PRESENTATION PAPER BY HON REQUEST MUNTANGA, MP, ON THE TOPIC: THE POLITICS OF CONSTITUTION-MAKING, THE ROLE OF PARLIAMENTS IN RELATION TO THE PEOPLE

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INTRODUCTION

Colleagues, Ladies and Gentlemen

Let me state from the outset that I feel greatly honoured to lead this discussion on the topic: “The Politics of Constitution – Making; The Role of Parliament in relation to the people”. To start with, I wish to make the following observations that:

- a constitution is the supreme law of a country on which all other laws are based;
- it is a social contract between the rulers and the ruled;
- it embodies the wishes and aspirations of the country;
- there are written and unwritten constitutions as observed in the constitutional arrangements of Zambia and Great Britain respectively; and
- most developing countries have written constitutions.

AN OVERVIEW OF THE POLITICS OF CONSTITUTION-MAKING

It is also to be noted that in the modern constitution-making process, there is emphasis on the participation of ordinary people. This introduces the concept of ownership by the majority as a fundamental prerequisite to the legitimacy of any resultant constitution. A constitution must be a reflection of a people’s history, fears, concerns, aspirations and vision of the nation.

In this regard, it is argued that to achieve popular involvement in constitution-making, certain requirements have to be satisfied. These requirements are that:

- the population must be educated about the role they will play in the formulation of the new constitution;
- there must be a process of consultation which must be inclusive providing full scope for every person to make contributions without fear or favour and fora for debate on contentious issues;
- it must be preceded by or accompanied by ‘civic education’, to increase people’s familiarity with constitutional issues and to enable them to engage actively in the process;
• the process must be open and transparent. The public must be informed and involved at all stages of the process of constitution-making; and
• the role of political parties and experts in the constitution-making process must be recognised as they play a role in bringing issues for debate to the people at the grassroots level.

THE ROLE OF PARLIAMENTS

As I have already intimated, an inclusive constitution-making process has to embrace many stakeholders. One such important stakeholder is the Institution of Parliament which among others must:

• facilitate public involvement and provide citizens with a meaningful opportunity to be heard in the making of the laws that will govern them;
• use its representative role to engage with constituents on contentious issues in the constitution-making process;
• allocate moneys for the various programmes that are undertaken in the process; and
• ensure that the constitution is enacted into law. Parliament therefore, enacts laws, which are subordinate to the constitution as prescribed by the people.

THE ZAMBIAN SITUATION

Colleagues, Ladies and Gentlemen

Like in the case of your respective countries, Zambia has had a number of attempts at constitutional-making since independence in 1964. The first being in 1969, when the requirement for a referendum to amend the Constitution was removed. In 1990, multiparty democracy was restored by amending the Constitution to remove the one party state; and in 1991, the 1973 Constitution was repealed and replaced with a new one to reinforce multiparty democracy and enhanced the power of the Legislature to oversee the Executive function. In view of the foregoing, let me now state some of the highlights of Zambia's three major constitutional amendments since independence in 1964.
The First Republican, Constitution, 1964 - 1972

As a negotiated instrument, the Constitution, at Independence, had no direct and active involvement of the public in its crafting. It provided the basic framework of the Government under a multiparty democracy.

The first major constitutional reform ensued the year after Independence when the then Constitution was amended to remove some clauses. These amendments included the removal of the referendum clause in 1969 and also the Zambian Legislature was given power to amend the Constitution.


The Chona Review Commission was appointed and given very wide terms of reference on the form the one party system was to take, in the context of the philosophy of humanism and participatory democracy. In 1972, the Constitution in force, from the time of Independence, was repealed and replaced by a new Constitution to bring in the system called 'one-party participatory democracy'.

Reversion to Multiparty Democracy – 1991

The transition to multi-party democracy was the culmination of a number of developments, at home and abroad calling for a simple amendment to the 1973 Constitution by the deletion of Article 4 which declared Zambia a One-Party State.

In November, 1990, the Mvunga Constitutional Review Commission was appointed to enquire, determine and recommend a system of political pluralism that would ensure the separation of the powers of the Legislature, the Executive and the Judiciary. Shortly after, a constitutional amendment was passed, Act No. 20, of 1990, removing Article 4 from the Constitution and thus paving way for the formation of other political parties.

Notwithstanding the above stated amendments, Zambians were not quite satisfied with the resultant outcomes. It was therefore, felt necessary to make further amendments as I shall try to show hereto.

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The Mwanakatwe Constitutional Review Commission

In 1993, the Mwanakatwe Constitutional Review Commission was appointed. The Commission was requested to recommend whether the Constitution should be adopted by the National Assembly, a Constituent Assembly, a national referendum, or by any other method suitable for amending any part thereof and to review the 1991 Constitution. In this regard, the Constitution of Zambia (Amendment) Act, 1996, included amongst the notable changes were inclusion in the preamble of declaration of Zambia as a Christian nation; addition of provisions relating to the qualifications of a Presidential candidate based on origins or birth of a candidate’s parents, and inclusion of provision that no person twice elected is eligible for re-election to that post.

The Mung’omba Constitutional Review Commission

In 2003, the Mung’omba Constitutional Review Commission was appointed with the broad mandate to recommend a Constitution that would effectively promote legal and constitutional protection of fundamental human rights and freedoms and stand the test of time.

Colleagues, Ladies and Gentlemen

In order to harmonise the findings of the Mung’omba Constitutional Review Commission, a meeting of political parties represented in Parliament under the umbrella of the Zambia Centre for Inter-Party Dialogue, was convened in July, 2007. At that meeting, it was resolved that instead of a Constituent Assembly, a National Constitutional Conference would adopt the Constitution. In accordance with that decision, the National Constitutional Conference Act No. 19 of 2007 was enacted. The 2010 Draft Constitution was presented to Parliament in 2011, but failed the required two-thirds majority vote required to enact such a Constitution.

In 2011, the Tripartite Elections ushered in another Government, which has since appointed a Technical Committee under the chairmanship of Hon. Justice Siliungwe, to come up with a Constitution. The committee submitted the first Draft Constitution on 30th April, 2012, and the public has been given time to make submissions to the Technical Committee on the Draft Constitution. The process of obtaining contributions to the Draft Constitution is in progress up to the end of September, 2012.
CONCLUSION

Colleagues, Ladies and Gentlemen

In conclusion, let me emphasis the point that a constitution is not an ordinary piece of legislation. As such, the constitution-making structures should be open to the views and the opinions of all stakeholders who must be given meaningful opportunity to make their concerns and wishes known.

The constitution-making process in Zambia has been dominated by political elites. However, it must be noted that in the on-going constitutional project, the cry of the people of Zambia has been that the people themselves should define the constitution-making process and that the Constitution should be a product of the sovereign will of the people.

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