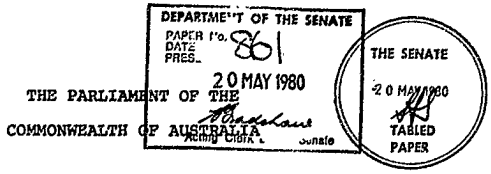

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Report of the Joint Committee on Foreign Affairs and Defence

ZIMBABWE

(May 1980)

Volume 1
(Chapters 1-5)

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

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Terms of reference

The following terms of reference were given to the Sub-Committee on 2 May 1978.

> That the Sub-Committee consider, investigate and report to the full Committee on the significance of events in Southern Africa, with particular reference to the economic, political, social and strategic implications for Australia.

The Sub-Committee interpreted Southern Africa to include, for the purposes of its inquiry, the following countries: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia (South West Africa), Zimbabwe, South Africa, Swaziland and Zambia.

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(Former member: Mr R. Jacobi, M.P., was chairman of the Sub-Committee until 7 November 1978.)

Secretary

John Vander Wyk,

Parliament House,
Canberra.

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Preface

The problems of Southern Africa are complex and interrelated. Central to those problems are the issues of race and black nationalism - the struggle by blacks for an end to white domination of their lives and for the opportunity to achieve social, political and economic equality with whites.

Because Zimbabwe was the focus of the struggle at the time the Sub-Committee began its investigation, the Sub-Committee decided to concentrate its inquiry initially on that country. This first report is the result of that inquiry. The Sub-Committee considered that a detailed examination of the Zimbabwe situation was important not only in its own right but for its implications for the region.

However, the issues of racialism and nationalism are not the only issues of Southern Africa. Its economic development, its strategically important geographic position and mineral resources, and existing and possible East-West confrontation in the region are also important issues. The Sub-Committee intends to examine these in a subsequent report or reports, together with their implications for Australia.

Although much of the evidence taken by the Sub-Committee was on the Zimbabwe situation, considerable evidence was also taken on the broader aspects of the inquiry. To date, the Sub-Committee has taken some 2,500 pages of evidence from 80 witnesses, most of it in public session, and considered in excess of 300 submissions. Formal hearings commenced in October 1978, and the volume and extent of the evidence indicates considerable interest in the community concerning events in Southern Africa.

As well as submissions and oral evidence, the Sub-Committee considered a large range of documentary source material, some of which is cited in endnotes at the conclusion of each chapter. This material came from a wide range of sources including successive Rhodesian governments, the Patriotic Front, United Nations, Amnesty International, the International Defence and Aid Fund for Southern Africa (London), the Catholic Commission for Justice and Peace in Rhodesia, Australian Government Departments, and interested academics and observers.

In the course of its inquiry into events in Zimbabwe the Sub-Committee was faced with two problems in particular. The first was the difficulty of preparing a report and formulating conclusions in a situation where major developments were regularly changing the course of events. The Sub-Committee began its inquiry some six months after the Internal Settlement Agreement of 3 March 1978. This was followed in April 1979 by the election of the Government of Bishop Muzorewa, by the Lusaka Agreement in August 1979, the Lancaster House Conference in September-December, the ceasefire and return to legality in December, new elections in February 1980 which brought Mr Mugabe's Government to power, and official independence on 18 April 1980.

The second problem was what to call the country in its report: 'Southern Rhodesia' (the British legal name for its colony), 'Rhodesia' (used by successive Rhodesian Front governments after the Unilateral Declaration of Independence, and by the British Governor, Lord Soames, after the country's return to legality), 'Zimbabwe Rhodesia' (used by the Muzorewa Government), or 'Zimbabwe' (used by black nationalists, and the country's name after Independence)? The question of a name was further complicated by the identification of 'Rhodesia' with the years of white domination and 'Zimbabwe' with black nationalism and black aspirations. In the event the Sub-Committee adopted the practice, where possible, of using the name 'Zimbabwe' for

general references, and the name in common usage at the time for specific references. A few inconsistencies may have resulted, but these would probably have been inevitable whatever the practice adopted.

The Sub-Committee also adopted the usage of the terms 'blacks' and 'whites' rather than 'Africans' and 'Europeans' - on the grounds that these are a more accurate description (whites born in Rhodesia also regard themselves as Africans), are the currently preferred terms, and were used in both the Consitution for Zimbabwe Rhodesia of 1979 and the Independence Constitution of 1980.

The Sub-Committee would like to thank all those who have assisted it to date, either by presenting oral and/or written evidence or providing documentary source material. It would particularly like to thank: the staff of the Parliamentary Library and the National Library for their assistance in locating and obtaining resource material; the Parliamentary Reporting Staff for transcripts of evidence; and its secretariat (Mr John Vander Wyk, Secretary, and Mrs G.D. Chorazy, Research Officer) for their outstanding efforts and assistance.

The report of the Sub-Committee on Southern Africa was examined and adopted by the full Committee at a meeting on 13 May 1980.

Don Dobie

Don Dobie
Chairman of the Sub-Committee
on Southern Africa

20 May 1980

CHAPTER 1

Overview and conclusions

The colony which was Rhodesia officially became the independent republic of Zimbabwe at midnight on 17 April 1980. The change of name symbolised the end of 90 years of white rule in a nation of 230,000 whites and seven million blacks. It also marked the end of a British colonial presence in Africa: Rhodesia had been Britain's last colony on the African continent.

In the time that the country was known as Rhodesia it attracted disproportionate attention for a country of its size and population. It did so principally for two inter-related reasons. The first was the struggle by whites for independence from Britain, and the second was the struggle by blacks for an end to white domination and racial inequality. The two were inter-related in that Britain would not grant independence until satisfied that discriminatory practices would end and majority rule would be implemented.

The Committee, in its report, has traced in some detail the development and interaction of both issues, particularly in chapters 2-6. Some basic data and a history of Rhodesia to the turn of the century are to be found in chapter 2. Rhodesia's constitutional history to the time of the Unilateral Declaration of Independence is traced in chapter 3, while chapter 4 continues that history through to 1978 and examines the various attempts to negotiate a settlement after UDI. Chapter 5 deals with the Internal Settlement of 1979, the 1979 Constitution and the elections of April 1979 which resulted in the establishment of Rhodesia's first black majority government, albeit a government subject to a white veto on major constitutional change and the

retention of white control of many of the instruments of power. Chapter 6 deals with the events which finally produced a settlement: the Lusaka Commonwealth Conference and the Lancaster House Conference. In particular the Committee examines the 1980 Constitution, the ceasefire and return to legality, and the arrangements for, and conduct of, the elections which produced Rhodesia's second majority rule government, this time with fewer entrenched protections for whites and a smaller guaranteed representation for them in the Parliament.

Although a settlement was achieved eventually through negotiation, it is unlikely those negotiations would have taken place had it not been for three major influences: the pressure exerted by the black nationalists through a guerilla war of increasing intensity; pressure on the economy of Rhodesia as a result of sanctions, and on the economies of neighbouring Zambia and Mozambique through their implementation of sanctions; and the election of a black majority government in April 1979. Bishop Muzorewa's Government, although in power only till December 1979, provided a transition between white rule and the present internationally accepted Government of Mr Mugabe. The election of the Muzorewa Government forced a reconsideration of the Rhodesian situation by all parties, and meant that in any future negotiations Rhodesia would be represented by a delegation composed mainly of blacks, and not Rhodesian Front whites as had been the case in the past.

The guerilla war had its origins in the black activism of the 1960s but began in earnest only in 1972. In the next seven years it was to claim more than 20,000 lives, leave thousands maimed and see a million people uprooted from their homes to become refugees or to be relocated in 'protected villages'. By 1979 the guerilla war was costing the Rhodesian Government in excess of $Z1 million a day. The rise and development of black nationalism and the origins and growth of the guerilla war are dealt with in chapters 7 and 8.

The institution of sanctions by Britain and other members of the Commonwealth when Rhodesia unilaterally declared its independence in 1965 was another vital step in the progress towards the eventual settlement of late 1979. At Britain's request the United Nations Security Council also implemented sanctions - voluntary at first, and then mandatory. Sanctions did not have the quickly constricting effect initially expected, due in no small measure to widespread sanctions evasion and in particular the inability to stop oil from reaching Rhodesia. Sanctions did, however, have a cumulative effect, and were a major contributing factor in the decline in the Rhodesian economy from the mid-1970s. This decline, together with the mounting costs of the guerilla war, brought increasing pressure on Rhodesian whites to find a settlement with the black nationalists.

By the late 1970s the economies of neighbouring Zambia and Mozambique, in which the guerilla forces were based, were themselves being adversely affected by sanctions against Rhodesia. Zambia had lost its main trade thoroughfare and its major source of imported food, and Mozambique its revenue from the transhipment of Rhodesian trade. The resultant effect was subtle pressure from both these countries on the Patriotic Front for a resolution of the Rhodesia problem. Chapters 10 and 12 deal with sanctions.

While the achievement of majority rule in 1980 resolved the political and constitutional aspects of racial inequality in Rhodesia, it did not resolve the economic or social aspects. These remain a problem and a challenge for both blacks and whites. The problems include an economy built on institutionalised discrimination; separate and unequal ownership of land; white control of industry, commerce, mining and commercial agriculture; a white monopoly of skilled and better-paid jobs; and inequalities in housing, education and health services.

To reorganise the economy without disrupting it, and to reallocate resources so that inequalities are minimised and no longer based on race will take time. But the time available to Mr Mugabe's Government may be limited because the achievement of majority rule, and the promises of two election campaigns, have created expectations of rapid change among blacks. Mr Mugabe will be able to improve the position of the worst-affected blacks in the short term - particularly with international financial assistance - but in the Committee's view in the longer term he will need to:

(1) Resolve the 'crisis of expectations' while retaining black confidence;

(2) Retain the co-operation and confidence of whites;

(3) Increase - or at least maintain - the overall productivity of the economy.

(4) Cope with the immense problems of reconstruction.

Mr Mugabe, with the example of countries such as Mozambique, would be aware of the need to avoid an exodus of expertise, and would be unlikely to precipitate a radical redistribution of resources which would force out whites and their expertise, cause the economy to decline, and worsen the position of blacks. Additionally, Mr Mugabe would be aware that the size and structure of the present economy is not such that everyone can enjoy the fruits of the modern sector. Nevertheless, some redistribution of resources will be necessary to meet minimum black expectations: land will have to be reallocated on a large scale, black minimum wages will need to be raised and greater resources will need to be devoted to black education, housing, health facilities and infrastructure such as water supplies, roads and power. The legacies of Rhodesia have

confronted the Government of Zimbabwe with a formidable task. With land redistribution, for example, Mr Mugabe will have to hold the balance between appeasing land hunger and maintaining an efficient agriculture. Similarly, in industry he will have the challenge of balancing productivity against wage rises, although there are considerable opportunities for a more equitable wage restructuring.

The economy of Rhodesia during the sanctions years and prior to Independence is outlined in chapter 10. The problems inherent in the economy and the inequalities resulting from the racial divisions of the past are discussed in some detail. Chapter 11 traces the history of what was perhaps the linchpin of institutionalised racial inequality in Rhodesia - the division of land on a racial basis. The chapter goes on to look at possible approaches to land reform and rural development, needs in the area of urban development and the question of economic development in general.

The problems confronting an independent Zimbabwe are many, but the prospects are good. As chapter 10 shows, Zimbabwe is a land with considerable natural resources - mineral and agricultural - and a developed modern economy second only to South Africa's in Africa. The country has large reserves of labour and, provided it can find the capital and markets and train additional skilled workers, has the potential to greatly expand the modern sector. Zimbabwe's pivotal position in the transport networks of Southern Africa, and a resumption of its role as a food exporter (the only other countries regularly exporting food are South Africa and Kenya), should also help Zimbabwe's economic recovery.

While the legacies of the past present major problems for blacks, they also pose problems for whites. A possible black backlash to revenge years of white domination or to vent frustration if the economic reforms of the new Government do not

line up with expectations, and a lowering of living standards, are examples of such problems. Mr Mugabe has indicated his determination not to allow a backlash to occur, but a lowering of living standards for the majority of whites would seem to be inevitable: the white minority can not expect to maintain its previous share of the limited resources of Zimbabwe at the expense of the black majority.

The Committee's assessment is that whites in the less skilled positions will gradually leave Zimbabwe as their standard of living is eroded below an acceptable level. Skilled whites are unlikely to see the same erosion of standards because their skills will attract a premium for some time to come. Only when there are sufficient numbers of skilled blacks will skilled whites face the possibility of a serious reduction in standards. By that time Zimbabwe may have become a genuine multi-racial society and differences based on race may no longer be significant.

The numbers of whites who will leave Rhodesia can not be predicted because of the large number of variables involved. But there seems little doubt that whites will continue to leave Zimbabwe. The population of Zimbabwe, the composition of the white sector, and reasons for the migration of whites are discussed in chapter 9. The chapter also examines Australian migration ties with Rhodesia and Australia's response should a new refugee situation develop in Zimbabwe.

Finally, in chapter 13, the Committee looks at the main areas of discrimination which existed in Rhodesia prior to majority rule.

Despite a seven-year guerilla war, Rhodesia became Zimbabwe through elections which peacefully produced a black Government. If this Government can successfully run Zimbabwe, reconcile its white minority to black rule and social equality

with blacks, and achieve a narrowing of economic inequalities, then Zimbabwe should prove a crucial stabilising force on the economies of the Front-line States of Zambia, Mozambique, Botswana, Tanzania and Angola. Progress by Mr Mugabe's Government will also bring pressure to bear on the Republic of South Africa as far as its internal racial problems are concerned, and for an early determination of the future of Namibia.

Conclusions and recommendations involving Australia

Aid

General aid:

(1) The urgent need for aid in Zimbabwe is in the one to two years immediately after Independence, to enable reconstruction and a quick improvement in the lives of the majority of blacks. The requirement is for aid to repair the damage caused by war and to start eradicating some of the inequalities resulting from past racial policies. Refugees and the homeless need to be resettled; land needs to be redistributed; schools, hospitals and health clinics need to be reopened, and new ones established; minimum wages for blacks need to be improved, and new jobs created. Malnutrition needs to be eradicated, and good agricultural practice restored (cattle-dips reopened, etc). Improvements in the initial period are essential to provide the stability needed for longer-term reform.

The Committee was pleased to note an Australian aid grant of $A5 million to be provided over the next two years, was offered by the Australian Prime Minister at the Independence Day celebrations on 18 April 1980, and that $A1.5 million of it had been allocated for the immediate rehabilitation and expansion of facilities such as schools and hospitals, and for veterinary work and agricultural rehabilitation. (Ch. 8, p. 348)

(2) The Committee noted further that Australia had already provided $A1m to assist the repatriation of refugees from neighbouring countries back to Zimbabwe and that it would continue to sponsor Zimbabwean students in Australia.

The Committee welcomes these initiatives, and urges the Government to keep the needs of Zimbabwe under review. If requests for additional aid are received from Zimbabwe, the Committee urges that they be considered sympathetically, so that the hard-won independence of Zimbabwe is not jeopardised. (Ch. 8, p. 348)

Rural aid:

(3) The Committee would urge the Australian Government, and governments around the world, to offer what assistance, expertise and facilities they can to assist in alleviating the hardships of rural poverty in Zimbabwe.

Australia has particular expertise in most of the areas of agriculture practised in Zimbabwe, and it could do much to assist by providing such expertise on the spot (as it already does in other African countries such as Kenya, Zambia and Tanzania), by providing training facilities, and by financial assistance. (Ch. 11, p. 549)

(4) The Committee urges the Australian Government to contribute financially to any schemes established to finance land redistribution and agricultural development in an independent Zimbabwe, and to provide what other assistance it can (e.g. the provision of experts, technical assistance, training, etc.). (Ch. 11, p. 553)

Migration and refugees

Immigrants:

(1) Should a deterioration of the internal situation lead to a mass emigration from Zimbabwe, Australia could be under pressure to relax its immigration criteria, and might conceivably have to cut back on immigrants from traditional sources. Charges of racism could arise if most of the immigrants from Zimbabwe continued to be whites and could result in divisions in Australian society. (Ch. 9, p. 386)

(2) The Committee found that the majority of Zimbabwean immigrants tended to integrate into the community fairly quickly, particularly as most had skills which helped them obtain employment and particularly as there were no language or cultural barriers to cross. Rhodesian settlers tended, on the whole, to be fairly self-reliant and the Sub-Committee received no evidence of any being a burden on the community. (Ch. 9, p. 400)

(3) The Committee noted that a number of blacks in Zimbabwe, particularly in rural areas, were married polygamously, and on this basis would be excluded from immigrating to Australia under principle (vi) of the immigration criteria. In circumstances where Australia may be faced with applications to immigrate from polygamously married persons, the Committee considers that this restriction should be re-examined. (Ch. 9, pp. 392-3)

Refugees:

(4) In the course of its inquiry the Sub-Committee received considerable evidence on the refugee situation existing inside and outside of Zimbabwe prior to the Lancaster House settlement. Much of this evidence was

overtaken by events and lost its direct relevance: with the ceasefire refugees began to return to Zimbabwe and resettlement programs commenced.

Nevertheless, the Committee canvassed some of the issues because of their possible relevance to other refugee situations which may occur in the Southern Africa region at some future time. (Ch. 9, p. 406)

(5) The Committee is firmly of the opinion that Australia should accept refugees or displaced persons from Southern Africa should the need arise. The Committee endorses the non-discriminatory aspects of Australia's refugee policy and re-emphasises that racial considerations must never enter into the selection of refugees. (Ch. 9, p. 408)

White Zimbabwean immigrants and racism

(1) The Committee, on the evidence available, rejects the contention that all whites from Zimbabwe are racists. The majority of white Zimbabweans who have immigrated to Australia to date have integrated into the Australian community without any major problems involving racism. Nor have any complaints of racial discrimination against white Zimbabweans featured in any of the reports of the Commissioner for Community Relations since his office was established under the Racial Discrimination Act 1975. In fact, the reverse is the case. The Fourth Annual Report, for 1978-79, lists four complaints of racial discrimination lodged by Zimbabweans, one of them allegedly involving refusal of entry to a hotel, out of a total of 993 complaints.

No person's political or racial views can be safely inferred from his membership of a racial group or his country of birth or residence. A blanket exclusion of immigrants or

refugees because they were white and came from Zimbabwe would show an intolerance no different from that of the racists being condemned. The Committee believes, however, that caution should be exercised so that people of overt extremist racist views are not admitted to Australia thereby damaging the racial harmony of this country. In this regard the Committee draws attention to the evidence of the Department of Foreign Affairs [quoted on p.410]. (Ch. 9, pp. 410-11)

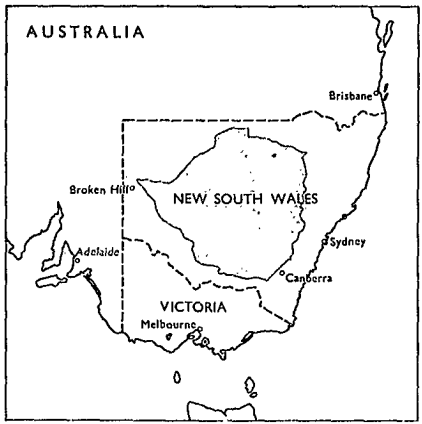
CHAPTER 2

Zimbabwe - Background

1. Physical features

Zimbabwe, with a population of some 7,000,000, is a landlocked country approximately 720 km long and 830 km wide and covers an area of 390,245 sq km - only 1.3% of the area of Africa as a whole. Slightly less than half the area of New South Wales and more than one and a half times the area of Victoria, it is nearly twice the size of Great Britain, about one-third the size of South Africa and half that of Zambia. The country lies wholly within the tropics, approximately between the latitudes of Rockhampton and Cairns in Queensland.

Figure 2.1: Area of Zimbabwe relative to New South Wales and Victoria



Geographically, Zimbabwe can be divided into four regions:

(1) The predominantly flat high veld, comprising land above 1200 metres, which extends across the country from south-west to north-east and which forms the watershed between the Zambezi, Limpopo and Sabi rivers. The high veld comprises some 25% of the country, and is cool, well-watered and fertile. It contains most of the important urban and industrial areas and the most productive agricultural land.

(2) To the west and east the land falls away to form the middle veld, between 900 metres and 1200 metres, which covers about 40% of the country. The middle veld is most extensive in the north-west. Many Tribal Trust Lands are situated in the middle veld.

(3) Beyond the middle veld lies the hot, dry low veld, below 900 metres, mostly in the Zambezi and Sabi-Limpopo valleys and constituting most of the remaining 35% of Zimbabwe.

(4) The fourth region, the eastern highlands, is distinctive because of its mountainous areas. It comprises a narrow belt running along the border with Mozambique. Many of its peaks exceed 1800 metres and the country's highest mountain, Inyangani, rises to 2592 metres. The lowest point in the country is the junction of the Sabi and Lundi rivers, at about 162 metres above sea level.

2. Boundaries

Unlike many African states whose boundaries are the result of political bargains made by European powers in the nineteenth century, Zimbabwe has for centuries had a geographic

unity of its own: bounded on the north by the Zambezi River, on the south by the Limpopo River, on the west by the Kalahari Desert and on the east by the eastern highlands.

These natural frontiers form the basis of the international boundaries existing today: Zambia north of the Zambezi, Mozambique east of the highlands, South Africa south of the Limpopo and Botswana west of the eastern edge of the Kalahari. Adjoining the western tip of Zimbabwe is the Caprivi Strip, part of Namibia.

These boundaries, though recent in origin, make a great deal more geographic and ethnographic sense than those of many other countries in Africa.

3. Climate and rainfall

Although Zimbabwe lies north of the Tropic of Capricorn, its climate is more semi-tropical. Temperatures are moderated by altitude: about four-fifths of the country is above 600 metres and a quarter above 1200m. Average monthly temperatures range from 22°C in October and 13°C in July on the high veld to 30°C on the low veld. Night frosts in winter are not uncommon on the high plateaux and can on occasions be destructive.

The climatic feature which most influences life in Zimbabwe, however, is not so much temperature as rainfall. For more than half the year, from April to October, there is virtually no rain throughout the country. Rainfall is confined to the summer months from late November to early March and, except on the eastern highlands, is very variable. This variability, a high rate of evaporation and, as much of the rain comes in torrents, a high rate of run-off, result in a low level of water availability for agriculture in many parts of the country. In some years there is not enough rain and drought ensues; in others there is too much and crops can be washed away or damaged.

Development of Zimbabwe's water resources is a continually pressing need met largely by building dams and by irrigation schemes in some low veld areas. Underground water resources are limited.

The average annual rainfall varies from 1400 mm in the eastern highlands to 800 mm on the north-eastern high veld, and to less than 400 mm in the Limpopo valley. Only about one-third of Zimbabwe enjoys an average rainfall of more than 700 mm a year while about half the country receives between 500 mm and 700 mm a year.

4. Soil and agriculture

Soils in Zimbabwe vary considerably. Granite occurs over more than half the country resulting in light, sandy soils of low fertility which cover about 70% of the country. Most of the Tribal Trust Lands are situated in these areas. Heavier loam and clay soils, usually red or brown, with a much higher fertility, comprise about 7% of Zimbabwe - areas occupied in the main by white farmers.

5. Tribes

The black population of Zimbabwe is more homogeneous than that of most African countries, in that there are only two main tribal groupings, based on linguistic and, to a lesser extent, geographic divisions. The two groups are the Shona (75%-80% of the black population) and the Ndebele (15%-20% of the black population). There are eight major tribes in the Shona group which speak different but mutually intelligible dialects.[1] The eight in rough order of size, are the Karanga[2] (22% of total black population), Zezuru (18%), Manyika (13%), Korekore (12%), Rozwi (9%) and Ndau (3%). There are two main tribes in the Ndebele group - the Ndebele tribe itself (14%) and the Kalanga tribe (originally a Shona off-shoot - 5%). In addition there are

a small number of minor tribes not oriented to either the Shona or Ndebele groupings, such as the Tonga (Batonka), Venda and Shangaan, comprising about 4% of the total black population.

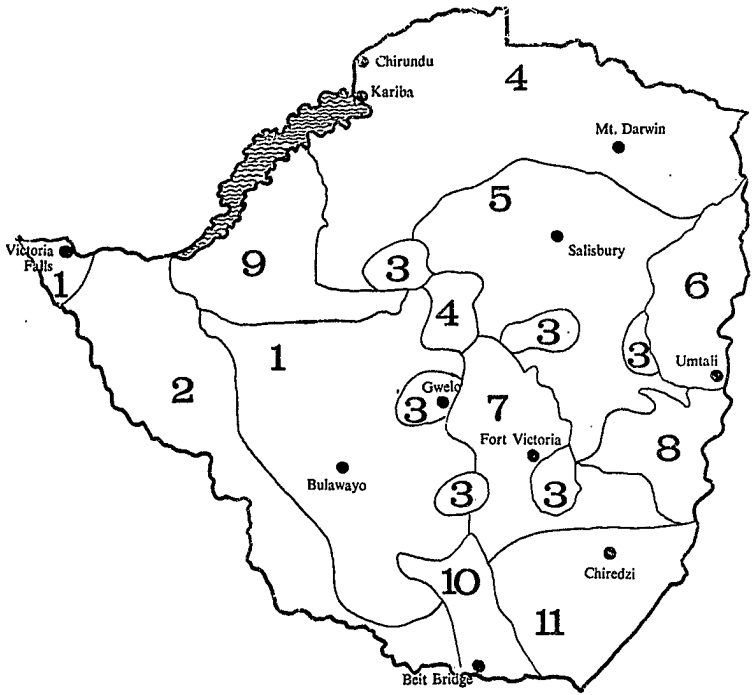
Some of the above tribes are further divided into sub-tribes or clans: the Karanga, for example, have some 15 and the Zezuru eight. The Shona language group has approximately 65 sub-groupings.[3]

The Shona group of tribes historically are based in a broad crescent of Zimbabwe stretching from the north-west to the south-east. The Ndebele are based mainly in the south and south-west. European settlers in the nineteenth century dubbed the former Mashonaland and the latter Matabeleland, although there have always been some Shona in Ndebele-occupied areas and some Ndebele have settled in Shona areas. For the distribution of the main tribes, see Figure 2.2.

Figure 2.2: The major tribal groupings in Zimbabwe (with approximate percentage of black population)

Tribe	*Percentage*	*No. of chiefs*
Ndebele oriented tribes		
1. Ndebele	14	44
2. Kalanga	5	3
Shona oriented tribes		
3. Rozwi	9	20
4. Korekore	12	20
5. Zezuru	18	22
6. Manyika	13	9
7. Karanga	22	35
8. Ndau	3	11
Others		
9. Tonga	2	27
10. Venda	1	6
11. Shangaan	1	5

Source: Rhodesia, Ministry of Foreign Affairs, *Fact Paper 9/77.*


Chirundu
Kariba
4
Mt. Darwin
5
Salisbury
Victoria Falls
1
9
3
4
3
6
3
Umtali
1
2
Gwelo
3
7
Fort Victoria
8
Bulawayo
3
3
10
Chiredzi
11
Beit Bridge

In the nineteenth century Shona tribes were a rather loose grouping politically, although they retained a degree of religious cohesion which assisted them in their risings against the whites in 1896-97.[4] The Ndebele were a more cohesive group, but were divided into three loose castes each of which was further divided into a number of clans. The castes were abezansi (the aristocracy), abenhla (the middle caste) and amaholi (the lowest caste). The true Ndebeles, the descendants of the Zulu warriors who crossed the Limpopo River in the 1830s, originally belonged to the first caste; members of tribes who were captured on the Zulu march northwards became the second caste; while members of the Kalanga tribe, then settled in the area occupied by the Ndebele, were incorporated into the third and lowest caste. The castes, while of less significance now because of intermarriage, still tend to be used to identify social standing.

The Ndebele have traditionally been seen as warriors and pastoralists and the Shona as more passive agriculturalists. But these labels are over-simplistic: the Shona have for centuries also herded cattle just as the Ndebele have grown crops; and the Shona fought just as fiercely as the Ndebele in the uprisings of 1896-97.

The Ndebele were ruled by a warrior king, and their political system as a result was more cohesive and authoritarian. The kingdom was divided into provinces under appointed chiefs. Succession in the Ndebele system was based on primogeniture. The Shona, on the other hand, were organised into autonomous chiefdoms and their succession system was more complicated: when a chief died each of his sons would succeed him in turn, from the eldest to the youngest. When the last of the chief's sons had died he would be succeeded by the eldest son of the chief's first son, followed by the eldest son of the chief's second son, and so on. In practice such a system became unwieldy and was complicated by lack of a written record of ages. The decision on who was to succeed was usually left to the tribal elders and recognised spirit mediums consulting the spirits of previous chiefs.[5]

The political systems of the Ndebele and Shona were changed after both were defeated by the whites in 1896-97. The Ndebele system of primogeniture was partially abandoned and chiefs came to be appointed, often by whites. The Shona system of collateral succession was also complicated by the appointment of chiefs. By 1902, 50 chiefs had been recognised by the white administration and by 1921, 330.[6] But after the introduction of the Land Apportionment Act in 1931, the administration embarked on a steady reduction in the number of chiefs, dispossessing a number of traditional chiefs as well as some of their own appointees. Currently there are some 200 chiefs.[7]

6. History to 1898

About 2,000 years ago an Iron Age negroid civilisation spread over most of Central Africa, including what is now Zimbabwe. These people were cultivators, able to smelt iron and make tools and had a characteristic pottery. A second group of Iron Age people arrived in about the fourth century AD. They were able to mine for and work gold, copper and tin. A third Iron Age group arrived in about the tenth century AD. Members of the group spoke a Bantu language and arrived in successive waves from the north, probably seeking new pastures for large herds of cattle. Members of this group are generally credited with having built the large stone structures known today as the Great Zimbabwe Ruins (near Fort Victoria) and a number of lesser stone structures.[8] The Shona tribes are largely decended from this group and inter-mixtures with earlier groups.

The Shona occupied most of what is now Zimbabwe and areas of Mozambique in the intervening centuries and apart from Portuguese influences in the sixteenth to eighteenth centuries, remained relatively undisturbed until the coming of the Ndebele from the south in the 1800s. The Shona established the two major empires of Mwene Mutapa and the Rozwi Mambos in the fifteenth to nineteenth centuries.

Nineteenth century Shona farmers produced a wide variety of crops and were considered good hunters and fishermen. The Shona also worked iron for agricultural tools and weapons, mined and traded gold and engaged in pottery, weaving and carving. There was a great deal of local trade and some external trade.[9] Shona knowledge was based on oral tradition. According to one writer:

> [Shona] agriculture, arts, crafts, internal trade, religion, social and political structure were, without doubt, among the most highly developed on the whole continent. The Mashona are a people with a proud past; a people with long and deep roots; a people with a distinct civilisation.[10]

The Portuguese first visited Shona occupied areas early in the sixteenth century. At the height of their power the Portuguese effectively controlled the eastern part of Mashonaland, but by the end of the seventeenth century their presence in what is now Zimbabwe was minimal. The Portuguese presence by then was confined mainly to what is now Mozambique.

The Shona way of life was disturbed not so much by Portuguese visits from the east as by two major 'invasions' from the south in the nineteenth century - first the invasion of the Ndebele and later the coming of the British South Africa Company and white settlers.

In the early part of the nineteenth century the Zulu nation expanded to control most of what is now northern Natal in South Africa. The Zulu king was Shaka and one of his best generals was Mzilikazi, who was given command of the northern part of Shaka's empire. Mzilikazi fell out with Shaka and after a time was forced to flee northward. As he went he conquered other clans and grew stronger. He eventually established the capital of his newly created empire near what is now Pretoria, in the Transvaal. His men became known as Matabele, or Ndebele.

In the late 1830s Mzilikazi and his Ndebele came under pressure from Boer groups moving northwards in what became known as the Great Trek. The Ndebele were forced to move further north and in about 1840 they arrived in present-day Matabeleland, then part of the Rozwi Empire of the Mambos. The Ndebele met little resistance and settled the area around what is now Bulawayo. They came to dominate large areas of Shona land through periodic raiding parties and tribute collections.

According to most historians the Ndebele sphere of influence in Shona areas did not extend past the Hunyani River in the north-east, and the Sabi River in the east.[11] Some recent historians put the eastern boundary at the Mtilikwe River, which reduces even further the extent to which the Ndebele were alleged to hold sovereignty over the Shona.[12]

Cattle played an important role in Ndebele society but the Ndebele, like the Shona, were also agriculturalists, however with much of the labour being performed by incorporated Shona.[13] They grew crops similar to those of the Shona, and also participated in a good deal of regional trade.

Mzilikazi died in 1868 and was succeeded by his son, Lobengula, who was to face the next, and final, invasion from the south - the coming of the British South Africa Company and white settlers. In the late nineteenth century the area which is now Zimbabwe was important to whites for two reasons - its alleged wealth in gold and its geographical position. In the case of its geographical position the Portuguese wanted it to give them an east-west belt of land across Africa and the Boers wanted it to expand their adjoining territories. The British feared that Boer occupation of the area could result in a link-up with the Germans in South-West Africa (Namibia), thus threatening their hopes of a South African union under the British flag as well as cutting off British access to the northern hinterland. Cecil Rhodes wanted it

both to realise his dream of a Cape to Cairo belt of British influence and for its alleged mineral wealth.

