Zambian Values

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Abstract

The Republic of Zambia is in the process of neo-constitutionalism. Just like the rest of the African countries, Zambia in the 1990s acquired a new constitution, based on the authentic model of democracy. Although with delay against the rest of the African countries, it has adopted the model of a constitutional tribunal. In the 2016 version of the constitution, this jurisdictional novelty has been introduced and ties in well with the movement of constitutionalism. Democracy and constitutionalism have been explicitly consecrated among the national values and principles of Zambia, in the current constitution. Last but not least, bill number 10 of August 2019 constitutes the latest attempt to amend the constitution, but this does not necessarily mean a real promotion of constitutionalism and other national values.

Keywords: human rights, human value / “αξία” (“axia”) (human dignity), isonomy (democracy), national values and principles, national symbols (emblems), Zambia.

1. Introduction

The model of nation state is the current one in international context, although it was established in a rather delayed and difficult way, in some countries of Europe. For instance, Italy became a unified country through a referendum but 98% of individuals becoming “Italian” had no voice on the matter (Behan, 2012). The Italian language, which is 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 enhanced (Maniatis, 2018). As far as Africa is concerned, the emergence of the new, ethnocentric type of polity was much more difficult, inter alia because it had to do with the decolonization of this vast territory. Anyway, the political decolonization of African countries has been a very important process (Adamou, 2018).

In this framework, it would be interesting to focus on a specific case of a country which emerged in the 1960s, against the most powerful of the mainstreaming colonial powers, the British Empire. It is about Zambia, whose name, according to an approach, means Land of God (Anonymous, 2018b).

The current study focuses on the normativity on the phenomenon of national values and principles, in correlation to the comparable normativity on national symbols. It analyzes the national values of the Republic of Zambia, as consecrated in the Constitution.
Zambian national values:

- Are consecrated in the Constitution along with national principles.
- Are symmetrical to the constitutional set of national symbols, to which patriotism is the closest principle.
- Consist mainly in “human dignity”.

National values in Comparative Constitutional Law should:

- Be consecrated in a way separate from national principles.
- Include the human “value” (instead of human “dignity”).
- Include the popular value, which is related to the principle of democracy.

Democracy:

- Was invented by ancient Greeks.
- Initially was called “isonomy” (citizens’ equality to the possession of State power)
- Constitutes a version of the general constitutional principle of equality

2. Zambian national symbols: Artistic features of national identity

The current version of Zambian Constitution is the set of norms being in vigor after the Constitution of Zambia (Amendment) Act, No. 2 of 2016. Zambia and its neighboring country, Tanzania, are marked not only by invented (artificial) names but also by failed constitutional processes in the current era of neo-constitutionalism in Africa (Mukosha, 2020). Article 6 of Zambian Constitution refers to the concept of symbols, in a way unusual at least as for European constitutions. However, in African constitutions there is the tendency to include rules on national flags.

Zambian constitutional normativity seems to be rather detailed on the matter, as it comprises a list of various symbols of the Republic. The national symbols are the following:

(a) National Flag;
(b) National Anthem;
(c) Coat of Arms;
(d) Public Seal; and
(e) National Motto.

However, this list is not very precise, in the sense that the constitutional legislator avoids including a concrete content for these rather heteroclite materials. He just cites that the form, words, description and use of the national symbols shall be as prescribed. In this way, the reference to the mainstreaming symbol of the State, which is the flag, becomes odd and quite unfamiliar in the comparative context. Indeed, as long as States, let alone African ones, consecrate their flag as a national symbol, they incorporate a quite detailed description on the matter. For instance, the first article of the 1991 Constitution of the Republic of Benin refers inter alia to symbols of the polity, citing that the national emblem is the tricolor green, yellow and red flag and describing it further.
On the one hand, the content of Zambian Constitution is vague and, as a result, debatable, on the other hand this formulation has the advantage that it is easily adaptable to both eventual political changes of the form of State and artistic trends. For example, another country, Cameroun, has changed its flag three times to date. Anyway, the Constitution of Zambia is detailed and extended, following a tradition related to the so-called “constitutions” which were adopted by the colonial regime of Northern Rhodesia.

3. Zambian “national values and principles”

Article 8 of the Constitution is specialized in the issue of values of Zambian Nation, comprising a Bill of the officially called “national values and principles”, without clarifying the conceptual distinction between values and principles. First of all, it is obvious that the notion “values” has a priority over the subsequent concept of “principles”. We believe that the notion of “value”, much more in correlation with the mainstreaming concept of principles, is conducive to confusion, if not to an overdose of vague notions. In Constitutional law, the key notion on the matter consists in “constitutional guarantees”, which, as a general rule, could be classified in three categories, from the more detailed group to the wider one: (fundamental) rights, institutional guarantees and fundamental (or general) principles.

