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Constitutional Deficits: Unpacking the Flaws in Zambia's Constitution-Making Process and Exploring Pathways for Reforms.

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ABSTRACT

Zambia's constitution-making process has been marred by flaws, which have resulted in a constitution that does not fully reflect the aspirations and values of the Zambian people. This article examines the causes of these flaws and explores possible ways to address them. It argues that a participatory and inclusive constitution-making process is essential for creating a constitution that is legitimate, effective, and enduring. The article also highlights the importance of ensuring ownership and control of the constitution-making process, strengthening institutions, and promoting civic education and awareness.

1.0 Introduction

The constitution-making process is a critical moment in a country's history, as it provides an opportunity for citizens to shape their governance framework and establish the rules that will guide their political, social, and economic lives. However, Zambia's constitution-making process has been flawed, resulting in a constitution that has been criticized for its shortcomings.

1.1 Historical Background to the Zambia's Constitution Making Flaws

Zambia's flaws and impediments to Constitution making can be traced back to the 1964 independence antecedents. Fast-forward in 1967 that is, two years after independence, the Inquiries Act Cap 41 of the laws of Zambia was enacted into law by the Kenneth Kaunda administrations. The main purpose of the law according to the preamble of the Act is to:

*'Enable the president set up the commission of inquiry and appoint commissioners to inquire into any matter of the public interest and report to the president on matters referred to them by the president.'*¹

From the preamble, it can be deduced that the Inquiries Act was not meant for purposes of initiating or crafting of the Constitution and its consequential adoption. This approach of mandating Constitutional reviews using the Inquiries Act² has also historically been criticized by the review commissions themselves, Constitutional scholars and civil society organizations at large for giving the sitting President a monopoly on the work of these commissions.

Thus, this approach has therefore been a major source of contestation for all Constitutional reviews in Zambia, and it is the major reason as to why the country has experienced Constitution making impasses from 1972 to date. This is so because the Inquiries Act empowers the sitting president to supplant people's content from the draft document who in essence should be the ones to make the Constitution.

In spite of that, for Constitution making purposes in Zambia, resort was and has been to some extent, as a result of the aforesaid law for 61 years of the country's independence. This is for a simple reason that, the processes have been executive driven as opposed to the people's activity. This law has largely been abused by the presidency as demonstrated above and it had influenced previous Constitution making and still continues to impact on the current approach to Constitution making in Zambia and if not treated, it will still affect even the future Constitution making processes.

For example, the 1964 Independence Constitution had already provided for a multi-party democracy which was very cardinal at the time with an executive president and it was designed to address the impending handover of the reins by the colonial administration at the time. In addition to that, the 1964 Independence Constitution though enshrined a rigid procedure for amendment and having been negotiated at the highest level with limited stakeholder involvement, it had progressive provisions with some of which even encouraged development democracy and Constitution making mechanisms in the country.³

¹ See the preamble of the Inquiries Act Cap 41 of the laws of Zambia and Section 2 (2) of the same Act.

² Cap 41 of the Laws of Zambia

³ Ndulo, MD. Constitution reforms in Zambia, P. 97

However, after eight years of its existence in power, the 'Executive-led Reforms,' led by the first republican president Dr. Kenneth Kaunda using the Inquiries Act, enacted the 1972 Constitution which essentially removed so-called entrenched clauses in the Constitution in particular, and obliterated the referendum clause required for Constitutional amendments that impinged on the Bill of Rights and major provision requiring parliamentary majority.

The 1972 Constitution is the one which ushered in a one-party state whose process was maliciously executive-driven. As a result, powers to do anything were centralized in one office called the presidency. Hence, monopoly, greedy and selfishness engulfed the presidency more especially when it came to Constitution making.

Of note, the 1972 Constitution created the problems of monopoly, greedy and selfishness in the presidency where the president was viewed as a small god and would even make or amend the Constitution through declarations⁴ and hence, sitting on people's sovereign power to make the Constitution.

Kaunda appointed a Constitutional Review Commission called 'Chona Commission' under the Inquiries Act on 30th March 1972.⁵ The Inquiries Act⁶ permitted the President to appoint a commission of inquiry to investigate into any matters, which in the opinion of the President were in public interest. The people of Zambia played no role in the appointment of the Commission. It can safely therefore be postulated that the Commission was more accountable to the President than to the nation and its people.