In February 1888 Lobengula signed a treaty with Rev. J.S. Moffatt, Assistant Commissioner of Bechuanaland in which Lobengula (a) claimed to be ruler of the Shona and (b) promised to give no part of his territories to anyone 'without the previous knowledge and sanction of Her Majesty's High Commissioner for South Africa'.[14] Later that year, in October, Lobengula signed what became known as the Rudd Concession, which gave the grantees 'complete and exclusive charge over all metals and minerals situated and contained in my kingdoms, principalities and dominions together with full power to do all things that they may deem necessary to win and procure the same'.[15] The grantees were also authorised 'to exclude from my kingdom, principalities and dominions all persons seeking land, metals, minerals, or mining rights therein', and Lobengula undertook 'to grant no concessions of land or mining rights ... without [the grantees'] consent and concurrence'.[16] The Concession made no grant of land but it did preclude other people from securing such grants.

Armed with the Rudd Concession Rhodes was able to obtain a charter for the British South Africa Company to exploit the Concession. The Charter came into force on 29 October 1889. The most important clause in the Charter was number 3, which authorised the Company, subject to the approval of the Colonial Secretary:

> to acquire by any concession agreement grant or treaty, all or any rights interests authorities jurisdictions and powers of any kind or nature whatever, including powers necessary for the purposes of government, and the preservation of public order in or for the protection of territories, lands, or property, comprised or referred to in the concessions and agreements made as aforesaid or affecting other territories, lands or property in

> Africa, or the inhabitants thereof, and to hold, use and exercise such territories, lands, property, rights, interests, authorities, jurisdictions and powers respectively for the purposes of the Company and on the terms of this Our Charter.[17]

The British South Africa Company began its administration in what became known as Southern Rhodesia on 13 September 1890. The day before, the Pioneer Column, comprising some 196 pioneers accompanied by 500 police, and established and financed by the Company, had arrived at what is now Salisbury. The pioneers were offered 15 gold claims each and the right to occupy 3,000 acres of land, despite the fact that the Rudd Concession made no grants of land to the Company and that it had not obtained any such rights through further treaties.[18]

By 1896 the number of whites had grown to approximately 5,000 and by 1901 to 11,000. By contrast, the number of whites in Northern Rhodesia (now Zambia) in 1904 was only 850 and in Nyasaland (now Malawi) in 1901 only 314.[19] The lure of a 'Second Rand' in Southern Rhodesia led to a large and rapid influx of whites, which had a much greater impact on blacks than in either Northern Rhodesia or Nyasaland.

Lobengula's efforts to continue exacting tribute from Shona tribes now in white occupied areas in an attempt to maintain his authority over them, together with a desire by Company officials to break the power of the Ndebele, resulted in a brief war against the Ndebele in 1893 which forced them to move further north. Lobengula died soon afterward and Bulawayo rapidly became a centre of white commercial enterprise. A few months after the victory over Lobengula almost all the traditional grazing grounds of the Ndebele had been given away and most of their cattle impounded.

By 1897 there were less than 14,000 head of cattle in the possession of blacks in the whole of Southern Rhodesia,

whereas four years earlier there had been more than 200,000 in Matabeleland alone.[20] Also, by 1899 some 6.4 million hectares of land had been granted to whites in Matabeleland and Mashonaland.[21]

By alienating most Ndebele land and cattle, the whites destroyed much of the economic, religious and social fabric of Ndebele society (but, for some reason, left most of the Ndebele military system intact). Relations between the Ndebele and their white conquerors were worsened by whites failing to differentiate between black castes in conscripting labourers, forcing warriors to do the same menial tasks as lower castes or Shona subjects. The Shona, too, while not conquered, were also conscripted in large numbers as labourers. Black women from both tribal groupings were on occasions abused. A hut tax was instituted to encourage blacks to enter the labour force. This aroused considerable antagonism, particularly among the undefeated Shona who looked on it as a charge for the occupation of their own lands.

The two territories of Matabeleland and Mashonaland were formally put under the administration of the Company by the Matabeleland Order in Council of 18 July 1894. The Company was to administer them as grantee of the Crown, now sovereign by right of conquest.[22]

In March 1896 the simmering discontent of the Ndebele erupted and resulted in the killing of a number of white settlers in outlying areas. The Ndebele rising was supported by a number of their Shona subjects. The uprising continued into June by which stage there were no prospects of the Ndebele winning and ejecting the whites but there was the prospect of a prolonged campaign before the whites could subjugate them completely. At this point, during the third week in June, many of the Shona tribes broke out in revolt and the killing of whites in Matabeleland was re-enacted in Mashonaland.

The situation was such that the whites could not hope to win both campaigns quickly without reinforcements which would not be able to arrive until the next dry season. The British South Africa Company was not likely to survive that long amid increasing calls for Imperial rule. The problem was solved when Rhodes negotiated a conditional surrender with the Ndebele in August-October. Rhodes promised to remedy a number of grievances, put an end to cattle collecting and make an adequate land settlement. Senior chiefs were to be incorporated into a reformed native administration as salaried officials. In return the Ndebele agreed to end their rebellion and give up their arms.

A similar peace was not made with the Shona. In the next year their uprising was ruthlessly suppressed, even to the extent of dynamiting caves and other strongholds while occupied by Shona. The number of casualties among the Shona and Ndebele is not known. White casualties were 430 dead and 189 wounded - some 10% of the total white population.[23] By comparison, during the Mau Mau uprising in Kenya only 68 whites were killed.[24]

The risings did result in greater Imperial supervision. Although the British South Africa Company was to run Southern Rhodesia for the next quarter century, it was to do so subject to limitations set by the Southern Rhodesia Order in Council of 1898, which fixed Imperial controls over legislative and administrative acts by the Company, particularly those relating to the black population. Britain also sought to limit the Company's freedom of action by giving substantial representation to white settlers in the newly-established Legislative Council. The political influence of the settlers increased when the Company began to foster white farming after it realised that Southern Rhodesia's gold resources were not nearly as large as supposed. The Company encouraged white farmers to settle to increase the value of its assets in the form of land and railways. In 1907 settlers were granted a majority in the Legislative Council, and by 1914, on the renewal of the Charter

for a further ten years, their right to succeed to the Company's powers was granted in principle.

In the years of Company administration the main questions concerning the political future of Southern Rhodesia were:

(1) Would Southern Rhodesia continue to be administered by a Chartered Company or would it become an orthodox British colony, and if the latter, would it become a Crown Colony like Kenya or would it have responsible government on the lines of Cape Colony or Natal prior to the formation of the Union of South Africa?

(2) Was Southern Rhodesia viable on its own, politically and economically, or should it join the Union of South Africa (constituted by a British Act of Parliament in 1910), to become its fifth province (a possibility left open under the Act)? Alternatively, should it amalgamate with Northern Rhodesia?

The first of these questions was answered by the continuance of Company administration until 1923 when responsible government was granted. A referendum in 1922 answered part of the second question by rejecting union with South Africa. The option of amalgamation with Northern Rhodesia, extensively discussed in the period 1914-23 and subsequently, was attempted in 1953. The attempt, in the form of the Federation of Rhodesia and Nyasaland, lasted ten years before the formal break-up of the Federation in 1963.

Notes and references

1. The statistics in this paragraph are from Rhodesia, Ministry of Foreign Affairs, Fact Paper 9/77, issued January 1978.

2. According to Fact Paper 9/77, about 80% of 'other ranks' in the Rhodesian African Rifles and about 60% of the black members of the British South Africa Police were recruited from the Karanga tribe.

3. Fact Paper 9/77.

4. T.O. Ranger, Revolt in Southern Rhodesia 1896-7 (A Study in African Resistance), (Heinemann, London, 1967), pp. 17-18, and see Chapter 10.

5. N.J. Brendon, 'The Man and His Ways' (Rhodesia, Ministry of Information, Immigration and Tourism, Salisbury), pp. 10-13; F.S. Musara, 'The Role of the Chiefs in Rhodesia/Zimbabwe', Evidence, pp. 1848-9.

6. Claire Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965 (With Special Reference to Imperial Control), (Clarendon Press, Oxford, 1966), footnote 1, p. 477.

7. Fact Paper 9/77.

8. Stanlake Samkange, Origins of Rhodesia (Frederick A. Praeger, New York, 1969), p. 2.

9. R. Palmer, Land and Racial Domination in Rhodesia (University of California Press, Berkeley, 1977), pp. 13-17.

10. Samkange, p. 6.

11. E.g. R. Blake, A History of Rhodesia (Methuen, London, 1977), pp. 19-20.

12. E.g. Ranger, pp. 30-1; Palmer, pp. 9-11.

13. Palmer, pp. 17-18.

14. Samkange, p. 58. Prof. Samkange disputes the Moffatt Treaty on pages 62-67, claiming that what Lobengula signed was not what he had been told he was signing.

15. Quoted in Samkange, pp. 78-9.

16. Quoted in Samkange, p. 79.

17. Quoted in Blake, p. 54.

18. Blake, p. 67.

19. Palmer, p. 11.

20. Blake, p. 123.

21. Blake, p. 115.

22. Palley, pp. 114-15; Blake, p. 114.

23. Blake, p. 142.

24. Palmer, p. 55.

CHAPTER 3

Constitutional history, 1898-1965

1. Introduction

From the time of the European occupation of the territory from the south in 1890, until 1923, Southern Rhodesia was administered by the British South Africa Company. Apart from the Company's Charter, granted in 1889, the principal governing instrument of Southern Rhodesia was the Southern Rhodesia Order in Council of 1898. In 1923 Company rule was dissolved and Southern Rhodesia was formally annexed to the British Crown.

The territory was granted a Constitution by Letters Patent in September 1923 and acquired the somewhat ambiguous constitutional status of a predominantly self-governing colony. The Constitution did not provide for complete self-government as a number of reserve powers were maintained by Britain. The Constitution provided responsible government subject to certain limitations. Britain retained a veto over openly discriminatory legislation but in fact never exercised it. The 1923 Constitution continued in force largely unchanged until 1937, when a number of alterations providing for increased local autonomy and diminished Imperial control were made. The grant of complete self-government, however, was described by the Imperial authorities as not being 'practical politics'.[1] A request by the Prime Minister of Southern Rhodesia for the grant of dominion status was refused in 1949.

The next major constitutional change occurred in 1953 when Southern Rhodesia joined Northern Rhodesia (now Zambia) and Nyasaland (now Malawi) in a federation - the Federation of

Rhodesia and Nyasaland, often referred to as the Central African Federation. Proposals for some form of federation between Southern and Northern Rhodesia had been expounded at various times since the occupation of both territories by the British South Africa Company. When federation did come, it was based mainly on economic grounds. The dissolution of the Federation ten years later was based mainly on political grounds. The realisation among blacks, particularly in Northern Rhodesia and Nyasaland, that under the federal electoral provisions they could not hope to win a majority for many years led to increasing pressures for independence in those territories. Conservative whites in Southern Rhodesia, fearing concessions to black majority rule, were also pressing for secession and dominion status. These pressures were intensified when Britain conceded constitutions which brought a black government to power in Nyasaland in 1961 and in Northern Rhodesia in 1962. The Federation was formally dissolved in December 1963.

A significant feature of the federal Constitution was that it permitted its component territories to be of different constitutional status - Southern Rhodesia remained a colony enjoying responsible self-government while Northern Rhodesia and Nyasaland remained protectorates.

It was as a self-governing colony that Southern Rhodesia was granted a new Constitution in 1961 to replace that of 1923. The main aim of Southern Rhodesian negotiators was to transfer to Southern Rhodesia the powers reserved to the United Kingdom. The two major concerns of the United Kingdom were that Southern Rhodesia not become a republic and that provision be made for eventual majority rule. The final result was a Constitution which conferred a much larger degree of self-government on Southern Rhodesia but which proved an unsatisfactory compromise between black nationalist demands and white determination to maintain control into the foreseeable future. The constitution was couched in largely non-racial terms and would, eventually, have led to

majority rule. It was as much as whites at the time were prepared to concede, but this was not enough to meet the aspirations of black nationalists.

Two years after the 1961 Constitution for Southern Rhodesia came into force the Federation collapsed. With the break-up of the Federation renewed efforts were made by Southern Rhodesia to negotiate independence from Britain. The British position on a new constitution was embodied in five (later six) principles, which it regarded as prerequisites for a grant of independence. These were that there should be unimpeded progress to majority rule, that guarantees against retrogressive amendment of the constitution would need to be given, that there should be an immediate improvement in the political status of blacks, that there should be progress towards ending racial discrimination; and that the British Government would need to be satisfied that the suggested basis for independence was acceptable to the people of Southern Rhodesia as a whole. The sixth principle was that, regardless of race, there should be no oppression of majority by minority or of minority by majority.

The Rhodesian Front Government of the time claimed it was entitled to independence on the basis of the 1961 Constitution. It was not prepared to concede more rapid progress to majority rule than was envisaged under that Constitution. A referendum on the question of whether Southern Rhodesia should obtain independence on the basis of the 1961 Constitution held in November 1964 was overwhelmingly in favour, and a general election in May 1965 gave the Rhodesian Front all 50 'A' roll seats. With this support, and with the negotiations with the British deadlocked, the Rhodesian Front Government unilaterally declared Southern Rhodesia independent on 11 November 1965.

This chapter will review the constitutional progress of Southern Rhodesia from the 1898 Order in Council to the Unilateral Declaration of Independence in 1965, with particular

emphasis on the changing nature of Southern Rhodesia's ties with Britain and the franchise.

2. The Southern Rhodesia Order in Council 1898

(1) General

The British Government took a more direct interest in the administration of Southern Rhodesia after the Jameson Raid into the Transvaal in late 1895. It began to formalise administrative arrangements and to establish controls on the activities of the British South Africa Company. These were embodied in the Southern Rhodesia Order in Council of 20 October 1898. The Order was framed in the expectation that while responsibility for the government and administration of the territory would continue for some years yet with the Company, in the longer term Southern Rhodesia would become a self-governing colony.[2] This expectation was reflected in the establishment by the Order of an 11-member Legislative Council empowered to make laws 'for the peace, order and good government of Southern Rhodesia'.

The Legislative Council comprised four elected members, five Company nominees, the Administrator (the chief Company official in the territory) and a non-voting Imperial representative, the Resident Commissioner, responsible to the High Commissioner for South Africa in the Cape Colony who, in turn, was responsible to the Colonial Secretary. The main restrictions on the Council were that it could not pass an ordinance repugnant to the Order in Council, the scale of customs duties that might be imposed was limited, and no conditions or disabilities not equally applicable to 'Europeans' could be imposed on 'natives' without the previous consent of the Colonial Secretary.

An administration to deal with the black population was set up under the Southern Rhodesia Native Regulations, proclaimed by the High Commissioner on 29 November 1898. The regulations established the Southern Rhodesia Native Department, which became almost a separate administration in charge of the black population.[3] The Administrator in Council[4] became responsible for the appointment of chiefs and the amalgamation and subdivision of tribes.

Southern Rhodesia was divided into two provinces - Matabeleland and Mashonaland - in each of which was a Chief Native Commissioner responsible to the Secretary for Native Affairs who, in turn, was responsible to the Administrator. Each province was divided into districts under Native Commissioners, who were aided by Assistant Native Commissioners. Native Commissioners were given considerable discretionary power to regulate the daily life of blacks and were the main instrument of government relations with the black population. For example, Native Commissioners were empowered to assign land for huts, gardens and grazing ground, and no huts could be built or gardens cultivated without their consent. Native Commissioners could fix the number of huts which might comprise a kraal, and allocated water supplies. They were also responsible for the collection of hut tax.

The chiefs became government officials appointed by the Administrator in Council and held office contingent upon their 'good behaviour and general fitness'. The chiefs were responsible to the Administrator for the general good conduct of the blacks under their charge, notification of crimes, deaths, disappearances, diseases, the publication of government orders, the prevention of crimes, the notification of newcomers to a district, the supply of men for military service when called upon to provide such men by the Administrator in Council, the discharge of any duties required by the Administrator in Council with consent of the High Commissioner, assisting in apprehending

and securing all offenders, and the collection of hut tax. Under the chiefs were district headmen, appointed by the Secretary for Native Affairs, usually on the nomination of the chiefs.

The 1898 Order in Council also provided for the extension of the native reserve system established in 1894 by requiring that additional land be assigned to reserves 'from time to time'. Under the Order, overall control of the administration of blacks was maintained by Britain, including the appointment, salaries and removal of the Secretary for Native Affairs, Native Commissioners, Assistant Native Commissioners and all officials employed in the administration of native affairs.

According to Palley, although these provisions were modified from time to time (e.g. the Native Affairs Act of 1927) the basic structure of the administration dealing with blacks remained substantially the same to at least 1965.[5]

(2) The franchise

The provision in the Order in Council of 1898 that no conditions or disabilities not equally applicable to 'Europeans' could be imposed on 'natives' without the consent of the Secretary of State meant that there was no legal colour bar in the franchise provisions for the four elected members of the Legislative Council.[6] In practice blacks were excluded by provisions which required voters to be males over 21 who were British by birth or naturalisation or who had taken an oath of allegiance, and who had for six months preceding registration either occupied a building in the electoral district to the value of £75, or owned a mining claim, or received wages at a rate of not less then £50 a year. Property communally or tribally held was excluded from the property qualifications but a house to the value of £75 on communal property was not. Those seeking registration as voters also had to be able to write their name, address and occupation (literacy was in effect a requirement).

The franchise was couched in non-discriminatory language and blacks who met the qualifications were entitled to register. The 1898 qualifications for the franchise, and as amended in 1912, are shown in Table 3.1.

Table 3.1: Franchise qualifications 1898 and 1912

Qualification	*1898*	*1912*
Income or property (occupation or ownership)	£50 per annum £75 or mining claim	£100 per annum £150 or mining claim
Education/literacy	Ability to write name, address, occupation	Ability to fill in registration form or do English dictation test of 50 words
Age	21 (males)	21 (males)
Citizenship	British subject or oath of allegiance	British subject

Source: Based on Claire Palley, *The Constitutional History and Law of Southern Rhodesia 1888-1965* (Clarendon Press, Oxford, 1966), pp. 136 and 171.

According to at least one historian, the purpose of the voting qualifications was not so much to exclude blacks - 'whom no one thought of seriously in that capacity anyway' - as to exclude poor whites from the Transvaal.[7] Using names as a guide administration officials estimated that the 1904 voting lists contained about 50 'native' voters.[8] The 1912 qualifications remained the basic Southern Rhodesian voters' qualifications until amended in 1951. The franchise was generally extended to women in 1919.[9]

(3) Subsequent developments

By the end of 1898 the major institutions, instruments of administration and legislative policies which were to form the basis of succeeding policies had been laid down:

> The representative principle had been introduced by the creation of a Legislative Council with a minority of elected members and, although the Legislative Council had no executive responsibilities, it was acknowledged that this was but the first step towards responsible government. A franchise couched in non-discriminatory language, but with property and monetary qualifications and the additional requirement of literacy that would, in effect, exclude the majority of Africans, was laid down. A Native Affairs Department responsible for government relations with Africans was established. In urban areas municipalities had been created and legislation providing for the control of Africans in such areas had been enacted. Insofar as land was concerned, the Reserve system had been introduced.[10]

Between 1903 and 1913 the membership of the Legislative Council was gradually enlarged and its character changed to become more representative of settlers.

The Charter of the British South Africa Company was renewed for a further 10 years in 1914. In a Supplementary

Charter the United Kingdom for the first time conceded the right of Southern Rhodesia to obtain responsible government. The Supplementary Charter provided that the Crown could, at any time, alter the terms of the Charter to establish responsible government provided it was requested to do so by the Legislative Council and the Council produced evidence that the territory was fit to have, and could finance, responsible government.

Pressures for responsible government continued to increase, and in 1921 a Royal Commission, the Buxton Commission, was appointed to advise 'when and with what limitations (if any) responsible government should be granted to Southern Rhodesia'. The Commission recommended that a constitution be drafted by the Colonial Office in consultation with elected members of the Legislative Council and that it be tested at a referendum. If the referendum result was favourable Southern Rhodesia should be annexed and Letters patent issued granting a new constitution.

The referendum, held on 27 October 1922, asked electors to choose between responsible government and union with South Africa. The result was a decision in favour of responsible government and, on 12 September 1923, Southern Rhodesia was formally annexed to Great Britain to become a Crown Colony. In the referendum the result was 8,774 in favour of responsible government and 5,989 in favour of union. The poll was 78% of the 20,000 registered voters. Of a black population of about one million, only an estimated 60 were on the register and eligible to vote.[11]

3. The Constitution of 1923

(1) General

By Letters Patent issued on 1 September 1923 Southern Rhodesia was provided with its first responsible government constitution. The Constitution, which came into force on 1

October 1923, did not confer complete self-government - it was self-government subject to a degree of supervision. The preamble to the Letters Patent specifically stated that the Constitution provided 'for the establishment of responsible government subject to certain limitations'.

The Constitution provided a number of safeguards for blacks - including the external control of reservation of Bills passed by the Legislative Council, the requirement of prior approval by the relevant Secretary of State of subordinate legislation discriminating against blacks, special provisions preserving the right of blacks to own and hold land on the same terms as whites, and the retention of native reserves for the exclusive use of blacks.

The general controls available to the British Government included:

> ... power to legislate by Act, Crown power to legislate by Order in Council, power by Act to revoke the constitution, power in the Crown to amend or revoke many sections and to suspend the Constitution, the rule of repugnancy, disallowance, reservation of discriminatory and other Bills, the need for obtaining the Secretary of State's approval of delegated legislation discriminating against Africans, appointment by the Crown of the Governor, the right to give the Governor Royal Instructions, the Governor's power to dissent from Cabinet advice, his power of discretionary reservation of all Bills, and appeal by special leave to the Judicial Committee of the Privy Council.[12]

The legislature created under the Constitution was unicameral, consisting of a Legislative Assembly initially comprising 30 members representing electoral districts.[13] The legislature was given full power to pass laws 'to be entitled "Acts" which shall be required for the peace, order and good government of the Colony'. The High Commissioner's power to legislate by proclamation was withdrawn.

Certain sections of the Letters Patent creating the Constitution were not alterable by the legislature, including those provisions reserving Bills, the Native Administration, the salary of the Governor and the provisions defining legislative power, providing for a special procedure for constitutional amendment, and prohibiting the alteration of certain sections of the Constitution. Constitutional amendments which were permitted required a two-thirds majority. Formal external relations were conducted by the British Government but Southern Rhodesia was gradually delegated authority to negotiate trade agreements with foreign governments and enter into local agreements with neighbouring governments.

One of the most effective, though negative, methods of Imperial control was the procedure of reservation. By section 28 of the Letters Patent the Governor was required to reserve certain Bills - including all Bills concerning blacks - unless he had either previously obtained instructions from a Secretary of State or unless the Bill contained a clause suspending its operation until the King had declared his intention not to disallow it under section 31. A reserved law lapsed after one year unless it had meanwhile received the Royal Assent.

Although no reserved Bill was ever refused assent, a number were delayed for some time.[14] The main effectiveness of the reservation process, however, was that it encouraged regular prior consultation between Imperial authorities and the Southern Rhodesian Government on draft legislation. It also encouraged the Southern Rhodesian Government to anticipate possible Imperial objections, when formulating legislation. On occasions draft legislation was withdrawn and modified and on other occasions conditions inserted at Imperial request.

(2) The franchise

The 1923 Constitution provided that the franchise qualifications should be those prescribed by existing electoral laws as at the grant of responsible government or as amended by any laws passed by the Legislative Assembly. Control of the franchise thus passed to the Legislative Assembly, subject to the provisions of the Letters Patent reserving laws which discriminated between blacks and whites. The franchise continued to be based on the property/income qualifications of 1912. Apart from minor changes in 1928 and 1937, the basic qualifications remained unaltered until 1951 when they were raised substantially, as shown in Table 3.2.

Table 3.2: Franchise qualifications 1951

Qualification	*1951*
Income	£240 p.a.
or property (occupation or ownership)	£500
Education/literacy	Ability to speak and write English
Age	21
Citizenship	Southern Rhodesian citizenship (*a*)

(*a*) Created by the British Nationality Act 1948.
Source: Based on Claire Palley, *The Constitutional History and Law of Southern Rhodesia 1888–1965*, p. 308.

A re-registration of voters under the 1951 provisions resulted in the following figures: 45,111 whites, 380 blacks, 444 Asians and 500 coloureds. By November 1956 out of a total electorate of 52,184, only 560 were blacks.[15]

A Franchise Commission was appointed at the end of 1956 under the chairmanship of Sir Robert Tredgold to report on a system for the 'just representation' of the people of the Colony in the Legislative Assembly 'under which the Government is placed and remains in the hands of civilized and responsible persons'.[16] The Commission reported in March 1957, recommending the maintenance of high qualifications as the best means of determining capacity to vote intelligently, but at the same time recommending a category of voters with special qualifications (£180 a year income and literacy) whose votes should count for no more than half the total votes of electors with ordinary qualifications in the same constituency. This recommendation, had it been accepted unaltered, would have given a substantial number of blacks the vote.

The Electoral Act of 1957 which gave effect to most of the Commission's recommendations did not, however, take up the proposals on special voting qualifications unaltered. Another scheme was substituted and instead of the proposal to devalue special votes a provision was inserted that once special voters reached 20% of the total number of registered ordinary voters, no further enrolment of special voters could take place. The qualifications for ordinary and special voters are shown in Table 3.3.

Table 3.3: Franchise qualifications 1957

Category	*Income (per annum, during each of 2 years preceding enrolment claim)* or	*Property (ownership)* and	*Education (completion of)*
	£	£	
Ordinary qualifications			
1	720	1 500	..
or 2	480	1 000	primary education
or 3	300	500	4 years' secondary education
Special qualifications (a)			
1	240	..	..
or 2	120	..	2 years' secondary education

(a) This category to fall away when numbers of voters with special qualifications equalled 20 per cent of those with ordinary qualifications. No further registrations then to be permitted.

Source: Based on Claire Palley, *The Constitutional History and Law of Southern Rhodesia 1888-1965*, p. 311.

The new qualifications provided for minimum standards of education and ownership (not just occupation) of property. Income now had to be earned over an unbroken period of two years. To cater for changes in money values the Act provided for a commission to automatically adjust monetary qualifications in accordance with a prescribed formula every three years. The franchise was slightly extended in that the senior wife of a man married under a polygamous system was deemed to possess the same means (but not educational) qualifications as her husband.

By November 1960, 3,129 blacks (1,861 with special qualifications and 1,268 with ordinary qualifications) were entitled to vote out of a total electorate of 75,061. A year later there were 5,177 blacks out of a total electorate of 88,820.[17] The figures for blacks are somewhat lower than would have been the case because of a policy of non-enrolment advocated by black political organisations.

4. The Constitution of the Federation of Rhodesia and Nyasaland of 1953

(1) General

Proposals for some form of federation or amalgamation between Southern and Northern Rhodesia (some including Nyasaland) had been discussed almost from the time both territories were occupied by the British South Africa Company. The reality - a federation of Southern Rhodesia, Northern Rhodesia (now Zambia) and Nyasaland (now Malawi) - was achieved in 1953. It was to last 10 years.

The arguments for federation were basically economic, emphasising economies of scale and a larger market, the complementary nature of the three economies, and increased financial strength. Other arguments were more political. The British viewed a federation at first in terms of a liberal

British counterpoise to white Afrikaner nationalism of South Africa and, by the early 1950s, the establishment of a multi-racial society interposed between the 'white racialism' of South Africa and the black nationalism of the rest of Africa. Some saw it as an opportunity for blacks to achieve greater political power, while others saw it as an opportunity to maintain white dominance for the foreseeable future by extending Southern Rhodesian influence over British Central Africa and removing Colonial Office control. It was for this last reason that majority black opinion in the two northern territories was consistently opposed to federation and was finally to produce its collapse.

Negotiations towards federation commenced in 1948 and resulted in a draft constitution which was tested at a referendum in Southern Rhodesia on 9 April 1953. The vote in favour was 25,570 and against 14,729.[18] The Legislative Councils of Northern Rhodesia and Nyasaland passed resolutions in favour of federation also in April 1953. On 1 August 1953 the Federation of Rhodesia and Nyasaland (Constitution) Order in Council was promulgated. The federation Constitution was contained in an Annex to the Order. Parts of the Constitution dealing with the Governor-General and the executive government came into force on 3 September 1953, and the remaining provisions came into force on 23 October 1953. On 15 December 1953 the first federal general election was held.

Under the federal Constitution responsibility for defence, regulation of commerce and industry, immigration, health, white education and white agriculture were transferred from the Southern Rhodesian Government to the Federal Government. African affairs, internal security, industrial relations and certain other matters were retained by Southern Rhodesia. In the two northern territories, control of black advancement was left with the Colonial Office. As with Australia, federal powers were delineated, with most other powers remaining with the constituent

territories. In addition, certain powers were concurrent to both the Federation and its constituents. The three parts of the Federation maintained their differing constitutional status - Southern Rhodesia remained a colony enjoying responsible self-government while Northern Rhodesia and Nyasaland remained protectorates.

Regionalism played a major role in the composition of the federal Legislative Assembly - constitutional amendments to alter the legislative power of the Assembly in the first 10 years of federation could be blocked by any one territory, and any territory could object within 60 days of their passage to other constitutional amendments. Such amendments would then need United Kingdom assent by Order in Council to become law. The only way in which a territory could secede from the Federation was by an Act of the United Kingdom Parliament (the dissolution of the Federation took place after enactment of the Rhodesia and Nyasaland Act 1963).

The federal Constitution did not contain a Declaration of Rights but did specify black land rights and the right not to be excluded from the federal public service on racial grounds. A special provision to protect the interests of blacks in relation to federal legislative and executive acts was the establishment of an African Affairs Board, whose job it was to report on subordinate legislation (an adverse report meant such legislation could be made subject to disallowance by a Secretary of State), make representations as to black interests and report on differentiating measures. Although the Board was set up as part of an endeavour to meet black opposition to federation, on the two occasions it requested that Bills be reserved its advice was overruled by the United Kingdom Government, which assented to both.[19] The Board was a Standing Committee of the federal Legislative Assembly, and comprised three black members of the Assembly and three white members representing black interests.

The legislature consisted of the Queen and a federal Legislative Assembly. Provision was made for an upper house, but this was never utilised. The composition of the Legislative Assembly in 1953, and as it was revised in 1958, is shown in Figure 3.1. The Governor-General was appointed by Her Majesty - the Federal Government was consulted but had no right of advice.

Figure 3.1: Federation of Rhodesia and Nyasaland - Composition of Legislative Assembly 1953-62

As originally composed under the Constitution and Territorial Electoral Laws, as adapted, from 1953 to 1958

Total membership 35 plus non-member Speaker with casting vote

26 'elected members'	14 S. Rhodesia 8 N. Rhodesia 4 Nyasaland	'Non-racial', but in practice all European elected by a predominantly European electorate
6 'specially elected African members'	2 S. Rhodesia	Elected by predominantly European electorate
	2 N. Rhodesia 2 Nyasaland	African elected
3 'European members charged with special responsibility for African interests'	1 S. Rhodesia	Elected by predominantly European electorate
	1 N. Rhodesia 1 Nyasaland	Appointed by Governors

Effect

29 members elected by predominantly European electorate, 27 of whom were Europeans and 2 of necessity Africans.
4 Africans elected by Africans of Northern Rhodesia and Nyasaland.
2 Europeans nominated by Colonial Office.

As composed after the Constitution Amendment Act 1957 and the Federal Electoral Act 1958, from 1958 to 1962

Total membership 59 plus non-member Speaker with casting vote

44 'elected members'	24 S. Rhodesia 14 N. Rhodesia 6 Nyasaland	'Non-racial', but in practice all European elected by a predominantly European electorate of general voters
8 'elected African Members'	4 S. Rhodesia 2 N. Rhodesia 2 Nyasaland	Elected by general and special voters, the great majority of whom were European
4 'specially elected African Members'	2 N. Rhodesia 2 Nyasaland	African elected
3 'European members charged with special responsibility for African interests'	1 S. Rhodesia	Elected by general and special voters, the majority being Europeans
	1 N. Rhodesia 1 Nyasaland	Appointed by the Governors

Effect

53 members elected by predominantly European electorate, 45 of whom were Europeans and 8 of necessity Africans.
4 Africans elected by Africans of Northern Rhodesia and Nyasaland.
2 Europeans nominated by Colonial Office.

Source: Palley, *The Constitutional History and Law of Southern Rhodesia 1888-1965*, pp. 394-5

(2) The franchise

Persons elected to the first Legislative Assembly were elected under the respective territorial electoral provisions but the federal legislature was empowered to make its own provisions for future elections, including franchise provisions, provided they were not racially discriminatory. The new franchise provisions were fixed in the Federal Electoral Act 1958. This Act, together with the Citizenship of Rhodesia and Nyasaland and British Nationality Act 1957 and the Constitution Amendment Act 1957, made it extremely difficult for blacks to participate to any great extent in the election of any federal government for many years to come. According to Palley, the changes 'made it clear to African politicians in the Northern Territories that they could not in their lifetime hope to gain control of the Federal Legislature under the Federal franchise introduced in 1958'.[20]

The franchise was limited to persons who, apart from residence, age and citizenship qualifications, also fulfilled one of a number of means and educational qualifications. The combinations of means and educational qualifications permitted are summarised in Table 3.4.

