

# **A new constitution should come first**

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## **Comment**

THIS week Zimbabwe Lawyers for Human Rights (ZLHR) came out strongly against government's intention to amend the constitution for the 18th time to set up a Zimbabwe Human Rights Commission.

On the other hand, the usual crowd of cheer leaders who applaud every government move were wheeled onto national television to give the proposed amendment a thumbs up and to praise government for its vision.

But their blindness to the realities on the ground and the rules of constitutional governance is the dangerous instrument which our government has always used to justify mutilating the constitution for political expediency.

Lawyers have pointed out that the amendment to establish the Zimbabwe Human Rights Commission will create "a mutilated bill of rights and a proverbial constitution which does not espouse the principles of constitutionalism".

They are right.

History has shown that in constitutions written on the spur of the moment, at a specific point in time, usually when society faces very difficult economic, social and other problems, there is a temptation and often a necessity to deal with these problems swiftly.

But provisions designed to quickly deal with immediate problems may not be appropriate solutions for the long-term.

In such instances human rights are not adequately protected, and it will be difficult to do so later.

Our government has been introducing piecemeal constitutional changes to deal with land, to set up an upper house and now to set up a Human Rights Commission.

In the first two instances, the omnibus amendment carried with it provisions which infringed the bill of rights by attacking property rights and abridging the authority of the judiciary to hear cases relating to land.

It will not be surprising if the proposed amendment also brings in egregious provisions to limit our democratic rights.

As rightly pointed out by ZLHR, government should refrain from manipulating and implementing piecemeal amendments to the constitution,

thereby negating the need for broad-based and inclusive consultation with all stakeholders.

This handicap in constitutionalism is deliberate. The government's constitutional draft was rejected in the 2000 referendum.

It is fully aware that in an all-inclusive process, the people will reject self-serving laws. The plan is therefore to introduce piecemeal measures on the hoof.

This brings us to the dichotomy arising from Zimbabwe's tinkering with supreme law-making and enactment of legislation.

A constitutional amendment should be necessary to deal with a particularly important issue. In this case the government has told us that it intends to protect the citizens of Zimbabwe by setting up a body that will deal with

human rights abuses by state and non-state actors.

We agree with human rights lawyers that to "establish a human rights commission in the prevailing legislative and administrative operating environment without corresponding and simultaneous changes to the current repressive laws is tantamount to deception and attempts to create illusory remedial institutions".

A commission crafted in an environment of state-perpetrated authoritarianism aided by repressive laws is a mockery to the populace seeking protection from the constitution.

Laws deemed to infringe the constitution must first be removed from our statutes if the government's proposed commission is to be taken seriously.

On that raft of legislation is the Access to Information and Protection of Privacy Act and the Broadcasting Services Act which have been used as a pretext to close independent media houses, harass and arrest journalists and to close independent radio stations.

Laws which restrict the enjoyment of fundamental rights such as assembly, association, protection of the law, freedom of expression and movement such as the Public Order and Security Act, the Miscellaneous Offences Act and Constitutional Amendment Act No 17 should be repealed.

What Zimbabwe is crying out for are not more sweet-sounding monoliths fashioned to bribe the nation's conscience that freedoms and protection of rights will come from statutes.

We live in a closed society where repression and brutality by security forces is condoned by the state on the pretext of maintaining law and order while the courts are unable to uphold the liberties to which we

are entitled.

There is urgent need for a democratic constitution as the foundation for a democratic government and only after such a process can our constitution contain provisions for the establishment of a genuine and effective human rights commission.

## **Home-grown constitution the answer, say lawyers**

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ZIMBABWE Lawyers for Human Rights (ZLHR) has said Zimbabwe needs a new home-grown constitution and not piecemeal amendments to the supreme law.

In a hard-hitting statement, ZLHR accused the state of "mutilating the bill of rights" through frequent amendments.

"The amendment to the Constitution of Zimbabwe to establish the Zimbabwe Human Rights Commission adds to the numerous constitutional amendments which have created a mutilated bill of rights and a proverbial constitution which does not espouse the principles of constitutionalism," it said.

