

LET MY PEOPLE GO

A summary of the Pastoral letter from the Catholic Bishops
on the 2003 Constitutional Review Process

INTRODUCTION

On Friday 24 October 2003, we celebrated 39th Anniversary of our Zambian Independence. We encouraged all our faithful to participate joyfully in this celebration with prayers of thanksgiving and with renewed commitment of working to implement the ideals that the independence struggle was all about.

One of the ideals of freedom that Zambia is currently grappling with is the realization and shaping of an effective and equitable constitution for our nation.

It is therefore our pastoral responsibility as the Catholic Bishops of Zambia to encourage the faithful in parish meetings, Small Christian Community gatherings and other groups to prayerfully consider the key issues that need to be addressed in the new constitution as well as ways of contributing to the adoption of the Constitution.

A. LESSONS FROM THE PAST

It is our right and duty as church leaders to speak out on major social, economic and political challenges facing Zambia as we have consistently done in our statements since 1958.

During the republican constitutional debates in 1995 – 1996, we raised pertinent issues regarding the constitutional making process. Among other things, we clearly stated that contentious constitutional issues cannot be dealt with adequately without the widest possible national consultation with a view of reaching a national consensus. The constitution, being the basic law of the land needs to go through the process of legitimatization and popularization. It is the people who should always be the driving force behind any constitutional making process in order to legitimize and popularize the constitution. The role of government is simply one of facilitating the process.

B. WHY REVIEW THE CURRENT ZAMBIAN CONSTITUTION

Zambia has since 1964 made four fruitful attempts to produce a widely accepted respected constitution that would stand the test of time.

It is for precisely this reason that Zambia is again involved in yet another constitutional making process in order to correct the mistakes of the past, address the issues of the present and shape the governance of the future.

The concerns this time are:

- Enacting a constitution that exalts and effectively entrenches and promotes legal and institutional protection of fundamental human rights and the rule of law.
- Ensuring that democratic principles, or regular and fair elections, transparency and accountability, are entrenched in the constitution.
- Eliminating provisions which are perceived to be discriminatory in the constitution
- Including provisions to ensure the competence, impartiality and independence of the judiciary.

Failure to look carefully and objectively at all the issues involved in the constitution making process leads to the production of constitutions that cannot last and continually begs the exercise to start again.

C. WHAT METHOD SHOULD WE FOLLOW

Constitution making requires that the method used to adopt and enact the constitution, is above suspicion of manipulation by the party in government. That is why a “road map”, which shows the various stages that the constitution making process should go through, is important. A starting point has been made by civil society in suggesting these various stages.

To ensure the success of the “road map”, it is pertinent, as civil society has suggested, that Parliament acts (a) to amend Section 5 of the Inquiries Act to remove the power of the Presidential veto over CRC recommendations; (b) to establish enabling legislation for a Constituent Assembly and (c) to meet the requirements of Article 79 of the Constitution (which needs a referendum for the alteration of part III – the Bill of Rights).

We, therefore, equally recommend that the final report from the CRC be submitted to a popularly constituted and representative body, also known as the Constituent Assembly, for purposes of further debate and adoption only. The adopted draft constitution should then be taken, if necessary, to a referendum, and thereafter, taken to parliament to be enacted into law.

A Constituent Assembly and Referendum will be costly, no doubt. But democracy is not cheap. A badly drafted Constitution, that might lack popular support, will probably have to be revisited in yet another constitutional review – and that will surely be even more expensive.

We would like, in speaking about the great need for the popular review of the constitution to, however, caution against haste in drafting, adopting, and enacting it. There are certain urgent provisions, on which there is already consensus, which can be changed through Parliament, such as the reinstatement of the requirement of 50% plus one vote for a candidate to be elected republican president. For this reason, we acknowledge the appointment of the Electoral Review Committee and urge it to expedite its recommendations.

D. WHAT ARE THE ISSUES TO BE ADDRESSED?

We would like to recommend several key issues that we believe should be dealt with in the new Constitution. We will make further recommendations about other important issues in presentations to the appropriate constitutional review mechanisms.

