

Zimbabwe Lawyers for Human Rights Pre-Referendum Statement March 2013

Zimbabwe Lawyers for Human Rights (ZLHR), in accordance with its mandate of promoting a culture of human rights and constitutionalism in Zimbabwe, has, since the formation of the Inclusive Government (IG), been carefully scrutinising the general environment ahead of the National Referendum on the draft constitution, set for Saturday 16 March 2013. It is vital to note that, not only is the country in a pre-referendum period, but also a pre-election period. Thus the environment currently prevailing serves concurrently as a telling indicator of the environment ahead of national elections.

In this context, the Board, on behalf of the membership of ZLHR, and in accordance with long-held tradition and practice, now releases its pre-referendum statement ahead of tomorrow's polling exercise.

ON COMPLIANCE WITH ARTICLE VI OF THE GLOBAL POLITICAL AGREEMENT (GPA)

- In relation to the national outreach process, ZLHR stands by the findings of the Independent Monitoring Mechanism in which it jointly participated with the Zimbabwe Election Support Network and the Zimbabwe Peace Project under the ZZZICOMP banner.

In relation to Article VI processes subsequent to the public outreach exercise, ZLHR concludes that:

- There was a consistent failure by the Constitutional Parliamentary Committee (COPAC) to adhere to the timelines stipulated in Article VI and the process lagged severely behind time. A process that the IG agreed would be completed in 18 months was extended to over 4 years, and timelines were violated with impunity.
- There was a general lack of sufficient and timely information from COPAC about the unfolding processes and developments and the general population was largely unaware of progress.
- Civil society organisations (CSOs) were largely sidelined throughout the process as they failed to independently and actively participate in the formal activities organised by COPAC. During the stages in which they participated, such as the Second All-Stakeholders' Conference, they did so largely as proxies of the three political parties to the IG, and there was little to no room for alternative input relating to issues that

were of lesser concern to political parties, but of vital importance to other societal stakeholders.

- The tampering of the draft produced as a result of the outreach process by the political parties to the GPA, and the subsequent finalisation of the draft constitution (including the “parked” issues) by the Principals was a process which was outside the mandate of, and which violated, the agreed Article VI process.
- The fast-track adoption of the draft by Parliament without substantive debate, and the subsequent fast-track gazetting of the draft and referendum date after periods of such long delays in the earlier stages raises concerns and questions around the democratic and popular nature of scrutiny and debate of the draft.
- Essentially 3 weeks were provided to disseminate, publicise and educate the nation on the contents of a voluminous and intricate legal document. The numbers of copies of the draft constitution, translations, and the simplified COPAC version, were insufficient to ensure comprehensive awareness of the draft. Concerns have also been raised about the accuracy of the contents of the simplified COPAC version as compared to the full draft, as well as poor attendance at the sensitisation meetings carried out by COPAC.
- COPAC representatives utilised public and donor funds not only to sensitise and educate the public on the contents of the draft, but also to actively encourage the public to vote “YES”. In addition, pressure was brought to bear on CSOs to sign a Memorandum of Agreement (MoA) with COPAC in order to be allowed to carry out civic education under threat of disruption of activities of those without a MoA. Further, such organisations were made to agree to promote a YES vote. Such practices are inconsistent with fundamental rights and freedoms, and with democratic standards of civic education that enlighten people without putting pressure on them to advocate or vote for one position or another.
- Several incidents of intimidation, arrest and vilification of those advocating a NO vote were reported, and this is contrary to promotion of a free environment in which dissenting opinions are encouraged and welcomed.

ON THE LEGISLATIVE ENVIRONMENT PERSISTING DURING THE PRE-REFERENDUM PERIOD

- The GPA clearly stipulates that laws impacting negatively on fundamental rights and freedoms of expression, assembly, association and movement were to be amended to ensure a conducive legislative environment. These undertakings were ignored, if not violated, with impunity.
- The position taken by COPAC representatives, that they would encourage law enforcement agents to “suspend” the application of the Public Order and Security Act to allow a conducive environment for education and debate on the draft constitution to take place, was startling. If there is an acknowledgement that such laws repress freedoms, they should not be suspended, but done away with. The subsequent disruption of civic debates on the draft constitution, and heavy-handed police action to prevent political players – including the Prime Minister himself – from carrying out such activities is a clear indication that legislative and institutional reform is not a government priority and such repressive laws will continue to be used selectively by unreformed state institutions and actors to prevent constitutional freedoms from being exercised due to lack of political will and failure to censure heavy-handed action whenever it occurs.
- The publicly-owned but state-controlled media (print and electronic) did a disservice to the nation by failing to provide programming and content that enlightened people in a comprehensive and educative manner about the contents of the draft constitution. There was inequality of access to such media by representatives offering dissenting views. Reform of the public broadcaster and state-controlled media remains outstanding despite their urgency and the GPA requirement that this is a priority for the IG.
- Other repressive laws continued to be abused and selectively applied against targeted CSOs and human rights defenders (HRDs) during the pre-referendum period. It is disturbing to note an increase in the criminalisation of free speech through the abuse of insult laws, and the reliance on the Broadcasting Services Act to stifle lawfully operational alternative media and voices. In relation to the latter, the Zimbabwe Republic Police (ZRP) has, since the beginning of the year, arbitrarily sought to “ban” alternative sources of media – namely short-wave radios. This has been followed by the confiscation of radios from CSOs and communities that have been searched or