The National Constitutional Assembly, which for the past seven years has been fighting for a new constitution, also joined in, accusing government of tinkering with the constitution to establish a Zimbabwe Human Rights Commission

"The NCA rejects a partisan rights commission designed merely to serve as an additional bureaucratic ruling to prevent and delay Zimbabweans from mounting human rights complaints in the international arena which offers their only hope," the NCA said in a statement. "The NCA fears that such an amendment will also serve as a vehicle for more sinister amendments designed to keep the government's grip on power."

ZLHR said government should refrain from manipulating and implementing piecemeal amendments which negate the need for broad-based and inclusive consultation with all stakeholders.

"To establish a human rights commission in the prevailing legislative and administrative operating environment without corresponding

and simultaneous changes to the current repressive laws is tantamount to deception and attempts to create illusory remedial institutions," the lawyers said. "Such a process will compound the human rights situation in the country. The commission will be a white elephant if institutions, laws and state-sponsored practices are not revisited."

ZLHR said Zimbabwe should do away with laws which restrict the fundamental rights of assembly, association, expression and movement before establishing a human rights commission. These include the Access to Information and Protection of Privacy Act, the Broadcasting Services Act and the Public Order and Security Act. - Staff Writer.

## **Reject piecemeal constitutional amendments, says lawyers organisation**

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By Sandra Nyaira

THE Zimbabwe Lawyers for Human Rights (ZLHR) is concerned with the government's continued piecemeal reforms and amendments to the Constitution of Zimbabwe. The government announced Sunday the cabinet had approved a proposal to make a record 18th amendment to the Constitution to establish the Zimbabwe Human Rights Commission.

"This amendment adds onto the numerous constitutional amendments which have created a mutilated bill of rights and a proverbial constitution which does not espouse the principles of constitutionalism," the ZLHR said in a statement. "To establish a human rights commission in the prevailing legislative and administrative operating environment without corresponding and simultaneous changes to the current repressive laws is tantamount to deception and attempts to create illusory remedial."

The lawyers organisation says such a process will compound the human rights situation in the country.

"ZLHR reiterates its position and that of progressive constituency based civil society organisations that the government should refrain from manipulating and implementing piecemeal amendments to the constitution which have failed to recognise the need for broad-based and inclusive consultation with stakeholders."

Most governments in Africa have human rights commissions set out by the United Nation's Paris principles. The UN has for long been urging countries that do not have such commissions to establish them but campaigners from Zimbabwe fear the government wants to use the

commission to avoid human rights complaints being taken outside the country. The African Commission on Human and People's Rights has in the past year dealt with many human rights complaints from ordinary Zimbabweans and organisations. With the establishment of the new commission, everyone will first have to exhaust local channels before getting human rights complaints to regional and international bodies.

The government argues its opponents and western governments have over the past few years "waged a campaign to project Zimbabwe as a violator of human rights".

Said Patrick Chinamasa in a Sunday Mail article on the commission: "They manufacture and peddle false allegations and they also recycle them as if whatever is being alleged happened yesterday. There has been that experience that we have had and we need to respond to it."

The commission will be mandated with investigating human rights violations and complaints and make findings and decisions on such.

"It is trite that the state is, under human rights law, obliged to have institutions of protection which offer effective remedies for human rights violations," said the ZLHR.

It says factors relevant to the effectiveness of the commission, among others, include issues of composition, the appointment process, the commission's mandate, to who the commission is answerable, especially its relationship with the executive, how the commission's decisions will be enforced and by who, resources for use by the commission, budget and accounts, political will to let it be independent, the existence of functioning institutions of protection such as a non-partisan police force and an independent judiciary and a permissive and non-repressive legislative environment.

The ZLHR says the commission will be a white elephant if laws and state-sponsored practices are not revisited. For example, the Access to Information and Protection of Privacy and the Broadcasting Services Acts which have been used as a pretext to close independent media houses, harass, arrest and intimidate journalists, need to be repealed or amended. Other things that need to be changed for the commission to work effectively are the practice of defiance and non-enforcement of court orders and decisions by arms of the state in issues which are of human rights nature. The ZLHR says also the interception of communications under the guise of protecting national security and economic interests of the country does not conform with the establishment of such a commission.

The lawyers organisation says Zimbabwe needs a home-grown Constitution produced with full people participation with strategic institutions in the region supporting the call for the opening up of democratic space in Zimbabwe.

"Zimbabweans must reject piecemeal constitutional amendment processes

which fail to recognise the need for broad-based and inclusive consultation with all stakeholders," the ZLHR says.