

Civil Society Position Paper on the New Constitution of Zimbabwe

Commissioned by the National Association of Non – Governmental Organisations (NANGO)
and the Crisis in Zimbabwe Coalition (CZC) on Behalf of the Civil Society Constitutional
Coordinating Mechanism (CSCCM)

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1. INTRODUCTION

This position paper builds and consolidates the work which Civil Society has been working on in its different formations regarding the constitutional reform process. Thus it takes note of the outputs of the Civil Society Leaders Constitutional Conference held on the 3rd of June 2009, the 2009 People Convention, and subsequent meetings of the CSOs held under the banner of the Civil Society Constitutional Coordinating Mechanism¹ (CSCCM). Herein is the CSO position paper on the constitutional reform process which consolidated the various positions and demand regarding the content of a democratic new constitution for Zimbabwe. This position paper will be used as a reference point by broader civil society to judge the degree of compliance of the COPAC draft with the demands and aspirations of the people of Zimbabwe. Thus it will also inform the thinking processes and positions to be adopted by civil society organisations working through the CSCCM on how to engage with the referendum that shall be held after completion of the drafting stage.

The process of collective engagement with the constitutional reform process has been as organic and natural as possible to allow for maximum flexibility in responding the changing operational context and for informed decision making. The CSO have approached the engagement process through a three pronged strategic; while individual organizations continued with the institutional lobbying and advocacy work, regular meetings were be held under the auspices of the CSCCM to harmonize the different approaches and ensure a coordinated approach to the constitutional reform process. In order to consolidate and focus CSO positions ahead of the release of the constitutional draft, the CSCCM engaged the services of a legal expert to synchronize them into constitutional position paper summarizing CSO demands on content according to the 18 thematic areas identified for the new constitution. The results of this process were presented to CSO leaders at the Directors NGO Conference held in Kariba from 3 – 7 November 2011. CSOs shall use the position paper as the basis for analyzing the draft constitutional document and develop positions ahead of the Second Stakeholders Conference to be organized by COPAC

¹ The CSCCM is a grouping of civil society organisations engaged with the process of the constitutional reform process and mandated by their respective sectors to represent them for purposes of ensuring smooth coordination of the CSO engagement process with the constitutional reform exercise.

The current Constitution review exercise presents an opportunity for CSOs to influence the future governance of Zimbabwe in line with its vision and objectives. The CSCCM has accordingly produced this position paper to consolidate the key Constitutional demands of its members in line with the best interests of the groups they represent. This position paper therefore sets out the basic fundamental principles which the CSCCM believes the Constitution should enshrine, if it is to create a Constitutional and legal system which respects the rule of law, which meets the requirements of good governance, which protects the human rights of the populace and which protects the weakest members of the society.

2. KEY PRINCIPLES

The CSCCM notes that the process adopted by the coalition government for making of the new constitution has serious flaws and its submission is premised on its desire to however influence the content that shall be included in the constitution under each of the thematic areas. The principles will be developed in greater detail in the latter part of this paper

1. *The Preamble* should recognise and affirm the contributions made by both men and women in building the nation of Zimbabwe. In particular all those who contributed to the liberation struggles must be given due recognition in the preamble.
2. *The founding principles:-* should provide a values and ethical framework for the interpretation of the Constitution and of public laws and policies. The values of the nation such as unity and respect for the rule of law and equality must be explicitly provided for in the founding principles.
3. *Separation of powers and system of Government:-* The Constitution must provide for clear separation of powers among the arms of government as well as a comprehensive system of checks and balances to guard against abuse of power by any one of the arms. The Constitution should also provide for a devolved system of government which meets the need for self determination at the local level and makes a participatory approach to decision making more possible, while maintaining the unity and coherence of the state.
4. (a) *Citizenship:* the Constitution should contain clear rules on the acquisition, loss and deprivation of citizenship. All the rights and privileges of citizenship must apply equally to both men and women and citizens should be permitted to become citizens of other countries.

(b) *The bill of rights:* The Constitution must provide for the protection of all the human rights recognised under international law including socio economic and

cultural rights. The rights must be justiciable, and must be formulated in a manner which reflects the universality, indivisibility and inalienability of those rights. The bill of rights must also provide unequivocally for obligations of the state to fulfil, protect, respect and promote the rights provided for and must provide for an accessible enforcement mechanism.

5. *Women and gender issues:* The Constitution must provide for the principle of equality between men and women. Discrimination against women must be absolutely prohibited and special measures to protect and promote women's rights must be included. Equal participation of women in decision making must be guaranteed. Affirmative action in favour of women must be made obligatory and an adequate machinery for the promotion and protection of women's rights must be provided for.
6. *The Youths:* Young people are the future of the country and Zimbabweans owe it to themselves to ensure the protection and full development of their young people because in them lies the future of the country. The Constitution should therefore contain provisions which address young people's needs for recognition, protection and development.
7. *People with Disabilities:* The Constitution must recognise and guarantee the full personhood and humanity of people with disabilities. Accordingly it must contain provisions designed to ensure that people with disabilities are protected from stigma and the vulnerabilities that arise from their disabilities. The Constitution must also enjoin the state to take positive measures to ensure the full participation of disabled people in national activities.
8. *The media:* Transparency and accountability of public officials are values which form the pillars of democracy and good governance. The media plays a crucial role in the maintenance of both transparency and accountability. The Constitution should therefore contain provisions to ensure the existence of a strong, accountable and vibrant media in Zimbabwe.
9. *Land, natural resources and empowerment:* Land is a finite resource; the Constitution should contain provisions which seek to ensure sustainable development and

exploitation of natural resources. The state must ensure equitable distribution of land and also provide for a Lands Commission.