The terms of reference of the Commission were to consider and examine changes in the Republican and UNIP Constitutions; and practices and procedures of government, which were necessary to create a one-party system in Zambia.⁷ It was not within the terms of reference to hear petitions against one-party system of government, as the one-party system was already preferred by the government. Any contrary views were unacceptable.

The people's participation in the making of the Constitution was therefore limited to giving their views on the character of the one-party system. Even then, the final decision on the content of the Constitution rested with the presidency and political leaders.

After touring the country, and receiving submissions from the people, the Commission prepared and presented its report to government in October 1972.⁸ The Commission made a number of recommendations that had the effect of curtailing presidential powers.

In particular the Commission recommended that the President's powers of detention should be limited, that a president should only serve for two consecutive five year terms, and that UNIP should place three presidential candidates before the electorate.⁹ Government analyzed the various recommendations and presented a *white paper* indicating which submissions that the government accepted, and those that it rejected.¹⁰

While the basic concept of the one-party system was accepted, the government however rejected all the recommendations pertaining to the limitation of presidential powers.

It is unclear which authority in government played a role of adoption of the Constitution. It is however manifestly stated clearly that the government rejected a lot of the submissions from the people.¹¹ That action, denied the Constitution the attribute of legitimacy {an original act of the people}. In addition to that, how extensive the consultation process was, still remain doubtful.

As stated earlier, the Commission on the establishment of the one-party system in Zambia was appointed on 20th March 1972. By 13th December 1972, just nine months later, the new Constitution was already in place.

In view of the above, all the Presidents that were elected after 1972 inherited the use of the Inquiries Act and continued on the path or notion that power to make or change a country's Constitution, is the preserve of the presidency and not the people themselves.

It is from this background which has now led into heated national debates among the key stakeholders to the Constitution making process such as the people themselves, civil society organizations, the church mother body and the opposition political parties as to how, and who should drive the Constitution making process and why.

1.2 Problem Statement

The flaws in Zambia's constitution-making process are multifaceted. One major issue is the lack of participation and inclusivity in the process. The constitution-making process has been dominated by politicians and elites, with limited input from ordinary citizens. This has resulted in a constitution that does not fully reflect the aspirations and values of the Zambian people. Another issue is the influence of external factors, such as donor pressure and regional politics, on the constitution-making process. These external factors have often taken precedence over the needs and interests of the Zambian people. Furthermore, the constitution-making process has been characterized by a lack of transparency and accountability. The process has been opaque, with limited access to information and minimal opportunities for public participation.

⁴ E.g. President Chiluba's Declaration of Zambia as a Christian Nation Demonstrate that.

⁵ Mwanakatwe J.M, "The end of Kaunda Era." P. 15

⁶ Chapter 41 of the laws of Zambia

⁷ The Choma Constitutional Review Commission, of 1972

⁸ Ibid

⁹ Ibid

¹⁰ Government White paper No. 1 of 1972

¹¹ Ibid

1.3 Instances and Causes of the Zambian Constitution-Making Process Flaws

The flaws in Zambia's constitution-making process can be attributed to several factors:

- i. Lack of participation and inclusivity: The constitution-making process has been dominated by politicians and elites, with limited input from ordinary citizens.
- ii. External influence and interference: Donor pressure and regional politics have often taken precedence over the needs and interests of the Zambian people.
- iii. Weak institutions: Zambia's institutions, such as the judiciary and the electoral commission, have been weakened by political interference and lack of resources.
- iv. Limited civic education and awareness: Many Zambians lack a clear understanding of the constitution-making process and the importance of civic participation.

In response to calls for a more democratic constitution and the need to restore Zambian political institutions that have been damaged over time by political manipulation, the country has made multiple attempts to draft new constitutions. A nation's constitution is its most significant body of law. It must be a freeing document that captures the nation's goals and desires. There is need for an agreement on the identities and aspirations of the populace. It is important at this point to start this conversation by remembering what Advocate George Bizos said on 9th December 2011, the day he received his PhD from the University of Pretoria. He remembered:

"The South African Constitution was written over a protracted period of time and involving numerous parties. There were frequent disagreements and breakdowns in the negotiations. Nelson Mandela, who was a member of the ANC Committee tasked with drafting a proposed South African constitution, paid a visit to the committee shortly after his release from prison. He said, 'Write a constitution that benefits all of South Africa, not just the ANC, he told us. And we carried out that action. The capacity to look beyond immediate objectives and perceive the larger picture is the measure of greatness and leadership.'

