Zambian constitutionalism and Christianism

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Abstract

Constitutionalism of Zambia was initiated in 1964, followed by the era of one-party authoritarian governance. In the current era of neo-constitutionalism, the 1991 Constitution was amended in 1996 to institutionalize the Christian character of the Nation whilst the multi-religious character of the State was introduced in 2016. The 2019 constitutional amendment attempt aims at enhancing the Christian identity, deleting the multi-religious character and incorporating Christianism into the national values and principles ‘’morality and ethics’’. Besides, a double phenomenon of restructuring has been produced, which at domestic level refers to the Zambian national identity on the basis mainly of religion but also of constitutionalism, and at international level consists in the fundamental right to sovereign debt restructuring. It results that Zambia has been particularly connected with the phenomenon of pluralism, whose material version, exemplified by multi-culturalism, has been promoted by its legal one, namely the multiplicity of legal sources and orders.

Keywords: amendment, Christianism, constitutionalism, legal pluralism, multi-culturalism, Zambia

1. Introduction

The decolonization of African countries has been an important process, on which the doctrine has signalized that it was not accompanied by an economic decolonization[1].It has also been noticed that many parts of Africa have far failed to develop democratic institutions and models of conducting public affairs in the post-colonial era[2]. The beginning of the 1990s was marked by a veritable constitutional

[1]P.-F. Gonidec, *Relations internationales africaines*, LGDJ, 1996, p. 208.

[2]M. Ndulo, ‘’The Democratization Process and Structural Adjustment in Africa’’, *Indiana Journal of Global Legal Studies*, 2003, 10, p. 315, http://www.repository.law.indiana.edu/ijgls.

boiling, consecrating pluralist democracy and the rule of law in the formal sense and the material one[3].

It would be interesting to examine the question of constitutionalism, mainly the constitutional rules on the religious identity, in combination with Christianism, in the Zambian legal order.

First of all, the present contribution takes an approach to the profile of Constitutionalism, with emphasis on its shaping and development in African States.

Afterwards, it refers to the constitutional amendment process in Zambia as long as they are relevant to religion.

Then, it includes a literature discussion on Zambian constitutionalism and Christianism.

Finally, it ends up to some critical remarks on this question, emphasizing its impact on comparative law.

2. Constitutionalism with emphasis on Africa

2.1 Constitutionalism, nation state and freedom of religion

Constitutionalism is a movement related to the principle of democracy along with political liberalism. For instance, the doctrine tends to identify Constitution with the Bill of rights[4]. More precisely, it refers to article 16 of the Declaration of human and civic rights, of 1789, previewing that ‘’*Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution’’*. Historically, the protection of human rights emerged in the field of domestic legislation, as it is the case of 1215 Magna Carta in England, the Bill of Rights in the USA and the aforementioned Declaration in France. In those countries, domestic human rights legislation was itself the product of popular revolution[5].

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[3]É. S.Mvaebeme, ‘’Regard récent sur les tendances du constitutionnalisme africain. Le cas des États d’Afrique noire francophone’’, *RIDC*, 2019, 71, p. 163.

[4] O. Chessa, ‘’Alcune osservazioni critiche al ‘pluralismo costituzionale’ di Antonio Ruggeri’’, *Forum di Quaderni Costituzionali Rassegna*, 2019, p. 1, http://www.forumcostituzionale.it/wordpress/wp-content/uploads/2019/10/chessa.pdf.

[5]J. Bikoloni Sakala, *The role of the judiciary in the enforcement of human rights in Zambia*, Image Publishers Limited, 2013, p. 4.

In a similar way, Constitutionalism appeared in the eighteenth century, in North America and in Europe[6]. It was based on the idea of supremacy of the written Constitution that is considered to guarantee sovereign power as well as fundamental rights against arbitrary practices and despotism, coming from ruling persons. In that period, the first generation of fundamental rights emerged, consisting in civil rights, such as the rights to personal freedom and to freedom of religion, and political ones.

Constitutionalism was combined with the model of nation state, whose introduction proved to be sometimes rather delayed and difficult. For instance, the creation of Italian nation state took place much later than in other European countries, let alone the fact that it resulted from no wide popular support. Despite the claims that Italy became a unified country through a referendum, only 2% of the population had the right to vote. In other words, 98% of individuals had no voice on the matter[7]. Furthermore, very few people could understand at that moment what happened – only 10% of Italians spoke Italian. The Italian language, being nowadays international, was promoted to a really national language just a century later, given that in the meanwhile the influence of many local dialects was still big.

In Africa, the emergence of the new, ethnocentric type of polity was much more difficult, inter alia because it depended on the decolonization and the fusion of heteroclite people and tribes. The history of those countries is related to various artificial features, such as the name ‘’Tanzania” which was invented to describe the fusion of Tanganyika and Zanzibar into a State, initially being called ‘’United Republic of Tanganyika and Zanzibar’’.

It is also notable that the term ‘‘Constitution’’ was already in use for texts of the colonial era. In the territory that nowadays is Zambia, that was the case of a series of structural arrangements decreed by the British government, loosely termed ‘’Constitutions’’ and marked by flexibility consisting in the ease in which they could be amended in response to pressures and crises[8].

Besides, as far as religion is concerned, there is a variety of terminology on guarantees granted to private individuals. On the one hand, ‘’freedom of religion’’

[6] J. I. Senou, ‘’Les figures de la séparation des pouvoirs en Afrique’’, *RDP*, 2019, p. 184.

[7] A. Maniatis, ‘’Zambian Values’’, *5th International e-conference on studies in humanities and social sciences*, 2020, p. 63, https://www.centerprode.com/conferences/5IeCSHSS/coas.e-conf.05.05059m.pdf.

[8] M. Ndulo &R. Kent, ‘’Constitutionalism in Zambia: Past, Present and Future’’, *JAL*, 1996, 40, p. 259, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1063&context=facpub.

constitutes a term which has been used to refer to the tolerance of theological systems of belief. On the other hand, the comparable term ‘’freedom of worship’’ has been defined as freedom of individual action, namely in religious everyday practice. As the development of a religion implicates both these forms of believers’ participation, its legal protection depends on the recognition of these components, for which humanity has experienced different grades of enjoyment.

The French State, from 1550s onwards, proved to be too weak to enforce a reconciliation between Catholics and Protestants. Religious tolerance was finally imposed through the Edict of Nantes in 1598, which however remained into force till its revocation in 1685, by Louis XIV. The antireform remained intact until the 1787 Edict of Versailles Louis XVI. Louis XVI reestablished religious toleranceand shortly afterwards French Revolution granted rights to Protestants, through the constitutional text of 24 December 1789. Revolutionists abolished State religion and their precited 1789 Declaration guarantees freedom of religion as long as religious activities do not infringe on public order in ways detrimental to society.

The historical origins of the protection of religious freedom may well lie in certain social goods, such as religious pluralism, harmony, and tolerance[9]. Since its transformation into a contemporary human right, however, its underlying rationale must, at least primarily, be found in a fundamental human interest rather than in the common good.

From 1917 / 1918 and on, humanity passed from the era of consecration of classical human rights to the phase of recognition of economic rights, exemplified by the rights to tourism and hospitality, and cultural rights. The second generation also includes an

[9] T. Khaitan & J. Calderwood Norton, ‘’The right to freedom of religion and the right against religious discrimination: Theoretical distinctions’’, *I CON*, 2019, 17, p. 1137, https://watermark.silverchair.com/moz053.pdf?token=AQECAHi208BE49Ooan9kkhW_Ercy7Dm3ZL_9Cf3qfKAc485ysgAAAp0wggKZBgkqhkiG9w0BBwagggKKMIIChgIBADCCAn8GCSqGSIb3DQEHATAeBglghkgBZQMEAS4wEQQM0Gj0-OZ1Bws6OoT_AgEQgIICUD_h_HFTcAO68_7ilX4C-FAUrz58L4v0Ul8XlPQQFu-HhECm9VMU4bQfHTkF5Lu9-M32ZaWqjkIEOjdHGrQayuGzXRYBlrrEhXWC7r_1YYddSukWAFgkIwpUJzW2ga4dUSFQTS35gTP04ycNFuFW5HYWzY3juuWUE2p9LBKwP1Gtk52-VE0UiMc4KjjTODStuhWv-FlBHFyqIHh_rnZMnUDGeQCv5EyA8KKtUasWZowRGWH-HCOtF1gIEvGLVT6s_t-HE2D38bRMB8dY_gGf2ZkXhWL3VcMzcvyQ_qyWGfvG52jG5ZU6BmLevndoQDaZDhswG98Er8VqroDilTmVpQvlfc7l7c0kwNNlQ_hk2D0oqbXxgRdVW-zAkNU3lP3IJGoDgqqYQeQEQm3iq8-qpUBV9yVr32mZlgglqcCPtU7K0o-t2Zh-8sXxElqHIBMzqMv8uqNrt3ONLxWjbMwDbhHW9Pa5S3HZkJZ6jJ3B9pQonfWr_yeAMP3Vx3hjsolYo-t4Enwgf8lu1BJzEwSyxLBGWgBXdABBSW_Pv08-7jm6FCBVOqJgAlUoIXo_eP1qBJJfOxWhCVFOVvG9d7_B_Yhfw0ehQkYnpbzyjNR03qH3dpFn2i693bqsG9KAfgy_1iQyQSylooUTOsneVevZUCUqJh0Ys1DSthowgZQ78NL6oWkW5FUj7SzLf9YTvwiiDLHnIsxK5KEta3uoiyX4N6qX-ZnHZAUMUW11lk1X28LxX-UAkVKqv5ff3wCYJVxOYl8eMD6aOamgAvtSZR_WbT0.

original set of rights, the social ones, introducing the model of Welfare State, particularly after World War II.

