



Our ref: IP/mn

12 July 2009

The Co-Chairpersons

Parliamentary Select Committee on the Constitution

Parliament of Zimbabwe

HARARE

Attention: Hon. Mwonzora; Hon Mangwana; Hon Coltart

Dear Sirs,

RE: FIRST ALL STAKEHOLDERS' CONSTITUTIONAL CONFERENCE

The above matter refers.

We write to register our several concerns relating to the First All Stakeholders' Constitutional Conference (1st ASHCC) which is due to take place from 13-14 July 2009 in Harare.

The following facts are relevant:

1. Zimbabwe Lawyers for Human Rights (ZLHR) has been allocated a total of eight (8) delegates for the 1st ASHCC. This only became known to us on Saturday 11 July 2009 – a mere 2 days before the event is due to commence – through a stroke of luck, after reading *The Saturday Herald* in which the list of proposed delegates was published.
2. ZLHR received an invitation - ostensibly from the Clerk of Parliament - at our offices at 11:30hrs on Saturday 11 July 2009.

3. This invitation was not delivered by a parliamentary staff member, but a member of a civic organisation who had visited Parliament that same day and had found a number of invitations for non-governmental organisations “*lying around and in danger of not being delivered, or of being picked up and taken for use by persons not from the named organisations*”.
4. The invitation did not provide information as to the intent, objectives and substance of the 1st ASHCC, nor did it include details of a programme or even when proceedings will commence.
5. At no stage before this was ZLHR or, to the best of our knowledge, other colleagues in civil society approached or consulted on views about and suggestions for the 1st ASHCC, its objectives and how the programme should be structured in order to ensure that it is something of value and moves the process of constitution-making forward in a positive way and with meaningful popular (and civic) participation.
6. The provincial consultations which were held last week, and which we monitored, were also not a platform at which these issues could be – or were - raised, discussed and/or satisfactorily resolved.
7. We have learned that there will be two Chairpersons – Dr Hope Sadza and Professor Makhurane. At no time was ZLHR or, to the best of our knowledge, any of our colleagues from civil society consulted on our suggestions and views on this critical issue. Instead, we are advised only after the selection has been made by politicians.
8. ZLHR also noted from the list published in *The Saturday Herald* that political party representation accounts for 40% of the total number of delegates, while non-governmental organisations have an 8% representation. We have also learned that, in addition to the 40% political party representation, all parliamentarians will be attending over and above the 40%, and that the government also has been allocated a large number of delegates.

In light of these facts, we therefore wish to place on record the following issues, which are of deep concern to us:

1. It is unacceptable that ZLHR is advised less than 2 days before the 1st ASHCC that we have been granted 8 representatives and are expected to organise for our members’ attendance and registration in less than 24 hours. We have members throughout Zimbabwe and we do not pay lip service to the need for national representation in all our activities and decision-making. Such short notice and lack of clear logistical arrangements make it impossible to ensure the registration of our members who are based outside Harare and who, according to the instructions in the letter of invitations, are expected to “*find their way to the capital where upon arrival they will be reimbursed bus fares on production of valid bus tickets*”.
2. The manner in which this has been handled leads us to conclude that ZLHR is either being put in a position where it will effectively be excluded or, applying the most generous

interpretation, is being sidelined although it represents an important sector of society, namely the legal profession in Zimbabwe whose members are mandated with the promotion and protection of human rights in Zimbabwe – a key issue relating to any process of constitutional reform.

3. The fact that there has been absolutely no consultation beyond politicians around the substance and intent of the 1st ASHCC, the proposed programme and the selection of Chairperson/s again leads us to believe that our views are not valued; neither are we considered an important stakeholder at this key stage of the constitution-making process.
4. The manner in which this has been handled further leads us to believe that politicians wish to control the proceedings at, and the outcome of, the 1st ASHCC through a blackout of information which results in the exclusion of key stakeholders, denies them the right and ability to prepare effectively for all issues which will be raised at the meeting, and shuts them out of any effective decision-making processes.
5. The percentage of representation of government and political parties when compared to that of non-governmental organisations in particular and the civil society in general, is unacceptably high, and again acts to exclude key stakeholders, including general members of the public. The refusal to revisit the numbers, as we have been advised, shows unwillingness to make this a truly representative meeting. Instead, it is likely to be one in which ordinary people and representatives of various sectors other than politicians and government representatives will have their freedom of expression stifled and their freedom of assembly, association and participation violated.
6. Article VI of the Inter-Party Political Agreement (IPA) acknowledges in its Preamble that “*it is the fundamental right and duty **of the Zimbabwean people** to make a constitution **by themselves and for themselves**” and further that “**the process** of making this Constitution **must be owned and driven by the people** and must be **inclusive and democratic**” [our emphasis]. Further, the constitution-making process is supposed to be a national exercise and should not be placed in the hands solely of politicians.*
7. Taking just the issue of the percentage representation of political parties, parliamentarians and other government representatives, it can be reasonably perceived that there are intentions to make this 1st ASHCC a political party-led and parliament-driven process, rather than a national process.
8. Regrettably, from the facts above, and the actions you have taken, it is our considered opinion that you are failing to meet your obligations under the IPA and the Constitution of Zimbabwe, as well as the principles which are enshrined in the Zimbabwe Peoples’ Charter and the SADC Guidelines on Constitution-Making and Constitutional Reform.

9. It is further reasonable to assume that such actions have been taken only in order to present a façade of consultation, representation and participation, whereas the true intent and effect is the opposite.

ZLHR is committed to striving for a new constitutional dispensation in Zimbabwe. However, it must be one which is nationally owned, and in which there is proper, effective and meaningful popular participation, according to well-known and established principles, without which there will be no ownership or legitimacy of, or investment in, any new constitution.

For this reason, and despite our serious misgivings as outlined previously, ZLHR has therefore taken a decision to have our 8 representatives attend the 1st ASHCC **under protest**. The decision to attend **under protest** is to ensure that attempts to exclude and/or sideline alternative voices do not succeed, but also to ensure that our organisation is not used to legitimize a process and *modus operandi* with which we have serious misgivings. Our representatives will also bring our views to the attention of the Chairpersons and attendees at the First ASHCC.

We hereby further place it on record that we will take the opportunity, whilst attending this meeting **under protest**, to monitor the proceedings, participation and outcome thereof closely, and will use our findings as a basis to re-assess, after the close of the 1st ASHCC, whether we can continue to participate without lending legitimacy to such a flawed process, or whether we should take alternate action.

We advise accordingly.

Yours faithfully,

Irene Petras

Executive Director

ZIMBABWE LAWYERS FOR HUMAN RIGHTS

cc. **Speaker of the House of Assembly**

President of the Senate

Minister of Constitutional and Parliamentary Affairs

Director, Rights and Interests Cluster, Office of the Prime Minister

Chairperson and Board, ZLHR

Chairperson/s, All Stakeholders Constitutional Conference