

**ZAMBIA'S ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS:  
WHY SHOULD THEY BE IN THE NEW CONSTITUTION?**

***Research Report***

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# ZAMBIA'S ECONOMIC, SOCIAL AND CULTURAL RIGHTS: WHY SHOULD THEY BE IN THE NEW CONSTITUTION?

## INTRODUCTION

Why are there so many people around us today in Zambia who are jobless, homeless, hungry, illiterate, failing to access proper medical care, and without safe water and sanitation? Is this the result of some authority's dereliction of duty, citizens' laziness, unequal distribution of available resources, or what? Can we do something about this unacceptable situation?

It has often been asserted that this current scenario, with about 80% of the people of Zambia living in inhuman conditions that are below the basic poverty datum line, is a result of not paying enough attention to citizen's access to Economic, Social and Cultural (ESC) rights.

But what are these rights? Why are they important for Zambia? What implications and obligations result from Zambia's ratification of international and regional covenants? Does Zambia really have adequate resources to meet basic rights such as food, housing, clean water, education and health services? Are these basic rights achievable in the current economic and political situation? How could they be claimed in Zambia? Can we learn from what other countries have done about ESC rights? Are there specific lessons that can be drawn from a value framework that emphasises human dignity, community, and special concern for the poor? Should the opinions and in-puts of civil society be taken seriously in the formulation of the Bill of Rights in the new Constitution for Zambia?

Because of the importance of these questions at this moment in time, the Jesuit Centre for Theological Reflection (JCTR) has prepared this research paper to examine in depth the issue of inclusion of ESC rights in the new Constitution. We want to offer both *insights* and *motivations* in order to see the necessity of a fuller Bill of Rights and to mobilise popular support for this end.

This Research Paper considers two questions as pertinent to the discussions and decisions around these ESC rights:

- *First, why should ESC rights be in the new Constitution?*
- *Second, how could they be included in the Bill of Rights with effective measures for implementation?*

## 1. HUMAN RIGHTS: FORMULATION, PURPOSE AND OBLIGATION

As understood in contemporary international usage, human rights are benefits, immunities, entitlements and respect that belong to every human being, for which the State as well as individuals must ensure are accessible to each and every category of people. Human rights serve several purposes, such as the protection of human dignity, promotion of the person's well-being, and the preservation of peace and justice (see Chanda, 2001).

Human rights as they are known in international instruments are divided into two categories: One, Civil and Political rights (or first generation, negative rights) which provide political conditions for someone to exercise these entitlements; and two, Economic, Social and Cultural rights (or second generation, positive rights) which mandate that social conditions are adequate for meeting physical, moral and biological requirements (see Kibwana, 1990). What are these latter rights, where are they found and how are they expressed?

## 1.1. SOURCES OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

At the United Nations level, ESC rights are found in the *Universal Declaration of Human Rights* (1948), where they are characterised as indispensable rights for human dignity and the free development of personality, realised through national and international co-operation. Several other UN covenants that guarantee ESC rights and their protection include: the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966; many conventions agreed upon through the International Labour Organisation (ILO); the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), 1979; and the *Convention on the Rights of the Child* (CRC), 1989. In Africa, ESC rights are defined in the *African Charter on Human and Peoples' Rights* (ACHPR), 1981.

All parties (States) to these conventions have pledged to create conditions where everyone may enjoy his or her economic, social and cultural rights in the same way that civil and political rights are enjoyed.

Among the ESC rights covered in these treaties are the rights to:

- social security;
- fair and safe working conditions for workers;
- equal marriage rights for women and men;
- adequate standard of living for everyone, involving adequate clothing, housing, food, safe water and sanitation;
- adequate standard of health care for all;
- participation in the cultural life of the community; and
- satisfactory primary education for all and increased opportunities for further education.

## 1.2. REALISATION AND OBLIGATIONS OF ESC RIGHTS

*Socio-economic rights* aim to ensure that everyone has access to resources, opportunities and services essential for an adequate standard of living. In accordance with international agreements, governments have the following obligations: to create an enabling environment within which people can gain access to these rights and improve their quality of life and well-being; to remove barriers and limitations that prevent residents from accessing and claiming these rights; and to adopt special measures to assist the disadvantaged and vulnerable to gain access to these rights. Such access is achieved over a period of time and depends upon the availability of resources.

Moreover, the *rights to culture* enable an individual to freely take part in the cultural life of his or her community; to enjoy the benefits of scientific progress and its application; and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (see ICESCR, 1966; ACHPR, 1981). State Parties (Member States) are called upon to take necessary steps for the conservation, development, and diffusion of science and culture if they are to realise this right in their own context.

The United Nations has decided that no country is too poor or underdeveloped as not to respect, protect and fulfill human rights obligations (see McChesney, 2000). The fact that a country is poor is not a legitimate excuse for it to avoid striving to ensure that its citizens enjoy adequate food, education, health care and so on. However, a poor nation is not expected *immediately* to ensure the same level of ESC rights benefits that a rich nation can afford. Nevertheless, even the poorest State Party is required by the ICESCR to ensure that

its people receive the highest level of Covenant rights that the country's resources can permit.

This in practice entails that all State Parties have an obligation to use all appropriate means at the legislative, administrative and judicial level to ensure full realisation of ESC rights. Local and international co-operation and assistance should also be made available.