The above statement is a demonstration that Zambia has failed to take a leaf from the South African constitution making process despite its embankment on its major four different constitution-making process before and after independence, that is, the one from 1962 which was a precursor to the 1964 constitution, the one from 1973, 1991, 1996 and the 2016 constitution. A number of significant constitutional modifications have also been made, most notable ones the 1996 and 2019 constitutions.¹² Furthermore, different commissions have also been established to study constitutions making processes, such as the Mvunga Commission in 1972 and the Chona Commission in 1972, the Mwanakatwe Commission (1991), the Mungomba Commission (2003), and others.

The 2008–2010 Constitution Review Conferences were organized by Mwanawasa Government in response to the Mungomba Commission. Civil society organizations' requests for a thorough examination of the 1996 constitution led to the creation of the Mungomba Commission. The Commission was appointed by President Mwanawasa in 2003. It created a draft constitution and suggested that an assembly of constituents adopt it. The Mwanawasa administration opposed the idea of a constituent assembly and made sure that it did not occur because it was set on controlling the process and making sure the result suited its needs¹³.

All political parties represented in Parliament met in 2007 and decided to hold a National Constitutional Conference in lieu of a Constituent Assembly to discuss and approve the Mungomba draft constitution. Many political parties including the present governing party, as well as civic society and churches, boycotted the process. The National Constitutional Conference delivered its final report in August of 2010.

In order to avoid a referendum, which is necessary to modify chapter three of the current constitution, the draft constitution that emerged from the process attempted to amend certain elements of the constitution while leaving the Bill of Rights section intact. Lacking parliamentary support, the plan was unable to secure enough votes in a referendum. The parliamentary majority needed to modify the constitution was not achieved by the draft. Out of all the preceding drafts, the Mungomba Commission's version is the most progressive and seems to have the greatest support. As such, it ought to serve as the cornerstone of Zambia's future constitution.¹⁴

In Zambia, the opposition and ruling parties, as well as the general public, generally concur that a new constitution is necessary. They disagree, meanwhile, about the procedure to be followed when creating a new constitution as well as its contents. The process of drafting Zambia's next constitution must draw from the past while also avoiding being limited by it. It needs to be inclusive and driven by discussion, deliberation, involvement, and consultation.

It should also be guided by the principles of legitimacy, autonomy, accountability, diversity, and inclusivity. Civil society must feel empowered by the process.¹⁵

¹² Ibid

¹³ Mwanakatwe Report cited in Mung'omba Report, 2005, 494

¹⁴ Report of the Mwanakatwe Constitutional Commission, Lusaka (1995), cited in the Mung'omba Commission Report, 2005

¹⁵ L M Mbao, The politics of constitution-making in Zambia: where does the constituent power lie? Draft paper presented at the African Network of Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi April 2007, 13.

Important protections against abuse must be included in Zambia's new constitution in order to guarantee public accountability, responsiveness to the electorate, citizen engagement in governance, and true local community power devolution.

However, it is deduced from the foregoing that Zambia's existing constitutional process is seriously defective and unlikely to produce a valid constitution that serves as a foundation for the country's democratic government.

The following are the processes main shortcomings: (a) the process is fundamentally unrepresentative and suffers from a lack of legitimacy; (b) it is poorly designed to foster consensus and produce a constitution that the nation can be proud of; (c) the committee's terms of reference make no mention of its philosophical stance toward the constitution, but the appointment process made it clear that it is terrified of values, transparency, institutionalization of accountability, and policy; (d) it is not guided by any principles found in the constitution; and (e) The government conveys the idea that it doesn't fully comprehend the role that a constitution plays as a guiding principle for society.

It is even less knowledgeable about the linkages and dynamics between institutions and procedures; (f) it is clueless about the importance and meaning of decentralization. The process of creating Zambia's constitution has resulted in confusion between devolution of governmental power to local communities and the decentralization of administrative functions of the central government, which is why provincial ministers are appointed from the center. Devolution of governmental power to democratic sub-national entities within a state involves the creation and maintenance of such entities as semi-autonomous entities with respect to their authority, responsibility, finance and human resources, and accountability arrangements.

