikusita Lewanika, has been hailed as the "founder" of the 'Movement for Multi-party Democracy, for it was his initiative to engage Derrick Chitala (an entrepreneur), Fredrick Chiluba (chairman of the ZCTU, who would later become President), a Mr. Mazyopa and Newstead Zimba, also of ZCTU "to prepare for a meeting of dissents which had been set for April, 1990" (Barlett, 2000: 433). A dissent in this case referred to any one from the elite class who was against the party and its government, for under the one party system, there had been no avenue for political choice. The co-optation of these people was no coincidence: The ZCTU leadership just like Akashambatwa had applauded the introduction of the NERP and also condemned the re- involvement of the IMF in economic policy making (Rakner, 1993 quoted in Barlett, 2000: 435). The meeting to ponder Zambia's multi-party option and future after the one party state was postponed from April 20 to 20th July, and Chiluba together with Zimba, both of ZCTU took advantage of this time to assert themselves and as a result emerged as crucial figures during the Garden House Conference of 19-20 July, 1990. The ZCTU, like the church had build trust and legitimacy among the people due to their pro-poor stance and the fact that

³⁵ The Church has got strong representation in most of the local communities in Zambia. Catholic Schools, hospitals and other social amenities have helped a number of people even where government can not reach.

they had been consistent on demanding for political pluralism to the extent that some of them had been incarcerated.

The conference was part-funded by Vernon Mwanga, a businessman and politician who had just resigned his ministerial position in the UNIP government. Prior Mwanga had insisted on calling for “the abolishing of state monopolies and (allowing for) free competition in all sectors of the economy” (Barlett, 2000: 431). Although the initial idea to convene the conference was initiated by Akashambatwa, it turned out that Mwanga,imba and Chiluba were the ones who prepared the guest list.imba had in 1973, then as general secretary of ZCTU, commented that it was easier to deal with private than with state employers since the former did not employ the security forces during disputes (interview MS, November, quoted in Baylies, 1992: 85). Author Wina, Zambia's first Finance Minister in 1964 and “a self-conscious free-market proponent” who had remarked shortly after independence that “wealth was produced by individuals and not by co-operatives, bureaucracies or committees” was appointed chair of that meeting (Baylies, 1992:84).

The Academics from the UNZA based Zambia Research Foundation (ZRF), of which Akashambatwa was also a part of, prepared a draft Manifesto that was to be discussed at the conference – the “Programme of National Reconstruction and Development through Democracy” (Barlett, 2000: 436). This document was however not received as expected and the ZRF's influence in the proto-party declined relative to that of businessmen and ex-members of UNIP, groups who largely ignored the programme and expounded a philosophy of “win the election and discuss policy later” (Interviews, Lusaka; *Africa confidential*, 32,13 (1991:7), *Quoted in* Barlett, 2000: 436). Despite this, the precursor to the MMD, the National Interim Committee for Multi-Party Democracy (NICMPD) was launched with Author Wina as Chairman and a committee comprising Chiluba, Akashambatwa, levy Mwanawasa, Mwanga, Andrew Kashita and Ephraim Chibwe. Mwanawasa was a former Solicitor General in the UNIP government and is now serving as Zambia's President since 2001. Andrew Kashita had been former mines minister in the UNIP government and was at some point accused of plotting against Kaunda while Ephraim Chibwe was a ZCTU official. The Committee was popular and received overwhelming support countrywide.

1991 Constitution Change

With the UNIP government still in power, the NICMPD's turning into a political party and running for elections could only be possible once the Zambian Constitution had been amended to allow for multi-party politics. As a result of political pressure, the government then proposed to hold a referendum on whether to continue with the one-party system but this was later abandoned. Instead UNIP's National Council on 24th September, 1990 opted to promptly amend the Constitution in order to permit multipartyism and announced an undertaking to introduce comprehensive amendments later (Ndulo and Kent 1996: 269). With this, in December 1990, President Kaunda finally "signed the Constitution of Zambia (amendment) bill, signaling the demise of the 17 years of one party rule..." (Sichone, 1996:4). By January 1991, the NICMPD had been transformed into a party-the MMD, following which a national conference was convened which saw an executive that included "a number of extremely successful businessmen and lawyers of all races, some with international connections" (Baylies and Szeftel 1992: 85).

What is however worth noting about President Kaunda and UNIP's quick capitulation is the fact that "Kaunda was extremely confident of victory as he thought that UNIP was still popular among the majority of the people and that even if they were to allow the MMD to contest against his party, UNIP would have a clean victory and with this he convinced his party members"(Interview with John Mwanakatwe). Kaunda admitted in subsequent interviews that "intelligence reports indicated that he would win at least 60% of the votes ..." Sichone, 1996:5)

While the "politicians" were making arrangements for "political liberalization", interest groups such as the church, students and the academicians pressed for the "comprehensive constitutional reforms" that the party and its government had promised. The President responded by appointing a CRC on 8th October, 1990 chaired by Solicitor -General Mvunga (and therefore called the Mvunga Commission) to tour the country extensively and obtain views "of a broad range of people on a future Constitution for Zambia"(Ndulo and Kent, 1996:269). Given the lessons from the Chona Commission of 1972, the MMD opposed the creation of the Mvunga Commission and advocated that the 1964 Constitution

should be reinstated, with amendments to reflect the recent changes. Despite this, the Commission proceeded with its task and made recommendations in a report which was presented to the UNIP cabinet. As expected, the Cabinet rejected some recommendations and only retained those that they preferred - for onward forwarding to the Parliament for enactment. The Constitution though provided for multi-party elections, but this did not sway the MMD from its earlier position, as it rejected not only the other contents but also expressed its dissatisfaction with the fact that the constitution would be enacted by a parliament that was dominated by UNIP. With this a stalemate ensued between the two parties and the churches mediated the differences which led to an agreement among the parties to reformulate the 1973 constitution in order to facilitate the introduction of multiparty politics (Ndulo, 1996: 269). The 1991 Constitution was thus a compromise between political parties. It has been observed that the 1991 Constitution, enacted on August 29, was agreed upon by the MMD as the major opposition and including the other smaller parties that had been formed (Ibid, 269).