10. *Labour*: Labour relations affect the socio economic conditions of ordinary men and women. Labour relations if not properly managed can also become a source civil unrest and destabilisation. Labour issues must be specifically provided for in the Constitution. In particular the right of freedom of trade, occupation and profession must be provided for and labour relations must also be regulated.
11. *Elections*: Election are crucial in the political life of any country. How elections are managed reflects the political culture of the country and also has far reaching consequences for the governance of the country. Ill managed elections spawn violence and division of the people and rob the government of the day of its legitimacy. The full range of political rights and the regulation of elections and the conduct of political parties must be provided for in the Constitution.
12. *Public Finance*: The manner in which public finances are managed can have a profound effect on the economic status of the country. Uneconomic and corrupt systems lead to poverty and social unrest while economy, probity and accountability can lead to economic growth, public confidence in the government and stability. It is therefore important that the Constitution should go beyond merely providing for the budgeting process and creating the institutions that deal with public finances such as the Reserve Bank and the Comptroller and Auditor General but go further to contain provisions that ensure an ethical framework for Public Finance management.
13. *Independent Commissions*: Independent commissions are an important feature of many modern constitutional democracies. They play the role of watchdog as well as provide a focal point for public query into and participation in specialised areas of governance such as human rights, the media and elections. The constitution should not only identify the independent Commissions but also contain provisions to ensure their true independence and effectiveness such as security of tenure and access to resources.
14. *The Executive Organs of the State*: The Executive organs of the state control important areas of government and state administration including the security forces,

the public service and treasury. The conduct of these organs has implications for socio economic development, peace and stability. The Constitution should therefore contain provisions to ensure that executive organs of the state remain apolitical and professional, and ensure their accountability to the people.

15. *Traditional institutions and customs:* Traditional institutions play an important role as custodians of traditional values and customs. They preserve our unique identities and cultural diversity. The treatment of traditional institutions and customs and customary law in the current Constitution is not acceptable to the CSCCM for the reason that some of the worst forms of discrimination faced by women and other vulnerable groups are justified on the grounds of cultural values and practices. Accordingly, the Constitution should contain provisions which entrench a limitation on the jurisdiction of the customary law courts and should provide in clear language that the bill of rights takes precedence over any traditional or cultural beliefs, practices and laws.

16. *Religion:* Religion is an important aspect of any society. People find full expression and personal development in religion and religious practices. The Constitution must provide for the right of freedom of worship and religious practice and expression. However all religious practices inconsistent with the bill of rights must be prohibited.

17. *Languages art and culture:* The Constitution must recognise the right of everyone to use their own language and participate in the cultural life of their own choice but, the enjoyments of these rights must be subject to the bill of rights.

I. THE PREAMBLE

The preamble is the introductory provision of the Constitution. It sets out the aspirations of the country in broad language. In the preamble, the nation defines itself and gives notice to the world of what it stands for what it lives for and what it may dies for. Thus it describes the forces that shaped it and points the direction for the future. Typically, the preamble sets the tone of the Constitution and defines the character of the nation.

The current Constitution does not contain a preamble.

CSCCM 's position

The preamble should inspire people and inform them about the historical basis on which the Constitution is founded. It must put the people at the centre and recognise the vital importance of adherence to the rule of law. It must acknowledge the existence of God and the supremacy of the Constitution.

It should also acknowledge the contributions of the groups that have made significant contributions in building the nation. In particular, liberation war veterans, both women and men, should be singled out for recognition of their role in building Zimbabwe.

II. FOUNDING PRINCIPLES

The founding principles of the Constitution sets out the values and principles which underlie the Constitutional system. The founding principles section should also set out the aspirations of the people, painting a picture of the people's vision of an ideal future towards which all should thrive and the attainment of which the resources of the state should be channelled towards.

Although founding principles are normally not justiciable, they are an important part of the constitutional system in that they embody an instruction to judges and public officials to interpret laws, purposively, in a manner which promotes important societal values, and which brings the nation closer to the stated ideal. They also provide a barometer by which the extent to which public action adheres to the Constitutional system can be assessed.

The current Constitution does not have a provision on founding principles.

CSCCM 's position

The Constitution should contain a founding principles provision which, among other things provides for the following principles which are important to CSCCM :

- Equality and non discrimination
- Unity
- Respect for human rights and dignity of the person
- Respect for private property ownership
- Respect for diversity
- Open and transparent government
- The rule of law

III. SEPARATION OF POWERS AND SYSTEM OF GOVERNMENT

Separation of powers is a fundamental principle of democratic government. The Constitution must ensure that there is clear demarcation of the roles and functions of the legislature, the executive and the judiciary. Not only must the spheres of influence of each of the arm of the state be defined, care should be taken that the powers of each arm are balanced against those of the others. In addition, the Constitution must also provide for a system of checks and balances in terms of which the three arms are able to exercise a measure of control on each other.

CSCCM 's position

The Executive

The executive should be led by an individual whose political party commands the majority of parliamentary seats.

Where there is a Prime Minister and a titular President, any decisions that must be made in relation to key issues such as declaration of war, martial law, or a state of emergency, conclusion of treaties, and senior appointments within state institutions must not be taken unilaterally.

Regardless of whether Zimbabwe is led by a Prime Minister or President, the new Constitution for Zimbabwe should ensure that the powers of the executive are subject to appropriate and effective restraints and that the executive does not dominate other constitutional bodies or branches of government. This could be accomplished by requiring approval by the legislature or an independent body before key executive action is taken, particularly in relation to the issues outlined above.

The executive should not be permitted to control the calendar and activities of Parliament, nor its proroguing or dissolution.

The procedure for passing a vote of no confidence should not be so difficult as to become irrelevant or practically impossible, and a Prime Minister or President (as the case may be) should not be able to overcome such an action by dissolving Parliament.

Any decision which is taken in relation to the removal or sanctioning of the President or Prime Minister must be able to be implemented.

The Constitution should ensure that a President can be held accountable by courts where he or she does not exercise powers in the manner specified by the Constitution.

There should be a clear provision for term limits for the Prime Minister or President to two terms only.

The Legislature

The Constitution should establish a legislature which is accessible, responsive and accountable to the will of the people and which is independent of other branches of government. To ensure that parliament remains accountable to the will of the people, the constitution should provide for a right of the electorate to recall a member for good reason.

Box III(a) Model Drafting Language on the Right of Recall

Right of recall

(1) The electorate have the right to recall the member of Parliament representing their constituency before the end of the term of the relevant House of Parliament.