In the 1970s, another generation began to emerge, being emblematically exemplified by the right to enjoyment and protection of the environment.

Humanity has gradually consecrated various fundamental rights to such a pitch that the current century is the era of the fourth generation, being characterized by new guarantees, most of them related to new technologies. Nevertheless, the consecration of rights, which are either explicit or implicit in Constitutions, does not implicate necessarily a ‘’democratization’’ of the exercise of these possibilities, which therefore are likely to remain more or less theoretical. This is the case of the right to tourism[10], not to speak about the threats on the freedom of religion in various regions, such as African ones.

Nowadays, secularism is the mainstreaming principle in the matter of religion. For instance, in Europe States are secular without necessarily going to a strict separation whilst there are two different models on the matter[11]. The first model is inspired by American law and considers that secularism is intended to protect religions against State interference. According to the other model, called by the European Court of Human Rights ‘’French model of secularism’’, secularism is intended to prevent religious interference in the organization and function of the State[12]. However, there are some exceptions to this phenomenon, such as Greece, which is endowed with a protracted period of rigid Constitutions establishing the prevailed position not of the entire Christianity but only of Greek Orthodox Church. It results that the constitutional consecration of privileges of a certain Christian denomination depends largely on the history and the composition of the population. As for the UK, it has maintained some official links with Protestantism whilst the Church of England is the established State religion uniquely in England.

[10] J. Gascón, ‘’Deconstruyendo el derecho al turismo’’, *Revista Cidob d’Afers Internacionals*, 2016, p. 65, https://www.cidob.org/es/articulos/revista_cidob_d_afers_internacionals/113/deconstruyendo_el_derecho_al_turismo.

[11] F. Foret, ‘’Les États européens et la sécularisation des religions’’, *Questions Internationales*, 2019, 95-96, p. 91.

[12] R. Letteron, ‘’Les modèles de laïcité en Europe’’, *Questions Internationales*, 2019, 95-96, p. 40.

Anyway, Christian denominations have experienced the last decades more or less an important institutional mobility, as it is the case of the Church of England, which in November 1992 voted to allow women become priests.

2.2The post-independence African Constitutionalism

The first period after the emergence of independence includes a political transition, from the colonial era towards a democratic form of State. It is marked by Constitutions being granted by the metropolis to its former protectorates, as it is the case of the UK. That power had the tendency to shape and submit Constitutions according to the Westminster model, based on the function of a Parliament, whose members are designated through free elections by the people, and a presidential (non-parliamentary) form of government. Administrators in newly independent States were reluctant to accept a parliamentary process proposed by a colonial power that the colonial power had not itself applied prior to independence[13].

Zambia has proved to be a pioneer polity in terms of political and constitutional developments in its history. For instance, it became the first country getting rid of the UK rule, with the unique exception of the sui generis case of Cyprus, to immediately take the form of a Republic, in opposition to other former British colonies which initially had a monarchical form of State, namely with the UK Queen represented by a Governor-General. That novelty was seen as a realistic acceptance, right at the outset, of what many African countries had found, after only a brief period of independence, the medium best adapted to their political aspirations. Anyway, the model of the Governor rule was replaced not by a conventional presidential regime but by presidentialism, consisting in a democratic Republic with enormous power of its President. So, democracy was from scratch altered, through this one-person authority (presidentialism), strongly reminding of the previous regime in constitutional terms (colonialism). In general, the political emancipation of African indigenous population was rather a reproduction of old practices coming from the colonial era, formally introducing democracy but essentially establishing a model of neo-colonialism.

It is also remarkable that the democratic phase of Zambia was marked by political instability, partly due to religious factors. That was the case of confrontation, known as ‘’Lumpa Uprising’’, related to Lumpa Church, an independent Christian Church

[13]J.Quigley, ‘’Perestroika African Style: One-Party Government and Human Rights in Tanzania’’, *MJIL*, 1992, 13, p. 614, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1623&context=mjil.

promoting a blend of Christian religious values and traditional ones, which adopted in 1958 the doctrine of rejection of any earthly authority. The President Kenneth Kaunda banned that major source of opposition, which did not allow its members to take part in compulsory political voting. That development caused animosity between the Church involved and Kaunda's ruling ''United National Independence Party'' (UNIP), resulting in some low-level conflict with claimed numerous lives.For most of its existence till the collapse of democratic governance, Zambia was under a state of emergency, first as a result of that (initially pre-independence) religious rebellion and later because of the liberation wars in southern Africa[14].

Besides, given that a good constitution presents the foundation of good governance and sustainable development, Zambians demand a good constitution for their country, a cause that they have been fighting for since 1972. According to a political approach, it is widely accepted that despite numerous amendments, the Republican Constitution for Zambia (at least in its form previous to the 2016 amendment) was weak, thereby weakening the governance of the country[15]. More precisely, from 1972 onwards, the political question of a people-driven Constitution started surfacing but it is not clear enough[16]. This term is based on the fundamental principle of democracy and is also strictly related to the mechanism of constitutional referendums, being the symbol of direct democracy. For many commentators, the parliamentary process to achieve the amendment of the constitution fell short of what was required for a truly people-driven constitution and a new constitution that would reflect the wishes and aspirations of the Zambian people.

The post-independence period is strictly related to marginalization of Barotseland, being the current Western Province of the Republic of Zambia. According to the Barotse Agreement, negotiated by the UK government and concluded in May 1964, the two former British protectorates involved, Northern Rhodesia and Barotseland, would gain their independence as a single Republic, to be called Zambia. The

[14] M. Ndulo &R. Kent, ''Constitutionalism in Zambia: Past, Present and Future'', *JAL*, 1996, 40, p. 266, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1063&context=facpub.

[15] Grand coalition on the campaign for a people driven constitution in ZAMBIA, *The quest for a people driven constitution in Zambia 2011-2015*, p. 2, http://constitutionnet.org/sites/default/files/the_quest_for_a_people_driven_constitution_in_zambia_feb_2016.pdf.

[16] A. Maniatis, ''Zambian Constitutional Amendment Process'', *IJHRCS*, 2020, 7, p. 163, https://eclass.gunet.gr/modules/document/file.php/LAWGU288/ZAMBIAN%20CONSTITUTIONAL%20AMENDMENT%20PROCESS.pdf.

convention previewed the independence being subject to the various provisions and conditions laid down in it, to maintain within this single Republic of Zambia the position, powers and most aspects of the protection formerly provided to the protectorate of Barotseland. However, it was breached by the Zambian government, in 1969. In March 2012, at a meeting of the Barotseland National Council, called by the leader (Litunga) and appointed with tradition by the people from across Barotseland, the Council resolved that it finally accepted the repudiation of the agreement and no longer wished to be a part of Zambia[17]. It decided for its people to exercise their own right to self-administration as an independent nation, but no relevant State has been recognized by the international community, to date.

2.3 The parenthesis of authoritarian governance

The post-independence African constitutionalism collapsed soon, being replaced by authoritarian governance. For instance, Zambia followed the paradigm of the regime of Tanzania, whose leader Julius Nyerere was the most articulate proponent of one-party rule on the continent[18].

When colonialism ended in Africa in the 1960s, the newly independent countries faced a difficult decision in determining the form of State to adopt. This difficulty was enhanced by the historical antecedent of lack of democratic standards in the precolonial era, in which nations were ruled by chiefs. Like other departing colonial powers in Africa, Britain drafted a constitution for its former protectorates, such as Tanganyika and Zambia, but the model of democratic Republic was accompanied by the growth of factionalism in Tanganyika[19] and the appearance of sectionalism in Zambia whilst at independence there was remarkable unity among the people of that country[20].

