

# NCC NEWS

KNOW MORE ABOUT YOUR CONSTITUTION



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## *SPECIAL EDITION ON EXPERT ADVISE TO THE NCC*

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### **SPECIAL POINT OF INTEREST:**

*The NCC third sittings begun on Tuesday April 22 and ended on Friday May 9, 2008*

## NCC CHAIRMAN'S REMARKS

Dear Readers,

The National Constitutional Conference has just begun its work of debating, adopting and making recommendations to the Mung'omba Draft Constitution.

The NCC has a mammoth task of producing a Constitution that will incorporate people's views.

At every stage of the process, the NCC will need every one's support, including that of our sisters and brothers who have decided not to be part of this process.

Cognizant of the fact that the work of the NCC is quite technical, the Conference engaged experts during its third sitting to orient members on various aspects of the Constitution.

It was imperative for NCC members to acquaint themselves with various aspects of the Constitution before embarking on making recommendations on the Mung'omba Draft.

Experts acquainted members on various aspects of the Constitution so that they can be able to make meaningful contributions.

After getting insights on various aspects of the Constitution from experts, it was important that members begin making their recommendations on the Mung'omba Draft Constitution.

Thus the first three Committees, namely, the Citizenship, Judicial and Public Service have already completed their work and are waiting to present their reports to the plenary for ratification and adoption. These Committees met from May 9 to June 15, 2008.

Suffice to mention that these Committees worked within the time frame of 20 days that they were given.

Once all the Committees have completed their work of looking at their terms of reference, the final report will be published for sixty days to solicit for comments from members of the public.



*NCC Chairman, Hon Chifumu K. Banda,*

As I have always stated at different for a, I want to assure our readers that the NCC will endeavour to finish its work at least within the stipulated time.

Finally, I want to urge all the NCC members to ensure that they read all the documents that they had been given to them so that they can be able make meaningful contributions in their respective Committees.

**SPECIAL POINTS  
OF INTEREST:**

During the third sitting of the NCC, members were oriented on various aspects of the Constitution.

Several experts were hired to orient Conference members on some of the critical issues they should watch out for as they embark on the mammoth task of debating, examining, altering and adopting the provisions in the Mung'omba Draft Constitution.

Enjoy reading some of the excerpts from presentations by experts.

## 'DON'T PRODUCE A BAD CONSTITUTION,' JHALA CAUTIONS NCC MEMBERS

*By Beene Mujala Moombe*

National Constitution Conference members have been cautioned against producing a bad Constitution.

Lusaka based renowned lawyer and lecturer at the Zambia Institute of Advanced Legal Education (ZIALE) Eva Jhala said this when she addressed members of the NCC on April 25, 2008.

Jhala explained that bad Constitutions have been known to be the cause of instability in most African countries and elsewhere in the world.

Jhala explained that the Constitution is not only regarded as the superior law of a country which spells out the basic rules but that it was also an important document that establishes a contract between the people and government. She noted that the Constitution forms the fundamental charter of governance which is the bedrock of Constitutionalism.

She further defined the Constitution as the powers of governance for all the three organs of the state, namely, the judiciary, legislature and the executive.

In addition, Jhala explained that a Constitution assists in predetermining the rules under which the three organs should perform, the checks and balances or limitations in relation to the organs themselves and the individual, the state and the public at large.

"The Constitution should have a general framework for determining policies on a wide range of critical issues such as land and other natural resources, foreign relations, treaty making, education and health," Jhala said.

She cautioned that a Constitution should not encourage the personalization of power or discrimination against or amongst its citizens, whether these are the minority or majority.

"A Constitution should not be used as a tool of oppression and should not in any way disadvantage anyone," Jhala said.

Jhala also spelt out the types of Constitutions as unitary systems with centralized power, federal or decentralized systems of government which are broken down into Presidential and Parliamentary systems.

She explained that Zambia is governed under a unitary system where power is concentrated in the national government.

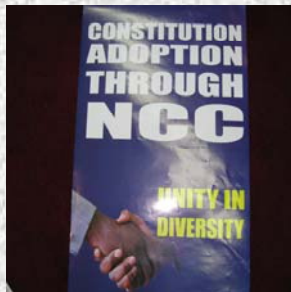


Mrs Eva Jhala, Lawyer and Lecturer at ZIALE.

"Federal system of government or federalism is a political arrangement which involves devolution or distribution of power to various centres in the country and defines how those centres are related," Jhala explained.

She further explained that federalism is not an economic arrangement but that it is the distribution of resources whereby development is achieved.





### SPECIAL POINTS OF INTEREST:

- **'The NCC members should ensure clarity and the removal of elements that are not suitable for inclusion in the Constitution.**
- **Too much detail may embed in the Constitution too many opportunities for controversy or for conflict with other legislation.'**

## 'ENSURE CLARITY IN YOUR SUBMISSIONS' - NGULUBE URGES NCC MEMBERS

Former Chief Justice Mathew Ngulube has called upon NCC members to ensure clarity in their submissions.

Ngulube urged members to make sure that they remove what he termed 'cobwebs' in the Mung'omba Draft Constitution.

In his presentation to the Conference during the third Conference sitting, Ngulube said there was need for the Conference to clarify and strengthen certain articles in the Mung'omba Draft Constitution.

He explained that it was important for members to ensure clarity and exclusion of elements that are not suitable for inclusion in the Constitution.