## **2. THE ZAMBIAN CONTEXT**

Zambia is a signatory to the *Universal Declaration of Human Rights* (1948) and the *African Charter on Human and Peoples' Rights* (1981). Moreover, Zambia has endorsed various conventions and declarations. Zambia ratified: the *Convention on Economic, Social and Cultural Rights* in 1984; the *Convention on Elimination of All forms of Discrimination Against Women* in 1985; and the *Convention on the Rights of the Child* in 1990.

Zambia is also a signatory of a number of global declarations, including *Education for All Declaration* (World Education Forum Dakar, 2000), and the ten commitments of the World Summit on Social Development in Copenhagen (*Copenhagen Declaration*, 1995). These ten commitments include, among others, the eradication of poverty and the promotion of full employment, social integration, human rights, gender equality and equity, adequate education for all, and access to universal primary health care.

Have all the rights contained in the documents to which Zambia is a signatory been in fact guaranteed through the Zambian Constitution? We must now examine the constitutional status of these rights.

### **2.1. THE CURRENT ZAMBIAN CONSTITUTION**

In Part III, "Protection of Fundamental Rights and Freedoms of the Individual" -- the *Bill of Rights* -- of the current Zambian Constitution, ESC rights are not explicitly provided for. However, some of these principles are mentioned within Part IX, "Directive Principles of State Policy" in Article 112. This stipulates among other principles that government shall endeavour to provide: clean and safe water, equitable educational opportunities in all fields and at all levels; adequate medical and health facilities; decent shelter for all persons; and development of a person's culture, tradition, custom or language that is not inconsistent with the Constitution (see Annex IV of this research paper).

According to Article 111, however, "The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity." This clearly means Zambian citizens cannot go to a law court and sue the government on the grounds that their right to education, for example, has been denied.

As the Constitution currently stands, therefore, the State is expected to consider these rights in formulating and implementing its policies relating to development, law reform and application of law "only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet." (See Annex IV)

## 2.2. INADEQUACIES OBSERVED

Several civil society organisations (CSOs), the general public and faith-based organisations have challenged the inadequacies in the Constitution with regard to the protection of ESC rights. A few examples can illustrate this point.

In November 2003, the Zambia Episcopal Conference (ZEC) noted in their pastoral letter on constitutional reform, “Let My People Go,” that for our nation to meet the challenges of globalisation, social and economic transitions, there is need to provide a clear set of guidelines on economic and social rights in the Bill of Rights.

In September 2004, the Permanent Human Rights Commission, in its submission to the Mung’omba Constitutional Review Commission (CRC), highlighted the real need to strengthen the scope of fundamental rights and freedoms in the next Constitution in order to include social and economic rights that have not been explicitly guaranteed by the Constitution. Furthermore, it observed that the current enforcement mechanisms are inadequate or inefficient. Hence, they urged the need to establish within the Judiciary a Constitutional Court and an Administrative Office to deal with issues like human rights and election petitions.

Likewise, the OASIS Forum’s submission to the Mung’omba CRC in September 2004 recommended that the economic, social and cultural rights should be incorporated in the Bill of Rights. It also noted that women should have a right to equal treatment and opportunity to participate in the political, economic, social and cultural life of the nation.

The Women in Law and Development in Africa (WILDAF) 2004 draft report on “Minimum Standards Relating to Women and Children’s Rights” observes in a similar fashion that the current Constitution does not recognize social and economic rights. WILDAF sees the exclusion of ESC rights from the Bill of Rights to be an anomaly because rights are interconnected and indivisible and their inclusion would enable most women to gain economic independence.

Similar positions are being championed by the umbrella group of women’s organisations in Zambia, the Non-Governmental Organisations’ Coordinating Committee (NGOCC), in their nation-wide campaign to educate the general public in both urban and rural areas on the importance of ESC rights in the fight against poverty. Members of the NGOCC express their belief that enshrining in Zambia’s Bill of Rights the ESC rights to health, education, and employment will contribute to the development of the nation and is crucial to fighting poverty. For these women’s organisations, education for all is both a human right and a development necessity, for this ensures the elimination of gender disparities in primary and secondary education and consequently helps achieve gender equity and quality for all levels of education. Therefore, they demand the inclusion of ESC rights within the Bill of Rights (see NGOCC, 2002; CSPR, 2004).

The August 2004 pastoral letter from the Catholic Bishops of Zambia on “Empowerment through Education” re-affirms the universal right to education. It states that: “all children, young people and adults have the right to benefit from an education that will meet their basic learning needs in the best and fullest sense of the term, an education that includes learning how to know, how to do, how to live together and to be” (ZEC, 2004, p. 3). It is the Bishops hope that this basic right to free education will be enshrined in Zambia’s revised Constitution.

The public, especially through civil society groups and the Church, recognises that ESC rights are currently not legally enshrined in the Constitution and that their protection has not

been the priority of government. Therefore, many people continue to advocate for the implementation and protection of ESC rights in the Bill of Rights, especially at this time of constitutional review.

### **2.3. ZAMBIA'S OBLIGATIONS TO INTERNATIONAL AGREEMENTS**

One cardinal question to ask at this point is: does Zambia have any legal obligation to the many international instruments it has signed? Two responses are common: On one hand, "Although these instruments do not constitute hard law and are, therefore, not directly binding in a legal sense, they nevertheless establish broadly recognised standards and are frequently invoked in connection with human rights issues" (Chanda, 2001). For example, the *Universal Declaration of Human Rights* provides at least a framework for the development of human rights policies. Equally, the *African Charter* invites Member States to recognise people's "right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind" (ACHPR, 1981, art. 22.1).

