
**Submission and Comments
by the
Jesuit Centre for Theological Reflection
to the
June 2010 Draft Constitution of the Republic of Zambia**

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1.0 INTRODUCTION AND BACKGROUND

The Jesuit Centre for Theological Reflection (JCTR) is a faith based non-governmental organisation (NGO) operating in Zambia and Malawi, working on issues of faith and social justice. The Centre has been in existence for 22 years. The Centre does research, education and advocacy on issues that affect the day-to-day lives of Zambians with the aim of promoting the fullness of human life of all people, especially for the poor. The mission of JCTR is to foster, from a faith-inspired perspective, a critical understanding of current issues. To fulfil this mission, the JCTR works through four Programmes: the Church Social Teaching Programme (Faith and Justice), Debt, Aid and Trade Programme (Economic Equity and Development), Social Conditions Programme, and Outreach Support Programme.

The JCTR, over the years, has remained a very strong, sober and intelligent moral voice in Zambia's social, economic, political and cultural issues. In the past Constitutional reviews (1991, 1996 and the ongoing 2003), the JCTR has been one of the organisations that has contributed both to the process of the reviews and the content of the reviews. JCTR has also been doing education programmes in 6 places outside of Lusaka (Kabwe, Ndola, Kasama, Mongu, Monze, and Livingstone) on Constitutional issues.

In the current Constitutional review process, the JCTR offered proposals especially on the inclusion of Economic, Social and Cultural Rights (ESCR) in the Bill of the new Constitution giving its justifications for the proposals. JCTR also commented on other issues such as the "Christian Nation" declaration, mode of electing Presidential candidates (50% + 1 and going the proportional representation system), the removal of the death penalty, and procurement and management of foreign and domestic debts. JCTR in 2008 and 2009 made two submissions to the NCC, one to the Public Finance Committee on public resources management, and another to the Human Rights Committee on the inclusion of Economic, Social and Cultural Rights as justiciable in the Bill of Rights. Both submissions were well received by the Committees, although we were greatly surprised and amazed when the Plenary of the NCC seemed to trivialise the important issues we highlighted in the submissions, such as rights to food, water and sanitation.

Our well researched submissions to the NCC, and indeed this submission, are based on extensive research, especially in the monthly *Basic Needs Basket*, documentation of experiences in other countries, and Zambia's commitment to international agreements. Our submissions are also aimed at finding institutional frameworks that will improve the lives of all Zambians especially the vulnerable and the poor. The suffering and challenges that Zambians face are heavily connected to bad governance and bad service delivery and a good Constitution can serve as a starting point to help in improving governance.

Before giving our analysis of the 2010 Draft Constitution, we would like to reiterate what we have said so many times on Zambia's Constitution making process that the process and content of the new Constitution is not only a political and legal issue but basically and mostly an ethical and moral one, given that the Constitution is an affirmation of equality and dignity that Zambians have as human persons.

Our submission and comments concentrate mainly on Part VI (Bill of Rights) of the Draft Constitution and Part XVII (Public Finance and Budget) but is not limited to these parts for it includes commentaries on the recognition of Christian values in the Constitution, separation of powers,

appointments by the President, public resources management, and some other parts of the Draft Constitution. In the Parts that we have not commented on, it is either because we consider them to be good clauses or because they are issues that are beyond our interest and competence.

2.0 SUBMISSIONS AND COMMENTS ON THE DRAFT CONSTITUTION

First and foremost, we are disappointed that despite the many calls from civil society and the Church Mother Bodies, the “Christian Nation” declaration has still been maintained in the Draft Constitution. This is a denial of the basic dignity of all persons in exercising religious freedom especially when the Constitution is not supposed to be sectarian in any way. We recommend the removal of the Christian nation declaration and replacing it with a declaration that we are a “multi-Religious nation.” Secondly, the first sentence in the Preamble, we recommend that it simply remains as “We the People of Zambia, ACKNOWLEDGE.” The phrase in the middle “By our Representatives Assembled in Parliament” should be removed because the Constitution is a document by and for Zambians. It is the Zambians that give ourselves a Constitution. The Parliament only enacts it on our behalf.