In addition, it lacks knowledge of the many successful global and African best practices that have influenced successful constitution-making processes elsewhere. Kenya, South Africa, Namibia, and Uganda, to mention a few, are just a few nations that have completed their successful constitution-making processes.¹⁶ Furthermore, it lacks a timeframe for completion, leaving it vulnerable to misuse by those looking to take advantage of the procedure to promote their own goals of accumulation.

An open-ended approach is irrational for creating constitutions, as the Zambian process has repeatedly shown.

It is also evident that the majority of successful constitution-writing initiatives have included a technical committee made up of reputable constitutional specialists to advise the body drafting the constitution on the necessity of particular provisions. Experts are crucial to the process of creating constitutions. It is insufficient for members of the body that drafts the Constitution to be lawyers, any more than it is for general practitioners to be present when a patient needs heart surgery.

The specialists would contribute ideas from the perspectives of comparative constitutional law and political science in relation to comparative politics. Experts would also share the best practices from around the globe, particularly from other African nations.

At one time, *Yash Ghai* has so eloquently put it, when he said: "*a democratic constitution acts as a timeless declaration of government, not a tool of authority.*"

This is due to the fact that it is designed to benefit all ages. The government seems to have entirely forgotten that the Zambian people's legitimate dissatisfaction with the abuse of presidential power by past presidents is the root of the clamor for a new constitution. The people are worried about the highly centralized system of government, the concentration of power in the executive branch, the overbearing state with limited ability to govern, the limited devolution of power to local communities, the frequency of appointments to the public sector and civil service based on geographic or ethnic factors, the mediocrity of leadership, the lack of transparency, and the pervasive corruption.

They understand that the quality of the men and women in charge of the three branches of government determines how well a nation's polity is functioning. They seek to establish a constitution that will secure and guarantee good governance and build a state that is capable of providing its citizens with services.¹⁷

It appears like the constitution-making process has been taken over by the politicians in Zambia. Instead of making sure that the people are at the center of the process, they have made them into passive participants. This is really regrettable. Constitution gains legitimacy by the backing of the people, hence they should have the last say. It is important to acknowledge that the interests of politicians and the general public in creating constitutions are frequently diametrically opposed.

Politicians, it must always be kept in mind, are fixated on power, dominance, and a system that enables them to profit from what they see as the spoils of office and power, while regular people are interested in values, accountability, social justice, transparency, morality, human rights, and security.¹⁸ We must choose our political structure based on the values of democracy, participation, accountability, and efficiency rather than the aspirations of a select group of politicians.

Zambia's ongoing task is to establish a stable political and constitutional order that guarantees citizens' government under the rule of law, encourages growth and good administration, and takes into account their gender, color, sex, sexual orientation, or ethnic origin. This means that in order to properly manage the state and empower our people, political, economic and administrative institutions must be developed. We would want to remind our legislators that the constitution also acts as a social compact among the populace, fostering shared ideals and social solidarity, in a developing nation such as ours with a wide range of people. The goal of the constitution ought to be to provide our people as a nation and as Zambians a vision. In order to strengthen

¹⁶ YEZI Consulting & Associates, Political governance study in Zambia, a study commissioned by Diakonia–Zambia, Lusaka, Zambia, March 2013, 33

¹⁷ YEZI Consulting & Associates, Political governance study in Zambia, a study commissioned by Diakonia–Zambia, Lusaka, Zambia, March 2013, 33

¹⁸ Ibid

Zambia's democracy, its constitution must be written with the interests of the people in mind, not the shifting demands of an elite power structure that jeopardizes our already precarious democracy.¹⁹

1.4 The Possible Way Out

1.4.1 Suggested Approach to Making a New Constitution

To address the flaws in Zambia's constitution-making process, several steps can be taken such as:

- i. Establish a participatory and inclusive constitution-making process: This can be achieved by establishing a constitutional convention or assembly that is representative of the Zambian people.
- ii. Ensure ownership and control: The Zambian people must be allowed to take ownership and control of the constitution-making process, free from external influence and interference.
- iii. Strengthen institutions: Zambia's institutions must be strengthened and allowed to operate independently, without political interference.
- iv. Promote civic education and awareness: Civic education and awareness programs must be implemented to educate Zambians on the constitution-making process and the importance of civic participation.

