

ZAMBIA CONGRESS OF TRADE UNIONS

**ZCTU/FES WORKSHOP ON NATIONAL
CONSTITUTIONAL CONFERENCE WORKSHOP,
HELD AT THE PROTEA HOTEL, LUSAKA FROM
15 – 16 OCTOBER 2007**

REPORT

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Introduction

The workshop to discuss the National Constitutional Conference was held at Protea Hotel, Cairo Road, Lusaka, with the support of Friedrich Ebert Stiftung.

Participants, who included members of the Executive, Presidents and General Secretaries of national unions scrutinized the National Constitutional Conference Act No 19 of 2007, with consultations from the resource persons, came up with their position on NCC in relation to the NCC Act no. 19 of 2007.

Workshop Objectives

The overall objective of the workshop was to bring together ZCTU leadership and its affiliates to be sensitized on the National Constitutional Conference and analyse issues surrounding the Act and see whether there are any omissions and inappropriate provisions.

By the end of the workshop, participants were expected to:

- a) study the NCC Act No. 19 of 2007, and
- b) to come up with a ZCTU position on NCC in relation to the NCC Act.

Official Opening Ceremony

Welcome Remarks: Mr. Alfred Mudenda, Deputy Secretary General (O & A)

The Deputy Secretary General, Mr. Alfred Mudenda, welcomed all participants to the workshop.

He paid tribute to Friedrich Ebert Stiftung through the Area Director, Mr. Gerd Botterwick for the support being rendered to ZCTU.

Mr. Mudenda read the outline of the objectives of the workshop and urged participants to take a serious approach to the deliberations of the workshop, which he emphasized pointed to the destiny of the entire nation.

He reminded the participants that the labour movement had always been part and parcel of developmental processes in the country and that the NCC was one of such processes, which required rigorous scrutiny by the labour movement as they were not expected to sit back on an issue involving all citizens to participate in.

Remarks from Friedrich Ebert Stiftung Area Director

The FES Director, Mr. Gerd Botterwick, expressed gratitude to be associated with discussions that were going on in the Labour Movement regarding the National Constitutional Conference. As FES, he said, it was important for them to provide assistance in matters of national interest, which the labour movement was discussing.

He commended Zambia Congress of Trade Unions for their selection of resource persons as well as the participants. He said that the workshop was a good idea and hoped that it would achieve the laid down objectives.

He mentioned that, in a country where there were divergent views regarding development, it was difficult to agree on a common view and therefore, there was need for the labour movement to effectively participate in all issues the country was discussing and also that, as a labour movement, it was important for them to take sides not politically based, but sides that would see the labour movement making a decision. He emphasized that it was important for the labour movement to make their point clear, state exactly what they were advocating for.

Mr. Botterwick hoped that the workshop would critically discuss the process and content of the NCC.

Mr. Mudenda then invited the Guest of honour to officially open the workshop.

The workshop was officially opened by Mr. Leonard Hikaumba, President, and ZCTU. He paid tribute to FES for their financial support, which without them, he said, it would not have been possible to hold the workshop.

In his speech, the President observed that there was poor understanding of the Constitution making process and of the Constitution itself in the nation. He therefore urged the affiliates of the Congress to play an active role in explaining the Constitution to other people in Zambia. The President further stressed that dialogue and consensus-building were essential strategies for restoring public confidence in the Constitution making process and in the resultant Constitution.

The President advised that there was need for mutual respect between those in favour of the National Constitutional Conference Act and those opposed to it. He advised Government to desist from making threats and use of provocative language to those opposed to the NCC. He emphasized that in order for the nation to make progress in the Constitutional making process, level-headedness, dialogue and diplomacy were necessary.

He challenged the affiliates to ensure that they educated their members on the Constitution making process that would give the nation direction.

Vote of Thanks

In moving the vote of thanks to the President's opening remarks, Brother Newman Bubala observed that the strength of the Congress was in its affiliates. He assured the Guest of Honour that the deliberations were going to be objective, researched and well informed. He challenged the affiliates to later ensure dissemination of information to their members on the Constitutional making process so that they too would be in a position to understand the debate surrounding it.