2.1 From the onset, we would like to commend the National Constitution Conference for finally availing the Zambians a Draft Constitution for their comments and consideration. Despite our many concerns on the problematic process and manner of adopting a new Constitution, we are bold enough to contribute in any way to the making of a good Constitution.

2.2 The Draft Constitution still invests too much power in the President (Articles 121-123) especially through political appointments of even key positions (Articles 128-140, also 235-241, 242, 251.2, 278.1, 295) that are apolitical (civil service) and need to be subjected to normal recruitment procedures. The so many positions in Government that are appointees of the President compromises the independence and effectiveness of governance institutions (e.g., in the Judiciary, Auditor General’s office).

2.3 Part II, Article 4 Clause 2 should include “multi-Religious” State.

2.4 Part III of the Draft Constitution is very sound especially in its commitment to fight against corruption (12c), promotion of ethics in public life (12d), recognition of civil society (12f), economic empowerment of citizens (13b), encouragement of food security (13c), eradication of poverty (13i), land ownership by citizens (13k), and respect of international law and treaties (14b). Despite the recognition of various rights such as employment, fair labour, safe and healthy working conditions, clean water and sanitation, adequate health facilities, shelter, disadvantaged groups (18.1) these should further be stressed and included in the Bill of Rights (Part VI). We will further comment on this when we comment on the section on Economic, Social and Cultural Rights (Part VI of the Draft Constitution).

2.5 Part III Article 16 should include promotion of other values of the mainline religions such as Islam, Hinduism, and Buddhism, especially that this Section clearly prohibits any practice that is dehumanising.

2.6 Part IV (20d) – We wonder why the British laws and statutes should be mentioned and apply to Zambian law especially when we claim to be a Sovereign Nation. The Part does not make specific reference to International Law that Zambia has agreed to follow especially on human rights.

2.7 Part V (29.1 and 29.2) – We welcome these Clauses on dual citizenship given the global nature of the lives of human beings.

2.8 Part VI Article 36 – We welcome the recognition of human rights as promoting and preserving human dignity of individuals and that these rights are inherent, not given or taken away by anyone. We also welcome the recognition given to civil society as having a role in promoting and protecting human rights (37.2), and the obligation of the State to give yearly updates to National Assembly on progress on human rights promotion.

2.9 Part VI Article 40 Clause 3 – The retention of the recognition of the Termination of Pregnancy Act of 1972 in the Draft Constitution still constitutes a grave violation of human life. Whilst some forms of termination of pregnancy might be permissible, there is greater need for revision of this Act to tighten reasons under which such exceptions can be made.

2.10 We welcome the recognition of rights of persons that are detained, in custody (46) and the right to free trial (47) even though some traces of claw-back clauses still exist in this section (Civil and Political Rights).

2.11 We welcome the right to equality of both gender as provided in Article 49 especially the explicit prohibition of unequal judgements based on culture, custom or tradition (49.4) and a limitation of customary law (Article 52.9).

2.12 We welcome the recognition of family as the natural and fundamental unit of society and as the basis of social order (Article 52).

2.13 We welcome provisions for the rights of children (50), youth (51), persons with disabilities (53).

2.14 Claw-back clauses that refer to denial of rights because of “interests of defence, public safety, public order, public morality, or public health” (e.g., 58.3, 60.3, 61.2, 62.4) are too vague and can easily be used by the State to take away or deny the rights of persons especially when such exceptions provided to the State cannot be questioned by a court, tribunal or commission. Even though some restrictions and clarifications on the extent of one’s enjoyment of the right are needed, such restrictions should explicitly be subject to decisions by judicial actions.

2.15 We greatly welcome the inclusion of (some) Economic, Social and Cultural Rights (ESCR) in Articles 64 to 70. We also welcome the provisions for “public interest litigation” as provided in Clause 74.2. We have our own reservations and concerns about the exclusion in this section of some very important rights that have been maintained under the Directive Principles in the earlier part of the Constitution (e.g., rights to food, water and sanitation, clean and safe environment).