In addition to that, there is need for enacting a specific law that outlines the guiding principles and procedures for the process which will aid in the development of an effective approach to prevent manipulation of the constitution-making process, which is a significant obstacle.

For example, a set of guiding principles was outlined during the 1993–1996 South African constitution-making process. A well-articulated set of principles improves the process and raises the likelihood of success.

In order to draft a new constitution for Zambia, a valid, transparent, and widely accepted legal framework outlining the procedures, guiding principles, accountability standards, and deadlines must be established.

Similar experiences demonstrate that the procedure requires careful planning and time. In 2002, the then Kenya's newly elected Narc Government pledged to draft a new constitution within a hundred days.

This deadline was missed, and an ill-conceived procedure that seemed to be modelled after Zambia's last National Constitutional Conference was started but ultimately fell short. That had disastrous political repercussions in 2007 to 2008. A new constitution was provided in 2010 under the circumstances of that crisis thanks to a well-thought-out process that was developed following protracted discussions and was headed by an impartial Committee of Experts acting under a constitutional framework with appropriate safeguards. A resounding majority of voters approved the constitution in a referendum, earning it widespread praise.²⁰

Zambia is in a good position to steer clear of the kind of constitutional crises that have followed poorly thought out constitutional processes, such as those that occurred in Kenya in 2000 and Zimbabwe in 2000. They could achieve this by using a well-run procedure to build on earlier constitution-making procedures mentioned above. Additionally, the nation is in a good position to prevent political gridlock and manipulation of the constitution-making process, as is currently the case in Zimbabwe. The recent failure of Zambia's National Constitutional Conference offers further significant lessons. There should be no more review commissions to gather public opinion, according to the suggestion. Zambians' opinions regarding the country's future constitution have been sufficiently gathered by the aforementioned panels and commissions.

This doesn't need to be discussed again. Given the several prior Commissions that have already been mentioned, a Committee of Experts of no more than nine members is now necessary to assess the prior constitutional proposals and oversee the writing of Zambia's new constitution. When a Task Force was established in 1991 to examine earlier constitutional ideas and draft a new one, this was acknowledged. Unfortunately, the Task Force was dissolved for political reasons and replaced by another Commission since it lacked a statutory foundation. Although the concept was sound in theory, it lacked a legal foundation to be put into practice, just like the current procedure.²¹

The Committee of Experts should be composed of people renowned for their proficiency in drafting constitutions. Two non-legal members of the committee are ideal, ideally political scientists. The committee needs to be diverse and gender-representative. It would be beneficial for the committee to have two non-Zambians. The knowledge of outside specialists is usually helpful for providing comparative experience. To collaborate with their own expertise, South Africa, Namibia, and Kenya brought in outside experts. This aids in gaining a comparative awareness of other countries' constitutional procedures and experiences.

The President should appoint the Committee, pending parliamentary authorization. Potential A committee of parliament should examine and vet the members of the Committee of Experts who are from Zambia. The Committee ought to create its own set of procedural guidelines. In addition, it must have the capacity to consult specialists on particular matters that require attention in a constitution. Examining all previous Zambian constitutions ought

¹⁹ Ibid

²⁰ Author interview with Boniface Cheembe, Executive Director of the Southern African Centre for the Constructive Resolution of Disputes (SACCORD), 18 April, 2023.

²¹ ibid

to be one of the Expert Committee's responsibilities. There should be a consensus and disagreement list produced by the Committee. The Mungomba draft ought to be the Committee's working document. The Committee has a deadline by which to provide a draft of Zambia's Constitution.

A select committee of parliamentarians should be given the proposed constitution to review and provide feedback on. Ensuring parliamentary participation in the process is the purpose of a Parliamentary Select committee. Ensuring that democratic institutions, like parliament, participate in the process of creating a constitution is essential in a democracy.

This also guarantees that these institutions support the process and do not try to sabotage it later on. Nonetheless, it is crucial to concentrate their involvement during the discussion and creation of the final draft rather than the initial text's production. There should be no excessive size for the Parliamentary Select Committee. According to each party's representation in Parliament, it ought to be inclusive of all political parties. Regarding the draft, the Committee of Experts and the Parliamentary Committee should confer.

