

Civil Society Constitution Coalition
Position Paper on the Draft Constitution

Introduction

The Civil Society Constitution Coalition (CSCC) is a group of like-minded Civil Society Organizations (CSOs) who have initiated a process to provide a coordinated and meaningful participation of civil society on issues related to the National Constitution Making process. It aims to promote a deeper understanding of constitutional reform issues, reach a broader consensus regarding proposals for amendments or revisions and jointly undertake some advocacy activities around the Constitution-making process. The group consists of local CSOs working on various issues ranging from human rights, poverty, governance, health etc. some of the organizations who are part of the coalition include:

- Jesuit Centre for Theological Reflection (JCTR);
- Zambia Civic Education Association (ZCEA);
- Women and Law in Southern Africa (WLSA);
- Civil Society for Poverty Reduction (CSPR);
- Zambia AIDSLaw Research and Advocacy Network (ZARAN);
- African Women Millennium Initiative in Zambia (AWOMIZ);
- Southern African Centre for the Constructive Resolution of Disputes (SACCORD);
- Save the Children;
- ActionAid International Zambia;
- Church of God;
- Transparency International Zambia (TIZ);
- Hope for Human Rights;
- Treatment Advocacy and Literacy Campaign (TALC);

- Zambian Union of Financial Institutions and Allied Workers (ZUFIAW/FFTUZ);
- Citizen's Forum;
- Anti-Voter Apathy (AVAP);
- Women in Law and Development in Africa (WiLDAF);
- Zambia Community based Natural Resources Management Forum;
- Zambia Women Media Association (ZAMWA);
- The People's Indaba;
- Infotainment Movement; and
- Zambia Land Alliance.

It should be noted that the past Constitution making processes in Zambia have failed to give the Zambian people a Constitution amidst calls for a people driven Constitution. CSO advocacy in previous years raised various concerns pertaining to both the *process* and the *content* of the Constitution making process. The CSOs have been unwavering in their contention that 'process protects content.'

Recognizing the critical role of civil society in the Constitution-making process which would help to shape a people driven Constitution, this coalition of CSOs is determined to remain vigilant and to advocate for strong Constitutional reforms. To ensure timely input into the Constitution review process, the coalition will base its advocacy work on the Technical Committee's Roadmap.

With the Technical Committee having released its first draft on Monday, the 30th of April, 2012, the Coalition, desirous to lobby on content issues, began a process aimed at allowing its member organizations to jointly conduct the analysis of that first draft Constitution. That exercise was managed by women and men who have experiences in different matters relating to the Constitution from among member organizations. To that end, a sub-committee was formed to be in charge of the exercise. It consisted of the following individuals and organizations:

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|-------------------------|---------|
| 1. Mr. Francis Mwale - | TIZ |
| 2. Mr. Daniel Libati - | ZCEA |
| 3. Mrs. Maimbo Ziela - | WLSA |
| 4. Mr. Anold Moyo - | JCTR |
| 5. Mr. Obby Chibuluma - | SACCORD |

6. Ms. Mary Mutupa - Coalition Coordinator
7. Ms. Sharon Chileshe - ZLA

That committee having being tasked to spearhead the analysis process of the 2012 Draft Constitution from the 2nd to the 4th days of May, 2012 proceeded to:

1. Finalize the Basic minimum's document prepared by the Coalition's Secretariat after having put together submissions made by its members to previous Constitution making processes;
2. Conducted a review and analysis of the 2012 draft Constitution released on 30th April, 2012 and
3. Has pursuant to those objectives now developed this position that is now shared with the general public as the coalition's position on the contents of the draft Constitution
4. The finale position paper has been adopted by the wider coalition group

ANALYSIS TABLE

Initial Basic Minimums	2012 Draft Constitution Provision	Position(s) Taken	Reason(s)
<i>The Preamble should read "We the people of Zambia". The phrase "By our representatives assembled in Parliament should be removed as the constitution is a document by and for Zambians.</i>	"We the people of Zambia, in exercise of our constituent power"	CSCC satisfied with the provision in the 2012 Draft. Clause to be defended.	
<i>Right to freedom from discrimination The Constitution should accommodate a wider basis for protection from discrimination including discrimination based on health status and disabilities. It should also protect against discrimination that emanates from private as well as public sources. It should also address direct and indirect discrimination and provide for affirmative action. The anti-discrimination clause should thus be expanded to take this issue into account. These are the</i>	Article.27	Progressive provision However, Article 27 (1) on Freedom from discrimination should end with " others Status " so as to make provision for other grounds and factors on which people may be discriminated.	Article 27 is progressive to the extent that it proscribes discrimination on the grounds of health status, disability, as well as proscribes any form of discrimination, whether direct or indirect. It is also progressive in the sense that it proscribes discrimination that emanates State and private entities alike.

