

**SUBMISSION  
TO THE  
MUNG'OMBA CONSTITUTIONAL REVIEW COMMISSION (2004)  
By the  
ZAMBIA EPISCOPAL CONFERENCE**

**A. INTRODUCTION**

The Zambia Episcopal Conference would like to make the following submission to the Mung'omba Constitutional Review Commission on issues that are of particular concern to the Catholic Church in Zambia.

The Conference does not seek to make an exhaustive submission on all constitutional issues as it takes cognisance of the fact that Christians in their individual capacities and other interest groups have submitted substantively and eloquently on most matters of concern.

**B. WHY REVIEW THE CURRENT ZAMBIAN CONSTITUTION?**

Zambia has since 1964 made four unfruitful attempts to produce a widely accepted and 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:

- a) enacting a constitution that exalts and effectively entrenches and promotes legal and institutional protection of fundamental human rights and the rule of law;
- b) ensuring that democratic principles, of regular and fair elections, transparency and accountability, are entrenched in the constitution;
- c) eliminating provisions which are perceived to be discriminatory in the constitution;
- d) 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 do not last and continually begs the exercise to start again and 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 needless delay in drafting, adopting, and enacting it. There are certain provisions, on which there is already consensus, this should help to hasten the process.

### **D. 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:

- a) contentious constitutional issues cannot be dealt with adequately without the widest possible national consultation with a view of reaching a national consensus;
- b) The Constitution, being the basic law of the land, needs to go through the process of legitimatisation and popularisation;
- c) It is the people who should always be the driving force behind any constitutional making process in order to legitimise and popularise the constitution;
- d) The President and Cabinet, being creations of the constitution, cannot, on moral grounds, be the ones to make final recommendations on the contents of the constitution;
- e) The role of government is simply one of facilitating the process.

## **E. WHAT ARE THE ISSUES TO BE ADDRESSED?**

The Conference therefore would like to submit on the following issues:

### **1 DECLARATION OF ZAMBIA AS A CHRISTIAN NATION**

The current Constitution in the preamble declares Zambia a Christian nation while upholding the right of every person to enjoy that person's freedom of conscience or religion. While noting that this declaration is to be found in the preamble and is therefore not *justiciable*, the Conference is of the opinion that this declaration should be omitted altogether from the Constitution.

The Church and State should be and continue to remain separate. In 1992, in a statement in response to declaration of Zambia as a Christian Nation by President Chiluba, we did emphasise that a nation is not Christian by declaration but rather by deeds. Zambia can be a Christian nation only if Zambian Christians follow Jesus in a life of love and respect for one another, a life of dedication, honesty and hard work.

As we stated in our contribution to the constitutional debate in 1995, Christianity may be the religion of the majority of Zambians, nevertheless there are many dedicated Zambians who profess other faiths. The Constitution of the country belongs as fully to these citizens as it does to those who profess Christianity. No loophole should be left in the Republican Constitution, which might, at some further date; lead to non Christian Zambians being regarded as second-class citizens or even excluded from public office.

We further said in this statement that such a declaration could lead to abuse of religion for purely political ends and even bring discredit to the name Christian. Experience has shown that since 1992, Christianity has been brought into the political fray to the faith's detriment.

Further, legislating faith and religion into the Constitution can lead to fundamentalism, which can one day be used against Christianity by a leadership of another religious persuasion.

We therefore agree with the recommendation of the Mwanakatwe CRC Report N<sup>o</sup> 3.5 which stated, that "Christianity or any other religion could be safely secured without any form of declaration"

## **2. THE DEATH PENALTY**

The Catholic Church believes in the sanctity of life from conception to death. It is so sacred that only God, who gives it in the first place, has the right to take it away. In this sense, the Church opposes all human actions that violate the sanctity of human life such as abortion, suicide, euthanasia, and the death penalty.

When he visited Missouri, in the United States, in 1999, the Pope called on all Roman Catholics and followers of Christ to oppose the cruelty of the death penalty. He said, "I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.... A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil".

The Catholic Church in Zambia supports the worldwide movement that has led to the abolition of death penalty in the majority of countries. We therefore submit that the death penalty should be removed from the Republican Constitution. Further all derogations must be removed from the right to life as provided for in the Bill of Rights except for the derogation dealing with death of army personnel in armed conflict.

## **3. TERMINATION OF PREGNANCY**

In 1972, the Zambian Parliament passed the Termination of Pregnancy Act of 1992 that legalized abortion under certain conditions.

Further, Chapter 3, Section 3, of the Constitution of Zambia provides that that "a person shall not deprive an unborn child of life by termination except in accordance with the conditions laid down by an Act of Parliament for that purpose"

The Episcopal Conference calls for the repeal of the 1972 Act as well as an amendment to the constitutional provision that gives Parliament unrestricted powers to legislate in favour of termination of pregnancy.

#### **4 THE BILL OF RIGHTS**

As we stated in our Pastoral Letter, *Let My People Go*, of 2003, on the current constitutional review process, we feel the Bill of Rights is the heart of any constitution. It is therefore vital that Part III of the Constitution of Zambia that deals with the rights of the private citizen is strengthened and expanded. This is in order to protect such rights as the right to life, gender and women's rights, children's rights, freedom of information, and social, cultural and economic rights.