On the other hand, every nation is expected to obey international law (see McChesney, 2000). Regardless of Zambia's Constitution or legal system, it cannot use its domestic law as an *excuse* to breach an international agreement or violate an international rule in this case of respecting ESC rights. Indeed signing of covenants does create a *political* commitment (even a *moral* commitment?) to them, even if it presses no *legal* obligation on the Zambian government until such commitments are domesticated, that is, incorporated into the country's laws.

Therefore, it can be argued that the Zambian government, having ratified most of these instruments, has pledged to recognise, observe and to fulfill these needs. One, as a signatory to these agreements, the government has a duty to work for the common good and general welfare of all citizens, to ensure that everyone is treated fairly and to provide balanced support to all. Two, the government has a responsibility to uphold human rights, to be committed to the promotion of basic human needs, and given the available resources, to make them accessible by all. (See Chitonge, 2001)

In the view of many CSOs and the Churches, the only option for realising the goals of these commitments is the legal translation of these commitments into obligations that are justiciable or enforceable in the courts of law. The opposite situation has prevailed in Zambia. As University of Zambia (UNZA) economist Professor Venkatesh Seshamani notes, these formal commitments have not been translated into concrete results. To the contrary, there has been a reversal in the development process. Therefore, it is time that the country moved from *commitments* to *obligations*. And obligations not only in respect of *conduct* but also in respect of *results* (Seshamani, 2004, interview).

### **2.4. MAJOR CONCERNS FOR THE INCLUSION OF ESC RIGHTS**

In the Zambian context, four major concerns are advanced about the inclusion of ESC rights in the new Constitution. One, in 1996 the Mwanakatwe CRC recommended to broaden the scope of the Bill of Rights in order to consolidate democracy and secure more liberties. But rights such as the right to culture, women's and children's rights, which would favour the achievement of ESC rights, were completely rejected by former President Chiluba in his government's response to the Mwanakatwe recommendations. Since then there have been very strong efforts by civil society to have these rights incorporated in the Bill of Rights.

Two, there has been a general observation that the current levels of illiteracy, poor working conditions, unemployment levels, the bad conditions of housing, medical care and sanitation and the escalating levels of poverty provide sufficient evidence that there is a prima facie violation of human rights (see Chitonge, 2001). Many advocates of ESC rights believe that the absence of these rights in our Bill of Rights has contributed in some extent to the poor living conditions of most Zambians. Simply put, the government is not obliged by law to provide for an adequate standard of living for all citizens and it has in fact not done so.

Three, in August 2004, WILDAF and Women and Law in Southern Africa (WILSA) released a Communiqué on the *National Consensus on Women and Children's Rights* (Daily Mail, 17 August 2004). In this document, they maintained that the lack of a guarantee of access to economic and social rights has worked against women's development. Research conducted by the Zambia Law Development Commission and WILSA on the Zambian laws related to inheritance, maintenance, family and gender violence shows that both statutory and customary laws fall short of the minimum international and regional standards of justice and create an obstacle to the realisation of ESC rights. (See WILDAF, 2004)

Four, the non-justiciable character of the "Directive Principles of State Policy" found in Part IX of the Constitution has been seen as a major hindrance to the full realization and enjoyment of ESC rights. Unless this issue of justiciability is adequately addressed, ESC rights will remain in a legal limbo.

These four concerns provide a context for the current discussions of ESC rights in Zambia and the advocacy efforts to include them in the new Constitution.

### **3. A "RIGHTS" APPROACH TO DEVELOPMENT**

As expressed by many CSOs and the Churches, if we are to achieve intended and desirable development goals, the full guarantee and protection of ESC rights must be in the Bill of Rights, which is the heart of any Constitution. Hence, there is need for the government to facilitate a Referendum Process to allow for the amendment of Part III (Bill of Rights) of the Constitution as demanded by article 79(3).

An overview of the current Zambian Bill of Rights shows an emphasis on the older understanding of human rights as covering *only* Civil and Political rights. But this is a separation of *convenience* rather than of *supremacy*. Perceived properly, all human rights have equal relevance and significance in the development of the human person. So why are ESC rights essential to the achievement of aspirations for adequate standards of living, that is, for integral human development?

The Millennium Development Goals (MDGs), proclaimed by the United Nations in September 2000, is one major attempt at the global level to positively address the crippling poverty and growing suffering that grips the world over. Member States such as Zambia have committed themselves by 2015 to reduce by half extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; and to develop partnership for development. (See UNICEF, 2004). Undoubtedly, it is clear that these MDGs are but sharper articulations of several international instruments that aim at promoting the fulfillment of ESC rights globally.

At the national level, a Poverty Reduction Strategy Paper (PRSP) was prepared by the Zambian Government with the involvement of large numbers of Zambian citizens and groups, coordinated by Civil Society for Poverty Reduction (CSPR). This PRSP guides

development towards the attainment of MDGs. As a three-year planning document (2002-2004), launched in June 2002, the PRSP seeks to address poverty alleviation in areas such as health, education, gender, water and sanitation, agriculture and good governance (see CSPR, 2002).

These basic human requirements are central to meaningful development and poverty eradication. To ensure that 100% of all budgeted resources for poverty reduction programmes actually do reach the intended beneficiaries, one appropriate legal mechanism is to enshrine ESC rights in the Bill of Rights. This would mean allocated funds would in effect be sufficiently “ring-fenced” or protected. This is an urgent necessity, because, as CSPR notes, commitment to poverty reduction is not only an issue of *resources* but also an issue of *priorities* (see CSPR, 2004). Consequently, CSPR has in fact recommended to the Mung’omba CRC that poverty allocations in the annual GRZ Budget should be constitutionally protected.