<i>areas in which vulnerable groups such as PLHIV experience discrimination based on HIV status.</i>			The Constitution Bill provisions thus apply both horizontally and vertically and are thus progressive to this extent.
	Article 26	With regards to Article 26 (4) 'application and interpretation of the Bill of Rights' it is recommended that what is in Mung'omba article 29 (5) and (b) must be adopted	This is because it may be difficult to apply the Bill of Rights using Christian values
<u>Freedom from inhuman and degrading treatment</u> <i>The Constitution should be amended to include the right to human dignity. All the concerns raised in the protection of rights of vulnerable groups including those affected by HIV can be addressed by recognising their humanity and by obliging Parliament and other law makers and well as developers of policies to be humane.</i>	Articles 29 and 30	Articles 29 and 30 of the Draft Constitution 2012 are progressive.	While the Draft Constitution recognises the right to freedom from inhuman and degrading treatment, it specifically provides for the right to human dignity.
<u>Protection of Privacy of a Person</u> <i>Right to Privacy should safeguard against a wider range of invasion of privacy such as forced or unapproved disclosure of personal information/status, forced /compulsory medical test, breach of the duty of confidentiality and eavesdropping or invasion of privacy in relation to communications.</i>	Article 34 (1) (c) and (d)	Progressive.	These provisions wholly address the concerns of invasion of privacy commonly experienced by PLHIV in Zambia.
	Article 35	<ul style="list-style-type: none"> Article 35 (3) should be removed as it is not necessary, does not define what constitutes 	It is simply enough to state a guarantee religious freedom and

		<p>Anti-Christian teaching and practice, and maybe abused to the disadvantage of other religions as it is prone to wide interpretation</p> <ul style="list-style-type: none"> Article 35 (2) (3) (4) (5) should also be removed as there are not necessary and as there are prone to abuse by people in conducting irrational religious observances which may prove to be nuisance to the public 	conscience without entering into these specific
<i>Right to freedom from expression and right to information particularly right to make informed decisions concerning one's health and to receive and share HIV-related information and benefits of scientific advancements</i>	Article.36, 37 and 38	Adequately address the issues.	The provisions are progressive in that they address the concerns raised to ensure adequate circulation of information on HIV that helps makes informed decisions and that benefits various vulnerable groups.
<p><u>Acquisition and protection of property</u></p> <p>This right should be provided without derogation as these can easily be abused</p>	Article 44 (3) (b) and (4)	<p>(b) Allows any person who has an interest in or right over, that property a right of access to a court.</p> <p>Provided that the court action specified herein shall act as a stay on the compulsory possession of property</p>	<p>The reason for (b) is that if this is not done, the Court action may become academic as the property would have changed hands.</p> <p>The reason for (4) is that "may" is discretionary word which is undesirable in these circumstances and should accordingly be replaced with "shall"</p>

<p><u>Further rights for women</u></p> <ul style="list-style-type: none"> - Allow women to be able to enter into Contracts - Acquire and maintain rights in the property including land independent or in association with others regardless of marital status - Acquires and retain custody, guardianship and care of children and have equal rights in the making of decisions that affect their children's upbringing. - We recommend that, Article 23 (4)(C) of the current Constitution be repealed as a matter of priority in order to render the Constitutional framework of the country - compliance with the international human rights obligations the State assumed 	<p>Article 52 Article 87 Article 310</p>	<p>We recommend that Parliament should put an Act in place to guarantee implementation of the rights</p> <p>To emphasize representation and participation of women, Representation of gender, Youth and Persons with Disabilities, Article 87 (1) and Equality of Both Gender Article 51 it was discussed that on further equality on representation refer to General Principles where the following should be inserted :</p> <p>"The State shall ensure that the principle of Equal Representation applies to any consideration for appointment, nomination and election to Executive, Legislative and Judicial offices which shall exhibit a 50/50 representation."</p> <p>In line with the principle of equal representation, with regard to presidential elections, if a presidential candidate is male, then his running mate should be female, and vice versa.</p> <p>"The Principle of Affirmative Action shall be mandatory to the Public Sector and shall be a guiding principle to the private sector." (This should be contained under basic principles)</p>	<p>The General principles give the spirit to the Constitution and it will be good to have the principle of affirmative action in this part.</p>
<p><u>Children's Rights</u></p> <ul style="list-style-type: none"> -Article 44 of the Mung'omba Draft Constitution on Children's rights must be retained in the new Constitution -The definition of a child be "one who is 	<p>Article 55 in conjunction with Article 311</p>	<p>Adequately covered</p>	

