

GREAT EXPECTATIONS FOR NCC AGENDA

Peter Henriot

When the over five hundred members of the National Constitutional Conference (NCC) gather at Lusaka's Mulungushi Conference Centre this morning to get down to their serious business, they must know that there are indeed "great expectations" put upon them by Zambians all across the country. With tragic and shameful events unfolding in our neighbour to the South, we have so much to be grateful for in Zambia that the NCC members should work extra hard to preserve a peaceful and democratic environment here.

For very good reasons, many important segments of Zambian society will be missing from the NCC sittings, including the major churches and civil society organisations. But even if these groups are not "participating" in the NCC, they still can be "contributing" to its deliberations through analysis of issues, civic education programmes and lobbying for key components of a truly new Constitution. And of course, some strong prayers can also help!

So much has already been written about the need for a really good new Constitution – not an overly amended version like the 3.5 model adopted in 1996 – that I hesitate to add yet more words! But let me presume to remind the NCC members and other good readers of this column of three very obvious points that should be paid attention to. (And let it be clear that I write this from my constitutional law background, not out of any partisan leanings!)

GOOD DRAFT

First, the process of getting a new Constitution in place needs to closely observe the well-traced path outlined by the Mung'omba Constitutional Review Commission (CRC) at the explicit request of the Republican President when he appointed the CRC in 2003. Remember that the President included in the Terms of Reference the expectation that we should be able to have in place a "constitution to stand the test of time." The citizens of Zambia didn't want any more of this constant re-writing of constitutions that are either weak or distorted.

So the path to follow was clearly to have a constituent assembly of some sort (the NCC is currently making an effort to fit that description) that would ADOPT a new Constitution. That is the first step. Being really new would necessarily mean revising the Bill of Rights and so the second step would be a national referendum to APPROVE the draft.

And the third step would then be for the Parliament to ENACT the new Constitution. Parliament's rightful legislative role is not to tinker with the document already adopted and approved but only to enact it for immediate implementation.

POPULAR SUPPORT

Second, what comes out of the NCC should really be able to legitimately begin with the sacred phrase, "We the People...." By that I mean that it should be the product of input and desires from the population from across the country, and not the creation of a body mainly controlled by politicians and government agents and meeting for only a brief period of time. That of course was the explicit intent of Mung'omba CRC as it was appointed by the President.

What the NCC will primarily be engaged with is debate and decision about a document that was capably drafted after two and a half years of extensive research and expert investigation, public hearings held all across the country, inputs from Government agencies, Parliament, civil society groups, churches and ordinary citizens. The Mung'omba CRC also relied upon the very good work that resulted in the draft document that had been prepared a few years earlier by the Mwanakatwe Commission – good work rejected out of hand by the then reigning President.

Truly, the Mung'omba draft deserved to begin with the phrase "we the People" because of its widespread popular consultation. There is no way that the NCC could attempt to duplicate or go beyond that

consultation and such an effort is not even in the mandate of the NNC Act. Yes, there will be some few adjustments, adaptations, amendments, etc., in what the NCC produces. But the NCC members should act both intelligently and humbly enough to know that they are dealing with a well-crafted draft that is the product of much good work and general popular support.

BILL OF RIGHTS

Third, it is certainly obvious that a central task of the NCC will be to adopt a new Bill of Rights. This is a document that the Mvunga Commission postponed, that the Mwanakatwe Commission proposed but was dismissed, and that the Mung'omba Commission now has expertly offered. The current Bill of Rights was written by the British before Zambia's Independence. If this NCC is not to adopt an updated Bill of Rights, when will Zambian citizens ever expect that? As the saying goes, "If not now, then when? If not us, then who?"

The up-dating of the Bill of Rights will of course mean the adoption of Economic, Social and Cultural Rights (ESCR), since this is the framework necessary for integral and sustainable development in Zambia. Moreover, the rights of women, children, the elderly and the differently-abled must be included in the new Bill of Rights.

If Zambia is to utilise all its very rich resources, especially its richest resource which is the women and men of this country, we simply cannot continue in a situation where currently no citizen has the legitimate and legally recognised right to education, health care, food, water, clean environment, decent employment, cultural respect, etc. Mind you, these rights don't come overnight nor are they without correlative duties. For example, the right to education is accompanied by the duty to put that education toward the improvement of the common good.

Following the tested example of the South African Constitution, the ESCR of the Draft are 1) justiciable – can be brought up in court action, 2) subject to progressive realisation -- dependent on available resources, 3) open to public interest litigation – citizen action, and 4) decided by a Constitutional Court. To speak of fears of bankrupting the country and over-straining the courts is to reveal that one has not read the text of the Draft or the allied literature explaining the content and process of ESCR.

Because of the very great importance – legal, political and moral – of adopting a new Bill of Rights, the Jesuit Centre for Theological Reflection (JCTR) is collecting signatures nationwide to present a petition to the NCC to put this task as one of its highest priorities. Already, almost 10,000 Zambian citizens have signed the petition (get details in our office or on our website: www.jctr.org.zm).

GREAT EXPECTATIONS

As I said at the opening of this column, the members of the NCC face "great expectations" from the citizens of Zambia. Those who are "participating" inside Mulungushi Centre should listen to those who are "contributing" outside. The new Constitution must by no means be a product of the current Ruling Party and its Government. The Republican President has already emphasised that point.

So let the NCC members go forward with the goal of a truly new Constitution, popularly mandated and inclusive of a new Bill of Rights. Surely, Zambia deserves that!

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Prepared for THE POST, Lusaka, 22 April 2008