



ORAL STATEMENT TO THE PORTFOLIO COMMITTEE ON JUSTICE, LEGAL & PARLIAMENTARY AFFAIRS

PROPOSED CONSTITUTIONAL AMENDMENT AN AFFRONT TO CONSTITUTIONALISM

Zimbabwe Lawyers for Human Rights (ZLHR) notes the gazetting of the Constitution of Zimbabwe Amendment (No.17) Bill, 2005 ("the Amendment") on 15 July 2005. This Amendment presents legislators, the Judiciary, the entire legal profession and ordinary Zimbabweans with perhaps their greatest challenge yet.

The Amendment is the latest in a long line of alterations to a Constitution which, by its very nature and history, is fundamentally deficient and problematic, especially in the protections offered under the Declaration of Rights.

The Amendment seeks to effectively remove the fundamental rights to property [section 16], secure protection of the law [section 18(9)] and freedom of movement [section 22] from the people of Zimbabwe who rely on the Constitution for protection against unchecked State action.

It further seeks to reconstitute the Parliament of Zimbabwe as a bi-cameral legislature consisting of a Senate and a House of Assembly, with certain representatives being appointed in an undemocratic manner, which undermines the principle that ***the authority to govern derives from the will of the people demonstrated through elections conducted on the basis of universal and equal suffrage exercised through a secret ballot***, and the principle that ***every citizen has the right to participate in government directly or through freely chosen representatives***, as enshrined in the Electoral Act [Chapter 2:13] and in the SADC Principles and Guidelines Governing Democratic Elections, to which Zimbabwe has bound itself. It also imposes fiscal obligations on the State which, in the current economic climate, will be impossible to sustain and will endanger the lives and livelihoods of the people of Zimbabwe.

ZLHR believes that the Amendment is a direct affront on basic human rights norms and standards and is a dereliction of the obligations of the State under section 1 of the African Charter on Human and Peoples' Rights (to which it is a State Party) to ***recognise the rights, duties and freedoms enshrined in the Charter and to undertake to adopt legislative and other measures to give effect to them***.

The African Charter guarantees all the rights which the State intends to remove by way of the Amendment.

The Amendment effectively usurps the authority of the courts of Zimbabwe by denying the people of Zimbabwe recourse to the law in challenging State action which violates fundamental human rights. This puts paid to the principle of separation of powers, by allowing the Executive to initiate, implement and adjudicate upon its own actions ensuring that the State will not be scrutinised nor its actions reviewed by an independent and impartial tribunal.

The logical conclusion of allowing such an intended amendment to go unchallenged will be the complete removal of the functions of the Judiciary and denial of any form of protection whatsoever for the people who rely on the courts for protection.

ZLHR strongly believes that, by its very nature, the Amendment seeks to demolish the Declaration of Rights and attack the fundamental principle of constitutionalism, which requires a Constitution to possess a distinctive solemnity and force, and which subscribes to a conception of popular sovereignty, where a government is accountable to its people, where it acts according to established legal frameworks and processes, and where its powers are limited through checks and balances, which include an independent and unfettered Judiciary which upholds the rule of law.

The membership of ZLHR, as officers of the Court with a duty to the law and the pursuit of these principles, cannot sit back and fail to speak out when fundamental rights accruing to people by virtue of their existence and dignity as human beings are being attacked.

Zimbabwe is urgently in need of constitutional reform, but this cannot be carried out in a piecemeal manner. Neither can it be imposed upon the people of Zimbabwe without broad consultation with all relevant stakeholders.

ZLHR intends to challenge the passage of this repressive and dangerous piece of legislation in all manners and through all channels available to the organisation, and expects that the Judiciary will lead the legal profession in taking a firm and public position against the affront to its dignity, constitutional function and the threat to its very existence.

ZLHR therefore calls upon the Portfolio Committee to:

- **Produce an adverse report on the Amendment Bill and recommend that it not be passed in its present form**

ZLHR also calls upon all Honourable Parliamentarians to:

- **Reject the imposition of an undemocratic Amendment which has failed to recognise the need for consultation with themselves or their constituents;**
- **Initiate a process of wholesale constitutional reform which takes into account the views of all stakeholders**

-Ends-
4 August 2005