The outcome of the 1991 Constitution Amendment

Here I mention some of the salient features of the 1991 Constitution. The President would be head of State and government and the executive power of the republic were vested in this office³⁶. The Presidential powers to nominate up to eight members of parliament were retained and so were the powers to appoint cabinet ministers from parliament. Most of the Presidents powers from the 1973 constitution were retained.

The reference to the 'philosophy of humanism' or the gloss of socialism which the 1973 constitution had acquired was scrapped from the constitution's preamble (Ndulo and Kent 1996: 270). The constitution also enshrined a Bill of Rights in a noticeable and expanded form which comprised among other things relative fundamental rights and freedoms for an individual such as "the protection for the privacy of his home and other property and from deprivation of property without compensation"³⁷. The individual was also given freedom to life, liberty, security and protection of the law. The state of emergency was abolished with powers of detention well spelt out. The Bill of rights also provided rights for an individual to freedom of conscience, expression, assembly, movement and association.

³⁶ 1991 Constitution of Zambia , Article 32(2))

³⁷ 1991 Constitution of Zambia , Art (11)

The provision of UNIP as the sole political party was removed. Article 21 provided for the “right to assemble freely and associate with other persons in and in particular to form or belong to any political party”. According to Ndulo and Kent (1996:269), article 1 that declared “this constitution is the Supreme law of Zambia and if any other law is inconsistent with constitution, that other law shall, to the extent of the inconsistency, be void” emphasized the end to notions of party supremacy.

Two months after the enactment of the 1991 Constitution, elections were held during which the opposition MMD’s Chiluba won the Presidency and majority seats in parliament, thereby forming government. The MMD was heavily funded by the business community, especially from the banking sector and the mines who wanted to see a reversal of the UNIP state led policies and these elements have continued funding the party³⁸. Baylies and Szeftel (1992:83) in a chapter entitled “who is the MMD?” gives an idea of the interests of the “new breed” of leaders; Levi Mwanawasa, vice-president of the MMD and now of the government, had remarked that when he was appointed as Solicitor General in the UNIP government, “he had carefully negotiated the terms of his appointment to the post of Solicitor General to ensure that he would be able to retain his law practice and other business concerns” and like wise many of those who founded the movement for a return to a multi-party system were highly educated and/or successful in business, perhaps in part because of their links with international capital” (ibid). In fact “among the MMD candidates who stood for election in 1991, at least a third (the number is almost certainly far higher) had significant business interests, legal practices or both and a number were among the most prominent members of the Zambian bourgeoisie...”³⁹. Table 4, shows the occupational background of the 1991 MMD cabinet prior to their appointment, also indicating whether they had occupied any top position in the UNIP government or not.

A “check however at the Register of companies showed that of the group of Zambians identified as owning companies, many remained outside party politics” (Baylies and Szeftel, 1996:84). Gilbert Temba confirmed this when he said “many of us business people

³⁸ Views of Syacheye Madyenkuku, former MP and Deputy Minister in the MMD government, in an interview on 8 July, 2007

³⁹ Bayles (1992:83)

prefer to remain out of politics, for politics is about money. There are many people who have gone into politics but destroyed their businesses. The best thing is to work towards changing the legal framework in which we do business.... A government needs to have a position on privatisation..”⁴⁰. He also mentioned that businessmen always try to be secretive in their dealings with government, since it was easy for the government to “destroy” their businesses by imposing “heavy taxes” and /or not offering them any “business contracts”. He himself had experienced this when he had joined the NGOs in advocating for constitutional review. In order to circumvent this and ensure a good business environment, he indicated that many have resorted to supporting the ruling party and this has been the case especially with the banking and mining sector.

4.3 The Making of the 1996 Constitution

Since the 1991 constitution had been a compromise between the political parties through the Church’s intervention, sooner than later, the Church, private Media and NGOs - that had since mushroomed - began to demand for a dynamic Constitution that would address the changing times. The MMD leadership had based their election campaign on economic and constitutional reforms and had made an undertaking that they would make a thorough review of the constitution once they formed government. They too had considered the need to have a constitution which would be “above partisan considerations and would strengthen democracy and the protection of human rights” (Ndulo and Kent, 1996:271). A year into government, the President assigned the Minister of Legal Affairs to create a “Task Force” to review the constitution. A seven person task force was formed with the Attorney General as chair. However, there was opposition from the church, NGOs and opposition parties that such a task could not be left to a few people and even more so to an Attorney General who was principle legal advisor to the government.

Their lobbying efforts translated into President Chiluba (using the Inquiries Act) appointing a 24 member -Mwanakatwe led Constitutional Review Commission in 1993, which went around the country to collect views from the people on what kind of Constitution they wanted in place. The commission was heavily funded by the donors who were interested in Zambia’s governance and democratic progress since its “return to democratic rule” in 1991. Mwanakatwe narrated how he got this role as chairman of the

⁴⁰ Interview held on 23 August, 2007

Commission, "President Chiluba phoned me to tell me that the cabinet had decided to amend the Constitution and he thought that I was capable of doing a good job"⁴¹. The President later exchanged details with Mwanakatwe such as the names of the other twenty three Commissioners through faxes and phone calls.

However, the interest groups had opposed the creation of another Constitution Review Commission and instead proposed that parliament should formulate a law that would clearly stipulate how constitution making was to be undertaken in Zambia. Their fears would nevertheless be put to rest by one of the Terms of Reference for the Commission which stated that the "commission was to recommend on whether the constitution should be adopted by the National Assembly, or by a Constituent Assembly, by a national Referendum or any other method". This term of reference implied that the people's choice of adopting the constitution by a body comprising not only politicians but other interest groups was viable. Given this assurance, the Mwanakatwe commission was well received by the public and the commissioners represented different interest groups such as the NGOs, churches, students associations, professional associations. The President had ensured that he invited these interest groups to recommend people to serve on the commission.