1st Presentation: National Constitutional Conference Act No. 19 of 2007: *Dr N Simutanyi*

Dr Simutanyi started by highlighting the major tenets of the NCC Act No. 19 of 2007. He said that in order to fully appreciate the Constitution making process and the numerous issues pertaining to it, it was important to first understand what the Constitution was. He explained that the Constitution is a document that comprises and outlines the arrangements governing the relationship between the governors and the governed. In this regard, the constitution provides mechanisms for the enjoyment of rights and the exercise of power (or authority) and the limits thereof and it must be founded on democratic principles. He stressed that the constitution must be evaluated in terms of the extent to which it facilitates harmonious relationship between the governors and the governed.

Dr Simutanyi gave an historical background to the Constitution making process in Zambia. He observed that the process of constitutional review dated to the 1970s when the first attempts to review the constitution inherited at independence were made. He noted that since independence, the Inquiries Act had been invoked a number of times in order to put in place Constitutional Review Commissions, namely the Chona, Mwanakatwe, Mvunga and the recent Mung'omba Constitutional Review Commission. He observed that not only was the selection of Commissioners arbitrary but also that most of the recommendations made in the reports were rejected by Government, or if they were accepted, they were not implemented. He noted that while the recommendation by the Mung'omba Constitutional Review Commission was that the Constitution be adopted by a Constituent Assembly and be approved by a national referendum was accepted by Government, there was an apparent lack of goodwill to implement the decision.

The National Constitutional Conference

Dr Simutanyi observed that up to 2006, there had several roadmaps for the constitutional review process proposed by both Government and Civil Society, prominent among who was the Oasis Forum. There was a stalemate regarding which of the roadmaps was the best. However, in the course of time, the political parties met and agreed to establish the NCC. Regrettably, the civil society organizations and the Oasis Forum were not involved in the discussions leading to the establishment of the NCC.

Dr Simutanyi highlighted major issues in the Act as follows: -

a) The Competence of NCC

It was observed that the NCC had only been mandated to debate the draft Constitution and then refer it to Parliament, which would also debate the draft Constitution before enacting it. This was a departure from the spirit of a Constituent Assembly.

b) The agenda to be discussed by the NCC as defined in part IV, Section 13 of the NCC Act

The functions of the NCC were not in consonant with the aspirations of the people as captured in the reports of the Constitutional Review Commissions. It was noted that there was fear in the nation that there was a possibility that only cosmetics changes would be made to the existing Constitution whereas the people have demanded for a completely new constitution.

c) Composition of the NCC

It was observed that composition of NCC indicated that political parties and Government related organizations constituted an in-built majority which would give Government some advantage. It was further noted that there was loss of confidence in Parliament since its member can no longer be trusted. A further observation made was that the process was currently exclusive rather than inclusive.

d) Powers of the President

It was observed that Section 32 (4) of the NCC Act gave the President the power to dissolve the NCC if he believed that they were not carrying out their mandate adequately. Fears were expressed as to how the President would establish that the NCC had failed in its duties. It was observed that this left a room for manipulation since the President could dissolve the NCC even on the basis of flimsy reasons.

Dr Simutanyi urged the ZCTU and its affiliates to come up with a well-informed position on the NCC. He emphasized that labour leaders had a responsibility to educate their members on what was good for them. He also advised the different parties to the Constitution making debates to work towards persuading those who did not agree with them to see their point, rather than to adopt a confrontational approach. He observed that history had shown that boycotting a process without assessing the impact the boycott would have on the process could be a disaster. He therefore advised ZCTU and its affiliates to consider all issues carefully before coming up with a common stand.

Plenary Session

In the ensuing plenary session, participants wondered why the political parties that had earlier reached consensus no longer were in agreement. They also wondered why Government had not accepted the recommendations and wishes of the people as reflected in the numerous Constitutional Review Commission Reports. The participants also expressed disappointment with the opposition Members of Parliament for their failure to forcefully oppose the NCC.

