

OP-ED: INTRODUCTION TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE NEED FOR INCLUSION IN THE BILL OF RIGHTS

The Government intends to complete the constitution reform agenda with a focus on expanding the Bill of Rights in the Constitution of Zambia (Amendment) Act No.2 of 2016. A Bill of Rights (BOR) is a formal list of the most important civil, political, economic, social and cultural rights of citizens of a country. **A Bill of Rights sets out fundamental rights, freedoms and entitlements that a citizen can claim against the State. Its main objective is to protect citizens from unnecessary violation of these rights by the State or its agents as well as by private citizens.**

The Zambian Bill of Rights is contained in Part III of the Constitution and Articles 11-26 recognise and declare that every person in Zambia has been and shall specifically be entitled to fundamental rights and freedoms, namely:

- a) Life, liberty, security of the person and protection of the law;
- b) Protection from slavery and forced labour;
- c) Protection from inhuman treatment;
- d) Secure protection of the law;
- e) Freedom of conscience, expression, assembly, movement and association;
- f) Protection of young persons from exploitation;
- g) Protection from discrimination on the grounds of race, sex, tribe, place of origin, marital status, political opinions, colour or creed;
- h) Protection for the privacy of home and other property and from deprivation of property without compensation.

These are collectively referred to as civil and political rights, as enshrined in the International Covenant on Civil and Political Rights (ICCPR) to which Zambia is a State party. Civil and political rights constitute a significant part of the Bill of Rights and in human rights discourse these are known as first generation rights. They are rights meant to protect the individual from excesses of the State. Further, citizens have the liberty to participate in the political life of their country and this is protected by the Constitution. Civil and political rights are inherent in each individual and are thus INALIENABLE - they cannot be taken away arbitrarily. It is for this reason that the Bill of Rights is entrenched i.e. it is explicitly protected by the Constitution.

Entrenchment is simply a legal mechanism employed to make certain provisions of the Constitution certain and stable - a hallmark of Constitutions, to ensure that the law is not changed at will.

In the case of Zambia, the provisions of the Bill of Rights are 'double entrenched' an implication that the legislature cannot amend the provisions without a referendum, wherein the citizens of the Republic also participate in the process. It is therefore purely understood that the Bill of Rights is locked with two keys - Parliament and the People and the Government is firm on the need for broad-based consensus relating to constitution reforms.

Civil and political rights do not constitute the full body of rights to which an individual is entitled. Zambia is also a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). This is another comprehensive treaty which stipulates the right to health care services, decent housing, food of an acceptable standard, clean and safe water, decent sanitation, social protection and education. These are referred to as second-generation rights and are rights related to EQUALITY. Economic, social and cultural rights guarantee different members of the citizenry equal conditions and treatment. Their effect is to impose upon Governments the duty to RESPECT, PROMOTE and FULFILL them, because the State controls resources needed to make them a reality.

All the rights referred to above do not exist in a vacuum; they are complemented by other key international and regional treaties, namely:

- 1) Universal Declaration of Human Rights (UDHR), which contains the original bill of rights;
- 2) African Charter on Human and People's Rights (ACHPR) and the Optional Protocol on the Rights of Women in Africa (Mozambique Protocol).
- 3) African Charter on the Rights and Welfare of the Child (ACRWC).
- 4) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
- 5) Convention on the Rights of the Child (CRC).
- 6) Convention on the Status of Refugees.
- 7) Convention on the Elimination of Racial Discrimination (CERD).
- 8) Convention Against Torture (CAT).

- 9) Convention on the Rights of Persons with Disabilities (CRPD).
- 10) ILO Conventions.
- 11) Pretoria Declaration on Economic, Social and Cultural Rights.

Economic, social and cultural rights are protected under various international and regional treaties as well as national Constitutions. Zambia's Constitution, however, does not make provision for these rights. In previous versions of the Constitution, they were loosely referred to under the Directive Principles of State Policy and the Duties of a Citizen. However, as directive principles, they could not be claimed as rights. It is further important to note that economic, social and cultural rights are non-justiciable - this essentially means a right is not capable of being evaluated or enforced under the law. States are required to incorporate the content of the right into domestic law and the law must provide for effective remedies where these rights are violated.

It is recommended that Part III of the Constitution of Zambia be subjected to a referendum because it contains entrenched provisions which cannot be amended using the regular amendment process.

Government acknowledges that investment in the social sector is essential for a skilled, healthy and empowered citizenry. For instance, reference has been made to education being an equalizer and yet education is not a right in our law. It is therefore gratifying that the undertaking to ensure access to education for all will be backed by the Constitution. Quality and equitable access to education should be every Zambian child's constitutional right.

Once enshrined in the Bill of Rights (BOR), Government will be obliged to create conditions necessary for their enjoyment, albeit subject to the availability of resources. Expansion of the BOR is a progressive move because citizens will enjoy an expanded menu of rights and will hold the State accountable to create a conducive environment for citizens to secure adequate means of livelihoods; to provide clean and safe water, adequate medical and health facilities; and decent shelter for all persons; as well as provide equal and adequate educational opportunities. These are basic but critical for

survival.

It is important to appreciate from the outset that the full realisation of all economic, social and cultural rights will generally not be achieved in a short time but it is an obligation for a State party to make strides towards the realization of these rights with the maximum available resources. Article 11 of the ICESCR holds States responsible for progressive realisation of rights therein contained and to move expeditiously and effectively to fulfil them.

The conversation on the inclusion of economic, social and cultural rights in the Constitution has been ignited by Government's desire to complete the constitution reform process in this regard but with emphasis on consensus and participation of the voting public.

The discussion will demystify the nature and value of these rights and will enhance informed participation by citizens. In view of the limited resource envelop, Zambia can appeal to the international community of nations for support to bridge the gaps in available resources for a sensitisation campaign which will serve to educate citizens on the Bill of Rights and its place and importance in the Constitution.

In the next article in this series we will discuss the need for a referendum to facilitate opening the Bill of Rights and the legal requirements.



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