

# What is the way forward to improve the lives of all Zambians?



*... Adopt a New Bill of Rights*

*... Adopt Economic, Social and Cultural Rights*

## INTRODUCTION

The Jesuit Centre for Theological Reflection (JCTR) realises that the debate around what should be contained in the final Constitution (content) and how to adopt the Constitution (process) is not only a political debate or discussion, but is very fundamentally an ethical one. This is why the JCTR believes that there is a value-added dimension that the Church's Social Teaching (CST) can contribute to the on-going constitutional debate. JCTR considers CST to be realistically very important, contextually very worthwhile, and potentially very influential.

This brochure is designed to help you know more about what the Mung'omba Draft Constitution proposes with regard to the inclusion of Economic, Social and Cultural Rights (ESCR) in the new Zambian Constitution's Bill of Rights.

The demand to incorporate ESCR is rooted on the respect for the dignity of the human person. That is, the worth of being human is not constituted by any human declaration or institution, but rather given by God, a universally shared reality. The inalienable dignity of every person and the rights that flow from that dignity – in the first place, the right to life and the defence of life – as well as the well being and full development of individuals, are core to CST message. Hence, human dignity, realised in community with others, becomes the norm against which all-social institutions and state activities (including, the review of the Constitution) must be measured.

However, on the individual level this dignity is denied when due regard is not given to values such as freedom, the right to profess one's religion, physical and mental integrity, the right to life's necessities and the right to life itself. On the social and political level, it is infringed upon when human beings cannot exercise their right to participate, when they are subjected to unjust and illegitimate coercion, when they are subjected to nepotism, bribery and corruption and when they are subjected to physical and mental torture.

## WHAT ARE ECONOMIC, SOCIAL AND CULTURAL RIGHTS?

ESCR are those rights which mandate that social conditions be adequate for meeting physical, moral and biological requirements for every category of people. They aim at ensuring everyone's access to resources, opportunities and essentials for an adequate standard of living. Some of the ESCR most discussed in Zambia for the inclusion in the new Constitution's Bill of Rights include: the rights

to education, health, food, safe water and sanitation, housing, employment, culture and a clean environment. The current Zambian Constitution does not specifically mention ESCR in Part III, the Bill of Rights, which refers to the fundamental rights and freedoms of an individual. They are contained within Part IX, "Directive Principles of State Policy," which states that government shall endeavour to provide, inter alia, clean and safe water, equitable educational opportunities in all fields and at all levels, adequate medical and health facilities, decent shelter for all persons, and development of a person's culture, tradition, custom or language (Article 112).

However, it clearly states in Article 111 that these shall not be justiciable or be legally enforceable in any court, tribunal or administrative institution or entity. This means that the government can't be taken to the court of law and forced to act if it can't provide for these rights (citing a shortage of funds), or won't provide for their realisation (asserting other priorities).

Therefore, basic rights such as adequate food, clean water and sanitation, proper health care, basic education, adequate housing, etc., are simply not constitutional priorities. This is why there is need to move ESCR from the weak category of "guiding principles" in Part IX to the justiciable category of "fundamental rights" found in the Bill of Rights, Part III.

There must be willingness to change the status quo which continues to deny many Zambians an opportunity to fully develop in an environment that legally recognises, respects, protects and assures a standard of living worthy of human dignity. Undoubtedly, ESCR are indispensable for human and national development. There is simply no development without provision of ESCR.

But the question really is: What do you do with ESCR? In this brochure four issues are being championed:

- First, recognise *progressive realisation* (time, resources). Realisation of ESCR largely depends on the available resources and full implementation is gradual. However, two extremes should be avoided in the realization of these rights. On one hand, indifference – that because of the meager resources nothing should legally compel government to take deliberate steps to their realization. And on the other hand, overnight realization – that every Zambian shall automatically have access to these rights in their fullest status.
- Second, assure justiciability (legal guarantee). Explicit mentioning of ESCR guarantees or legal action.
- Third, ensure legal redress (constitutional court).

Claiming rights once denied.

- Fourth, promote public interest litigation (locus standi).  
Allowing others (apart from the affected) to petition in the courts of law on behalf of the aggrieved.

In the following paragraphs, we share with you ESCR as proposed in the Mung'omba Draft Constitution (2005) for inclusion in the New Bill of Rights as they relate to the four principles.