Table 3.4: Federation of Rhodesia and Nyasaland - Means and educational qualifications for the franchise 1958

Category	*Income (per annum, during each of 2 years preceding enrolment claim)* or	*Property (fixed)* and	*Education (completion of)*
	£	£	
General voters			
1	720	1 500	..
or 2	480	1 000	primary education
or 3	300	500	4 years' secondary education
or 4	Ministers of religion with university degree or five years' training or two years' training and three years' service as a minister, and chiefs deemed to have means qualifications		
Special voters			
1	150	500	..
or 2	120	..	2 years' secondary education

Note: Every applicant was required to have an adequate knowledge of the English language, viz. ability to speak, read, write and comprehend a subject to testing. He was also required to complete the claim form unassisted in his own writing.

Source. Based on Clute Palley, *The Constitutional History and Law of Southern Rhodesia 1888-1965*, p. 392.

Voters were either general voters or special voters, on two separate rolls. General voting qualifications were higher. In practice, the franchise qualifications meant that the majority of general voters were whites and the majority of special voters blacks. The numbers of electors in each of the three Federal elections is shown in Table 3.5. The figures for blacks are distorted to some extent as the result of a boycott of the rolls by a number of blacks eligible to register. Most such blacks, however, would only have been able to register as special voters and thus would not have greatly altered black representation in the Legislative Assembly. Special voters were only able to participate in voting for a maximum of 13 of 57 seats in the Legislative Assembly (of the other three seats in the 60-member Assembly two were filled by Governors' nominees and one by a non-member Speaker).

Table 3.5: Federation of Rhodesia and Nyasaland - Voters at general elections for Legislative Assembly

Federal Election Year	*Whites*	*Blacks*	*Coloured and Asian*	*Total*
1953 . . .	64 338	448	2 133	66 919
1958 . . .	85 834	7 132	4 075	97 041(*a*)
1962 . . .	103 896	10 959(*b*)	4 505	119 360(*a*)

(*a*) Including general and special voters.
(*b*) At least 6000 registered on special roll.
Source: Palley, *The Constitutional History and Law of Southern Rhodesia 1888-1965*, pp. 394-5 and 367.

In Southern Rhodesia in 1953 there were 48,870 white, 594 Asian, 570 coloured and 441 black voters, while in Northern Rhodesia there were 14,487 white, 892 Asian and eight black voters. (Blacks in Northern Rhodesia were largely excluded as they were classed as British Protected Persons and thus were not British subjects unless naturalised. In 1958 British Protected Persons became Federation citizens and were able to vote provided they met the other franchise qualifications.) In Nyasaland in 1953 there were 981 white and 77 Asian voters.

(3) Subsequent developments

Black opposition to the Federation and the growth of African nationalism was such that in 1959 states of emergency were declared in each of the three member territories. Britain was forced to take stock and in November-December 1959 appointed an Advisory Commission to review the Federation and its future. The Commission comprised 26 persons - 11 British, one Australian, one Canadian and 13 Federal and territorial - and was chaired by Lord Monckton. The Commission reported in October 1960.

The report advocated considerable changes to the existing federal structure, including greater responsibility for territorial governments, particularly those of Northern Rhodesia and Nyasaland, provision for equal numbers of blacks and whites to sit in the federal Legislative Assembly and the right of territories to secede. The report rejected dissolution of the Federation, but warned that no form of association was likely to succeed between the three territories unless Southern Rhodesia was willing to alter its racial policies.

The Federal Government rejected the conclusions of the Monckton Report. Attempts to reach an overall settlement of the problems in Central Africa, beginning with a Review Conference in London in December 1960 and continuing through 1961 and 1962, failed. Alternative forms of association were discussed at

various times and also rejected, largely because of black opposition in the two northern territories. On 19 December 1962 the United Kingdom Government announced it would permit Nyasaland to secede and on 29 March 1963 a similar announcement was made for Northern Rhodesia.

On 8 May 1963 the United Kingdom Government announced it would dissolve the Federation, and the Federation officially ended on 31 December 1963. Nyasaland became the independent state of Malawi on 6 July 1964 and Northern Rhodesia the independent state of Zambia on 24 October 1964. Both remained within the Commonwealth.

5. The Constitution of 1961

(1) General

The responsible government Constitution of 1923 continued in force in Southern Rhodesia until 1962. Negotiations to revise this constitution commenced in 1958 with a view to transferring to Southern Rhodesia most of the remaining powers vested in the British Government. A draft constitution formulated at a *Constitutional Conference in December 1960 - February 1961* was approved at a referendum on 26 July 1961. The vote was 42,004 in favour and 21,846 against. As the total electorate was 83,486 the poll was 76.5%. The black nationalist party, the National Democratic Party, advocated a boycott of the official referendum, holding its own 'referendum' on 23 July. It claimed that 457,189 votes were cast against the new constitution and 584 in favour.[21]

An Act of the British Parliament enabling the Crown to revoke, by Order in Council, the Southern Rhodesia Constitution Letters Patent of 1923 was passed in November and the Southern Rhodesia (Constitution) Order in Council was made on 6 December 1961. The transitional provisions of the new Constitution came into *effect on 7 December 1961 and the remainder on 1 November* 1962.

A basic feature of the new Constitution was that the United Kingdom Government, in return for franchise provisions which would eventually lead to black majority rule, agreed to the elimination of nearly all its reserve powers. These included the reservation of Bills and the power to disallow (except in the case of certain constitutional Bills amending entrenched provisions in the Constitution), control over matters relating to the Native Department, and its power to revoke or amend vital sections of the Constitution conferring legislative power. Southern Rhodesia was also permitted to enact laws having extra-territorial operation.

Safeguards built into the Constitution by the British included, for the first time, a Declaration of Rights subject to judicial review, including appeal to the Privy Council, a Constitutional Council with delaying and advisory functions in respect of Bills and subordinate legislation, a new franchise and enlarged legislature, and fairly rigid procedures for amending those parts of the Constitution not reserved by the United Kingdom. Special land provisions secured Tribal Trust Land for the exclusive use and occupation of tribesmen. The right to veto changes in the Constitution had been replaced by entrenched safeguards.

Palley argues that the United Kingdom retained theoretical general powers, in exceptional circumstances, to suspend the Constitution and perhaps even to revoke it.[22] She also argues that the United Kingdom maintained a general right to legislate for Southern Rhodesia, at least in those areas outside a convention recognised by the United Kingdom Government in 1961.[23] The argument is based on the fact that an enactment which might have ended that right, the Statute of Westminster 1931, did not apply to Southern Rhodesia. Section 4 of the Statute states:

> No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

The Dominions defined in section 1 of the Statute are the *Dominion of Canada, the Commonwealth of Australia, the* Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland. Southern Rhodesia was not included and therefore did not benefit from the provisions of section 4.

However, Southern Rhodesia did benefit from the somewhat similar provisions of a convention recognised by the United Kingdom Government in 1961. The UK Government recognised:

> ... an established convention for Parliament at Westminster, not to legislate for Southern Rhodesia on matters within the competence of the Legislative Assembly of Southern Rhodesia, except with the agreement of the Southern Rhodesian Government.[24]

Palley claims that among the matters which fell outside this convention were the provisions of section 111 of the 1961 Constitution.[25] This section reserved to the Queen full power to amend, add to or revoke, by Order in Council, 10 sections of the Constitution dealing with the office of Governor and his powers and duties, the composition of the legislature, the Governor's assent to Bills, disallowance of certain laws, the definition of the authority in whom executive power for Southern Rhodesia was to be exercised, and the prerogative of mercy. In addition, the legislature was prohibited in section 105 from legislating on any of the matters mentioned in section 111.

Claims were made when the 1961 Constitution was published that the insertion of section 111 was a departure from the terms as agreed and as outlined in the UK White Papers on

which the 1961 constitutional referendum was based. The White Papers had referred only to the 'formal functions within the Constitution of the Sovereign and of the Governor in his capacity as the Sovereign's representative' as being excluded from the Southern Rhodesian legislature's competence.[26] This alleged British 'subterfuge' was one of the reasons used in support of UDI in 1965.[27] The main import of the section was that Southern Rhodesia could not legally break off her connection with Britain unless Britain agreed.

Under the Constitution (section 30) the only Bills to be reserved were those amending, under one of two procedures, the specially entrenched provisions of the Constitution as set out in the Third Schedule. The specially entrenched sections of the 1961 Constitution dealt with restrictions on the power of the legislature in respect of the franchise, constitution of the High Court and the appointment, tenure, removal and remuneration of judges, the Declaration of Rights, various provisions concerning the Constitutional Council and its functions, various provisions concerning Tribal Trust Lands, amendment of the Constitution, and the franchise.

Any constitutional Bill amending, adding to or repealing any specially entrenched provision had to be approved by a two-thirds vote of the total membership of the Legislative Assembly. In addition, it either had to be approved in a referendum by a majority of those eligible to vote in Legislative Assembly elections in each of four main racial groups - whites, blacks, coloureds, and Asians, or an Address had to be presented to the Governor asking him to submit the Bill to Her Majesty for assent.[28] Such an Address also had to be approved by a two-thirds majority, and could only be moved after the Governor had previously signified Her Majesty's consent to the moving of such an Address. The latter option gave the United Kingdom the negative power of refusing to permit an amendment of the entrenched clauses, although such amendment was still possible

under the former option of a referendum of each of the four main racial groups. Only constitutional amendment Bills which were not put to referendum were reserved.

A 1965 survey of support for the 1961 Constitution showed that whereas 45.1% of respondents supported it for its multi-racial character, 54.9% supported it because it was thought to offer the then best available terms short of total independence of Britain.[29]

(2) Main provisions

(a) Legislature

The legislature comprised the Queen and a Legislative Assembly of 65 members, elected by voters on two rolls for a five-year term. Of the 65 members, 50 were to be elected from constituencies and 15 from electoral districts. The Speaker could be a non-member.

(b) Constitutional Council

The Constitutional Council consisted of a chairman and 11 elected members, including at least two whites, two blacks, one Asian, one coloured and two persons who were advocates or attorneys of not less than 10 years' standing. Members were elected by an electoral college comprising mainly High Court judges and the chairman was appointed by the Governor on the advice of the Chief Justice.

The principal task of the Council was to report to the Governor and the Speaker of the Legislative Assembly on whether the provisions of Bills, Acts assented to after a certificate of urgency by the Prime minister and statutory instruments conflicted with the provisions of the Declaration of Rights in the Constitution. This had to be done within 30 days of the third

reading of a Bill unless an extension of time was granted. If a conflict was reported, the Bill could only be presented to the Governor for assent after a two-thirds majority vote of the total membership of the Legislative Assembly or, after a delay of six months, by a simple majority vote. The Council was also empowered to indemnify litigants seeking to test infringements of the Declaration of Rights against reasonable costs.

(c) Declaration of Rights

The 1961 Constitution was the first in Southern Rhodesia to have a Declaration of Rights. The rights dealt with were the rights to life and personal liberty, protection from slavery, forced labour, inhuman treatment, and deprivation of property, protection of privacy of home and other property, protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, and protection from discrimination by written laws and administrative acts. Breaches of the Declaration were justiciable and there was ultimate appeal to the Privy Council.

Many of the provisions of the Declaration could be suspended during periods of public emergency, which could be declared for up to three months at a time. Section 70 of the Constitution qualified the rights listed in the Declaration by excluding from its operation all laws in force immediately before the coming into operation of the Constitution which had at all times since continued in force and any new laws to the extent that they repealed and re-enacted any provision in such laws.

(d) Council of Chiefs

Although not specifically provided for in the Constitution, the existence of a Council of Chiefs was assumed in a number of its provisions. The Council of Chiefs was established by the Council of Chiefs and Provincial Assemblies Act 1962. The functions of the Council as outlined in the Act were:

> to make representations to the Minister [of Internal Affairs] with regard to the needs and wishes of the tribesmen living on Tribal Trust Land; to consider any representations made to it by a Provincial Assembly and in its discretion to report thereon to the Minister; and to consider and report on any matter referred to it by the Minister or the Board of Trustees [for Tribal Trust Land] for consideration.

The Council, consisting of 26 chiefs elected by Provincial Assemblies, was to meet twice yearly. Its members held office for five years.

Provincial Chiefs' Assemblies had commenced in 1951 and their activities were formalised by the Act. They met at least twice yearly and their task was to elect chiefs to the Council of Chiefs, to consider and report on matters referred by the Minister, the Trustees for Tribal Trust Land, the Council of Chiefs or a member of the particular assembly, and to bring to the notice of the Council of Chiefs 'any matter of national interest' and to the notice of the Minister of Internal Affairs 'any matter of local interest which affects the inhabitants of the province or any part thereof which concerns their interests or well-being'.

(3) The franchise

New franchise provisions embodied some concessions to black political aspirations but did not guarantee any rapid progress to majority rule. Voters were placed on an 'A' roll or a 'B' roll, depending on their qualifications. Qualifications for the 'A' roll were the higher. Voters on each roll voted twice - once for a member to represent their constituency and once for a member to represent their electoral district.

In practice members representing constituencies were predominately elected by 'A' roll voters, and members representing electoral districts by 'B' roll voters. This resulted from a system of cross-voting and vote valuation, the effect of which was that 'A' roll voters could have up to a 20% influence in an electoral district and 80% influence in a constituency, while 'B' roll voters could have up to 80% influence in an electoral district and 20% influence in a constituency.[30] Under the system, 'B' roll votes were allowed to count in an 'A' roll constituency for up to a quarter of the total 'A' roll votes cast in that constituency, and vice versa for electoral districts. The overall result was a disproportionate influence for 'A' roll voters as there were 50 constituency seats in the Legislative Assembly and only 15 electoral district seats.

Voters' qualifications meant that most 'A' roll voters were whites and most 'B' roll voters blacks. The extent to which those on the 'B' roll could graduate to the 'A' roll depended on the level at which means and educational qualifications were fixed. In effect whites controlled the rate at which blacks became enfranchised through their control of the parliament, economy and the education system.

Registration figures for voters before and after the new provisions came into effect as from the end of 1961 are shown in Table 3.6. The figures are distorted to some extent by a continuing black boycott of voters' rolls. This boycott, however, would mainly have effected the 'B' roll. Estimates of the number of blacks who would have been eligible for 'B' roll registration range from 55,000 in 1961 to 100,000 in 1964, and for 'A' roll registration from 5,500 in 1961 to 8,500 in 1965.[31]

Table 3.6: Registered voters in Southern Rhodesia 1961–65

		31 May 1961	*31 August 1962*	*31 May 1964*	*31 January 1965*
Whites	'A' Roll	77 717	86 720	89 278	92 405
	'B' Roll	429	614	608	587
Asians	'A' Roll	972	1 151	1 231	1 242
	'B' Roll	55	147	114	120
Coloureds . .	'A' Roll	999	1 281	1 308	1 307
	'B' Roll	63	151	176	181
Blacks	'A' Roll	1 397	1 920	2 263	2 330
	'B' Roll	3 231	9 585	10 466	10 689
Total . . .		84 863	101 569	105 444	108 861

Source: Palley, *The Constitutional History and Law of Southern Rhodesia 1888–1965*, p.421.

The franchise provisions for the 'A' and 'B' rolls are summarised in Table 3.7. The 1961 qualifications were based on those fixed under the Electoral Act of 1957, with the 'A' roll corresponding to the ordinary qualifications of 1957 and the 'B' roll to the special qualifications. In 1964, under the constitutional provisions permitting an increase or decrease in the monetary amounts of franchise qualifications to reflect changes in money values, the 1961 means qualifications were increased by 10%. The options available in the franchise qualifications were based on the principle that the lower the income earned or property owned, the higher the educational qualifications had to be. In practice these alternatives were not so generous in that the majority of people with a good education also tended to have a reasonable income and vice versa.

Table 3.7: Franchise qualifications 1961-62

Qualifications common to both rolls

1. Citizenship of Rhodesia and Nyasaland
2. 21 years of age or over
3. Two years' continuous residence in the Federation and three months' residence in the constituency and electoral district concerned immediately preceding application for enrolment.
4. Adequate knowledge of the English language and ability to complete and sign the prescribed form for registration except in the case of duly appointed chiefs and headmen

Category	*Income (per annum, during each of 2 years preceding enrolment claim)* or	*Property (fixed)* and	*Education (completion of)*	*Official status*
	£	£		
'A' roll				
1	720	1 500	..	..
or 2	480	1 000	primary education	..
or 3	300	500	4 years' secondary education	..
or 4	..	..	..	chief or headman
'B' roll				
1	240	450	..	..
or 2	120	250	2 years' secondary education	..
or 3 (30 years and older)	120	250	primary education	..
or 4 (30 years and older)	180	350	..	..
or 5	..	..	..	kraal head with following of 20 or more
or 6	..	..	..	ordained ministers of religion

Notes:

1. The owner of property, for purposes of the 'B' roll only, included a hire-purchaser if such person had been in continuous occupation for three years, was not in arrears and had paid not less than 10 per cent of the purchase price.
2. A married woman was deemed to have the same means qualifications as her husband. However, under a system permitting polygamy only the wife to whom he had been married the longest was deemed to have such qualifications.
3. Ministers of religion, to be eligible, had to have a university degree in divinity, or five years' full-time training in divinity, or two years' full-time training and three years' service as a Minister.

Source: The Constitution of Southern Rhodesia 1961, second schedule; *The Southern Rhodesia (Constitution) Order in Council* 1961, section 3.

(4) Subsequent developments

The 1961 Constitution fully came into effect on 1 November 1962. It came into effect despite resolutions of the United Nations General Assembly and its Trusteeship Committee calling on Britain to suspend the Constitution, to cancel forthcoming elections under it, to convene a conference to formulate a new constitution, to extend the franchise immediately to all inhabitants and to establish equality among them. The resolutions were passed on 31 October 1962. Britain, as she had done on nearly all occasions when Southern Rhodesia was under debate, abstained. The UN call was prompted in part by increasing attempts to suppress black nationalists, including the proscription on 20 September 1962 of the Zimbabwe African People's Union (ZAPU), then the major nationalist party. The National Democratic Party, its predecessor, had been proscribed on 9 December 1961.

General elections were held under the 1961 Constitution on 14 December 1962 and 7 May 1965. In the 1962 election the newly-formed Rhodesian Front won 35 seats against the United Federal Party's 29 (of which 14 were won by black UFP candidates in the 15 electoral districts), and in the 1965 election, the Rhodesian Front won all 50 'A' roll seats and the Rhodesia Party, the successor to the UFP, won 10 of the 15 'B' roll seats (the other five were won by independent candidates). Both elections were boycotted by black nationalists. In the 1965 election the Rhodesian Front was led by Ian Smith, who succeeded Winston Field when he was dismissed by the Rhodesian Front parliamentary party in April 1964. What moves there had been for gradual and limited reforms leading eventually to majority rule under 'liberal' white leaders such as Garfield Todd and Sir Edgar Whitehead were stopped and then reversed by the Rhodesian Front under Ian Smith.[32]

The demise of the Federation of Rhodesia and Nyasaland led to increased calls for independence for Southern Rhodesia. One of the first acts of Winston Field as Prime Minister in 1963 had been to re-open negotiations with Britain on the question of independence for Southern Rhodesia on the basis of the 1961 Constitution. The British Government conceded that Southern Rhodesia should obtain independence but stated that it 'must be satisfied that any basis on which it was proposed that independence should be granted was acceptable to the people of the country as a whole'.[33] The Southern Rhodesian Government responded with proposals for a referendum of registered voters and consultations with the black population 'within the tribal structure'.

In pursuance of this policy the Southern Rhodesian Government conducted a referendum on 5 November 1964 on the question of 'whether the voters of Southern Rhodesia are in favour of or against Southern Rhodesia obtaining independence on the basis of the Constitution of Southern Rhodesia 1961'. Voters in favour totalled 58,176 and those against 6,101, out of a total electorate of 105,444. The poll was thus only 61.9%, but the 'yes' vote amounted to 89.3% of total votes cast. The consultations with the black population involved only chiefs and headmen - about 210 chiefs and about 400 headmen - and took place in October 1964 at Domboshawa.[34] No vote was taken at the meeting, or indaba, but it was claimed by the Southern Rhodesian Government that the chiefs and headmen present unanimously favoured independence under the 1961 Constitution.[35] The British Government reserved its position and discussions continued.

The British Government made it clear in 1965 that guarantees would have to be provided that future constitutional development 'should conform to the principle of unimpeded progress to majority rule together with an immediate improvement in the political status of the African population and progressive elimination of racial discrimination'.[36]

In October 1965 the British Government laid down five principles as its basic requirements for granting independence. These were:

(1) The principle and intention of unimpeded progress to majority rule, already enshrined in the 1961 Constitution, would have to be maintained and guaranteed.

(2) There would also have to be guarantees against retrogressive amendment of the Constitution.

(3) There would have to be immediate improvement in the political status of the black population.

(4) There would have to be progress towards ending racial discrimination.

(5) The British Government would need to be satisfied that any basis proposed for independence was acceptable to the people of Rhodesia as a whole.[37]

A sixth principle was added in January 1966:

(6) It would be necessary to ensure that, regardless of race, there was no oppression of majority by minority or of minority by majority.[38]

Prime Minister Ian Smith, on behalf of the Southern Rhodesian Government, argued that the franchise provisions of the 1961 Constitution, the actions of his Government in gradually moving to end racial discrimination, the creation of a Senate, a new procedure replacing the four racial referenda or reservation for amendment of specially entrenched provisions of the Constitution whereby a two-thirds majority of both houses of the

legislature would be required, a proposed lowering of the requirements for registration on the 'B' roll so as to enable adult black taxpayers to vote, and his Government's consultation of tribal opinion and its mandate from the electorate in the 1964 referendum satisfactorily met the United Kingdom Government's requirements. He considered that Southern Rhodesia was entitled to independence on the basis of the 1961 Constitution by virtue of her responsible exercise of powers of self-government since 1923.

By early November 1965 agreement had not been reached. Then, on 11 November 1965, Mr Smith's Government unilaterally declared Rhodesia's independence from Britain.[39]

Notes and references

1. Claire Palley, The Constitutional History and Law of Southern Rhodesia 1888-1965 (With Special Reference to Imperial Control), (Clarendon Press, Oxford, 1966), p. 300.

2. Palley, p. 132.

3. Palley, p. 138.

4. As well as the partly elected Legislative Council, a separate Executive Council was also established, consisting of the Administrator as president, any other Administrator, the Resident Commissioner and not less than four other persons (nominees of the British South Africa Company, which had the power to remove them with the consent of the Secretary of State). The Administrator in Council was the Administrator acting on the advice of his Executive Council. See Palley, p. 133.

5. Palley, p. 140.

6. The franchise provisions were contained in a High Commissioner's Proclamation dated 25 November 1898, entitled Legislative Council Voters' Qualifications.

7. Robert Blake, A History of Rhodesia (Eyre Methuen, London, 1977), p. 150.

8. Palley, p. 136, footnote 2.

9. Palley, pp. 171, 308. Women married other than by a system permitting polygamy were permitted to vote in 1919 - wives were deemed to possess the same occupation and salary qualifications as their husbands.

10. Palley, p. 155.

11. Palley, p. 211; Blake, p. 187.

12. Palley, p. 216.

13. Palley, p. 216. Provision was made for the creation of an upper house, a Legislative Council, but this provision was not carried into effect.

14. See Palley, pp. 254-6.

15. Palley, p. 308, footnote 5.

16. Quoted in Palley, pp. 308-9.

17. Palley, p. 312.

18. Palley, p. 342.

19. Palley, p. 389.

20. Palley, p. 368.

21. Palley, p. 318, footnote 2. Blake, pp. 336-7, gives slightly different figures: 41,919 in favour and 21,846 against in the official referendum, and 372,546 against and 471 in favour in the NDP referendum.

22. Palley, pp. 714-6.

23. Palley, pp. 702-14.

24. United Kingdom, Command paper 1399, p. 3, quoted in Palley, p. 703.

25. Palley, pp. 708-11.

26. United Kingdom, Command Paper 1400, para. 83, quoted in Palley, p. 709.

27. Blake, p. 334.

28. 1961 Constitution, sections 106, 107. A proviso in section 108 stated that until such time as there were 50,000 registered black voters, all blacks who were 21, citizens and had completed a course of primary education in accordance with the normal franchise provisions, would be entitled to vote at a referendum.

29. Anthony R. Wilkinson, 'From Rhodesia to Zimbabwe', in Davidson, Slovo and Wilkinson, Southern Africa : The New Politics of Revolution (Penguin Books, 1976), p. 225.

30. Palley, pp. 415-6.

31. Palley, pp. 421-2 and 798-9.

32. Blake, p. 373. See also J.A. McKenzie, 'Sir Edgar Whitehead's Government in Southern Rhodesia, 1958-1962' (BA(Hons) thesis, unpublished, Australian National University, 1977).

33. Communique issued by the Prime Ministers of Great Britain and Southern Rhodesia in September 1964, quoted in Palley, p. 740.

34. Palley, p. 740, footnote 3. Blake (p. 370) puts the number attending at 622 chiefs and headmen.

35. Palley, p. 740, footnote 3; Blake, p. 370. See also House of Representatives, Hansard, 17.11.65, p. 2862, for comments of an Australian parliamentary observer.

36. Mr Bottomley, House of Commons Debates, vol. 717, cols, 908-9, 30 July 1965, quoted in Palley, p. 741.

37. United Kingdom, Rhodesia: Documents Relating to Proposals for a Settlement 1966 (Command 3171), p. 3.

38. Command 3171, pp. 3-4.

39. Since October 1964 the Rhodesian Front Government has referred to Southern Rhodesia only as Rhodesia.

CHAPTER 4

From UDI to 1978

1. Introduction

The 13-year period from the Unilateral Declaration of Independence in 1965 to the Internal Settlement Agreement in 1978 was one of almost continual negotiation. The Declaration itself was the result of a series of unsuccessful attempts to negotiate legal independence from the United Kingdom. Negotiations after UDI were concerned principally with the inter-related aims of a return to legality and the achievement of a constitution which would, sooner or later, guarantee majority rule and an end to racial discrimination. Neither was achieved in the period.

The Unilateral Declaration of Independence brought with it an 'independence' Constitution modelled largely on the British-granted Constitution of 1961 but with a number of important differences to take into account Rhodesia's changed status. The Rhodesian Government by-passed the resident British Governor and substituted an Officer Administering the Government who was claimed to still represent the Crown but who would act only on the advice of his Rhodesian Ministers. Appeals to the Privy Council were abolished and a number of safeguards concerning constitutional amendment were dropped.

Britain responded by having the Governor dismiss the Rhodesian Front Government (which dismissal was ignored) and enacting legislation to give it full legal responsibility for and power to deal with Rhodesia. One of the first uses of this legislation was to impose limited sanctions on Rhodesia with a request to other Commonwealth countries to follow suit. Among

those which did was Australia. Britain followed this with a call to the United Nations Security Council to support it by requesting member states to impose voluntary selective sanctions and, later in 1966, to impose limited mandatory sanctions. The mandatory sanctions were made more comprehensive in 1968. Australia also complied with the Security Council resolutions. The British Government, for a variety of reasons, ~~did not consider using~~ decided not to use force to restore legal government in Rhodesia.

The British position on UDI was that Rhodesia's unilateral declaration was illegal and constituted an act of rebellion against the Crown, a rebellion which could only be ended by the restoration of a situation of legality (which, in fact, occurred on 12 December 1979). The Rhodesian position was that it had been virtually a de facto sovereign state since 1923 and that a convention formally recognised by Britain in 1961 in effect gave Rhodesia the same independence as was enjoyed by dominions under the Statute of Westminster. Rhodesia claimed that the British position ignored the realities of the situation - the Rhodesian situation was no different to that of the American colonies after their revolution where, also, constitutional law had 'followed hard upon the heels of constitutional fact'. The Rhodesian High Court declared in 1968 that the then Rhodesian Government was the de jure as well as the de facto government.

Two major initial attempts by Britain to achieve a return to legality and a constitution which would eventually lead to majority rule, in 1966 on board HMS Tiger and in 1968 on HMS Fearless, both failed.

In 1969 the Rhodesian Government abandoned any pretence of continued loyalty to the Crown and enacted a 'republican' Constitution in November which came into effect in March 1970. This Constitution was the first in Rhodesia to completely base the franchise on separate rolls for whites and blacks. Instead of eventual majority rule, the maximum that blacks could achieve

under the Constitution was eventual parity of seats. Key provisions of the electoral and land tenure laws were entrenched by the Constitution.

After the promulgation of the republican Constitution Britain abandoned attempts to achieve a return to legality on the basis of its 1961 Constitution. Subsequent negotiations attempted to achieve a return to legality based on changes to the 1969 Constitution. The first of these negotiations took place in 1970-71 and culminated in the Smith-Home Agreement of 1971. The Agreement provided for separate racial rolls until eventually parity was achieved on the basis of white franchise qualifications. When parity was achieved mechanisms would be brought into play to provide for majority rule.

The proposals in the Agreement were tested by the Pearce Commission in 1972, and were rejected on the basis that the people of Rhodesia as a whole did not regard them as an acceptable basis for independence. The Pearce Commission was the first attempt at systematically trying to assess black opinion on a proposed settlement (previous settlement negotiations had taken place with little or no consultation with blacks).

For a time after the Pearce Commission Britain largely washed its hands of any direct involvement in settlement attempts and declared that Rhodesians of all racial groups should attempt to find a solution between themselves. A number of such attempts were made. They were aided by the 1974 coup in Portugal, and the resulting moves to independence of Angola and Mozambique, which forced South Africa to re-assess its previous reliance on a cordon sanitaire of white-run territories to its north and to seek detente with black Africa. South Africa's detente exercise included pressure on the Smith Government to negotiate a peaceful solution. However, all the talks between the Smith Government and black nationalist leaders up to 1976 failed.

The next major attempt at a settlement resulted from an American initiative in 1976. The United States' increasing interest in a Rhodesian settlement resulted in large part from the situation in Angola and a desire to prevent a repetition in Rhodesia. The United States was concerned to minimise, and to prevent if possible, Soviet-Cuban involvement in Rhodesia and in the Southern Africa region generally. As a result the US Secretary of State, Dr Henry Kissinger, toured Africa seeking support for a settlement package based to a large extent on British proposals. With the help of South Africa he was able to obtain support from the Smith Government for majority rule within two years. Part of the 'package' required Britain to call a constitutional conference to discuss, among other things, the functions and powers of an interim government. The conference was called at Geneva on 28 October 1976 and continued until 14 December. Agreement on interim arrangements could not be reached.

In 1977 a new, joint British-United States initiative was commenced, and this culminated in the publication, on 1 September 1977, of what became known as the Anglo-American Proposals. Included in the Proposals, apart from the now-regular demand for a return to legality, was provision for a presidential form of government based on a single-chamber national assembly. The assembly was to be elected by universal adult suffrage, but with reserved seats for minority groups (essentially whites).

The transitional provisions provided for a British Resident Commissioner who would, in the transition, exercise legislative and executive authority but who would be subject to direction from Britain. A United Nations Zimbabwe Force would be involved to supervise the ceasefire and to assist with maintaining law and order if required. The most controversial of the transitional provisions required the disbandment of both the Smith Government's and the Patriotic Front's armed forces and the creation of a new security force, but based largely on the 'liberation forces'. Both the Smith Government and the Patriotic

Front, while welcoming parts of the settlement, eventually rejected it because of opposition to different aspects of the transitional provisions.

The next major development was the Internal Settlement Agreement, announced on 3 March 1978.

2. Unilateral Declaration of Independence

Attempts to negotiate independence for Southern Rhodesia continued right up to the eve of the Unilateral Declaration of Independence, but none succeded. UDI went ahead despite repeated warnings to Mr Smith that Rhodesia would face a variety of sanctions if it did declare its independence. At their meeting on 29 October 1965 in Salisbury, for example, the British Prime Minister, Mr Harold Wilson, advised Mr Smith that although the British Government had rejected military intervention by the United Kingdom in the event of UDI, it stood by its public statements, and 'those meant economic war'.[1]

On 5 November 1965 the British Governor of Southern Rhodesia, Sir Humphrey Gibbs, on the advice of Mr Smith and his Cabinet, proclaimed a state of emergency under the Emergency Powers Act. This enabled regulations to be made giving the Southern Rhodesian Government wide powers of censorship, detention and restriction, arrest without warrant and search without warrant. Later regulations dealt with exchange and price controls, and powers over the deployment of the security forces outside the country and the civil service. This state of emergency has been renewed periodically ever since. Then, on 11 November, Mr Smith issued a Proclamation declaring Southern Rhodesia's independence as Rhodesia and purporting to 'adopt, enact, and give to the people of Rhodesia' the constitution of Rhodesia 1965.

The British response was quick. The moment UDI was declared the Governor dismissed the Government and became, legally, the Southern Rhodesian Government. The Governor called on people to refrain from illegal acts furthering the objects of the illegal regime, but added:

> It is the duty of all citizens to maintain law and order in the country and to carry on with their normal tasks. This applies equally to the judiciary, the armed services, the police and the public service.[2]

The Rhodesian Front Government ignored its dismissal and, anticipating the Governor's response, by-passed him completely by providing in its new Constitution for an Officer Administering the Government as head of state acting on behalf of the Queen but on the advice of her 'Rhodesian' Ministers. The Governor was asked to vacate Government House but refused; he remained there until 1969 - the legal Government but powerless to govern.

The British Parliament passed the Southern Rhodesia Act 1965 on 16 November. This Act was both declaratory and enabling - it declared (and reaffirmed) that Southern Rhodesia continued as part of Her Majesty's dominions and that the Government and Parliament of the United Kingdom had 'responsibility and jurisdiction as heretofore' in respect of it, and it enabled Her Majesty to issue Orders in Council concerning Southern Rhodesia as necessary or expedient. Orders in Council which could be issued included those which might suspend, amend, revoke or add to any of the provisions of the 1961 Constitution, which might modify, extend or suspend the operation of any enactment or instrument relating to Southern Rhodesia, and which might restrict, prohibit or regulate transactions relating to Southern Rhodesia or persons or things in any way connected with Southern Rhodesia.