Anyway, a constitution essentially is the mainstreaming legal Code of values for both the State and citizens and could be held as the rational counterbalance of some artistic features of the State, such as the national symbols.

The list of these core norms is the following:

(a) Morality and ethics;
(b) Patriotism and national unity;
(c) Democracy and constitutionalism;
(d) Human dignity, equity, social justice, equality and non discrimination;
(e) Good governance and integrity; and
(f) Sustainable development.

This declaration of values enacts a pedagogical role for society and the staff of the public sector, like the aforementioned set of national symbols. Furthermore, the use of the term “value” is rather uncommon for a national Constitution, at least as far as the main text is concerned. For instance, in the Preamble of the Constitution of Benin, the constitutional legislator refers to the cultural, philosophical and spiritual values of civilization, which animate the forms of patriotism of the people.

In a comparable way, article 2 of the EU-Treaty (Lisbon Treaty) describes the European values, just as a Constitution would establish national values. It is to signalize that these values (human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities) are considered as common to the Member States.

As for the impact of Zambian national values, article 9 of the Constitution previews that they shall apply to the interpretation of this text, the enactment and interpretation of the law and the development and implementation of State policy.
4. The first group of national values and principles

The first group of national values and principles formally consists in a couple of notions, like the majority of the groups of the same list, but essentially it seems to be rather monolithic, as a general rule.

In English, the terms “ethics” and “morality” are used interchangeably, although a few social groups, such as academic or religious ones, occasionally make a distinction. On one hand, ethics could be conceived as codes of conduct that pertain to a community, family, company or even a nation in its whole. On the other hand, morality (or morals) has the sense of personal beliefs about what is right and wrong. 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.

The question of homosexuality is a delicate matter, in Zambia, in both legislative and jurisprudential levels. Although Section 155 on unnatural offences, of Chapter XV “Offences against morality”, of the penal code, chapter 87 of the laws of Zambia, adopts a distinction between a felony and an offence on the matter, even the felony is very heavily punished, against the fundamental principle of proportionality. As far as the felony is concerned, the code previews that “Any person who-

(a) has carnal knowledge of any person against the order of nature; or
(b) has carnal knowledge of an animal; or
(c) permits a male person to have carnal knowledge of him or her against the order of nature;
(d) commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life”.

Two Zambian men were sentenced to 15 years in prison for having consensual sex in the privacy of their hotel room, in 2017. Supporters of this jurisprudence highlighted the fact that the two “misfits” were given leniency by the sentencing judge who administered the minimum sentence of 15 years, when he could opt for the maximum life imprisonment.

In November 2019, the US ambassador said that he had been horrified to learn that this sentence was emitted. According to an embassy source, the refusal of President Lungu to work with the ambassador left the US with no choice but to recall (The Millennial Source, 2019). In the aftermath of the sentencing of the two gay men, a Zambian bishop called for fellow citizens to protect their own values and culture from outside influences (Hairsine, 2019).

Many African States make use of their criminal law in the matter of homosexuality whilst the only country that recognizes gay marriage is the unique industrialized African country, South Africa. Certain polities, such as Zimbabwe, criminalize exclusively male homosexual activity (The Millennial Source, 2019).

It is notable that on the 72 countries worldwide that criminalize homosexuality, 32 are African States whilst according to scholars there are many reasons for homophobia in Africa (Hairsine, 2019). Among the most influential reasons are the following:

a. Colonial laws

African colonialism had a moral impact on the everyday life of local people. Legal tendency to prohibit social practices, particularly the ones related to private life and morality, has
been a mainstreaming policy of colonial rulers. In that era, some beneficial effects were produced in the matter of the status of protection of human rights. For instance, colonialism out-lawed slavery child marriages and forced marriages (Sakala, 2013). More than half of the African countries, in which homosexual acts are banned, are former British protectorates, where colonial administrators introduced law prohibiting “unnatural acts” (Hairsine, 2019).

b. Religious morality

The case of morality is indirectly related to colonial movement, given that Africa has gradually changed its religious orientation, mainly towards the official religion of European colonial powers. Around 93% of sub-Saharan Africans are either Christian (63%) or Muslim (30%) whilst both these mainstreaming religions are often vocally opposed to this practice. Some researchers believe that American evangelical Christians are playing a significant role in shaping a negative attitude on the matter, in various countries of this region, such as Uganda, Zambia and Zimbabwe by deliberately promoting conservative religious agendas (Hairsine, 2019).

c. Western origin of homosexuality

The idea that homosexuality is imported by the West is often supported by African elites but extensive evidence collected by anthropologists and other scholars shows that same-sex practices and diverse sexualities can be found all over the continent and predate colonization (Hairsine, 2019).