## A. PROGRESSIVE REALISATION

### 63. Economic, social and cultural rights

Parliament shall enact legislation which provides measures which are reasonable in order to achieve the progressive realisation of the economic, social and cultural rights referred to in Articles 65, 66, 67 68, 69, 70 and 71.

## B. JUSTICIABILITY (LEGAL GUARANTEES)

### 64. Freedom of trade, occupation and profession

Every person has the right to choose a trade, occupation or profession freely.

### 65. Consumer rights labour relations and pensions

- (1) A person has the right to fair labour practices.
- (2) A worker has the right to -
  - (a) fair remuneration, equal work for equal pay, and to work under satisfactory, safe and healthy conditions;
  - (b) form, join or participate in the activities and programmes of a trade union including the right to strike;
  - (c) withdraw labour in accordance with law; and
  - (d) a reasonable pension commensurate with that person's status, salary and length of service.
- (3) Where pension is not paid promptly the retirees name shall be retained on the payroll until final payment.
- (4) Every employer has the right to -
  - (a) form and join an employers' organisation; and
  - (b) participate in the activities and programmes of an employers' organisation.
- (5) Every trade union and every employers' organisation has the right to -
  - (a) determine its own administration, programmes and activities;
  - (b) organise; and
  - (c) form and join a federation.

- (6) A trade union, an employers' organisation and employer has the right to engage in collective bargaining.
- (7) Parliament shall enact legislation to regulate pensions and pension schemes and in particular:
  - (a) make provisions for persons over sixty-five years of age to receive welfare support;
  - (b) provide that all workers subscribe to pension schemes.
  - (c) provide for equitable representation of both employees and employers; and
  - (d) provide for the prudent investment of pension funds.

### 66. Social security

All persons have the right to social security, including, if they are unable to support themselves and their dependants, appropriate social security assistance from the State.

### 67. Health

- (1) Every person has the right to health, which includes the right to health care services and reproductive health care.
- (2) A person shall not be refused emergency medical treatment.

### 68. Education

- (1) Every person has the right to a basic education, including pre-primary, primary and secondary education.
- (2) The State shall -
  - (a) institute a programme to implement the right of every child to free and compulsory primary education; and
  - (b) make post-secondary, technical and vocational education progressively available and accessible.
- (3) Every person has the right to establish and maintain, at that person's own expense, independent educational institutions that meet standards prescribed by an Act of Parliament and comply with the requirements of this Constitution.

### 69. Shelter and housing

- (1) Every person has the right to have access to adequate shelter and housing.
- (2) Parliament shall not enact any legislation that permits or authorises arbitrary eviction.



#### 70. *Food, water and sanitation*

- (1) Every person has the right to be free from hunger and to have access to food in adequate quantities and of adequate quality and cultural acceptability.
- (2) Every person has the right to water in adequate quantities and of satisfactory quality.
- (3) Every person has the right to a reasonable standard of sanitation.

#### 71. *Environment*

Every person has the right

- (a) to an environment that is safe for life and health;
- (b) to free access to information about the environment;
- (c) to compensation for damage arising from the violation of the rights recognised under this Article; and
- (d) to the protection of the environment for present and future generations.

### C. LEGAL REDRESS (Claiming ESCR)

#### 86. *Enforcement of protection provisions*

Where a person alleges that a provision of this Part has been, is being or is likely to be contravened in relation to that person, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the Constitutional Court.

#### 205. *Jurisdiction of Constitutional Court*

- (1) The Supreme and Constitutional Court, when sitting as the Constitutional Court, has original and final jurisdiction –
  - (a) in all matters of interpretation of this Constitution;
  - (b) to determine a question of violation of any provision of the Bill of Rights;

### D. PUBLIC INTEREST LITIGATION

#### 205. *Jurisdiction of Constitutional Court*

- (3) A person or group of persons who alleges that –
  - (a) an Act of Parliament, a Bill of the National Assembly or any other law or anything done under the authority of any law; or
  - (b) any act of or omission by any person or group of persons or authority; is inconsistent with or is in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress.

### THE WAY FORWARD FOR ZAMBIA!!

Because the exercise of full human rights for all citizens is essential to integral and sustainable human development in Zambia now and because the current Constitution does not guarantee these rights for all Zambian citizens, we invite you to sign the petition demanding that members of the National Constitutional Conference (NCC) consider this as TOP PRIORITY!

**For further information, contact:**

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Brochure

Advocacy on Economic, Social and Cultural Rights (ESCR)

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