It is increasingly clear, therefore, that *development goals ought to be understood as basic human rights and not mere policy directives*. All this can adequately be realised only in an environment that guarantees the protection of ESC rights by inclusion of these rights in the Constitution.

#### **4. OBJECTIONS TO CONSTITUTIONAL STATUS FOR ESC RIGHTS**

As noted earlier, this debate over ESC rights has been necessitated by the *non-justiciable* character of these provisions in Part IX, Article 111 of the current Constitution, which speaks only of “Directive Principles of State Policy.” Indeed, some high Zambian government officials have in recent months made strong comments such as, “Education is not a right, because it is not enshrined in the Constitution as a basic right,” or “Zambians do not have a right to eat.” Such statements are certainly confusing and disturbing because they imply that certain basic rights for full development of the person are not the concerns of our democratic government.

The following are objections that must be addressed in discussing the inclusion of ESC rights in the new Constitution.

##### **4.1. APPLICATION**

Three aspects are worth noting. One, *definition*: To what extent can ESC rights be fulfilled without legal inclusion within the Constitution? Two, *reasonableness*: Have advocates of inclusion exaggerated the benefits of making these rights legal? Is it within the capacity of the State to provide access to these rights? Three, *resources*: Does the government have the financial capacity to deliver these basic needs? Who is held accountable for the provision of financial resources to improve living conditions in accordance with ESC rights? These definitional points are reiterated by both government officials and civil society organisations.

##### **4.2. CONSTITUTIONAL STATUS**

What does domestication of international covenants and instruments imply for our country? Does it simply mean taking some pre-packaged articles and making them into Zambian law? How about the considerations of our prevailing situations? Is ratification of such commitments enough to guarantee the fulfillment of ESC rights? Should in fact the new Constitution guarantee any of these rights in an explicit fashion?

### 4.3. LACK OF PUBLIC INTEREST LITIGATION

Do citizens or associations who may not be individually or directly affected by the actions of the government nevertheless hold the right to bring a complaint before the courts of law on behalf of those affected? This raises the very important legal question of “*locus standi*” which determines the ability to go to court with a complaint. For example, could a local Justice and Peace Committee sue the government because in its area there is very poor housing for most citizens?

### 4.4. CHALLENGES FROM PREVIOUS CONSTITUTIONS

Since Independence in 1964, Zambia has had four major constitutional changes: The 1964 Constitution emerged as a document of the Independence struggle; the 1972 Chona Commission enabled the introduction of a “One Party Participatory Democracy”; the 1991 Mvunga Commission re-introduced multiparty democracy; and finally, the 1996 Mwanakatwe Commission which was meant to effectively draft a Constitution that will stand the test of time and did in fact make substantive and progressive recommendations.

But the final elements contained in these Constitutions have not been embraced by all Zambians, largely because they were all considered to be the products of the ruling government. The current Mung’omba Commission may face the same problem of legitimacy if government insists to own the whole process of constitutional review and denies the popular demand for a Constituent Assembly.

### 4.5. DEBT SERVICING AND PROMOTION OF ESC RIGHTS

There is a clear conflict between Zambia’s debt servicing and ESC rights obligation, for debt servicing diminishes government’s resource capacity to provide basic social services while the ESC rights obligation implies increasing such funding (see Hansungule, 1999). What can be done to address this situation where paying interest on government debt has priority over the protection of ESC rights? Is donor aid actually impeding or facilitating recognition and realisation of ESC rights? How can Zambia, which is hard-pressed for resources, meet the basic needs to its citizens in view of the current debt overhang that continues to consume resources? (The controversial and elusive HIPC offers only partial debt relief and Zambia will continue to pay massive sums in debt servicing each year.)

## 5. APPROACHING SOME SOLUTIONS

There is no doubt that the eventual realisation of ESC rights depends largely on the ready availability and effective distribution of State resources. But these concerns can only be met by a well-intended political will and a commitment that has a heart for all citizens of Zambia. As the Oasis Forum noted when it submitted to the Mung’omba Commission its “Basic Minimums” document (Oasis, 2004), the problem concerning the legal nature of ESC rights does not relate to their *validity*, but rather to their *applicability*. That is, their implementation has direct implications for budgetary matters. This however should not be a bar to their justiciability.

The current state of affairs in which the Zambian Constitution has only the non-justiciable “Directive Principles of State Policy” means that successful achievement of ESC rights is elusive because they are not enshrined in the Constitution in an enforceable character, i.e., in the Bill of Rights.

But once ESC rights are in the Bill of Rights, two results should occur. Firstly, the government will be obliged to make clear budgetary and implementation efforts to meet these basic needs. This will ensure accountability and transparency by the government in its preparation of the National Budget and in its distribution of the country's resources. Thus ESC rights will act as a criterion or norm for government to prioritise development issues. Secondly, citizens will have a right to redress or reparation if these rights are denied or infringed upon. Claims can be made in court that the government is not fulfilling its constitutional obligations.

## **6. SOCIETY'S PARTICIPATION IN THE CONSTITUTIONAL PROCESS**

The issue of wide and intelligent participation of the people in the design and adoption of a new Zambian Constitution is very critical in the building of the nation's future. How much the Zambian citizens actually know about their rights affects both the outcome of the Constitution process and the ownership of its content. Considerable efforts are being made by many CSOs and Church-based organisations through debates, discussions, seminars, workshops and conferences throughout Zambia. But these exercises have shown that lack of public awareness of and/or interest in ESC rights not only hinders adoption of a comprehensive and progressive Constitution, but also affects people's response to it.