<i>below the age of 18 years”</i>			
<p><u>Economic, Social and Cultural Rights</u></p> <p><i>We strongly recommend the inclusion of Economic, Social and Cultural rights (ESCR) in the Bill of Rights in the new Constitution. For example the following rights must be included: Freedom to choose trade, occupation and profession; Labour relations and pensions; Social security; Health; Education; Shelter and housing; Food, water and sanitation; Environment;</i></p>	Articles 61 to 67	<ul style="list-style-type: none"> - Article 61 (1) provides for progressive realisation of ESCR. There will be need to ensure that stringent measure are put in place to measure the “progress” - Article 61 (3) (b) is an issue of procedure and can be left to an Act of Parliament. Another suggestion is to ask the Technical Committee to review it and give less power to the State or remove it to guarantee the rights. 	<ul style="list-style-type: none"> - The problem with progressive realisation is that if the monitoring part is weak, there will be no realisation at all - This will ensure that the guaranteeing of ESCR is not only on paper but can actually be enforced in practice. - Unclear as to the interpretation of the clause
Labour relations issues	Articles 65 (Compare this to Article 69 in the Mung’omba), 251(retirement age (1)), 252, 253 and 254	Article 65 (2) (c) is not compatible with Mung’omba Article 69 (3) as well as Article 254 (2) of the 2012 draft Constitution in that Article 65 (2) (c) does not deal with retrenchment. There is need to adopt what is in Article 254 (2) to include it in the Bill of rights to bring about issues of enforcement.	The way the draft Constitution has been couched, retrenched workers are not protected by the Bill of rights and enforcement may be difficult.
<i>No unjustified limitations on rights and freedoms; Non-derogable rights and freedoms; Derogation of rights and freedoms during emergency and others</i>	Articles 68, 69, 70, & 71	Article 68 (1) on limitations of rights and freedoms is usually a standard Article in most Constitutions. However, Article 68(2) is unreasonable and should be removed from the draft Constitution as most of the derogations are rendering the rights irrelevant	Claw-back clauses that refer to denial of rights because of “interests of defence, public safety, public order, public morality, or public health” should be guarded against as can easily be used by the State to take away or deny the rights of persons especially when such exceptions provided to the State cannot be questioned by a Court,

			Tribunal or Commission. Even though some restrictions and clarifications on the extent of one's enjoyment of the right are needed, such restrictions should explicitly be subject to decisions by judicial actions.
<u>Enforcement of Bill of Rights</u>	Article 72	<p>Provided for.</p> <p>However, there will be need to emphasize that Article 72 should add "the rights, duties, declarations and guarantees relating the fundamental human rights and freedoms specifically mentioned in this part shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in democracy and intended to secure the freedoms and dignity of men/women". This will then be in line with Article 24 (3) (d). It is further proposed that the wording proposed herein should be used in Article 24 (3) (d) for the avoidance of doubt.</p> <p>Further, with regard to the enforcement of the Bill of Rights and the whole Constitution, a clause should be added which states that: In interpretation of this constitution, courts shall take into consideration international law and the treaties/conventions that Zambia is party to.</p>	This is just to ensure that enforcement is not restricted to the rights specifically provided for in Part V of the 2012 draft Constitution.
<u>Presidential powers</u>			
<i>Reduction of Presidential powers</i>	Article 91	Articles 91 & 92 (4) provides for curtailing of Presidential powers by empowering National Assembly	If decision is not referred to the Constitutional Court, the National

		to approve certain matters and ratify Presidential appointments respectively. However, Article 92 should be strengthened by referring the refusal to ratify to the Constitutional Court just as Article 91 envisages.	Assembly is made to be a rubber stamp of Presidential decisions.
<p><u>Presidential Immunity</u></p> <p><i>A clear procedure of lifting immunity for the incumbent (previous) President who is found to have committed grave abuse of authority</i></p>	Article 96	Covered, however Article 96(8) should be removed as Article 96 (7) is adequate.	Article 96 (8) does not really state what Court in particular has the power to acquit the former President. This curtails the right of the State to appeal. Further, since there will be no 'blanket' removal of immunity, there will be no need to restore the immunity after the final court has decided. The basic criminal law principle is that you cannot be prosecuted twice for the same offence.
<p><u>Running Mate for President</u></p> <p><i>We recommend for a running mate provision for a president in the new Constitution</i></p>	Article 107	<p>Adequately covered.</p> <p><u>Meaning</u></p> <p>The presidential running mate clause entails that when there is a presidential election, the presidential candidate will choose another person to be his vice in the election such that each vote given to a presidential candidate will automatically count to be also given to the vice presidential candidate. In the event that the president cannot continue in his office, then his running mate will just ascend to the office of presidency without an election as it happened recently in Malawi. This provision attempts to reduce presidential powers as the president cannot fire his or her vice as he or she is deemed to have gotten the mandate to be vice directly from the voters and NOT from the president. However, it is recommended that in 102(5), the person the vice president nominates to be vice president when the</p>	