The post-independence Constitution, adopted in 1964, was replaced the 1973 Constitution, declaring Zambia a ‘’One-Party Participatory Democracy under the

[17] A. Maniatis, ‘’African Constitutionalism and Barotseland’’, *OJLS*, 2019, 2, p. 48, http://centerprode.com/ojls/ojls0202/coas.ojls.0202.02041m.pdf.

[18] J. Quigley, ‘’Perestroika African Style: One-Party Government and Human Rights in Tanzania’’, *MJIL*, 1992, 13, p. 611, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1623&context=mjil.

[19] J. Quigley, ‘’Perestroika African Style: One-Party Government and Human Rights in Tanzania’’, *MJIL*, 1992, 13, p. 614, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1623&context=mjil.

[20] M. Ndulo &R. Kent, ‘’Constitutionalism in Zambia: Past, Present and Future’’, *JAL*, 1996, 40, p. 264, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1063&context=facpub.

Philosophy of Humanism''. The new form of State was antidemocratic, marked by socialism and the prevailed position of the Kenneth Kaunda's UNIP, constantly ruling the country from the beginning of its independence and on.

Some scholars call the second phase of the independent life of African nations (from about 1964-1965 to 1990) indigenous constitutionalism, characterized by a change from the liberal model to a form of authoritarian government[21]. Without under-valuing the indigenous profile of that new wave, another part of the doctrine implies that this period is not an authentic case of constitutionalism. For instance, it implicitly refers to its mistrust of the possibility of undemocratic constitutionalism, by making use of the term ''return of constitutionalism'' in the 1990s[22].

2.4 African neo-constitutionalism with emphasis on religion

Everywhere in Africa, the end of cold war inaugurated a new era, marked by the triumphant ideology of economic and political liberalism, and the deregulation policies which were associated with it[23]. According to the most optimist observers of the constitutional development of those countries, whatever the pitfalls or resistance of the old political system, the democratic experience has led to significant progress[24].However, the most skeptical among the authors consider, on account of political pluralism of the last quarter of the twentieth century, that processes involved were still far from having delivered all of their effects.

Neo-constitutionalism is not merely a new version of post-independence constitutionalism but it is endowed with original features, such as multi-culturalism and the mechanism of Constitutional Court.Furthermore, regional novelties have been added, such as the constitutional consecration mainly of chieftainship, related to customary form of norms, but also of traditional values, in the former colonies of

[21]É. S. Mvaebeme, ''Regard récent sur les tendances du constitutionnalisme africain. Le cas des États d'Afrique noire francophone'', *RIDC*, 2019, 71, p. 165.

[22]A. Bourgi, ''L'évolution du constitutionnalisme en Afrique : du formalisme à l'effectivité'', *RFDC*, 2002, 52, p. 723, https://www.cairn.info/article.php?ID_ARTICLE=RFDC_052_0721#xd_co_f=MmEyYTllOThhYTlmOTljMmUxNzE1OTY5NTg5MTExNjY=~.

[23] J. Gould, ''Les juristes, le politique et la fabrique de la légalité postcoloniale. Un cas d'étude zambien'', *Politique africaine*, 2015, p. 73, https://www.cairn.info/revue-politique-africaine-2015-2-page-71.htm?try_download=1.

[24] F. J. Aïvo, ''Le statut constitutionnel du «Président élu» en Afrique noire francophone'', *Afrilex*, 2019, p. 2, http://afrilex.u-bordeaux4.fr/sites/afrilex/IMG/pdf/F--J-_Aivo_Le_statut_constitutionnel_du_president_elu_en_Afrique_noire_francophone_Afrilex_2019.pdf .

France. This tendency has contributed to a further convergence of Constitutional Law of African countries, particularly of the former French colonies to the former British ones, but also it exemplifies the current trend of glocalization. This term is a portmanteau of globalization and localization and has to do with an osmosis of globalization with particular features of the local societies involved, including normativity and political institutions.

Besides, neo-constitutionalism was combined with the alternance of political parties in power, on the basis of elections. That alternance, being essential for the quality of the democratic regime, was inaugurated by Cabo Verde, Benin and Zambia, in 1991.

In that year, Zambia adopted a new Constitution, whose Part III includes the freedom of religion. It is about an extended and detailed Bill of Rights, which is very similar to the initial one, included in the 1964 Constitution. The content of the Bill has remained unchanged through the two amendments of the current Constitution, which occurred in 1996 and 2016. The guarantee relevant to religion is incorporated in article 19 under the title ‘’Protection of freedom of conscience’’ whilst article 14 (3)c refers to the labor that person is required by law to perform in place of military service, with no explicit use of the term ‘’religion’’.

In virtue of paragraph (1) of article 19, ‘’*Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance* ’’.

Constitutionalism in Africa is related, as a general rule, to rigid Constitutions whilst constitutional amendments on some topics are prohibited, in almost all national legal orders[25]. Nevertheless, Zambia has got a tradition of very flexible Constitutions, being comparable to the aforementioned flexibility of colonial ‘’Constitutions’’. All constitutional dispositions are amendable, including normativity on religion.

These remarks are not valid for the majority of Constitutions of African polities, either secular or not. On the one hand, Northern States are openly linked with Islam, like Algeria, whose Constitution prohibits any amendment of the clause on Islam as

[25] B. M. Metou,‘’Existe-t-il une hiérarchie entre les normes constitutionnels des Etats africains?’’, *Afrilex*, 2019, p. 26, http://afrilex.u-bordeaux4.fr/sites/afrilex/IMG/pdf/Existe-t-il_une_hierarchie_entre_les_normes_constitutionnelles_Metou.pdf.

the State religion. On the other hand, the vast majority of countries are secular. In a way more explicit than the rest Constitutions, the fundamental law of Niger previews, in article 136, inter alia that the principle of separation of the State and religion may constitute the object of no amendment.

Last but not least, in the period of neo-constitutionalism Zambia became a heavily indebted country whilst the Zambian case of sovereign debt resulted in the revision of UK's legislation on the matter[26]. In response to that affair, in 2010 an original law was adopted, the Debt Relief Act, which became permanent in 2011. The law introduces a regime derogatory to the benefit of the States identified as heavily indebted poor countries by the IMF and the World Bank, in accordance with the program ''Heavily Indebted Poor Countries (HIPC)''. That program, inaugurated in 1996 by the precited organizations and other creditors, as well as the related Multilateral Debt Relief Initiative (MDRI) have relieved 36 – 30 of them in Africa – countries of 99 billion $ in debt. In September 2015, the General Assembly of United Nations adopted the resolution 68/304 ''Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes'' whilst restructuring processes were a frequent phenomenon in the international financial system. This text has been presented as declaration recognizing to any State the right to restructure its sovereign debt but it avoids making a frequent explicit use of the technical term ''right'' and thus it is marked by embarrassment on the matter. Argentine took the initiative for the adoption of that text and was supported by the polities belonging to G77, namely an alliance of (initially) 77 developing countries in UN, including Zambia.

3. Zambian constitutional amendments on religion

3.1 The pending constitutional amendment

After a controversial drafting process and enactment of a Constitution by Parliament, in August 2016 Zambians were set to adopt the final proposed amendments to the 1991 Constitution, as already amended in 1996, in a referendum[27].

[26] A. Maniatis, ''Zambian Public Economic Law'', *Archives of Economic History*, 2019, XXXI, pp. 93-94, http://www.archivesofeconomichistory.com/webdata/magaz/Volume_XXXI_No1-2_2019.pdf.

[27] C. Lumina, ''Zambia's constitutional referendum: More rights, questionable legitimacy?'', *ConstitutionNet*, 2016, http://constitutionnet.org/news/zambias-constitutional-referendum-more-rights-questionable-legitimacy.

According to the Referendum Act, at least 50% of Zambians who are entitled to be registered as voters for the purposes of presidential and parliamentary elections must vote in a referendum like that. In other words, a turn-out quorum was required, in the form of absolute majority of citizens above 18 years. The amendment of the Bill of Rights and of the amendment clause of the Constitution was not achieved, in spite of the fact that the majority of participating voters approved of it.

In virtue of Bill No. 6 of 2019, namely the National Dialogue Act (NDF), a National Dialogue Forum was established to go on with previous reform proposals, such as the constitutional amendment. Participation was, arguably, coerced, given that the NDF Act provided that anyone required to attend the Forum and who absented themselves from the meeting without reasonable excuse or permission, was liable to a fine or imprisonment for a term not exceeding six months[28].

That development was negative, as it reminded of an inquiry committee of Parliament. However, Constitutional Law is not Criminal Law. When it comes to Zambian Constitutional History, it is also to add that there is a protracted tendency of the political power to make the people do what is desirable for it, even if this practice particularlyrestricts human rights. This tendency is exemplified inter alia by the following phenomena:

a. Enforced labor as a substitute of slavery

Africa has experienced various forms of economic exploitation by colonialists, despite the fact that slavery had been abolished by both the mainstreaming colonial powers, initially France and afterwards the UK[29]. Colonialism implicated forced labor as well as taxation of the local people, as it was the case of Northern Rhodesia. In a similar way, the British administration in Tanganyika initiated a head tax, less to gain revenue than to force Africans to work on plantations[30]. In order to pay the tax, an African had to leave subsistence farming and enter the money economy.