In order to have a durable Constitution understood by many citizens, there is need for comprehensive civic education. Lobbying and advocating for ESC rights should aim at arousing public interest. Inevitably people need to begin asking questions such as:

- Why don't we have these rights in our Constitution?
- What kind of rights do we really want in the Bill of Rights?
- How can we seek legal redress if these rights are violated?
- What difference would these rights actually make in our lives?

It has become increasingly evident through civic education that the promotion of a Constitution with the legal clarity and guarantees relating to the functions and the privileges of ESC rights cannot be simply a preserve of the government. What occurred in the constitutional review in the mid 1990s demonstrates very clearly the dangers of following the route of a "government-driven" constitutional process rather than a "people-driven" process. It is helpful at this point to recall what actually took place, since it contributes to an understanding of the large-scale suspicion about the current government's intentions relating to the full constitutional review process.

Because of the popular pressure during the review of the Constitution between March 1994 and March 1995, the Mwanakatwe Commission did indeed include some ESC rights within its proposal for a Draft Constitution. It recommended that a provision similar to Article 11 in the present Constitution "should be drafted in such a way as to embrace the new regime and freedoms that are meant to advance existing provisions to consolidate democracy and secure more liberties" (Mwanakatwe, 1995, 7.2). Some of the proposed rights by various respondents were: the rights to a clean environment and respect of human dignity, which includes adequate housing, health care and education. In effect this would have meant that the proposed ESC rights would have become justiciable.

But for its own reasons, the Chiluba government "soundly" rejected this proposal. In its White Paper responding to the recommendations of the Mwanakatwe Commission, the government argued: "This is not accepted because these rights are already contained in various Articles of the present Constitution and need not be re-arranged or be made as absolute rights by the omission of the necessary exceptions to which they are at present

subject” (ibid.). This was a clear case of where government did not pay attention to the popular demands. And it explains the reluctance to “trust” this current government not to manipulate the process for its own interests as did the previous government.

## **7. STRATEGIES TO BUILD PARTICIPATION**

To promote and support the inclusion of ESC rights within the Constitution, several strategic plans should be implemented collectively by the government, the Church and Civil Society. In order to give the constitution-making process the respect that it deserves and the durability it requires, the following points should be taken into consideration:

### **7.1 INCLUSIVENESS**

All the citizens of Zambia should as much as possible be part of the whole process from its beginning to completion. A good Constitution is one that is broad based, inclusive, open and allows every citizen to participate in its building process. There is a moral demand that involvement should not be an option, preserve or monopoly of a few. Hence, there is need for public debates at all levels of society and for putting in place the instruments of a Constituent Assembly and Referendum.

### **7.2 OWNERSHIP**

An inclusive constitution-making process enhances wide participation at grass-root levels, and ensures that people pledge to support its contents as committed stakeholders. Furthermore, citizens become proud of it, own it and are ready to defend its contents because it is a reflection of fundamental national consensus. Therefore, ESC rights claims must also be owned and championed by the people who are the custodians of the laws of the land.

### **7.3 SENSITISATION CAMPAIGN**

Sensitisation to all issues surrounding constitution-making lies at the foundation of active participation in the debates around what is to be included in the Bill of Rights. The core of any successful advocacy depends on adequate and proper dissemination of education materials and communication with a broad-based group. Hence there is need for local language translations of the documents. It is also evident that Constitutional changes are much more than revising inadequate words on paper, but rather changing the mentality and value systems of the people.

One of the objectives of conscientisation is to ensure that citizens are aware of their rights and know how to demand for these rights. A public that is aware of its basic rights is able to challenge the status quo of continual deprivation of these rights and is also ready to stand together in fighting for the enshrinement of these rights in the Bill of Rights.

### **7.4 COLLABORATIVE ADVOCACY**

The government, the Church and the Civil Society have a responsibility to engage in a wide campaign of disseminating information on ESC rights to reach all the corners of the country. Advocacy through organised national, district and local discussions should be a priority. A review of the discussions and debates organized by CSOs show that they are moving in the right direction. But there is need for a more intensive campaign of getting wider people’s participation in the constitution-making process for the inclusion of ESC rights.

What are some of the ways that can be undertaken collaboratively in ensuring an effective implementation of ESC rights? There is need:

- to strengthen sharing of information and advice with Members of Parliament, in order to persuade politicians in both ruling and opposition parties to join this campaign;
- to strengthen popular in-put into the government budget, that would include preparing and publicising “alternative” or “parallel” budgets that emphasize implementation of the PRSP and the MDGs priorities;
- to strengthen working relationships with the Judiciary, the Permanent Human Rights Commission and members of the Public Service in efforts aimed at monitoring human rights violations;
- to closely work with the media, Trade Unions and educational institutions to inform the public about ESC rights; and central to this effort must be translation of materials into local languages. (See McChesney, 2000)

## 8. PRECEDENTS FROM OTHER CONSTITUTIONS

Serious comparative study of what is contained in various other Constitutions is very vital in any constitution-making process. What kinds of Economic Social and Cultural rights do we want? How should they be formulated? What categories of rights do we need to include and to exclude? Since rights are not really for writing but for claiming, what mechanism for enforcement do we need to employ? Two aspects need to be considered here: justiciability and enforcement mechanism.