(2) Parliament shall enact legislation to provide for the grounds on which a member may be recalled and the procedure to be followed.²

Legislators must be accountable to their constituencies, and the quorum in each house of Parliament should not be so low as to sanction non-participation; it should also not be so high as to negatively impact on the ability of Parliament to attend to business in a timely and effective manner.

A Prime Minister or President (as the case may be) must not be able to avoid having his or her veto overruled by dissolving Parliament.

² Adopted from section 104 of the Constitution of the Republic of Kenya

The privileges and Immunities of Parliament must be provided for in the Constitution

Box III(b) Model Drafting Language on Privileges and Immunities of Parliament³

There shall be freedom of speech, debate and proceedings in Parliament and that freedom shall not be impeached or questioned in any court or place out of Parliament.

Other privileges and immunities of Parliament may be provided for in an Act of Parliament

The Judiciary

The Constitution should ensure that the judiciary is independent from other branches of government, particularly the executive. Separation of powers must be respected.

The Constitution should contain provisions to ensure that courts maintain *institutional independence*. This means that There must be provisions to ensure that courts are adequately resourced in order to function efficiently and without interruption. Accordingly, the judges themselves must be responsible for determining and managing their own budget and expenditure, with oversight by an independent Auditor General. The budget should not be allocated or controlled by the executive, but by the judiciary itself

One of ay of ensuring institutional independence is to provide for a judiciary fund.

Box III(c) Model Drafting Language on the Judiciary Fund

(1) There is established a fund to be known as the Judiciary Fund which shall be administered by the Chief Registrar of the Judiciary.

(2) The Fund shall be used for administrative expenses of the Judiciary and such other purposes as may be necessary for the discharge of the functions of the

³ Adopted from section 115 of the Constitution of the Republic of Ghana

Judiciary.

(3) Each financial year, the Chief Registrar shall prepare estimates of expenditure for the following year, and submit them to the National Assembly for approval.

(4) Upon approval by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid directly into the Judiciary Fund.

(5) Parliament shall enact legislation to provide for the regulation of the Fund.⁴

The judges must exhibit individual independence. This means that:

Judges must be appointed through a transparent and public process by an independent Judicial Service Commission and not by the executive, so they do not owe their loyalty to another branch of government; The Constitution should contain provisions which ensure that judges are adequately and transparently remunerated and have security of tenure. This reduces the risk that they will be negatively affected by arbitrary disciplinary or dismissal procedures if they take certain decisions considered unfavourable by the executive.

Box III(d) Model Drafting Language on provisions to ensure individual independence of the judiciary.

(1) In the exercise of judicial authority, the Judiciary, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.

(2) The office of a judge of a superior court shall not be abolished while there is a substantive holder of the office.

(3) The remuneration and benefits payable to or in respect of judges shall be a charge on the Consolidated Fund.

(4) The remuneration and benefits payable to, or in respect of, a judge shall not be varied to the disadvantage of that judge, and the retirement benefits of a retired judge shall not be varied to the disadvantage of the retired judge during the lifetime of that retired judge.

(5) A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial

⁴ Adopted from Art. 173 of the Constitution of the Republic of Kenya.

*function.*⁵

Disciplinary procedures must be properly laid out in the Constitution, and should be carried out by an independent Judicial Service Commission.

Removal of a judge on the basis of disciplinary issues should be effected only by the Judicial Service Commission or a supra-majority of Parliament.

The Judicial Service Commission should be a truly independent body with multisectoral representation, including individuals chosen by the different sectors and stakeholders of the legal community.

Box III(e) Model Drafting Language on the composition of the Judicial Services Commission

Judiciary Services Commission

There is a Judicial Services Commission, consisting of:

- (a) the Chief Justice who is the Chairperson of the Judicial Services Commission;*
- (b) the Judge President;*
- (c) the Attorney General;*
- (d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;*
- (e) three practicing legal practitioners designated from within the legal practitioners profession to represent the profession as a whole;*
- (f) two teachers of law who are not members of the Constitutional Court, designated by teachers of law at Zimbabwean universities.*
- (g) five persons designated by the National Assembly from among its members, at least two of whom must be members of the opposition parties represented in the Assembly and at least two of whom must be women;*
- (h) two customary law judicial officers designated by the judicial officers of the customary law courts;*⁶

⁵ Adopted from section 160 of the Constitution of the Republic of Kenya

⁶ Adopted from Chapter 8 of the National Constitutional Assembly NCA draft Constitution

System of Government

In addition to the expectation that the Constitution play its traditional role of ensuring separation of powers among the three arms of the state, The Constitution should also provide for a system of government which meets the demand for open and transparent government and allows full participation of citizens in the government processes. It is CSCCM 's view that only a decentralised form of government adequately meets the requirements for greater public accountability and citizen participation.

The current Constitution does not provide for a local government framework, although local government institutions are provided for under statutes⁷. Provincial Governors are not even provided for in the Constitution, save to provide that they shall be *ex officio* members of Parliament.

Accordingly the Constitution must provide for a devolved system of government which creates three tiers of government at the national, provincial and local levels. The spheres of influence of each of the tiers must be clearly demarcated and designed to ensure a participatory approach to decision making. Unity and coherence of the state must not be compromised by decentralisation and must be preserved by provisions to guarantee co operative government.

IV. CITIZENSHIP AND BILL OF RIGHTS

CITIZENSHIP

Provisions on citizenship are fundamental because they define the terms of membership of the state. The extent to which a person enjoys the benefits and privileges provided for under the Constitution is determined by their citizenship status. Similarly citizenship status also defines the extent to which the individual owes certain obligations to the state. Citizenship is also important in that the international law concept of nationality is also dependant on citizenship status and defines the extent to which the individual may expect the protection of the state at the international level.

The current Constitution provides for issues of citizenship in Chapter II. It provides for three modes of acquisition of citizenship, namely birth, descent and registration. The Constitution,

⁷ Local government legislation includes the urban councils act, the rural district councils act, the Provincial Councils and Administration Act

read with the Citizenship Act however provides for inequality of treatment on the ability of women and men to pass on their citizenship status to their children and prohibits dual citizenship.

CSCCM 's position

The Constitution must provide for the concept of equal citizenship for all, especially as between men and women and must also allow Zimbabweans to be citizens of other countries. there must not be any form of differential treatment between men and women with regard to the rights, privileges and duties of citizenship, and their ability to pass their citizenship status to their children.