In total the Commission had fourteen Terms of Reference and one noticeable feature was that they were all focused on the creation and nurturing of democracy. As noted by Zambia Legal Information Institute⁴², the Terms of Reference were "sufficiently broad and generous to accommodate all shades of opinion aimed at securing individual liberty and advancing the cause of an open, free and democratic society...(and the) broad mandate enabled the commission to consider provisions, which would help the country create an open, transparent and democratic society and a constitution that will stand the test of time".

The Mwanakatwe CRC completed its work in 1995 and its report was submitted to the Cabinet.

⁴¹ Interview I had with John Mwanakatwe, on 20 August 2007 in Lusaka, Zambia

⁴² See: <http://www.zamlji.ac.zm/mwanakatwe-1996.html>

The Recommendations

As stated above, the Mwanakatwe Terms of Reference were broad in nature thereby allowing for a wide spectrum of views and I address the critical ones: To ensure autonomy of the legislatures from the Presidency, the commission recommended that ministers should be appointed from outside the National Assembly, from among the citizens on the basis of ability, merit, and experience, and such appointments should be subject to ratification by the national assembly. Once a Member of Parliament had been appointed to cabinet, they had to relinquish their parliamentary seat. It also recommended that the vice president should be a running mate to the president and not an appointee of the president as had been the case. A chapter on "Directive Principles of State Policy", guidance for institutions of government in law making, administration and arbitration was recommended.

Major changes for qualification to Presidential office were made; only a person whose parents were Zambian citizens could be eligible to vie for the presidency. Further, no person who had twice been elected as President would be eligible for re-election. A similar provision had been present in the 1991 constitution but it had provided that this limitation could only apply to a person who had been president after 1991. A presidential candidate had to secure 50% plus one of the votes to get into office and the term of office for the President was reduced to two five year terms. The creation of a constitutional court was recommended to exercise jurisdiction over constitutional matters. The Commission condemned the adoption of previous constitutions, the long standing practice and heritage from the British Order in Council by which Zambian constitutions had appeared as schedules to Acts of Parliament. It was therefore recommended that a referendum should be a prerequisite for subsequent amendments and adoption of the constitution should be undertaken by a Constituent Assembly. The Mwanakatwe commission went further as illustrating the "modus operandi" for the Constituent Assembly and its composition which included government institutions and various other interest groups. The Constituent Assembly would have the power to debate the draft constitution before enactment by the Parliament and subsequently the parliament would have no powers to amend anything approved by the Constituent Assembly.

Internal Conflict within the Commission

The goodwill that had been shown by the various interest groups was tested when conflicts erupted within the commission over some recommendations. Minority reports were presented by commissioners Lucy Sichone, Beatrice Chileshe, Patrick Mvunga and Azwell Banda. These four shared their grievance on the recommendations for qualification to the Presidency which stated that only a person whose parents were born in Zambia and no person who had twice been elected as President *before 1991* could run for the Presidency. The quartet argued that the clauses were discriminatory and did not conform to fundamental human rights and freedoms. They also made it clear that the clause to bar anyone who had been President before 1991 was directed at Kaunda since he had been the only President before then. Further, they contended that the recommendations on having to run for the Presidency only if one's parents were born in Zambia were equally directed at Kaunda. Incidentally, Kaunda's parents were born in Nyasaland (now Malawi) but had lived and worked in Zambia.

Government response

The cabinet rejected most of the progressive submissions and produced a White Paper⁴³. In short, the recommendation to have the constitution adopted by a constituent Assembly was rejected. The government reneged on their Terms of Reference and instead argued that a Constituent Assembly was a traditional measure that was to be used where a Parliament was not universally constituted by the majority of citizens such as was the case in Namibia and South Africa. The Zambia situation, it emphasized, was different since Parliament was constituted through universal adult suffrage. The recommendation to have the cabinet appointed from outside parliament and the resignation from parliament in the event that an MP was appointed to a cabinet position was rejected. The government also rejected the creation of a constitutional court. The rejection of progressive submissions entailed that most of the articles from the previous constitution were retained and as before Presidential powers remained intact.

⁴³ Republic of Zambia, Government White Paper, No. 1 of 1995

Commissioners' response to Government

According to the Inquiries Act under which the Commission was appointed, its work ended once the report was handed over to the President. However, prior to the official announcement of the white paper, some commissioners heard about the government response to their recommendations and Mwanakatwe, the former chairman, convened a press conference to announce all the recommendations that the commission had made in order to preempt government action⁴⁴. This however did not deter government from going ahead with producing the "white paper" indicating what had been rejected and the reasons why, to be followed by presentation of a Constitution Amendment Bill to parliament.

⁴⁴ Interview with Mwanakatwe

CHAPTER FIVE: ANALYSIS

5.1 Reading Zambia's constitution making failures from Historical Institutionalism (HI) perspective

The discussion on Zambia's constitution making process has shown that the major institutions involved in constitution making are the government and the party. In discussing these two institutions via HI, it is clear that both government and party formation was not a local initiative but modelled in line with the prior colonial arrangement. The leadership that took over power at independence in 1964, by choosing not to amend the institutional framework of the government via comprehensive constitutional reform inherently accepted the colonial institutional set up. To these leaders therefore "independence" simply meant the "switching of actors" or "the transfer of power to indigenous actors". Given this lack of institutional shifting, it is only logical that these new leaders would continue to manage the affairs of the country in the same manner as the colonialists had done except if and when they "exercised self restraint". The arbitrary manner in which the party and government decided to employ the Inquiries Act in amending the constitution in 1973 goes to show that patterns of behaviour from the colonialists were transferred to this new leadership since the colonialists never involved the local people in decision making processes - in fact "derogatory and exclusionary" tendencies towards the indigenous population was what precipitated the independence struggle. The Inquiries act was equally a creation of the British government and it has since remained unchanged.