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[28] C. Lumina, ‘’Zambia’s proposed constitutional amendments: Sowing the seeds of crisis?’’ *ConstitutionNet*, 2019, http://constitutionnet.org/news/zambias-proposed-constitutional-amendments-sowing-seeds-crisis.

[29] A. Maniatis, ‘’African Constitutionalism’’, *e-JST*, 2019, 14, pp. 38-39, http://e-jst.teiath.gr/issues/issue_62/Maniatis_62.pdf.

[30] J. Quigley, ‘’Perestroika African Style: One-Party Government and Human Rights in Tanzania’’, *MJIL*, 1992, 13, p. 613, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1623&context=mjil.

b. Quasi enforced participation to constitutional referendums as a substitute of authoritarian governance

Through the turn-out clause of legislation on constitutional referendums, the people were essentially forced to participate to them and, as a result, they are indirectly led to vote upon the volunteer of the ruling party, mainly on the basis of the argument of political instability danger. Of course, a practice like that may have a boomerang effect, exemplified by political abstention. For instance, according to a commentator, after casting their ballots in the general election on 11 August 2016, some voters did not vote in the constitutional referendum of the same day, despite the conduction of both processes in the same polling stations. Besides, the comparable phenomenon of the high number of spoiled ballots may be a further indication of the problem consisting in the fact that most of the voters did not fully understand the proposition they were being asked to vote on[31].

The government in June 2019 released the Constitution of Zambia (Amendment) Bill No. 10 of 2019 for public comment. Various changes are proposed, for example the new reform attempt reverses many of the constraints of the President's power, introduced in 2016[32]. The government tabled the Bill in the National Assembly, which can adopt it with the majority of two-thirds of all members, namely no referendum is required. Nevertheless, this text seems unlikely to be passed, as the main opposition party, United Party for National Development (UPND), can block the reforms promoted by the ruling party ''Patriotic Front'' (PF).

This amendment process has raised severe criticism by various factors, for which the danger of regression in terms of rule of law and protection of human rights is visible. For example, a petition to the Parliament started in August 2019, to stop the Parliament from passing the Bill, making reference to the danger of a constitutional dictatorship.

The first proposed change is relevant to religious matters, producing some important metaphysical associations, as religion affairs seem to have a (formal and

[31] C. Lumina, ''Zambia's failed constitutional referendum: What next?'', *ConstitutionNet*, 2016, http://constitutionnet.org/news/zambias-failed-constitutional-referendum-what-next.

[32]C. Lumina, ''Zambia's proposed constitutional amendments: Sowing the seeds of crisis?'' *ConstitutionNet*, 2019, http://constitutionnet.org/news/zambias-proposed-constitutional-amendments-sowing-seeds-crisis.

substantial) priority against other aspects of the amendment reform. Far away from secularism, the object of the Bill is to amend the Constitution so as to revise the Preamble in order to reaffirm the Christian character of Zambia. It is about the 2016 novelty on the multi-religious character of Zambian Nation, related to the African constitutional tendency to consecrate multi-culturalism. As the so-called ‘’‘words’’‘multi-religious’’ (more precisely, the unique word ‘‘multi-religious’’) are deleted and substituted by the word ‘‘Christian’’, this change could not be isolated; it is completed by the same substitution in the par. 3 of article 4, namely on the multi-religious character of the State.

In addition to this labeling, article 8 is amended by the deletion of par. (a) and the substitution therefor of the following paragraph: ‘’(a) *Christian morality and ethics;*‘’ against the current mention of morality and ethics, among the national values and principles applying to the interpretation of the Constitution, enactment and interpretation of the law as well as development and implementation of State policy.

3.2 The 1996 constitutional normativity on religion

A tacit convention of the constitution has resulted, consisting in the fact that Zambian political regimes tend to abstain significantly from the proposals of amendment process commissions. According to the doctrine, the last three constitutional review commissions, the one appointed by the President of the Republic Kaunda, headed by Lawyer Mvunga in 1990, whose recommendations led into the new Constitution that brought back multipartism in 1991, the one by the Movement for Multi-party Democracy (MMD) and President Chiluba, headed by John Mwanakatwe in 1993 and the last one appointed by President Mwanawasa, headed by lawyer Mung’omba in 2003, all did draft reports that were regarded as being widely progressive, recommending many points that the people wanted to be included into the Constitution, but only partly were adopted[33]. This approach is basically correct, but in reality the review processes have been marked by such a Byzantinism that there was also (at least) a fourth similar organ in the aforementioned

[33]K. Kakanku, *The 1964 Zambia Barotseland agreement conflict. A report submitted to the University of Catalonia/United Nations Institute for training and advanced research in partial fulfilment of the requirements of the award of an international master’s degree in conflictology*, 2018, p. 16, https://www.academia.edu/36579824/THE_1964_ZAMBIA_BAROTSELAND_AGREEMENT_CONFLICT.

list. When the President of the Republic Michael Sata came into office in 2011, he appointed a Technical Committee to redraft a new Constitution. Many people felt that the Justice Silungwe led Technical Committee was the sixth Constitutional Review Commission while Levy Mwanawasa's roadmap was termed the fifth Commission[34].

Anyway, against the recommendation of the Mwanakatwe Commission and over the objections of many of the churches, the government inserted in the preamble of the 1996 version of the Constitution a provision to declare ''*the Republic a Christian Nation while upholding the right of every person to enjoy that person's freedom of conscience or religion*''. Scholars have signalized that the concept of a preferred religion is antithetical to the equality of the people regarding their religious beliefs[35]

Anyway, the abovementioned formulation, being original against the one of previous Constitutions, was rather odd because a Republic is not a nation adhering to a religion but a State.

3.3 The 2016 Constitutional Normativity on Religion

The 2016 version of the Constitution is not a religion-neutral one, omitting any explicit reference to religious belief of the people. It starts with Christianism, essentially following the well-established on international Christian scale proverb ''To start with God''. It did not interrupt the constitutional tradition of too detailed texts, coming from the colonial era. It makes the step forward with the delicate question of religious belief, as in the beginning of the preamble includes a new disposition, according to which the people of Zambia acknowledge the supremacy of God Almighty.

This stereotype expression of Christianism is completed by the preciteddeclaration on the Christian character of the Nation of the Republic, as this identity is counterbalanced by the recognition of the freedom of religion. The formulation has been enriched, given that the Republic upholds a person's right to freedom not only of conscience or religion but also of belief.

The declaration on Christianism has been used to distinguish Zambian nation from other African ones. For instance, the Northmead Assembly of God argues *''that*

[34] E. C. Chipalo, ''History of Zambian Constitution – part V.'', *Daily Nation*, 2016, https://www.zambiadailynation.com/2016/05/18/history-of-zambian-constitution-part-v/.

[35]M. Ndulo & R. Kent, ''Constitutionalism in Zambia: Past, Present and Future'', *JAL*, 1996, 40, p. 277, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1063&context=facpub.

God's purpose of Zambia is that of being a tithe to the African continent'' whilst the emphasis on Zambia as Africa's tithe is covert discourse to promote national holiness or the set apartness of the nation to God out of all African nations[36]. The nation is supposed to be unlike any other African nation. Dr Liya Mutale, chairperson of the Christian campaign called ''Christians for Lungu'' (vote for Edgar Lungu) in the 2016 presidential election, stresses:*''We are God's nation, a Christian nation, the only nation in the world that has openly declared itself one''.* The declaration, despite its neutral formulation on Christian religion in its whole, has not been supported by some ecclesiastical factors. While Pentecostal-Charismatics affirm it, others have adopted an ambiguous attitude (the Protestant ''United Church of Zambia'', UCZ) or are rejectionists (Roman Catholic Church).

Anyway, it is contradictory to the new mention of the Preamble, consisting in the multi-religious character of the Nation. The lack of cohesion and particularly the defect of conceptual repetitions are obvious in the main text, in which the Republic is characterized as a multi-religious State, as already signalized. More precisely, article 4 (3) consecrates, though not explicitly, the principle of pluralism, as follows: '*The Republic is a unitary, indivisible, multi-ethnic, multi-racial, multi-religious, multi-cultural and multi-party democratic State*'. This guarantee is exemplified mainly by multi-culturalism, which ties in with an important Zambian convention of the constitution, consisting in the ''tribal balancing'' practice in terms of governance[37]. This practice was inaugurated by Kaunda and was maintained by the rest Presidents, so it constitutes a mainstreaming tradition of political history. The choice for ''tribal balancing'' has implicated the fact that governance representation in Zambia has been void of inequities likely to cause dissent in the dominant ethnic groups. As a result, equities at the ''governance elite level'' have caused inequalities at the regional levels.