It is to signalize that Zambia is engaged in a very protracted procedure to amend various dispositions in its 1991 Constitution, as it is in vigor after the amendments occurred in 1996 and 2016. In 1996, the 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 US, or by a State later, as it is the case of France. Constitutions, in opposition to religious dogmas or principles, are a modern political phenomenon, which in Western societies tends to laity (Marinho, 2014). Just the opposite, a declaration on the Christian character of Zambian Nation was introduced in the Preamble of the Constitution, which could be enhanced through the approval of the amendment Bill 10 of 2019. The proposed change is relevant to the set of “morality and ethics”, which would be transformed into “Christian morality and ethics” whilst the clause on multi-religious character of the Republic, adopted in 2016, would be deleted. In 2020, one of the arguments that have been used to back up this change consists in the fight against homosexuality. However, this political opinion, obviously influenced by the aforementioned developments of the previous months, is not accurate, let alone the fact that 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.

According to a researcher, it’s telling that those politicians who are often most vocal in their anti-gay sentiments, such as in Zambia and Uganda, lead countries where democracy is on the decline (Hairsine, 2019). The proposals for the amendment, related to religion, have been produced by an initiative of the governing party “Patriotic Front” and have been supported by the Pentecostal Church groups (Lumina, 2019), which were related to the re-election of President Lungu in 2016.

In 2017, the President, in the framework of his obligation, being previewed in article 9 (2) of the Constitution, once in every year to report to the National Assembly on the progress made in the application of Zambian national values and principles, expressed concern at the high rate of teen pregnancies and early marriages. As commented, teen pregnancies and early marriages are 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 (Anonymous, 2018a). This approach is not irrelevant to Christian morality but is incorporated in the framework of deontology (ethics) as far as family matters are concerned. Proportionately, this concern for early family rehabilitation of women can
be paralleled by the aforementioned old ban on forced marriages. So, there is a constant official policy to cope with sexual relationships of the members of the society, particularly in the matter of human rights of minors, regarded as the mainstreaming vulnerable social group of Zambian population.

Anyway, it is notable that questions related to ethics and mainly to morality are in many cases connected with the protection of both the health and the aesthetic dimension of human body, for instance in the matter of adolescent pregnancy. Zambia has an important problem related to HIV/AIDS, whilst some of the reasons why gay and bisexual men are at higher risk of HIV than their straight counterparts are biological. Zambia receives 500 million dollars every year from the US for financial support, much of it earmarked towards HIV/AIDS prevention (The Millennial Source, 2019) whilst AIDS constitutes a disease which emerged in Sub-Saharan Africa in the colonial era. In other words, this pandemic has an origin relevant to the wider region, to which Zambia belongs.

5. The second group of national values and principles

Patriotism is more a sentimental than an ideological tendency related to homeland, needing protection, particularly against potential external enemies. It is intrinsically associated to the aforementioned national symbols, mainly the flag. The reference to the patriotism fits in with the constitutional dispositions on Armed Forces but in comparative Constitutional Law it does not have to do uniquely with foreign affairs. For instance, article 120 of the Greek Constitution cites that the devotion to Homeland and Republic constitutes a fundamental obligation of all Greeks. It adds inter alia that the observance of this text rests with the patriotism of the Greeks, who are entitled and obliged to resist by any means against anyone who attempts to suppress it by force.

Besides, the national unity is an ambivalent notion, which is related to other similar dispositions, such as the declaration of the unitary and indivisible character of the Republic, explicitly consecrated in article 4 par. 3 of the current version of the Constitution. Zambian constitutionalism has led to the model of the unitary Republic, reinforced by important national values, in spite of the fact that neo-constitutionalism of the Republic of Zambia has exemplified the African tendency to promote multi-culturalism (pluralism) (Maniatis, 2019a). This tendency ties in with an important, diachronic Zambian “convention of the constitution”, consisting in the “tribal balancing” practice in terms of governance. Anyway, in the dramatic year 1969, one of the major events was the dissolution of the kingdom of Barotseland, which was reduced to the “Western Province”, being equal to the other provinces. Zambia has fostered national unity sometimes through illegal or violent operations.