Furthermore, the third generation rights currently placed in the directive principles of state policy should be moved to the bill of rights so that such rights as employment, education, health and housing are given a clear place in the heart of the Constitution.

#### **5 CITIZENSHIP**

The enjoyment of the right to citizenship is enshrined in the Universal Bill of Rights. This right is central to the enjoyment of all rights to be found in the Constitution. On citizenship we submit as follows

- a) A child should assume Zambian citizenship if, on the date of his or her birth, one of his or her parents is a Zambian citizen.
- b) A child should assume citizenship if he or she is born in Zambia to parents with permanent residence.
- c) Because citizenship is a basic right that should not be dealt with lightly, citizenship by birth or descent should not be lost lightly. To this end we submit that Chapter II Article 9 Section 1(b) of the current Constitution should be removed. A citizen should only lose their citizenship on full assumption of another citizenship.

#### **6 THE ELECTORAL PROCESS**

The Catholic Church is very sympathetic to the democratic system of governance because of its promotion of wide participation by citizens in governance and promotion of human dignity. Central to a good democratic system is the electoral process. We submit as follows on the electoral process:

- a) the 1996 parental clause that requires that both the parents of a candidate in the Presidential election should have been born in Zambia should be removed as it creates classes of citizens. All citizens by birth or descent as provided for in the citizenship clause must have equal access to all elective offices including the presidency;
- b) a candidate in the republican presidential election should only be declared duly elected if he or she receives 50% plus one vote of total votes cast. In the event of none of the candidates receiving the required votes there should be a runoff between the top two candidates;
- c) the date for general elections should be enshrined in the Constitution to ensure fair play. We suggest the last Friday of August to allow for a re-run, if necessary, before the onset of the rainy season;
- d) there should be an independent Electoral Commission with powers to enforce its regulations in order to curb corrupt practices;
- e) the Chief Justice should not be the returning officer in the Presidential election, as he may need to hear any petition brought against the election results;
- f) the winner in the presidential election should only be sworn in after any petition of the results has been disposed of. To this end therefore, the Constitution should allow for a three months window in which all petitions in the presidential and parliamentary elections can be disposed of;
- g) any Member of Parliament that crosses the floor should not be eligible to re-contest the seat in the life of that Parliament.

## **7 SEPARATION OF POWERS**

In order to enhance the principle of good governance that proceeds on the assumption that the three arms of government will be separate, autonomous and equal, we submit as follows:

- a) cabinet must be constituted from outside Parliament;
- b) judges of the High and Supreme Courts must have security of tenure. In the event of misconduct a tribunal to hear the disciplinary case should be set up by the Judicial Service Commission to report

- to a Committee of Parliament. The committee of Parliament should then make recommendation to the President for removal;
- c) the conditions of service for High and Supreme Court Judges should be determined by the Judicial Service Commission subject to approval by Parliament;
  - d) the Speaker of the National Assembly should be voted for from among the elected Members of Parliament;
  - e) there should be no nominated Members of Parliament as this gives undue advantage to the ruling party in case of a balanced Parliament.

## **8. THE POWERS OF THE PRESIDENT**

On the powers of the President we submit as follows:

- a) the Vice President should be a running mate of the Presidential candidate;
- b) the President should have no power to choose who sits on tribunals that deal with disciplinary cases for any person holding a constitutional office such as the Director of Public Prosecutions or Auditor General. These should be done by a Parliamentary Committee. The President should only act on the final decision of the tribunal;
- c) any international agreements to be entered into by the country should be subject to Parliamentary ratification. This includes external debt, conventions and treaties.

## **9 ADOPTION OF THE CONSTITUTION**

On the adoption of the reviewed constitution we reiterate what we stated in the pastoral letter on the Constitutional Review Process "*Let My People go*" that "the new Constitution must 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."

## **CONCLUSION**

It is the deep prayer of the Zambia Episcopal Conference that this constitutional review process will meet the aspirations of the Zambian people for a durable Constitution that commands respect from all citizens.

It is our further prayer that the nation has learned lessons from its past when various attempts have been made to produce a Republican Constitution which mistakes should not be repeated.

We wish the nation God's blessings and wisdom.

Signed by:

|                                   |                                       |
|-----------------------------------|---------------------------------------|
| Rt. Rev. Telesphore-George Mpundu | Bishop of Mpika (President, ZEC)      |
| Rt. Rev. Noel O'Regan, SMA        | Bishop of Solwezi (V. President, ZEC) |
| Most Rev. Medardo J. Mazombwe     | Archbishop of Lusaka                  |
| Most Rev. James Spaita            | Archbishop of Kasama                  |
| Rt. Rev. Raymond Mpezele          | Bishop of Livingstone                 |
| Rt. Rev. Aaron A. Chisha          | Bishop of Mansa                       |
| Rt. Rev. Paul Duffy, OMI          | Bishop of Mongu                       |
| Rt. Rev. Emilio Patriaca          | Bishop of Monze                       |
| Rt. Rev. George Lungu             | Bishop of Chipata                     |
| Very Rev. Fr. Patrick Chilambwe   | Diocesan Administrator – Ndola        |
| Cardinal Adam Kozlowiecki         | Retired Archbishop – Lusaka           |
| Most Rev. Adrian Mung'andu        | Retired Archbishop - Lusaka           |

**30<sup>th</sup> September 2004**