2.16 We reject in the strongest way possible the inclusion and phrasing of Clause 64.3 that makes State’s claims immune to judicial wisdom. This Clause subjects these justiciable rights to the current practice where they are not justiciable nor legally enforceable even though they are referred to as “rights.” True, the State should be given a chance to defend itself and sometimes, in the right circumstances, provide evidence of State’s inability to progressively realise these rights, but such liberty of the State should still be questioned under a court of law or independent and impartial tribunal.

We also reject the two derogations that are given to the right to life in Article 40 especially those accepting the death penalty and abiding to the Termination of Pregnancy Act (40.2). The right to life cannot be taken away by allowing another life to be taken away.

It will be prudent to make the whole Bill of Rights, including ESCR to be subjected to a referendum if changes are proposed. Not subjecting the part of the Bill of Rights that deals with ESCR to a referendum could mean that they could very easily be removed from the Bill of Rights without consulting the people through a referendum (refer to Part XXI).

2.17 We welcome the declaration of assets and liabilities by public officers as stipulated in Part VII of the 2010 Draft Constitution.

2.18 We welcome the electoral reforms in Part VIII that require not less than 30% representation of any gender in parliament and other important bodies, representation of persons with disabilities and youth (78.4), the majoritarian system of electing a President with not less than fifty percent plus one vote of the valid cast votes (79 and 101.2), the mixed member representation system of electing the National Assembly (79.2), a fixed date of holding elections (83.1), and changes in the Electoral Commission of Zambia (87 to 88) to make it more efficient and independent.

2.19 Provisions for Presidential by-elections still remain not there. It would be good to explicitly state in the Constitution such provisions. Article 116 does not explicitly state that this will be a by election.

2.20 The duration given to the Electoral Commission of Zambia to determine electoral malpractices (24 hours) is too short a time to do a good investigative work.

2.21 We welcome the establishment of “Political Parties’ Fund” using national resources equitably for funding registered political parties with seats in National Assembly (Articles 99-100). It is also a welcome move to explicitly state that public resources or institutions will not be used to promote political party interests (Article 105) or during the election period (Article 106).

2.22 We reject Clause 111.1 of swearing in the President-elect immediately and not later than twenty-four hours for this has been the bone of contention in past elections especially when there are disputes in an election. We propose at least one month (or any reasonable time) to be given before the President-elect is sworn in. This would leave enough time for appeals by losing candidates or other concerned parties to seek judicial redress or redress from the Electoral Commission of Zambia. The time given before swearing in should be in tandem with the time given for determining the election petition (stipulated in 112.3).

2.23 We welcome Article 115 on the “Impeachment of President” for this creates the checks to the powers of the Presidency.

2.24 Since enormous power is vested in the office of the Vice-President (in absence of President, illness of President, death of President), it is necessary to provide having a Presidential running mate as the Vice-President so that the office of the Vice-President also receives credibility and majority support by citizens. It is unfair to vest such enormous powers on an appointed figure that has no popular support and acceptance.

2.25 The Presidential immunity to civil proceedings and criminal proceedings whilst he or she is in office for offences done or omitted to be done in his or her personal capacity as proposed in Article 120 should be reviewed for this allows malpractices to be done by incumbent Presidents for they know they are above the law.

2.26 The functions of the National Assembly as stipulated in Article 142 are welcome especially as it concerns oversight on national public expenditure and public debt (142.2f), ratifying appointments by the President, impeaching the President.

2.27 It is unbelievable that the seats for the first-past-the post segment of the mixed proportion should consist of 240 members up from the current 150 members (158 with appointees) and only 30 seats on proportional basis (Article 143) with 10 members nominated by the President. This would mean that Parliament would consist of 280 MPs -- this is surely a bloated Parliament that will be unsustainable in terms of use of national resources and expenditure on such a large Parliament.

2.28 We welcome Clauses (no. 3) in Article 147 that forbid MPs that cross the floor to contest in a by-election.

2.29 We welcome the establishment of a Constitutional Court in Articles 183-187. It would be good to make this Court an autonomous Court, part of the Supreme Court but not necessarily the same Court (where the Supreme Court is the Constitutional Court). The Constitutional Court must have decentralised structures for easy accessibility.

2.30 We welcome decentralised local government structures as stipulated in Part XII of the Draft Constitution. It is our hope that these good Constitutional intentions do not just remain written in the Constitution but that they will be put into practice.