		president's position falls vacant must qualify to be the vice president.	
<u>Declaration of war</u>	Article 110	Article 110(2) on declaration of war gives power to the president to declare war in an emergency without approval of the National Assembly. This may be justified as it could be responding to times when this power has to be invoked but the National Assembly is in recess. However, the use of "reasonable" and "practicable" can be abused as these terms are not defined anywhere in the draft. It is thus proposed that an Article to prevent abuse from happening should be added under (4) to read: "an Act of Parliament shall provide for the actualization of this article".	There is need to check excessive powers of the president to reduce abuse.
<u>Enhancement of the oversight functions of the National Assembly</u> <ul style="list-style-type: none"> - Oversight role of the National Assembly very critical in ensuring for an effective parliament - The new Constitution to ensure that, the independence of the three organs of the state, i.e Legislature, Executive and Judiciary. - President should only appoint Ministers outside parliament so that the MPs can perform their duties as expected by the electorate 	Article 120 (appointment of ministers from outside the national assembly)	<p>Adequately covered,</p> <p>The appointment of Ministers from outside the National Assembly is fully endorsed but is proposed that the ceiling of 21 should have an option of an increment subject to approval by the National Assembly. This could also be in line with Article 91 (3) (c) in terms of giving effect.</p> <p>Note that the position of Deputy Minister has been done away with by the draft Constitution.</p>	<p>There may be need for more than 21 Ministers to be appointed and we should not restrict the number as long as there is two-third majority approval by National Assembly before the increase in Ministries</p> <p>1. The position is irrelevant as there are no specific roles</p> <p>2. the draft already provides for Provincial Ministers in Article 121 who can exercise any duties assigned to them by any of the Ministers within their respective provinces</p> <p>3. The Deputy Minister cannot</p>

	Article 128	Article 128 under functions of the National Assembly , a clause should be included that compels parliament to domesticate treaties/international instruments the country would have ratified. A timeline should be set for this, e.g. 5yrs within the ratification of a treaty. In the alternative, we recommend that Zambia moves from a dualistic state to a monolistic state so that ratification of a treaty should automatically entail being bound by it.	deputise the Minister in Cabinet 4. The position of Deputy Minister is an unnecessary expense which is usually reserved for political patronage purposes
<i>The enhancement of Parliament's role in the management of the public finances.</i>	Article 283	<u>Incurring of public debts</u> Covered. However, a clause should be included that would require the government to justify as to why they intend to borrow from one source and not the other. <u>Disposal of state assets</u> The requirement for resolution of the National Assembly before any major State asset is disposed of as provided by Article 315 of the Mung'omba draft Constitution has been completely left out. Accordingly, we propose that the draft Constitution provides for such resolution but the threshold for such resolution should be simple majority and not 2/3 of the National Assembly.	This enhances accountability of the Executive to the National Assembly

<p><u>Judiciary</u></p> <p><i>The judiciary should be independent from the powers of the executive.</i></p>	<p>Article 183 (g)</p>	<p>The improvement that the Judicial Service Commission will be involved in the appointments of Supreme Court Judges in Article 183 is noted. This is not provided for in the current Constitution. It is however proposed that word 'recommendation' be substituted with 'nomination' in Article 183.</p> <p>Further, it is recommended that the nomination as now proposed in Article 183 should only apply to the Chief Justice so that the rest of the Judges as listed in the same Article should be appointed by the Judicial Service Commission and not the President</p>	<p>There is no complete separation of powers between the Executive and the Judiciary because the Judicial Service Commission will only recommend appointments to the President.</p>
<p><u>Local Government systems</u></p> <p><i>Recommend for a clause on empowering Districts and sub-district activities.</i></p> <p><i>We also recommend the introduction of an electoral regulation that requires not less than 50% representation of any gender in Parliament and other important bodies</i></p> <p><i>We recommend that the new Constitution should stipulate the representation of youths and persons with disabilities in important State institutions and bodies</i></p>	<p>Article 211 (1) Article 211 (3) Article 212</p> <p>Article 87 (1) Article 310 (1) (c)</p>	<p>Adequately covered</p> <p>Not covered, however it is recommended that "the state shall ensure that the principle of Equal Representation applies to any consideration for appointment, nomination and election to Executive, Legislative and Judicial offices which shall exhibit a 50/50 representation" in the national values, principles and basis of state policy in Article 9 of the draft Constitution.</p> <p>It is also recommended that "the Principle of Affirmative Action shall apply as a guiding principle to the Public Sector, CSOs, FBOs, private sector and all other sectors" also in the national values, principles and basis of state policy in Article 9 of the draft Constitution.</p>	<p>To enhance equality and representation of both gender.</p>

<u>Provinces and provincial administration</u>	Article 201	Article 201 (2), on provinces and provincial administration , gives the power to the president to adjust boundaries and (4) gives powers to registered voters to petition if it affects their culture. There must be added an article under clause (4) that states that residents may petition to stop/cease the division or/merger of a province with another by the president.	<u>Provinces and provincial administration</u>
<u>Provincial Assemblies</u>	Article 203	Article 203 (e) and (f) on Provincial Assemblies calls for representation but seems to suggest one organization can provide the 3 names required. We recommend for a change of (h) to 3 representatives for each of the listed groups under it.	This will bring parity in representation
<u>Provincial speaker and deputy provincial speaker of Assembly</u>	Article 207	Article 207 (4) regarding Provincial speaker and deputy provincial speaker of Assembly says they elect one from among themselves but if they are from (e) (f) (g) or (h) they cease to represent the sponsoring organization but the recommendation is that 207 (4) should apply to everyone covered under 203 (1).	Same treatment to all groups
<i>We recommend for 50% + 1 to be included in the new Constitution</i>	Article 75 (1) Article 99	Adequately covered	
<u>Election/voting for Zambians living abroad</u> <i>Introduce a clause in the Constitution which will allow for Zambians living abroad to vote in the Presidential election</i>	Article 78 (k) (iv)	Adequately covered	
<u>Election Date & Proportional Representation</u> <i>We support the enshrining of the elections</i>	Article 82 (1)	Adequately covered but we recommend that the month	There is need to harmonise the