Furthermore, the principle of pluralism has been already consecrated in the aforementioned point of the Preamble, equally in a non-explicit form, but without the

[36]Ch. Kaunda,'' Christianising Edgar Chagwa Lungu: The Christian nation, social media presidential photography and 2016 election campaign'', *Stellenboch Theological Journal*, 2018, 4, pp. 221-222, http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2413-94672018000100013&lng=en&nrm=iso.

[37]A. Maniatis, ''African Constitutionalism and Barotseland'', *OJLS*, 2019, 2, p. 48, http://centerprode.com/ojls/ojls0202/coas.ojls.0202.02041m.pdf.

mention of the multi-party character of the Nation. This reference of the Preamble is completed by the recognition of Zambia as unitary, multi-party and democratic sovereign State. This conceptual difference implies a State-centered approach to political parties, which constitute sui generis institutions under Public Law. In terms of Constitutional History, it reminds of the authoritarian period of the one-party form of government. Nevertheless, political party could also be linked with the Nation, more precisely with the people, given that it is about a citizens' union, not a public service. In addition, it has been regulated in a separate, detailed article, following the tendency of comparative constitutional law. Article 60 includes an institutional guarantee in favor of political parties but also it constitutes essentially a means of self-defense of the polity against any radical groups of this category, with centrifugal or subversive tendencies against it. It previews that a political party shall promote the values and principles specified in the Constitution, have a national character and promote and uphold national unity.

This normativity is related to the historical past of African former colonies, which had to cope with problems like these, particularly in the post-independence era, as already signalized. It is demanding as for the operation of parties to such a pitch that it imposes the principle of internal democracy. In a way being unusual for the Western-type model of constitutionalism, it previews that a party shall ''*promote and practice democracy through regular, free and fair elections within the party*''. Of course, democracy is a general principle, which is destined to rule not only services and organs of the polity but also citizens' society. However, this normativity is too detailed against the right to create parties, implying a margin of improvisation as for their internal shaping and operation. The maximalist approach on the matter is obvious in another disposition of this article, which prohibits a party to ''*be founded on a religious, linguistic, racial, ethnic, tribal, gender, sectoral or provincial basis or engage in propaganda based on any of these factors*''.

The prohibition of the operation on the ideological basis of religious belief transgresses the freedom of religion. Besides, essentially it is incompatible to the principle of democracy, as citizens are not allowed to influence the State power through a party on the basis of their religious beliefs.

Anyway, pluralism is consecrated in a wider sense, as it is the case of the linguistic phenomenon. Article 258 ensures the dominance of the English language, which is

consecrated as the (unique) official language of Zambia, but for the first time counterbalances have been added. First of all, par. 2 of this article previews that a '*language, other than English, may be used as a medium of instruction in educational institutions or for legislative, administrative or judicial purposes, as prescribed*'. Furthermore, this opening to the principle of multi-culturalism is completed by par. 3, guaranteeing the diversity of the languages of the people of Zambia as a State duty. So, not only is the multi-lingual character of the people recognized, but it is also protected by the Republic, despite the fact that basically the State is not multi-lingual. In addition, par. 2 of article 267 mentions that in case of conflict between the English version of the Constitution and a different language version, the English version shall prevail.

It is possible to make a comparison between the religious topic and the linguistic one. On international scale, colonization and evangelization have, in most cases, constituted two parallel and concomitant enterprises, intimately linked to a situation of ''impossible independence''[38]. Christianism in Zambia resulted from the penetration of Western missionaries, already before the beginning of the colonial era, which implicated the dominance of the English language. Nowadays, the Republic of Zambia is a Christian nation and has, as a general rule, uniquely, the English language as its official one. Nevertheless, religious and linguistic diversity of private individuals is respected by the polity, which is also supposed to promote and protect linguistic diversity.

3.4 Approaches to the proposed amendment on religion

Sometimes personal data, including religious identity, of a candidate for the office of the President of the Republic are used to block his way for it. For instance, the 1996 constitutional amendment introduced the requirement that a candidate's parents be born in Zambia, in the light of common knowledge that former President Kaunda's parents were born in the territory that is now Malawi, though he was born in what is now Zambia[39]. Furthermore, the two-term limitation on service as President, which was adopted in the 1991 Constitution, was to be only prospective,

[38] A. Lorin, ''Le christianisme en situation coloniale'', *Questions Internationales*, 2019, 95-96, p. 170.

[39] M. Ndulo & R. Kent, ''Constitutionalism in Zambia: Past, Present and Future'', *JAL*, 1996, 40, p. 276, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1063&context=facpub.

but the prospective character was repealed in 1996. So, another obstacle was put into force, to prevent Kaunda from running again. The 6th Republican President Lungu, like previous republican Presidents, such as Kaunda and Chiluba, portrayed himself as a devout Christian in order to advance his political fortunes and after the 2016 election established a Ministry of National Guidance and Religious Affairs and appointed a Pentecostal pastor to head it. In a parallel way, in that election, Hichilema, Lungu's major opponent, was presented as a Satanist.

Roman Catholics constitute the majority within Zambian population, againstvarious churches, mainly of Protestantism but also of Orthodoxy. They are endowed with important political power whilst even the former President of the Republic Michael Chilufya Sata, founder of PF, belonged to that Church. It is also notable that Lungu started his political career with the ''United Party for National Development'' (UPND) and later moved to PF, led by Sata. The doctrine has signalized that one interesting aspect is that most of social media pictures of Lungu during his 2016 presidential campaign were taken in the mainline churches (especially, UCZ and the Roman Catholic Church)[40]. All these data lead to the conclusion that Zambian society eventually may be no more a ''multi-religious'' one, but has a quasi ''multi-religious'' character. It is about a divided Christian society, marked by the competitive operation of various denominations whilst the current President is a member not of a mainstreaming Church but of the Pentecostal – Charismatic one.

An important institution, such as PF, in July 2019 formulated its opposition to the proposed amendment on religion. It stated that it supported the declaration on Christian Nation, as it stands in the current Constitution, from 1996 and on, and desired no amendments on the matter, by arguing that the Bill of rights still protects the freedom to religion. On the one hand, the fact that the ruling party disapproved of the proposed changes could seem of relatively minor importance, given that at the same time it also opposed almost all other controversial proposals for the amendment. On the other hand, this position is significant, mainly as the proposals

[40]Ch. Kaunda,''Christianising Edgar Chagwa Lungu: The Christian nation, social media presidential photography and 2016 election campaign'',*Stellenboch Theological Journal*, 2018, 4, p. 231,http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2413-94672018000100013&lng=en&nrm=iso.

on religion have been a PF initiative, supported by the Pentecostal Church groups[41].

The majority of stakeholders that have made submissions on the amendment Bill have overwhelmingly supported the retention of the Christian Nation clause in the Preamble by deletion of the term ''multi-religious''[42]. However, there were mixed feelings over entrenchment of Christian values in the Constitution. This opposition is interesting as it highlights the fact that even if the Christian character of Zambian Nation can be considered as a traditional norm in this constitutional order, the proposed novelty on Christian morality seems to be rather an overdose, which is likely to be conducive to limitations on fundamental rights of various social groups.

In English, the terms ''ethics'' and ''morality'' are used interchangeably, although ethics could be conceived as codes of conduct that pertain to a community, family, company or even a nation in its whole whilst morality has the sense of personal beliefs about what is right and wrong[43]. However, the distinction is not so simple, given that morality is not merely an individual issue but also a set of rules within a social group, mainly as far as religion is concerned. For instance, homosexuality is regarded as a sin of major importance in the framework of Christian morality and, in a similar way, it could be held immoral according to personal beliefs. Nevertheless, it would be ethically wrong to discriminate against a person, just because he is a homosexual. In 2020, one of the arguments that have been used in Zambia to back up the pending constitutional amendment consists in the fight against homosexuality. Nevertheless, this political opinion, obviously influenced by the fact that some months earlier two Zambian men were sentenced to 15 years in prison for having consensual sex, is not accurate. Moreover, the correlation between the constitutional ''Christianization'' of morality and the question of homosexuality was inexistent, at least explicitly, in the debate on the Bill 10 of 2019.

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[41] C. Lumina, ''Zambia's proposed constitutional amendments: Sowing the seeds of crisis?''*ConstitutionNet*, 2019, http://constitutionnet.org/news/zambias-proposed-constitutional-amendments-sowing-seeds-crisis.