It was observed that unions were essentially political organizations and that they wielded political power which they could use to change a system. It was also established that one great hurdle in the Constitution making process in Zambia was the difference between the interests of the people and those of Government. This was identified to have led to the many constitutional reviews and the failure to reach consensus on the roadmap to constitution making.

It was further observed that in its current form, the NCC Act did not contain clear procedures. This, it was noted, was an important omission because there needed to be provisions in the Act allowing the NCC to create its own terms and procedures.

It was emphasized that any person or grouping had the right to accept or reject the NCC if they felt that their interests were not adequately served. It was advised that Organizations could democratically choose to be part of the NCC or to boycott it. Participants were advised not to be defeatists but rather to be positive and to work towards taming the politicians because the latter were servants of the people.

2nd Presentation: “Is the NCC Act No. 19 of 2007 adequate to enable Zambia develop a people driven constitution, as opposed to the Constituent Assembly recommended by the Mvunga and Mung’omba Commissions of Inquiry?”

Mr. Musa Mwenye and Fr Joe Komakoma

This was a two-part presentation. Mr. Mwenye is Honorary Secretary of the Law Association of Zambia. Although he is member of LAZ, he said his presentation was based on his personal views and not that of LAZ.

Mr. Mwenye explained that in order to fully appreciate the current debate on the constitution making process, there was need to understand the historical context in which it was taking place. He emphasized that a good constitution was a reflection of the collective will and vision of the people and not a gift by the governors to the governed. In order to achieve this he said, it was essential for active involvement of the people and actively consulted. He further explained that a good constitution was a result of the fusion of two important parameter, namely the process by which it is produced and its actual content. He said only if all citizens are genuinely involved will the resultant Constitution be a credible document.

Regarding the extent to which the Constitutional Review process had been consultative, Mr. Mwenye pointed out that earlier there had been attempts made but the recommendations made in the reports were usually rejected by Government. He observed that the Mung’omba Commission recommended that a Constituent Assembly or any other popularly constituted body should adopt the Constitution. He emphasized that this Commission has a three-step enactment process, namely

1. Adoption of the Constitution by a Constituent Assembly
2. National Referendum
3. Enactment by Parliament without further debate.

Mr. Mwenye explained that, this, notwithstanding, Government had continued to argue that Parliament must have the right to debate the Constitution and to alter any part of it. However, he argued that Government was a servant of people and that Article 1 (2) of the Constitution clearly states that all power belongs to the people and the referendum is one mechanism through which people can exercise this power.

Mr. Mwenye also echoed the fears by civil society based on the composition of the NCC. He was convinced that the fears by civil society of manipulation had a strong basis. These fears were also expressed by the Mung’omba Commission. He further argued that, in its current form, the NCC would only facilitate piecemeal amendments, contrary to the people’s desires for a new Constitution.

He urged well meaning people to take principled decisions on the NCC now, as it was important to resolve all contentious issues before going any further. He concluded by arguing that in its current form, the NCC falls far below the Mung’omba CRC.

In his submission, following Mr. Mwenye’s submission, Fr Komakoma observed that it was essential to agree on the rules before proceeding. He emphasized that all the issues earlier observed (i.e. the composition of NCC, the Powers of the President and other issues) must be resolved now and that a favourable atmosphere, not one of threats must prevail.

In the plenary session it was observed that there was still time to amend contentious articles in the NCC Act but that depended on goodwill from Government. It was emphasized that collective decisions taken by different stakeholders to either participate in the NCC or not must be respected.

**3rd Presentation: Consensus amongst Stakeholders in making of the Constitution:
Mechanism for arriving at mutual conclusions: *Prof. Mvunga, SC***

Prof Mvunga gave an overview of the constitutional making process in Zambia. He explained to the participants the mechanism used for coming up with a constitution as outlined in his attached presentation.