The former Chief Justice was pleased that the Mung'omba Draft Constitution dealt with main issues, leaving the details to ordinary legislation.

Mr. Ngulube explained that the danger of having too much detail embed in the Constitution is that it could create opportunities for controversy or conflict with other legislation.

"The Constitution is to be liberally construed so as to carry into effect the intentions of the people; it is a political as well as a legal

document and should ideally be read not so much as dealing with words but with the substance contained in the statement of the broad principles it deals with," Ngulube explained.

He advised members to pay particular attention to Articles 109 clause (2) that explains the role of the Electoral Commission of Zambia in determining the boundaries and the naming of wards as well as Article 118 clause (1) which proposes that the ECZ shall supervise the conduct of political parties.

He explained that although this new inclusion in Draft Constitution was well intended, it was important that these roles are clearly spelt out to avoid problems between the ECZ and individual political parties.

He was, however, hopeful that the ECZ would ensure that the proposed political parties fund would be administered without bias, if adopted by the members.

Other Articles that the former Chief Justice cited that members would need to critically look at include Article 132 clause (3) that prohibits both the President and the Vice President to be out of the country at the same time.

Ngulube also pointed out certain Articles in the Draft Constitution that the members would need to examine such as Articles 44, 45, 48 and 52 that deal with rights of children, youths, persons with disabilities as well as servitude and forced labour.

Others are Articles 80 on enforcement of the Bill of Rights, Article 88, Article 92 and 93 which propose the Establishment of the Gender Equality Commission, the appointment to public body as well as codes of ethics for professions and other bodies respectively.

He added other Articles that need to be critically looked at include Article 162 clause 6 which proposes the tenure of office and vacation of office of Members of Parliament.

### SPECIAL POINTS OF INTEREST:

- **The Mung'omba Draft Constitution has several new inclusions on citizenship such as dual citizenship and responsibilities of citizens among others.**
- **Under public service, the Draft proposes the establishment of commissions such as the Civil Service and the Police and Public Complaints Commission which is currently an Authority.**
- **Under the judiciary, the Draft Constitution proposes the**

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- *The Mung'omba Draft Constitution has proposed additional human rights.*
- *Amongst them are the Economic, social and cultural rights as well as new generation rights*
- *Watch out for details on the NCC website. The website will also carry schedules of committee sittings including that on Human Rights.*

[www.ncczambia.org](http://www.ncczambia.org)

#### SPECIAL POINTS OF INTEREST:

**'Zambia recorded the highest Constitutional amendments of not less than twenty during the one party state regime of between 1964 and 1975. These amendments were done mostly on the Bill of Rights and were mainly done to enfeeble the opposition political parties and to give more power to the Executive to deal with detained persons.'**

## LEGAL PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL (ESC) RIGHTS IS WEAK IN ZAMBIA, SAYS MULONDA

By Beene Mujala Moombe

A Human Rights Activist and Consultant has observed that legal protection of cultural, economic and social rights is weak in Zambia compared to political rights.

Chief Executive for HURID Palan Mulonda says there was an urgent need to find means of ensuring that provisions of economic, social and cultural rights are translated into concrete action at national level.

Mulonda bemoaned the lack of legal recognition of these rights as compared to civil and political rights despite the persistent invoking of indivisibility on economic, social and economic rights, there is still.

Mulonda said this when he presented a paper to the NCC members entitled 'Human Rights and the Constitution.' This was during orientation of members on April 25, 2008.

He urged members of the NCC to ensure that they take care of the concerns of the Zambian people on civil, social and economic rights which he said needed to be enshrined in the Constitution for them to be effectively appreciated by the people.

"The Zambian people need to see a new convention on civil, cultural, economic and political rights ratified and domesticated. There is need to have these rights entrenched at national level," Mulonda said.

He explained that there is need to have provisions that could guarantee a just and impartial administration as well as legal control and supervision of the economic, social and cultural rights



Mr. Palan Mulonda, HURID  
Executive Director

He explained the historical background of the human rights perspective which he said has developed as an aspect of western political philosophies.

He said that the idea of human rights or natural rights as they were called in ancient times, is disquiet to the relationship between the individual and the political community within which one lives.

'It concerns itself with the notion that the individual in the total scheme of that political community must be protected against the arbitrary or oppressive conduct of those exercising state power, or against the abuse of such power' Mulonda explained.

Mulonda also explained that the Bill of Rights has been incorporated in African Constitutions through the European Convention on Human Rights and Fundamental Freedoms of 1950.

"The principles of human rights set out under the European Convention found their way into Africa before independence through the extension of the Convention as prescribed

in the Convention and through the adoption of the Bill of Rights based on the Convention in the independence of many ex-British colonies acceding to independence," Mulonda said.

Mulonda explained that in Zambia, the Bill of Rights was first introduced in the Constitution of 1963, adding that since then, this section of the Constitution has seen several amendments.

He explained that Zambia's Bill recorded the highest Constitutional amendments in the Commonwealth African states between 1964 and 1975 where not less than twenty amendments were made.

Mulonda noted that some of these amendments in Zambia were passed to enable the government exercise some control over the foreign-owned businesses by amending the constitutional provisions entrenching the right to property.

He pointed out that others were intended to vest more power in the hands of the executive to deal with detained and restricted persons, thereby curtailing their rights, while others still were launched for political ends specifically to enfeeble the opposition parties.