2.31 We welcome the non-partisan nature and mandate of Chiefs in politics (Article 227).

2.32 Part XVII on Public Finance and Budget is fairly a satisfactory Part especially that it stresses centralisation of public resources in the National Treasury, some limitation of the powers of the Minister responsible of finance, greater Parliamentary oversight on public resources (Articles 272 to 274).

Presidential powers in public finance issues should be considerably limited because Article 267 gives too much power to the President.

2.33 We recognise the independence of the office of the Auditor General in Article 280 even though the Auditor General still remains an appointee of the President (Article 278) and that this can easily limit the operations of the office of the Auditor General. It would be good to allow the office of the Auditor General to also have access to other funds other than those from the State (281.1).

2.34 We welcome the recognition of the importance of taking care of the environment (Part XX). It is now common practice in environmental ethics not to use the word "exploitation" of the environment (297.1 and in other instances of this Part). Consider using another word such as "use" of the environment. The right to clean and safe environment should be reconsidered to be explicitly

mentioned in the Bill of Rights under the Economic, Social and Cultural Rights (Part VI). We find it good to proceed with caution in encouraging the State to go into carbon trading, maybe the phrase “with caution” should be added in 299b.

3.0 RECOMMENDATIONS TOWARDS A GOOD CONSTITUTION

Given the above analysis we make the following recommendations:

3.1 That reasonable, sober, popular people’s submissions be taken seriously despite the NCC having rejected some of them during the Plenary sessions;

3.2 That the Bill of Rights be extensively revised to include key Rights such as those to food, water and sanitation, health, and decent work;

3.3 That the powers of the President especially in appointing major positions for the key governance positions be revised so that there should be an open recruitment of candidates, ratified by Parliament and only then appointed by President. The rules for dismissal from that job should also be clearly stipulated;

3.4 That the Final Draft Constitution (before enactment) be availed to Zambians for verification of consideration of their submissions;

3.5 That a referendum is a must (as proposed in Article 303) as a way of further abiding by the people’s aspirations especially that the NCC failed to meet two thirds majority on several articles or clauses and that the Bill of Rights has considerably been changed. It is surprising that although any alteration in the Bill of Rights needs to be subjected to a referendum, Articles 64 to 70 has been made exceptions (as not needing a referendum -- 303.1b)

3.6 That the enacted Constitution is printed in a simpler language for easier understanding by the people. The Constitution must be printed in different sizes (e.g., pocket size) for easier porting and use

3.7 That a clear and reasonable roadmap is made available to the public about when the new Constitution will be enacted and the various stages and processes that will lead to the final document. This will help to ignite interest in Zambians to engage more in the Constitution making process.

4.0 PRIORITY ISSUES

Given the importance of a few key Constitutional issues, the JCTR emphasises that these points be included in the final version of the new Zambian Constitution:

4.1 “Christian Nation” and “Christian Values” language be excluded, to be replaced by “multi-religious.” This is because a Constitution is for all citizens regardless of their faiths, colour or race, age or any other consideration.

4.2 Debt contraction oversight by Parliament be retained because these provision is very good and progressive. This is a way of making sure that borrowed resources are done for important and necessary development needs but also making sure that they reach the intended projects.

4.3 Economic, Social and Cultural Rights be explicitly included in the Bill of Rights including the rights to employment, food, water and sanitation, and clean environment.

5.0 CONCLUSION

Despite the many comments and highlights of Articles and Clauses that need changing, we would like to recognise the fact that this Draft Constitution is considerably better than the existing (1991(96)) Constitution. However, we are disappointed that the Draft leaves out a good number of Articles and Clauses proposed in the 2005 Mung'omba Draft Constitution. Even though we are not naively proposing that everything that was proposed in the 2005 Draft should have been incorporated in the 2010 Draft, they are surely certain provisions that needed serious consideration such as (i) recognition of Zambia as being multi-Religious in nature, (ii) subjecting state action or exceptions to rights to the courts of law in dealing with the progressive realisation of ESCR, (iii) incorporation of very crucial Economic, Social and Cultural Rights (such as food, water and sanitation, health, and employment) as justiciable in the Bill of Rights.