### 8.1. JUSTICIABLE CHARACTER: MALAWI EXAMPLE

Zambia needs to learn from countries like Malawi, Uganda and South Africa which have found ways of dealing with the application of ESC rights as articulated in their Constitutions. For example, the Malawian and South African Constitutions allow citizens to have legal redress to secure protection of ESC rights and to assure priority spending of government to comply with these rights as included in the Bill of Rights.

In the Malawian Constitution, Article 14 on the “Application of the Principles of National Policy” provides that the principles of national policy “shall be directory in nature but the courts shall be entitled to have regard to them in interpreting and applying any of the provisions of this Constitution or any law or in determining the validity of decisions of the Executive and in the interpretation of this Constitution” (see Constitution of Malawi, 1995). That is, the Malawian Constitution gives aggrieved citizens access to recourse through the courts of law, thereby making the ESC rights *justiciable*.

In our Zambian situation, however, one thing is clear. Both the Mvunga and Mwanakatwe Commissions recommended that some of the ESC rights the people demanded should be in the “Directive Principles of State Policy” with a *non-justiciable* character. The major reason cited for this preferred choice was concern about the financial demands that would be attached to their realisation. The ESC rights might prove too expensive to bear implementation (see Mvunga, 1991; Mwanakatwe, 1995). Therefore, as Professor Michelo Hansungule rightly observes that, “even if the 1991 Constitution had been amended in its Bill of Rights provisions, it would still not have catered for social and economic rights” (Hansungule, 1999, p. 33).

But questions still remain: for how long shall Zambia excuse itself from achieving these basic rights for its citizens? Is the status given to “Directive Principles of State Policy” a permanent

solution? How should we deal with the inadequacies or ineffectiveness noted earlier about our enforcement mechanism?

Since ESC rights are obviously being achieved in a few countries world-wide, there is sufficient case law to demonstrate that these rights are indeed justiciable and to illustrate the potential demand in those countries where there are not yet justiciable. Therefore it is very important to analyse the possibilities of an effective enforcement mechanism.

## **8.2. ENFORCEMENT MECHANISM: SOUTH AFRICA EXAMPLE**

The most important instrument of vindication of human rights violations is the Judiciary. However, if effective measures for vindication of such rights are lacking, human rights cannot be realistically enjoyed by individuals (see Kibwana, 1990). The courts must be ready to resolve human rights conflicts according to the law, whether this be through a special Constitutional Court or through the High Court. ESC rights will be meaningless if the courts do not vindicate them when they are violated. Citizens must have easy access to the courts to ensure prompt adjudication of claims.

In South Africa, for example, ESC rights are generally regarded as "progressive realisation" rights in the Constitution. That is, they should be gradually realised. Over recent years, the South African jurisprudence on socio-economic rights has been developing quite well. When negotiations were going on to include the cluster of ESC rights in the Bill of Rights, there were many dissenting views. But the Constitutional Assembly resolved to include them in the Bill of Rights as a way of ensuring that the government takes seriously its commitment to the constitutional founding principles of human dignity, justice, equality and freedom.

Different rights are formulated differently. For example, Section 26, which provides for the right to housing and section 27, which provides for access to health care, food, water and social security have been formulated in terms of the "rights of access". In order to realise these rights the "State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights." While sections 25 and 29 providing for the right to property and the right to education respectively, are "full-blown" unqualified rights. (See Constitution of South Africa, 1996)

Since 1996, when its new Constitution came into force, at least four cases on socio-economic rights have been brought before the Constitutional Court. Out of these, the Constitutional Court has ruled in favour of the plaintiffs, essentially ordering government to provide for these rights or to take "reasonable measures" towards realising these rights. (See South African Constitutional Court web-site)

One outstanding and frequently cited example is the October 2000 case of *Grootboom versus Oostenberg Municipality and Others*. This dealt with housing rights and land rights as positive obligations. The facts included that 900 people were evicted from their houses and then re-settled in a sports field. The community approached the Court on the basis of their constitutional right to have access to adequate housing (a point clearly stated in the South Africa Constitution).

The Constitutional Court in its decision held that the Constitution does not oblige the State to go beyond its available resources or to realise the socio-economic rights contained in the Constitution immediately. However, the failure of the State housing programme to provide any form of temporary relief to those in desperate need or living in crisis conditions meant that the programme was not reasonable and failed to satisfy the State's obligation to achieve the progressive realisation of these rights. The Court issued a declaratory order that required

the State to devise and implement a programme that included measures to provide relief for those desperate people who had not been catered for in the State housing programme.

In 2001, residents of Bon Vista Mansions sued their local council (SMLC) for disconnecting the water supply to a block of flats in Johannesburg. The High Court found that disconnection was a *prima facie* breach of the constitutional and legislative right to access to sufficient water. The Court argued that the council must demonstrate that disconnection is “fair and equitable” and this includes taking into account the ability to pay. Since the council had not discharged this onus, an interim order for reconnection of the water supply was made.

During the same year, a case was heard between the *Minister of Public Works and Others versus Kyalami Ridge Environmental Association and Others* dealing with the right to access housing and land rights. Facts were that the government established a transit camp on a State owned land as a temporary measure to cater for the people of Alexandra Township who were displaced by severe floods.

A residents’ association contended that the setting up of this camp contravened a town planning scheme, land and environmental legislation, and had been undertaken without hearing local residents’ views. The High Court ruled in favour of the Association and granted an interim interdict, a decision that the government challenged in the Constitutional Court.