The Act did not authorise revocation or suspension of the 1961 Constitution as a whole. The 1961 Constitution was to continue in force as amended from time to time. The powers ~~confirmed~~ conferred by the Act were for three main purposes - to invalidate actions by the Smith Government, which continued to govern despite its dismissal, to confirm and confer certain executive and legislative powers on the lawful authorities in the United Kingdom, and to apply economic and other sanctions against the Smith Government with the aim of forcing a return to constitutional government.[3]

The main instrument invalidating Rhodesian action was the Southern Rhodesia Constitution Order 1965, which came into effect on 16 and 18 November, with some provisions retrospective to 11 November. The Order provided that any action taken to promulgate a 'constitution' for Southern Rhodesia was void and of no effect, unless authorised by an Act of the United Kingdom Parliament. It also suspended the powers of the Southern Rhodesian legislature to make laws, transact business, or reconstitute the Legislative Assembly. The Queen was empowered to make laws by Order in Council for the peace, order and good government of Southern Rhodesia, including laws having extra-territorial operation, and a Secretary of State was given the executive authority to act on her behalf. The Rhodesian Legislative Assembly disregarded its suspension.

One of the most significant first uses of the powers conferred by the Southern Rhodesia Act 1965 was the imposition over the next two months of sanctions by Britain. Southern Rhodesia was excluded from the Commonwealth Preference Area, embargoes were imposed on the purchase of commodities from Southern Rhodesia, control was assumed over the Reserve Bank of Rhodesia (which, in practice, meant control of the Reserve Bank's foreign assets), Southern Rhodesia was suspended from the sterling area, Southern Rhodesian bank accounts in the United Kingdom were 'frozen' by the Bank of England, an embargo was

imposed on the supply of oil to Southern Rhodesia, and Southern Rhodesian rights to a sugar quota under the Commonwealth Sugar Agreement were abrogated. United Kingdom bans on the purchase of Rhodesian sugar and tobacco alone stopped a net total of 71% by value of Southern Rhodesian exports to Britain.[4] 'Political' sanctions imposed included provision for the confiscation of passports issued by Rhodesian authorities after UDI and application of the Commonwealth Immigrants Act to persons holding United Kingdom passports by reason only of their Southern Rhodesian citizenship. The British High Commissioner in Rhodesia was withdrawn and the Rhodesian High Commissioner in the UK was expelled. On 30 January 1966 Britain imposed a total ban on exports to (except for humanitarian goods) and imports from Rhodesia.

International reaction to UDI was equally swift. The United Nations Security Council on 12 November passed a resolution (no. 216) which condemned UDI and called upon all states not to recognise 'this illegal racist minority regime' and to refrain from rendering it any assistance. UN concern about a possible UDI stemmed back to at least 6 May 1965 when the Security Council called on the United Kingdom Government not to accept a unilateral declaration of independence and to take all steps necessary to prevent such an action (resolution 202).

To retain the initiative for action on Rhodesia, to ensure universal acknowledgement of British responsibility for Rhodesia and to discourage the use of force, the UK Government sent its Foreign Secretary to the UN to inform it of Britain's responsibility and the measures it was taking and to ask the support of other countries for those measures. The Security Council on 20 November passed a resolution without a dissenting vote (France abstained) calling on the United Kingdom to quell 'this rebellion of the racist minority', to take immediate measures to allow the people of Southern Rhodesia to determine their own future, and calling on all states to do their utmost to

break all economic relations with Southern Rhodesia, including the imposition of an oil embargo. The resolution also called on the Organisation of African Unity (OAU) to do all in its power to assist in the implementation of the resolution.

In April 1966 when an oil tanker was spotted heading for Beira, Mozambique, the United Kingdom initiated a resolution (no. 221) in the Security Council which asked all states to divert oil shipments from Beira if destined for Rhodesia. The resolution called on Portugal not to receive oil destined for Rhodesia at Beira nor to allow it to be pumped through the pipeline from Beira to Rhodesia, and called on the United Kingdom to use force if necessary to prevent the arrival at Beira of vessels 'reasonably believed to be carrying oil destined for Rhodesia'. This was the first and only time that the Security Council authorised the use of force concerning Rhodesia.[5] The resolution, adopted on 9 April, led to the establishment by the UK of the Beira naval blockade, which lasted until June 1975.

The UN Security Council, in resolution 232 of 16 December 1966, formally determined that the 'present situation in Southern Rhodesia constituted a threat to international peace and security', and imposed limited mandatory sanctions. These were extended in a more comprehensive resolution, no. 253, on 29 May 1968. This resolution also established the UN's Sanctions Supervisory Committee, and requested the United Kingdom, as the administering power, to assist the committee by seeking and providing information on breaches of sanctions. Between 1965 and 1979 more than 25 resolutions concerning Rhodesia were adopted by the Security Council. Most dealt with sanctions and progressively increased the range of sanctions and obligations on UN members to apply them.

When Britain first imposed sanctions it asked Commonwealth countries to take similar steps. The Australian Government's response was announced in the House of

Representatives by the then Prime Minister, Sir Robert Menzies, on 16 November 1965.[6] He said that as Great Britain was the colonial power, only the Parliament of Great Britain could grant independence to Rhodesia. This principle had been unanimously accepted on two separate occasions at Commonwealth Prime Ministers' Conferences. The Australian Government supported the five principles which the British Government had declared as its basis for Rhodesian independence.

Sir Robert said Australia would not recognise what had become an illegal administration. At the same time Australia would not contemplate support for the use of force to restore legitimacy, which at that time was being advocated by some members of the United Nations. Despite reservations that economic sanctions might not be equitable, but could bear more heavily on the black population, Sir Robert stated that his Government had decided to institute economic sanctions similar to those being imposed by Britain as the lesser of two evils - the greater being the use of force. He announced that Australia would ban the export of arms and military equipment to Rhodesia. It would also ban the import of Rhodesian tobacco, suspend Commonwealth tariff preferences, support Rhodesian exclusion from the sterling area, and terminate the appointment of Australia's trade representative in Rhodesia (until the announcement in March 1980 that one would be established, Australia has never had a diplomatic mission in Rhodesia). A general debate on Rhodesia took place in the House of Representatives on 17 November.

Following further British actions in December, Sir Robert announced on 28 December that Australia would recognise the British-appointed Board of the Reserve Bank of Rhodesia and that restrictions on financial transactions between Australian and Rhodesian residents might become necessary. The money order service between Rhodesia and Australia would be suspended. Sir Robert said that in addition to banning the import of Rhodesian

tobacco, Australia would also prohibit the importation of ferro-alloys, chrome ore and asbestos. These, with tobacco, accounted for more than 90% of Australian imports from Rhodesia.[7]

A special Commonwealth Conference on Rhodesia in Lagos on 11 and 12 January 1966 reaffirmed Britain's authority and responsibility for guiding Rhodesia to independence but also acknowledged that 'the problem was of wider concern to Africa, the Commonwealth and the world'.[8] The Conference set up two committees - a Sanctions Committee to meet with the Commonwealth Secretary-General in London to regularly review the effects of sanctions, and another committee to co-ordinate a special Commonwealth program of assistance in training Rhodesian blacks. The Conference discussed the use of military force in Rhodesia and accepted that its use could not be precluded if this proved necessary to restore law and order.[9]

Australia was opposed to the special conference and was represented only by an observer. Sir Robert Menzies, explaining Australia's opposition to the calling of a special conference on Rhodesia, said that given the publicly expressed attitudes of a number of Commonwealth countries, particularly their advocacy of armed intervention, the proposed conference would be unlikely to do more than record and emphasize differences. Australia was opposed to the use of arms to enforce a constitutional settlement. Sir Robert said that Australia supported British actions to date and if all Commonwealth countries took the same view as Britain there was no occasion for a special conference to record that fact. Australia subsequently agreed to participate in the two committees set up by the Conference.[10]

The Organisation of African Unity, at a meeting in Addis Ababa on 3-5 December 1965, adopted a resolution calling on all OAU member states to impose a total economic blockade on Rhodesia, to end all economic relations, to sever all communications links and to bar the use of their air space for

flights to Rhodesia. Later, the OAU set up a Sanctions Committee on Rhodesia, with Egypt, Kenya, Zambia, Tanzania and Nigeria as members.

After 1965 the United Kingdom Parliament renewed its powers under the Southern Rhodesia Act annually in order to maintain sanctions - particularly to maintain the status quo while political efforts towards a settlement continued. The Foreign and Commonwealth Secretary, speaking in a House of Commons debate on the renewal of sanctions in 1974, said sanctions were 'a clear signal to the people of Rhodesia that Britain does not and will not accept the illegal declaration of independence ...'. When sanctions were renewed they knew that 'Rhodesia will not be accepted as part of the international community until that state of illegality is brought to an end'.[11] The economic and diplomatic isolation of Rhodesia were a fundamental aspect of British - and world - policy towards the Unilateral Declaration of Independence after it was made on 11 November 1965.

3. The 'independence' Constitution of 1965

(1) General

The proclamation which unilaterally declared Rhodesia independent included as an annex the 'Constitution of Rhodesia 1965'. Although the Rhodesian Government purported in its proclamation to 'adopt, enact, and give to the people of Rhodesia' the new Constitution, the Government endeavoured also to give the Constitution legal basis by passing an Act to ratify and confirm it. The Constitution (Ratification) ~~Act~~ Bill 1966 was passed by a two-thirds majority of the total membership of the Legislative Assembly, and was assented to on 18 February 1966 by the Officer Administering the Government.

The 1965 Constitution was modelled largely on that of 1961, but with a number of important differences stemming from the declaration of independence. The 1965 Constitution purported to revoke the 1961 Constitution granted under the Southern Rhodesia (Constitution) Order in Council 1961 and to remove the remaining limitations on Rhodesia's sovereignty contained in that Order. Instead of the Governor, it provided for a head of state designated Officer Administering the Government who would act on behalf of the Queen but only on the advice of her Rhodesian Ministers, and removed a number of safeguards concerning constitutional amendment. Appeals to the Privy Council were abolished. On the other hand, provisions concerning the number of constituencies and electoral districts, the electoral laws and franchise, the Declaration of Rights (apart from provisions dealing with appeals to the Privy Council), the Constitutional Council, and land were subject to only minor or consequential amendments. The aims of the changes were to assert Rhodesia's independence and deny any remaining British authority.

Section 142 of the 1965 Constitution provided that its validity should not be inquired into in any court and the provisions of the constitution were to be regarded as valid. 44 Section 143 provided that the legislature might pass a law or Act of Indemnity concerning anything done under a state of emergency or in connection with the attainment by Rhodesia of 'sovereign status'. Some of the main provisions attempting to assert Rhodesian independence from Britain were contained in section 26. This provided that:

(a) No Act of the United Kingdom Parliament passed after the coming into force of the new Constitution should extend to Rhodesia unless so extended by an Act of the Rhodesian legislature;

(b) The Colonial Laws Validity Act 1865 should not apply to any Rhodesian law after the coming into force of the new Constitution;

(c) No law made after the coming into force of the new Constitution should be declared void or inoperative on the grounds of repugnancy with any existing or future British legislation, and the Rhodesian legislature might amend or repeal any British legislation insofar as it was part of the law of Rhodesia;

(d) The legislature should have the power to make laws having extra-territorial operations.

Britain's powers of disallowance and reservation of Bills were repudiated.

The 1961 procedure for amendments to specially entrenched provisions in the Constitution, which involved obtaining a two-thirds majority of the total membership of the Legislative Assembly plus either approval at a referendum of electors in each of the four racial groups or an Address to the Governor seeking the Queen's assent, was dropped. Under the 1965 Constitution all constitutional amendment Bills had to be affirmed by a two-thirds majority of the total membership of the Parliament. In the case of amendments to specially entrenched provisions there was the additional requirement that before the Officer Administering the Government could assent, the Parliament at a subsequent sitting had to resolve, again by a two-thirds majority of its total membership, to present to him an Address requesting assent. The Constitution provided that the legislature was competent to amend any of its sections. The Rhodesian Front at the time of UDI had a majority of more than three-quarters - 50 out of 65 seats.

The Officer Administering the Government was either to be a Governor-General appointed by the Queen on the advice of her Rhodesian Ministers or, if no such appointment was made, an officer appointed by the members of the Executive Council presided over by the Prime Minister, or in such other manner as

prescribed by the legislature. The Officer Administering the Government had broadly the same responsibilities and powers as those exercised by the Governor under the 1961 Constitution. Among his powers were the ability to proclaim martial law or a state of emergency and to declare war.

The 1965 Constitution still provided for allegiance to Her Majesty but also attempted to introduce a new element by requiring allegiance to the new Constitution. The forms of oaths listed in the first schedule to the new Constitution required office-holders and members of the judiciary to swear 'in accordance with the Constitution of Rhodesia, 1965' that they would 'respect and uphold the aforesaid Constitution'. Existing officials, members of the Legislative Assembly, judges (but not High Court judges) or chiefs who refused to swear loyalty to the new Constitution if requested to do so could be deprived of their offices or positions without compensation.

Appeals to the Privy Council were abolished, and the appellate division of the High Court became the final court of appeal. The Constitution also provided that no court or person in Rhodesia should be bound by any judgement, order, ruling or opinion given by any tribunal, court, person or authority outside Rhodesia.

(2) The franchise

There were few changes in the franchise provisions of the 1965 Constitution. The citizenship requirement was altered to substitute citizenship of Rhodesia for citizenship of the Federation of Rhodesia and Nyasaland as in the 1961 Constitution. The income and property requirements were the same as those for 1961 but increased by 10% to take account of changes in money values in the interim. Educational qualifications also remained the same.

The Parliament was again unicameral and, as in 1961, comprised 65 members in a Legislative Assembly - 50 elected from constituencies and 15 from electoral districts, by voters on an 'A' roll and a 'B' roll. The same provisions were made for cross-voting and vote valuation as in 1961. The franchise provisions of the 1965 Constitution are summarised in Table 4.1.

Table 4.1: Franchise qualifications 1965

Qualifications common to both rolls

1. Citizenship of Rhodesia
2. 21 years of age or over
3. Two years' continuous residence in Rhodesia and three months' residence in the constituency and electoral district concerned immediately preceding application for enrolment
4. Adequate knowledge of the English language and ability to complete and sign the prescribed form for registration, except in the case of duly appointed chiefs and headmen

Category	*Income (per annum, during each of 2 years preceding enrolment claim)* or	*Property (fixed)* and	*Education (completion of)*	*Official status*
	£	£		
'A' roll				
1	792	1 650	..	..
or 2	528	1 100	primary education	..
or 3	330	550	4 years' secondary education	..
or 4	..	..	..	chief or headman
'B' roll				
1	264	495	..	..
or 2	132	275	2 years' secondary education	..
or 3 (30 years and older)	132	275	primary education	..
or 4 (30 years and older)	198	385	..	..
or 5	..	..	..	kraal head with following of 20 or more heads of families
or 6	..	..	..	ordained ministers of religion

Notes:

1. The owner of property, for purposes of the 'B' roll only, included a hire-purchaser if such person had been in continuous occupation for three years, was not in arrears and had paid not less than 10 per cent of the purchase price.
2. A married woman was deemed to have the same means qualifications as her husband. However, under a system permitting polygamy, only the wife to whom the husband had been married longest was deemed to have such qualifications.

Source: The Constitution of Rhodesia 1965, second schedule.

(3) Subsequent developments

The 1965 Constitution provided that Parliament had to be dissolved five years from the date of its first meeting if it had not been dissolved earlier. The Parliament was not dissolved until 2 March 1970, after Rhodesia had become a republic under its 1969 Constitution, and an election was never held under the 1965 Constitution. The first elections since those of 7 May 1965 (under the 1961 Constitution) were held on 10 April 1970 (under the 1969 Constitution).

In September 1966 the Constitutional Amendment Act came into force. Under its main provisions the Rhodesian Government was given power to detain or restrict individuals in the interests of defence, public safety or public order, without recourse to proclamation of a state of emergency. These powers were deemed not to conflict with the provisions of the Declaration of Rights.[12]

4. The legality of UDI

The British position was that Rhodesia (strictly, Southern Rhodesia) was a colony of the United Kingdom, that Rhodesia's Unilateral Declaration of Independence was illegal and that the Smith Government and succeeding governments had no independent constitutional status recognised by the United Kingdom. Britain regarded the declaration as an act of rebellion against the Crown - the first by a British dependency since the eighteenth century[13] - which could only be ended by the restoration of a situation of legality. Mr Harold Wilson, the British Prime Minister, told the House of Commons on 11 November 1965, 'the purported declaration of independence by the former government of Rhodesia is an illegal act and one which is ineffective in law'.[14]

The Rhodesian Government claimed after UDI that it was not rebelling, that the Crown still remained the symbol of government authority and that the main effect of the declaration had been to sever the few ties that remained between the Rhodesian Government and the British Government and Parliament. (The argument claiming continued loyalty to the Crown was abandoned, however, in 1969 when Rhodesia proclaimed a republican Constitution.) The Rhodesian Government claimed it had been virtually self-governing since 1923 and that the British Government had lost its right to legislate for the country, 'except with the agreement of the Southern Rhodesian Government', by the convention formally accepted by the United Kingdom in 1961. The 1961 Constitution had transferred a large measure of governmental, as well as legislative power, to Rhodesia - for example, the Constitution stated that the Rhodesian Prime Minister had to be consulted before the appointment of a Governor, and that the Governor was to act in accordance with the advice of his Rhodesian Ministers unless otherwise provided in the Constitution. At UDI the Rhodesian Government was almost completely responsible for its internal affairs. The armed forces, police and civil service were all controlled by the Rhodesian Government.

In the years preceding UDI Britain had been endeavouring to minimise its legal responsibility for Rhodesia, at least as far as its internal affairs were concerned. At the United Nations, where it had been subject to regular demands to intervene in Rhodesia's internal affairs to give the black majority a much greater role in government, British representatives had been maintaining that 'the freedom of the Southern Rhodesian Government to conduct its own internal affairs is no fiction but an inescapable constitutional and political fact'.[15] For example, the British representative to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, at a meeting in March 1964, stated that

the United Kingdom had neither the right in law nor the means in practice to interfere in the internal affairs of Southern Rhodesia.[16] Britain also claimed that the UN had no authority to intervene in the affairs of Southern Rhodesia nor did it have authority to direct Britain to intervene. This was because, according to Britain, Southern Rhodesia was not a non-self-governing territory within the meaning of Chapter XI of the UN Charter. The British position was summed up in this statement by the then Commonwealth Secretary, Mr Duncan Sandys, in the House of Commons on 15 November 1963:

> Southern Rhodesia, we must remember, has for over forty years enjoyed complete internal self-government. Up to the creation of the Federation she was responsible for her own defence ... and was represented by a High Commissioner in London. I hope that those outside who always tell us that we ought to interfere, and do this or that in Southern Rhodesia, will realise that there is not a single official or soldier in Southern Rhodesia responsible to the British Government. We have long ago accepted the principle that Parliament at Westminster does not legislate for Southern Rhodesia except at its request.[17]

When UDI was declared, however, the formal legal ties remaining between Britain and Rhodesia were revived and strengthened, including powers over internal matters. The British Parliament was able to assert its formal authority over Rhodesia by means of the Colonial Laws Validity Act 1865. This Act provides that no colony may pass any law repugnant to any statute passed by the British Parliament. The main relevance of the Act was that it retained for Britain a residual power to legislate for British possessions overseas. As pointed out by Castles:

> Only in cases where the Act has been expressly excluded from operating, as it has in the case of the Commonwealth of Australia by the adoption of the Statute of Westminister, and in circumstances like the granting of complete sovereign independence to a country like Ghana

> does the British Parliament lose its authority under this enactment. At UDI, no formal action had been taken to break this tie with Rhodesia and the British Parliament therefore retained the right to legislate for Rhodesia.[18]

Palley made a similar point when she stated that before Rhodesia could obtain independence legally, an Imperial Act analogous to the Statute of Westminster or one of the independence Acts passed for Commonwealth members would be required to remove the remaining limitations on Rhodesia's competence under the 1961 Constitution and to make its independence fully effective.[19]

The power to legislate for British possessions overseas was utilised to pass the Southern Rhodesia Act 1965, which considerably strengthened Britain's legal powers concerning Rhodesia. This declared that the Colony of Rhodesia was still part of Her Majesty's dominions, and authorised the British Parliament to alter, suspend or revoke the 1961 Constitution. The Act also authorised the proclamation of Orders in Council affecting Rhodesia, the principal one of which was the Southern Rhodesia (Constitution) Order 1965. According to the internal constitutional law of Britain, Rhodesia was a colony in rebellion.

The legality of UDI was soon tested within the Rhodesian legal system, in three major test cases which became known as the 'constitutional cases'. The first test case was Madzimbamuto v. Lardner-Bourke and Another and Baron v. Ayre and Others in the general division of the High Court, on 9 September 1966. This went to the appellate division of the High Court in 1967 and judgement was given on 29 January 1968.[20] The case finally went to the Judicial Committee of the Privy Council, with judgement being given on 23 July 1968.[21] The second was Rhodesia v. Ndhlovu and Others, which was finally determined in the appellate division of the Rhodesian High Court on 13 September 1968, and which provided the High Court's response to the judgement of the Judicial Committee of the Privy Council in the Madzimbamuto

case.[22] The third case was that of Dhlamini and Others v. Carter and Another, also finally decided in 1968.[23]

In the appellate division hearing of the Madzimbamuto case the Chief Justice, Sir Hugh Beadle, summed up his views thus:

(a) Southern Rhodesia before the Declaration of Independence was a semi-independent state which enjoyed internal sovereignty and also a large measure of external sovereignty, and her subjects, by virtue of the internal sovereignty she enjoyed, owed allegiance to her, but they also owed a residual allegiance to the United Kingdom by virtue of the external sovereignty which that country enjoyed.

(b) The status of the present Government today is that of a fully de facto Government in the sense that it is in fact in effective control of the territory and this control seems likely to continue. At this stage, however, it cannot be said that it is yet so firmly established as to justify a finding that its status is that of a de jure Government.

(c) The present Government, having effectively usurped the governmental powers granted Rhodesia under the 1961 Constitution, can now lawfully do anything which its predecessors could lawfully have done, but until its new Constitution is firmly established and thus becomes the de jure Constitution of the territory, its administrative and legislative acts must conform to the 1961 Constitution.[24]

A majority of the appellate division Justices, in individual decisions, agreed with Sir Hugh's conclusions. Two of the five Justices went further and declared that the existing Government was then also the internal de jure Government.

In a second hearing on 1 March 1968 the appellate division refused Madzimbamuto leave to appeal to the Judicial Committee of the Privy Council under the provisions of the 1961 Constitution. In this case Justice J.A. Macdonald went further

than his fellow Justices and held that the Rhodesian High Court could not accept as binding in Rhodesia 'a decision reached under the laws not of its own sovereign power but under those of an external sovereign power not recognised as exercising authority under the 1965 Constitution and engaged at the present time in an economic war against this country'.[25]

The Judicial Committee of the Privy Council, however, decided that Madzimbamuto had a right to appeal to the Privy Council and gave special leave to do so.[26]

The majority of the Judicial Committee found as follows:

(a) That since full Sovereignty over Southern Rhodesia was acquired when the territory was annexed by the Crown in 1923, and had not been diminished either by the limited grant of self-government then made or by United Kingdom legislation passed since that date, the Queen in the United Kingdom Parliament was still Sovereign in Southern Rhodesia in 1965 and that, accordingly, the Southern Rhodesia Act, 1965, and the Southern Rhodesia (Constitution) Order in Council, 1965, made thereunder, were of full legal effect in Southern Rhodesia; that nothing either in the British Nationality Act, 1948, or in the 1961 Constitution operated to confer even limited sovereignty upon Southern Rhodesia; and that the convention under which the Parliament of the United Kingdom did not legislate without the consent of the Government of Southern Rhodesia on matters within the competence of the Legislative Assembly, though politically important as a convention, had no legal effect in limiting the powers of the United Kingdom Parliament.

(b) That the conceptions of international law as to de facto or de jure status were inappropriate where a court sitting in a particular territory had to decide upon the validity or otherwise of a new regime which had gained control of the territory; and that, accordingly, the usurping government in control in Southern Rhodesia could not, for any purpose, be regarded as a lawful

> government, since the United Kingdom Government, acting upon behalf of the lawful Sovereign, was still taking steps to regain control.[27]

The Rhodesian High Court responded to the Privy Council's judgement in the case of Rhodesia v. Ndhlovu and Others. In that case it found that the existing Government of Rhodesia was also the de jure Government and the 1965 Constitution the only valid constitution. The appellate division concluded that a Rhodesian court should, as far as possible, respect any ruling of the Judicial Committee of the Privy Council on any point of law, as having the highest persuasive value but not to be regarded as binding.[28]

The third case, Dhlamini and Others v. Carter and Another, was finally decided in the appellate division of the Rhodesian High Court on 29 February 1968. Constitutionally, the case dealt mainly with the power of the Executive Council (which in the 1965 Constitution replaced the Governor's Council of the 1961 Constitution) to exercise, or not exercise, the prerogative of mercy and to carry out death sentences. An application for a stay of execution filed on behalf of Dhlamini and Others to permit an appeal to the Privy Council was refused on 1 March 1968 on the grounds that 'an appeal ... would be of no value to them because whatever judgement the Privy Council might give would be wholly ineffective in Rhodesia'.[29] A second application for a stay of execution, made after the Queen had exercised the prerogative of mercy and commuted their sentences to life imprisonment, was refused on 4 March 1968 on the grounds that the power of exercising clemency was vested in Rhodesian Ministers and not the Crown.[30]

The Committee has outlined the course of the 'constitutional cases' in the Rhodesian High Court and Privy Council in some detail to indicate that a strictly legalistic view of UDI ignores the practical and political realities which were also involved. The British view, particularly, while correct

in British law, failed to take into account the realities of an evolving constitutional situation. While the Rhodesian Government was able to exercise its authority a 'fundamental change of circumstances [had] occurred in Rhodesia with the declaration of independence'. As Castles put the matter:

> For law in these circumstances to play any meaningful and effective role in settling the dispute, at any point in time, it must reflect at this time the political reality of the situation which it seeks to regulate. British constitutional law itself, no less than the law of other nations and perhaps international law as well has recognised that the continued functioning of a constitutional system is always subject to revolution, be it peaceful or otherwise. In the United States after the American revolution, constitutional law, of necessity 'followed hard upon the heels of constitutional fact'.[31]

Castles went on to point out that the British Bill of Rights, one of the cornerstones of the British constitutional system, was itself born of a revolution, that of 1689. In newly independent countries when a fundamental change had taken place in the constitutional structure of a country, the courts had found it to be one of their first tasks to make the law 'come to terms with constitutional fact'.[32] Castles argued that the majority of legalistic arguments concerning UDI, and also concerning the authority of the UN Security Council to impose mandatory sanctions, were in essence 'no more than a legal means of attempting to achieve a political end'.

The continued existence of the Rhodesian Government after UDI depended not so much on law as on the political realities of the international situation. Rhodesia possessed many of the attributes of a sovereign independent state (such as a permanent population, a defined territory, an effective government and the capacity to enter into relations with other states), but it lacked the key attribute of recognition by a substantial part of the international community. Jennings, in his

Constitutional Laws of the Commonwealth, states that 'authorities on international law are generally agreed that status in international law depends on recognition by the community of nations'.[33] As long as Rhodesia was regarded as a British colony by most nations in the world, the only effective means by which Rhodesia could have become a sovereign independent state was by an Act of the British Parliament or some similar legal action by the British Crown, acceptable to those nations. While the international community continued to regard UDI as an act of rebellion against Britain, Rhodesia continued to be refused recognition. But if most nations had recognised the existing Rhodesian Government the British legal position would have become largely irrelevant. In the event, the Lancaster House settlement of 1979 did produce a return to legality, and thus eventually vindicated the British position.

5. Commonwealth Conferences, 1966

British negotiations on Rhodesia were, to a large extent, determined by the two Commonwealth Conferences in 1966 - in Lagos in January and in London in September. The Lagos Conference had expressed its basic attitude thus:

> The Prime Ministers declared that any political system based on racial discrimination was intolerable. It diminished the freedom alike of those who imposed it and of those who suffered under it. They considered that the imposition of discriminatory conditions of political, social, economic and educational nature upon the majority by any minority for the benefit of a privileged few was an outrageous violation of the fundamental principles of human rights. The goal of future progress in Rhodesia should be the establishment of a just society based on equality of opportunity to which all sections of the community could contribute their full potential and from which all could enjoy the benefits due to them without discrimination or unjust impediment.[34]

Heads of Government at the London Conference reaffirmed this view and the principle that one man one vote 'was regarded as the very basis of democracy and this should be applied to Rhodesia'. The majority of Heads of Government wanted a speedy end to the Rhodesian 'rebellion' and expressed their view that force was the only sure means of bringing down the illegal regime.[35] Most Heads of Government also urged Britain to make a 'categorical declaration' that independence would not be granted before majority rule was established on the basis of a universal adult franchise. Britain resisted the call for force but gave qualified acceptance of the NIBMAR call (no independence before majority African rule). The British response was that any constitutional settlement had to conform with its six principles, and implicit in the fifth (the test of acceptability) was that there would be no independence before majority rule if the people of Rhodesia as a whole were opposed to it.

Britain advised the London Conference that if the illegal regime was not prepared to take the 'initial and indispensable steps' whereby the rebellion would be brought to an end and executive authority vested in the British Governor, then the following consequences would ensue:

> (a) The British Government will withdraw all previous proposals for a constitutional settlement which have been made; in particular they will not thereafter be prepared to submit to the British Parliament any settlement which involves independence before majority rule.
>
> (b) Given the full support of Commonwealth representatives at the United Nations, the British Government will be prepared to join in sponsoring in the Security Council of the United Nations before the end of this year a resolution providing for effective and selective mandatory economic sanctions against Rhodesia.[36]

The Conference agreed to assist Zambia to implement sanctions against Rhodesia and to help her withstand any serious effects on her economy resulting therefrom.

The outcome of the London Conference was that the Smith Government was given a last chance to reverse its illegal declaration of independence before the implementation of the NIBMAR principle and a request to the UN for the imposition of mandatory sanctions. This chance was provided by the HMS Tiger talks on 2-4 December 1966. In offering this 'last chance' of independence before majority rule, Britain imposed a number of conditions based on its six principles, the most important of which were:

(a) Any independence constitution had to firmly establish 'an open road, which could not be blocked or impeded, for African political advancement to majority rule within a reasonable period of years'.

(b) Essential parts of an independence constitution had to be protected by 'the most effective possible safeguards' to prevent changes which could stop or impede this advancement.

(c) Any independence constitution had to be demonstrated by 'appropriate democratic means' to be acceptable to the people of Rhodesia as a whole.

(d) Any independence constitution should provide for some immediate improvement in the political status of Africans, and there had to be progress towards ending racial discrimination.[37]

The Smith Government, however, rejected this 'last chance' on 5 December by rejecting the settlement reached on board the Tiger and agreed to by Britain.

Australia, at the London Conference, had indicated reservations about referring to the United Nations a problem which 'should be capable of solution inside the Commonwealth of Nations', but said that if negotiations failed Australia would support a move in the UN Security Council for selective mandatory sanctions.[38]

6. HMS Tiger talks 1966

A series of discussions between the British and Rhodesian governments began after the Commonwealth Conference in London and culminated in a meeting on board HMS Tiger off Gibralter on 2-4 December 1966. The discussions on HMS Tiger eventually produced a working document which the British Prime Minister, Mr Wilson, and the Rhodesian Prime Minister, Mr Smith, agreed to take back to their respective governments for approval.

The working document set out proposals for an independence constitution which, according to the British Government, satisfied its six principles. The document provided for unimpeded progress to majority rule (i.e. the first principle), and introduced reserved seats for whites to give effect to the sixth principle. It met the second principle by establishing an effective blocking mechanism in a Senate and Lower House voting together, and by providing a right of appeal against the amendment of specially entrenched clauses of the constitution to a Constitutional Commission in Rhodesia and from the Commission to the Judicial Committee of the Privy Council. It met the third principle (i.e. an immediate improvement of the political status of the blacks) by an extension of the 'B' roll franchise to cover all blacks over 30 years of age; by increasing 'B' roll seats in the Lower House from 15 to 17, and by providing a total of 14 black seats in the Senate of which eight would be elected and six would be chiefs.

The fourth principle was met by a proposal for a Royal Commission and a Standing Commission thereafter to study and make recommendations on the problems of racial discrimination and land apportionment. In order to conform with the requirements set out in the Commonwealth Conference communique of September 1966 arrangements were suggested for a return to legality by means of the appointment by the Governor of a broad-based administration.

Provided that the test of opinion of the people of Rhodesia (by a Royal Commission) as required by the fifth principle took place after the restoration of constitutional government and in conditions of political freedom, the British Government was prepared to agree that the interim government, which would include five independent members of whom two would be blacks, should be headed by Mr Smith.[39]

The working document, as finally agreed, proposed the following changes for the legistature:

(a) Instead of a Governor, there would be a Governor-General appointed on the advice of the Rhodesian Government. He would act on the advice of his Ministers in all matters, except where specifically empowered to act on his own.