It is our sincere hope that the 2010 Draft Constitution will sincerely and soberly include key suggestions by Zambian citizens and institutions so that Zambia finally gets a People's Constitution with popular support. For the sake of consensus building and public confidence, it is a must that the Constitution be subjected to a referendum before enactment by Parliament.

As JCTR, and our partners in 6 places around the country where we operate, we remain committed to seeing Zambia get a good Constitution that represents the aspirations and dignity of Zambians. A good Constitution is the beginning of not only democracy but of good governance, rule of law and development in the broader sense.

Please feel free to contact us or consult us on any of the issues that we have tabulated in this submission to the 2010 Draft Constitution of the Republic of Zambia.

6.0 APPENDICES

To provide justification to the issues that we have raised above, we have included some appendices of some articles that deal with the issues in greater detail for your consideration.

6.1: Appendix 1: Debt Contraction and Management Mechanism

“Given the background of Zambia's indebtedness and the possibility of falling back into the debt trap, a debt contraction framework or mechanism is the surest way of ensuring that we do not only fall back into the debt trap but that we also borrow for the right reasons so that the intended results (significant reduction in the poverty levels) are achieved. Debt resources are meant for the public and, as such, they are public resources meant to serve the needs of the public. Moreover, the Government uses public resources through taxation to service the Country's debt. This is why Articles 312 of the Mung'omba Draft Constitution is so important to the overall development of the country” explains Sidney Mwansa, Programme Officer for Debt, Aid and Trade Programme at JCTR.

The article seeks to support the transparency and accountability in the process of debt contraction by giving parliament powers of oversight and approval of the whole process. It will also make the process more consultative as Parliament will have to scrutinise, debate, approve and limit loans the Ministry of Finance and National Planning will contract in relation to debt sustainability and the needs

of the Zambian people in every financial year. Recently, we have seen a lot of dealings with China where sums of money are mentioned to have been borrowed but nothing is said about the conditions and specific purpose. We have also seen transfer of responsibility and blame on certain public procurements such as that on hearses and the mobile clinics. This can only be avoided by parliament giving oversight/approval for loans contracted by the government. Through parliament, the Zambian population through their elected leaders in parliament will have a say about the reason for borrowing, from who and how much debt the country should have in relation to Gross Domestic Product.

Therefore, the argument that giving the powers of approval to Parliament would make loan contraction impracticable by giving Parliament power to amend term and conditions of the loan does not contend that this is the importance of the debt contraction mechanism. One of the roles of Parliament would be to ascertain whether or not the conditionalities are right for the Country and if they are not, negotiate for right terms and conditions. Whether or not this will slow the process of contraction cannot be compared to the implications of contracting loans as and when the Minister can on the development status of the Country and on poverty which remains so high. Time and care should thus be taken whenever a loan is being contracted especially having a look at where we are coming from – Highly Indebted. This can only be done through a debt management framework where Parliament takes time to look at the source and purpose of loans as well as the terms and conditions before the Minister can commit the Country. It is thus very clear, that this power should not be left to one person – the Minister of in charge of Finance. Otherwise, we will find ourselves trapped again in the debt burden position with very little or nothing to show from borrowed resources.

With the background of: high poverty levels of over 75%, high indebtedness, debt cancellation, Zambia should safeguard against falling back into high indebtedness by putting good mechanisms of effective ways of contracting debts that include oversight by Parliament and other interested bodies. The 2010 Draft Constitution's provisions do provide for such to happen and it would be good to uphold these provisions. This will provide increased transparency and accountability in debt contraction and use of public resources. Moreover, Countries such as Uganda, Ghana and Nigeria that have put in place such debt contraction frameworks that give Parliament oversight have not reported any regrets for having done so. This is very important for our generation and those to come!

6.2: Appendix 2: Press Statement on the Right to Employment and Other ESCR

As the National Constitutional Conference (NCC) distributes the Draft Constitution for comments, it is essential to analyse whether the contents of this important document represent the interests of the majority of the Zambians, especially the poor. "Realising that no other law or Government action can supersede the Constitution and that all Government policies and strategies are guided by it, meaningful development can only occur once the needs of the poor are reflected in the supreme law of the land," says Miniva Chibuye, Coordinator of the Social Conditions Programme of the Jesuit Centre for Theological Reflection (JCTR).