The Constitution must expressly provide that the state has an obligation to protect its citizens in other countries.

Box IV(a): Model Drafting Language on Equality of Citizenship

There is a common Zimbabwean citizenship.
All citizens are-
equally entitled to the rights, privileges and benefits of citizenship; and
equally subject to the duties and responsibilities of citizenship.
Entitled to become citizens of other states
(3) National legislation must provide for the acquisition, loss and restoration of citizenship.

THE BILL OF RIGHTS

One of the main and most important roles of the Constitution is to regulate the relationship between the state and the individual. The individual must be protected against the excesses of the state through a full and comprehensive human rights regime.

Fundamental rights are provided for in Chapter III of the current Constitution but the following shortcomings have been observed with regard to the current provisions

- 1) the scope of fundamental rights protected is too narrow: only civil and political rights are protected and there is no mention of socio economic, cultural and solidarity rights.

- 2) Only the state is recognised as being capable of human rights violations. This does not reflect the reality of the lived experiences of ordinary Zimbabweans, particularly vulnerable groups, who are open to having their rights violated by private players such as religious organisations, business corporations, private clubs and others
- 3) The non discrimination clause in section 23 is made subject to a claw back clause that permits discriminatory laws and conduct in matters of personal law and also in the application of customary law
- 4) International human rights commitments are not an automatic component of the Bill of Rights
- 5) Enforcement provisions are weak.

CSCCM 's position

In view of the above shortcomings of the Bill of Rights of the current Constitution, CSCCM 's position on the Bill of Rights of the new Constitution is as set out below:

- 1) The principle of Non discrimination is the bedrock of a fundamental rights regime. The Constitution must therefore absolutely prohibit discrimination on a comprehensive set of grounds

Box IV(b): Model Drafting Language on non Discrimination on a Comprehensive Set of Grounds

No law shall make any provision that is discriminatory either of itself or in its effect; and no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

A law shall be regarded as making a provision that is discriminatory and a person shall be regarded as having been treated in a discriminatory manner if, as a result of that law or treatment, persons of a particular description by race, tribe, place of origin, political opinions, colour, creed , sex, gender, marital status, pregnancy, age culture, religion or physical disability are prejudiced—⁸

⁸ This is a modification of the language of section 23 of the current Constitution

- 2) The Constitution should provide for the full scope of fundamental rights protected and recognised under international law and these are, civil and political right, socio economic rights, cultural rights and “group” or solidarity rights. The formulation of the Bill should also ensure that the content of each right is the same as the content of the same right under international law.
- 3) The obligations of the state in the Bill of Rights must be clearly defined as being the obligations to respect, to protect, to fulfil and to promote the rights provided for.
- 4) The Constitution must expressly recognise that private actors can be capable of human rights violations. It should provide for the horizontal application of the Bill of rights were this is appropriate and applicable.

Box IV(c): Model Drafting Language on the Horizontal Application of Human Rights

A provision of the Bill of Rights binds a natural or juristic person if, and to the extent that it is applicable, taking into account the nature of the right and the nature of the duty imposed by the right.⁹

- 5) The bill of rights must not contain any claw back clauses. The Constitution must provide expressly that customary law and the common law are subject to the Bill of Rights and that no departure from the Bill of rights shall be countenanced on the basis of the need to observe cultural practices or customary law. This must be stated in absolute terms which permit no derogations.
- 6) International human rights law must be incorporated into the Constitution. Thus it should provide that the rules of customary international law are to be considered part of the laws of Zimbabwe and that the international human rights treaties that Zimbabwe has ratified shall automatically become part of the laws of Zimbabwe.

⁹ See the wording of Art. 8(2) of the Constitution of the Republic of South Africa

Box IV(d): Model Drafting Language on the Incorporation of International Human Rights Law

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Zimbabwe under this Constitution shall form part of the law of Zimbabwe.¹⁰

- 7) The Bill of rights is effective only to the extent that it is actually enforced. The Constitution should therefore provide for a system of enforcement which ensures access to justice to as many people as possible by providing for a Constitutional court with a simple procedure and which entertains audience from a wide range of interested persons.

Box IV(e): Model Drafting Language on Enforcement of the Bill of Rights

This Bill of Rights may be enforced by:

- a) Any one acting in their own interest*
- b) Any one acting in the interest of another person*
- c) Any one acting in the public interest.¹¹*
- d) An association acting in the interest of its members*

8. The Bill of rights should enjoy a higher level of entrenchment than any other provision of the Constitution. There should be a specific provision dealing with the procedure for amendment of the Bill/ Declaration of Rights. This procedure must make it extremely difficult for provisions in this section of the Constitution

¹⁰ This is adopted from the wording of Art. 144 of the Constitution of Namibia. Alternative wording can be found in

¹¹ See section 38 of the Constitution of the Republic of South Africa.

to be changed, by for example, requiring any amendment to be supported by a three-quarters (¾) majority of Parliament, or even a national referendum.

9. Fundamental rights are rarely absolute. Non-derogable rights must be identified in line with international standards.

Where derogations are deemed necessary in general or during a state of emergency, the Constitution must provide for a clear concise and restrictive derogations / limitations regime. The circumstances under which rights may be limited. The extent of the limitation and the grounds for derogations must be clearly spelt out. Limitations of rights should be established through the action of a clear and unambiguous general limitations clause which is tied to international human rights standards.

V. WOMEN AND GENDER ISSUES

Women constitute 52% of the population of Zimbabwe. Currently women in Zimbabwe face discrimination and the current Constitution, far from addressing women's needs for equality actually reinforces the subordination of women in several ways:

- a) Section 23(3) of the current Constitution permits discrimination in the application of customary law and in matters of personal law. These are the very areas in which women face the worst forms of discrimination.
- b) The language of the Constitution is generally gender neutral and so does not address the specific needs of women.
- c) There are no specific provisions dealing with the rights of women
- d) There are no specific provisions for machinery to protect and promote the rights of women
- e) There are no provisions to ensure equal participation of women in decision making
- f) There is no specific provision placing an obligation on the state to implement affirmative action to address women's historical inequality.