(b) The composition of the legislature would be:

Legislative Assembly

33 'A' roll seats	}	Each block of seats to
17 'B' roll seats	}	cover the whole country
17 reserved white seats	}	
67 seats		

Senate

12 whites (elected by whites on the 'A' roll. Six members to represent Mashonaland and six members to represent Matabeleland).

8 blacks (elected by blacks on the 'A' and 'B' rolls voting together. Four members to represent Mashonaland and four members to represent Matabeleland).

6 Chiefs (elected by Chiefs' Councils - three from Mashonaland and three from Matabeleland elected on a provincial basis).

26 seats

The Tiger proposals would eventually have led to majority rule on the basis of the franchise qualifications of 1961, as amended. The initial white majority would have found it extremely difficult to increase the qualifications for the 'A' or 'B' rolls (apart from varying monetary amounts in line with inflation) because blacks in the 93-seat legislature would have comprised more than the blocking quarter necessary to prevent amendment of specially entrenched provisions of the constitution, such as the franchise qualifications.

The British Government accepted the proposals outlined in the working document on 4 December, but the Rhodesian Government, on the following day, rejected them. Prime Minister Wilson at once declared for NIBMAR and invited the UN Security Council to impose selective mandatory sanctions.[40]

7. HMS Fearless talks 1968

Despite the failure of the Tiger talks, discussions continued through 1967 and 1968 and resulted in a further attempt at a settlement on HMS Fearless, again at Gibraltar. These talks took place on 9-13 October 1968. When it became clear, on 12 October, that a settlement would not be reached the British Prime Minister, Mr Wilson, had a statement prepared outlining the key British proposals for Mr Smith to take back for his Government's consideration. The statement was based on the changes to the 1961 Constitution made on board HMS Tiger two years earlier. Commenting in the House of Commons on 15 October, Mr Wilson said that he had made it clear to Mr Smith that any agreement had to be on the basis of the six principles.[41] But in his address he also gave the impression that the NIBMAR principle might be negotiable: certainly, the British proposals were not based on NIBMAR.

Mr Wilson said the statement made clear that, provided there was at all times 'a blocking quarter' of 'directly and

popularly elected Africans' as a safeguard against retrogressive amendment of the constitution, the British Government did not insist on any particular composition of the legislature. The statement also set out new procedures to deal with the problem of the return to legality.

Provisions relating to the Governor-General, the legislature, the franchise, the Delimitation Commission and the terms of office of Senators were as discussed at the Tiger talks, with the following changes: the British Government would be prepared to consider variations in the composition of the legislature, including increased representation of chiefs, provided that a 'blocking quarter' of directly and popularly elected blacks was secured at all times; the qualifications of Senators were to be higher than those for members of the Legislative Assembly. The powers of the Senate were clarified, as were the appeal provisions relating to amendments to the consitution.

To improve the position of the black population, and the number of blacks able to qualify for the 'A' roll franchise, the British Government offered to contribute £50 million over 10 years on a pound-for-pound basis for expanded education and training facilities for blacks.

One calculation was that, under the Fearless proposals, majority rule would not have been attained before 1999 at the earliest.[42]

The Fearless proposals were the subject of further discussions continuing into 1969, but were finally rejected by the Smith Government. Its main objection was to the provisions for appeals to the Judicial Committee of the Privy Council on amendments to entrenched clauses in the proposed constitution. The Smith Government claimed that the appeal provisions gave the British Government additional powers, entailing a derogation from

the sovereignty of the Rhodesian Parliament. Another sticking point was the composition of the broadly-based government proposed to oversee interim arrangements.

A Commonwealth Heads of Government Meeting in January 1969 discussed the Fearless proposals and also considered them unacceptable. They considered that to transfer sovereignty to a racial minority as the result of an agreement reached with that minority would settle nothing if the settlement was not freely accepted by the people of Rhodesia as a whole. They stated that historical experience suggested that once independence was achieved, a minority in power could not be prevented from changing a constitution in whatever way it wished. The only effective guarantees of political and civil rights lay in vesting those rights in the people as a whole.[43]

8. The 'republican' Constitution of 1969

(1) The Whaley Commission

The Rhodesian government, in the period between the Tiger and Fearless talks, had established a five-man Constitutional Commission charged with producing a constitutional framework:

> best suited to the sovereign independent status of Rhodesia and which is calculated to protect and guarantee the rights and freedoms of all persons and communities in Rhodesia and ensure the harmonious development of Rhodesia's plural society, having regard to the social and cultural differences amongst the people of Rhodesia, to the different systems of land tenure, and to the problems of economic development.[44]

The Commission, under the chairmanship of W.R. Whaley, a Salisbury lawyer, was appointed on 1 March 1967 and reported on 5 April 1968.

The Whaley Commission report to a large extent, but not completely, reflected the declared philosophy of the Rhodesian Front, particularly in its emphasis that the government of Rhodesia should remain in 'responsible hands'. The major recommendation of the Whaley Commission was a constitutional and electoral system which would, over a very long term, produce 'racial parity'. The report declared:

> ... the Europeans must surrender any belief in permanent European domination and the Africans must surrender any belief in ultimate African domination.[45]

The concept of ultimate parity of seats envisaged in the Whaley report clearly rejected the first of the British Government's six principles, which called for 'unimpeded progress to majority rule'. The rejection was perhaps best summed up in the criticism of a former Chief Justice of the Federation, Sir Robert Tredgold, who said 'the most significant recommendation in the report is that there shall never be majority rule in Rhodesia'.[46] The report received a mixed reaction among whites, and its proposals were modified somewhat in their translation into the 1969 'republican' Constitution.

The proposed constitution was published on 21 May 1969 and approved in a referendum on 20 June 1969 with 54,724 in favour and 20,776 against. At the same time the electorate voted in favour of a republic by 61,130 to 14,327. The Constitution of Rhodesia Bill was passed by the Rhodesian Parliament on 17 November 1969, and the new Constitution came into effect on 2 March 1970. From that day Rhodesia regarded itself as a republic. The British Governor of Rhodesia, Sir Humphrey Gibbs, had already resigned, on 24 June 1969, and Britain had closed its residual mission in Salisbury, and Rhodesia House in London, on 14 July 1969.

The 1969 Constitution provided for eventual parity of representation between blacks and whites, thus permanently excluding majority rule and, for the first time, put the franchise on a completely racial basis by eliminating any common roll. The Constitution also reduced the proportion of directly elected black members of parliament and substituted representation through tribally constituted electoral colleges. The new proposals, Mr Smith declared, would 'sound the death knell of the principle of majority rule'.[47] Mr Wilson described them as 'a complete and flat denial of at least five of the six principles'.[48]

(2) Main provisions

(a) The legislature

Legislative power was vested in a legislature consisting of a President (who was also Commander-in-Chief of the Armed Forces) and a Parliament comprising a House of Assembly and a Senate. The composition of the House of Assembly and Senate was as follows:

Legislative Assembly

50 white members (elected by those on the European Roll, including Asians and coloureds)

8 black members (four directly elected by those on the African Roll for constituencies in Mashonaland; four by those on the African Roll for constituencies in Matabeleland).

8 black members (four elected by electoral colleges of chiefs, headmen and elected councillors in Mashonaland; four by electoral colleges in Matabeleland)

66 members

Senate

10 whites (elected by electoral college of white members of House of Assembly).

10 chiefs (five elected by electoral college of members of Council of Chiefs in Mashonaland; five by members of Council of Chiefs in Matabeleland).

3 persons appointed by the President (increased to 5 in 1974)

—

23 members

The mechanism for achieving eventual parity of racial representation in the House of Assembly was based on the income tax paid by blacks. When the proportion of income tax assessed on blacks exceeded sixteen sixty-sixths of the total income tax assessed on whites and blacks then the number of black members in the House of Assembly would increase in proportion, two at a time, until eventually blacks comprised 50% of the membership. The first two additional blacks would be indirectly elected and the next two directly elected, and so on in sequence. In the year ended 30 June 1968, only 986 blacks out of a total of more than 70,000 personal income tax payers earned a high enough salary to qualify to be taxed and their contribution was less than 0.5%.[49]

The Senate was given power to originate Bills, to amend or reject Bills other than money Bills and to recommend amendments to money Bills, but its powers, in the final analysis, were powers of delay only.

(b) Senate Legal Committee and Declaration of Rights

A Senate Legal Committee was established to examine all Bills (except money or constitutional Bills) and subordinate legislation, and to report on whether any of their provisions conflicted with the Declaration of Rights. Bills drawing adverse reports from the Legal Committee could not be passed unless the Senate, by a simple majority, decided that their enactment was

necessary in the national interest. However, Bills drawing adverse reports and rejected by the Senate could be assented to by the President after 180 days on resolution of the House of Assembly.

(c) The franchise

Rhodesia was divided into 50 white constituencies (of which 18 had to be rural) and eight black constituencies (four each in *Mashonaland and Matabeleland*). *The Electoral Act of 1969* required constituency boundaries to be drawn so that they contained, as near as possible, equal numbers of whites in the case of white constituencies, and equal numbers of blacks in the case of black constituencies.

The franchise qualifications provided for in the entrenched provisions of the Electoral Act 1969 are shown in Table 4.2.

Table 4.2: Franchise qualifications 1969-70

Qualifications common to both rolls
1. Citizenship of Rhodesia
2. 21 years of age or over
3. Resident in a constituency at date of electoral claim and for three months prior to claim
4. Adequate knowledge of English and ability to complete application form in own writing

Category	*Income (per annum, during each of 2 years preceding enrolment claim)* or	*Property (fixed)* and	*Education (completion of)*	*Official status*
	£	£		
European Roll				
1	900	1 800	..	..
or 2	600	1 200	4 years' secondary education	..
or 3	..	..	..	Ministers of religion
African Roll				
1	300	600	..	..
or 2	200	400	2 years' secondary education	..
or 3	..	..	..	Ministers of religion

Source: Rhodesia, Electoral Act 1969.

(d) Constitutional amendment

Provisions of the Constitution dealing with the two houses of parliament, the judicature, constitutional amendment procedures, the Declaration of Rights, the use of English as the only official language, rights in relation to local authority elections (dealing with African Areas and European Areas), and the amendment of entrenched provisions in electoral laws and land tenure laws were specially entrenched. Bills amending them required approval by a two-thirds majority of the total membership of each House sitting separately.

Bills amending provisions of the Constitution other than specially entrenched provisions also required approval by a two-thirds majority of the total membership of each House, but if a Bill failed to achieve approval by a two-thirds majority in the Senate it could be resubmitted by House of Assembly resolution after 180 days and would then need the approval of only half the total membership of the Senate. The Bill would then be regarded as having been duly passed by Parliament.

(e) Electoral and land tenure laws

The Constitution in effect incorporated the major principles of electoral law and land apportionment through the provisions of section 80. This section provided that Bills containing or amending provisions of electoral laws declared to be entrenched provisions were to be subject to the same procedures as Bills amending constitutional provisions other than specially entrenched provisions. Bills containing or amending provisions of land tenure laws declared to be specially entrenched provisions were to be subject to the same procedures as Bills amending specially entrenched provisions of the Constitution. An example of the former was the Electoral Act 1969 and its franchise provisions outlined earlier. An example of the

latter was the Land Tenure Act 1969. ~~Both were passed in late 1969.~~

(f) Other provisions

The Constitution contained a Declaration of Rights which was specially entrenched. However, by section 84, the Declaration was not enforceable in court and no court could inquire into or pronounce on the validity of any law on the ground of its inconsistency with the Declaration. The Senate Legal Committee was the only body which could make such pronouncements, and its powers were powers only of delay.

The President was to be appointed by the Executive Council and to act on its advice. The President was given power to declare states of public emergency, which had to be confirmed by resolution of the House of Assembly, but which could then continue in force for up to 12 months. The House of Assembly could extend a declaration of a state of emergency on an annual basis.

The High Court was the final court of appeal. A person was not qualified for appointment to the High Court unless he was or had been a judge of a superior court in a country in which the common law was Roman-Dutch and English an official language, or he had been qualified to practise as an advocate in such a country for not less than 10 years.

(3) Subsequent developments

The new Constitution (and the Land Tenure Act) came into effect on 2 March 1970, and Rhodesia became a republic. The Australian Prime Minister, then Mr William McMahon, in answer to a question in the House of Representatives on 11 March 1970, said Australia would not recognise the 'republic' and had no intention of giving any assistance to it.[50]

In the general elections which took place on 10 April 1970 the Rhodesian Front Party led by Mr Smith won all 50 of the white seats in the House of Assembly. The multi-racial Centre Party polled poorly in the white constituencies (it won seven of the eight non-white seats) but the extreme right-wing Republican Alliance polled worse. Rhodesia's first 'President', Mr C.W. Dupont, was sworn in on 16 April, and Rhodesia's first 'republican' Parliament was opened by him on 28 May.

In the following month the British Labour Party under Mr Wilson lost office to the Conservative Party under Mr Edward Heath. Mr Heath's Foreign and Commonwealth Secretary, Sir Alec Douglas-Home, resumed negotiations, low-key at first, with the Smith Government. These culminated in a provisional agreement signed by him and Mr Smith on 24 November 1971.

9. The Smith-Home Agreement 1971

In the Smith-Home Agreement the demand, made in the Tiger and Fearless talks, for a 'broad-based' interim government was dropped, as was the provision for appeal to the Privy Council on constitutional amendments. The Constitution on which the proposals were based was no longer that of 1961, but the 'republican' Constitution of 1969, with electoral provisions altered to provide for eventual majority rule. Separate racial rolls were preserved until parity was achieved, when additional seats would be created for representatives elected on a common roll basis. The Declaration of Rights was made justiciable. The provisional settlement, according to one historian, was within the five principles (the Conservative Government had dropped Labour's sixth principle) - but only just.[51]

(1) The proposed constitution

The Agreement stated that the constitution of Rhodesia would be the Constitution adopted in 1969 as modified, although both sides reserved their positions on the existing status of the 1969 Constitution.

(a) The legislature

The 1969 Constitution precluded blacks from ever attaining more than parity of representation in the House of Assembly, and related any increase in black representation to the amount of income tax paid by blacks. Under the proposed terms of settlement these provisions would be replaced by new provisions securing 'unimpeded progress to majority rule'.[52] Blacks would proceed to parity of representation in the House of Assembly through the creation of a new African Higher Roll, with the same income, property and educational qualifications as the European Roll. When the number of voters on the African Higher Roll equalled 6% of the number of voters on the European Roll, two black seats would be created to be filled by voters on the African Higher Roll. When the ratio reached 12% two further black seats would be created to be filled by indirect election under the 1969 constitutional system of electoral colleges of chiefs, headmen and councillors. This sequence would be repeated until the number of additional black seats reached 34, thus achieving a total of 50 (there being 16 black members initially), or parity with the number of white seats. By this time the number of voters on the African Higher Roll would be approximately the same as the number on the European Roll. The rate at which parity would be achieved would depend on the rate at which blacks acquired franchise qualifications the same as those of whites. The composition of the House of Assembly initially and at parity would be as shown in Table 4.3.

Table 4.3: Composition of House of Assembly under the Smith-Home Agreement 1971

Type of constituency	Number of seats	
	Initially	*At parity*
European Roll (including Asians, coloureds)	50	50
African Higher Roll (directly elected)	..	18
African Lower Roll (directly elected)	8	8
African Electoral College (indirectly elected)	8	24
Total	66	100

Note. After parity a referendum would decide whether directly elected blacks should replace indirectly elected blacks and any additional seats would be created on a common roll basis, thus providing for an eventual black majority

Source: Based on United Kingdom, *Rhodesia: Proposals for a Settlement* Command 4835, November 1971).

When parity was achieved a referendum would be held among blacks on both the higher and lower rolls to determine whether or not indirectly elected blacks should be replaced by directly elected blacks. After the referendum and any consequential elections ten common roll seats were to be created, if found to be acceptacle to the Rhodesian people at that time by an independent Commission. These seats would be filled by an election in a single nationwide constitutency by voters on the European Roll and African Higher Roll. Under these proposals majority rule, by one calculation, would not be achieved until the year 2035 at the earliest.[53]

The Senate would be as constituted by the 1969 Constitution - 10 whites elected by the white members of the House of Assembly, 10 chiefs and three presidential appointees. As the new Declaration of Rights would be enforceable in the courts, the Senate Legal Committee would be abolished.

(b) *The franchise*

The franchise qualifications (converted to Rhodesian dollars) for whites would be the same as those set by the Electoral Act 1969. Qualifications for the African Higher Roll would be the same as those for whites. The qualifications for the African Lower Roll would be replaced by qualifications equivalent to those for the 'B' roll in the 1961 Constitution, adjusted for inflation. Agreement was also reached on a simplified application form for enrolment on the African Lower Roll and for assistance to be provided in completing it. Details of the proposed franchise qualifications are shown in Table 4.4.

Table 4.4: Franchise qualifications under the Smith-Home Agreement 1971

($Rhodesian)

Qualifications common to all three rolls
1. Citizenship of Rhodesia
2. 21 years of age or over

Category	*Income (per annum, during each of 2 years preceding enrolment claim) or*	*Property (fixed) and or*	*Education (completion of)*	*Official status*
European Roll and African Higher Roll				
1	1 800	3 600	..	..
or 2	1 200	2 400	4 years' secondary education	..
African Lower Roll				
1	600	1 100	..	..
or 2	300	600	2 years' secondary education	..
or 3 (30 years and older)	300	600	primary education	..
or 4 (30 years and older)	430	800	..	..
or 5	..	..	..	kraal head with following of 20 or more heads of families

Source: Based on United Kingdom, *Rhodesia: Proposals for a Settlement* (Command 4835, November 1971), annexe B, appendixes I and II, pp. 18-19.

(c) Declaration of Rights

The Declaration of Rights in the 1969 Constitution would be replaced by a new declaration which would confer a right of access to the High Court (but not the Privy Council). An independent Review Commission was to be set up to examine racial discrimination in all fields including the allocation and use of land under the Land Tenure Act. Britain agreed to provide up to £5 million in matching grants a year for 10 years to improve educational facilities and job opportunities for Africans.[54]

(d) Constitutional amendment

Until the independent Commission to be appointed after parity reported, amendments of specially entrenched provisions of the constitution would require, in addition to a two-thirds majority of all the members of the House of Assembly and the Senate voting separately, the affirmative votes of a majority of the total white membership and a majority of the total black membership in the House of Assembly. This ensured that the directly elected blacks would be sufficient to block any retrogressive constitutional amendments. After parity had been reached the requirement for separate racial approval in the House of Assembly would be dropped.

(e) Test of acceptability

In conformity with Britain's fifth principle, the Agreement provided that the proposals for a settlement would only be confirmed and implemented if they were 'acceptable to the people of Rhodesia as a whole'. To ascertain this the British Government would appoint a Commission to find out directly from all sections of the Rhodesian population their views on the proposals. The Rhodesian Government agreed to assist the Commission to carry out its task.

(2) The Pearce Commission

The appointment of Lord Pearce as Chairman of the Commission on Rhodesian Opinion was announced on 25 November 1971. The Commission, which reported on 4 May 1972, canvassed opinion extensively over a two month period. As part of the Agreement, blacks were allowed greater freedom to express their opinions and the Commission became a focus for black political activity. Much black opinion was channelled through the African National Council (ANC), formed in December 1971 under the leadership of Bishop Abel Muzorewa. The ANC was the first substantial black political organisation to operate since the Zimbabwe African National Union (ZANU) was banned in 1964 (the Zimbabwe African People's Union - ZAPU - had been banned in 1962). The main purpose of the ANC's formation was 'to explain and to expose the dangers of accepting the settlement proposals and to co-ordinate the campaign for their rejection'.[55]

The Pearce Commission reported that the proposals had been fully and properly explained to the people of Rhodesia. The Commission reported that, apart from a small minority, the white, coloured and Asian populations were broadly in favour, but the majority of blacks consulted publicly or privately were against the proposals. Accordingly, the Commission concluded that 'the people of Rhodesia as a whole do not regard the Proposals as acceptable as a basis for independence'.[56] The British Government accepted the Pearce Report but nevertheless left the settlement proposals on offer until they were withdrawn by the new Labour Government in July 1974.[57]

The Commission reported that blacks particularly distrusted the Rhodesian Government:

> Mistrust of the intentions and motives of the Government transcended all other considerations. Apprehension for the future stemmed from resentment at what they felt to

> be the humiliations of the past and at the limitations of policies on land, education, and personal advancement. One summed it up in saying 'We do not reject the Proposals, we reject the Government'. This was the dominant motivation of African rejection at all levels and in all areas. Few could bring themselves to believe that the Government had changed its policies or that the European electorate on whom it depended was prepared to change its attitudes or its way of life. Most refused to see advantages in the Proposals. Those who did doubted whether the Government would ever implement them. These people thought that as soon as Independence was recognised and sanctions revoked, a Government which had torn up previous constitutions could do so again ...[58]

Blacks were dissatisfied with the vagueness and delay surrounding majority rule and were highly critical of the total absence of black involvement in the settlement negotiations.

The particular provisions of the settlement proposals were criticised on a wide variety of grounds: the franchise qualifications for the African Higher Roll were too high and therefore progress towards parity and beyond would be too slow; different franchise qualifications would divide blacks among themselves; equal qualifications for the European and African Higher Rolls were unfair because blacks did not receive the same educational opportunities, nor the same remuneration as whites for the same work; fixed property qualifications were discriminatory because of restrictions on private home ownership by blacks (e.g. there was no freehold home ownership in Tribal Trust Lands); chiefs and tribal authorities should not be used as a method to control political representation; the African Lower Roll was meaningless because eight seats would have little or no effect in the House of Assembly; and white immigration would mitigate against additional black seats being obtained by increases in the numbers of voters on the African Higher Roll.

(3) Subsequent developments

The British viewpoint after the Pearce Commission was that Rhodesians of all racial groups should find a solution between themselves on the basis of the 1971 proposals.[59] Some discussions took place between the ANC (which was permitted to remain in existence although subject to harassment) and the Smith Government from 1973 to 1975. The ANC position was that majority rule was the ultimate aim, although it was not opposed to a sharing of power between blacks and whites as a transitional arrangement. An agreement on settlement proposals was reached between Mr Smith and Bishop Muzorewa on 7 May 1974, but this added little to the 1971 proposals because it would still have taken 40-60 years for blacks to reach parity with whites.[60] On 2 June 1974 the ANC Central Executive Committee rejected the proposed settlement.

In the general election of 31 July 1974 the Rhodesian Front Party again won all 50 white seats in the House of Assembly. The ANC had decided not to participate in any elections under the 1969 Constitution but pro-ANC candidates nevertheless won seven of the eight directly elected black seats.

10. Detente 1974-76

(1) The Portuguese coup 1974

An event in mid-1974 changed the direction of future negotiations on Rhodesia by adding pressure for a settlement from South Africa. This was the 25 April 1974 coup in Portugal which led to a collapse of Portuguese power in its African colonies. Two of these colonies, Mozambique and Angola, both of which gained independence as black states in 1975, were strategically situated adjacent to South Africa and the territory administered by it, Namibia. The Portuguese collapse forced South Africa to re-assess its reliance on a cordon sanitaire or buffer zone of white-controlled territories between it and the rest of Africa.

The South African response was to seek detente with black Africa. This response was a successor to its previous 'dialogue' policy. In an address to the Senate in Cape Town on 23 October 1974 the South African Prime Minister, Mr John Vorster, said that Southern Africa was at the cross-roads and should choose between peace or escalating conflict. In relation to Rhodesia, he said:

> It is in the interests of all parties to find a solution. Now is the time for all who have any influence to bring it to bear to find a durable, just solution so that internal and external relations can be normalized.[61]

One of the first fruits of Mr Vorster's detente policy was the opening of a dialogue with President Kenneth Kaunda of Zambia who, with the failure of nearly 10 years of British attempts at a settlement, had concluded that in the absence of direct intervention by Britain a settlement was only possible if the contending parties within Rhodesia were subjected to pressure by the states upon whose assistance they were dependent for their survival.[62] A series of meetings between representatives of Zambia and South Africa followed, taking place against a backdrop of increasing guerilla raids from Zambia and Mozambique into Rhodesia and the operations of some 2,500 South African police assisting Rhodesian forces near the Zambian border.

(2) The Lusaka Agreement 1974

The result was a further series of meetings ~~in Lusaka~~ in Lusaka in December 1974 attended by President Kaunda of Zambia, President Julius Nyerere of Tanzania and President Seretse Khama of Botswana. From Rhodesia there were delegations from ZAPU, ZANU, FROLIZI (Front for the Liberation of Zimbabwe) and the ANC. A number of nationalist leaders were released from detention in Rhodesia to attend, including Joshua Nkomo, Robert Mugabe and Rev. Ndabaningi Sithole. Also present was Bishop Muzorewa

representing the ANC. The FRELIMO President, Samora Machel, later President of Mozambique, also attended. Notably absent were the British. The talks dealt with the unity of the African nationalist organisations and, with representatives of the Smith Government, Rhodesia's constitutional future. On 7 December the ANC, ZAPU, ZANU and FROLIZI agreed to unite under the banner of the ANC, but with a new constitution, in order to present a united front at any constitutional talks that might follow. This agreement was contained in the Zimbabwe Declaration of Unity (the 'Lusaka Declaration').

The Lusaka Agreement, reached on 11 December after an earlier setback, established that negotiations between a reconstituted ANC and the Rhodesian Government were to be held without preconditions, but there was to be a ceasefire and remaining detained nationalist leaders and their followers were to be released by the Rhodesian Government. However, the Agreement gave rise to differing interpretations by the two sides, particularly on the implementation and status of the agreed ceasefire. In mid-January 1975 the Rhodesian Government halted the release of nationalist detainees, alleging that the ceasefire was not being observed, while the ANC claimed that agreements on freedom of political activity for blacks were not being honoured. The stalemate continued, and during 1975 hopes of progress towards a settlement were not fulfilled.

(3) The Pretoria Agreement and Victoria Falls Conference 1975

South African involvement in a second settlement attempt took place in August 1975. On 9 August 1975 Mr Vorster, Mr Smith and Mr Mark Chona, a special adviser to President Kaunda, signed the Pretoria Agreement in terms of which constitutional talks would take place on the Victoria Falls Bridge, midway between Rhodesia and Zambia. The talks, on 25 and 26 August, were attended by Mr Smith representing the Rhodesian Government, Mr

Nkomo, Bishop Muzorewa and Mr Sithole, representing the ANC, and President Kaunda and Mr Vorster. The talks broke down on the nationalist demand for immediate majority rule and the Rhodesian Government's refusal to grant immunity from arrest for exiled members of the ANC to enable them to return to Rhodesia.

(4) Smith-Nkomo talks 1975-76

After the Victoria Falls Conference the ANC split into two wings, an internal one led by Mr Nkomo which continued negotiations with Mr Smith and an external wing led by Bishop Muzorewa and Mr Sithole which operated in exile from Lusaka. The talks between Mr Smith and Mr Nkomo commenced in December 1975 but broke down in March 1976, as a result of differences on the period of time which should elapse before majority rule and on the composition of an interim government.

11. The 'Kissinger package' 1976

On 22 March 1976, in the same month that negotiations between blacks and whites within Rhodesia finally broke down, Britain re-entered the picture. The then Foreign and Commonwealth Secretary, Mr James Callaghan, in a speech to the House of Commons, said that any attempt at a settlement would need to involve two stages - firstly prior agreement by all parties on preconditions, and secondly, negotiations on the actual terms of an independence constitution.[63] Mr Callaghan announced Britain's view of the necessary preconditions as follows:

(a) Acceptance of the principle of majority rule;

(b) Elections for majority rule to take place in 18 months to two years;

(c) Agreement that there would be no independence before majority rule;

(d) The negotiations should not be long drawn out.

Shortly after this speech the United States Secretary of State, Dr Henry Kissinger, arrived in London for discussions on Rhodesia with Mr Callaghan's successor, Mr Anthony Crosland (Mr Callaghan having become Prime Minister). Dr Kissinger's visit reflected increased American interest in a settlement, brought on in no small way by the situation in Angola and the threat of further Soviet-Cuban involvement and influence in Southern Africa. The Americans were particularly determined that Southern Africa should not become an arena for super-power rivalries.

After his London visit Dr Kissinger undertook a diplomatic initiative which included visits to seven African countries including the four Front-line States of Zambia, Botswana, Tanzania and Mozambique (25 April - 2 May 1976), talks with Mr Vorster in Europe (on 23-24 June and 4-5 September), and a second visit to Africa in September which (after consultations in Lusaka and Dar es Salaam) culminated in talks in Pretoria on 18 and 19 September with Mr Vorster and then Mr Smith.

On 24 September 1976 in a television and radio broadcast Mr Smith announced his somewhat reluctant 'in principle' acceptance of the Kissinger 'package' discussed in Pretoria. He added that the proposals did 'not represent what in our view would be the best solution for Rhodesia's problems'.[64] There seems little doubt that Mr Smith agreed to the 'package' under pressure from South Africa, through which passed the bulk of Rhodesia's imports, including oil and arms, as well as most of Rhodesia's exports.[65] South Africa also was underwriting a large part of Rhodesia's defence costs, and the closure of the Mozambique border on 3 March 1976 increased Rhodesia's reliance

on South Africa as its lifeline to the world. Other factors which may have influenced Mr Smith included a worsening economy and the effect on that economy of the energy crisis and the Western economic recession, the steady escalation of guerilla activity, the increase in white emigration, and the sharp change in policy towards Rhodesia by the United States.

Dr Kissinger did not announce the proposals in his 'package deal' (which were based to a large extent on British proposals), nor did the British Government. The first public announcement of the package was Mr Smith's on 24 September 1976. According to Mr Smith the proposals were as follows:

(a) Rhodesia agreed to majority rule within two years.

(b) Representatives of the Rhodesian Government would meet immediately at a mutually agreed place with black leaders to organize an interim government to function until majority rule was implemented.

(c) The interim government would consist of a Council of State, half of whose members would be black and half white, with a white chairman without a special vote. White and black sides would each nominate their representatives. The Council's function would include legislation; general supervisory responsibilities; and supervision of progress in drafting the constitution.

The interim government would also have a Council of Ministers with a majority of blacks and a black First Minister. For the period of the interim government the Ministers of Defence and Law and Order would be white. Decisions of the Council of Ministers to be taken by a two-thirds majority. Its functions would include delegated legislative authority, and executive responsibility.

(d) The United Kingdom would enact enabling legislation for this process to majority rule. Upon enactment of that legislation, Rhodesia would also enact such legislation as might be necessary to the process.

(e) Upon the establishment of the interim government sanctions would be lifted and all acts of war, including guerilla warfare, would cease.

Substantial economic support would be made available by the international community to provide assurance to Rhodesians about the economic future of the country.

In announcing the proposals, Mr Smith said:

> Dr Kissinger assured me that we share a common aim and a common purpose, namely, to keep Rhodesia in the free world and to keep it free from Communist penetration. In this regard, of course, Rhodesia is in a key position in Southern Africa. What happens here will inevitably affect the entire sub-continent. Although we and the Western powers have a common purpose, we differ from them in how best to achieve this.
>
> I would be dishonest if I did not state quite clearly that the proposals which were put to us in Pretoria did not represent what in our view would be the best solution for Rhodesia's problems. Regrettably, however, we were not able to make our views prevail, although we were able to achieve some modifications in the proposals. The American and British Governments, together with the major Western powers, have made up their minds as to the kind of solution they wish to see in Rhodesia and they are determined to bring it about. The alternative to acceptance of the proposals was explained to us in the clearest terms, which left no room for misunderstanding.[66]

Two days later, after a conference in Lusaka, the Presidents of the Front-line States rejected Mr Smith's version

of the Kissinger 'package' which, they said, was not what they understood to be the package. The version as outlined by Mr Smith, in their view, was 'tantamount to legalizing the colonialist and racist structures of power'.[67] In their view, and also that of Rhodesian black nationalists, any details relating to the functions and powers of the transitional government should be decided by a conference of 'the authentic and legitimate representatives of the people of Zimbabwe' and called on Britain to convene such a conference. They regarded the package as announced by Mr Smith as no more than a basis for negotiations.

Britain announced on 29 September that, in response to requests from all the parties concerned, it would convene a conference to discuss the formation of an interim government. The conference opened in Geneva on 28 October 1976 under the chairmanship of Mr Ivor Richard, British Permanent Representative at the United Nations.

12. The Geneva Conference 1976

At Britain's invitation the Conference in Geneva was attended by delegations representing the Rhodesian Front, led by Mr Ian Smith, ZANU (Mr Robert Mugabe), ZAPU (Mr Joshua Nkomo), the United African National Council (UANC) (Bishop Abel Muzorewa), and a delegation led by the Rev. Ndabaningi Sithole. Also present were observers representing Botswana, Mozambique, Tanzania and Zambia, the US, the Organisation of African Unity (OAU) and the Commonwealth Secretariat. Prior to the conference, on 9 October, ZANU and ZAPU had agreed to form an umbrella organisation, the Patriotic Front, to present a joint approach at the negotiations.

After lengthy discussion on a possible date for independence, the Conference moved on to the central issue of the structure and functions of an interim government. It became clear that the nationalists were not prepared to negotiate on the basis of the 'five points' accepted by Mr Smith, involving as they did

special guarantees for whites in the interim government. They argued, for example, that control of defence and law and order should be in black hands in the interim period. The British Government considered that new proposals involving a British presence in the interim period might help to bridge the gap and meet, in Mr Crosland's words, 'the concern of the nationalists that the transfer to majority rule should be rapid and irreversible and of the white Rhodesians that it should be peaceful and orderly'.[68] To enable further consultations on the new proposals the conference went into recess on 14 December.