[42] IDEA, ''In Zambia, stakeholders submit views on proposed constitutional amendments to Parliament'', *ConstitutionNet*, 2019,http://constitutionnet.org/news/zambia-stakeholders-submit-views-proposed-constitutional-amendments-parliament.

[43] A. Maniatis, ''Zambian Values'', *5th International e-conference on studies in humanities and social sciences*, 2020, pp. 62-63, https://www.centerprode.com/conferences/5IeCSHSS/coas.e-conf.05.05059m.pdf.

It is notable that in most countries of sub-Saharan Africa, homosexuality is punishable. Among the most influential reasons for homophobia in Africa are religious morality, as already signalized, the idea of Western origin of homosexuality and colonial law. More than half of the African polities banning homosexual acts are former British protectorates, where colonial rulers introduced law prohibiting ‘’unnatural acts’’. As far as Cameroon is concerned, this polity, which is one of the most aggressive in terms of prosecutions, is endowed with laws of Western liberal inspiration, but communitarian values continue to play an essential role in their interpretation. Seemingly, some of these values are inconsistent with liberal ideologies which, as in the case of homosexuality, do not respond to the belief system of the people and thus create tensions[44].

Besides, it is remarkable that the Zambian State emphasizes to such a pitch morality and ethics that it has included them into a monitoring mechanism. In virtue of article 9 (2) of the Constitution, the President of the Republic once in every year reports to the National Assembly the progress made in the application of Zambian national values and principles, specified under Part II, entitled “ National Values, Principles and Economic Policies ’’. For instance, in 2017, the President Lungu, in the framework of his reporting obligation, expressed concern at the high rate of teen pregnancies ad early marriages[45]. Those phenomena are held to be bound to subject girls to abuse while robbing them of a brighter future and denying them the chance to be decision makers at a higher level. This approach is not irrelevant to Christian ‘’morality’’ but is incorporated in the framework of ‘’ethics’’, namely deontology, as far as family matters are concerned.

As for the amendment proposal relevant to morality and ethics, the State organs involved would have to cope with an inconvenience, consisting in the theological approach to Christian doctrine. In other words, Christian values in correlation to morality and ethics are a vague concept, depending on the point of view adopted by various denominations and Churches, among which the Constitution recognizes no prevailed position. This intrinsic difficulty would implicate the need for an

[44] M. E. Kiye, ‘’Criminalization of same-sex relations in Cameroon: appraisal from group rights perspective’’, *Haramaya Law Review*, 2019, 8, p. 15, https://www.haramayajournals.org/index.php/hulr/article/view/776/393.

[45] A. Maniatis, ‘’Zambian Values’’, *5th International e-conference on studies in humanities and social sciences*, 2020, p. 63, https://www.centerprode.com/conferences/5IeCSHSS/coas.e-conf.05.05059m.pdf.

interdenominational dialogue whilst those Churches have been led to cooperate for mediation in cases of political crisis, such as the constitutional amendment review processes.

3.5 The Social Doctrine of the Church

Roman Catholic Church has some particular features within the religious community of Christianity. For instance, a part of this has a Charismatic orientation, making the Charismatic doctrine a theory of wider acceptance. This concept is not limited to its mainstreaming movement, consisting in Protestantism, whilst the Orthodox denomination is almost absolutely unfamiliar to it.

Furthermore, in opposition to other denominations like Orthodoxy, Catholicism has adopted the Social Doctrine of the Church. This concrete theory, which aims at designing the private individuals' behavior, was transformed into a systematic synthesis, entitled ''Compendium of the Social Doctrine of the Church'', in 2004[46]. In the framework of this centralized codification, the Vatican includes the major principles on social life, consisting in the set of human dignity, common good, subsidiarity and solidarity.

The topic of the Doctrine has a big wealth, a very modern character, inter alia in the matter of corporate social responsibility, to which the 2001 European Union White Book refers. There is mainly a multiplication of conduct codes, according to which companies are engaged to respect certain fundamental rights, such as the interdiction of child labor and forced labor, *vis-à-vis* not only their own employees but also the employees of their suppliers and subcontractors[47]. Furthermore, due to the influence inter alia of the Doctrine, a right to consultative vote perhaps could be granted to the staff of companies[48]. This proposal exemplifies the social sensitivity of that theory, which is in conceptual connection with various branches of law, particularly of private law. It is also notable that the first laws in comparative labor law aimed at protecting the most vulnerable group of the working population, consisting in children. Indeed, laws introducing some limits to child labor were adopted in England in 1802, in Prussia in 1839 and in France in 1841, namely long before the presence of the labor

[46]A. Maniatis, ''Droits sociaux et travail'', *RRJ*, 2017, XLII, p. 975.
[47]A. Sobczak, ''Le cadre juridique de la responsabilité sociale des entreprises en Europe et aux États-Unis'', *Droit Social*, 2002, p. 806.
[48]A. Maniatis, ''Droits sociaux et travail'', *RRJ*, 2017, XLII, p. 983.

movement on the political scene became noticeable. It is also to signalize that in the colonial era some beneficial effects relevant to religion were produced as for the protection of human rights in Northern Rhodesia, given that slavery child marriages and forced marriages were out-lawed[49].

About the last two centuries there is a pioneer concern of developed countries, such as the UK, on the fundamental rights of children, whose legal condition could be highlighted as a mainstreaming field from the point of view of certain values, such as morality and ethics. It is also remarkable that article 266 of Zambian Constitution makes an explicit use of the age-based terms ‘‘child’’, ‘‘young person’’ and ‘‘youth’’, for persons who have attained maximum the age of 18 years, the age of 15 but not of 19 years, and the age of 19 years but not of 35 years, respectively.

Besides, the aforementioned principle on common good is characterized as very actual, given that the use of a certain good may be expanded to a whole community. From this altruistic concept emanates the current idea of providing compulsory licenses, to allow copying the formula of a drug constituting a patent right.

Since the nineteenth century, Catholic Church has emitted some texts on work and popes have manifested a keen interest in the question of worker condition. That was the case of Pope Jean Paul II, who had worked as a worker in his homeland, Poland[50].

4. Literature discussion

4.1The lack ofconstitutionalism and the economic deterioration

From the above-mentioned data, it results that there has been a diachronic tendency of authoritarian elements of governance, in the territory that nowadays is Zambia. Slavery was a thing not only of the past but also of the present during African colonialism, given that it was transformed into forced labor.

Reasonably, the doctrine has highlighted the imperfect character of Zambian initial constitutionalism and the political instability of the post-independence period. That was the case of religious issues (Lumpa Church), institutional ones (the former protectorate of Barotseland) and ethnic ones (political competition among Zambian tribes). To cope with those issues and serious economic problems, the polity was

[49]J. Bikoloni Sakala, *The role of the judiciary in the enforcement of human rights in Zambia*, Image Publishers Limited, 2013, p. 35.

[50]A. Maniatis, ‘‘Droits sociaux et travail’’, *RRJ*, 2017, XLII, p. 976.

gradually oriented to a less democratic governance, without having from scratch an intention to put an end to democracy.

The second period of governance may be characterized as rather modern, in the sense that it adopted the African trend of one-party form of State. It was also impressionist, as long as the country kept making use of terms like democracy and human rights in the Constitution and introduced institutional novelties, such as an authority being comparable to the Ombudsman model. However, the new form of government seems to have caused more problems than the ones it resolved, for instance mainly in the field of economy. As a result, the trade union movement (never captured by the Party), the business community, the churches, scholars and students at the University, the legal profession, all from time to time expressed increasing hostility[51]. The failure of authoritarianism has been commensurate with the deterioration of economic situation of almost all African countries and, worse still, the difficulties of survival that the populations of the continent often experienced[52].

4.2 Neo-constitutionalism and the upgrade of the Constitution

In the period of neo-constitutionalism, Christianism became a constitutional institution, in correlation to the phenomenon which the doctrine calls ‘’Zambianness’’, consisting in the national character and culture[53]. The Christian profile of Zambian nation is new as long as the ancestors of Zambian citizens were not Christians but were related to animism. Its constitutional recognition, from the 1996 amendment onwards, has been not only gradual in both material and temporal terms but also relatively unclear, at least as for its implications, and quite impressionist in comparative constitutional law. It could be compared with the sociopolitical demand for a people-driven constitution, which seems to be legitimate from the point of view of democracy and is also classic in the political debate.

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[51]M. Ndulo & R. Kent, ‘’Constitutionalism in Zambia: Past, Present and Future’’, *JAL*, 1996, 40, p. 268, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1063&context=facpub.

[52]A. Bourgi, ‘’L’évolution du constitutionnalisme en Afrique : du formalisme à l’effectivité’’, *RFDC*, 2002, 52, p. 723, https://www.cairn.info/article.php?ID_ARTICLE=RFDC_052_0721#xd_co_f=MmEyYTllOThhYTlmOTljMmUxNzE1OTY5NTg5MTExNjY=~.