CSCCM 's Position

- a) The Constitution must absolutely prohibit discrimination on a comprehensive set of grounds, including, sex, gender, marital status, culture, pregnancy and disability

- b) As much as possible, the language of the Constitution must reflect a recognition of the equal importance of women by being gender specific
- c) The Constitution must contain a provision dealing specifically with the rights of women.

Box V(a): Model Drafting Language on the Specific Rights of Women

- (1) Women shall be accorded full and equal dignity of the person with men.*
- (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.*
- (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.*
- (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.*
- (5), women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.*
- (6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status. are prohibited by this Constitution.¹²*

- d) The Constitution must provide for a Gender Equality Commission.
- e) There must be specific provisions to ensure the equal participation of women in decision making.

Box V(b): Model Drafting Language on Women’s Participation in Decision Making

Whenever the President or any other person or authority is required by this Constitution or any written law to appoint members of any Commission, statutory or public body, he or she shall ensure that at least 50% of the persons appointed to such Commission statutory or private body are women. The filling of casual vacancies on any of these

¹² This is adopted from the wording of Art. 33 of the Constitution of the Republic of Uganda

Commissions, statutory bodies or public bodies shall also be done in such a way as to maintain gender balance.

- f) The Constitution must obligate the state to implement affirmative action measures to address the historical disadvantages faced by women

Box V(b): Model Drafting Language on Affirmative Action

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination shall be taken¹³

VI. CHILDREN AND YOUTHS

Young people represent the future of this country and the Constitution should protect them and ensure their development into capable future leaders in all walks of life. The current Constitution does not provide for children and young people in any way.

It is CSCCM 's position that all children have rights which must be protected. Girl children are particularly vulnerable to abuse and marginalisation. Disadvantages suffered by the girl, usually perpetuate into adulthood affecting the kind of woman she will eventually become. Failure to protect and promote the girl therefore ultimately amounts to failure to protect and promote the woman.

The new Constitution should therefore have a clear definition of a child and enshrine the principle of the best interests of the child. It should also contain provisions which seek to specifically address the rights of children and young persons. In particular, the Constitution should contain section dealing only with the rights of children and should provide for

¹³ This is adopted from the wording of section 9 of the Republic of South Africa. Art. 23 of the Constitution of the Republic of Namibia provides alternative wording

appointment of a Youth and Child Welfare Commission to oversee the rights and welfare of the youths and of children.

Box VI(a): Model Drafting Language on Children's Rights

- (1) all decisions affecting a child made by the state and by any person or authority shall be based on the best interests of that child*
- (2) Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.*
- (3) Every child is entitled to a name and nationality at birth*
- (4) Every child is entitled to basic education which shall be the responsibility of the State and the parents of the child.*
- (5) No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs*
- (6) Children are entitled to be protected from all forms of exploitation and abuse and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.*
- (7) A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.*
- (8) a child has the right to have a legal practitioner assigned to him or her by the state and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result*
- (9) a child has the right not to be used directly in armed conflict and to be protected in times of armed conflict*
- (10) The law shall accord special protection to orphans and other vulnerable children.*

In this section a child means any person under the age of 18¹⁴

There shall be a Youths and Children's Rights Commission whose functions and composition shall be provided for by an Act of Parliament

¹⁴ The wording is based on an amalgamation of the provisions of Art. 15 of the Constitution of the Republic of Namibia, and Art. 34 of the Constitution of the Republic of Uganda. Similar provisions are found in section 28 of the Constitution of the Republic of South Africa and section 28 of the Constitution of the Republic of Rwanda

[Empty Box]

Box VI(b): Model Drafting Language on the Youths

“youth” means the collectively of all individuals in the Republic who—

(a) have attained the age of eighteen years; but

(b) have not attained the age of thirty-five years.

The State shall take measures, including affirmative action programmes, to ensure that the youth—

(a) access relevant education and training;

(b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;¹⁵

(c) access employment; and

(d) are protected from harmful cultural practices and exploitation.

VII. PEOPLE WITH DISABILITIES

People with disabilities are as much a part of Zimbabwe as able bodied people, but, in general, they are marginalised and vulnerable to abuse. And suffer from social stigma. The current Constitution makes no mention of people with disabilities, save to provide under section 23 that physical disability shall be one of the grounds on which discrimination is prohibited

CSCCM ’s Position

It is CSCCM ’s position that disability should be understood to include mental disability. It is not enough to merely prohibit discrimination on the grounds of physical and mental disability. It must enjoin the state to put in place positive measures to promote the interests of people with disabilities. Their interests must be taken into account in all budgeting and

¹⁵ Adopted from Art. 55 of the Republic of Kenya

planning processes. Further, the Constitution must ensure that people with disabilities are represented in Parliament and in other decision making bodies.

Box VII(a): Model Drafting Language on the Rights of People with Disabilities

Persons with disabilities have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.

Parliament shall enact laws appropriate for the protection of persons with disabilities¹⁶.

There shall be a Disability Commission whose functions and composition shall be provided for by an Act of Parliament

VIII. THE MEDIA

The right of freedom of expression is the bedrock of democracy. The media plays an important role in the enjoyment of the right to receive and disseminate information. Thus the media is able to bring to light and under public scrutiny the conduct of public officials and so makes it possible for the public to hold the government to account.

The current position provides for the right of freedom of expression and also provided for the appointment of a Media Commission.

CSCCM 's Position

The Constitution should contain provisions to guarantee the right of freedom of expression. It must be clearly spelt out that the content of this right includes the right to set up media houses and to practice responsible journalism.

Box VIII(a): Model Drafting Language on Freedom of the Media

(1) Freedom and independence of electronic, print and all other types of media is guaranteed subject to the provisions of this Constitution

(2) The State shall not—

¹⁶ This is adopted from section 34 of the Ugandan Constitution

(a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

(b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that—

(a) are necessary to regulate the airwaves and other forms of signal distribution; and

(b) are independent of control by government, political interests or commercial interests.