Prior to 1973, amendments to the any law in Zambia were undertaken through British Orders in Council. The 1972 decision to amend the constitution through the Inquiries Act and the appointment of the Chona CRC was therefore a turning point, a critical juncture in Zambia's constitution making history and the events leading to the constitution amendment point to the fact that there had been pressure on the UNIP government, from the opposition parties, especially the UPP, led by Mwansa Kapwepwe. Considering that the one-party system was imposed despite the outcry from some quotas of society like the local businessmen and opposition political parties (with the ANC that took the matter to

court and losing their appeal) set a legacy for the future. Under this constitutional arrangement, UNIP was able to co-opt some parties and keep out of power all other parties that opposed its rule. This strategy, although it might not be the only explanation to the UNIP government's stay in power for twenty seven years, should have been key. The message delivered by the 1973 constitutional change was that the ruling party and its government could use the constitution to extend their stay in power and the constitution was therefore no longer "the higher law" and did not require "...broad based consensus to be adopted" as this could be done through legislative majorities"⁴⁵.

This pattern of behaviour was reflected in 1990, when Zambia had to walk the path of constitution making again. Although the UNIP government had decided to hold a referendum to determine whether the citizens wanted constitution reform or not following the creation and demands for political pluralism from the MMD, the idea was abandoned once UNIP's National Council had decided otherwise. The Constitution was instead amended immediately and only to allow for the formation of other political parties. The UNIP government had decided that constitution making would once again be undertaken through a CRC. The Mvunga Commission replicated the same steps that the Chona commission had undertaken during its work in 1973. However, unlike the 1970s, the 1990s were different. The UNIP government had been defiant to any measures intended to bring about political reform because of its linkages with the Soviet Union that provided it with military and financial assistance. The collapse of the Soviet Union incapacitated UNIP - a "gap" that the MMD took advantage of - with the support of western democracies such as the US. The MMD therefore had some leverage over UNIP at the time of its formation in 1991 which it employed in rejecting the report of the Mvunga CRC and insisted that the 1964 and later the 1973 constitution should be reinstated. The compromise between UNIP and the MMD was the reinstating of the 1973 constitution without any major amendments, except to allow for political pluralism and remove any clauses or reference to socialism.

Chapter three and four has shown that the MMD resembles UNIP in many ways. In fact, majority of the MMD top leadership had served in the UNIP government or are businessmen, who had been frustrated as a result of the leadership code, UNIP's socialist policies and "closed politics". What follows from this is that the transfer of power had no meaning considering that the actors remained constant or were only there because they wanted to create a conducive policy environment for their businesses ventures.

⁴⁵ Quotes from Ndulo and Kent (1996:257). See discussion on Constitution making in Chapter 2

I have mentioned elsewhere that the 1990s was a period of NGO formation in Zambia – a trend which was precipitated by the change of the constitution in 1990 which gave way to associational life and donor involvement in NGOs. The presence of NGOs and the church, the students and professional associations that had supported the MMD in its election campaign, including the time when it was still a movement showed a picture of what Zambia was slowly becoming “the hub of democracy in Southern Africa”. The fact that many sectors of society had been involved in condemning the UNIP regime’s governance record and in ushering in the MMD through a landslide electoral victory, raised expectations among the people who believed that the MMD would reciprocate by giving the country a “fresh start”. Besides, the MMD had placed comprehensive constitutional reform as one of their top priorities in their election campaign. This was not to be as the MMD had to be lobbied by donors and non governmental actors for constitutional reforms to begin. Initially and unilaterally, in 1992, the government appointed the Attorney General and a seven member team to undertake the work that was performed by the CRCs during the UNIP government. In retrospect, this decision meant that what the UNIP government called a “CRC” would now be referred to as a “Technical Committee” and the “Attorney General” would replace the “CRC chairman” . Whatever the differences in the names, the end product i.e. the report would still be at the government’s discretion. The MMD government’s decision to appoint a Technical Committee contradicted the reasoning behind rejecting the report of the Mvunga CRC two years prior, when it was argued that the Mvunga Commission was an instrument for advancing the UNIP government’s interests just like the Chona CRC had been.

Once the Technical Committee was disbanded, the MMD in 1993 appointed the Mwanakatwe CRC. In trying to show that it was departing from the UNIP legacy, the Mwanakatwe CRC was provided with wide ranging terms of reference, including that of determining the mode of adoption for the constitution. The Mwanakatwe CRC recommended the adoption of the constitution through a Constituent Assembly but this was rejected by the government. The MMD executive, in the same manner that the UNIP executive and National Council had done after the Chona commission, deliberated the report, accepted the recommendations that they wanted, modified some and rejected the rest.

Conclusion

The above discussion has revealed that 1) the institutions involved in constitution making in Zambia are alien. 2) Both the old politicians in the UNIP government and the new but “recycled” politicians in the MMD government have been using the constitution to maintain their hold on power. However since the MMD government came into power in 1991, these new but “recycled” politicians have formed an alliance with local businessmen through which the old system has been maintained for personal and political gains. This has involved making no substantial changes to the constitution. 3) The 1972 constitution making process leading to the 1973 constitution has passed on negative patterns of behaviour about what the constitution and the constitution making processes should represent. This legacy still remains very alive therefore contributing to Zambia’s constitutional failures up to now.

5.2 Reading Zambia’s constitution failures from RCI Perspective

The origins of the party, government, inquiries act and even the constitution can only be explained by the functions that these institutions perform and those who have served or are still serving in government and party positions have total recognition of their expectations. A discussion on the functions of a political party, government and constitution in chapter two shows that these institutions are meant to serve the needs and interests of the majority while protecting the minority in a given state. The leadership in these institutions (in the Zambian case both UNIP and its government and the MMD) only rose to their positions based on their capabilities which were in line with the institutional functions. The discussion on UNIP and the MMD shows that each of them has different goals – with UNIP being inclined to socialist policies and the MMD pursuing liberal policies such as privatisation, market liberalisation etc.