If the unitary character of Zambian Republic had not already been consecrated, at least explicitly, in the 1964 version of the Constitution, during which Barotseland was deconstructed, the current version is intensively unfriendly to any centrifugal tendencies. For instance, article 60 prohibits a political 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”.

6. The third group of national values and principles

In the current period of neo-constitutionalism, just like the rest of African countries, Zambia acquired a constitution, being based on the authentic model of democracy.

It is notable that democracy is a classical value, given that it was invented by ancient Greeks. Indeed, it is about the most important legacy of the Greek nation to humanity. The principle of people’s sovereignty consists of the nouns “demos” (“common people”) and “kratos”, meaning rule, strength. It is to put the stress on the fact that the Greek word on the matter was
probably inexistent before 465 BC, whilst the democratic regime was introduced in Athens in 507 BC. The term being in use to describe that novelty was “isonomy”, in the sense of equality in terms of citizens’ participation in the State power. In other words, it is to pay special attention to the fact that democracy constitutes a specific form of political equality of all citizens, having an inclusive character particularly in favor of the weakest social groups and classes.

In the First Zambian Republic, a bill to amend the Constitution required the votes of not less than two-thirds of all of the members of the National Assembly, but an approval through referendum was also required, especially in case that the amendment had to do with any part of the Constitution relating to fundamental rights. This democratic condition was eliminated in the preceded dramatic year 1969, through the “referendum to end all referenda”, fact that was later to facilitate the adoption of a one-party system of government (Ndulo et al., 1996).

Besides, Zambia is a constitutional State, as signalized in article 4 (1) of the Constitution, according to which this country is a sovereign Republic under a constitutional form of governance.

Nevertheless, being a Constitutional State does not necessarily implicate the application of the authentic model of constitutionalism. According to the jurisprudence of 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 (Mukosha, 2000).

There is an important delay against the rest of the African countries, as for the adoption of the model of Constitutional Court. It is to signalize that in Africa in the period of neo-constitutionalism, democracy and the mechanism of Constitutional Court have been used as a couple of material and procedural guarantees in the field of Constitutional Law. The rule of law in Africa seems to be shaped in the form of the double movement consisting in the shift to democratization and the contribution of the constitutional judge (Ba, 2019). This remark is perfectly transposable in Latin America, as the new jurisdictions coming from the major constitutional reforms of years 1980-1990 count the interest of the protection of the rule of law.

Prior to the Constitution of Zambia (Amendment) Act, No. 2 of 2016, all constitutional matters were dealt with the conventional justice. That competence was concentrated in the High Court of Justice, which was the mainstreaming substitute of this sui generis mechanism of jurisdictional control of unconstitutionality of law. Anyway, the Supreme Court could also intervene, on appeal.

7. The fourth group of national values and principles, mainly the human values

The fourth group of national values and principles seems to be the most problematic, mainly because it includes a lot of components with no sufficient connection, although it is obviously related to the recognition and protection of human rights.

The mainstreaming component consists in human dignity, whose consecration raises criticism. First of all, the most suitable term would be human “value” instead of “dignity”. It is to put the stress on the fact that in 1975 the legislator of the new Greek Constitution, after the last authoritarian governance, adopted a relatively original disposition in Comparative Constitutional Law, to protect the dignity of human being. It is about article 2 par. 1 of the Constitution, citing that “Respect and protection of the value of the human being constitute the primary obligation of the State”. The source of inspiration for the adoption of this disposition, being unique in the Hellenic Constitutional History, consisted in disposition of article 1 par. 1 and 2 of the 1949 Constitution of Germany and of article 2 of the 1947 Constitution of Italy. It is not coincidental that the Greek constitutional legislator, being helped by the very extended expressive capacities of
the Greek language, adopted the term “value”, namely “axia” («αξία») in Greek, instead of the already consecrated concept of “dignity” in the international context (Pavlopoulos, 2019). As clarified in the amendment process, the term “value” is preferable because the word “dignity” means only the value against other people whilst the word “value” has the sense of the essence, which is a datum being independent from the correlation to any other persons.

Besides, Zambian Constitution consecrates the principle of human dignity just in the fourth group whilst the Greek one in article 2, let alone by clarifying explicitly that the specific obligation of the Hellenic Republic to protect human value consists is its most important duty, against other consecrated principles, such as democracy.