(4) All State-owned media shall—

(a) be free to determine independently the editorial content of their broadcasts or other communications;

(b) be impartial; and

(c) afford fair opportunity for the presentation of divergent views and dissenting opinions.¹⁷

Further, the Constitution should provide for the appointment of an independent Media Commission. The provisions pertaining to the appointment of the Commission must be designed to ensure the selection of competent individuals and maintain the independence of the Commission.

Box VIII(b): Model Drafting Language on the Media Commission

(5) Parliament shall enact legislation that provides for the establishment of a body, which shall—

(a) be independent of control by government, political interests or commercial interests;

(b) reflect the interests of all sections of the society; and (c) set media standards and regulate and monitor compliance with those standards.¹⁸

IX. LAND AND NATURAL RESOURCES

¹⁷17 Adopted from Art. 34(1) to (4) of the Constitution of the Republic of Kenya

¹⁸18 Adopted from Art. 34(5) of the Constitution of the Republic of Kenya

Land and natural resources are finite sources of wealth. The Constitution should play a role in ensuring that land and natural resources are utilised in a manner that is sustainable and that promotes wealth creation and community development.

The current Constitution falls short in this regard in that it talks about land only in relation to the right to private property and derogation of that right in favour of the right of eminent domain of the state.

CSCCM 's Position

Given the importance of land and its finite nature, the Constitution should provide more detailed provisions with regard to land. Accordingly the Constitution should contain provisions which seek to ensure sustainable development and exploitation of natural resources. The state must ensure equitable distribution of land

Box IX(a): Model Drafting Language on the Obligation of the State to Ensure Equitable Access to Land

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.¹⁹

Further, the rights of marginalised groups such as women, children the disabled and minority groups in relation to land and natural resources must be clearly spelt out.

Sustainable land tenure systems should also be provided for the Constitution.

The Constitution should provide for the establishment of a land Commission to deal with and advise government on all matters pertaining to the management of land and natural resources

Box IX(b): Model Drafting Language on the Land Commission

There shall be established a Lands Commission which shall, in coordination with the relevant public agencies and governmental bodies, perform the following functions -

¹⁹ Adopted from section 25(5) of the Constitution of the Republic of South Africa

- (a) on behalf of the Government, manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;*
- (b) advise the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of Zimbabwe to ensure that the development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned;*
- (c) formulate and submit to government recommendations on national policy with respect to land use and capability;*
- (d) advise on, and assist in the execution of, a comprehensive programme for the registration of title to land throughout Zimbabwe;*
- (e) perform such other functions as the Minister responsible for lands and natural resources may assign to the Commission²⁰*

Strong consideration should be also be given to including provisions which protect, preserve and wisely utilize the natural resources of the country; ensure that they benefit the majority of the population; ensure their extraction does not harm community rights; and provide for state accountability in the use and preservation of such natural resources. A further provision should be included which allows for action to be taken against corporate entities which violate such protections and which utilize such resources or their proceeds in the violation of fundamental rights and freedoms of individuals and communities.

X. LABOUR

Labour relations affect the socio economic conditions of ordinary men and women. Labour relations if not properly managed can also become a source civil unrest and destabilisation

The current Constitution does not address labour relations in any way.

CSCCM 's Position

Labour issues must be specifically provided for in the Constitution. In particular the right of Freedom of trade, occupation and profession must be provided for and labour relations must also be regulated.

²⁰ Adopted from Art. 258 of the Constitution of the Republic of Ghana.

Box X(a): Model Drafting Language on Labour Rights and Labour Relations

Freedom of trade, occupation and profession.-

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Labour relations.

(1) Everyone has the right to fair labour practices.

(2) Every worker has the right-

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and

(c) to strike.

(3) Every employer has the right-

(a) to form and join an employers' organisation; and

(b) to participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right-

(a) to determine its own administration, programmes and activities;

(b) to organise; and

(c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining.²¹

XI. ELECTIONS

²¹ This wording is adopted from section 22 and 23 of the Constitution of the Republic of South Africa

Elections are crucial in the political life of any country. How elections are managed reflects and shapes the political culture of the country and also has far reaching consequences for the governance of the country. Ill managed elections spawn violence and division of the people and rob the government of the day of its legitimacy.

The current Constitution does not provide for election in any great detail. Most of the law governing elections in Zimbabwe is found in the Electoral Act.

CSCCM 's Position

While it is inevitable that most aspects of the electoral system should be dealt with in an Electoral law, there are certain fundamental aspects of the system which should be dealt with in the Constitution:

The full range of political rights must be provided for in the Constitution.

Box XI(a): Model Drafting Language on Political rights

Political rights

(1) Every citizen is free to make political choices, which includes the right—

(a) to form, or participate in forming, a political party;

(b) to participate in the activities of, or recruit members for, a political party; or

(c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—

(a) any elective public body or office established under this

Constitution; or

(b) any office of any political party of which the citizen is a member.

(3) Every adult citizen has the right, without unreasonable restrictions, —

(a) to be registered as a voter;

(b) to vote by secret ballot in any election or referendum;

and

(c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.²²

²² Adopted from Art. 38 of the Constitution of the Republic of Kenya.

The Constitution must outlaw political violence

Box XI(b): Model Drafting Language on Outlawing Political Violence

*Any activity of a person or group of persons which suppresses or seeks to suppress the lawful political activity of any other person or any class of persons, or persons generally is unlawful.*²³

The Constitution must contain provisions to ensure a transparent voting system and process.

Box XI(c): Model Drafting Language on Election Procedures

At every election, the Independent Electoral Commission shall ensure that—
(a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;
(b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station;
*(c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and (d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.*²⁴

The Constitution must provide for a mandatory code of conduct for political Candidates

Box XI(c): Model Drafting Language on the Regulation of Political Candidates

*In every election, all candidates and all political parties shall comply with the code of conduct prescribed by the Independent Electoral Commission.*²⁵

²³ Adopted from Art. 32 of the Constitution of the Republic of Ghana

²⁴ Adopted from Art. 86 of the Constitution of the Republic of Kenya.