Following their discussion with the Parliamentary Committee, the Committee of Experts ought to produce a draft that incorporates feedback from the Parliamentary Select Committee. The Expert Committee should continue to be in charge of writing the new constitution. The Committee of Experts should produce a final draft of the constitution to be made available for public comment following the Parliamentary Select Committee's response to the preliminary draft.

The public assessment ought to be brief and properly organized. It ought to end after no more than a month. At this point, public involvement improves the public's comprehension of the procedure. A final text of the Constitution should be produced by the Committee of Experts and presented to Parliament for enactment following the public review. The constitution ought to be put up for adoption in a referendum after it is enacted.²²

The process needs to be subject to realistic time limitations that are specified and communicated explicitly in order to prevent a drawn-out procedure. The procedure and the deadlines need to be made into legislation. The recommended course of action is to take the subsequent concrete steps. The UPND government should declare its political intention and commitment to crafting a new constitution in a clear and transparent manner; Actions should be done to start fostering a civic and political consensus around the merits of a new constitution-making process; drafting and approving by Parliament of a legislative framework (law) to control the process of creating a new constitution. This is for the sake of process management, accountability, legitimacy, and openness.

The Act or statutory framework needs to be created in a way that ensures the process of creating a constitution is successful. In order to achieve this, it should outline the goals to be met, create a legally recognized independent Committee of Experts to lead the process of writing a new constitution, specify the Committee's membership and responsibilities, establish the guiding principles that can guide its work, identify the approach the Committee will take, set deadlines for important procedural milestones, and describe the roles of the Parliament and the Parliamentary Select Committee.²³

As said at the beginning, the public's educated and active engagement in the process is essential. First, the author suggests that all parties involved in the process of developing the new constitution must consent to it. This implies that a broad inclusive process is required. The representative of the people in Parliament should ratify the appointments of the members of the Committee of Expert. Parliamentary Act security can be provided for the procedure. The experts' committee may consult the entire Constitution.

The National Assembly's Select Committee should debate the draft constitution with the Committee of Experts. The Committee of Experts will develop the final draft of the constitution after receiving feedback from the public on the draft. The Committee of Experts will support workshops across the nation on the different topics included in the constitution. There will be chances for public participation. Lastly, as mandated by the current constitution when it comes to the Bill of Rights, a national referendum should be held to adopt the new constitution.²⁴

In conclusion, just as crucial as the content of a constitution, is its creation process. The procedure needs to be valid, and valid processes need to be inclusive. All citizens of the nation should have a sense of ownership over the process and final product, and it should represent their interests.

All of the major parties in a nation, both inside and outside of parliament, organized civil society, and individual citizens should have contributed their views to the creation of the constitution. Transparency requires that the procedure be carried out in plain view of the nation and the whole community. A constitution that is viewed by a sizable portion of the populace as being foisted upon them or as having been approved through procedural manipulation by some stakeholders is not likely to garner enough support or legitimacy to withstand the test of time. All parties involved should be involved in the constitution-making process, rather than just the current government. The importance of government accountability, participation, and openness has been highlighted by recent events in North Africa.

The goals of the Zambians people should be known and not forgotten. They seek a constitution that establishes a strong framework for respecting the rule of law, diversity, social and economic rights, and fundamental human rights. They seek a constitution that establishes workable and efficient institutions for carrying out the functions of governance, promotes an atmosphere in which peace and development can thrive, upholds the rule of law, and ensures that the use of governmental power is done so in a predictable, responsible, and lawfully regulated manner, all while keeping the people informed.

²² Federalization and Constitution-Making as an Instrument of Conflict Resolution, Demokratizatsiya 12(4) (2004).

²³ Ibid

²⁴ L M Mbao, The politics of constitution-making in Zambia: where does the constituent power lie? Draft paper presented at the African Network of Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi April 2007, 13.