To test reaction to a more concrete formulation of the new proposals Mr Richard began a round of consultations with Mr Smith, the other parties to the Geneva Conference, and the Presidents of the Front-line States. The new British plan provided for a transitional government to be headed by an interim commissioner, appointed by Britain, and a Council of Ministers. The Council of Ministers would contain equal numbers of members from each of the political groups represented by the delegations at Geneva, including the Rhodesian Front, and a further number of members (the same as for a delegation) appointed by the interim commissioner from among members of the white minority. The Council of Ministers would thus have a substantial black majority (whites would comprise one-third of the total membership). Leaders of the delegations to Geneva would be members of the Council of Ministers and would form an Advisory Council or 'inner cabinet'. The Council of Ministers would have full executive and legislative competence, subject to the interim commissioner's reserve powers in certain matters (primarily external affairs, defence, internal security and the implementation of the program for independence). These powers were designed to enable the commissioner to ensure a smooth transition to majority rule and independence.

A National Security Council, presided over by the interim commissioner, would be responsible for defence and

security and for ensuring the effective control by the government of the defence and security forces. The main responsibility of the Council of Ministers would be to implement the program for independence and to work out an independence constitution.

The proposals were accepted as a basis for negotiation by the Front-line States and by all the nationalist leaders, but not by Mr Smith, who stated on 24 January that it would be in the best interests of Rhodesia to adhere to the proposals as presented by Dr Kissinger. As an alternative, he hinted at the possibility of an 'internal' solution in which Rhodesians should be left to solve their problems themselves, though he excluded anyone who supported terrorism from such a solution. The Geneva Conference did not reconvene.

13. The Anglo-American Proposals 1977-78

Dr David Owen succeeded Mr Crosland as Foreign and Commonwealth Secretary on 22 February 1977 and, in April 1977, launched a new Anglo-American initiative, which included the formation of an Anglo-US consultative group to visit Southern Africa for intensive discussions. The group was headed by Mr John Graham, Deputy Under-Secretary at the Foreign and Commonwealth Office, and included Mr Steven Low, the US Ambassador in Zambia.

On 25 August Dr Owen and the US Ambassador to the United Nations, Mr Andrew Young, also visited a number of African countries including, this time, Nigeria and Kenya. The result of this extensive consultation process was the Proposals for a Settlement in Rhodesia or, as they became known, the Anglo-American Proposals, published on 1 September 1977 in London, Washington and Salisbury.[69] Announced on the same day was the appointment of a Resident Commissioner-designate for Rhodesia, Field-Marshall Lord Carver. In a statement in Salisbury on 1 September Dr Owen said that the British Government, with the support of the United States, believed that the proposals could

provide the basis for negotiations for a cease-fire and for an internationally acceptable settlement which was in the best interests of all Rhodesians.[70]

A foreword to the Proposals as outlined in the British White Paper (Command 6919) stated they were based on the following 'elements':

(a) The surrender of power by the illegal regime and a return to legality.

(b) An orderly and peaceful transition to independence in the course of 1978.

(c) Free and impartial elections on the basis of universal adult suffrage.

(d) The establishment by the British Government of a transitional administration, with the task of conducting the elections for an independent government.

(e) A United Nations presence, including a United Nations force, during the transition period.

(f) An Independence Constitution providing for a democratically elected government, the abolition of discrimination, the protection of individual human rights and the independence of the judiciary.

(g) A Development Fund to revive the economy of the country which the United Kingdom and the United States view as predicated upon the implementation of the settlement as a whole.[71]

The foreword stated that while it was impossible to lay down an exact timetable, the British Government intended that elections should be held, and Rhodesia should become independent as Zimbabwe, not later than six months after the return to legality.

In essence the Anglo-American plan called for the resignation of the Rhodesian Government and the appointment of a

British administrator during a six-month transitional period in which Rhodesia would return to a temporary state of colonial rule prior to independence.

(1) The proposed constitution

The proposed constitution provided for Rhodesia to become the independent republic of Zimbabwe, with an executive President and Vice-President, although this did not necessarily exclude alternatives such as a constitutional President and a Prime Minister.

The legislature would consist of the President and a single-chamber National Assembly of 100 Elected Members representing single-member constituencies and, for at least the first two parliaments or eight years, 20 Specially Elected Members. These would be elected by the Elected Members of the Assembly after each general election to provide representation for minority groups. The franchise would be based on universal adult suffrage, i.e. all citizens aged 21 or more who were registered as voters. Bills passed by the National Assembly were to be presented to the President for his assent. If the President withheld his assent the Bill was returned to the National Assembly which could, within six months, present it once more for the President's assent. The President then either had to give his assent or dissolve parliament.

The constitution would contain a Bill of Rights along the lines of those in the constitutions of other recently independent Commonwealth countries, and based on the Universal Declaration of Human Rights. These rights would be justiciable and would be entrenched in the constitution. The Bill of Rights in particular would exclude discriminatory laws and practices, except that discriminatory laws not ended by the transitional administration could continue for up to two years from the date of independence. Certain provisions of the Bill of Rights could

also be suspended during periods of public emergency. Provision was made for an independent judiciary, with the court of final appeal being the High Court. The public service would be controlled by an independent Public Service Commission.

Provisions of the constitution could be amended by an Act of Parliament passed either by a simple majority or a two-thirds majority, depending on the nature of the provisions to be amended. Bills amending provisions requiring a two-thirds majority had to be notified in the Official Gazette at least 30 days prior to the first reading, and at least three months had to elapse between the first and third readings. Bills amending entrenched provisions such as those dealing with citizenship, fundamental rights, the judicature and procedures for constitutional amendment, could be amended only by a Bill which had been passed by a two-thirds majority as described above, in two successive sessions in between which parliament had been dissolved and a general election held. Certain provisions would not be amendable at all until after the end of a specified period.

(2) Transitional provisions

The basic premise of the Anglo-American Proposals was that the Smith Government would surrender power 'so that the transitional administration may be installed peacefully'.[72] The transitional arrangements proposed were outlined in the White Paper as follows:

> (a) The appointment by the British Government, either under existing statutory powers or under new powers enacted for the purpose, of a Resident Commissioner and a Deputy. The role of the Resident Commissioner will be to administer the country, to organise and conduct the general election which, within a period not exceeding six months, will lead to independence for Zimbabwe,

and to take command, as Commander-in-Chief, of all armed forces in Rhodesia, apart from the United Nations Zimbabwe Force.

(b) The appointment by the Secretary-General of the United Nations, on the authority of the Security Council, of a Special Representative whose role will be to work with the Resident Commissioner and to observe that the administration of the country and the organisation and conduct of the elections are fair and impartial.

(c) The establishment by resolution of the Security Council of a United Nations Zimbabwe Force whose role may include:

(1) the supervision of the cease-fire;

(2) support for the civil power;

(3) liaison with the existing Rhodesian armed forces and with the forces of the Liberation Armies.

The Secretary-General will be invited to appoint a representative to enter into discussions, before the transition period, with the British Resident Commissioner designate and with all the parties with a view to establishing in detail the respective roles of all the forces in Rhodesia.

(d) The primary responsibility for the maintenance of law and order during the transition period will lie with the police forces. They will be under the command of a Commissioner of Police who will be appointed by and responsible to the Resident Commissioner. The Special Representative of the Secretary-General of the United Nations may appoint liaison officers to the police forces.

(e) The formation, as soon as possible after the establishment of the transitional administration, of a new Zimbabwe National Army which will in due course replace all existing armed forces in Rhodesia and will be the army of the future independent State of Zimbabwe.

(f) The establishment by the Resident Commissioner of an electoral and boundary commission, with the role of carrying out the registration of voters, the delimitation of constituencies and the holding of a general election for the purposes of the Independence Constitution.[13]

On the day that power was transferred to the transitional administration, a ceasefire was to come into effect within Rhodesia and measures would be taken to lift sanctions.

A transitional constitution, defining the powers of the Resident Commissioner and dealing with other matters, would be contained in an Order in Council made under an Act of the United Kingdom Parliament. On the day it came into operation Rhodesia would return to legality. Under the provisions of the proposed transitional constitution the Resident Commissioner would be the representative of the Crown in Rhodesia and would be subject to instructions from the UK Government except where otherwise provided in the constitution. There would be no separate legislative body during the transition and all legislative and executive functions would be performed by the Resident Commissioner.

So that Rhodesia could return to legality with a coherent and workable legal and administrative system all laws made since 11 November 1965 were to be validated, except those incompatible with the restoration of legality and except where existing laws needed to be adapted to make them conform with the new constitutional structure. A general amnesty was also to be proclaimed in respect of acts arising out of the political situation on both sides.

(3) Zimbabwe Development Fund

A Zimbabwe Development Fund, jointly sponsored by the British and United States governments, would have as a target a

minimum approaching $US1,000 million and maximum 'rather less than' $US1,500 million to which governments in many parts of the world would be asked to contribute. Its purpose would be to provide funds for the economic stability and development of an independent Zimbabwe through assistance to various sectors and programs such as rural development, education, health, social and economic infrastructure, and resettlement and training schemes for blacks, including those affected by the existing conflict. The operations of the Fund were to help ensure that the obligations of the Zimbabwe government under the settlement would not inhibit economic development for lack of foreign exchange and to reassure those who feared that the new government might be unable to carry out these obligations. The establishment and continued operation of the Fund were predicated upon the acceptance and implementation of the terms of the settlement as a whole.

(4) Subsequent developments

The UN Security Council, on 29 September, adopted resolution 415 by which it requested the Secretary-General to appoint a representative to enter into discussions with the British Resident Commissioner-designate and 'with all the parties' concerning military and associated arrangements necessary to effect a transition to majority rule. The Secretary-General announced on 30 September that he had appointed Lieutenant-General D. Prem Chand, formerly Force Commander of the UN Peace-keeping Forces in Cyprus from 1969 to 1976.[74] In November and December Lord Carver and General Chand visited the Front-line States and Nigeria for consultations. They also held discussions with Mr Nkomo and Mr Mugabe, Mr Smith, Bishop Muzorewa and the Rev. Sithole.

Australia supported the Anglo-American Proposals for a settlement in Rhodesia.[75]

The day before the announcement of the Anglo-American Proposals, on 31 August 1977, the Rhodesian Front for the fourth successive time won all 50 of the white seats in a general election for the House of Assembly. The more liberal National Unifying Force, which broadly supported the Anglo-American Proposals, and the more conservative Rhodesian Action Party both failed to win a seat.

Mr Smith, after the announcement of the Anglo-American Proposals, agreed to examine them, although he described some of them as 'insane'.[76] In a televison interview later he said that he might accept the 'one man one vote' aspect of the proposals, provided that 'standards were maintained'.[77] On 21 September he rejected the Anglo-American initiative, but added that his Government had 'genuinely come to the conclusion that we've got to get away from discrimination based on colour' and that Rhodesia would 'try to choose our future government on merit, irrespective of colour'.[78] The Patriotic Front approved a number of aspects of the plan, including the call for the Smith regime to surrender power, for elections based on one man one vote and for an orderly transition, but nonetheless considered that the proposals had serious limitations.

Subsequent modifications to the Anglo-American Proposals attempted to accommodate some of the objections made to the original plan, but without success.

From the end of 1977 the Smith Government largely dropped out of Anglo-American negotiations, but these continued with the Patriotic Front, for example in Malta in late January 1978 and Dar es Salaam in April 1978. At the Malta talks with Dr Owen and Mr Young, the Patriotic Front insisted that the Rhodesian army and police would have to be dismantled prior to the installation of a transitional government and that Patriotic Front forces instead would be responsible for peace and law and order, and the powers of the Resident Commissioner would need to

be curtailed. The Patriotic Front reluctantly agreed to elections before independence but insisted on UN supervision.[79] In the end the Malta conference broke up without agreement. So did the second conference (sometimes referred to as 'Malta II') at Dar es Salaam in April with Dr Owen and the US Secretary of State, Mr Cyrus Vance (Dr Owen and Mr Vance also visited Salisbury for consultations with the Smith Government). By October 1978 at least three optional versions of the Anglo-American Proposals were in existence, their differences centering mainly on the role of the Resident Commissioner and the power of the Patriotic Front in an interim administration and in the case of one option, the postponement of elections until after independence.

The internal parties, however (the Smith Government and internal black nationalist parties led by Bishop Muzorewa, Mr Sithole and Senator Chief Jeremiah Chirau), were involved in their own independent negotiations from November 1977. These were to lead to the Internal Settlement Agreement announced on 3 March 1978 and, eventually, to the abandonment of the Anglo-American Proposals.

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CHAPTER 5

The Internal Settlement and 1979 Constitution

1. Introduction

The Internal Settlement Agreement of 3 March 1978 proved a watershed in the affairs of Zimbabwe. It led to the election of the country's first government based on a black majority, and meant that blacks ~~and~~ as well as whites would now be representing the ~~illegal~~ government of Zimbabwe Rhodesia - as the country became known after the Internal Settlement - in subsequent settlement attempts. The United Kingdom, instead of being a principal party trying to negotiate a settlement with an illegal white government in its rebellious colony, became more an arbiter between an internal government based on a black majority and external black parties seeking to gain power - as the Lancaster House Conference was to demonstrate. With the Internal Settlement, Rhodesian whites did not retire quietly from the scene - on the contrary they made sure there were safeguards to ensure their standards and position for some years to come. Nevertheless, they accepted black majority representation in the Parliament - a politically irreversible step consistently resisted until then.

Mr Smith's announcement in November 1977 that he was going to commence talks with internal nationalist parties effectively ended any chance of reviving the Anglo-American Proposals, although attempts to do so by means of all-party talks continued throughout 1978. When the Internal Settlement Agreement was announced it was rejected by most countries as illegal and unacceptable. Proposals in the Agreement for a new constitution and for transitional arrangements were criticised for the disproportionate power they would give whites for at least the next 10 years. The Agreement was also criticised on the ground

that the Patriotic Front had not been involved in the negotiations which led to it. The Rhodesian Government's response to this last criticism was that the Patriotic Front had been invited on a number of occasions to participate but had refused to do so. The Patriotic Front refused because all invitations had been conditional and anyhow it believed that negotiations for a settlement should be between representatives of Zimbabwean nationalism and the British Government.

Despite the opposition of most countries the internal parties set about implementing the Agreement. A constitution was negotiated and announced on 2 January 1979. The constitutional proposals were submitted to the white electorate at a referendum on 30 January and approved, and a Constitution Bill was passed by the Rhodesian Parliament on 20 February.

The Constitution was criticised on much the same grounds as the Internal Settlement Agreement - whites retained too much power and privilege through a disproportionate influence in the legislature, including the power of veto over significant constitutional change for 10 years, through the entrenchment of provisions in several key Acts, through de facto control for some years of the various services commissions and through de facto domination of the judiciary. The criticisms were valid, but much would have depended on how the Constitution was actually implemented, on how rapidly blacks were actually promoted in the various services and the judiciary, and on the degree of tolerance shown by blacks and whites for each other and their appreciation of each other's fears and aspirations.

In theory, any provision of the Constitution or the clauses entrenched in key Acts could have been amended at any stage. In practice, the constitutional requirement that any vote for change be supported by 78 members of the 100 - strong House of Assembly, particularly when whites were guaranteed 28 votes, effectively ruled out the possibility of any amendments not

supported by whites. The Constitution was a compromise, and as such was not what all parties might have preferred.

Elections under the Constitution were held in April 1979 and resulted in a majority for Bishop Muzorewa's UANC party. Most international observers and the Press regarded the procedures and conduct of the elections, held in a guerilla war situation, to have been reasonably free and fair under the circumstances. Although a minority criticised the conduct of the elections, most of the criticism was of the 1979 Constitution on which the elections were based. The major criticisms were that the Patriotic Front parties were not involved, that black voters had not been given a chance - unlike white voters - to pass judgment on the Constitution and that, in any case - and this was the basis of many countries' objections - the elections would not end the guerilla war.

The official response to the first was that the Patriotic Front was invited to take part in the elections - although this would have involved participation by the Patriotic Front in an election administered by its political opponents. The threat by the Patriotic Front to disrupt the elections compelled the Zimbabwe Rhodesian Transitional Government to detain known supporters of the Patriotic Front. The response to the second criticism was that the elections themselves provided an opportunity for blacks to vote on the Constitution - a relatively high turnout being indicative of support, as voting was voluntary. The turnout of some 64% of eligible voters and the comparatively low number of informal votes (3.55%) were cited to support this response. On the third point, despite the claims by some parties that the elections would bring peace, the guerilla war continued.

One result of the elections, however, was to highlight the nature of some countries' opposition to the Internal Settlement. Among the most vocal critics of the elections were

countries which were not themselves parliamentary democracies. A number of other countries refused to recognise the elections partly for fear of offending such countries. The United Nations was particularly criticised for its insistence that the only elections it would recognise in Zimbabwe would be those conducted under its supervision when in the case of at least a dozen member countries where governments had been changed without elections and by violence it had made no such demands.

2. The Internal Settlement Agreement 1978

(1) General

Apart from some half-hearted attempts by the Smith Government to reach a settlement with black nationalist leaders in the period 1973 to 1976, all major attempts to produce a Rhodesian solution up till 1978 were external, and all failed. The Internal Settlement of 1978 was the first involving some black nationalists to successfully produce an agreement in which whites conceded the principle of majority rule. However, the agreement was reached with internal nationalists only and did not involve external nationalists. Nor did it provide for unfettered majority rule. As a consequence, it was not recognised by the international community.

Mr Smith announced his intention to negotiate an internal settlement at a Press conference on 23 November 1977. Formal negotiations began on 2 December and continued until March.[1] The parties involved in the negotiations were: the United African National Council (UANC), headed by Bishop Muzorewa; the African National Council (Sithole) (ANC(S)), headed by the Rev. Ndabaningi Sithole; and the Zimbabwe United People's Organisation (ZUPO), headed by Senator Chief Chirau. Each party had five delegates and four legal and political advisers.[2] The negotiations concluded on 3 March 1978 with the signing of an agreement to establish an interim government to prepare for

majority rule. The Agreement was signed by Mr Smith, Bishop Muzorewa, Mr Sithole and Chief Chirau.

(2) The Agreement

The preamble to the Agreement stated that its purpose was to establish fundamental principles to be embodied in a new constitution 'that will lead to the termination of ... sanctions and the cessation of the armed conflict'.

(a) The proposed Constitution

The 'Rhodesian Constitutional Agreement', as it was referred to by the Transitional Government, provided for a constitution to be drafted and enacted to bring about majority rule on the basis of universal adult suffrage. The constitution was to provide for a legislative assembly of 100 seats - 72 reserved for blacks elected by black and white voters on a common roll, and 28 reserved for whites (i.e. Europeans as defined in the 1969 constitution: whites, Asians and coloureds).[3] Of the 28 seats reserved for whites, 20 would be determined by the white voters on the common roll, and eight would be determined by both black and white voters on the common roll.

In May 1978 the Transitional Government announced that the proposed constitution would also provide for a titular president, to be chosen by an electoral college of all members of parliament, and a Senate, comprising 10 chiefs elected by the Council of Chiefs, 10 members elected by the government of the day and 10 elected by white members of the legislative assembly.

The constitution would have a justiciable Declaration of Rights, which would include in its provisions protection from deprivation of property without adequate compensation and protection of pension rights.

The constitutional provisions mentioned in the Agreement were to be specially entrenched and could only be amended by a Bill receiving the affirmative votes of not less than 78 members of the legislative assembly.

(b) The Transitional Government

The main functions of the Transitional Government were stated in the Agreement as being to bring about a ceasefire and to deal with related matters such as the composition of the future military forces and the rehabilitation of those affected by the war, including members of the 'nationalist forces'. Other duties were to 'determine and deal with' the release of detainees, the review of sentences for offences of a political character, the 'further removal' of discrimination, the 'creation of a climate conducive to the holding of free and democratic elections', the drafting of a new constitution in terms of the Agreement, and procedures for the registration of voters for a general election to be held at 'the earliest possible date'.

The Transitional Government was to comprise an Executive Council and a Ministerial Council. The Executive Council would consist of the Prime Minister and three black Ministers, being the heads of the delegations which took part in the negotiations. Decisions of the Executive Council would be by consensus and its members would rotate as chairman. The Ministerial Council would be composed of equal numbers of black and white Ministers - one black and one white sharing responsibility for each portfolio. Black Ministers would be nominated in equal proportions by the heads of the delegations involved in negotiating the Agreement, and white Ministers would be nominated by the Prime Minister (Mr Ian Smith).

The existing Parliament, elected under the 1969 Constitution, would continue to function as and when summoned by the Executive Council for the purposes of passing a Constitution

Amendment Act to enable Ministers not elected to Parliament to serve for periods in excess of four months, to pass legislation for the registration of voters, to pass the 1978-79 Budget, to enact any legislation or deal with any matter brought forward by the Transitional Government, to enact the new constitution, to nominate the 16 whites as candidates for the eight non-constituency seats reserved for whites, and to enable the work of various select committees and the Senate Legal Committee to continue.

The Executive Council was sworn in on 21 March 1978, and the Ministerial Council (nine Rhodesian Front whites and nine blacks as co-Ministers) first met on 20 April.

The main strengths of the Agreement were that it provided for a universal franchise (even if whites did have an additional vote) - something which the Rhodesian Front Government had not previously conceded, it established a date, 31 December 1978, for independence (subsequently postponed for several months), it provided transitional machinery and it protected the interests of the white minority but prevented white members of the proposed legislative assembly from forming a government in coalition with a single black party.

(3) Criticisms of the Agreement

The key aims of the Smith Government in negotiating a settlement with the internal black leaders were referred to by Mr Smith in an address to the nation on 12 March 1978:

> Despite the failure of the Anglo-American initiative, the need to reach a constitutional settlement in Rhodesia remained paramount, in order to bring an end to the war and to restore normal trading relations. These were our two over-riding objectives, but it would have been pointless to attempt to achieve them on any basis which destroyed the confidence of white Rhodesians on the one hand, or which

failed to meet black aspirations on the other.[4]

A major criticism of the Agreement was that it made no mention of its primary purpose being to provide for majority rule or to change the basis of government. As expressed in the Agreement, the concept of majority rule appeared less important than ending the war and sanctions. The Agreement defined the Rhodesian problem in terms of results rather than causes. Consequently, it failed to win international acceptance despite a good deal of support from internal blacks who saw it as a considerable step forward.

The Agreement was also criticised for the fact that decisions of the Executive Council were to be by consensus - thus each member, including Mr Smith, had a potential veto. The white Ministers on the Ministerial Council had greater experience and a closer rapport with the predominantly white public service and thus would have an advantage over their black co-Ministers. As the existing Rhodesian Front-dominated Parliament continued to function during the transition period it had the potential to block Transitional Government legislation, including the new constitution. In the event, it did not do so.

The continuing power of whites in the Transitional Government was illustrated in their criticism of comments by the co-Minister for Justice, Law and Order, Mr Byron Hove, which resulted in his summary dismissal on 28 April 1978. Mr Hove, a black barrister and member of the UANC, had called for 'positive discrimination' in appointments and promotions to correct years of white domination of the police force. He also called for a restructuring of the judiciary. His criticisms, by extension, applied equally to the public service and armed forces. Mr Hove was criticised by leading white officials and his white co-Minister, Mr Hilary Squires. He was reprimanded by the Executive Council and ordered to withdraw his statement on the grounds that it contradicted the provisions of the 3 March Agreement. When he

refused he was dismissed. The UANC threatened to withdraw from the Transitional Government in protest but in the end did not do so for the sake of the Agreement. Instead for a time Bishop Muzorewa refused to appear in joint public meetings of the Executive Council.[5]

Other criticisms were also made, relating to the composition of the parliament, the franchise, the Declaration of Rights (land and property), and procedures for constitutional amendment.[6] The Committee does not intend to examine these at this point as they are considered in some detail in the section on the 1979 Constitution.

An additional criticism concerned the postponement of the proposed elections. The Agreement had provided for 31 December 1978 to be 'Independence Day' and for elections to be held at 'the earliest possible date'. Elections were subsequently scheduled for 4-6 December. However, on 16 November 1978 the Executive Council stated that because it had 'not yet completed all of the political decisions required for finalising of the new constitution' it was postponing the elections to 20 April 1979.

The Agreement represented a compromise between black aspirations for unfettered majority rule and white demands for safeguards. As a compromise the Agreement offered less than either side would like to have achieved. Proponents of the Agreement argued that it should be accepted as it was the first time that Rhodesian whites had conceded majority rule, and the safeguards demanded by whites would, after 10 years, be capable of being altered - even sooner with some white support. What whites feared was a sudden change in their status: gradual change might succeed where sudden change would be resisted. Critics of the Agreement claimed that the internal blacks conceded too much and the Smith Government too little. The result was the illusion of majority rule - continuing white rule with a black face, through white control of the veto in Parliament, the public

service, police, security forces and judiciary, and through continuing white control of the economy.

Whatever the arguments, the 3 March Agreement set in train a process which whites came to realise was politically impossible to reverse. Future concessions, as events were to show, were concessions made almost wholly at the expense of white safeguards. Had Mr Smith conceded in 1965 what he conceded in 1978 he would have avoided much bloodshed, 13 years of international isolation and severe internal dislocation for a similar - or perhaps even more advantageous - result.

(4) The Agreement and the Patriotic Front

A frequent criticism of the Agreement apart from those outlined in the previous section was that it was reached in the absence of any representatives of the Patriotic Front, despite the fact that one of its two principal objectives was to achieve a ceasefire. As one of the co-leaders of the Patriotic Front, Mr Mugabe, pointed out in a speech to the United Nations Security Council on 9 March 1978:

> The situation in Zimbabwe is a war situation. No agreement that does not take into account the realities of this war situation can produce a settlement. The reality is that only those locked in combat are capable of bringing about a settlement.[7]

Bishop Muzorewa and Mr Sithole, according to some reports[8], had indicated to Mr Smith that they could persuade a substantial number of guerillas to lay down their arms. However, events did not bear out their claims. In fact the guerilla war intensified after the signing of the Salisbury Agreement. An amnesty offered on 20 January 1978 - midway through the talks leading to the Agreement - drew little response, nor did subsequent amnesty offers.

The Patriotic Front was invited to participate in the negotiations which led to the Agreement, but the invitations were non-specific and conditional on the Front ceasing guerilla warfare. Thus Mr Smith at a Press conference on 24 November 1977, in reply to a question on whether the Patriotic Front would be invited, replied:

> Once again I think my stance in regard to this question is consistent. I have said that if any of the externally based organisations are interested in turning over a new leaf so to speak and coming back to Rhodesia on the basis that they forsake terrorism and accept that the best thing to do is to work constitutionally for a peaceful settlement in Rhodesia, then their case will be given very serious, and I should imagine, favourable consideration. Clearly we will have to be satisfied that any such offers and undertakings given are given in all honesty and with complete sincerity.[9]

Mr Smith indicated a similar position after the event when, after talks with Dr Owen and Mr Vance in Salisbury, he stated on 25 April 1978:

> As we have pointed out previously, the leaders of the Patriotic Front were not excluded from our negotiations. They excluded themselves. It was repeatedly made clear that they would be welcome to return and participate, provided they returned in peace.[10]

The invitations did not make clear whether forsaking terrorism or returning in peace meant a ceasefire or a surrender. Whatever the case, the Patriotic Front refused to participate.[11] In a statement to the UN Security Council on 9 March 1978 Mr Mugabe roundly condemned the Internal Settlement, describing it as a 'conspiracy' of the Smith regime, and its black participants as 'puppets' and 'stooges'.[12]

The Patriotic Front also ignored a number of invitations to join the Transitional Government issued after the Agreement

was signed. These included invitations to Mr Nkomo and Mr Mugabe to join the Executive Council, as indicated in the following statements by Bishop Muzorewa and Mr Smith:

> Bishop Muzorewa (26.7.78): We have never been averse to the participation of the Patriotic Front in our Transitional Government. Indeed we have repeatedly stated that there are two empty chairs for Mugabe and Nkomo on the Executive Council and that we want all people to participate in an all party election.[13]
>
> Mr Smith (8.12.78): We have invited them to participate. We invited them to participate in our conference which led to the March 3rd Agreement. At least a dozen times subsequently we have invited them to come back and participate and offered them the same position as the rest of us in the Transitional Government, seats on the Executive Council, Ministers in the Ministerial Council but they have not accepted.[14]

As with the invitations to participate in the negotiations leading to the Agreement, the major condition governing the return of the Patriotic Front leaders was 'that they must work constitutionally and peacefully as opposed to using force and intimidation'.[15] Few would argue with the call for peaceful involvement, but again it was never made clear whether this involved a ceasefire or surrender. After the 3 March Agreement the demand to work 'constitutionally' was interpreted to mean participation within the terms of the Agreement - and thus within a system in which military, police and administrative powers lay with the opponents of the Patriotic Front.

The Patriotic Front attitude to the negotiations leading to the Internal Settlement was that the only discussions in which it would participate would be discussions between the UK, as the colonial power, and the Patriotic Front, 'as the authentic representative of the people of Zimbabwe'.[16] In any interim or transitional period, Patriotic Front forces should be the predominant security force and the UK and the Patriotic Front

would share administrative power.[17] These conditions were unacceptable both to Mr Smith and to the internal black leaders, whose only involvement would have been through the UK.

Mr Smith's disillusionment at the failure of his internal black co-leaders to produce a ceasefire may have led him to engage in secret talks with Mr Nkomo in Lusaka on 14 August 1978 in the presence of Brigadier General Garba, of Nigeria, and some senior officials of the Zambian Government (the talks were the second in a year with Mr Nkomo - the first being in late 1977[18]). According to Press reports of Mr Nkomo's version of the talks, Mr Smith allegedly offered Mr Nkomo leadership of the Transitional Government until elections were held, at the expense of the internal black leaders, and indicated that in principle he was prepared to transfer power to Mr Nkomo's wing of the Patriotic Front.[19] Mr Smith denied he had made such an offer.[20]

Earlier, on 5 July, the Executive Council had agreed to consider the creation of a fifth seat on the Council for a representative of the Ndebele (the three black members of the Executive Council were all Shona). In announcing the Executive Council decision a Transitional Government spokesman referred several times to invitations to Mr Nkomo, an Ndebele, to join the Transitional Government and said that despite his rejection of past invitations a seat was still available to him should he change his mind.[21] The proposed seat was never filled.

Whether Mr Smith was seeking to sound Mr Nkomo out on settlement possibilities generally, whether he went to offer him a seat on the Executive Council, or whether he went to offer him more at the expense of the existing black members of the Executive Council, has not been revealed. Undoubtedly one consideration in Mr Smith's exercise must have been the possibility of splitting the Patriotic Front by holding his discussions only with Mr Nkomo - regarded by most white Rhodesians as the more moderate of the two Patriotic Front

leaders. Mr Smith's exercise did succeed in increasing tensions between the two wings of the Patriotic Front and caused divisions among the leaders of the Front-line States, but it also caused disquiet among his white supporters and the black members of the Executive Council.

Mr Nkomo was reported to have refused to return without Mr Mugabe. The Presidents of the Front-line States met at Lusaka on 2-3 September and were reported to have discussed the secret meeting. According to President Nyerere, of Tanzania, Mr Smith's intention was 'clearly to try and divide the Patriotic Front and if possible to divide the front-lines States'. President Nyerere said the Front-line States preferred talks on Rhodesia to be with the United Kingdom, as the colonial power, and on the basis of the Anglo-American Proposals.[22]

(5) The Agreement and the Anglo-American Proposals

A comparison of the Agreement and the Anglo-American Proposals indicates several key differences. The Anglo-American Proposals recognised that transitional institutions and arrangements should not be subject to control by the existing Zimbabwe Rhodesian Government, and proposed an independent administration under a Resident Commissioner. In the Internal Settlement Agreement these arrangements were under the control of the Transitional Government. In the Anglo-American Proposals the Resident Commissioner was to ensure free and fair elections under United Nations supervision. In the Agreement there was no provision for outside supervision. Arrangements and responsibility for the conduct of the elections remained effectively with the Transitional Government.

Under the Anglo-American Proposals a UN Zimbabwe Force was to assist the Resident Commissioner to maintain law and order, to supervise a ceasefire and to liaise between the existing Rhodesian security forces and the 'liberation forces'

during the transition period. There were suggestions, however, that upon independence the new Zimbabwean army would be based on the 'liberation forces' but with recruitment open to all. Under the Agreement the existing Zimbabwe Rhodesian security forces continued in operation, but guerillas who responded to amnesties were able to enlist if they so desired.

Amendment of entrenched provisions in the constitution under the Anglo-Americal Proposals was by two-thirds majority in a National Assembly of 100 members elected on a common roll and, for the first two parliaments or eight years, 20 special members elected by the other 100 members to represent minority groups. There was no special provision for whites other than the representation for minority groups, and even the special members need not have been white. Under the Agreement the amendment of entrenched provisions, in the course of the first two parliaments or 10 years, was by a majority of 78 out of 100 members, 72 of whom were blacks and 28 of whom were whites. The Agreement effectively provided for a white veto while the Anglo-American Proposals did not.

White safeguards and white dominance, for some years at least, of the public service, judiciary, police and security forces were more likely under the Agreement than under the Anglo-American Proposals.

(6) World reaction

The United Nations Security Council on 14 March 1978, by a 10-0 vote, with the five Western members abstaining, rejected the Internal Settlement, declaring the Agreement - and any settlement made 'under the auspices of the illegal regime' - as illegal and unacceptable. The resolution declared that:

> ... the speedy termination of the illegal regime and the replacement of its military and police forces is the first prerequisite for

the restoration of legality in Southern Rhodesia.[25]

The resolution also declared that any arrangements for a settlement should include the holding of free and fair elections on the basis of universal adult suffrage 'under United Nations supervision'.