²⁵ Adopted from Art. 84 of the Constitution of the Republic of Kenya

The Constitution must contain provisions establishing the right to funding from public resources of political parties on an equitable basis

Box XI(d): Model Drafting Language on Political Party Funding

To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.²⁶

The Constitution must prescribe basic requirements for political parties

Box XI(e): Model Drafting Language on Political Party Regulation

- (1) Every political party shall—*
- (a) have a national character as prescribed by an Act of Parliament;*
 - (b) have a democratically elected governing body;*
 - (c) promote and uphold national unity;*
 - (d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;*
 - (e) respect the right of all persons to participate in the political process, including minorities and marginalised groups;*
 - (f) respect and promote human rights and fundamental freedoms, and gender equality and equity;*
 - (g) promote the objects and principles of this Constitution and the rule of law; and*
 - (h) subscribe to and observe the code of conduct for political parties.*
- (2) A political party shall not—*
- (a) seek to engage in advocacy of hatred on any such basis;*
 - (b) engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;*
 - (c) establish or maintain a paramilitary force, militia or similar organisation;*

²⁶ Adopted from section 236 of the Constitution of the Republic of South Africa

(d) engage in bribery or other forms of corruption; or
(e) except as is provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.²⁷

XII. PUBLIC FINANCE

The manner in which public finances are handled can have a profound effect on economic and social development. The current Constitution provides for the consolidated revenue fund and for the office and role of the Comptroller and Auditor General, but says nothing about the values and principles to govern the allocation and management of public resources.

Corruption and financial mismanagement result in the diversion of resources meant for programmes to benefit the poor and vulnerable, and in wastage of resources. It is a fact the cost of corruption is borne by the poorest in the society.

CSCCM 's Position

The new Constitution should provide for mechanisms to ensure transparency and accountability in the management of public resources. For example, the Constitution must specifically provide that the values of transparency, integrity and accountability shall underlie all public finance systems. issues of public procurement must be provided for

Box XII(a): Model Drafting Language on Principles of Public Finance Management

The following principles shall guide all aspects of public finance in the Republic—
(a) there shall be openness and accountability, including public participation in financial matters;
(b) the public finance system shall promote an equitable society, and in particular—
(i) the burden of taxation shall be shared fairly;
(ii) revenue raised nationally shall be shared equitably among the different tiers of government and
(iii) expenditure shall promote the equitable development of the country, including by

²⁷ Adopted from Art. 91 of the Constitution of the Republic of Kenya

making special provision for marginalised groups and areas;
(c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
(d) public money shall be used in a prudent and responsible way; and
(e) financial management shall be responsible, and fiscal reporting shall be clear.²⁸

Box XII(b): Model Drafting Language on Public Procurement

When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.²⁹

The Constitution should also contain provisions to promote public accountability and also to address corruption.

Box XII(c): Model Drafting Language on Public Accountability

(i) All public offices shall be held in trust for the people.
(ii) All persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people.
(iii) All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices.³⁰

The Constitution must provide for a budgeting system which promotes transparency, accountability and economy

Box XII(d): Model Drafting Language on Principles of Budgeting

*National, provincial **and** municipal budgets.-*

²⁸ Adopted from section 201 of the Constitution of the republic of Kenya

²⁹ Adopted from section 217 of the Constitution of the republic of South Africa

³⁰ Principle XXVI of the Ugandan Constitution

National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sect³¹

The Constitution must provide for an Auditor-General who is appointed through a public process free from executive interference. Similar provisions must relate to an Anti-Corruption Commission. Both institutions must be provided with broad powers to investigate, prosecute and punish corruption in government and the private sector. Reporting procedures should be to Parliament rather than to the executive in order to ensure transparency, public accountability and efficiency of service.

XIII. INDEPENDENT COMMISSIONS

Independent Commissions can be effective watchdogs of the executive, but their effectiveness depends largely on the extent to which they are able to carry out their mandate without interference from any person, the resources available to the Commissions to carry out their work and the personal competence of the individual Commissioners.

When deciding on the number of Constitutional Commissions the Constitution should provide for, Constitution makers must bear in mind the fact that running Commissions requires considerable resources. It may be better to have a few well resourced Commissions in critical areas than to have a multiplicity of Commissions which are largely ineffective because the available resources have been spread too thin amongst them.

Given Zimbabwe's needs, the most critical Commissions to which priority should be given are Commissions on gender, human rights, elections, the media and anti corruption. The important thing however is that the Constitutional provisions must ensure Independence, gender balance, availability of resources and the selection criteria must be such that it enables selection of the most highly qualified and competent individuals

The appointment procedure for members of Commissions, must be properly considered in order to ensure that qualified and efficient professionals are appointed and serve the nation, rather than a particular political party or interest group. At the very least, the approval of Parliament or a truly independent body should be required to confirm appointments; the role

³¹ Adopted from section 215 of Constitution of the Republic of South Africa

of the executive, through the President or Prime Minister (as the case may be) must be minimal and ceremonial. Ideally, constitution-makers should give the power to make appointments to an independent body which carries out its mandate through a public, transparent and accountable process.

Box XIII(a): Model Drafting Language on the Objects of Independent Commissions

The objects of the Commissions and the independent offices are to—

- (a) protect the sovereignty of the people;*
- (b) secure the observance by all State organs of democratic values and principles; and*
- (c) promote Constitutionalism.*

(2) The Commissions and the holders of independent offices—

- (a) are subject only to this Constitution and the law; and*
- (b) are independent and not subject to direction or control by any person or authority.*

(3) Parliament shall allocate adequate funds to enable each Commission and independent office to perform its functions and the budget of each Commission and independent office shall be a separate vote.³²

Box XIII(b): Model Drafting Language on the Conditions of Service of Commissioners

The remuneration and benefits payable to or in respect of, a Commissioner or the holder of an independent office shall be a charge on the Consolidated Fund.

- (8) The remuneration and benefits payable to, or in respect of, the members of a Commission or the holder of an independent office shall not be varied to the disadvantage of that person during their respective terms of office.*
- (9) A member of a Commission, or the holder of an independent office, is not liable for anything done in good faith in the performance of a function of office.*
- (10) The members of a Commission shall elect a vice-chairperson from among themselves—*
 - (a) at the first sitting of the Commission; and*

³² Adopted from Art. 249 of the Constitution of the Republic of Kenya

(b) whenever it is necessary to fill a vacancy in the office of the vice-chairperson.
(11) The chairperson and vice-chairperson of a Commission shall not be of the same gender³³.