It is important to remember that the Constitution is being made at the time when half of the poor people in the country cannot afford the minimum basic food requirements. This is not surprising considering the ever rising cost of living. For instance, the Lusaka *Basic Needs Basket* (BNB) showed an increase in the cost of living for a family of six from K2,798,580 in May 2010 to K2,799,280 in June 2010. This amount includes the nominal average cost of basic food items and essential non-food items such as housing, water and electricity. The cost of food alone amounted to an average of

K928,050 increasing by K3,100 from K924,950 in May 2010. The increase was largely attributed to the rise in the cost of dry fish, Siavonga Kapenta, tomato and meat. Reductions were recorded only in the price of mealie meal and vegetables. The average price of bread, salt and tea, however, remained the same. As these items are very basic adding up to the recommended 2,100 calories per person per day, any good Constitution should, at least, guarantee access to basic food needs.

The question to ask therefore is: Do the provisions in the Draft Constitution set sufficient grounds for realising the inherent needs of the Zambian people, especially the poor?

It is important to recognise that the Draft Constitution distinct from the current Constitution has included more aspects of Economic, Social and Cultural Rights (ECSRs) in the Bill of Rights of the national Constitution. This is significant because the Bill of Rights affirms the democratic values of human dignity, equality and freedom. Furthermore, provisions spelt out in the Bill of Rights are legally enforceable in any court, tribunal or administrative institution or entity. Any person or group of persons can therefore claim this right through the court of law if the Government fails to fulfil these rights. It is therefore a fundamental duty of the state to respect, protect, promote and fulfil the Bill of Rights within the maximum available resources.

Looking at specific provisions under ESCRs, it is encouraging to note that the Draft Constitution has included social protection. As such, the Government will be compelled to progressively increase allocations to Ministry of Community Development and Social Services (MCDSS) and enable them scale up social protection to the most vulnerable households unable to provide for their own minimum needs.

Another positive development is that retired workers have been catered for in the Draft Constitution. As provided under Section 65 (4d), "...where a worker who retires or is retrenched is not paid promptly, the retention on the pay roll of that worker, until payment of the pension or retrenchment benefits" will be provided for. This provision will significantly protect retired workers from falling into abject poverty while waiting for their retirement package.

While the Draft Constitution has recognised that every person has the right to work and to just and fair labour practices in its Bill of Rights, it is not enough to leave it at that. The high proportion of the workforce in informal employment is what should be responded to in the Constitution. Evidence shows that more people are employed below their potential and do not have regular jobs. Most of these are lowly paid. Therefore, this section should be revised to include parts such as; "Government shall progressively increase quality of employment through creation of formal jobs to ensure sustainable income and poverty reduction," says Ms. Chibuye. The aspect of creating decent work should be spelt out in the Bill of Rights.

Similarly, while the right to education and health have been provided for in the Bill of Rights, the language should be revised to include the aspect of quality to facilitate increased funding towards employment of more staff and investments in necessary equipment and infrastructure.

Perhaps most disappointing is that fundamental rights such as the right to food, water and housing were left out of the Bill of Rights. This is critical because of the great numbers of people that are being denied of access to food, clean water and decent housing. For instance, the majority of Zambians have inadequate food needed for a healthy living, almost half of the children are stunted,

about 40% of the population do not have access to safe drinking water and the rampant cholera cases in high density areas is evidence that there is an urgent need for investment in better housing, water and sanitation. These statistics alone should compel the state to respect, promote and fulfil these rights by including them in the Bill of Rights and progressively increasing budgetary allocations to the relevant lines for their fulfilment.

As the Bill of Rights is the cornerstone of democracy and development, the right of every person to at least safe water and adequate food should be guaranteed. It is therefore imperative that the NCC includes the right of food, water and housing as recommended by the Mung'omba Constitutional Review Commission. Furthermore, the sections on employment, health and education should be strengthened by including the aspect of quality.