<p><i>date in the Constitution</i></p> <p><i>We also uphold the declaration of the day on which a general election is held as public holiday</i></p>	<p>Article 82 (3)</p> <p>Article 135</p>	<p>should be June with the day remaining the same</p> <p>(2) The word 'May' should be replaced with ' Shall'</p> <p>Article 82(2) is not relevant and must be removed because this may envisage a situation where you have parliamentary elections on their own. This is not a good process as it requires more financial resources.</p> <p>We support the multi-member constituency and proportional representation electoral system. However, the system must be well and simply explained in the Constitution so that people may appreciate its value. As it stands, it is difficult to comprehend.</p>	<p>budgeting and election processes. This is because in an event that the election is contested there would be a possibility of not having a budget until around March the following year. Article 279 (3) states that the budget will be presented 90 days after the election but in case of a re-run when there is a presidential petition then the implementation of the budget will spill over into the financial year.</p> <p>We further recommend maintaining the holding of elections as a tripartite event to save resources.</p> <p>The Proportional Representation system provided in the 2012 draft Constitution is not clearly and simply explained, hence people may fail to appreciate its value and oppose it.</p>
<p><u>Presidential powers</u></p> <p><i>Reduction of Presidential powers</i></p>	<p>Article 91</p>	<p>Articles 91 & 92 (4) provides for curtailing of Presidential powers by empowering National Assembly to approve certain matters and ratify Presidential appointments, however it should be strengthened by</p>	<p>Those ratifications under Article 92 (4) if decision is not referred to the Constitutional Court makes the National Assembly a rubber stamp of</p>

		referring the final decision to the Constitutional Court.	Presidential decisions.
<p><u>Presidential Immunity</u></p> <p><i>A clear procedure of lifting immunity for the incumbent (previous) President who is found to have committed grave abuse of authority</i></p>	Article 96	Covered, however Article 96(8) should be removed as Article 96 (7) is adequate.	Article 96 (8) does not really state what Court in particular has the power to acquit the former President. This curtails the right of the State to appeal.
<p><u>Qualifications of Presidential Candidates</u></p> <p><i>The CSCC proposes that the qualifying words “cumulative” and “these need not be consecutive” be included in the condition. The sentence will hence read like this, “A citizen of Zambia shall be qualified to be a candidate as president if he or she has been domiciled in Zambia for a period of at least X cumulative years which need not be consecutive.</i></p>	Article 97	Adequately covered	
<p><i>Every Zambian who meets other criteria should have the right to stand for election as long as they have once resided in the country for at least a certain number of years, which need not be continuous.</i></p>	Article 97	Adequately covered but the definition in 311 for “ordinarily resident” must be clearly defined to mean “a person who has been resident in Zambia for a period of at least 10 cumulative years, which need not be consecutive”	Even Zambians that live and work abroad should be given an opportunity to be President
<p><u>Returning officer</u></p> <p><i>Returning officer in an election should not be the Chief Justice but instead be the</i></p>	Article 99 (2)	Adequately covered, we strongly agree with it.	However, the basic minimum was a bit erroneous as it was demanding for the chairperson of ECZ to also

<i>chairperson of the Electoral Commission of Zambia (ECZ) who should have also authority to swear in the President elect</i>			swear in the President elect
<u>Electoral system for Presidential Election</u> - <i>We recommend 30 days to be the number of days after which a president-elect should be sworn into office</i> - <i>In addition, we recommend the Constitution to make an explicit provision for a presidential by election</i>	Article 101 Article 102 (6)	Adequately covered Adequately covered 102(5) we also recommend that the person the vice president nominates to be vice president when the president's position falls vacant must qualify to be the vice president.	We agree with 14 days as proposed in Article 101 This person must be able to qualify
<u>Qualification and Tenure for MPs</u> - <i>The (limitation on) third term to the office of the Presidency should be extended to the Members of Parliament.</i> - <i>Tenure of office and vacation of the office of Member of National assembly</i>	Article 139	Not covered. We agree with the provisions of the draft Constitution not to limit the term of office for MPs	People at that level should be free to choose who they vote for and it is easier to remove an MP than a President (who has more power than the MP) out of office.
<i>If a political party is dissolved, a member holding a constituency- based seat should lose the seat.</i>	Article 139 (5)	Adequately covered	
<u>Local Government systems</u>	Article 211 (1)	Adequately covered	To enhance equality and