The Constitutional Court observed that it was the government’s responsibility to ensure that laws, policies, programmes and strategies were adequate to meet the State’s obligation to provide access to adequate housing as provided for in section 26(2) that guarantees progressive realisation of this right. That is, to facilitate access to temporary relief to people living in a crisis due to such disasters as floods or fires. The government’s decision to establish a temporary camp to flood victims was therefore lawful as it was intended to give effect to its constitutional obligations.

Moreover, in 2002 the case of *TAC versus the Minister of Health* dealing with health rights as positive obligations was brought before the Constitutional Court. The applicants sought to compel the South African government and its relevant agencies to allow the provision of anti-retroviral drugs, Nevirapine or AZT to all HIV positive pregnant women in order to prevent mother-to-child HIV transmission. It was argued that confining the use of Nevirapine to research and training sites could not be regarded as reasonable and thus constituted a violation of the constitutional right to access adequate health care.

In its judgement, the Court noted that it is impossible to give everyone access to a “core” service *immediately* and that all that can be expected of the State is that it acts reasonably to provide access to the socio-economic rights identified in sections 26 and 27 on a *progressive* basis. However, the State’s policy not to make Nevirapine available at hospitals and clinics other than the research and training sites was unreasonable and, therefore, fell short of meeting its obligation to devise and implement within its available resources a comprehensive and coordinated programme. As a remedy, the Court ordered that the government act “without delay” to provide Nevirapine in public hospitals and clinics when this is medically indicated and to take reasonable measures to provide testing and counseling facilities at hospitals and clinics.

It is clear that Zambia can learn several things from the South African precedents. The first is to put ESC rights and remedies clearly in the Constitution. Then there is the need to broaden the legal definition of “*locus standi*” to include these categories of claimants: anyone acting in their own interest; anyone acting on behalf of another person who cannot act in their own name; anyone acting as a member of, or in the interest of, a group or class of persons;

anyone acting in the public interest; and an association acting in the interest of its members (see Mwanakatwe Report on *locus standi*). Moreover, the enforcement mechanism for ESC rights must be established by including within the Judiciary a special Constitutional Court.

What the South Africa examples show is that it is indeed possible -- given the political will and the intelligent imagination -- to make ESC rights enshrined in a Constitution both justiciable and manageable. As Zambia moves further in its constitutional review process, the clear case in point of how South Africa is handling such situations should be helpful.

## **9. VALUE-ADDED DIMENSION IN THE DEBATE**

It should be clear from what this research paper has argued so far that inclusion of ESC rights in the Constitution is not simply an *economic* or *political* issue, but it is a profoundly *moral* issue. It is therefore helpful to examine this aspect of the debate by taking note of the value-added dimension of policy analysis that the Churches' Social Teaching (CST) offers.

CST's emphasis on human rights arises from its concern for the dignity of every human person. This dignity is a result of human existence and is not earned by achievements or bestowed by any authorities other than God. In the CST the human person is considered as "the source, the center, and purpose of every socio-economic life."

Therefore, for the CST full enjoyment of ESC rights increases the capacity of each person to meet the basic needs and other amenities necessary for a meaningful life. As such, every one is considered as having a right and a duty to participate in the full range of activities and institutions of social life. But this is possible only in an environment that promotes policies sensitive to the following value positions.

### **9.1. EQUALITY AND EQUAL PARTICIPATION**

Participation is not only political. Seen as central to ESC rights, it calls for a more equal sharing of social status and economic resources in the concrete realm of social existence. The rights and duties of participation are central. To be excluded from playing a significant participative role in the life of society is a serious injustice, for it frustrates legitimate aspirations to express oneself in human freedom. CST argues that anything that blocks full political, economic, social, cultural and spiritual participation counts as a serious offence against human rights.

### **9.2. INTEGRAL DEVELOPMENT**

It is a development whose focus is not simply an economic one, but integral in the sense of embracing also the social, cultural, political, ecological and spiritual dimensions of the whole human person in the fullness of whole human community. CST sees that development is a "transition from less human conditions" which perpetuates a lack of material necessities, especially for those who are without the minimum essentials of life and those under oppressive structures, "to those which are more human" where there are assurances of good health and fixed employment, better education, proper food security, etc. ESC rights are thus central to integral development.

### **9.3. SOLIDARITY**

Rights should always be placed in the context of solidarity and concern for the well-being of the wide community. To be human is to experience not only rights but also obligations to others. In practice, solidarity calls attention to the fact that people are interdependent in effective interrelationships. In other words, a person cannot realise full potential or appreciate

the full meaning of human dignity unless that person shares life with others and cooperates on projects that hold the promise of mutual benefit.

#### **9.4. COMMON GOOD**

Human rights are always experienced within the context of the promotion of the common good. This common good is described by the CST as “the sum total of those conditions of social living whereby all people are enabled more fully and more readily to achieve their own perfection.” This means that each person both benefits from and contributes to the fullness of life. CST documents have been quite explicit in linking ESC rights to common good (see DeBerri et al, 2003; Massaro, 2000). The political order, supported by the public, must ensure that conditions promoting realisation of economic, social and cultural rights are protected.

#### **9.5. LOVE AND JUSTICE**

Love of neighbour is an absolute demand for justice, because charity must manifest itself in actions and structures, which respect and protect human dignity and rights and facilitate human development. Love of God and love of neighbour are inseparable and are indispensable to authentic human development. Meaningful commitment towards the promotion of ESC rights is one of the most important expressions of moral integrity in actions designed to promote the good of one’s neighbour. Such an action on behalf of justice is a participation in the transformation of the human family and liberation from every oppressive situation.