#### SPECIAL POINTS OF INTEREST:

*The Human Rights Committee has a total of 64 terms of reference, which is the highest amongst all the 11 Committees of the NCC*



## BANDA ALLAYS FEARS THAT CONSTITUTION WILL BE MANIPULATED

By Beene Mujala Moombe

NCC Chairperson Chifumu Banda has allayed fears that the current method of adopting the Constitution would be manipulated by government.

Banda explained that the method of adopting the Constitution was independent of government.

He was speaking when he addressed members of the University of Zambia Political Students Association (UNZAPOSA) at the University of Zambia.

Responding to a question on misgivings on the inclusion of people's demands Banda said it was justified that many Zambians did not have trust on the outcome of the constitution-making process.

The student alleged that given the rejection of the NCC by various groupings in the country, it was highly doubtful that the outcome of the process would not be manipulated by government.

Banda attributed this lack of confidence to past experience in which Government would reject peoples recommendations from a Constitutional Review Commission (CRC) and only adopt what would suit it through Government white paper.

He said from since independence, governments have always subjected Zambians to adopting recommendations from CRCs through government white paper.

"This has discouraged most Zambians," Banda said.

It is for this reason that the Mwanawasa government decided to follow the recommendations of the Mung'omba Constitutional Review Commission of adopting the Constitution through the NCC,' Banda explained.

He dispelled assertions by some students that the NCC was not amongst the recommended methods of adopting the process.

Quoting from the Mung'omba Draft Report of 2005, Banda explained that the Mung'omba Commissioners recommended that the Constitution should be adopted through a Constituent Assembly, referendum or any other popular body.

"That is how the NCC was established whose composition is actually more than that which was recommended under a Constituent Assembly by the Mung'omba Commissioners," Banda said.

He explained that the composition of the NCC was all inclusive as it has representation from various stakeholder groups in the country.

On the question of alleged hefty allowances that NCC Commissioners are purportedly getting, Banda explained that it was important that Zambians understand that Constitution making process was expensive anywhere in the world because of the enormous work involved.

He explained that the K500,000 that members were getting was not even enough compared to the amount of work that they were doing.

"Constitution making processes are expensive and you can't expect to get a good document without spending money," Banda said.

Meanwhile Hon. Banda has urged youths to take keen interest in issues of national importance such as the current constitution making process.

He told the students that they are currently facing several challenges some of which can be addressed if embedded in the Constitution.

"Take keen interest in what is happening at the NCC as it can bring answers to some of your challenges," Banda explained.

### SPECIAL POINTS OF INTEREST

- *Zambia has had four Constitutional Review Commissions (CRCs) since independence, namely: The Mainza Chona CRC of 1972, the Professor Patrick Mvunga CRC of 1990 and the Mwanakatwe CRC of 1995, The fourth CRC is the Willa Mung'omba of 2003, which has given birth to the National Constitutional Conference*

**NCC - MEETING TO ADOPT A PEOPLE'S CONSTITUTION**

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**YOU CAN PARTICIPATE BY PHONING ON 0211-291801 OR SEND AN SMS TO 882 ON ALL NETWORKS**

**SPECIAL POINTS OF INTEREST:**

*The Executive committee is where matters concerning the Office of the President would be considered. Issues about Presidential candidate, nomination for election as president, election of president and swearing in as well as transfer of power from outgoing President to the President elect will be discussed. Election petition, tenure of office of president, removal of president on grounds of incapacity, impeachment of president for violation of the constitution or gross misconduct and many other issues will also be under consideration by this committee.*

*The Executive Committee shall look at issues of establishment of parliament, legislative powers and other functions of National Assembly as well as the composition of the National Assembly. Other matters of interest which members of this committee will need to address, pertain to emoluments of members, parliamentary election tribunal as well as the offices of the Speaker and Deputy Speaker of the National Assembly.*

*The terms of reference for the Judicial Committee include establishment of courts of judiciary, supreme and constitutional courts and offices of chief justice and deputy chief justice.*

*The other terms of reference under this committee include matters pertaining to high court and its supervisory jurisdiction and divisions. Appointment of judges of superior courts, acting appointments, qualification for*

## “ADDRESS CHALLENGES IN ARMS OF GOVERNMENT,” MWINGA URGES NCC MEMBERS

By Beene Mujala Moombe

Clerk of National Assembly Doris Mwinga has urged NCC members to ensure that they address the challenges being faced in the three arms of government, namely the executive, judiciary and legislature.

Mwinga told the members to examine and recommend issues that should address the challenges in the three arms of government.

She said this when she addressed NCC members during orientation on various constitutional issues on April 25, 2008.

In a presentation entitled ‘The doctrine of separation of powers: the roles of the legislature, executive and judiciary,’ Mwinga explained that the Constitution should act as a distinct guide on how the legislature, judiciary and executive should execute their roles.

In her presentation Mwinga said the concept of separation of powers has come to be generally accepted as a fundamental attribute of a representative and Constitutional government.

Giving a short history of the doctrine of separation of powers dating as far back as the 17th century, Mwinga explained how the English philosopher John Locke first delineated the functions of legislative power to define the rights of the individual, and that of the executive.

“The fundamental principles arising from there are that clear distinctions be made between the functions of the organs of government,” Mrs Mwinga ex-

plained.

She told the members that it is imperative to ensure that state power is controlled, limited and shared by dividing it among three different governmental organs.