After discussions on these ideas, a draft statute containing goals, guiding principles, frameworks, procedures, and schedules should be created. The following are the suggested timelines, methods, and structures:

- i. In order to determine areas of agreement and disagreement, the Committee of Experts should examine earlier constitutional proposals from the National Constitutional Conference, the Mvunga, Mwanakatwe, and Mungomba Commissions.
- ii. The Committee should next offer suggestions on how to handle disagreements and apply global best practices to these problems. Three months would be the time frame for this.
- iii. The public should receive a draft of the Committee's recommendations, and all of the Districts would receive official and condensed copies.
- iv. Following that, the public would have a month to provide feedback on the Committee's draft recommendations and to submit their opinions to the Committee.
- v. The Expert Committee ought to support conferences and workshops throughout this time to help people comprehend the proposed constitution. Two more months would be given to the Committee to incorporate public input into a draft constitution. The Parliamentary Select Committee on the Constitution can then be presented with the draft constitution.
- vi. The proposed constitution should be reviewed by the Parliamentary Committee and returned to it after a three-week period.
- vii. The Committee of Experts should complete a draft constitution and offer it to Parliament for legislation within a month of receiving the opinions of the Parliamentary Select Committee. The legislature should have 28 days to pass the constitution.
- viii. A majority of 65% of the MPs presents and voting in Parliament must vote in favor of any changes to the draft constitution that the legislature proposes.
- ix. If Parliament wants to reject the draft constitution, the same vote would need to be held. In the event that the dissenting vote in Parliament falls short of the 65% threshold, the new constitution should remain in effect.
- x. Should Parliament reject the draft constitution, one week following the passage of twenty-eight days, the latter will submit its justifications for rejecting the draft constitution to the Committee of Experts. After receiving the Parliamentary Select Committee's reasons, the Committee of Experts should meet with them in two weeks to discuss the reasons, amend the draft constitution to reflect the revisions, and then send it back to Parliament for adoption.
- xi. Within a week of receiving the draft constitution, Parliament must enact it as written. Up until the vote, the Electoral Commissions and the Committee of Experts should conduct civic education on the proposed constitution, and the Attorney General must issue copies of the document for distribution around the nation. The new constitution should be enacted by Parliament and put to a vote within two months. The referendum should be run by the Electoral Commission, which should also select the campaign symbols for the "yes" and "no" sides.
- xii. In the run-up to the referendum, the Electoral Commission should support the Committee of Experts in overseeing civic education. The proposed constitution, if approved by the vote, after being approved by a referendum, the proposed constitution should be published as the *Zambian Constitution* and issued by the president within two weeks.
- xiii. In the event that the referendum is unsuccessful, the Committee of Experts and the Parliamentary Select Committee will meet two weeks later under the direction of the Committee of Experts to discuss the next steps in crafting the nation's new constitution.

Further, regarding the ultimate ratification of the constitution, the current one is extremely explicit about this matter. The law provides that, a bill amending Article 79 or Part III of the Constitution cannot be passed unless it has undergone a national referendum on its first reading, with at least 50% of eligible voters needed in order for the bill to be approved for both presidential and parliamentary elections. This process is crucial to the creation of constitutions.

The methods available for regular legislature should not be used to establish the ultimate law of the land. A successful constitution is one that is accepted by the general public. A culture of mutual control and consultation must be institutionalized in popular democracy in order to ensure that power and privileges are used responsibly and laws are made.

One of the clearest methods to advance a democratic culture of consultation is through the adoption of a constitution through a referendum.

1.5 Conclusion

The flaws in Zambia's constitution-making process are a major concern, as they have resulted in a constitution that does not fully reflect the aspirations and values of the Zambian people. To address these flaws, it is essential to establish a participatory and inclusive constitution-making process, ensure ownership and control, strengthen institutions, and promote civic education and awareness.

1.6 Recommendations

Based on the analysis above, the following recommendations are made:

- i. Establish a constitutional convention or assembly: This can be achieved by bringing together representatives of the Zambian people to draft a new constitution.
- ii. Ensure participation and inclusivity: The constitution-making process must be participatory and inclusive, allowing for input from all sectors of Zambian society.
- iii. Strengthen institutions: Zambia's institutions must be strengthened and allowed to operate independently, without political interference.
- iv. Promote civic education and awareness: Civic education and awareness programs must be implemented to educate Zambians on the constitution-making process and the importance of civic participation.

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- The Mvunga Constitutional Review Report of 1972
- The Mwanakatwe Constitutional Review Report of 1991
- The Mun'gomba Constitutional Review Report of 2003

Statutes

- The Enquiries Act Cap 41 of the Laws of Zambia
- The Constitution of Zambia Cap.1 Amendment Act No. 2 of 2016
- The 1962 Constitution
- The 1964 Constitution