As for the rest national values of the fourth group, there is an overdose of the principle of equality, which could be highlighted as a general principle, for instance against other similar ones, such as equity. However, it is positive that the leniency is consecrated, whilst in comparative law the legislator seems reluctant to make reference to it, even in inferior sources of law. Equality constitutes one of the most important general principles in the constitutional order. Democratic regimes are based mainly in two principles, freedom and equality. However, in contradiction to the first general rule, the second one seems to be rather isolated in Constitutions. Equality could be distinguished at least in the following principles (Maniatis, 2011):

A. Equality (in a strict sense), in the sense of equality of (mathematical) values,
B. Proportionality, namely equality of fractions (analogy),
C. Equity, in the sense of equality of similar things, on the basis of the Greek word “επιείκεια” (“επιείκεια”),
D. Democracy, in the sense of isonomy, namely citizens’ equality in the possession of State power, as already signalized.

8. The fifth group of national values and principles

Good governance is intrinsically related to morality and mainly to ethics, in the sense of political deontology whist integrity is a facet of good governance. In other words, the principle of good administration (and the subsequent rule of integrity of public servants) is not an independent principle but a version of ethics. It is also notable that the political practice of Zambia’s elite has been characterized by neopatrimonialism, since independence (Soest, 2009). Republican Presidents, such as at least the initial ones, Kaunda, Chiluba and Mwanawasa, have all behaved as big men who regularly rotated their cabinet ministers and maintained large cabinets, which is indicative of providing personal favors to other elite members (Maniatis, 2019b).

9. A seventh group of national values and principles?

Zambian constitutional legislator did not follow the model of Greek Constitution, having incorporated the principle of sustainability as far as environment is concerned, through the 2001 amendment. Unlike his general tendency to consecrate couples of similar values and principles, which could appear in the form of “sustainability and development”, he adopted the common practice consisting in combining sustainability and the right to socioeconomic development, by putting the stress on development. This need for development, which has been a constant demand of the underdeveloped world, was combined with the new tendency to protect the environment, particularly related to the concern of the ecological movement in developed countries. However, sustainability has confirmed its autonomy and general dynamic in comparative law, for instance by regulating the entire phenomenon of tourism worldwide. It
consists in an emblematic principle of Environmental Law, belonging to the third generation of fundamental rights, exemplified mainly by the right to the environment.

10. Conclusion

The current analysis ends up to the following critical remarks, on the question of Zambian national values:

a. “Values”, a concept symmetrical to “Symbols” and similar to “principles”

The notion of national values is a rather uncommon concept in comparative constitutional law, although the values and principles incorporated in the relevant list of Zambian Constitution are present, as a general rule, in the rest Constitutions of the current era. There is no attempt to discern between “national values” and “national principles”, implying that values and principles have the same nature, although “values” deserve a priority, if not also an informal supremacy, against principles. In other words, we consider that the set “national values and principles”:

- Constitutes the hardcore normativity of the Constitution, in essential matters and enacts a rational role towards society,
- is symmetrical to the constitutional concept of national symbols, which have a formal and aesthetic nature, enact an evocative role towards society.

So, both sets of national components in a sense are emblematic for the correspondent polity whilst patriotism constitutes the closest principle to national symbols.

b. An overdose of morality, being related to Christianization

There is an overdose of morality, in various aspects and specific notions, such as morality, ethics (a term which could be called “deontology”), good governance, integrity. It is not coincidental that the constitutional legislator has attempted to promote the prevailed position of morality over the other versions, by concretizing the nature (Christianism) of this central concept. Religion anyway has already got an important impact in the wider legal system, exemplified by penal normativity on homosexuality.

c. “Values” deserving an anthropocentric reorientation

Democracy and constitutionalism have been consecrated among the national values and principles of Zambia, in the current version of the Constitution, given that the value of constitutionalism was added through the 2016 amendment. The completion of democracy by constitutionalism constitutes an inspiring notable innovation, although there are serious problems relevant to the reference of general principles in this list. For instance, principles of major importance are not mentioned, at least explicitly, such as the rule of law. This is also valid for the classical principle of separation of powers, which is not explicitly consecrated in almost all African constitutions, which anyway are marked by the model of presidentialism.

Anyway, we suggest values be a separate subcategory of the general concept of constitutional guarantees, deserving the leading position against national principles. Values are a phenomenon of upmost significance at the service of human being. It results that in comparative Constitutional Law constitutions could be amended towards a clearly and emphatically anthropocentric direction. For instance, they could preview that the values of national legal order are the following:

a. The human value and
b. The popular value, which is related to the principle of democracy.
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