Mwinga added that the doctrine of separation of powers and checks and balances is premised on the fact that each state organ has distinct functions which can not be performed by the other organ of the State.

Citing the Zambian situation since 1964, Mwinga said the country has been a constitutional democracy where all the three organs of government derive their principal powers from the Constitution which has inbuilt checks and balances.

“The Constitution has thus, established that the basic principle of the doctrine of separation of powers and checks and balances is linked to the maintenance of fundamental liberties or freedoms,” Mwinga explained.

In addition, Mwinga outlined some of the functions of the arms of government.

She explained that the roles of the executive among others is to ensure good governance and secure the management of public affairs.

“In addition, the executive is mandated to the exercise public powers and duties, initiate legislation in form of Bills for passage by parliament into laws, govern its citizens and provide an enabling environment for education, health, employment, housing, food, clothing, water

and others in accordance with the laws of the land,” explained Mwinga.

On the legislature, Mwinga explained that its powers are vested in Parliament which consists of the President and National Assembly.

She explained the functions of the Zambian Parliament which include making laws, voting expenditure, approving taxation measures, ratifying certain Presidential appointments and overseeing the government administration.

“The roles of the Judiciary on the other hand are to interpret the law, decide whether somebody is guilty or not, determine the sentence, review administrative action and protect the rights of subjects to ensure that justice is done under the rule of law,” Mwinga said.

The Executive is found in Part IV, the Legislature is in Part V while the Judiciary is in Part VI of the Zambian Constitution

***DID YOU KNOW THAT YOU CAN BE AN OBSERVER TO NCC PROCEEDINGS?***

***CONTACT THE NCC SECRETARIAT AT THE MULUNGUSHI INTERNATIONAL CONFERENCE CENTRE IN LUSAKA. OR VISIT OUR WEBSITE ON:***

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***DON'T JUST BE TOLD, HEAR IT YOURSELF BY BEING PART OF THE PROCEEDINGS.***



# CONFERENCE APPROVES COMPOSITION OF COMMITTEES

By Beene Mujala Moombe

The third sitting of the NCC ended on May 9, 2008 after members sat from April 22, 2008.

During the sitting, members begun by adopting the composition of Committees as arranged by the Secretariat in accordance with the members' submissions.

NCC Chairperson Chifumu Banda informed the Conference that several issues were taken into account when deploying members into various committees to ensure that no organisation dominated in any one Committee.

Elections for Chairpersons and vice-chairpersons of committees were conducted. These form the General Purposes Committee that shall be headed by the NCC Chairperson Chifumu Banda.

The following members were elected to head various committees.

Bishop Joshua Banda, an eminent person from Eastern Province will head the **General Constitutional Principles Committee** and Ms Maimbo Ziela from the Seventh Day Adventist Church will deputise him.

The **Citizenship Committee** elected Hon. Dr. Peter Machungwa, Member of Parliament (MP) for Luapula and he will be assisted by Ms Agness Mumba, a trustee from the Zambia Congress of Trade Unions.

Mr. Enock Mulembe from the Human Rights Commission will head the **Human Rights Committee** while Pastor Godfridah Sumaili from Children in Need



*RIGHT: Land and Environment Committee Vice-Chairperson Hon. Lucy Changwe, MP, MIDDLE: Hon. Vera Tembo Chiluba, MP Deputy minister for Ministry of Tourism, Environment and Natural Resources. FAR LEFT: Hon Angela Cifire, Vice-Chairperson for the Public Service Committee*

is the vice-chairperson.

The **Democratic Governance Committee** will be lead by Mr. Stanley M'hango from Foundation for Democratic Process (FODEP) and he shall be assisted by Hon. Elizabeth Chitika, the MP for Kawambwa while the **Executive Committee** will be headed by Hon. Michael Mabenga, MP for Mulobezi and Rev. Mary Mwiche Zulu from Theological College of Central Africa as Chairperson and Deputy respectively.

Deputy Speaker of the National Assembly, Hon. Mutale Nalumango, MP is the Chairperson for the

**Legislative Committee** and Hon David Matongo, MP for Pemba is the deputy. Hon. Jack Mwiimbu, Member of Parliament for Monze Central is Chairperson for the **Judicial Committee** and he will be assisted by Ms Chanda Mwamba, from the Judiciary.

**Committee** elected Mr. Solomon Muzyamba, an eminent person from Southern Province and Mrs Charity Nanda Mphande as Chairperson and vice-chairperson respectively.

The **Public Service Committee** elected Mr. Likolo Ndalamei, a senior civil servant and Hon. Anjela Cifire MP for Luangeni as Chairperson and deputy respectively.

A retired banker from the Movement for Multi-party Democracy (MMD) Mrs Sherry Thole will head the **Public Finance Committee** while an independent MP for Luena, Hon. Charles Milupi is the deputy.

The **Land and Environment Committee** shall be headed by Hon. Request Muntanga, MP for Kalomo and Hon. Lucy Changwe, MP for is the vice-chairperson.

## SPECIAL POINTS OF INTEREST:

The NCC tries to ensure there is gender balance in all its formations and working groups as stipulated in the NCC Act.

For the overall membership, female representation is at 29 percent.

All committee elections ensured equal representation (50 percent male and 50 percent female).