A further division between UNIP and MMD can also be made especially when one brings into the picture UNIP’s leadership code which despite its defects ensured the monitoring of “wealth accumulation” by those in public office at the expense of other members of society, including humanism, an inbuilt mechanism to instil a human centred spirit. However, of interest to UNIP’s leadership code is that it succeeded in “expelling” dissenting members since most liberals soon left UNIP to join other liberal parties. Others condemned the system in private but stayed on later joined the MMD. One can therefore

argue that President Kaunda and the Central Committee (the significant coalition) who introduced the leadership code must have found something amiss with the constitution for them to introduce "an institutional setup"- a code of conduct that could be applied at Kaunda's discretion and which would benefit this coalition. We can also argue that this significant coalition was aware of the fact that their challengers within the party were those with business interests and financial resources since financial resources are necessary for party mobilisation. For instance, despite its position on "putting man at the centre" the UNIP government turned the county's parastatals into party funding machines and members of these parastatals were obliged to contribute a percentage of their income to the party.

The "common" interests that can be deduced from the MMD and UNIP is that the actors were in for "power, status and income" both for themselves and their regions. There was a battle for UNIP's party positions as early as 1968 and the trend has been the same with the MMD. In studying the game - the Constitution making process- we see that despite the fact that UNIP had cited the need to maintain national unity when it changed the constitution in 1973- thereby turning the country into a one party state, there is clear evidence showing that this amendment favoured UNIP as it was the sole party in Zambia from 1973 to 1991. The significant coalition in UNIP then decided to amend the constitution via the Inquiries Act and appointing a high ranking UNIP official Mainza Chona to chair the CRC. Once the Chona CRC had presented the recommendations, the government proceeded with choosing what they wanted and rejected the rest and sent the white paper to the party's National Council for approval before presenting it to parliament where it had a majority passed it without any hindrance.

Clearly, the MMD came as a big challenge to UNIP in 1991 and there was no way in which UNIP having worked towards maintaining itself in power through a constitutional amendment for a one party state would easily give way to another party. The sequence of events shows that UNIP still tried to find a way to change the rules in its favour by firstly wanting to hold a referendum to ascertain whether the people wanted constitutional change and thereafter rescinding the decision. Secondly, it appointed the Mvunga CRC with the aim of ensuring that the changes made to the constitution though allowing for multipartyism should however "maintain the status quo" to some level. Thirdly, when the Constitution review commission was rejected, UNIP's negotiated changes with the MMD did not alter much of what was in the 1973 constitution such as "presidential powers" that

could be employed to easily revert some of the changes that could have been made to the constitution. To crown it all, the UNIP government had “miscalculated” their ratings in the country as former president Kaunda confessed later that he had been sure of victory against the MMD at the polls.

When the MMD leadership (comprising local businessmen and former government officials) had entered the political game, they too did not want to introduce comprehensive changes to the law, they condemned the Mvunga commission but did not offer any immediate thorough alternative; the MMD had instead demanded that the 1964 constitution should be reinstated - only because it had allowed for multipartyism. This “calculation” by both the MMD and the UNIP government could be seen as the contributing factor to the lack of comprehensive review of the constitution in 1991. The fact that the constitution was not changed in 1991 played well for the MMD as they could now use the powers that the former government had to advance their interests.

Meanwhile, the MMD leadership had also ensured that their liberal ideas were incorporated during the negotiated constitution pact with UNIP and any other changes that they wanted could be achieved by using the constitution and their majority in parliament. This should explain the reason why the MMD government which had preached democracy and constitutional reform in their 1991 election messages had to be lobbied by donors and non-governmental organisations for them to begin the constitution making process. When the MMD did decide to amend the constitution it started by employing a Technical Committee (which was an equivalent of the Constitutional Review Commission in the UNIP regime) to undertake the study. Amid public opposition to this Technical Committee, the MMD then decided to appoint a CRC, widened the terms of reference to include that which involved the CRC deciding the mode of adoption for the constitution. In its continued effort to make the CRC look like a different creation from those of UNIP, the government invited other non-state actors to nominate people to be appointed as commissioners on the CRC. The government also claimed to have appointed a “neutral” chairperson for the commission, Mr. Mwanakatwe. However, this study has shown that Mr. Mwanakatwe was not as neutral as portrayed. Although he had been part of the UNIP Cabinet, his position on the UNIP government had changed over the years. He had complained of the Central Committee’s influence on the Cabinet and was aggrieved by Kaunda’s “one party participatory democracy” which in his view was a “dictatorship”. He had also chaired together with Author Wina, as members of UNIP’s Parliamentary Select

Committee the dissident's report which had denounced the leadership code, UNIP's socialist policies, the reduction of the powers and role of the Central Committee etc. It was no coincidence then that a former Minister from the UNIP Kaunda's era could be appointed as Chairman of the Commission. Mwanakatwe also indicated that his appointment to the commission was announced to him by the President via a telephone call.

The discussion on internal conflict within the commission and the minority reports, has also shown that Mwanakatwe did not question the clauses that sought to bar President Kaunda from ever returning to office: the clause that stated that only persons whose parents were Zambian citizens could vie for presidential office and that if one had been president for two terms before then could not stand for the presidency office again.

It is however important to acknowledge that Mwanakatwe raised concerns when informed about the MMD's rejection of the recommendation to amend the constitution via a Constituent Assembly. The opposition from Mwanakatwe and other interest groups to the government's rejection of majority of the recommendations did not deter the MMD as it took advantage of its majority in parliament to pass the draft constitution into law. The constitution was passed two months before the 1996 elections and with Kaunda, the UNIP leader excluded from contesting the presidency due to the constitutional amendments, the MMD had no major apposition.

Conclusion

The review of constitutional failures through RCI brings out three inter-related findings. Firstly that the constitution has been used by the politicians and their local business associates as a tool for keeping them in power. Secondly, that the actors in the UNIP government were mainly politicians without major business interests but we see another trend with the MMD government where the new "but recycled" politicians from the UNIP government have been teaming up with local businessmen to keep their hold on power. When NGOs and other interest groups were co-opted in the 1996 constitution making process, it was only a "public relations exercise" also meant to instil false hope. Thirdly, the realm between business and politics is blurred as those in politics engage in both, to the extent that politics has become a means for conducting business.