[53]Ch. Kaunda,’’ Christianising Edgar Chagwa Lungu: The Christian nation, social media presidential photography and 2016 election campaign’’,*Stellenboch Theological Journal*, 2018, 4, p. 220,http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2413-94672018000100013&lng=en&nrm=iso.

Zambia is a constitutional State, as signalized in article 4 (1) of this text, according to which this country is a sovereign Republic under a constitutional form of governance. For instance, upon the Constitutional Court in its decision involving the Speaker of the National Assembly, all institutions and the high offices created by the Constitution are themselves subservient to the Constitution[54]. The supremacy of this text as a source of law is not a novelty of its current version. The previous version emphatically highlighted it in article 1 (2) and (4) whilst the application of the Constitution and any other law was previewed as one of the directive principles of State Policy, in article 110 (1) (d). Furthermore, according to article 113 (d), one of the duties of every citizen is to ‘*’promote democracy and the rule of law*’’.

Mainly from that disposition has derived the explicit recognition of Constitutionalism in the 2016 version. This phenomenon is previewed in article 4 (c), in the form of the couple ‘’democracy and constitutionalism’’. As far as democracy is concerned, there was rather no innovation, given that the previous version made use of relevant expressions, such as the value of democracy, in the Preamble, and democratic principles, in article 112 (a). However, as for the second component of this original set of guarantees, a significant development was produced as long as the principle of the rule of law seems to have ceded its position. In a way, it was replaced by constitutionalism whilst the rule of law was thoroughly omitted in the list of national values and principles. That list was created for the first time, at least as a whole of ‘’values and principles’’ being previewed in the main text of the Constitution. The absence of the recognition of the rule of law does not have the sense that this principle has been regarded as a guarantee of minor importance but could be attributed to technical reasons related to the formulation of dispositions from one version of the Constitution to another, as already described.

The principle of the rule of law constitutes a mainstreaming one in comparative constitutional law and to a great extent coincides with the guarantee of constitutionalism. As remarked by the doctrine, the rule of law in Africa seems to be shaped in the form of a double movement consisting in the shift to democratization

[54]A. Maniatis, ‘’Zambian Values’’, *5th International e-conference on studies in humanities and social sciences*, 2020, p. 65, https://www.centerprode.com/conferences/5IeCSHSS/coas.e-conf.05.05059m.pdf.

and the contribution of the constitutional judge[55]. Anyway, the set of values ''democracy and constitutionalism'' is eloquently associated to the demand for a people-driven constitution, already at an etymological level. The sovereign people are reflected in the component ''democracy'' whilst the Constitution being driven by the people corresponds to the component ''constitutionalism''.

Essentially, the Constitution as the supreme source of law in Zambian legal order has been upgraded in 2016, compared to the 1996 provisions. This development has occurred in both material terms, through the introduction of the value of constitutionalism along with democracy, and procedural terms, with the emergence of an ad hoc organ, the Constitutional Court, as already signalized.

4.3 Neo-constitutionalism and the upgrade of morality

In 1996,Zambian political regime did not institutionalize the proposed secular character of the State, in spite of the fact that secularity may be established at a State's creation, exemplified by the USA, or by a State later, as it is the case of France. So, Zambian polity is not only unitary, officially, but also unified through some guarantees, which have been explicitly incorporated in the Preamble of the Constitution (democracy and Christianism) and – at least in the 2019 process of constitutional amendment – in the article on national values and principles (democracy, constitutionalism and Christianism)[56]. Initially Christianism and later constitutionalism itself both have gained territory, through the amendments of the 1991 Constitution.

It is noticeable that not only the Constitution but also morality and ethics have been upgraded, as sources of law. The progressive institutionalization of the Christian identity cannot be held irrelevant to the introduction of morality in that text. Constitutional principles and religious dogmas are basic statements of faith expressing core values or ideals of a tradition (religions) or society (law) and have historically

[55]B. Ba, ''La convergence des offices juridictionnels en matière constitutionnelle : regards croisés entre l'Afrique et l'Amérique latine'', *Afrilex*,2019, p. 2019, http://afrilex.u-bordeaux4.fr/sites/afrilex/IMG/pdf/Boubacar_BA_Juges_cons_Afique_Amerique.pdf.

[56]A. Maniatis, ''African Constitutionalism and Barotseland'', *OJLS*, 2019, 2, p. 59, http://centerprode.com/ojls/ojls0202/coas.ojls.0202.02041m.pdf.

served as ethical elements for unification of communities and societies[57]. In a way, religious morality has been informally present, since 1996 at the constitutional level. The institutionalization of morality and ethics, particularly in the mainstreaming set of national values and principles, implies the priority of morality, having an intensively religious background, against ethics and exemplifies the opening to religions, following a new international trend. Scholars have highlighted the fact that we live in a post-secular world where religion has made a surprising comeback, falsifying Weberian predictions of ever-continuing secularization[58]. Almost every large society – some for the first time in recent history – is grapping with religious pluralism.

The progressive institutionalization of the Christian identity has been perhaps contradictory to the new trend of constitutionalism, consisting in pluralism. This principle seems to be rather opposite to the promotion of Christianism, if not unnecessary as long as the fundamental guarantee, consisting in the human right to freedom of religion, is explicitly consecrated. However, it contributes to the enhancement of the upgrade of morality in Zambian Constitution, given that the legal protection of religions implies the importance of their moral rules.

Anyway, morality and ethics cannot be considered simply as values, they constitute a source of law, which is not limited to the written rules on the matter. It results a multiplicity of legal sources of law, being very intense in the framework of African neo-constitutionalism, which has highlighted the importance of mainstreaming sources, such as the Constitution, and other ones, such as customary law exemplifying well a wider protection of the tradition.

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[57]Vinicius Marinho,*The Tension Between Normativity and Plurality in Religious Dogmas and in Constitutional Principles*, 2014, p. 8, https://ssrn.com/abstract=2467160.

[58]T. Khaitan & J. Calderwood Norton, ''The right to freedom of religion and the right against religious discrimination: Theoretical distinctions'', *I CON*, 2019, 17, pp. 1125-1126, https://watermark.silverchair.com/moz053.pdf?token=AQECAHi208BE49Ooan9kkhW_Ercy7Dm3ZL_9Cf3qfKAc485ysgAAAp0wggKZBgkqhkiG9w0BBwagggKKMIIChgIBADCCAn8GCSqGSIb3DQEHATAeBglghkgBZQMEAS4wEQQM0Gj0-OZ1Bws6OoT_AgEQgIICUD_h_HFTcAO68_7ilX4C-FAUrz58L4v0Ul8XlPQQFu-HhECm9VMU4bQfHTkF5Lu9-M32ZaWqjkIEOjdHGrQayuGzXRYBlrrEhXWC7r_1YYddSukWAFgkIwpUJzW2ga4dUSFQTS35gTP04ycNFuFW5HYWzY3juuWUE2p9LBKwP1Gtk52-VE0UiMc4KjjTODStuhWv-FlBHFyqIHh_rnZMnUDGeQCv5EyA8KKtUasWZowRGWH-HCOtF1gIEvGLVT6s_t-HE2D38bRMB8dY_gGf2ZkXhWL3VcMzcvyQ_qyWGfvG52jG5ZU6BmLevndoQDaZDhswG98Er8VqroDilTmVpQvlfc7l7c0kwNNlQ_hk2D0oqbXxgRdVW-zAkNU3lP3IJGoDgqqYQeQEQm3iq8-qpUBV9yVr32mZlgglqcCPtU7K0o-t2Zh-8sXxElqHIBMzqMv8uqNrt3ONLxWjbMwDbhHW9Pa5S3HZkJZ6jJ3B9pQonfWr_yeAMP3Vx3hjsoIYo-t4Enwgf8lu1BJzEwSyxLBGWgBXdABBSW_Pv08-7jm6FCBVOqJgAlUoIXo_eP1qBJJfOxWhCVFOVvG9d7_B_Yhfw0ehQkYnpbzyjNR03qH3dpFn2i693bqsG9KAfgy_1iQyQSylooUTOsneVevZUCUqJh0Ys1DSthowgZQ78NL6oWkW5FUj7SzLf9YTvwiiDLHnIsxK5KEta3uoiyX4N6qX-ZnHZAUMUW11lk1X28LxX-UAkVKqv5ff3wCYJVxOYl8eMD6aOamgAvtSZR_WbT0.

If the constitutional proposal to characterize the morality and ethics as Christian ones is adopted, the way of Christianizing not only the internal structure and operation of the polity but also the lifestyle of private individuals is probably open. That development could be ensured through the obligation of the State staff to make an official and systematic use of Christian rules, which to date have not constituted explicitly and clearly a source of law. So, it would enhance the position of Christianism and confirm in a way the status of morality and ethics as a legal source. Nevertheless, this set of norms would be altered, given that it is not uniquely based on the content of any religion or denomination and is not limited to metaphysical questions.