For committee membership, gender representation is as follows:

General Constitutional Principles Committee:	
MALE	FEMALE
30	9
Citizenship Committee	
MALE	FEMALE
32	9
Human Rights Committee	
MALE	FEMALE
29	28
Democratic Governance Committee	
MALE	FEMALE
38	10
Executive Committee	
MALE	FEMALE
39	9
Legislative Committee	
MALE:	FEMALE
33	8
Local Government Committee	
MALE	FEMALE
32	8
Public Service Committee	
MALE	FEMALE
34	9
Public Finance Committee	
MALE	FEMALE
27	14
Land and Environment Committee	
MALE	FEMALE
35	9

## SPECIAL POINTS OF INTEREST:

- *'A Constitution is a product of a country's history'*
- *'The principle of 50 percent plus one vote was first introduced in the Zambian Constitution in 1991'*
- *'The greatest challenge Zambia has faced with its Constitutions is the mode of adoption by Government through 'white paper'*
- *'The NCC should revisit the Articles on public finance so that controls in money matters are enhanced.'*

## 'REFLECT PEOPLE'S WILL IN CONSTITUTION' SANGWA

A Lusaka based lawyer John Sangwa has urged members of the NCC to ensure that they enact a Constitution that will reflect the will of the people.

Sangwa said members should ensure they carried forward aspects of the past Constitutions which they feel can still be relevant today.

He was speaking when he presented a paper entitled 'The History of Constitution making in Zambia.' This was during orientation of NCC members during the third conference sitting.

Sangwa's presentation which spelt out a number of shortcomings of the Zambian Constitution, attracted a lot of debate among the members.

One of the issues that members discussed at length is the 50 percent plus one vote which Sangwa said

He explained that this clause was first introduced in the Zambian

Constitution in 1991 but was not a factor then because the Movement for Multi-party Democracy (MMD) had overwhelming support then.

'The principle of 50 percent plus one is not new to the Zambian Constitution hence if adopted by the NCC, we have to try it as country," Sangwa said.

He implored the NCC members to ensure that they identify aspects of the Constitution which require amendments and improve on them as they debate.

"The Constitution is a product of a particular country's history and this should be the same in Zambia," Sangwa said.

And Southern Africa Development (Community (SADC) Parliamentary Forum Secretary General Dr. Kasuka Mutukwa urged the NCC members to ensure that they look at the challenges of the past so as to come up with a viable Constitution.

In a presentation on how to produce a viable Constitution and Constitution making process, Mutukwa explained that one of the greatest challenges that Zambia has faced with its constitutions has been the mode of adoption which he said has mostly been through Government white paper which he said was faulty.

He explained that this process tended on aligning constitutions with immediate short term political interest of the ruling party who had power to reject or accept recommendations and views of the people.

"Some of the faulty lines could be traced to the terms of reference for Constitutional Review Commissions which were skewed in one direction or another," Mutukwa explained.

## 'REVIST ARTICLES ON PUBLIC FINANCE' - SICHINGA

Former Member of Parliament for Kafue Bob Sichinga has called upon NCC members to review the Articles dealing with public finance in the Draft Constitution.

Sichinga said NCC should critically look at the excess financial powers enjoyed by the President and the Minister of Finance.

He said the Conference should revisit the Articles dealing with public finance issues so that controls in money matters are enhanced in the country.

Drawing from his experience as a Zambia Institute of Chartered Accountants fellow, Sichinga, who is from Innovative Consulting and Financial Services, ably discussed Public Finance Management in relation to the current Constitutional and other Legislative Frameworks.

Mr. Sichinga addressed the issue of taxation where he noted that power to impose or alter any taxation other than by reduction is with the Minister responsible for Finance.

Currently, Currently there is no provision in the Constitution nor in any subsidiary laws requiring the Minister of Finance to consult stakeholders including Zambia Institute for Certified Accountants (ZICA).

He recommended that this scenario should be changed, so that a bottom up consultative process is enshrined in the Constitution. Members of Parliament should be consulted through their portfolio committees, by subjecting estimates to scrutiny and this should be done before rather than after the budget is finalized.



## 'BE WEARY OF 50 PERCENT PLUS ONE VOTE'

By Beene Mujala Moombe

A consultant on democratic governance issues has called upon NCC members to weigh the merits and demerits of enshrining the principle of 50 percent plus one vote in the Constitution.

Francis Chigunta observed that the principle of 50 plus one percent is an emotive issue that calls for careful scrutiny by the NCC members.

He said it was important that members understand the strengths and weaknesses of having such a principle in the Constitution.

Chigunta said on the surface, it could be argued that a majority President will enjoy greater legitimacy, credibility and respectability.

He noted that the principle of 50 percent plus one could also be seen as promoting national unity by ensuring that the elected President acquires votes from most regions.

He further stated that the principle could be said to discourage voter apathy as voters will be motivated to turn up in large numbers for their preferred candidate.

On the disadvantages, Chigunta explained that the system could be quite difficult to guarantee an outright winner especially in a democracy where there are more candidates.

"It can be quite frustrating to the voters who may turn up in large numbers because eliminating candidates with fewer votes may be limiting the democracy space," Chigunta said.

He further added that the principle can be quite costly for a developing country like Zambia as it has many challenges.

He urged members of the NCC to ensure that they come up with an electoral system that will uphold the principles of broad representation, inclusiveness, political accountability of leadership, transparency and legitimacy as well as political stability.

Chigunta said there was need for the NCC to recommend a system that will minimize the weaknesses in the current First Past The Post (FPTP) system that the country has been using since the colonial days.