6.3: APPENDIX 4: Press Statement on Economic, Social and Cultural Rights (ESCR) that Promote Development

The development of the people of Zambia can only be facilitated and achieved through the government's observance of Economic, Social and Cultural Rights (ESCR), says JCTR. This makes it an imperative for the NCC to include in the new Constitution ESCRs. "As an organisation that advocates the full realization of justice in society, JCTR will continue the call for the Constitutional recognition of these fundamental human rights, for without their realisation, we cannot talk of development, and without development, we cannot talk of freedom", explains Mr. Anold Moyo, Programme Officer at the JCTR.

There has been an outcry from citizens and Civil Society Organizations (CSOs) over the exclusion of some ESCR in the Draft Constitution's Bill of Rights. Economic, Social and Cultural Rights are those human rights which mandate that social conditions be adequate for meeting basic needs that are necessary for the enjoyment of a fully human life. These rights include the right to food, education, shelter, clean water, health and social protection. According to JCTR, development should be understood as the uplifting of people from less-human living conditions characterized by lack of material necessities essential for a dignified life, to more human conditions: "Development concerns the growth of the human person. It concerns his or her becoming more and fully human than he or she currently is through the actualization of the qualities that he or she has as a human being", says Mr. Moyo. "This actualization of the human qualities is as much a means to human development as it is constitutive of human development itself."

JCTR also notes that development and freedom are inextricable from each other, and that if the people remained undeveloped, the government cannot claim that Zambians are free: "We cannot talk of freedom solely in theoretical terms", argues Mr. Moyo, "freedom has to be concretised by the provision of social services and basic amenities such as food, shelter, health and education. Without these, people are incapacitated to even fully enjoy civil and political rights. Freedom without development is illusionary". JCTR advises that freedom should not just be thought of as 'freedom from', but also as 'freedom to', meaning that people should not just be free *from* political oppression or arbitrary arrest, but also free *to* engage in other activities essential for good livelihood. If freedom is seen in this way, it becomes meaningless for the government to say that people are free to seek medical attention when sick if there are no hospitals, or to say people are free to go to school yet they do not have the resources to do so. People cannot be free to do something that they have no

capacity to do given the lack of resources. Development thus removes the source of “unfreedom” by uplifting people from poverty, says JCTR.

JCTR then advises the government against taking too much pride in the growth of the country’s economy when this is not being reflected in the life of ordinary citizens who continue to be deprived of basic needs. It calls for the government to have a human-oriented understanding of the economy: “What people need is a progressive economy, not just economic progress. Economic progress is measured by indexes such as GDP, but a progressive economy is measured by the development it brings to people, who are the rightful agents of this progress”, says Mr. Moyo.

JCTR therefore reiterates its call for the inclusion of economic, social and cultural rights in the new constitution. As the Catholic Bishops stated in a recent press statement, it is not late to consider this inclusion as failure to do so may see the nation “going through yet another expensive process of constitution-making on the legitimate grounds that the current process has failed to meet the aspirations of the Zambian people”. The constitutional recognition of these rights will ensure legal obligation on the part of the government to provide basic amenities.

6.4 APPENDIX 4: Article on the Constitutional Declaration of Zambia as a Christian Nation

Arnold Moyo, SJ

The Preamble of the Draft Constitution of Zambia declares the Republic a Christian Nation, with the declaration having been introduced in the 1996 Constitution. In Part III Article 16, the Draft further states that “The State shall direct the policies and laws towards securing and promoting Christian values, beliefs, ethics and morals consistence with this Constitution [...]”. In this article, I argue that such a declaration is inconsistent with the demands of liberal democracy, whose values the Draft Constitution purport to embrace.

My point of departure shall be the assertion made by the Draft Constitution in Part II Article 4:2, in which it states that “The Republic of Zambia is a unitary, multi-party, multi-ethnic, and multi-cultural democratic state”. This declaration acknowledges the diversity of the Zambian people. That is the nature of Zambia. It is a nation of people with different identities, identities which the state should recognise, and rightly does so in the Preamble.