5. Conclusion

The present contribution has ended up to the following findings:

a. *Relation of the multi-religious Zambian State with a wider form of pluralism (mainly cultural pluralism)*

Zambia constitutes an almost unique State, at least in Africa, given that it has adhered to constitutionalism permitting any amendment of constitutional dispositions and, from 1996 and on, it has adopted a unique, established religion, Christianism. Thus, it is comparable, in the African context, to Muslim countries, whose regulation on their Islamic nature is non-amendable in the framework of their rigid Constitutions.

However, Zambian Constitutionalism follows the development of current constitutionalism particularly of African States, such as the explicit consecration of multi-culturalism. Essentially, it is about the wider phenomenon of pluralism, which is mainly exemplified by multi-culturalism, whose specific version could be held religious pluralism.

Although the introduction of that profile is modern, it is not exempted from criticism. For instance, it has complicated in a rather unclear way the issue of religious normativity. Those rules are located in various rather heteroclite points of the Constitution, which require different amendment processes. Neo-constitutionalism did not interrupt the tradition of very flexible Constitutions but has proved to be extremely impractical in procedural terms (preliminary procedure of amendment committees, referendum condition for the amendment of the Bill of rights…). So, it results a contradictory character of the Constitution, at least in terms of constitutional

amendment, which is comparable to the current status of the coexistence of the rules on the Christian identity and the multi-religious character.

The pending amendment does not seem to threaten the wider phenomenon of multi-culturalism, which is of major importance. However, neither multi-religious identity nor multi-culturalism can have an automated impact on the regulation of crucial issues relevant to the rights of minorities, such as homosexuals, particularly in societies having a cultural sensitivity[59]. The informal concept of ‘’cultural sensitivity’’ is used to limit down the impact of the principle of multi-culturalism whilst as far as religion is concerned, the relevant opposite tendencies are both institutionalized (Christian Nation, multi-religious State).

b. Gradual constitutional upgrade of the Constitution and morality in Zambia (pluralism of legal sources)

In Zambian legal order, Christianism has gradually followed the way of Constitutionalism. Those ideological movements of the Western-type culture eventually will be also met formally, in the main text of the Constitution, in form of values and principles. Nevertheless, the most important development on the matter has already been produced. From 1996 to 2016 there has been a process consisting in constitutional consecration or upgrade of sources of law, in a parallel way.

On the one hand, Christianism has been introduced instead of the possibility of transforming the almost absolute religious neutrality of the Constitution into an explicit principle of secularism. This institutionalization, at least in combination with the posterior introduction of the multi-religious character of the State, has led to the recognition of morality and ethics as a set of national values and principles whilst the emblematic component of morality has intrinsically a religious background. Even the 2019 proposal on the matter does not tend to delete that set but to limit it down to the Christian doctrine.

On the other hand, a gradual upgrade has been noticed as for the supreme source of law, which in 2016 was significantly promoted in both material terms (constitutionalism) and procedural ones (Constitutional Court). Constitutionalism, as implied by the scholars’ use of the term ‘’neo-constitutionalism’’, and Christianism

[59]M. E. Kiye, ‘’Criminalization of same-sex relations in Cameroon: appraisal from group rights perspective’’, *Haramaya Law Review*, 2019, 8, p. 15, https://www.haramayajournals.org/index.php/hulr/article/view/776/393.

are connected with the mainstreaming concept of tradition, which enhances further the multiplicity of sources of law. Diversity of legal rules seems to be an emerging phenomenon in constitutional terms but is far away from being institutionalized as a principle. Anyway, cultural pluralism is exemplified not only by the multi-cultural, multi-religious and eventually multi-linguistic character of the State or the society but also by legal pluralism, coming from an osmosis of sources of those two forums.

c. Restructuring ''Zambianness'' and the sovereign debt in the framework of pluralism of legal orders

The consecration of Christian identity in the Zambian Constitution has proved to be a rather acceptable political choice. As for the wider profile of Zambian nation, a modernizing process has been produced, on the basis of religious issues, such as mainly the precited identity and the multi-religious character of the State. This process has restructured the national profile and could be further promoted through relevant theories, such as the Social Doctrine of Church, particularly if the rule on Christian morality and ethics is adopted. The conceptualization of the vague notion of this value should be based on bona fide and interdenominational dialogue.

Besides, it is not to underestimate that restructure through other parameters, such as Constitutionalism, as it is the case of Constitutional Court. Zambian Constitutionalism is rather in a delay, as for the introduction of that independent State structure, which is held as particularly adaptable to the question of pluralism.

If a need for sociopolitical consolidation has driven to the fact that ''Zambianness'' has been restructured in a rather modernizing way at the domestic level, the consolidation has been also the Protagonist in another political movement, based on international and comparative law. It is about the emergence of the 4G fundamental right to sovereign debt restructuring in favor of heavily indebted countries. This guarantee is related to Latin American countries, such as Argentina, but also mainly to African ones, including above all Zambia[60]. Being one of its holders, the Zambian polity has acquired a dynamic profile, in terms of legitimate negotiation and economic sustainability. Essentially, ''Zambianness'' is a collective identity being promoted

[60]A. Maniatis, ''Zambian Public Economic Law'', *Archives of Economic History*, 2019, XXXI, p. 96, http://www.archivesofeconomichistory.com/webdata/magaz/Volume_XXXI_No1-2_2019.pdf.

from the internal political life of the correspondent State to the external field, benefiting from the principles of international solidarity and world justice.

Moreover, African countries have recently experienced a legal upgrade of various fundamental rights, such as the human rights relevant to tradition and multi-culturalism at the domestic level and the right to debt restructuring at the level of foreign relations. Both cases exemplify the phenomenon of emergence of the so-called ‘’new rights’’, which is noticed very intensively in the comparative constitutional context, in the post-cold war period. The heavily indebted polities have acquired a further incentive to consecrate pluralism, particularly in its cultural versions, given that they have been drastically supported through the precited economic right. The international solidarity could be duplicated through the introduction of new, solidarity constitutional rights, mainly protecting minorities.

In general, from the enumeration of the above-mentioned findings it results that the current research has highlighted the content as well as the impact of pluralism in Constitutional Law of a developing polity. Besides the material aspect of that phenomenon, including the multi-religious character of the State, there is a legal version. This second component, consisting in the multiplicity of both legal sources and orders, is an important tool to introduce and regulate the first one.

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Religion is much more than a right, it is a source of constitutional values.

Ο ζαμπιανός συνταγματισμός και ο Χριστιανισμός

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Περίληψη

Ο συνταγματισμός της Ζάμπιας άρχισε το 1964 ενώ επακολούθησε η περίοδος της μονοκομματικής αυταρχικής διακυβέρνησης. Στην τρέχουσα εποχή του νεο-συνταγματισμού, το Σύνταγμα του 1991 αναθεωρήθηκε το 1996 για να θεσμοποιηθεί ο χριστιανικός χαρακτήρας του Έθνους ενώ ο πολυ-θρησκευτικός χαρακτήρας του Κράτους εισήχθη το 2016. Το εγχείρημα αναθεώρησης του Συντάγματος, του 2019, αποσκοπεί στην ενίσχυση της χριστιανικής ταυτότητας, στην κατάργηση του πολυ-θρησκευτικού χαρακτήρα και στην ένταξη του Χριστιανισμού μεταξύ των εθνικών αξιών και αρχών «ηθική και δεοντολογία». Επιπροσθέτως, έχει παραχθεί ένα διττό φαινόμενο αναδόμησης, το οποίο σε εγχώριο επίπεδο αναφέρεται στη ζαμπιανή εθνική ταυτότητα στη βάση κυρίως της θρησκείας αλλά επίσης του συνταγματισμού, και σε διεθνές επίπεδο έγκειται στο θεμελιώδες δικαίωμα αναδιάρθρωσης του δημοσίου χρέους. Συνεπώς, η Ζάμπια είναι ιδιαίτερα συνδεδεμένη με το φαινόμενο του πλουραλισμού, του οποίου η ουσιαστική (οντολογική) εκδοχή, παράδειγμα της οποίας αποτελεί η πολυπολιτισμικότητα, έχει προαχθεί με τη νομική του εκδοχή, που συνίσταται στην πολλαπλότητα των πηγών του δικαίου και στην πολλαπλότητα των εννόμων τάξεων.

Λέξεις-Κλειδιά: αναθεώρηση, Χριστιανισμός, συνταγματισμός, νομικός πλουραλισμός (πλουραλισμός του δικαίου), πολυπολιτισμικότητα, Ζάμπια