

# EASTER HOPE FOR A NEW CONSTITUTION!

Peter Henriot

For us Christians, Easter is a time of new life and therefore new hope! I thought of that this past weekend in the midst of all the church services commemorating the great events recorded in our scriptures. Because Jesus rose from the dead, we have the hope of rising from the dead to enjoy new life. And that includes the rising from the dead spots in our life right now, in our personal lives and in the life of our country.

For Zambians today, one of those dead spots surely is the lack of real progress on the long-promised and much-desired new Republican Constitution. So can we find any grounds for new life and therefore new hope when we look at what is happening with the constitutional reform process?

## SOME SIGNS OF HOPE

First of all, of course, there is the commitment of the Republican President to put in place a good new Constitution before he leaves office. When he appointed the Mung'omba Commission in 2003, it was clearly his intention – and a worthy intention – to go down in history as the Zambian President who assisted the people to put in place a “Constitution that would stand the test of time.” Despite political ups and downs and occasional flares of disappointment and temper, on many sides, it surely would not be his intention to back down on what people see as a very solemn pledge. And that is a cause of hope!

Second, we now have a Budget passed which includes money to move the constitution-making process forward. The Government spokesperson is reported in a Government newspaper on Saturday to have assured Parliament and the nation that a Cabinet committee would soon meet to discuss the next steps and that the road maps submitted by civil society would be considered. It is hopeful to hear that the Government is “determined to move ahead on the issue of the constitution-making process.”

Third, civil society has intelligently and effectively done its homework in preparing a realistic road map that outlines a one year and a half programme of getting a new constitution by *adoption* in a Constituent Assembly, *approval* through a National Referendum and *enactment* by the Parliament. The road map is designed by a non-partisan group of legal experts who have done a thorough job of research. Surely this must be taken seriously in the days ahead. Such conscientious work offers grounds for hope.

Fourth, I think it is hopeful that there is growing wide-spread national recognition that delays are simply unacceptable in a truly democratic process. It is only a very small minority of persons in Zambia today who offer long and drawn-out processes, who cite financial concerns that can readily be overcome, or who even raise questions about whether a new Constitution is necessary. Their position daily grows less credible, less respectable, more isolated.

## NEED FOR A NEW CONSTITUTION

Let's take up a point just mentioned, that some officials in the current Government have even expressed doubt about the need for a new Constitution. And this despite the fact that the leader of the Government inaugurated the constitutional reform process several years ago precisely because his Party agreed with the national consensus that the current Constitution was seriously flawed.

Here briefly are some of the flaws highlighted by the Mung'omba Commission in its very thorough research on the current Constitution and the need for a new Constitution.

First, the Bill of Rights is sorely lacking an up-date. The product of British colonial authorship almost fifty years ago, the Bill of Rights is silent on Economic, Social and Cultural Rights, women's and children's rights, the rights of the disabled, and environmental rights. When some arguments are made that people can't eat a constitution, we can argue that people won't eat without a good constitution!

Second, the Mwanakatwe Commission of the mid-1990s and the more recent Mung'omba Commission both recommended curbing excessive powers of the President. For example, removing the unrestricted ability to dissolve Parliament and reducing the ability to remove without authorisation certain key officers such as the Attorney general, Solicitor General and Director of Public Prosecutions. Again, it is important to emphasise that this is not a partisan recommendation but one that would reinforce a balance of power no matter what party was in State House.

Third, the electoral process set out in the current Constitution needs major overhaul, as was clearly evident in the 2006 elections. The independence of the Electoral Commission needs to be guaranteed, the process of petitioning elections streamlined and the 50%-plus one rule put in to assure that a President has a truly popular mandate. That all needs to be done prior to the 2011 elections.

Fourth, if Zambia is to avoid again becoming a HIPC country because of huge external debt contractions, Parliament must be given an oversight role regarding new loans. This is done in other countries such as Uganda and has meant much more serious debt management and consequently a more stable future development.

### **AMENDED OR NEW?**

These four points about the need for a new Constitution are minimal indeed and others have analysed the issue much more deeply than I have done so here. But they can serve as simple pointers to the more profound grounding for the new Constitution. And this is where I think that the recent submission of the Law Association of Zambia (LAZ) is so important in clarifying once and for all that it is a NEW Constitution and not an AMENDED Constitution that Zambia should be pursuing.

I recall listening several years ago with considerable fascination to a very senior Zambian lawyer and constitutional expert who made just this point in an early discussion of constitutional reform in Zambia. According to this distinguished legal specialist, the cautions about Article 79 of the current Constitution simply do not matter in the exercise undertaken to draft a completely new Constitution. Article 79 constrains the process of amendment of an old document and does not touch on the process of designing a new document.

So my hope then brightens when it can be seen that the growing pressure for a new Constitution has right reason, moral insight and legal precedent on its side. Surely there are plenty of problems ahead. Civil society's road map probably has some potholes and some distracting detours in it. But so does the government's proposed plan. Let's have some honest dialogue without further delay!

## HOPE FOR NEW LIFE

I began by saying that that Easter is a time of new life and hope. We feel that in our churches. And we should also feel it in our political discussions and decisions. Who is promoting new life and encouraging hope as regards constitutional review, and who is stifling life and discouraging hope, is going to become more and more evident in the immediate days ahead.

It's time for people of every political persuasion to get on with the task so strongly desired and deserved by the Zambian people. When the SADC Heads of State summit meets here in Lusaka in August, Zambia has the opportunity to offer a strong example of good governance. We shouldn't miss that chance by delaying any more the constitutional reform process!

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