<p><i>Recommend for a clause on empowering Districts and sub-district activities.</i></p> <p><i>We also recommend the introduction of an electoral regulation that requires not less than 50% representation of any gender in Parliament and other important bodies</i></p> <p><i>We recommend that the new Constitution should stipulate the representation of youths and persons with disabilities in important State institutions and bodies</i></p>	<p>Article 211 (3) Article 212 Article 197-198 Article 203 Article 223</p> <p>Article 87 (1) Article 310 (1) (c)</p>	<p>Not covered, however it is recommended that "the state shall ensure that the principle of Equal Representation applies to any consideration for appointment, nomination and election to Executive, Legislative and Judicial offices which shall exhibit a 50/50 representation" in the national values, principles and basis of state policy in Article 9 of the draft Constitution.</p> <p>It is also recommended that "the Principle of Affirmative Action shall apply as a guiding principle to the Public Sector, CSOs, FBOs, private sector and all other sectors" also in the national values, principles and basis of state policy in Article 9 of the draft Constitution.</p>	<p>representation of both gender.</p>
<p><i>The introduction of a clause to protect and ring fence funds designated for poverty reduction activities. No budget line allocation to poverty reduction programmes should be moved to another concern no matter the pressure from government to look for funds to meet a 'non-poverty reduction' concern.</i></p>	<p>Article 277</p>	<p>Not covered. We recommend the inclusion of this clause as contained in the basic minimum column.</p>	<p>Currently some over expenditure could be as high as 100% or more but Article 277 (2) proposes that such over expenditure should not go beyond a percentage of the budget for that public body as approved by the National Assembly.</p>
<p><u>Budget Process</u></p> <p>- We recommend the engagement of the</p>	<p>Article 280 (c)</p>	<p>Partly covered, however it is recommended that Article 309 (6), (7) and (8) as provided in the Mung'omba draft</p>	<p>That will provide for participation of the districts and provinces in the</p>

<p><i>public in the preparations of the Budget during initial stages and also at committee stage</i></p> <p><i>- we support the provision for National Assembly to approve Legislation (Budget Act, article 329) that would define elements such as the method for the preparation of the budget, sources of the budget, people's participation (at ward, district and provincial levels), and the Minister's submission of the anticipated revenues and expenditure to the appropriate committee at National Assembly for prior consideration before the preparation and submission of actual estimates for the financial year.</i></p>		<p>Constitution be incorporated into Article 279 of the draft Constitution.</p>	<p>budgeting process.</p>
<p><i>The enhancement of Parliament's role in the management of the public finances.</i></p>	<p>Article 282</p>	<p><u>Incurring of public debts</u></p> <p>Covered. However, a clause should be included that would require the government to justify as to why they intend to borrow from one source and not the other.</p> <p><u>Disposal of state assets</u></p> <p>The requirement for resolution of the National Assembly before any major State asset is disposed of as provided by Article 315 of the Mung'omba draft Constitution has been completely left out. Accordingly, we propose that the draft Constitution provides for such resolution but the threshold for such resolution should be simple majority and not 2/3 of the National Assembly.</p>	<p>This enhances accountability of the Executive to the National Assembly</p>

<u>Government Financial report</u>			
<i>The need to for the Executive to provide details of expenditure for the preceding financial year to enable Parliament make informed decisions</i>	Article 284	Adequately covered and should be maintained	
<u>Erring Controlling officers</u>			
<i>Powers of the Auditor General with regards to erring Controlling Officers</i>	Article 288 (e)	It is recommended that the provision be amended to include the words "or any other public institution competent to deal with the matter".	So as to extend the control of the Auditor General's office to not only criminal actions but also to those that could be dealt with administratively.
<u>Recall clause for non-performing MPs</u>		Not covered. It is recommended that a clause under Article 158 be inserted empowering a Constituency to pass a vote of no confidence in their MP as contained in Article 189 of the Mung'omba draft Constitution. Furthermore, under Article 139 (2) a clause should include to the effect that the office of an MP becomes vacant if a vote of no confidence is passed in her or him.	The need to foster accountability and responsibility of MPs to their constituents
<u>Amending the Budget</u>		Not covered. We recommend the provision in the draft Mung'omba Constitution in Article 309 (9) be inserted but with the removal of the words "but shall not vary the total" and adding "provided where the National Assembly varies the total estimate upwards the sources of revenue should be specified" and that this be incorporated in Article 279 of the draft Constitution	The National Assembly should be given enough powers to vary the budget even upwards.
<u>Auditor General's report</u>			
<i>Auditor general's report to be submitted simultaneously to both National Assembly</i>		Not covered. We recommend that Article 320 (4) of the draft	The Auditor General's report is one of the primary functions of that office which cannot be dispensed with.