The Constitution must ensure that the office of the Commissioner has security of tenure and is protected from interference by any person.

XIV. THE EXECUTIVE ORGANS OF THE STATE

The executive arm of the state is usually the largest and the most powerful of the three. It is headed by either the Prime Minister or Executive President. Most governmental action is carried out through the executive organs of the state and these include the police, the army and the general public service. The character of the state is usually shaped by the conduct of the executive organs of the state. It is therefore very important that the Constitution contain provisions to ensure that the executive organs of the state are properly managed and that they adhere to an agreed set of values of public administration. The Constitution should provide for an ethical framework for public administration and safeguard against the politicisation of organs of the state.

Box XIV(a): Model Drafting Language on National Security

The national security of Zimbabwe shall be promoted and guaranteed in accordance with the following principles—

- (a) national security is subject to the authority of this Constitution and Parliament;*
- (b) national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;*
- (c) in performing their functions and exercising their powers, national security organs shall respect the diverse culture of the communities within Zimbabwe; and*
- (d) recruitment by the national security organs shall reflect the diversity of the Zimbabwean people in equitable proportions.³⁴*

³³ Adopted from Art. 250 of the Constitution of the Republic of Kenya

³⁴ Adopted from section 238 of the Constitution of the Republic of Kenya

Box XIV(b): Model Drafting Language on Depoliticisation of the Security Sector

The primary object of the national security organs and security system is to promote and guarantee national security

In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not—

(a) act in a partisan manner;

(b) further any interest of a political party or cause; or

(c) prejudice a political interest or political cause that is legitimate under this Constitution.

(4) A person shall not establish a military, paramilitary, or similar organisation that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament.

(5) The national security organs are subordinate to civilian authority.

(6) Parliament shall enact legislation to provide for the functions, organisation and administration of the national security organs.³⁵

The Constitution should provide for a right to just administrative action.

Box XIV(b): Model Drafting Language on the Right to Administrative Action

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in section (1) and that legislation shall—

(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

(b) promote efficient administration.³⁶

³⁵ Adopted from section 239 of the republic of Kenya

³⁶ Adopted from Art. 47 of the Constitution of the Republic of Kenya

XV. TRADITIONAL INSTITUTIONS AND CUSTOMS

Traditional institutions play an important role as custodians of traditional values and customs. They preserve our unique identities and cultural diversity.

The current Constitution does not recognise traditional leaders save to provide for their membership of the Senate. Section 89 of the Constitution recognises customary law as one of the sources of law in Zimbabwe. Section 23(3) of the Constitution not only recognises the operation of customary law, but actually permits discrimination to take place if such is warranted by the application of customary law.

CSCCM 's Position

The treatment of traditional institutions and customs and customary law in the current Constitution is not acceptable to CSCCM for the reason that some of the worst forms of discrimination faced by women and other vulnerable groups are justified on the grounds of cultural values and practices.

Accordingly, the Constitutions should contain provisions which entrench a limitation on the jurisdiction of the local courts and should provide in clear language that the bill of rights takes precedence over any traditional or cultural beliefs, practices and laws.

Box XV(a): Model Drafting Language on the Supremacy of the Bill of Rights over Cultural Beliefs and Customary Law

When interpreting any legislation, and when developing the common law and customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights

The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill³⁷

³⁷ This is adopted from the wording of section 39(3) of the Republic of South Africa. Alternative wording can be found in section 31 (2) of the Constitution of the Republic of South Africa, section 2(2) and 33(6) of the Constitution of the Republic of Uganda; and Art 66 (2) and Art. 19 of the Constitution of the Republic of Namibia.

XVI. RELIGION

Religion is an important aspect of any society. People find full expression and personal development in religion and religious practices.

The current Constitution provides for the right of freedom of conscience.

CSCCM 's Position

The Constitution must provide for the right of freedom of worship and religious practice and expression. However all religious practices inconsistent with the bill of rights must be prohibited.

Box XVI(a): Model Drafting Language on Language and Linguistic Communities

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Cultural, religious and linguistic communities.—

Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-

(a) to enjoy their culture, practise their religion and use their language; and

(h) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

XVII. LANGUAGES, ARTS AND CULTURE

Languages art and culture are important and powerful media of self expression and cultural identity. Individuals and communities' wellbeing and development are linked to their ability to express themselves through language art and culture.

The current Constitution does not contain any provisions on languages arts and culture.

CSCCM 's Position

The Constitution must recognise the right of everyone to use their own language and participate in the cultural life of their own choice but, the enjoyments of these rights must be subject to the bill of rights

Given the predominance of Ndebele and Shona languages, the Constitution must provide that these two languages and English are the official languages of the country, but also recognise the existence and promote the use and development of other less prevalent languages. (An **official language** is a language that is given a special legal status in a particular country, state, or other jurisdiction. Typically a nation's official language will be the one used in that nation's courts, Parliament and administration. The justification for making Ndebele, Shona and English the official languages is that they are by far the most widely spoken languages in Zimbabwe. It is also CSCCM's position that sign language should be made an official language

The Constitution should also provide for a Languages Board to promote, and create conditions for, the development and use of Zimbabwean languages.

Box XVIII(a): Model Drafting Language on the Recognition of all Languages

Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned;

(b) Local Government Authorities must take into account the language usage and preferences of their residents.

The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the

provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

- (5) A Languages Board established by national legislation must-*
- (a) promote, and create conditions for, the development and use of-*
 - (i) all official languages;*
 - (ii) other African languages spoken in Zimbabwe*
 - (iii) sign language; and*
 - (b) promote and ensure respect for-*
 - (i) all languages commonly used by communities in Zimbabwe,*

3. CONCLUSION

CSCCM has put forward its position on the new Constitution in good faith, trusting that the importance of the principles set out in this paper are self evident and deserve the support of all Zimbabweans who dream of a new Zimbabwe which guarantees freedom for all its people and which ensures a democratic government which enjoys legitimacy and the support of all patriotic Zimbabweans. It is also CSCCM's belief that the principles in this paper will go a long way in protecting the members of society who are weak and who deserve the protection of the state.