"The FPTP system entails that a candidate with the largest number of votes in an election wins the election. This is irrespective of whether the number of votes received constitutes less than 50 percent (majority) of all voters who participated in voting," Chigunta explained.

He observed that despite its unrepresentative nature which has been compounded by low voter turn-outs, vote wastage, electoral malpractices and disputes, the system has continued to be used while receiving little attention from key

keep a system that is flawed.

"Zambia needs an electoral system that combines the best elements of majoritarian and proportional representation," Chigunta said.

Dr Chigunta recommended among other things that if the system has to be maintained, there was need to introduce electoral affirmative action through a quota system to ensure that the representation of the disadvantaged groups is maintained.

He paid tribute to the Mung'omba Draft Constitution Commissioners for proposing the Mixed Member Proportion, which he said is an improvement from the current FPTF.

The Draft Constitution recommends that this system should be used in Parliamentary and local government election.

"This is an improvement from the current FPTF and it may appeal to the country as it ensures adequate representation of the disadvantaged groups in society such as women, youth, and differently abled persons," Chigunta said.

He however urged the members of the NCC to keep in mind some of the limitations of this system such as producing two Members of Parliament; those tied to the constituencies and those from party-lists.

He urged members to ensure that they learn from the experience of other countries and to keep in mind the electorate's willingness to embrace change as they recommend an electoral system.



*Dr. Francis Chigunta, University of Zambia Development studies lecturer and consultant on democratic governance issues.*

### SPECIAL POINTS OF INTEREST:

- **The principle of 50 percent plus one is an emotive issue.**
- **Zambia uses the FPTP system where a candidate with the highest vote is declared winner.**
- **The Mung'omba Draft Constitution proposes the Mixed Member Proposition (MMP) which ensures equal representation of all in society.**

### SPECIAL POINTS OF INTEREST:

- **“There are a number of lacunas or catch 22 on Public finance provisions in the Mung’omba Draft Constitution which the NCC should address”**
- **The Public Finance looked at issues pertaining to imposition of tax, consolidated fund, withdrawal from consolidated fund, establishment of compensation fund, annual financial estimates, budget act, borrowing by government; and public debt among others**
- **Members of the Public Finance Committee met from July 10 to August 15, 2008, and are waiting to present their report to the plenary for ratification and adoption.**

## PARLEY SHOULD BE GIVEN MORE POWERS IN THE BUDGET PROCESS - SICHINGA

By Beene Mujala Moombe

Former United Party for National Development (UPND) Member of Parliament for Kafue Bob Sichinga has proposed that the Constitution should consider giving National Assembly more powers in the budget process.

And Jesuit Centre for Theological Reflection Coordinator for debt, aid and trade Muyatwa Sitali has urged the members of the NCC to consider giving the Auditor General’s Office more powers to ensure issues of public fund misappropriation are followed up.

The two were speaking on a National Constitutional Conference (NCC) weekly sponsored live phone-in discussion programme on Zambia National Broadcasting Corporation (ZNBC) television recently which was on public finance as it relates to the provisions in the Mung’omba Draft Constitution

Mr. Sichinga said there are a number of gaps in the Mung’omba Draft Constitution provisions on public finance which the current Constitution making process should address.

He observed that although the Mung’omba Draft Constitution addresses some of the weaknesses found in the current Constitution, most of the provisions were not conclusive.

He said as long as the Executive was given more powers in the budget process and Parliament remained a rubber stamp, Zambia will not achieve any meaningful economic development.

He said there was need for members of the NCC to consider giving Parliament powers to adjust the budget upwards. He said that the current scenario where Parliament was only allowed to amend the budget downwards but had no authority to vary the figures presented to it, tended to downplay the role of Parliament.

“Whatever is presented to Parliament can only be amended but the figures are not supposed to vary, meaning that the budget can only be adjusted downwards and not upwards, thus making Parliament a mere rubber stamp,” Mr. Sichinga said.

He also proposed that the Constitution should be more elaborate on Article 310 clause (c), which talks about budget participation process to include a bottom-up approach instead of the current top-down approach where everything is decided by the Ministry of Finance.

“The Mung’omba Draft Constitution recommends participation but there is need to have a bottom-up approach in the budgeting process to ensure that there is in-depth involvement of the people,” Mr. Sichinga said

And Mr. Sitali said the Constitution should be more elaborate on Article 320 clause (5) by including the action to be taken by National Assembly on those who abuse and misappropriate public funds.

He said there is need to know what action will be taken on officers who misappropriate public funds.



**RIGHT: Mr. Muyatwa Sitali, Jesuit Centre for Theological Reflection (JCTR) Debt, aid and Trade Coordinator exchanging some notes with former Kafue Member of Parliament and business consultant Bob Sichinga just before making an appearance on an NCC live phone-in discussion programme on ZNBC television. The programme comes every Wednesday from 20:00 hours to 21:30 hours.**

He expressed concern that despite glaring revelations on abuse of public funds cited in the Auditor’s General’s report for 2005 and 2006, Zambians have not seen any action that has been taken by government on those who misuse public funds.

“Article 320 Clause (4) is not conclusive, it should go further by spelling out what action should be taken on those who are found wanting,” Mr. Sitali explained.

Mr Sitali also proposed that the NCC should address the lacunas or catch 22 in the tendering procedures which he said were making it difficult for the budget implementation process to be effective.

