

NCC THIRD SITTING

The National Constitutional Conference (NCC) adjourned its third sittings on May 9, 2008 after sitting from April 22, 2008.

During the sitting, members began by adopting the composition of committees. NCC Chairperson Hon. Chifumu Banda SC informed the Conference that several issues were taken into account when distributing members into various committees to ensure that no one organisation dominated in any one committee.

ELECTIONS OF CHAIRPERSONS AND VICE-CHAIRPERSONS

Elections for Chairpersons and vice-chairpersons to head the committees were conducted. The elected Chairpersons and vice-chairpersons of committees will automatically become members of the General Purposes Committee which is headed by the NCC Chairperson Hon. Chifumu Banda, SC., MP.

The following members were elected to head various committees.

- 1. GENERAL CONSTITUTIONAL PRINCIPLES**
CHAIRPERSON: Bishop Joshua Banda
VICE-CHAIRPERSON: Ms Maimbo Ziela
- 2. CITIZENSHIP COMMITTEE**
CHAIRPERSON: Hon. Dr. Peter Machungwa, MP
VICE-CHAIRPERSON: Ms Agness Mumba
- 3. HUMAN RIGHTS COMMITTEE**
CHAIRPERSON: Mr. Enoch Mulembe
VICE-CHAIRPERSON: Pastor Godfrida Sumali
- 4. DEMOCRATIC GOVERNANCE COMMITTEE**
CHAIRPERSON: Mr. Stanley M'hangho
VICE-CHAIRPERSON: Hon. Elizabeth Chitika, MP
- 5. EXECUTIVE COMMITTEE**
CHAIRPERSON: Hon. Michael Mabenga, MP
VICE-CHAIRPERSON: Rev. Mary Mwiche Zulu
- 6. LEGISLATIVE COMMITTEE**
CHAIRPERSON: Hon. Mutale Nalumango, MP
Hon. David Matongo, MP
- 7. JUDICIAL COMMITTEE**
CHAIRPERSON: Hon. Jack Mwimbu, MP
VICE-CHAIRPERSON: Ms Mwamba Chanda
- 8. LOCAL GOVERNMENT COMMITTEE**
CHAIRPERSON: Mr. Solomon Muzyamba
VICE-CHAIRPERSON: Ms Charity Mphande
- 9. PUBLIC SERVICE COMMITTEE**
CHAIRPERSON: Mr. Likolo Ndalamei
VICE-CHAIRPERSON: Hon. Anjela Cifire, MP
- 10. PUBLIC FINANCE COMMITTEE**
CHAIRPERSON: Mrs Sherry Thole
VICE-CHAIRPERSON: Hon. Charles Milupi, MP
- 11. LAND AND ENVIRONMENT COMMITTEE**
CHAIRPERSON: Hon. Request Muntanga, MP
VICE-CHAIRPERSON: Hon. Anjela Cifire, MP

The Conference also elected Rev. David Masupa as a member of the disciplinary committee to replace Dr. Cornelius Mathandiko who died on Wednesday.



FROM LEFT TO RIGHT: Lucy Changwe, Deputy Chairperson, Land and Environment Committee, Vera Tembo Chiluba, Deputy Minister, Ministry of Environment and Natural Resources and Anjela Cifire, Deputy Chairperson Public Service Committee.

In order to ensure that members make meaningful input as they debate and make recommendations on the Mung'omba Draft Constitution, consultants were hired by the Secretariat to orient members on various aspects of the Constitution.



NCC members attentively listening to the presentations from experts during the third (3rd) sittings. LEFT: Mr. James Noah Mbene from All People's Congress Party (ACP) RIGHT: Mr. Japhet Muvovo from New Generation Party (NGP)

THE SCOPE OF THE CONSTITUTION

The first presentation was from a Lusaka based renowned lawyer Eva Jhala who is also a lecturer at Zambia Institute of Advanced Legal Education.

In a presentation entitled "The Scope of the Constitution," Mrs Jhala cautioned members against coming up with a bad Constitution which she said has been one of the causes of instability in Africa and elsewhere in the world.

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

"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," Mrs Jhala said.

She added that a Constitution should not encourage the personalization of power.

Mrs. Jhala also spelt out the types of Constitutions which are unitary systems with centralized power, federal or decentralized systems of government and

these 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.

SEPERATION OF POWERS

Members were also challenged to examine and recommend issues that should address the challenges that are currently being faced in the three arms of government. The challenge came from the Clerk of the National Assembly of Zambia, Mrs. Doris Katai K. Mwinga.

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

She explained that there should be clear distinctions between the three arms of government which can only be guaranteed if clearly indicated and stated in the Constitution.

"For this reason, 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," Mrs Mwinga explained.

THE CONSTITUTION AND HUMAN RIGHTS

The Constitution and Human Rights is another aspect that members were oriented on. Mr Palan Mulonda cautioned members of the NCC to ensure that they take care of the concerns from the Zambian people on civil, social and economic rights which he said needed to be added 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.

THE HISTORY OF CONSTITUTIONALISM IN ZAMBIA

Members were also encouraged to make reference not only to the Draft but also to the current and past Constitutions when making their recommendations on the Mung'omba Draft Constitution. Thus, to assist members understand and appreciate the Constitution history of the country, a paper was presented by Mr. John Sangwa, a Lusaka based renowned lawyer.