found to possess such gadgets. This unlawful confiscation of radios is directly linked to the closing up of access to diverse information and leads to a situation where people in communities are not able to get any alternative sources of information as they cannot afford to buy newspapers, and in most cases there is no frequency for state controlled broadcasting. This is a blatant violation of the right to freedom of expression and access to information.

ON THE ROLE AND READINESS OF THE ZIMBABWE ELECTORAL COMMISSION (ZEC)

- The ZEC was not consulted prior to the referendum date being set. Although they have worked comprehensively to prepare for rolling out the poll, the short notice will impact its readiness to fully manage the referendum process and ensure adequate resources to carry out its constitutionally mandated duties.
- New referendum regulations were gazetted shortly before the date of the referendum, and included provisions altering some key aspects of the observation process in a manner that impacts good practices.
- The failure by ZEC to abide by the principles of natural justice and its refusal to accredit observers from Zimbabwe Peace Project and ZimRights adversely affected preparations by such organisations and observers ahead of referendum day and drew time and attention away from proper preparation for the referendum – both by ZEC and the affected organisations due to on-going negotiations and litigation. They were essentially found guilty before trial by a body not qualified or empowered to act in such a manner.
- The reduction in numbers of international observers and refusal to accredit those not considered “friendly” was also problematic. What better way to shame potential “detractors” than to invite them and allow them to see democracy at work?

ON THE OPERATING ENVIRONMENT FOR CIVIL SOCIETY ORGANISATIONS AND HUMAN RIGHTS DEFENDERS

- The ongoing and intensifying clampdown on CSOs and HRDs ahead of the referendum remains a matter of the greatest concern and has impacted negatively on the pre-referendum environment. The assault on CSOs has been strategic, intentional, well-planned, well-resourced and implemented. It has targeted organisations carrying out lawful activities that, for unknown reasons, appear to be a threat to certain institutions and actors. These include mobilisers, civic educators, human rights monitors, and service providers.
- Since November 2012, police have, amongst others, raided premises of 5 major CSOs, namely Counseling Services Unit, Zimbabwe Human Rights Association, Zimbabwe Peace Project, Zimbabwe Election Support Network, and Radio Dialogue. These searches have been conducted in terms of search warrants that are broad, vague and subject to legal challenge. As a result of these searches, personnel and Board members have been charged with varying offences that range from operating unregistered organisations, committing forgery, fraud and other related offences which beggar belief. A total of 358 HRDs from CSOs have either been harassed through interrogation, arrest and detention, although subsequently being released without charge in the majority of cases since November 2012. Only 18 out of the 358 HRDs from CSOs have been charged and taken to court. In most cases taken to court, the prosecutors have declined to prosecute.
- The ZRP has used several public platforms, including an appearance in Parliament and press conferences to intimidate and issue threats and false information against CSOs – some named, and some unnamed. The GPA requirement for reform of such institutions and actors, and a cessation of politically-motivated attacks, has been largely ignored.
- The state-controlled media and aligned outlets have stepped up their defamatory and false publications against these same CSOs as part of the sustained assault. Hate speech and incitement against CSOs and HRDs has become alarming, and has the potential to escalate out of control due to slow processes of achieving legal redress and general impunity of such state media practitioners and media houses.

CONCLUDING REMARKS

One of the greatest challenges in the run up to the referendum has been the preoccupation of the three political parties to the IG with ensuring that the draft constitution is accepted in the national plebiscite. This has caused the IG to render secondary other key reforms and processes outlined in the GPA. These include substantive legislative and institutional reform as well as the stemming of bad administrative practices and the escalating impunity for violations of laws and current constitutional safeguards. In particular, the assault on civil society must be comprehensively addressed if the country is not to lose its only remaining independent voice ahead of critical elections.

ZLHR believes that, in spite of the challenges that have faced this constitution-making process, a step forward has been taken in terms of generating debate and a greater interest in constitutional matters, as well as debate around issues of constitutionalism. The process has taken place in an extremely difficult environment, but nevertheless, there is a general willingness and interest in the pursuit of a better constitution for Zimbabwe and this must be encouraged and kept alive. However, the key issues of concern remain – that we have an environment that has been less than conducive to free debate, agents who continue with their old practices of violating fundamental rights and freedoms with impunity, and preventing the sharing and dissemination of information. An inch has not been moved towards correcting this and this will adversely impact the efforts towards a free and fair election if it is not addressed urgently and with political will.

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