Meanwhile a caller from Kitwe who only identified himself as Mukankande called for easing up of the tendering procedures so that there is effectiveness in the implementation of the budget.

“We will in turn avoid a situation where funds end up being returned to the treasury at the end of the year,” Mukankande said.

He proposed that the budget should be an activity based one to avoid certain votes from having too much money which they

can’t even utilise.

Last year, about one trillion kwacha was not utilized and was taken back to the treasury mainly due to regulations on tendering procedures.

On Article 314 clause (4) which stipulates that the ‘Minister responsible for finance shall within nine months after the end of the financial year lay the financial report of the Government with the Auditor General’s opinion before National Assembly,’ Mr Sitali proposed that the period should be reduced to six months so that the Auditor General is given three months to prepare the report.

He said it was important that the whole process takes place within one year instead of it spilling over into another year.

“The reports should be completed within six months after the commencement of the new financial year, give the Auditor General’s office three months to prepare their report and it should be tabled before Parliament at least before the end of the year,” Sitali.



## ECZ SHOULD NOT REGULATE POLITICAL PARTIES - KABIMBA

By *Beene Mujala Moombe*

Former Lusaka town clerk Winter Kabimba has said that the Electoral Commission of Zambia (ECZ) should not be given the mandate to regulate and supervise political parties as proposed in the Mung'omba Draft Constitution.

Speaking during an NCC sponsored live phone-in discussion programme of the Zambia National Broadcasting Corporation (ZNBC) television recently, Kabimba said regulation and supervision of political parties would infringe on the independence of political parties' intra-party democracy.

He said that if there is need for the ECZ to be given that mandate, there is need for the NCC to spell out the limitations of that supervision and regulation to avoid interference with intra-party democratic principles.

Kabimba also urged the NCC to examine the Mung'omba Draft Constitution thoroughly to ensure that only fundamental constitution principles are left in the Constitution.

He observed that the Mung'omba Draft has too many articles some of which do not need to be in the Constitution but in subsidiary legislation.

Mr Kabimba proposed that Zambia's current electoral system of first past the post should be changed to the proportional representation which takes into consideration equal participation of everybody.

'Zambia should move towards the proportional representation system which takes into account the participation of everybody,' Kabimba said.

And National Constitutional Conference (NCC) Spokesperson Mwangala Zaloumis said the ECZ should be given enough constitutional powers to handle election disputes and malpractices instead of leaving such to other government security wings.

Zaloumis said that it was saddening to see a situation where despite seeing the malpractices during elections, the ECZ has no constitutional powers to prosecute anybody.

"The ECZ has to always depend on the law enforcement agencies who are mandated to deal with such cases, which is not good enough," Zaloumis explained.

She said the ECZ currently does not have the powers to handle disputes and malpractices during elections, a situation that has made Zambians lose confidence in the institution.

Meanwhile a democratic governance consultant and lecturer at the University of Zambia Dr. Francis Chigunta has proposed that the current constitution making process should ensure that the ECZ is given constitutional powers to be able to conduct elections in a transparent and impartial manner so as to win the confidence of the Zambian people.

Chigunta said most Zambians have lost confidence in the ECZ due to the election malpractices that have rocked elections in the past.

He said there is need for members of the NCC to consider the issue of electoral systems critically.

Chigunta observed that most of the problems affecting the African continent have been as a result of not taking constitutional issues seriously.

He urged Zambians to ensure that they take a keen interest on the current constitutional process.

*The live-phone discussion programme is aired on Zambia National Broadcasting Corporation TV every Wednesday between 20:00 hours and 21:30 hours.*

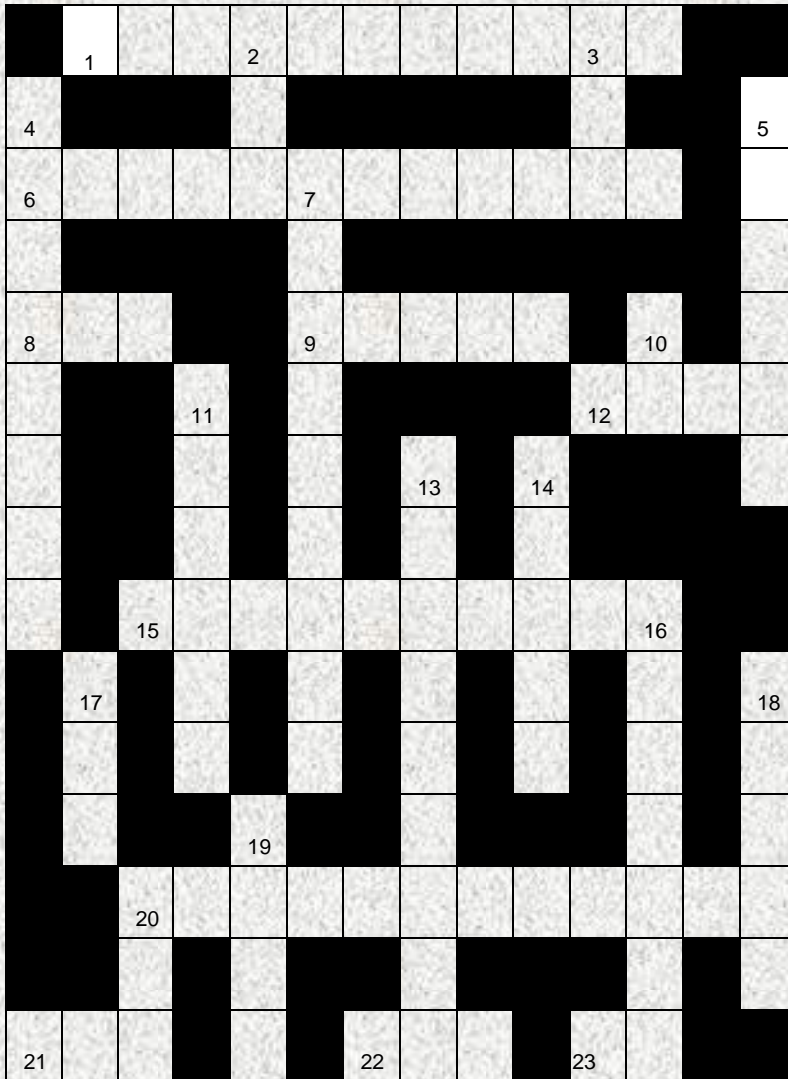
*Make a date and listen to what people's views are on the Constitution!!!!!!*