5.3. HI and RCI Readings Interpreted

The question that I raise in this analysis is: have the two readings provided a clear understanding to how constitutional failures in Zambia can be explained? Both readings share one common finding - that the politicians and since 1991, an alliance of new “but recycled” politicians and local businessmen has been responsible for the constitutional failures that Zambia has been experiencing due to their quest for power and personal gain. Following this with HI’s notion of critical junctures, it seems that this trend can only be reversed if a major event takes place that will empower Zambians in “economic terms” to be able to compete at the same level as the politicians and the businessmen. This line of thought goes in support of Barrington Moore’s thesis of “no bourgeois, no democracy” and Przeworski et al, (quoted in Burnell 2005: 192) findings that “ democracies (encompassing tenets such as constitutions adopted by a majorities, among others) can survive even in poor countries if they manage to generate development and reduce inequality while meeting certain conditions”. The reasons advanced for this is that for democratic institutions to flourish there is need for “...a public involvement and an affluent and well educated society that economic progress provides” and “...technological and economic progress improved the physical infrastructure of political communication”(Burnell, 2005:193) . In addition, “social modernisation” provides a mindset that supports the reversal of traditional patterns of behaviour that view the person as a subject of a political system and not a citizen with full legal authority. On the other hand, industrialisation, with its effects of urbanisation provides opportunities for larger “working class” associations that can counter the hegemonic tendencies of those in power if and when redistribution of public goods is unequal. This discussion however does not only point to economic development but also to a change in norms or patterns of behavior as being essential for such democratic transformation.

HI has also provided an understanding to the problems that Zambia has regarding its institutional crafting – post independence. It seems that Zambia lost an opportunity to align the government and party to local requirements and aspirations when the UNIP government found it unnecessary to undertake comprehensive constitutional reforms at independence. Although there is a perception among Zambians that the government and the party are there to serve the interests of the citizens, the possibility for this to happen is

minimal given that these institutions were not “tuned” to perform this task from inception. Through HI’s notion of path dependency, it is clear also to see that “history has been repeating itself” in the Zambia’s constitution making processes.

It is difficult however to reach outstanding conclusions based on these readings for there are gaps within the theories. RCI can not point to the origins of these constitutional failures in its assumption that institutions can only be understood through the functions that they perform. There is also a supposition that the rules that these actors who get into office use are perfect and that these actors are recruited based on their capabilities. This poses a problem for the Zambian context where politics of patronage still exist and where there is evidence that the rules are not known even by the political actors. To illustrate, the current President Levy Mwanawasa once rebuked his cabinet ministers over their “ignorance” with the constitutional provisions when he was urging them to study and support his efforts in the current constitution making process that began in 2003⁴⁶. According to the President’s findings, only two of his cabinet ministers were adequately informed about the provisions.

⁴⁶ See Times of Zambia “Levy Slams inept, ignorant ministers” 29/ 8/2007

CHAPTER SIX: CONCLUSION

This study sought to explain Zambia's constitution failures, reflected through continuous constitution making processes since independence in 1964. Constitution failure has robbed the nation of resources that would otherwise have been used for economic activity considering its poor economic status. Explaining Zambia's constitutional failures through scientific study arising out of analysis that is conducted via political theories has provided an understanding to the phenomenon that has eluded many in Zambia. The emphasis among the scholarship and practitioners alike has been to view these failures as occurrences arising out of the government and party, particularly the two Presidents involved, due to their power over the instruments of power. But this however does not go to give an understanding of how this plays out with the other actors or other social forces that might not be that "visible". The paper has therefore endeavored to address this gap.

Reading the Zambian constitution failure case through the new institutionalism theories, one common conclusion points to the fact that while politicians were responsible for the constitutional failures during the UNIP government, the trend since 1991 has been that of politicians and businessmen forming alliances to hold on to power in order to serve their interests which has entailed maintaining the status quo regarding the constitution. When constitutional amendments have been made, the protection of the interests of these groups has been the priority and not necessarily those of the citizens. The realm between politics and business has therefore become intertwined such that separating the two is increasingly becoming difficult. Apart from this common conclusion, analysis through HI has shown that the political institutions in Zambia were never crafted to serve the local interests particularly that the leadership at independence in 1964 retained most of the colonial laws. Also revealed is the fact that the 1973 constitution making process sowed negative patterns of behavior among the politicians about the role of the constitution which is mainly seen as a tool for the maintenance of power.

Despite these findings, there are lacunas within the theories that have been addressed above in the analysis. This study, as noted in the limitations, can therefore not claim to be comprehensive but can serve as a starting point for further research.

REFERENCES

- Baker, R. (1991) 'The Role of the State and the Bureaucracy in Developing Countries since World War II', in A. Farazmand (ed) *Handbook of Comparative and Development Public Administration*, pp. 353-363. New York: Marcel Dekker, Inc.
- Barlett, D.M.C (2000) 'Civil Society and Democracy: A Zambian Case Study', *Journal of Southern African Studies*, 26 (3): 429-446.
- Baylies, Carolyn and Szeftel, Morris (1992) 'The fall and rise of multi-party politics in Zambia', *Review of African Political Economy*, 19(54): 75 – 91
- Bratton M, Mattes, E. and Gyimah – Boadi (eds) (2005), *Public opinion, Democracy, and Market Reform in Africa*. Cambridge: Cambridge University Press.
- Burnell, P. (2001) 'The Party System and Party Politics in Zambia: Continuities Past, Present and Future', paper presented at ECPR Workshop, Grenoble, France (6-11 April).
- Burnell, P. (2002) 'Parliamentary Committees in Zambia's Third Republic: Partial Reforms; Unfinished Agenda', *Journal of Southern African Studies*, 28(2): 291-313.
- Burnell, P. (2005) 'Democratization' in P. Burnell and V. Randell (eds) *Politics in the Developing World*, Oxford, pp. 185-204. Oxford University Press.
- Collier, R.B. (1991) *Shaping the Political Arena : Critical Junctures, the Labour Movement and Regime dynamics in Latin America*. Princeton, New Jersey: Princeton University Press.
- Craig, J. (2000) 'Evaluating Privatization in Zambia: A Tale of two Processes', *Review of African Political Economy*, 27(85): 357 – 366.
- Hall, P.A and Taylor C.R. (1996) 'Political Science and the Three New Institutionalisms' a paper presented at the Max-Planck-Institut für Gesellschaftsforschung (MPIFG) Scientific Advisory Board Meeting, Lothringer Str.78, Köln, Germany (9 May).
- Hamalengwa, M. (1992) *Class struggles in Zambia, 1889-1989 & the fall of Kenneth Kaunda, 1990-1991*. Lanham, MD: University Press of America.
- Hyden, G. (1996) 'Rethinking Theories of the State: An Africanist Perspective', *Africa Insight* 26: 26-35.
- Haydu, J. (1998) 'Making Use of the Past: Time Periods as Cases to Compare and as Sequences of Problem Solving', *The American Journal of Sociology*, 104 (): 339-371.