#### **9.6. SPECIAL CONCERN FOR THE POOR**

As is evident in the case of Zambia, failure to support and implement ESC rights is a major contributor to the unacceptable levels of poverty in today’s world. A central tenet in the CST is the special concern that must be shown for the poor, or what is commonly called the “option for the poor.” This means that all programmes and policies – as well as personal actions – should have as one of their necessary criteria for evaluation the question: “What is the impact on the poor?” Pro-poor orientations must be a priority.

#### **9.7. ROLE OF THE GOVERNMENT**

The government is entrusted with the task of safeguarding citizen’s rights and the promotion of the common good. CST is definitely at odds with an increasingly popular and influential thesis of neo-liberalism, the need for the “retreat of the state.” It is thus incumbent upon the State to ensure availability of decent economic, social and cultural conditions for all its citizens, especially those incapable of defending their rights and asserting their legitimate claims. In practice, the role of the government should ensure that ESC rights are respected and implemented in coordination with other rights so that each citizen may live a full human life and carry out his or her duties in community.

## CONCLUSION AND POLICY RECOMMENDATIONS

This research paper has endeavoured to show that the demand for the inclusion of ESC rights in the Bill of Rights of the Zambian Constitution:

- Is not a new experience. Efforts to have these rights in our Constitution have in the past until now been part of the lobbying and advocating campaign as witnessed by peoples' submissions to the Mvunga Commission, and more extensively during the Mwanakatwe Commission and the current Mung'omba Commission.
- Is not the sole responsibility of civil society organisations and the Church. All the struggles are meant to ensure that the process of constitution-making is broad, inclusive and participatory to ensure that the new Constitution "stands the test of time".
- Is the wish of the people of Zambia to have their basic rights protected, since Part IX of the current Constitution, "Directive Principles of State Policy," has clearly failed to meet their basic needs.
- Is a realistic demand and one that is possible to achieve since there are very good precedents for such constitutional provisions, for example, in the Constitution of South Africa.
- Is a moral and ethical demand on the citizens of Zambia, in order to promote the fullness of human life within a just society.

In view of the above discussion, the JCTR makes the following *policy recommendations* as major initiatives that can and should be immediately undertaken:

- A coordinated civic education campaign should be launched by civil society and Church groups to help Zambian citizens understand the meaning of Economic, Social and Cultural (ESC) rights and the necessity and possibility of including these rights in the new Constitution.
- Special attention should be paid by civil society and Church groups to the ESC rights of women in order to assure that gender issues are adequately dealt with in the current Constitutional review.
- The Permanent Human Rights Commission should undertake a study of how the Constitution can effectively include ESC rights and how a Constitutional Court can be established (following the precedent, for example, of South Africa).
- The government should firmly commit itself to a Constituent Assembly and a Referendum, in order that ESC rights can be included in the new Constitution.
- The new Constitution of Zambia should widen the scope and regime of rights and freedoms in the Bill of Rights to include issues, which have become very important in recent years, especially ESC rights as required by an open and democratic society.

In conclusion, the Jesuit Centre for Theological Reflection urges that appropriate steps be taken immediately to assure that the full range of economic, social and cultural rights are enshrined in the new Zambian constitution, with proper mechanisms for their effective implementation and full enjoyment.

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#### **PERSONS INTERVIEWED:**

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Ms Matrine B. Chuulu, Acting Regional Coordinator, WILSA-Zambia.

Mr. Patrick Matibini, Lusaka Lawyer.

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Mr. Alick Lungu, Catholic Centre for Justice, Development and Peace.

Mr. Akashambatwa M. Lewanika, Politician and Economist.

## ANNEX I

### UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

#### Article 22

Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in and out of

wedlock, shall enjoy the same social protection.

#### Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

#### Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## ANNEX II

### INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)

#### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### **Article 8**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the

right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### **Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

### **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social

exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

### **ANNEX III**

#### **AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (1981)**

##### **Article 15**

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

##### **Article 16**

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State Parties to the present Charter shall take necessary measures to protect the health of their people and ensure that they receive medical attention when they are sick.

##### **Article 17**

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

##### **Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

**Article 22**

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. State shall have the duty, individually or collectively, to ensure the exercise of the right of development.

**Article 24**

All peoples shall have the right to a general satisfactory environment favorable to their development.

**Article 25**

State parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

**ANNEX IV**

**CONSTITUTION OF ZAMBIA (1996)**

**PART IX, "DIRECTIVE PRINCIPLES OF STATE POLICY AND THE DUTIES OF A CITIZEN"**

**110. APPLICATION OF DIRECTIVE PRINCIPLES OF STATE POLICY**

- (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the-

- (a) development of national policies;
- (b) implementation of national policies;
- (c) making and enactment of laws; and
- (d) application of the Constitution and any other law.

- (2) the application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

**111. DIRECTIVES NOT TO BE JUSTICIABLE**

The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

**112. DIRECTIVE PRINCIPLES OF STATE POLICY**

The following Directives shall be the Principles of State Policy for the purposes of this Part:

- (a) the State shall be based on democratic principles;
- (b) the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;
- (c) the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- (d) the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
- (e) the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
- (f) the State shall endeavour to provide to persons with disabilities,

- the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
- (g) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;
  - (h) the State shall strive to provide a clean and healthy environment for all;
- (i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generation; and
  - (j) the State shall recognize the right of every person to fair labour practices and safe and healthy working conditions.