In explaining their ~~votes~~ abstention the British and United States representatives argued that the Internal Settlement contained some positive elements and needed to be examined dispassionately. While Britain and the United States were not prepared to reject the Internal Agreement out of hand, particularly those elements consistent with the overall objective of the Anglo-American Proposals of majority rule, they were concerned that it did not provide for impartial transitional arrangements or a genuine transfer of the instruments of power to the black majority. Nor did it include the Patriotic Front.

For the remainder of 1978 Britain and the United States concentrated their efforts towards convening an all-parties conference in the hope of securing acceptance of the Anglo-American Proposals as a basis for an eventual settlement. In the course of 1978 three optional versions of the Anglo-American Proposals were developed in efforts to get an all-parties conference underway. None of the options changed the basic principles of the Anglo-American Proposals, but were refinements mainly of the transitional provisions intended to encourage all parties to get together for negotiations. However, none of the options proved acceptable to all parties.

In July 1978 the Organisation of African Unity reiterated its decision at Libreville a year earlier to recognise the Patriotic Front as the sole representative of the people of Zimbabwe. It declared that the parties to the Internal Agreement were now part of the 'illegal Salisbury regime', and called for intensified armed struggle and support for the Patriotic Front,

designated the sole liberation movement of Zimbabwe. The Agreement was also rejected by the Presidents of the Front-line States.

The Australian Government continued its support for the Anglo-American Proposals. The Australian response to the Internal Settlement Agreement was outlined in the following written answer on 31 May 1978 to a question without notice in the Senate by the Minister representing the Minister for Foreign Affairs:

> In his foreign policy statement to Parliament on 9 May, the Minister for Foreign Affairs expressed the Government's support for all attempts to find peaceful solutions to the problems in southern Africa based on the principles of majority rule and human rights for all. As far as Rhodesia (or Zimbabwe) is concerned, the Government sees the Anglo-American proposals as providing the best basis for a lasting settlement acceptable to Rhodesians as a whole and internationally. It therefore supports the attempts of the British and American Governments to bring all the parties involved to the conference table.
>
> The Government considers the agreement signed on 3 March by Mr Smith and the three black nationalist leaders as a positive development. However, it is by no means certain that it will be accepted by Rhodesians as a whole and this must be the final test of any settlement. It must also be recognised that the agreement falls well short of the Anglo-American proposals as a basis for genuine majority rule....
>
> The Anglo-American proposals ... do not contain provisions which would allow the minority to preserve its privileged position. They provide for the protection of basic rights for all, on a non-discriminatory basis, through a Bill of Rights. They also provide for impartial transitional arrangements and internationally supervised elections. The Anglo-American proposals are, moreover, more broadly based and envisage the participation of all the parties concerned in the negotiating process.[24]

(7) Subsequent developments

The more significant developments in the remainder of 1978 and early 1979 were as follows.

2 May 1978: The Transitional Government, in conformity with its duties under the Agreement to 'deal with' matters such as the release of detainees, announced that it had released more than 700 persons detained without charge or trial on an indefinite basis. Further releases were planned. The Catholic Commission for Justice and Peace in Rhodesia reported on 4 July 1978 that according to its figures 813 political detainees had been released and 137 continued to be held without trial - figures which broadly accord with the general estimate of about 1,000 detainees at the time the Agreement was signed.[25]

According to the London-based International Defence and Aid Fund for Southern Africa the phased release program did not include persons convicted for political activities under the Law and Order (Maintenance) Act and other legislation, and all persons being released were required to sign a pledge not to engage in subversive or unlawful activities.[26] Also, while the release program was under way, new suspects were being detained.

In its 2 May announcement the Transitional Government also offered an amnesty and lifted bans on proscribed political organisations, including the internal organisations of ZAPU and ZANU, provided that their political activity was peaceful and lawful.[27] Mr Nkomo and Mr Mugabe both rejected the amnesty offer.

8 August 1978: The Executive Council approved recommendations of the First Report of the Ministerial Committee on the Removal of Discrimination. The recommendations concerned admission to public places, trading in black and white areas, provision of separate facilities by local authorities and local government elections.[28]

10 September 1978: Martial law was introduced 'in order to cope with the worsening situation, externally motivated'.[29] The announcement to introduce martial law was partly a result of the shooting down of an Air Rhodesia Viscount aircraft by ZAPU a week earlier. (A second Viscount was shot down on 12 February 1979). Announcing its introduction, Mr Smith said that martial law would be introduced in particular areas as and when required, and would not be introduced on a nationwide basis. However, by the time of the April 1979 elections, some 90% of Rhodesia was under martial law.

17 September 1978: The Transitional Government announced that blacks would be drafted into the Rhodesian army for the first time and would have the same military obligations as whites.[30]

18 September 1978: The bans on the internal organisations of ZAPU and ZANU were reimposed, after their leaders had been placed in detention. They were detained on the ground that they had 'openly vowed to work against the Agreement' and in order to give the Agreement 'a fair chance'.[31] The re-imposition of the bans was conditional: if the Patriotic Front wished to participate peacefully in the coming electoral process the bans would be lifted once more.

October 1978: In October 1978 the four members of the Executive Council went to the United States at the invitation of a group of 27 US Senators. In the course of discussions with the US State Department and senior officials from the United Kingdom on 20 October the four agreed to attend an all-party conference. The Patriotic Front responded that it was prepared to meet only with Britain 'to work out the process of total transfer of power to the people of Zimbabwe'.[32] The Executive Council after its US visit continued to declare its readiness to attend an all-parties conference without preconditions until 21 March 1979 when it

declared that because of the failure of the UK and USA to call such a conference it had no alternative but to proceed with the full implementation of the Internal Settlement Agreement.[33]

30 November 1978: The Executive Council announced that for the life of the first parliament, or five years, the Government would be one of national unity. This was to ensure 'policial stability' while the new Government tackled the security situation and the economy.[34]

January-February 1979: The new constitutional proposals were announced on 2 January 1979, and were submitted to a referendum of white voters only on 30 January. Just under 85% of the 68,000 whites who voted in the referendum (a turn-out of 71%) voted in favour. A Constitution Bill was presented to Parliament on 7 February 1979 and was passed on 20 February. Parliament was dissolved on 28 February.

2 February 1979: Zimbabwe Rhodesia officially became a non-racial society as eight laws barring racial discrimination went into effect, eliminating legal segregation in public education, hospitals and residential areas, and making it an offence to deny admission to hotels, restaurants and theatres because of race. The Land Tenure Act was repealed.

17 March 1979: An unconditional amnesty was offered to all guerillas to return in peace and take part in the April elections.

3. The Constitution of 1979

(1) General

After the signing of the Internal Settlement Agreement a Constitution Drafting Committee was established. It was chaired by the then Director of Legal Drafting and Solicitor-General, Mr

L.G. Smith (a civil servant), and comprised two representatives each from the UANC, ZANU (Sithole) and ZUPO, with the Rhodesian Front appointing one member.[35] With one exception, the members were either all advocates or attorneys. Each draft chapter was submitted to the Ministerial Council for discussion and comments and was then submitted to the Executive Council for approval by consensus.

The Constitution of Zimbabwe Rhodesia 1979, as finally approved by the Executive Council and as enacted, largely reflected the intentions of the Internal Settlement Agreement. It provided that Rhodesia was to be a sovereign state officially known as Zimbabwe Rhodesia. The major provisions of the constitution were a bicameral parliament elected by universal franchise, a judiciary independent of political control, independent commissions to oversee the public service, police force, prison service and defence forces, an ombudsman, a Declaration of Rights, and protection of the existing rights of whites by weighted representation in the parliament and by the special entrenchment of safeguards.

(2) The Constitution

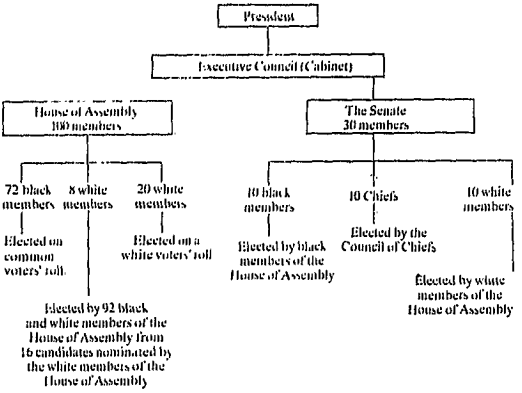
(a) The legislature

The legislature was to consist of a titular head of state and a Parliament comprising a House of Assembly and a Senate. The head of state was the President, appointed by an electoral college consisting of the members of both Houses.

The 100-member House of Assembly included 72 blacks elected by voters on a common roll to represent 72 constituencies. However, for the first parliament, these members were elected by a party-list system and not on a constituency basis. The other 28 members were whites, 20 being elected by whites on the white voters roll to represent 20 constituencies

and the remaining eight being elected by the 72 black and 20 white members of the House of Assembly sitting together as an electoral college. The eight were to be elected from 16 white candidates nominated by the white members of the previous House of Assembly. The Senate consisted of 30 members - 10 chiefs elected by the Council of Chiefs (five from Mashonaland elected by Mashonaland members of the Council of Chiefs, and five from Matabeleland elected by Matabeleland members of the Council of Chiefs), 10 blacks elected by the 72 black members of the House of Assembly, and 10 whites elected by the 28 white members of the House of Assembly. The provisions of the Constitution relating to the legislature are shown schematically in Figure 5.1.

Figure 5.1: The legislature under the 1979 Constitution



(b) Constitutional commission

At the end of 10 years or after the second parliament, whichever was the later, a commission would be established to review the question of retaining the 28 white seats. The chairman would be the Chief Justice or a judge of the High Court nominated by him and four other members, two to be elected by the 28 white members of the House of Assembly and two to be appointed by the President. If that commission recommended by majority vote that the white seats should be abolished or reduced, a Bill to give effect to the recommendation could be passed by 51 members of the House of Assembly and the Bill would not be submitted to the Senate. If the white seats were abolished or reduced, the existing 72 black seats would no longer be reserved exclusively for blacks and the 20 members of the Senate who were not chiefs would be elected by all the members of the House of Assembly and not two separate racial groups.

(c) The franchise

Under the provisions of the Electoral Act 1979 all persons 18 years of age and over who were citizens of Zimbabwe Rhodesia or who had been resident in Zimbabwe Rhodesia for the two previous years were eligible to vote in the first election.

(d) Legislation

Bills had to be considered by both Houses of Parliament, but the powers of the Senate were powers of delay only.

(e) Specially entrenched provisions

Provisions of the Constitution could be amended or repealed by an Act of the legislature. Certain provisions of the Constitution were specially entrenched and a Bill to amend or repeal any such provision had to be passed by not less than 78

members of the House of Assembly. The other provisions of the Constitution could be amended by a two-thirds majority. Thereafter the Bill, whether it was to amend a specially entrenched provision or any other provision, was required to be submitted to the Senate. If it obtained a two-thirds majority in the Senate, the Bill could be submitted to the President for his assent. If the Bill did not obtain a two-thirds majority, it could be delayed for at least 180 days after which the House of Assembly could resolve by a two-thirds majority that the Bill be submitted to the President for his assent.

The provisions of the Constitution which were specially entrenched were listed in the second schedule. The more important dealt with the President, his powers and duties, his election and tenure of office; the Parliament, its power to make laws, and the composition of the Senate and the House of Assembly; procedures in regard to Bills; functions and reports of the Senate Legal Committee; the Executive and Executive Council; the declaration of public emergencies; the judiciary; the commissions (including the Judicial Service Commission, Public Service Commission, Police Service Commission, Defence Forces Service Commission) and the powers and functions of the public service, police, defence forces; finance and the Consolidated Revenue Fund; the Declaration of Rights; citizenship; the ombudsman; amendment of the Constitution and entrenched provisions of other laws; English as the official language; the appointment of chiefs by the President and continuation of the Council of Chiefs; the remittability overseas of pensions; the schedule of specially entrenched provisions; and transitional provisions.

Out of 212 clauses in the Constitution (including the 42 clauses of the third schedule which dealt with transitional provisions) 168 were specially entrenched. Only 44 clauses of the Constitution were not specially entrenched, and these dealt in the main with matters consequential on those in entrenched clauses. In addition, certain provisions of eight Acts were also

specially entrenched. A Bill to amend such provisions had to go through the same procedures as a Bill to amend a specially entrenched clause in the Constitution. The Acts were the Electoral Act 1979, Education Act 1979, Medical Services Act 1979, Housing Standards Control Act, Rural Councils Act, Urban Councils Act, Parks and Wild Life Act and the Forest Act. Other provisions of these Acts, and of the approximately 350 other Acts in existence, could be amended by a simple majority of members voting in favour at each reading. Laws current prior to the new Constitution continued in force until such time as amended or repealed by the legislature.

(f) The executive

To advise the President there was an Executive Council consisting of the Prime Minister and Ministers appointed by the President. For the first parliament or a period of five years, whichever was the longer, there would be a government of national unity in which each party represented in the House of Assembly by five or more members would be represented in the Executive Council in proportion to the number of seats held by it.

(g) The judicature

Judicial authority was vested in the High Court, whose judges were appointed by the President on the advice of a Judicial Service Commission. This Commission consisted of the Chief Justice as chairman, the chairman of the Public Service Commission and one other member appointed by the President on the advice of the Chief Justice. The third member had to be a High Court judge or an advocate or attorney of not less than 10 years' standing.

A person eligible for appointment as a judge had to have been a judge of a superior court in a country in which the common law was Roman-Dutch and English an official language or the

person had been qualified to practice as an advocate for not less than ten years in Zimbabwe Rhodesia or in a country in which the common law was Roman-Dutch and English an official language. The Constitution guaranteed judges security of tenure of office, and serving judges continued in office.

(h) Public service and prison service

The public service and prison service came under the jurisdiction of the Public Service Commission. In relation to the prison service certain of the commission's functions could be delegated to the Director of Prisons. The Public Service Commission was responsible for appointments and for the conditions of service of members of the public service and prison service. The Government retained financial control.

[In a memorandum to the Sub-Committee chairman, dated 25 May 1979, the then Solicitor-General,] Mr L.G. Smith, commented:

> The policies of government and the allocation of funds to implement such policies will be determined by the government of the day. The function of the Public Service Commission is to ensure that there is a well-trained and efficient Public Service to implement Government policies.[36]

The Commission consisted of a chairman and two to four other members appointed by the President on the recommendation of the Executive Council. The chairman and at least one other member or, if there were more than three members of the Commission, at least two other members, had to be persons who had held the post of Secretary, Deputy Secretary, or Under Secretary in a public service ministry, or an equivalent grade, for at least five years.

Information supplied to the Sub-Committee by the Zimbabwe Rhodesian Government stated that of 10,453 established officer posts (roughly equivalent to Third and senior Fourth

Division or equivalent technical and professional posts in the Australian Public Service) in the public service as at 1 July 1979, 2,631 were filled by blacks (approximately 25%). In February 1978, only 1,215 out of 9,669 posts (approximately 12.5%) were filled by blacks. The Government did not specify the number of blacks at grades equivalent to or higher than Under Secretary, but told the Sub-Committee that as at July 1979 there were 954 black men and 222 black women in senior posts of which the top salary was $Z9,000 or more (equivalent to the top half of the Third Division or equivalent in the Australian Public Service). These included senior personnel in the Ministry of Health, magistrates, medical officers of health, engineers, quantity surveyors, senior agricultural economists and provincial social affairs officers, as well as some administrators.

Evidence by the then Public Services Board to the Rhodesian Commission of Inquiry into Racial Discrimination of 1976 (the Quenet Commission) stated that the concept of a non-racial public service had been introduced in 1961 and that since then 'all posts including established posts were open to persons of any race on equal conditions'.[37] The Public Service Commission was specifically required, when making appointments, to give preference to the person who, in its opinion, was the most efficient and suitable for the appointment.

At July 1979, the Public Service Commission comprised four members - three whites and one black, Mr Griffiths Malaba, formerly the Deputy Chief Education Officer (Standards Control). The then members of the Commission held discussions with the Sub-Committee Chairman and the Chairman of the Joint Committee in Zimbabwe Rhodesia in April 1979.

(i) Police force

The police force, established for preserving internal security and maintaining law and order, was under the command of

the Commissioner of Police, appointed by the President on the recommendation of the Judicial Service Commission. A person could not be appointed as Commissioner unless he had held the rank of Assistant Commissioner or a more senior rank for at least five years. Before making a recommendation the Judicial Service Commission was required to consult with the Prime Minister and, if available, the retiring Commissioner. In his command of the police force and the exercise of his responsibilities and powers, the Commissioner of Police was not to be subject to the direction or control of any person or authority, except that he was required to comply with general directions of policy concerning the maintenance of law and order given to him by the Prime Minister or some other Minister.

A Police Service Commission was responsible for considering grievances and proposals to dismiss, to make regulations for the general well-being and good administration of the force and to maintain it in a high state of efficiency. The Commission consisted of a chairman and two to four other members appointed by the President. The Chairman was the chairman of the Public Service Commission, and of the other members appointed at least two had be persons who had held the rank of Assistant Commissioner or a more senior rank for at least five years.

Information supplied to the Sub-Committee by the Zimbabwe Rhodesian Government stated that at July 1979 the composition of the British South Africa Police was 22% white and 78% black. The Government anticipated that by 1981 there would be 140 black section officers and by 1982 there would be seven black superintendents and 43 black inspectors. As at July 1979 there were seven black commissioned officers (inspector and above), and 204 black policemen and women held senior positions previously held by whites.

(j) Defence forces

The defence forces consisted of the army, the air force and any other branch established by law. The Commander of each branch was responsible for the administration and operations of that branch. Each Commander was appointed by the President on the recommendation of a board consisting of the retiring Commander or, if he was not available, the chairman of the Defence Forces Service Commission, one of the other Commanders and a third member appointed by the President who was a Secretary of a ministry in the public service. There was provision for the Prime Minister to be consulted. If he considered it necessary, the Prime Minister could appoint a person recommended by the Commanders of the army and air force as Commander of Combined Operations. A Commander had to have held the rank of colonel or a more senior rank in the army, or group captain or a more senior rank in the air force, for at least five years.

A Defence Forces Service Commission was responsible for considering grievances and proposals to dismiss and to make regulations for the general well-being and good administration of the forces. The Commission consisted of a chairman and two to four members appointed by the President. The chairman was the chairman of the Public Service Commission, and of the other members at least two had to be persons who had held the rank of colonel in the army or group captain in the air force, or a more senior rank, for at least five years.

In carrying out their functions the Commissioner of Police and Commanders of the defence forces were required to implement and abide by the provisions of laws made by the legislature. Thus, in maintaining law and order members of the police force could only exercise the powers conferred upon them by the legislature; they could not act outside the law without fear of prosecution. Similarly with the defence forces. It was the function of the government of the day to determine the

policies and laws of the country and of the Commissioner and Commanders to give them effect.[38] The Commissioner of Police and the Commanders were also subject to financial controls in that no money could be spent on arms, equipment, buildings or anything else without parliamentary approval.

Information provided by the Zimbabwe Rhodesian Government stated that at July 1979 the regular army was predominately black - of other ranks, 82% were black and 18% white. There were at that time 31 black officers with a number of black officer cadets on courses. Further black commissioning courses were to be held. Of the 31 black officers, the most senior was a captain, with the others being company second-in-commands, platoon commanders, administrative officers, training officers, quartermasters, ADC to the President, adjutant to the School of Signals and chaplains. Of the overall air force establishment, 66% was white and 34% black. Of the senior air force positions 10% were held by blacks and 90% by whites.

In a second memorandum to the Sub-Committee Chairman, dated 4 July, Mr L.G. Smith stated that in the case of the Public Service Commission and the Defence Forces Service Commission, although it would be at least five years before there were black specially qualified members, each was to have two black and three white members from the start.[39]

(k) Declaration of Rights

There was a justiciable Declaration of Rights which provided for the protection of the basic rights and freedoms of the individual and for the protection of minorities, whether black, white or otherwise. The Declaration of Rights provided for protection of the right to life and the right to personal liberty, protection from slavery and forced labour or inhuman treatment, protection from deprivation of property and from arbitrary search or entry, protection of the law, protection of

freedom of conscience, of expression, of assembly and association and of movement, and protection from discrimination.

Perhaps the most contentious and certainly the most detailed of the provisions of the Declaration related to protection from deprivation of property. Under the relevant provisions of the Declaration, a person's property could not be acquired unless the High Court or a court established for the purpose was satisfied that the acquisition was necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, utilization for a purpose beneficial to the public generally or a section thereof, or the settlement of land for agricultural purposes.

In the case of the settlement of land for agricultural purposes, the land could only be acquired if it had not been substantially used for agricultural purposes for a continuous period of at least five years. If the failure to use the property was because of public disorder, any such period of non-use was to be disregarded. Where property was compulsorily acquired, the owner would be entitled to receive adequate compensation.

Any law which adversely affected any right to pension benefits would be regarded as a law providing for the acquisition of a right in property.

The Declaration also provided for preventive detention. The laws which actually implemented preventive detention, however, were subject to amendment by simple majority. The constitutional provisions on preventive detention laid down certain requirements which had to be met by any preventive detention laws.

A Senate Legal Committee was established to examine Bills and statutory instruments against the Declaration of Rights. If the Committee reported adversely on a Bill the Senate

could resolve that the Bill, if enacted, would be in contravention of the Declaration of Rights, and would then have to reject the Bill. However, after 360 days the House of Assembly could by-pass the Senate and submit the Bill directly to the President for his assent. If the Senate did not so resolve the Bill became law.

The protections of the Declaration of Rights could also be enforced in the courts. Although existing laws were protected for a period of 10 years to the extent that during that period they could not be declared ultra vires on the grounds that they were inconsistent with the Declaration of Rights, all such laws could be amended at any time by the legislature.

(1) Other provisions

The Constitution protected multiple citizenship rights, created an ombudsman (who was not, however, permitted to investigate complaints relating to activities of the police or defence forces), and provided that English would by the official language of the country. The system of chiefs and the Council of Chiefs was retained. The remittability of pensions overseas was guaranteed with restrictions being permitted for a limited period in relation to the remittability of any commutation of a pension.

(3) Criticisms of the Constitution

Proponents of the Constitution argued that it provided for majority rule and a non-racial society, while at the same time protecting minorities. Critics argued that the overall effect of the Constitution was to preserve the powers and privileges of the white minority at the expense of blacks. Aspects of the Constitution which attracted most argument were: the provision of a large bloc of white seats and continuation of a separate white voters roll; the establishment of independent commissions to oversee the public service, prison service, police

force and defence forces and the qualifications required for members of those commissions; the establishment of a similar commission for the judiciary and the qualifications required for membership of that commission and for judges; the special entrenchment of key provisions of the Constitution and of certain Acts; and the Declaration of Rights. Critics also pointed to the 'illegality' of the Constitution itself. In the following the Committee outlines some of the criticisms and Zimbabwe Rhodesian Government responses.[40]

(a) Legality of the Constitution

Perhaps the first criticism was that the Constitution was no more legal or valid than the UDI Constitution or the 1969 Constitution it replaced, and the Government it produced was not any more legal than the Smith Government prior to 1978.

As far as the international legal aspects of recognition were concerned, although Zimbabwe Rhodesia possessed several of the attributes of a sovereign independent state it had received practically no recognition as such a state. It was still regarded by most countries as a British colony. Australia, along with most other countries, consistently adopted the view that Rhodesian governments and their constitutions since 1965 had been illegal. The Australian position was succinctly put in an Executive Certificate provided by the Government to the NSW Supreme Court in a 1974 case involving the then Rhodesian Information Centre:

> ... the Executive Government of Australia -
>
> 1. recognizes that Southern Rhodesia has since 1923 been and continues to be a colony within Her Majesty's dominions;
>
> 2. recognizes that the Government and Parliament of the United Kingdom have responsibility for and jurisdiction over Southern Rhodesia as and to the extent provided under s.1 of the Southern Rhodesia Act 1965 of the United Kingdom;

3. does not recognize and has not at any time recognized Southern Rhodesia (or Rhodesia) as a State either de facto or de jure;

4. does not recognize and has not at any time since 11 November, 1965, recognized any persons purporting to be Officer Administering the Government, President or Ministers of Rhodesia (or Southern Rhodesia) as constituting a Government in Southern Rhodesia either de facto or de jure.[71]

(b) Parliament and the franchise

Two criticisms of the Constitution were that it provided for a separate, racially-based roll for whites, and gave whites, who comprised only 3.5% of the population, a disproportionately large bloc of 28 seats in a 100-seat House of Assembly. Although blacks had a large majority, that majority was largely illusory because whites could block all changes to specially entrenched clauses in the Constitution and its schedules (168 out of 212 clauses covering key provisions), and needed the support of only seven blacks to block changes to the remaining clauses of the Constitution (blacks, likewise, need the support of six whites to change any specially entrenched clauses). Critics argued that whites in fact retained power by their ability to block change and by their continuing social and economic control.

The response of whites in Zimbabwe Rhodesia was usually that numbers alone were not a good criterion. Whites had made a major contribution to the economy and administration of the country and if the gains made were not to be lost, a transitional period was both desirable and necessary. 'Moderate' blacks were keen that whites remained in the country to ensure the retention of their skills and expertise. A 10-year period of safeguards for whites who did stay was considered a reasonable 'trade-off' for relinquishing the reigns of government. In any case there was no requirement that whites had to vote as a bloc and if six or more whites in the House of Assembly agreed with changes to entrenched

clauses, including those reserving white seats, then those changes could be made. Apart from entrenched clauses in the Constitution and sections of eight Acts, the Parliament was able to amend or abolish any of the 350-odd Acts in force, or create new laws, by a simple majority.

White Rhodesians also pointed out that provision for reserved seats for whites was by no means unique in Africa. Apart from consistent British acceptance of the principle in various settlement proposals, Zambia, Tanzania and Malawi all had provision for reserved white seats in their independence constitutions - in the case of Zambia 10 out of 75 elected seats. In the case of Tanzania, out of 81 seats 12 were reserved for whites, 11 for Asians and eight were nominated seats (four of which also went to whites and one to an Asian).[42]

(c) The judiciary and service commissions

Critics argued that the qualifications for the judiciary, top positions in the police and defence forces and members of the service commissions were such that in practice it would be some years before blacks could qualify. The establishment and powers of the various commissions were such that they would be able to act in large measure independently of the government of the day. Whites would, in effect, continue to oversee the day-to-day life of the country through their monopoly of top positions and thus largely preserve the social and economic status quo. Continued white domination would be enhanced by requirements for promotion on merit and efficiency - blacks would will be at a disadvantage because of many years of discrimination and lack of opportunity.

The broad response was that independent commissions were established to maintain a judiciary, public service, police force, etc. free from political interference and patronage. The Constitution provided that senior officials (Commissioner of

Police, defence force Commanders) were required to comply with general directions on policy issued by the Prime Minister or some other authorised Minister, and the services were all subject to financial controls. The qualifications of those appointed to the judiciary, the service commissions and other senior positions were set at the level they were to maintain existing high standards. The head of one public service department in Rhodesia told the Sub-Committee Chairman during a visit to Zimbabwe Rhodesia in 1979: 'We are concerned about what happened in countries like Zambia where standards deteriorated because you had inexperienced civil servants dealing with inexperienced ministers, and where political appointments became the norm.'

In discussions with the members of the then Rhodesian Public Services Board in April 1979, the Sub-Committee Chairman was told that the Public Service Commission would have to walk a tightrope between majority government demands for accelerated advancement for the better blacks on the one hand and allay apprehensions about positions, career prospects, pensions etc. of white public servants on the other, while at the same time trying to maintain an independent and expert public service. The Board had instituted a program of accelerated advancement of blacks up to middle management level, with promotion thereafter depending on vacancies and merit. Some supernumerary positions might be created at senior levels to train blacks for top positions.

(d) Special entrenchments

Apart from the fundamental provisions of the Constitution which were specially entrenched, certain provisions in eight other laws were also specially entrenched. The reasons for their entrenchment were outlined by Mr L.G. Smith as follows:

> The Electoral Act, 1979, specifies that the provisions thereof providing for the appointment and functions of the Delimitation Commission and the Registrar-General of

Elections, the qualifications for election as a Senator or member of the House of Assembly and the system of elections for the first Parliament are specially entrenched. This is to ensure that the foundations of the Constitution cannot be undermined by a lesser number of members than are necessary to amend the entrenched provisions of the Constitution. The other provisions of the Electoral Act, which set out the mechanics for elections, can be amended by Parliament by an ordinary majority.

The Education Act, 1979, provides for the establishment and operation of private schools and community schools and also Government schools. In order to ensure that education will continue to be provided by the Government at present standards, the Act provides that there will be three classes of Government schools - high fee paying, low fee paying and schools where education is free. The number of schools which may be established by Government and the facilities to be provided at the schools is within the complete discretion of the Government of the day. All the Act requires, however, is that the Government shall maintain the various classes of schools which are presently maintained in the country. The provisions of the Education Act which are entrenched are those which ensure the retention of these principles. Admission to Government or community schools cannot be regulated on a racial basis.

The Medical Services Act, 1979, requires the Government, as far as is reasonably possible, to provide and maintain or encourage the provision and maintenance of comprehensive and constantly developing hospital services. Government hospitals are required to be classified as open or closed, depending on the basis of the fees to be charged thereat. Admission will not, however, be regulated on a racial basis. The Act specifies that provisions providing for the above matters are specially entrenched.

The Housing Standards Control Act [Chapter 208] provides for the control of the standards and safety of buildings and also for the control of the harmful use or occupation of premises and undue interference with the rights of persons. The Act specifies that the

relevant provisions, which are not racially discriminatory, are specially entrenched.

In addition to the above, the Parks and Wild Life Act, 1976, and the Forest Act [Chapter 125] prescribe the areas of the country which are set aside for national parks and the conservation of wild life and for forestry purposes. The Constitution provides that the areas as set aside on the 31st May, 1979, may not be reduced by more than 1% unless the Bill providing for such reduction is passed by 78 votes in the House of Assembly. The purpose of this provision is to ensure that the total extent of the areas set aside for national parks or forestry purposes is not reduced to any great extent unless the necessary majority of the members of the House of Assembly agree thereto.

Local government in the country is provided by a system of municipalities, town councils, rural councils and local boards. These are administered throughout the country on a completely non-racial basis. The Constitution provides that any Bill which amends certain provisions of the Acts regulating these local authorities [Rural Councils Act, Urban Councils Act] requires to be passed by 78 votes in the House of Assembly.[43]

Critics argued that the result of these special entrenchments was to replace discrimination on racial grounds by discrimination on economic grounds: blacks would only be able to utilise the superior facilities of previously white schools and hospitals, and move into previously white suburbs if they could afford to pay. As the vast majority of blacks did not earn anywhere near as much as whites they would still be effectively excluded and would continue to be second class citizens. The provisions entrenched in the eight Acts entrenched white privilege on an economic basis, ignoring the great inequalities in wealth fostered by previous white governments.

(e) Racial discrimination and the Declaration of Rights

Before it was dissolved in February 1979, the last parliament constituted under the 1969 Constitution passed the following laws to end racial discrimination on a legal basis. The Parliament:

- enacted the Public Premises (Prevention of Racial Discrimination) Act 1979;
- repealed racially discriminatory provisions in the following Acts:
  - (i) General Law Amendment Act [Chapter 43],
  - (ii) Services Levy Act [Chapter 185],
  - (iii) Rural Councils Act [Chapter 211],
  - (iv) Urban Councils Act [Chapter 214],
  - (v) African Beer Act, 1974;
- repealed the following Acts which contained racially discriminatory provisions:
  - (i) Education Act [Chapter 82],
  - (ii) Land Tenure Act [Chapter 148],
  - (iii) African Education Act [Chapter 233],
  - (iv) Africans (Urban Areas) Accommodation and Registration Act [Chapter 242],
  - (v) Shop Hours Act, 1975;

- enacted the Tribal Trust Land Act 1979, which set aside approximately 40% of the area of Zimbabwe Rhodesia for occupation by tribesmen on a voluntary basis.

Racial discrimination in written laws was prohibited by the Declaration of Rights, but this prohibition could be suspended in periods of public emergency.

The Declaration was criticised as relatively meaningless in that the scope of the basic rights were qualified by a number of broad and vaguely-worded qualifications and exceptions, that most of its provisions could be suspended in times of emergency, and that it served to entrench white privilege and property ownership as much as basic human and civil rights.

(4) The Constitution as a compromise

When examining the good and bad points of almost any constitution it should be remembered that such a document is more often than not a compromise between competing positions. It should also be remembered that a constitution is only as effective as it is allowed to be in the environment in which it operates, including particularly the attitude and approach of those who interpret and enforce its provisions. In the United States, for example, despite a Bill of Rights enshrined in the Constitution, it was many years before American blacks were afforded equality with whites, and women were afforded equality with men, and were able to vote. As a compromise, the 1979 Constitution did not, and most probably could not, please all parties. Examined in the abstract, it was not an unreasonable compromise, but the test of the Constitution would have been in its practical implementation.