<i>and the President</i>		<p>Mung'omba Constitution be incorporated into the functions of the Auditor General in Article 288 of the draft Constitution. We further recommend the addition of a clause that requires the Auditor General to submit his/her report to both Parliament and President within a period of nine months of the Finance Minister's submission to him/her.</p> <p>We recommend that that appears under Article 287 (2) to do with the independence of the office of the Auditor General of the draft Constitution should be correctly reflected in Article 288</p>	
<i>We support the Mung'omba Constitution Commission's recommendation to oblige government to release "approved budgetary allocations on a quarterly basis, in full and on time, to the institutions and bodies entitled to the allocations". The general public should equally have access to such information.</i>		Not covered. We strongly recommend that what appears in the Mung'omba draft Constitution in Article 311 (4) should be incorporated in Article 281 of the draft Constitution. However, such quarterly releases should not necessarily be actual funds but maybe in the form of warrants to spend.	In the absence of these releases operations of certain departments may ground to a halt.
<u>Land</u>			
<i>Equitable access to and ownership of land by all citizens</i>	Article 293 (1) (a)	<p>Partially covered.</p> <p>We recommend the extension of Article 293 (1) (a) of the draft Constitution to include the words 'ownership of land by all citizens'.</p>	Simply to emphasise the point that land should be accessible to all citizens.
<i>Security of land rights and recognition of indigenous cultural rights which promote gender equity.</i>	Article 293 (1) (b)	<p>Partially covered.</p> <p>We recommend the extension of Article 293 (1) (b) to include the words 'and recognition of indigenous cultural rights which promote gender equity'.</p>	The need to provide security for land that belongs to local communities.

<p><u>State Land</u></p> <p><i>Land that has been converted from customary to leasehold for a particular use to revert to customary tenure after that use or if the said land has not been utilized for the intended purpose as provided for in an Act of Parliament.</i></p> <p><i>Customary land shall not be alienated or otherwise used until the approval of the chief, all members of the local community living in the area to be allotted and local authority in whose area the land is situated has first been obtained, and as may be provided for by or under an Act of Parliament.</i></p>	Article 297 (3)	<p>Not clearly covered.</p> <p>We recommend that Article 297 (3) should be extended to read ‘...Customary land shall not be alienated or otherwise used until the approval of the chief, all members of the local community living in the area to be allotted and local authority in whose area the land is situated has first been obtained, and as may be provided for by or under an Act of Parliament...’</p>	To safeguard against the dubious conversion or alienation of customary land to state land.
<p><u>Minerals and Petroleum</u></p> <p><i>A person holding land which is the subject of a mining rights or rights to other significant natural resources shall take equity in the mining or exploitation of such other natural resources which are subject of the right in lieu of compensation</i></p>		<p>Not covered.</p> <p>We recommend that the NCC draft Constitution provision in Article 293 be incorporated into the draft Constitution</p>	There is need for those citizens that may find themselves on such land to benefit from the exploration or otherwise exploitation of minerals and petroleum on that land
<p><u>Vesting of Land</u></p> <p><i>The President may, through the National Lands Board, Chiefs, all members of the</i></p>	Article 294 (3)	Adequately covered.	

<i>local community living in the area (where this is applicable) and local authorities alienate land to citizens or non-citizens as provided by this Constitution.</i>			
<p><u>National Lands Commission</u></p> <p><i>The Technical Committee must seriously consider retaining the provision in the Mung'omba draft Constitution establishing a National Lands Commission.</i></p> <p><i>We propose that the composition of the commission should be broad based and include representatives from government Members of Parliament, traditional leaders and civil society</i></p>	Articles 299 & 300	<p>Adequately covered.</p> <p>We recommend that the provision in Article 337 (c) of Mung'omba draft Constitution should be incorporated in Article 300 of the draft Constitution as one of the functions of the Lands Commission.</p>	<p>The Lands Commission should not only be vested with powers relating to state but also customary land.</p>

OTHER ARTICLES

2012 Draft Constitution Provision	Position(s) Taken
Article 9	<ul style="list-style-type: none"> ❖ Article 9 (a) that make reference to Christian values should be removed as it is philosophically and practically problematic. Christianity is a broad religion that comprises different churches who profess different doctrines and who therefore have different understandings of what constitutes right and moral Christian conduct. Some Christian churches' reading of the Bible and their application of it in practical life (e.g. on the role of women) may curtail other people's freedoms. As such, the article, when read with ❖ Article 9 (c), may prove to be contradictory in some instances. Clause (A) (C) is inconsistency. This concern also related to the Christian declaration. Therefore the Constitution should not be anchored on any religion beliefs. Remove in clause (A) 'Christian values'. Go with the Mung'omba Draft that did not put "Christian values" or make reference to Christianity apart from the Preamble.
Article 16	Article 16 (4) <i>"or a person with refugee status in Zambia"</i> should be removed as it is discriminatory. The decision to grant citizenship status should be left to the Citizenship Board of Zambia.
Article 26	<ul style="list-style-type: none"> ❖ With regard to Article 26 (4) 'the spirit of the bill of Rights, we recommend that what is in Mung'omba 68. (1) (b); 68. (2) (a) be what is adopted.
Article 27	<ul style="list-style-type: none"> ❖ Article 27 (1) on freedom from discrimination should end with "Other Status" so as to make provision for other grounds and factors on which people may be discriminated.
Article 35	<ul style="list-style-type: none"> ❖ Article 35 (3) should be removed as it is not necessary, does not define what constitutes anti-Christian teaching and practice, and maybe abused to the disadvantage of other religions as it is prone to wide interpretation. ❖ Article 35 (2) (3) (4) (5) should also be removed as they are not necessary and as they are prone to abuse by people in conducting irrational religious observances which may prove to be nuisance to the public. It is simply enough to state a guarantee religious freedom and conscience without entering into these specifics.
Article 63	<ul style="list-style-type: none"> ❖ Article 63. (4) (b) and (c) and (5) (a) and (b) that deals with language and culture is important but must be an article on its own.