- Immergut, E.M. (1998), 'The Theoretical Core of the New Institutionalism', *Politics & Society*, 26 (1): 5-34
- Karl, T. L. (1997), *The Paradox of Plenty: Oil Boom and Petrol- States*, California, US: University of California Press.
- Kloppenber, J.T. (1995) 'Institutionalism, Rational Choice, and Historical Analysis', *Polity*, 28(1):125-128.
- Mahoney, J. (2000) 'Path Dependence in Historical Sociology' *Theory and Society*, 29(4): 507-548.
- Mahoney, J. and Dietrich R. (eds) (2003) *Comparative historical analysis in the social sciences*. Cambridge: Cambridge University Press.
- March, J.G. and Olsen, J.P. (2005) "Elaborating the "New Institutionalism" CES Working Paper No.11. Norway: Centre for European Studies.
- Mwanakatwe, J. (1994) *End of the Kaunda Era*, Zambia: Multimedia.
- Mvunga, P. (2001) 'Constitutionalism: Prospects for Change and Reform in the Region', *The Human Rights Observer*, 5: 1-2.
- Ndulo M.B and Kent, R.B. (1996) 'Constitutionalism in Zambia: Past, Present and Future', *Journal of African Law*, 40 (2): 256-278.
- North, D. C. (1987) 'Institutions, Transaction Costs and Economic Growth', *Economic Inquiry*, 25(3): 419-28.
- Phiri, A.I. (1973) 'The Current Situation in Zambia', *African Affairs*, 72(288):323-325.
- Pierson, P. and Skocpol, T "Historical Institutionalism in contemporary Political Science":<http://polisci.berkeley.edu/faculty/bio/permanent/Pierson.P/Discipline.pdf>, accessed April 20, 2007
- Pierson, P. (2000) 'Increasing Returns, Path Dependence, and the Study of Politics', *The American Political Science Review*, 94 (2): 251-267
- Pratt, N. (2004) 'Bringing politics back in: examining the link between globalization and democratization', *Review of International Political Economy*, 11(2): 311 – 336.
- Rejai, M. and Enloe, C.H. (1969) 'Nation-States and State-Nations' *International Studies Quarterly*, 13 (2):140-158

Simutanyi, N. and Mate, N. (2006) 'One-Party Dominance and Democracy in Zambia', paper at the Fredrich Ebert Stiftung meeting, Mozambique (3-4 August)

Skocpol, T. (1995) 'Why I Am an Historical Institutional', *Polity*, 28(1):103-106

Southall, T. (1980) 'Zambia: Class Formation and Government Policy in the 1970s', *Journal of Southern African Studies*, 7 (1): 91-108

Steinmo, S., Thelen, K. A. and F. Longstreth (eds) (1992) *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press.

Steinmo, S. (2001) 'The New Institutionalism' in B. Clark and J. Foweraker, (eds.) *The Encyclopedia of Democratic Thought*. Found at: <http://stripe.colorado.edu/~steinmo/foweracker.pdf>, accessed on August 30, 2001

Thelen, K. (2003), 'How Institutions Evolve: Insights from Comparative Historical Analysis' in J. Mahoney and D. Rueschemeyer (eds) *Comparative Historical Analysis In The Social Sciences*. Pp208-240. Cambridge: Cambridge University Press.

APPENDICES

TABLE 3: THE ACTORS IN CONSTITUTION MAKING: THE “RECOGNISED” AND “UNRECOGNISED” IN THE ZAMBIAN CONSTITUTION FAILURE DEBATE