In such a nation with diverse identities, citizens should be free and have a right to be loyal to their respective identities, be they ethnic, linguistic, cultural or religious; in as far as what is constitutive of these loyalties is consistent with the dictates of justice. In such a multi-cultural society, it becomes an imperative of the State to formulate and enact principles of justice that respect this plurality and guarantee freedom of conscience. This has political implications for the State.

Firstly, it calls for the state to make an elaborate distinction between two spaces that citizens occupy in their lives. These are the public space and the private space, the public being the political and the private being the non-political, such as membership in a religion. Given the plurality of people’s identities, the State should deal with citizens as political entities, and interact with them in their public space and not make any decrees with regard to their private lives, save for when private life undermines the freedom of other citizens. Secondly, the principles of justice governing the State should be freestanding, meaning they should not be anchored on any comprehensive and exclusive religious or moral doctrine, or on any comprehensive and exclusive conception of the good. To do

this will be tantamount to forcing some members of society to follow other people's conceptions of the good.

Now, whilst the Draft Constitution recognises the plurality of Zambian society, and whilst it guarantees the freedom of conscience and cultural rights, the declaration of the country as a Christian nation betrays this recognition of plurality. It is also a declaration that poses some political and logical challenges. Firstly, there is a logical contradiction in declaring the country a Christian nation whilst at the same time affirming that it is a multi-cultural society. It is more reasonable and politically justifiable to state that the country is a multi-cultural and multi-religious society, even if the majority of citizens may be Christian. For this reason, Part II, 4:2 should be maintained whilst adding "multi-religious". The Christian declaration should of course be removed. Secondly, the declaration blurs and fails to honour the distinction between the public (political) sphere and the private (religious) sphere. This failure leads to a third problem, that of a sectarian constitution. As mentioned above, in pluralistic society principles of justice governing the State should not be derived from exclusive and comprehensive religious beliefs. However, the Draft wishes to have Christian values undergird political principles and inform political practice. This amounts to a discrimination of non-Christian citizens and it compromises their freedom of conscience. It is offensive to non-Christian citizens for the State to categorically state that its laws and policies seek to promote Christian values, beliefs and ethics. It is not the duty of the State to promote values of a particular religion. The State's duty is to ensure justice for all of its citizens. The State should address and serve the needs of people as citizens of the country and not as religious entities, or any other entity such as ethnicity (although affirmative action can make it justifiable in certain cases). Non-political identity should not be a determining factor on national issues.

The declaration may also pose a hermeneutic problem to some people. Being Christian may end up being a *de jure* criterion for "true" citizenship and admittance to public office. This may lead to an overt sectional capture of the state by those claiming to be Christians, and a justification by some of discrimination of non-Christians. The Middle Ages and our contemporary experiences with Muslim extremists teach us that people do no evil so freely and unconstrained by their conscience as when they do it from religious conviction. The basic rights of citizens and their recognised claims should not depend on religious affiliation. A citizen's public and institutional identity and his or her rights as a citizen should not be lost or compromised should he or she decide not to be loyal to his or her non-political identity. One should not be perceived less Zambian by being non-Christian.

There is one more problem caused by the declaration. The Draft Constitution promises to promote Christian values and beliefs. One may ask: which Christianity in particular is being sought to be promoted? Christianity is a broad religion, and comes in different forms. There are many Christian denominations in Zambia, with varying influence in people's lives. Their belief systems are not the same (which is why they are many in the first place). Their ethical systems differ, and their approach to politics also differs (with some choosing to remain apolitical altogether). Now, whose belief does the State wish to promote? Does it plan to find a common denominator? To which denomination will the State make reference? These questions should be considered seriously, for the declaration has the potential of fuelling antagonism among Christian churches themselves, if one church is perceived as being preferred to others.

From the discussion above, it is my submission that the declaration of Zambia as a Christian nation is unwarranted and undesirable. This is not to say that Christianity should not have any influence on

politics. It should have, much as any other religion should, or can, if it so desires. The State itself should seek advice from religions as each religion has something good to offer, and this includes African traditional religions. People can thus advocate justice from their respective religious perspective, and can reach an overlapping consensus, a situation where political institutions are justifiable to all in spite of different religious beliefs and philosophies. Indeed, the legitimacy of any state rests upon its being justifiable to *all* sections of its citizenry.