4. The 1979 elections

(1) General

With the April 1979 Zimbabwe Rhodesian elections pending, the British Foreign and Commonwealth Secretary, Dr Owen, in a statment issued on 17 March, called on 'all parties' (internal and external) to first accept the principle of United Nations supervised elections in Zimbabwe Rhodesia and to agree to negotiate the conditions for holding such elections, preferably before the April elections were held. He said that Britain would not be sending observers to the April elections 'since to do so could be to imply official recognition'. ~~to the conflict'~~. Dr Owen said that Britain would lift sanctions as soon as an agreed-upon and irrevocable transition process leading to UN supervised elections had begun. A similar statement was made on the same day by the US Secretary of State, Mr Vance.

Two days later the Commonwealth Committee on Southern Africa issued a Press release which condemned the approaching elections as 'fraudulent' and called on governments to refrain from sending official observers. Earlier, on 8 March 1979, the United Nations Security Council declared the proposed elections and any results thereof as 'null and void' and also urged member states to refrain from sending observers and 'to discourage organizations and institutions within their respective areas of jurisdiction from doing so' (resolution 445).

The Australian Government, in conformity with UN policy, did not send official observers. However, the Government did agree to meet the air fares and travelling expenses of a delegation from the Committee to attend as observers, either on behalf of the Parliament or on behalf of the Committee. In the event three members of the Committee went to Zimbabwe Rhodesia, but as individual members of the Committee. The three spent two weeks in Zimbabwe Rhodesia and presented their findings in a report to Parliament tabled on 7 June 1979.[44]

(2) White roll elections

At an election on 10 April 1979 the Rhodesian Front won all 20 of the white seats in the House of Assembly to be decided by voters on the white voters roll. Sixteen of the Rhodesian Front candidates were elected unopposed and four won after contests against white Independents.

(3) Common roll elections

The common roll elections for 72 black members of the House of Assembly took place on 17-21 April 1979, under the scrutiny of some 70 international observers and between 250 and 300 members of the international Press. None of the international observers officially represented governments (apart, perhaps, from the South African diplomatic mission in Zimbabwe Rhodesia). The following is a brief summary of the election process and results. For a more comprehensive outline, see the Report of the Australian Parliamentary Observer Group.

The elections were conducted under a party list system, by which voters indicated their choice of political party rather than candidate. Each party was allocated seats based on the proportion of votes cast for that party in each electoral district. In the 1979 Zimbabwe Rhodesia common roll elections the eight electoral districts were:

Manicaland	10 seats (402,700 voters)
Mashonaland Central	5 seats (187,800 voters)
Mashonaland East	15 seats (588 300 voters)
Mashonaland West	6 seats (264,300 voters)
Matabeleland North	10 seats (383,400 voters)
Matebeleland South	5 seats (191,200 voters)
Midlands	11 seats (419,600 voters)
Victoria	10 seats (388,900 voters)

The five parties competing in the election, and their leaders, were:

- United African National Council - UANC
  (Leader: Bishop Abel Muzorewa)

- Zimbabwe African National Union (Sithole) - ZANU (Sithole) - formerly the ANC(S)
  (Leader: Rev. Ndabaningi Sithole)

- United National Federal Party - UNFP
  (Leader: Chief Kayisa Ndiweni)

- Zimbabwe United People's Organisation - ZUPO
  (Leader: Chief Jeremiah Chirau)

- National Democratic Union - NDU
  (Leader: Mr Henry Chihota)

(Chief Ndiweni was vice-president of ZUPO at the time of the Internal Settlement Agreement of 1978, and was present at the talks leading to the Agreement.[45])

The number of persons who voted, according to official figures, was 1,869,077 out of an estimated voting population of 2.9 million - a turn-out of 64.45%. The number of seats won by each party is shown in Table 5.1.

The UANC did best in Mashonaland while the UNFP picked up much of its strength from Matabeleland, most probably because of its plans for a Zimbabwe federation in which the majority Shona and minority Ndebele tribes would have an equal say through the creation of two States based on Mashonaland and Matabeleland. Also, Chief Ndiweni was an Ndebele while all the other party leaders were Shonas. Both ZANU (Sithole) and ZUPO polled less well than many observers expected.

The number of spoilt papers totalled 66,319, or 3.55% of the total poll. The number of spoilt or blank ballots was highest in Ndebele areas (reaching 9.7% in Matabeleland South), where support for ZAPU and its leader, Mr Nkomo, was strongest. These figures implied that some voters deliberately spoilt papers, but the numbers involved, while unknown, on a national basis were comparatively small. By comparison, the number of informal votes at the 1977 Australian House of Representatives election was 2.52%, and in the Senate 9%.[46] The overall figure of 3.55% was remarkably small when account was taken of the fact that nearly all blacks, many of them illiterate, were voting for the first time.

(4) After the common roll elections

Claims that the elections were fraudulent were made on 23 April by the Rev. N. Sithole, leader of ZANU (Sithole). Mr Sithole said his party would refuse to accept the result because of voting irregularities. Earlier in the same day Mr Sithole had issued a statement praising the voting as fair and demanding Western support for the result. According to observers and the Press he apparently changed his mind after unofficial returns showed his party polling poorly in areas where he had expected major support.[47] ZANU (Sithole) did not lodge any complaints of irregularities with the Electoral Supervisory Commission but on 30 April did lodge a petition with the Executive Council calling for an independent commission of inquiry. This was rejected on 1

May, and the next day ZANU (Sithole) announced it would institute proceedings in the High Court to have the elections declared invalid. This was not done until 23 July. The petitions lodged with the High Court were withdrawn on 18 January 1980 - a week before they were due to be heard. A party spokesman said the case had been overtaken by the Lancaster House Agreement.

On 26 April 1979 the 50 white members of the previous House of Assembly (all Rhodesian Front) formed an electoral college to nominate the panel of 16 whites from which eight were subsequently to be elected by the then elected 92 black and white members of the incoming House of Assembly. This election took place on 7 May, but was boycotted by the 12 members of ZANU (Sithole), who did not take their seats in the House of Assembly until 2 August 1979.

Elections for the Senate commenced on 17 May when separate electoral colleges were held to elect five Senator chiefs from Mashonaland and five from Matabeleland. On 23 May the black members of the House of Assembly elected 10 black Senators and the white members elected 10 white Senators. Again, ZANU (Sithole) did not take part. Both Chief Ndiweni and Chief Chirau were elected to the Senate as Senator Chiefs. The 10 black Senators elected were all UANC and the 10 white Senators all Rhodesian Front.

Bishop Muzorewa was sworn in as Prime Minister on 29 May by the new President of Zimbabwe Rhodesia, Mr Josiah Gumede, a UANC member, former diplomat and retired teacher. The new Executive Council (Cabinet) was announced by Bishop Muzorewa on 30 May. It comprised 10 UANC members, five Rhodesian Front and two UNFP (in proportion to the parties in the House of Assembly - excluding ZANU (Sithole) because of its boycott). The former Prime Minister, Mr Ian Smith, was made Minister without Portfolio while Bishop Muzorewa took both the key portfolios of Combined Operations and Defence.

The new State of Zimbabwe Rhodesia came into being on 1 June 1979 - unrecognised by the world and subject still to sanctions. The provisions of the 1979 Constitution (apart from those already in force to cover the holding of elections, etc.) also came into effect on 1 June. The Prime Minister, Bishop Muzorewa, declared that: 'This is indeed the moment of the assumption of nationhood', while former Prime Minister, Mr Ian Smith, said he had no regrets after 15 years as Prime Minister, and told an interviewer who questioned him on his statement of opposition to black majority rule ('never in a thousand years'):

> I am still opposed to black majority rule. I am opposed to majority rule which is based on race or colour. I am not opposed to majority rule which is based on other criteria, standards for example.... We should get away from race and colour as much as we can.[48]

Asked if he believed majority rule had come too soon, Mr Smith replied:

> Yes. I have no compunction in saying to you that I believed and would have preferred an evolutionary process, one that would have taken more time than the process we were forced into.

The United Nations Security Council response to the elections came on 30 April when it reiterated that the elections were 'null and void' and called on all states not to recognise any government resulting therefrom (resolution 448). The US, Britain and France abstained from the 12-0 vote in favour of the resolution. The Front-line States, on 3 June, called for an international diplomatic boycott of the new Government, which they described as 'illegal and racist'. The Patriotic Front announced its response would be an intensification of the guerilla war.

The Australian position was that the elections represented an 'advance' on the previous situation, and were 'a constructive step towards a lasting settlement'.[49] However, the elections did not go far enough towards genuine majority rule and deficiencies in the Constitution would need to be remedied. The Australian Government believed that:

> ... it must approach the Rhodesian question in terms of Australian and overall Western interests in Africa. Western interests and the perceived interests of the Rhodesian authorities have in many basic respects been quite opposed over the years. Put most simply, the struggle to maintain virtually exclusive white control in Rhodesia has contributed to the growing threat to Western influence in the entire continent, as well as offering the Soviet Union and Cuba ready opportunities to establish their own pervasive influence. A premature decision by Western countries to recognise the Muzorewa administration could lead to the total loss of Western influence in Africa, and a dramatic increase in Soviet, Cuban and East German influence.[50]

(5) How free and fair were the elections?

A clear majority of international observers at the common roll elections declared them in the circumstances of a continuing guerilla war, to be basically free and fair.

Among the conclusions of the Australian Parliamentary Observer Group, for example, was the following:

> We are satisfied that the common roll elections were conducted in a free and fair manner, openly and in accord with usual democratic practices, particularly considering that they were the first universal franchise elections to be conducted in Zimbabwe Rhodesia.[51]

The nine-member mission from the US organisation, Freedom House, which produces the annual Comparative Survey of Freedom, stated in its report:

> ... it is the Mission's judgement that the election represented a significant advance toward multiracial majority rule in Zimbabwe Rhodesia. The country had never had so inclusive and free an election. Elections in most developing countries are less free. In a world in which peaceful change does not and cannot occur all at once, this election was a useful and encouraging step toward the establishment of a free society in Zimbabwe Rhodesia.[52]

The major dissenting report was that of the two observers sent by the British Parliamentary Human Rights Group, entitled Free and Fair? The 1979 Rhodesian Election. The two observers concluded, in rather emotive language, that:

> The recent election in Rhodesia was nothing more than a gigantic confidence trick designed to foist on a cowed and indoctrinated black electorate a settlement and a constitution which were formulated without its consent and which are being implemented without its approval.[53]

Opponents of the elections such as the Front-line States, the OAU, communist countries, the United Nations and a number of Western democracies did not take issue on the voting process so much as on the principles underlying the settlement. They objected to the new Constitution, the fact that the new Constitution had not been put to a referendum of blacks, and the non-participation of the Patriotic Front. They argued the elections should not be recognised because they would not end the war.

(a) Participation of the Patriotic Front

Just as the Patriotic Front had been invited to participate in talks leading to the Internal Settlement Agreement, and subsequently to participate in the Transitional Government, ~~and the elections~~, albeit within the terms of the

Agreement, so the Patriotic Front was also invited to participate in the April common roll elections:

> The Executive Council (5.2.79): The Executive Council once more extends an invitation to the leaders of the Patriotic Front to return and take part in the election and thus join with us all to ensure a peaceful transition to majority rule.[54]

In a statement responding to comments by Mr Callaghan and Dr Owen that the elections could not be free and fair because the Patriotic Front parties were banned and excluded from participation, the Executive Council stated on 6 March 1979:

> One of the first actions of the Executive Council after it took office was to lift the ban on all political organisations, including the internal wings of the Patriotic Front.
>
> At the same time, the leaders of the Patriotic Front were invited to return in peace, take their places in the Executive Council and participate in the first elections and in the peaceful transfer of power to the black majority.
>
> They spurned this invitation and vowed to increase their terrorist attacks and to disrupt the election by making every polling booth their target.
>
> Because the internal wings of the Patriotic Front were actively assisting the terrorists operating in the country, the Executive Council, in carrying out its prime duty of protecting the population against terrorism, had no alternative but to re-impose the ban. In doing so, the Executive Council made it clear that if the Patriotic Front wished to participate peacefully in the electoral process the ban would immediately be lifted. This invitation has been repeated on a number of occasions but has been rejected by the Patriotic Front leaders. Nevertheless, the offer still stands.[55]

The Patriotic Front refused to participate in the elections for a number of reasons. The major one was that they had not had a say in formulating the Constitution under which the elections were held. To participate, they would have had to accept the terms of the Internal Settlement Agreement, and these were unacceptable because of the disproportionate power remaining in white hands. Another reason was that for years neither Patriotic Front party had enjoyed genuine freedom of speech, assembly and publication within Rhodesia - although bans on ZAPU and ZANU were lifted for several months in 1978 - and had little reason to believe these would suddenly be granted, impartially, by members of a Transitional Government themselves seeking election.

The Patriotic Front's general position on elections had been developed at the Malta and Dar es Salaam conferences in January and May 1978. At these the Patriotic Front had expressed its concern that it would not be able to campaign freely and canvass for votes if Government security forces were policing a ceasefire. The Patriotic Front wanted a UN peace-keeping force during any transitional period to ensure observance of a ceasefire, to disarm and dismantle the existing security forces and to ensure free and fair elections. The Patriotic Front required that its forces form the basis of the security forces and police during a transitional period - although 'acceptable' elements of the Government forces could be integrated into its forces under UN supervision. The Patriotic Front also required that it should have a controlling position on any proposed governing council.[56]

(b) Black support for the Constitution

A criticism of the elections was that black voters, unlike whites, were not given a chance to vote on the Constitution itself, but only on who would represent them under the Constitution. Against this it was argued that the fact that

more than 60% of the electorate had voted and the relatively low proportion of informal votes were evidence of acceptance of the Constitution, or at least of an attitude of 'give it a go'. If there had been widespread opposition this would have shown in a lower poll or, if large numbers were intimidated into voting, in a much higher proportion of informal votes.

To a large extent both the internal Government and the Patriotic Front viewed the elections as a test of support for the Internal Settlement proposals for majority rule - hence the internal Government's encouragement of a large voter turnout and the Patriotic Front's opposition to the elections themselves.

According to the Freedom House Mission, the purpose of the elections in the minds of blacks and whites was to make possible black majority rule. The Mission argued that a large turnout at the polls was 'tacit acceptance' of the Internal Settlement's version of majority rule as voters were aware that this was the major issue rather than which of the parties would win government.[57]

The Committee, while in some agreement with this interpretation, is aware that a comparison of voter turnouts between the April 1979 elections (64.5%) and the February 1980 elections (93.7%) would tend to signify the contrary: that a significant proportion of the electorate stayed away in 1979 because of opposition to the Internal Settlement proposals. Other explanations are possible: the April 1979 elections were the first for blacks and many might have stayed away through fear or ignorance; in 1979 the Patriotic Front was actively discouraging potential voters while in 1980 it was actively encouraging them; the desire for an end to the war, for peace, became stronger between the two elections as the scale of violence and killing escalated; the UK and Commonwealth Monitoring Force presence and increased resources to conduct an election in 1980 may have also made a difference.

While the Committee agrees with the Freedom House assessment to the extent that it considers the 1979 turnout would have been lower than it was if there had been widespread opposition to the Internal Settlement Agreement, it also considers that the 1980 turnout does indicate that some voters did stay away in 1979 because of such opposition. The Internal Settlement would have been on much firmer ground if black voters had been directly consulted on their attitudes to the new Constitution either before or in conjunction with the common roll elections. It should be noted that neither the black nor white electorate was consulted on the Constitution agreed to at Lancaster House in late 1979.

(c) Martial law and detentions

A further criticism was that free and fair elections could not be held while most of the country was under martial law and numbers of people - mainly opponents of the Internal Settlement and supporters of the Patriotic Front - were in detention.

According to an Executive Council statement on 6 March 1979, martial law was introduced (in September 1978) to provide 'better protection for the black population against increasing terrorist attacks and, in particular, to enable black voters to go to the polls in safety'.[58] Bans on political organisations including the internal wings of the Patriotic Front, had also been re-imposed (on 18 September 1978, having been lifted on 2 May 1978) to protect 'the population against terrorism'. Both martial law and the bans would be lifted, said the Executive Council, if the Patriotic Front parties were willing to participate peacefully in the forthcoming elections.

At the time of the elections about 90% of Zimbabwe Rhodesia was subject to martial law. About 226 persons were

detained under the Emergency Powers Regulations and another 117 were specially detained for the duration of the elections.[59] In addition, an unknown number of persons were detained before the elections under Martial Law Regulations - estimates varied from 1,000 to several thousand.[60] The exact number could not be verified as the Zimbabwe Rhodesia Government did not release figures on the numbers of persons detained under martial law.

International observers at the elections were not in a position to observe all facets of the operation of martial law. They did observe up to 1000 students at the University of Rhodesia demonstrating in support of the Patriotic Front, but the students were not permitted to demonstrate outside the campus. Members of the security forces (including defence forces, police and Internal Affairs personnel) were highly visible during the elections, due mainly to a general mobilisation involving some 100,000 persons. Their presence at polling stations, the effects of martial law and the constraints on active opposition to the elections, must have had some effect on voters. So, too, must have internal Press censorship, the ban on 2 October 1978 on The Zimbabwe Times, the major black paper favourable to the Patriotic Front parties, large-scale Government election advertising and a campaign to have employers encourage black employees to vote. A few instances of intimidation were reported by observers but these were not significant to the extent that they would have affected the outcome of the elections. On the other hand, observers were told by significant numbers of voters that they would not have voted in the absence of the security provided by the defence forces and police for fear of Patriotic Front reprisals.

Instances of intimidation to encourage persons to vote should be balanced against Patriotic Front pressures on persons not to vote. The Australian Parliamentary Observer Group, for example, was told of a number of instances of threats, physical violence and other forms of intimidation being applied by the

Patriotic Front to stop people voting, but in five days of visiting polling stations they received only one direct allegation by voters of an employer endeavouring to intimidate them into voting.[61] The Freedom House Mission had this to say:

> ... our judgment on the basis of many contacts with the [election] process throughout the country is that the government generally did not bring out the vote by compelling the population to participate. In many localities people did not vote in large numbers, and local government officials seemed simply to accept that fact .... while the pervasive presence of security forces helped constrict opposition to the election, these forces did not appear to be used for its positive promotion.
>
> In evaluating the degree to which there was an element of compulsion in the effort to get people to the polls, it must also be remembered that an undetermined number of people were physically prevented or deterred by fear from voting or campaigning, particularly in remote areas.
>
> Insurgents often made clear that voters would suffer immediate or delayed retribution; in some areas it was too dangerous even to provide polling facilities a reasonable distance from the potential voters. Land mines were planted near polls, and a limited number of people were killed while in transit to or from polling stations. While these efforts were not as great as had been anticipated, it is likely that without this form of coercion the total poll would have been several percentage points higher.[62]

Figures released by the Zimbabwe Rhodesian Government for the period 15-21 April 1979 show that 22 polling stations were attacked, as were 12 vehicles carrying voters, 35 incidents of intimidation of voters by Patriotic Front supporters were recorded, and there were 16 landmine incidents. In the period 17-21 April 43 civilians were killed by guerillas - 10 as a direct result of the elections, 52 civilians were injured by guerillas - 14 as a direct result of the elections, seven members of the

security forces were killed and 111 guerillas or guerilla 'collaborators' were killed.[63]

The extent of the pressures from both sides could not be precisely established but the Committee is satisfied that the majority of voters felt free to vote or not to vote.

(6) The elections and the world

A number of countries critical of the elections were criticised for double standards, for not practising at home what they preached abroad. Mr Bayard Rustin, a co-chairman of the Freedom House Mission, national chairman of Social Democrats USA and a black civil rights leader, commented in July 1979:

> No election held in any country at any time within memory has been more widely or vociferously scorned by international opinion than the election conducted last April in Rhodesia, now Zimbabwe Rhodesia. In scores of countries, non-democratic governments periodically stage elections whose predetermined results are never challenged or questioned, even by the world's democracies.... In contrast to the silent acquiescence in what passes for elections in the world's tyrannies, the outcry against the Rhodesian election has been deafening.[64]

Mr Rustin also stated that since opponents of the election would undoubtedly have used a low turnout as evidence of major opposition to the election, they were hardly in a position to deny the significance of the election that did take place with its voter turnout of more than 60%.[65]

Of the five Front-line States only one, Botswana, was at the time a multi-party democracy. Another major critic of the Zimbabwe Rhodesian elections, Nigeria, was a military dictatorship until the latter half of 1979. According to the Africa Institute of South Africa in 1978 there were in Africa

eight multi-party states, 21 one-party states with legislative bodies and elected heads of state, 11 one-party states without elected institutions, five states governed by coalitions of parties or monarchies, and six military dictatorships.[66] The position of the Front-line States and African Commonwealth countries as at 1980 is shown in Appendix One.

Double standards were thus a feature of the commentaries of many countries on the elections. Nevertheless, whilst the procedures and conduct of the elections were satisfactory, the elections themselves could not be regarded as a true expression of views in Zimbabwe Rhodesia, when two major political groups did not participate. Nor could the Constitution under which the elections were held be regarded as democratic when it guaranteed the white minority disproportionate power.

5. Subsequent developments

7 June: President Carter announced that the United States would not lift economic sanctions against Zimbabwe Rhodesia.

20 June: The UANC first vice-president, Mr James Chikerema, and seven other UANC members, broke away to form a new party, the Zimbabwe Democratic Party. The defection reduced UANC numbers in the House of Assembly from 51 to 43. One of the eight rejoined the UANC on 25 June.

26 June: The first session of the first majority rule parliament in Zimbabwe Rhodesia commenced.

5 July: The House of Assembly voted unanimously to extend Zimbabwe Rhodesia's state of emergency for a further six months - the first time since the state of emergency was declared six days before UDI in 1965 that it was renewed unopposed.

11 July: Bishop Muzorewa met President Carter at Camp David for discussions on Zimbabwe Rhodesia.

18 July: The Zimbabwe Rhodesian High Court ruled that the seven UANC defectors who formed the Zimbabwe Democratic Party were entitled to seats in the House of Assembly but had no right to demand representation in the Cabinet because the ZDP did not contest the April elections as a party.

20-21 July: The Zimbabwe Rhodesian Government launched a major amnesty program.

Security forces killed 183 mainly ZANU (Sithole) - oriented auxiliaries in an operation officially described as designed to stamp out intimidation and Mafia-type activities by 'ill-disciplined groups'. The deaths resulted when the auxiliaries resisted attempts to 'regroup' them. At the same time as the operation against the auxiliaries police arrested more than 100 ZANU (Sithole) members and searched ZANU (Sithole) headquarters.

31 July: The Muzorewa Government decided that martial law death sentences would not be carried out unless confirmed by the President. Previously such sentences needed only to be confirmed by a special review authority which included the Commander of Combined Operations.

2 August: ZANU (Sithole) ended its boycott of the House of Assembly and took its 12 seats and two Cabinet positions.

1-7 August: The Commonwealth Conference at Lusaka took place.

Notes and references

1. For an account of the negotiations see I.R. Hancock, 'The Rhodesian Solution', Quadrant, vol. 22, no. 5, May 1978, pp. 29-33.

2. Ndabaningi Sithole, In Defence of the Rhodesian Constitutional Agreement (A Power Promise) (Graham Publishing, Salisbury, 1978), p. 48.

3. The number of white seats - 28 - was a compromise between the Rhodesian Front's initial demand for 34 (a 'blocking third') and the offer of two of the black delegations of 20 - See Sithole, In Defence of the Rhodesian Constitutional Agreement, p. 51.

4. Rhodesia, Ministry of Information, 'Prime Minister's Broadcast to the Nation', For the record, no. 45, 12 March 1978, p. 1.

5. Rhodesia, Ministry of Information, 'Address to the People of Rhodesia by Bishop Muzorewa', 13.7.78, (document 409/78/DMM).

6. See, for example, Catholic Commission for Justice and Peace in Rhodesia, An Analysis of the Salisbury Agreement, issued 4 July 1978 with the approval of the Rhodesian Catholic Bishops' Conference; International Defence and Aid Fund for Southern Africa, Fact Paper on Southern Africa No. 6, 'Smith's Settlement - Events in Zimbabwe Since 3 March 1978' (London, June 1978); United States Senate, Staff Report to the Committee on Foreign Relations, A Rhodesian Settlement? (Washington, 1978); Australian Department of Foreign Affairs, Evidence, pp. 163-72.

7. Quoted in Zimbabwe News (official organ of the Zimbabwe African National Union), vol. 10, no. 1, Jan-Feb 1978, pp. 32-3.

8. See, for example, Catholic Commission for Justice and Peace in Rhodesia, An Analysis of the Salisbury Agreement.

9. Zimbabwe Rhodesia, Cabinet Secretariat, Notes on Rhodesian Constitutional Agreement, p. 4.

10. Zimbabwe Rhodesia, Notes on Rhodesian Constitutional Agreement, p. 4.

11. See, for example, the statement by Mr Mugabe and Mr Nkomo described as the 'Paloma Declaration', reproduced in Zimbabwe News, vol. 10, no. 1, p. 29.

12. Zimbabwe News, vol. 10, no. 1, pp. 29-33.

13. Zimbabwe Rhodesia, Ministry of Foreign Affairs, Fact Paper 1/79, 17.4.79, p. 3. See also statement by Bishop Muzorewa on 2.3.79, in Zimbabwe Rhodesia, Notes on Rhodesian Constitutional Agreement, p. 8.

14. Transcript of interview with Mr S. Gall, of I.T.N., 8.12.78.

15. Zimbabwe Rhodesia, Fact Paper 1/79, p. 4.

16. Zimbabwe News, vol. 10, no. 1, p. 28. See also Ronald T. Libby, 'Anglo-American Diplomacy and the Rhodesian Settlement: A Loss of Impetus', Orbis, vol. 23(1), spring 1979, p. 189.

17. Zimbabwe News, vol. 10, no. 2, March-April 1978, p. 42. See also Christopher Coker, 'Decolonization in the Seventies: Rhodesia and the Dialectic of National Liberation', Round Table, April 1979, no. 274, pp. 125-7.

18. W. Burchett, Southern Africa Stands Up (Urizen Books, New York 1978), p. 241; The Times (London), 4.9.78; The Observer, 17.9.78.

19. The Times (London), 1.9.78, 4.9.78; The Observer, 3.9.78.

20. Rhodesia, Ministry of Information, 'Statement from P.M.'s Office' 2.9.78. And see Mr Smith's statement broadcast 10.9.78, reproduced in Zimbabwe Rhodesia, Notes on Rhodesian Constitutional Agreement, p. 5.

21. Rhodesia, Ministry of Information, 'Fifth Member of Executive Council', 5.7.78 (doc. 395/78/LMB).

22. United Nations, 'Southern Rhodesia', a working paper prepared by the Secretariat to the Special Committee on Decolonisation (the Committee of 24), 2.3.79, pp. 10-11 (doc. A/AC.109/L.1284).

23. United Nations, Security Council, resolution 423, 14.3.78.

24. Senate, Hansard, 31.5.78, pp. 2210-11. And see Department of Foreign Affairs, Evidence, pp. 178-80.

25. Catholic Commission for Justice and Peace in Rhodesia. Addendum to An Analysis of the Salisbury Agreement, p. 10. For other estimates of total detainees see IDAF, Fact Paper on Southern Africa No. 6, p. 13, which quotes a Rhodesian Government figure of 961 in indefinite detention in March 1978; Department of Foreign Affairs, Evidence, p. 168.

26. IDAF, Fact Paper on Southern Africa No. 6, pp. 11-12; IDAF, Focus on Political Repression in Southern Africa, no. 16, May 1978, pp. 4-5.

27. Zimbabwe Rhodesia, Notes on Rhodesian Constitutional Agreement, pp. 1, 3.

28. Rhodesia, Ministry of Information, 'Statement by Executive Council', 8.8.78 (doc 467/78/JEP).

29. Rhodesia, Ministry of Information, 'Statement by Executive Council', 17.9.78 (doc 560/78/RH).

30. Rhodesia, Ministry of Information, 'Statement by Executive Council', 17.9.78. See also The Times, (London), 18.9.78; International Herald Tribune, 18.9.78.

31. Rhodesia, Ministry of Information, 'Statement by Executive Council', 17.9.78.

32. ZANU statement issued in Lusaka, 23.10.78, and quoted in Rhodesia, Ministry of Foreign Affairs, 'Background Briefing', 30.11.78.

33. Zimbabwe Rhodesia, Ministry of Information, 'Statement by the Executive Council', 21.3.79 (doc 212/79/WRF).

34. Rhodesia, Ministry of Information, statement issued on 30.11.78.

35. Memorandum to the Sub-Committee Chairman by the Zimbabwe Rhodesia Solicitor-General, Mr L.G. Smith, dated 25.5.79.

36. Memorandum by Zimbabwe Rhodesia Solicitor-General, 25.5.79.

37. Rhodesia, Report of the Commission of Inquiry into Racial Discrimination 1976, p. 34.

38. Memorandum by Zimbabwe Rhodesia Solicitor-General, 25.5.79.

39. Memorandum to the Sub-Committee Chairman by the Zimbabwe Rhodesia Solicitor-General, dated 4.7.79.

40. For criticisms of the Constitution see, for example, Commonwealth Secretariat, An Analysis of the Illegal Regime's 'Constitution for Zimbabwe Rhodesia', and the Report of the observers (Lord Chitnis, assisted by Eileen Sudworth) on behalf of the British Parliamentary Human Rights Group, entitled Free and Fair? The 1979 Rhodesian Election. The arguments in response are based in the main on the memorandum dated 4.7.79 prepared for the Sub-Committee Chairman by the Zimbabwe Rhodesian Solicitor-General.

41. Corporate Affairs Commission v. Bradley and Another, 1974, 24 Federal Law Reports, p. 59.

42. Zimbabwe Rhodesia, Ministry of Foreign Affairs, Fact Paper 2/79; Memorandum by Zimbabwe Rhodesia Solicitor-General, 25.5.79.

43. Memorandum by Zimbabwe Rhodesia Solicitor-General, 4.7.79.

44. Report of Australian Parliamentary Observer Group on the Zimbabwe Rhodesia Common Roll Elections, 14-28 April 1979 (Parliamentary Paper 191 of 1979). The members of the group were the Hon G.M. Bryant, E.D., M.P., the Hon J.D.M. Dobie, M.P. (Sub-Committee Chairman) and Mr R.F. Shipton, M.P. (Committee Chairman).

45. Memorandum by Zimbabwe Rhodesia Solicitor-General, 25.5.79.

46. Parliamentary Library, Parliamentary Handbook of the Commonwealth of Australia, 20th ed., 1978, pp. 343, 365.

47. Report of Australian Parliamentary Observer Group, p. 26; Sydney Morning Herald, 25.4.79; The Australian, 27.4.79; New York Times, 24.4.79.

48. The Herald (Zimbabwe Rhodesia), 1.6.79.

49. Minister representing the Minister for Foreign Affairs, Senate, Hansard, 1.5.79, p. 1463.

50. Department of Foreign Affairs, Backgrounder, no. 196, 25.7.79. pp. 16-17.

51. Report of Australian Parliamentary Observer Group, p. 27.

52. Report of Freedom House Mission to Observe the Common Roll Election in Zimbabwe Rhodesia - April 1979 (Freedom House, 10 May 1979), p. 36. The nine members of the mission had between them 'professionally monitored' elections in 26 countries - Bayard Rustin, mission co-chairman, 'The War Against Zimbabwe', Commentary, vol. 68, no. 1, July 1979, p. 26. See also United Kingdom Conservative Party Observer Group, Report to the Prime Minister on the Election held in Zimbabwe Rhodesia in April 1979.

53. Report by observers on behalf of the British Parliamentary Human Rights Group, Free and Fair? The 1979 Rhodesian Election, May 1979, p. 52.

54. Zimbabwe Rhodesia, Notes on Rhodesian Constitutional Agreement, p. 7. See also statement by Mr Smith on 9.3.79, reproduced in Zimbabwe Rhodesia, Fact Paper 1/79, p. 4.

55. Zimbabwe Rhodesia, Ministry of Information, 'Statement by Executive Council', 6.3.79 (doc.171/79/TW).

56. Keesing's Contemporary Archives, 1.9.78, p. 29177; Zimbabwe News, vol. 10, no. 2, March-April 1978, p. 42.

57. Report of Freedom House Mission, pp. 25-6.

58. Zimbabwe Rhodesia, Statement by Executive Council, 6.3.79.

59. Report of Australian Parliamentary Observer Group, p. 25; letter to Sub-Committee Chairman by Mr P. Claypole, Secretary for Law and Order, dated 26.4.79.

60. The observers on behalf of the British Parliamentary Human Rights Group quoted 'reliable sources' that there were at least 1,000 martial law detainees at the time of the elections (p. 19 of their report). The Catholic Commission for Justice and Peace in Rhodesia and the International Defence and Aid Fund for Southern Africa both quoted estimates of 7000 in July and August 1979 respectively (the Catholic Commission in correspondence to the Committee, dated 24.7.79; IDAF in its report, Political Prisoners in Rhodesia 1979 (September 1979), p. 30).

61. Report of the Australian Parliamentary Observer Group, pp. 13-14.

62. Report of Freedom House Mission, pp. 29-30.

63. Zimbabwe Rhodesia, Ministry of Information, 'Miscellaneous Abstracts', April 1979.

64. Bayard Rustin, 'The War Against Zimbabwe', p. 25. A Sub-Committee member, Senator the Hon. J.M. Wheeldon, made a similar point in an article entitled 'Why Australia should recognise Zimbabwe Rhodesia', The Bulletin, 7.8.79, pp. 88-90.

65. Bayard Rustin, 'The War Against Zimbabwe', p. 26.

66. Africa Institute of Southern Africa and Southern Africa Freedom Foundation, Africa at a Glance 1978, pp. 34-5.