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

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

He said members should extensively consult past Constitutions and carry forward aspects which they feel can still be relevant to day.

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

CONSTITUTIONAL MAKING PROCESS

Another challenge to the NCC members came from the Southern Africa Development (Community) (SADC) Parliamentary Forum Secretary General Dr. Kasuka Mutukwa.

In a presentation on how to produce a viable Constitution and Constitution making process, Dr. Mutukwa urged members to ensure that they look at the challenges of the past so as to come up with a viable Constitution.

PUBLIC FINANCE MANAGEMENT IN THE CONSTITUTION AND OTHER LEGISLATIVE FRAMEWORKS

On Articles 304 to 322 in Part 17 of the Constitution that deal with public finance issues, NCC members were urged to critically look at the excess financial powers enjoyed by the President and Minister of Finance.

Former Member of Parliament for Kafue Constituency Mr Bob Sichinga said NCC members 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, 'Mr. 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 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.

DEMOCRATIC GOVERNANCE

To enable members debate and make recommendations on democratic governance issues, Dr Francis Chigunta gave an overview of electoral systems that are currently in use in the world.

A lecturer in the department of development studies at the University of Zambia (UNZA), Dr Chigunta explained the importance and types of electoral systems in a democracy such as majoritarian, proportional representation, mixed systems and others. He explained how the proportional representation systems have worked in countries like South Africa where people choose parties instead of individuals during an election. This entails that Members of Parliament in this system are not answerable to the people who vote them into power but to the party that they represent.

Dr. Chigunta advised members to critically examine the principle of 50 percent plus one vote. He said should members make a decision for or against this proposal, they needed to keep in mind some of the advantages and disadvantages of embedding it in the Constitution.

He outlined some of the advantages such as enjoyment of greater legitimacy, credibility and respectability by the President, promotion of national unity by ensuring that the elected President acquires votes from most regions as well as encouraging enthusiasm and large voter turn-out.

On the disadvantages, Dr Chigunta explained that enshrining a 50 percent plus one vote in the Constitution can be quite costly for a developing country like Zambia where there are usually several candidates in an election.

'In a democracy with four contestants who have different constituents, it may prove difficult to have an outright winner – eliminating candidates with fewer votes may be limiting the democracy space,' Dr Chigunta said.

Dr Chigunta also outlined some of the features of a good electoral system such as broad representation, inclusiveness, political accountability and transparency and legitimacy.

INTERPRETATION OF THE NCC ACT No. 19 OF 2007

Members were also called upon to ensure that they maximally use the NCC Act No. 19 of 2007 provisions to the fullest to help guide the deliberations.

Giving the background of the Act and its significance to the Constitution making process, Ministry of Justice head of Drafting Department Mrs Anne Sitali said the Act is a very useful guide in ensuring success of the Conference.

IDENTIFICATION OF ARTICLES NEEDING CLARITY IN THE MUNG'OMBA DRAFT

The former Chief Justice Mathew Ngulube was also on hand to assist members identify certain issues that they need to consider when making their recommendation on the Mung'omba Draft Constitution of 2005.

The Chief Justice implored members to ensure that they remove 'cobwebs' in the Constitution by making recommendations that would stand the test of time.

In his presentation, the former Chief Justice observed it was a good thing that the Mung'omba Draft Constitution deals with main issues and points leaving the details to ordinary legislation.

'Too much detail may embed in the Constitution too many opportunities for controversy or for conflict with other legislation,' Ngulube said.

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

'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 said.

Justice Ngulube told the members to ensure they look at Articles 109 clause 2 that explains the role of the Electoral Commission in determining the boundaries and the naming of Constituencies or wards, Article 118 clause 1 which says that the Electoral Commission shall supervise the conduct of political parties and Article 132 clause 3 that prohibits both the President and the Vice-President to be out of the country at the same time.

Members of the General Purposes Committee which comprise of NCC Chairperson and his deputies, the Chairpersons and vice-chairpersons of all committees also underwent orientation from May 13 to 14, 2008. The orientation which was organized with funding from the United Nations Development Programme (UNDP) assisted the Chairpersons and their vice-chairpersons in understanding their roles as leaders and managers of the committees.

The third sitting of the Conference ended on May 9, 2008 with NCC Chairperson calling on members to ensure that they read the documents they had been given so that they can make meaningful contributions as they debate and make recommendations on the Mung'omba Draft Constitution.

Hon. Chifumu Banda reminded the members that the NCC has been given a specific time frame in which to debate and make recommendations on the Mung'omba Draft Constitution.

The Chairperson thus told the members that it was imperative that committees begin debating and making recommendations under their respective terms of reference from May 19, 2008.

'Three Committees shall begin their work on May 19, 2008 and these are Citizenship, Judicial and Public Service Committees. The members of these Committees should therefore arrive on May 18, 2008 and they shall meet for a period of 21 days,' Banda explained.

Committee meetings are from 14:00hours to 16:00 hours on weekdays..



INFORMATION BROCHURE

NATIONAL CONSTITUTIONAL CONFERENCE (NCC)

(ENGLISH)

National Constitutional Conference (NCC)
Mulungushi International Conference Centre
P. O. Box 51261
Lusaka.

Tel: 0211-293082/ 293083/ 293940

**(NCC THIRD SITTING)
APRIL 22 - MAY 09, 2008**

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