Article 68	❖ Article 68 (2) (a) should be removed
Article 110	❖ Article 110(2) on declaration of war gives power to the president to declare war in an emergency without approval of National Assembly. Approval by parliament after declaration leaves the problem of this being done when parliament is in recess. The use of “reasonable” and “practicable” can be abused. An article to prevent this from happening should be added under (4): “an act of parliament shall provide for the actualization of this article”.
Articles 128	❖ Article 128 under functions of the National Assembly , a clause should be included that compels parliament to domesticate treaties/international instruments the country would have ratified. A timeline should be set for this, e.g. 5yrs within the ratification of a treaty. In the alternative, we recommend that Zambia moves from a dualistic state to a monolistic state so that ratification of a treaty should automatically entail being bound by it.
Article 197	❖ Article 197 (devolved governance system) on the provision/distribution of electricity appears to be a function of both local and national government. Clarity should be made as to which authority should do what in terms of generation and distribution of electricity.
Article 201	❖ Article 201 (2), on province and provincial administration , gives the power to the president to adjust boundaries and (4) gives powers to registered voters to petition if it affects their culture. There must be added an article under (4) that states that residents may petition to stop/cease the division or/of merger of a province with another by the president.
Article 203	❖ Article 203 (e) and (f) on Province Assemblies calls for representation but seems to suggest one organization can provide the 3 names required. We recommend for a change of (h) to 3 representatives for each of the listed groups under it.
Article 236	❖ In Article 236 on conflict of interest , the words “be in a position” should be deleted and leave the rest because being in a position where one has interest does not necessarily mean that one will abuse their position.
Article 238	❖ Article 238 on participation in politics and public affairs , gives a choice for officers to either be in politics or public service. For most public positions after a period of 20 years one can retire and get their benefits.

Article 242	❖ We recommend that article 242 (4) (b) and 243 (3) (b) on the tenure of Attorney General be removed because a change of president should not necessitate the change of Attorney General and Solicitor General. There may be a change of a president who does not want to change the holders of the 2 offices in question. We further recommend that the removal of Attorney General and Solicitor General be done by parliament so as to ensure there is no cohesion and intimidation
Article 244	❖ The clause on article 244(4) on the Director of Public Prosecutions should be deleted because these powers to enter a Nolle Prosequi are necessary in criminal prosecutions and the issue of disclosure may jeopardize the work of the prosecution team. Article 244 (6) (b) should be removed because it does not serve any relevance in this case and rest can be provided for in subsidiary legislation.
Article 309	❖ Article 309 or 310 does not define a public emergency and is left to the discretion of the president. It needs to be defined.
Article 311	❖ There is need to define what is meant by “ threatened state of public emergency ” in article 311.
	❖ With regard to the enforcement of the Bill of Rights and the whole Constitution , a clause should be added which states that: In interpretation of this constitution, courts shall take into consideration international law and the treaties/conventions that Zambia is party to.

PROCESS ISSUES AND WAY FORWARD

ADOPTION

We would like to urge government to adopt the Draft Constitution 2012 with amendments of what the people of Zambia will submit through the planned consultative processes. We further demand that the new Constitution be adopted through a national Referendum as provided for in the Referendum Act, CAP 14 of the Laws of the Zambia and Article 79 of the current Constitution. We accordingly call upon the President to immediately appoint a referendum commission so that this constitution review process is not unnecessary delayed to complete.

REFERENDUM PROCESS

We further demand that a Referendum Commission be established as a matter of urgency to allow for the body to start preparing for this important process. We further recommend the follow:

- Referendum date should be set as soon as possible;
- Government should assign the Electoral Commission of Zambia (ECZ) to manage the Referendum process;
- Electoral Commission of Zambia should embark on the process of updating the voter's roll;
- Government/ECZ must conduct civil education on the referendum process;
- Zambian should be given a chance to vote for the new Constitution; and
- Referendum results should be announced within a reasonable time after voting.

ENACTMENT PROCESS

- Presentation of approved and adopted Constitution Bill to the National Assembly
- Enactment of the adopted Constitution Bill without any changes