### SPECIAL POINTS OF INTEREST:

- **'The proposed regulation of political parties in the Mung'omba Draft Constitution would infringe on the independence of intra-party democracy'**
- **The Mung'omba Draft Constitution proposes that the Electoral Commission of Zambia should regulate the conduct of political parties and administer the political party fund.**
- **These are new inclusions and if adopted by the NCC, it will be the first of its kind in Zambia's Constitutional history.**
- **This issue was discussed under the Democratic Governance Committee that concluded its work of examining and debating on the provisions in the Mung'omba Draft Constitution under its terms of reference. The Committee is waiting to present its resolutions to the main plenary.**



## NCC TEASER



**ACROSS**

- 1 The one who led Zambia’s first Constitutional Review Commission (11)
- 6 Freedom from political control (12)
- 8 A law that has been passed by Parliament (3)
- 9 Formally accept a suggestion or policy (5)
- 12 A draft of a proposed law (4)
- 15 Vote on an important political question open to all the electors of a state (10)
- 20 Supreme law of the land (12)
- 21 National Constitutional Conference (3)
- 22 Land and Environment Committee (3)
- 23 Auditor General (2)

**DOWN**

- 2 National Action Plan (3)
- 3 National Constitutional Conference (3)
- 4 NCC Vice-Chairperson (8)
- 5 NCC Secretary (6)
- 7 Process of making law (9)
- 10 Statutory Instrument (2)
- 11 Having special skill in a subject (6)
- 13 One of the NCC Committees (9)
- 14 Beneath (5)
- 16 Assembly of Committee ((7)
- 17 Bill Of Rights (3)
- 18 NCC Deputy Secretary (5)
- 19 Ever or at all (4)
- 20 Constitutional Review Commission (3)

**ANSWERS TO VOLUME 1 ISSUE 1**

**ACROSS**

- |             |                    |              |
|-------------|--------------------|--------------|
| 1 COMMITTEE | 24 OATH            | 9 ENACTMENT  |
| 5 OATH      | 25 ACT             | 11 DY        |
| 8 HE        | 27 EP              | 12 DEBATE    |
| 10 ADOPTED  | 29 CLAUSE          | 14 MANDATE   |
| 13 UNITY    | 34 ARTICLE         | 15 ELABORATE |
| 15 EAZ      | 35 BANDA           | 19 FAR       |
| 16 ENACT    | <b><u>DOWN</u></b> |              |
| 17 ALL      | 1 CONFERENCE       | 22 EL        |
| 18 ACT      | 2 MEET             | 26 NCC       |
| 19 CODE     | 3 IMMUNITY         | 28 PART      |
| 20 LET      | 4 TREATY           | 30 SOB       |
| 21 CODE     | 6 HRH              | 31 AIR       |
| 23 ALTER    | 7 REPEAL           | 32 AN        |
|             |                    | 33 SAT 36 AG |

*Look out for answers in the next issues!!!!*



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Together, lets move with unity of  
 purpose!!!!!!!!!!!!

**We are on the web!!**  
[www.ncczambia.org](http://www.ncczambia.org)

**ORBITUARY**



The Chairperson, Management and staff of the NCC convey their deepest condolences to the family and friends of the late Dr. Cornelius Mulenga Mathandiko, President of the Seventh Adventist Church in Zambia who died on Wednesday, April 2, 2008 in Lusaka.

The late Dr. Mathandiko, also a member of the Disciplinary Committee of the NCC, will be warmly remembered and greatly missed for his enormous contributions towards the Constitution making process. May his soul rest in Eternal peace.

FOR ANY INFORMATION ON THE CONSTITUTION MAKING PROCESS, PLEASE GET IN TOUCH WITH THE NCC SECRETARIAT OR THE NCC NEWS EDITOR-IN-CHIEF

*NCC - MEETING TO ADOPT A PEOPLE'S CONSTITUTION*

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Spokesperson

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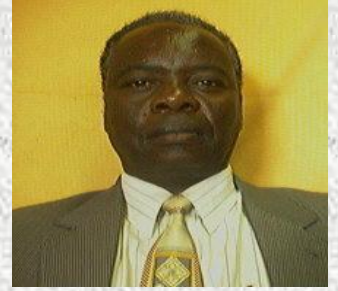
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