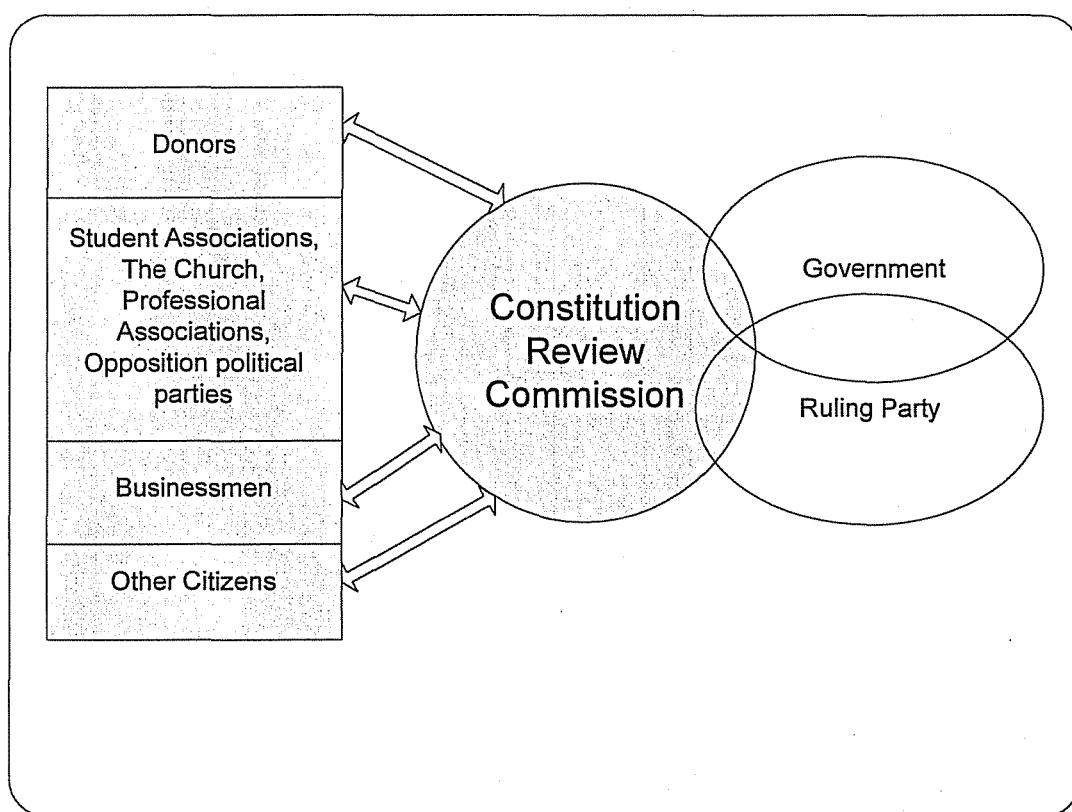


TABLE 6: THE 1991 ZAMBIAN CABINET (CONTINUED ON NEXT PAGE)⁴⁷

Name	Occupation before appointment to MMD Cabinet	Top posts served in UNIP Government?	Post in MMD Government	Portfolio in MMD Government
Mr. Frederick Chiluba	President, ZCTU	No	President	Republic of Zambia
Mr. Levy Mwanawasa	Lawyer	Yes, as Solicitor General	Vice President	Republic of Zambia
Dr. Guy Scott	Businessman	No	Minister	Agriculture, Food and Fisheries
Mr. Ronald Penza	Director, Capital Bank (private bank)	No	Minister	Commerce, Trade and Industry
Mr. Gabriel Maaka	Civil Servant	No	Minister	Community Development and Social Welfare
Mr. Mwila Ben	Businessman	No	Minister	Defense
Mr. Alfeyo Hambayi	Politician	Yes, as member of the UNIP Central Committee	Minister	Energy and Water Development
Mr. Kelly Walubita	Manager of a Security Firm	Yes, Assistant Commissioner in the Zambia Police Force	Minister	Environment
Mr. Kasonde Emmanuel	Politician	Yes, First Permanent Secretary, Ministry of Finance	Minister	Finance
Mr. Vernon Mwanga	Businessman/Diplomat	Yes, Deputy Ambassador	Minister	Foreign Affairs
Mr. Arthur Wina	Businessman/ politician	Yes, First Minister of	Minister	General Education

⁴⁷ Source: Author's own research with help from the Movement for Multiparty Democracy (MMD) Secretariat

		Finance		
Dr. Boniface Kawimbe	Consultant Physician	No	Minister	Health
Mr. Newstead Zimba	ZCTU Secretary General and Teacher	No	Minister	Home Affairs
Mr. Stan Christopher	Clergy	No	Minister	Information and Continued Education
Mr. Ludwig Sondashi	Politician	Yes, As Member of the Central Committee	Minister	Labour and Social Security
Mr. Dawson Lupunga	Manager- Furniture Company of Zambia- a government parastatal	No	Minister	Lands
Dr. Roger Chongwe	Lawyer	No	Minister	Legal Affairs
Mr. Michael Sata	Politician	Yes, Lusaka Governor	Minister	Local Government and Housing
Mr. Humphrey Mulemba	Politician/Businessman	Yes, Prime Minister	Minister	Mines
Mr. Baldwin Nkumbula	Businessman	No	Minister	Sport, Youth and Child Development
Mr. Akashambatwa Lewanika	Academician, Government parastatal director	No	Minister	Tech Education and Voc Training
General Criston Tembo	Serving prison sentence due to involvement in coup to oust Kaunda	Yes, as General in the Zambian Army	Minister	Tourism
Mr. Andrew Kashita	Businessman	No	Minister	Transport and Communications
Brig Gen (RTD) Godfrey Miyanda	Businessman	Yes, as Brigadier General in the Zambian army	Minister	Without Portfolio
Mr. Ephraim Chibwe	Labour Movement	No	Minister	Works and Supply

Interviews- Guiding Questions

Political Parties

1. How is your party structured?
2. What are the roles of each organ?
3. How are decisions arrived at in your party?
4. What do you think makes your party different from the other parties in the country?
5. Your party seems to be popular, How do you maintain this support?

Government – Former Cabinet Ministers in the MMD Government

1. When did you leave government?
2. Why did you leave?
3. But I heard that you were not happy with the way the way the government was running the affairs of the country?
4. Or the President has appointed other former ministers back into cabinet, are there any reasons why you think you could have been left out?
5. The Government is now involved in the anti- corruption campaign; do you have any views on this?
6. I am aware that you were involved during the 1991 and 1996 constitution making processes, can you explain?
7. Do you wish to return to active politics?
8. What are your reasons for your decision?

Businessman and Representative from Private Sector consortium

1. How long have you been in this business?
2. How have you fared so far?
3. I have been told that the environment for business has been deterioration, what are your views?
4. Some businessman told me that some of the laws are archaic, have you taken time to study them?
5. I suspect that constitutional amendments could bring about the necessary relief to many, you included - do you have any comment?

Former Constitution Review Chairman and Minister in the UNIP Government

1. I am aware you served in the UNIP government, what was your position
2. I hear that you retired from politics in 1978, was it about your age?
3. The recommendations that the CRC that you chaired made have been hailed as the best in Zambia's constitution history and yet they were rejected by the government? What happened?
4. You have so much experience on Zambia's constitution making processes, did you follow the 1973 and 1991 processes as well?
5. What is your general view on constitution making in Zambia?
6. How do you think we can get out of this cycle of Constitution making failures?

Media

1. I have been following the stories in your paper and you have featured matters relating to the constitution on many occasions, what is your view on the current constitution making process?
2. How do you think we can get out of this cycle of Constitution making failures?

3. I am aware that you have been following Zambian politics, what is your view of the governance situation in the country?

Note: Since these were semi structured interviews, some of the questions were interchanged among different categories in some instances. This guide does not capture all the questions that were asked.

