

IS A “FAST TRACK” FOR CONSTITUTIONAL ROAD MAP POSSIBLE AND DESIRABLE?

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A senior Government official recently warned that trying to speed up the process laid out by the Government for adoption of the new Constitution by 2009 could have very bad quality consequences. Let's take his advice as being made in good faith – a non-partisan warning to be analysed through dialogue and not a partisan mandate to cease further discussion.

I'd like to suggest for discussion that the process can indeed be speeded up without bad consequences if three attitudes are reinforced and three structures put in place.

THREE NECESSARY ATTITUDES

A fundamental attitude for successful and expeditious enactment of the Constitution is the acknowledgment that a new basic law of the land is absolutely necessary for development. A Constitution is not a secondary matter, something to work for after the economy is turned around, the Fifth National Development Plan (FNDP) is in place and Zambia is on the way toward meeting the Millennium Development Goals (MDGs). Why? Because the new Constitution will put pressures on Budget expenditures for development since it will contain Economic, Social and Cultural Rights in the Bill of Rights. Moreover, it will improve good governance by trimming the powers of the Executive and enhancing the proper powers of the Parliament. And it will assure that the electoral process is free and fair by setting out the much-desired electoral reforms.

There won't be a successful FNDP and we won't move toward the MDGs without good governance, and we won't have good governance without a new Constitution. Let's face the facts and with a positive attitude move forward with urgency.

A second attitude is obvious but must be restated again and again. Good constitutional reform must be a non-partisan process, above the whims and wishes of a particular party, whether it be Ruling or Opposition. It is not the prerogative of a specific party to exercise a control over the process that cannot be challenged. The President set a good example when he overrode his own reluctance to endorse a Constituent Assembly because he recognised that the majority of the people wanted such a people-centred process for constitutional adoption.

Third, let it be clearly acknowledged that we have in hand a good document – indeed, a very good document -- in the Second Draft (December 2005) offered by the Mung'omba Constitutional Review Commission. This the fruit of several years of intense labour based on public hearings, interviews, research, visits to other countries, etc. The wisdom of the 1996 Mwanakatwe Draft (rejected for partisan reasons by the President of the day) was relied on in formulating the new Draft. Hundreds of pages summarising the offerings of citizens of different status from across the country are contained in the Draft report. There is simply no need to go through a lengthy and extensive process of re-formulating the Draft. Here and there will be differences that can be ironed out quickly by people who bring the expertise and the commitment to make a good Constitution acceptable to the majority of the people.

THREE NECESSARY STRUCTURES

If these three reasonable attitudes are in place, then some good structures can readily be established to speed up the process, putting us on the “fast track” for a new Constitution.

First, let's have a clear constitutional judgement about what is required and what is not required to deal with such controversial issues as to whether #79 of the current Constitution must be amended and whether a new national census must be undertaken. There simply is a mix of opinions on these important issues and it should not be the claim of the current Government to say that its opinion is the only correct one that must be followed. Very competent constitutional experts have offered other views that at least should be considered. Let the Justices of the Supreme Court be petitioned to give an independent constitutional opinion, after hearing the reasoned and non-partisan arguments of the various stakeholders. Then all necessary road maps can be adjusted accordingly.

Second, let's deal with the Constituent Assembly (CA) in a pragmatic and sensible fashion. I want to propose here ideas that I have heard raised in many responsible and non-partisan circles in recent months. There is both the urgent need and practical possibility of a small and focused CA that can adopt the new Constitution in an efficient, inexpensive and timely fashion. That means looking realistically at the task, membership, venue, perquisites and time of the CA.

Because the CA will be dealing with what is already a very sound document in the Mung'omba Draft, its task will not be complicated. Some fine-tuning will be necessary in some parts while a few major revisions may be necessary in other parts. But remember, we are dealing with the output of a process that took almost three years of intense research, intelligent exchange and wide consultation. The CA simply will not have a big task facing itself!

The membership of the CA can be drastically reduced from what has been suggested (upwards to one thousand members!). Let the selection of members be divergent but dedicated. That is, what is needed is expertise in dealing with the task, not simply "representation of diverse interests." Let the Members of Parliament select a small number who should serve in the CA in the same way that they choose the best individuals to serve on parliamentary standing committees. Opposition parties can decide on a few highly qualified persons to represent them. Let the civil society organisations, trade unions, business groups and youth groups choose a few representatives. The major church bodies can pick two or three representatives, and the traditional leaders pick half a dozen.

It is neither sensible nor necessary to try to include every possible group. The Mung'omba CRC recommended a large list, much too large. I believe that the criteria for choice should be competence and not simply representativeness.

If consensus is reached on the character of the CA membership, then the size should be manageable. Something in the range of 60 to 90 members could be reasonable.

Given that small size, then the venue is much easier – and much less expensive – to locate. Let's look at places like the Commonwealth Youth Centre on the UNZA Campus, or public places like the Barn Motel or Andrews Motel – reasonable and comfortable but not luxurious. And no sitting allowances will be allocated CA members! If necessary supplements are required, the institutions from which the members come can supply that. (The original Zambian Freedom Fighters didn't get sitting allowances – why should patriotic citizens serving on the CA expect such?)

Finally, the time of the CA need not go beyond 60 days. Again, look at the task and the quality and quantity of members. I don't believe that intelligent and selfless work is going to require many months!

The third structure is something that can be begun immediately: popularise the draft and explain the process. Get it out to the people. Translations in simplified form. Web site access (why is the Second Draft not on the State House website right now – is there something to hide?). Civil society groups and churches can assume the duty of getting information out.

A “FAST TRACK” THAT SAFEGUARDS QUALITY

What I have suggested here by way of necessary attitudes and necessary structures is not, I humbly submit, radical or unreasonable. And the quality of the on-going process and eventual outcome would be safeguarded through a non-partisan, representative and highly competent engagement of dedicated citizens who know the importance of a new Constitution as soon as possible.

When I did my degree in Constitutional Law, I learned that the USA Constitution was the product of character, competency and compromise – and it didn't take very long to formulate and enact. Surely Zambians can do the same today!

The President has asked for suggestions – here are some. Any reactions?

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