1. *The Bill of Rights, with the following major concerns:*

- Clarifications of the rights of accused persons
- Environment issues
- Gender and women's rights
- Freedom of information
- Abolition of capital punishment
- Abortion questions
- Public order act
- Children's rights

These concerns are derived from the Catholic Church's social teaching, about the dignity of the human person, which speaks clearly about the rights and duties of all persons.

2. *The Electoral Process*

In one Hundred Years (1991, #46), Pope John Paul II praises democracy as a system of government befitting human dignity. Central to a good democratic system is the electoral process. We therefore see several points that need to be addressed:

- Removal of the discriminatory 1996 parental clause for presidential candidates
- Return to a 50% plus one vote requirement for presidential election
- Setting of a specific date for general elections
- Strengthening of an independent Electoral Commission with powers to enforce its regulation to curb corrupt practices
- Restriction of re-running for a parliamentary seat after crossing the floor
- Introduction of a political code of conduct.

3. *The Powers of the President*

Subsidiarity is a very significant principle of the Social Teaching of the Catholic Church which states that, what can be decided and/or done effectively and equitably at a lower or local level should not be taken to a higher level. Furthermore, power as understood in the Bible is for service, as seen in the example of Jesus washing the feet of his disciples. Much can be drawn from these principles for constitutional arrangements touching on power.

We therefore not with concern that the republican President's Office is currently the locus of considerable administrative and political power such as extensive powers to:

- appoint and fire various officers in government
- negotiate and sign international agreements without recourse to Parliament.

4. “*Christian Nation*”

Our understanding, from the Catholic Church’s social teaching, that emphasizes freedom of religion and respect for individual conscience, makes us cautious of the contentious provision in the constitution that “Zambia is a Christian Nation”... We stand by the position we took in 1992 that “a nation is not Christian by declaration but by deeds”. We therefore recommend that the new Constitution should not contain any reference to Zambia as a “Christian Nation”.

E. WHAT SHOULD WE DO?

The importance of designing and implementing a new Constitution cannot be overemphasized. Therefore, everyone in Zambia must be involved as much as possible, in order to ensure that it truly is a people’s constitution, worthy of the opening phrase, “We the People of Zambia...”

As pastoral leaders, we make the following call to action in the next several months:

1. ***To the Church:*** we direct all Catholic parishes and institutions in Zambia to set up civic education programmes, drawing upon materials sent from our national offices, to sensitize our faithful on the important issues that should be addressed in the constitutional review process
2. ***To the Government:*** we ask for immediate clarification, in appropriate legal fashion. Of the commitment of the Government to a process guaranteeing that the new constitution will be designed, adopted and implemented in a non-partisan fashion that is fully transparent and accountable. This will require a Constituent Assembly and a National Referendum, if that is necessary. We ask that the government begins to take the required steps to source the funds (e.g. by proper budget priorities for 2004, by requesting assistance from cooperating partners, etc.)
3. ***To Political Parties:*** we urge both the ruling party and the opposition parties, to demonstrate a non-partisan commitment to a good Constitution. Let the parties demonstrate wisdom and maturity in this process.
4. ***To Civil Society and the General Public:*** we commend the active and courageous participation of civil society in advocating for a genuine people’s constitution and we encourage others to do so in the months ahead.
5. ***To the Media:*** we appeal for a non-partisan reporting. We urge the media to aim for the highest professional ethical standards. In particular, we urge the national broadcaster, to embrace the aspirations of our people. Our journalists have a critical role to not only inform correctly but also take into consideration the context of their stories, especially for such important issues as constitutional making. The pleasing of the political party in power does a great disservice to the noble profession of journalism.

Conclusion: As we celebrate 39th Anniversary of our Independence, let us recall those the basic desires of the founders of Zambia, political freedom and economic prosperity, Let us all prayerfully join in gratitude to God for 39 years of peaceful pursuit of these ideals. Let us recommit ourselves in or various capacities, as families, church communities, political groups, leaders, civic organizations... to realize these ideals in our everyday life. Therefore, let us

design a new Constitution that will make the realization of these ideas evermore possible today and ensure total freedom and prosperity for this nation. It is only then that the opening phrase of the constitution “We the people...” shall become a reality.

Lusaka, November, 2003

Signed by:

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