Prof. M'vunga regretted that the Constitutional making process had taken a long time to complete, though, it was now making headway. He mentioned that dialogue and consultations with all stakeholders and their involvement in the constitutional review process was important so that everyone could claim ownership. He said that boycotting the process would not be the best solution as it would not yield anything.

Prof Mvunga agreed that it was possible to have a new Constitution instead of making piecemeal amendments. He was of the view that the Constitution be referred to a referendum for legitimacy purposes. He also agreed that the NCC Act No. 19 of 2007 could be amended in order to accommodate views or concerns of the people. He mentioned that there was no rigid law and that the laws were made with a view of repealing them. This means that the Act, which is law could be amended.

In answering questions on why the Act allows the Minister of Justice to appoint the drafting committee and also questions on why NCC should discuss issues that have already been submitted by the people through the CRC, Prof Mvunga said that the Ministry of Justice was the drafting Ministry and therefore, the Minister of Justice had the power to do so. He told the participants that a body like NCC could be appointed to give form to already submitted views and wishes of the people as long as this was not altered. The idea was to come up with faithful views of the people and also to polish up areas which were inconsistent.

Prof Mvunga regretted that the whole process had been marred by mistrust on issues such as the composition of NCC, functions, roles, powers of the President, powers of the Minister. He told the participants that it was not possible to avoid the President in the Constitutional review process.

At this moment, the Deputy Minister of Labour and Social Security, Mr. Austin Liato joined the workshop.

Mr Liato assured the participants that the President was committed to the constitutional making process and that it was his hope to give the nation a good constitution. He said that the President was an important figure in this case. He wondered why mistrust was so much pronounced when the President had given in to a lot of demands of the people regarding the constitutional making process. He encouraged the labour movement to accept the fact that in any given situation it was important to have a last person to shoulder the responsibility for any outcome. He said the President in this case was important to the constitutional making process and even any other, otherwise they would be chaos.

4th Presentation: *Mr Simeza Sangwa*

Mr. Sangwa also alluded to the fact that boycotting the NCC would not be best option for anyone. He said that this was a unique case that the nation was dealing with and that it was important for stakeholders to participate and give it a chance. In his view, he thought that civil society was too much into discussions to the process without considering the outcome. He mentioned that no single individual would determine the final outcome but a collective responsibility.

The fact that this time government is not going to have a final say in terms of committing the whole document to a white paper and the fact that there are more than 500 men and women on the NCC shows that this is an opportunity which should not be wasted. He cautioned, though that the key to the issue of representation was not in terms of numbers but quality of representation. He encouraged ZCTU to make quality nominations and go further to give more information to the nominees on how to approach the issue.

Mr Sangwa alluded to the fact that the Act could be amended to accommodate views of the people. He also said that the mandate of NCC should be made clear now as this is what was creating a lot of tension in the nation.

Mr. Sangwa regretted the threats by the President to the people opposed to the process. However, he urged participants not take these threats seriously but to be focused to the broader picture of the process.

Thereafter, the participants were broken down into two groups to consider the way forward for the labour movement. This is a presented form of recommendations as shown below:

1. The Zambia Congress of Trade Unions shall participate in the National Constitutional Conference based on the premise that the Labour Movement has a duty to fully represent and articulate the interests of workers, and indeed other vulnerable sections of society, and as such cannot contribute to the constitutional making process outside the legal framework.
2. ZCTU shall lobby Government and other stakeholders to ensure that all contentious issues in the Act are resolved in national interest before the National Constitutional Conference commences its statutory duties and assignment.
3. ZCTU and its affiliates shall ensure sensitisation of its members on the NCC Act No. 19 of 2007 and the draft constitution.
4. ZCTU shall make detailed submissions to the Republican President indicating areas of concern in the Act for possible amendments.

Conclusion

The question as to whether ZCTU should participate in NCC was answered by leaders presenting their members from affiliate unions. ZCTU shall participate in the NCC. What remains, though, is to see whether ZCTU representatives can also join in influencing decisions of the NCC.