



AMENDMENTS TO THE CONSTITUTION OF ZIMBABWE: A CONSTANT ASSAULT ON DEMOCRACY AND CONSTITUTIONALISM

The Constitution of Zimbabwe was a ceasefire document conceived during peace talks to protect selected interests. It therefore remains flawed and unable to substantively promote and protect the human rights of all the people of Zimbabwe today. Further, virtually all amendments made to this ceasefire document have been in favour of entrenchment of state power and have compounded the attack on, rather than the protection of, civil rights and liberties as confirmed by the courts and otherwise.

Zimbabwe Lawyers for Human Rights (ZLHR) sadly finds itself having to take note of the fact that, since Independence, the Executive and Legislature have found it necessary to amend the Constitution a record seventeen (17) times. This, in itself, is very telling of the acceptability of this document in our society. Most of the Amendments have sought to reverse judicial rulings which have set standards for constitutional conduct by the state. Others have been a direct and unadulterated assault on the very liberties espoused in the Constitution. Some examples appear below:

- **Amendment No. 7** (Act 23 of 1987) abolished the system of a Ceremonial President and a Prime Minister and instead introduced the Executive Presidency which subsists today. Executive power of the presidency was entrenched by this and concomitant amendments in the following years, leading to the current crisis in which the country finds itself today.
- **Amendment No. 9** (Act 31 of 1989) abolished the bi-cameral legislature and introduced a single house of parliament. In light of the ceasefire notion carried in the previous legislation where some parliamentary seats were 'transitionally' reserved for the white minority, the state failed to open all parliamentary seats to the vote and instead used them to continue to allow the President to exercise extreme powers over the legislature by appointing a large proportion of this erstwhile 'independent' institution, essentially to promote political party interests. This put paid to the internationally recognised right of the people to democratically elect their representatives in the Legislature.
- When the Constitutional Court of Zimbabwe held in *S v A Juvenile*¹ that corporal punishment amounted to inhuman and degrading treatment which was not reasonably justifiable in a democratic society, the Legislature in **Amendment No. 11** (Act 30 of 1990) amended the Constitution to add a derogation expressly allowing such corporal punishment. It added that hanging by the neck did not amount to inhuman and degrading treatment. This directly

¹ 1989 (2) ZLR 61 (S)

reversed the ruling of the Constitutional Court and negatively impacted on the independence of the judiciary and the principle of separation of powers.

- In a further assault on the judiciary, when the Constitutional Court of Zimbabwe held in *Catholic Commission for Justice and Peace v Attorney-General and Others*² that a delay in the enforcement of capital punishment amounted to inhuman and degrading treatment, the Legislature in **Amendment No. 13** (Act 9 of 1993) again reversed the decision by inserting a provision that such conduct would be considered acceptable.
- **Amendment No. 13** (Act 9 of 1993) also allowed limits on the remittability of pensions in response to yet another Constitutional Court judgment which had ruled in favour of the unfortunate citizenry.
- The compulsory acquisition of land was added as a derogation from the right to hold property in various amendments including **Amendment 11** (Act 30 of 1990) which ousted the jurisdiction of the courts in deciding whether compensation for land thus acquired was fair or not. **Amendment No. 16** further limited such ‘unjusticiable’ compensation to improvements on land. Ultimately, **Amendment No. 17** was promulgated to oust entirely the jurisdiction of the courts over cases of acquisition of land by the state, thus rendering impotent national and international protections of the fundamental right to protection of the law, a fair hearing, and the independence of the judiciary.
- **Amendment No. 17** was also a means for the state to restrict the freedom of persons to move out of Zimbabwe on the vague grounds of alleged public interest, national interests or economic interests of the state. This was done to circumvent yet another Constitutional Court ruling in *Chirwa v Registrar General*³, which ruled that such restrictions to freedom of movement were in violation of the Constitution and therefore null and void.

It is clear that, rather than improving the Constitution and making it a “living document” which improves peoples’ lives, protects and promotes their fundamental rights and freedoms, and facilitates an environment necessary for economic, social and political empowerment of the masses, the Amendments have become an everyday method by which judicial decisions can be subverted, human rights defenders increasingly repressed, the *status quo* maintained by way of political patronage and the rule of law and separation of powers subverted. Any further piecemeal amendments, therefore, are subject to the same criticism and can serve no useful popular purpose.

As clearly expressed by ZLHR, together with all right-minded civil society organisations, Zimbabwe needs wholesale, people-driven constitutional reform which subscribes to the principles of constitutionalism.

In the circumstances Zimbabwe Lawyers for Human Rights calls upon the government of Zimbabwe to embark on a true constitution-making initiative with the interests of the people at heart and thus end the legacy of a patched-up ceasefire document which has played a large part in the failure of the people of Zimbabwe to truly enjoy their fundamental human rights.

² 1993 (1) ZLR 242 (S)

³ 1993 (1) ZLR 291 (S)