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ZIMBABWE

Government moves to curb academic freedom Constitutional rights under threat

In two unexpected moves the government of Zimbabwe has introduced a law to restrict the independence of the country's university and has tabled amendments to the Constitution which explicitly allow whipping of juveniles and execution by hanging. Both developments have alarmed many local observers, including human rights groups, who had praised the government for a number of positive moves to respect human rights throughout 1990.

In July 1990 the government announced that it was not seeking parliamentary renewal of the state of emergency which had been in force since 1965. Most importantly emergency powers allowed government to detain indefinitely without trial. Detention without trial was extensively used by the pre-independence Rhodesian government, as well as by the Zimbabwean government in the 1980s. The lifting of the emergency was therefore most welcome. At the same time the government announced an amnesty for all those serving prison sentences for offences related to armed opposition to the government. Then, in September 1990, the Central Committee of the ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), voted overwhelmingly not to proceed towards a one-party state in Zimbabwe. This was despite a commitment to the one-party state in the ZANU-PF constitution and the known preference for such a system on the part of President Robert Mugabe. However, large sections of the public clearly favoured retaining multi-party politics and President Mugabe won wide praise for allowing free debate on the issue within the Central Committee and then indicating his readiness to abide by its decision.

The moves against the university

The Zimbabwean Government has presided over an expansion of education at all levels, including higher education, and has generally respected academic freedom. However, in the past two years there have been an increasing number of confrontations between sections of the university and government. In September 1988 riot police used teargas and baton charges to break up a demonstration of university and polytechnic students protesting government corruption. After the protest law lecturer Shadreck Gutto, a Kenyan political exile, was summarily expelled from the country because he was alleged to have helped the students draft an anti-corruption manifesto. In June 1989 another law lecturer accused by the government of having helped organize the protest, Kempton Makamure, was arrested and detained without charge for a week after he had given a radio interview in which he criticized government economic policy. In September 1989, on the first anniversary of the anti-corruption protest, police again came onto campus to break up a planned seminar on the corruption issue. Violence escalated, particularly after the arrest of leaders of the Student Representative Council (SRC). The student leaders were first detained under emergency powers and later charged with issuing a subversive document. All charges were eventually dropped. The university was closed for three weeks and students were only allowed to return after signing undertakings not to be involved in political activity.

The University of Zimbabwe Amendment Bill was passed by Parliament in early November after a hurried debate which allowed no time for the public and members of the University to express their views. The Bill, which is currently awaiting the signature of President Mugabe before it passes into law, greatly restricts the independence of the University from government and extends the disciplinary powers of the university authorities against staff and students. These amendments in the constitution of the existing university were combined with a long-sought proposal to establish a new university in Zimbabwe's second city of Bulawayo. By combining the two issues in the same Bill, the government guaranteed the support of many members of parliament from Bulawayo and the surrounding Matabeleland region who might otherwise have been expected to oppose the restriction of the university's freedom.

Among the measures envisaged in the new Bill are the following:

- * The powers of the Vice-Chancellor are extended to allow him to: suspend any member of staff from duty; prohibit the admission of a student; prohibit a student or group of students from attending classes or entering the university; expel or suspend any student or group of students; dissolve or suspend the students' union.
- * The government, in the person of the Minister of Higher Education, has much greater day-to-day control of the running of the university. At present the Minister appoints 12 out of 37 members of the University Council. Under the new Bill the Minister will appoint 16 out of 42 members, as well as having a say in the appointment of nine others. Thus a clear majority of council members will owe their position to the Minister.

- * Under the new Bill the appointment of Vice-Chancellor will be subject to ministerial approval.
- * Under the existing law the Staff Disciplinary Committee is chaired by a High Court judge, whereas under the new Bill it is entirely internal, with no independent member.
- * Student representation on the Student Disciplinary Committee is reduced and there is no longer any obligation that some staff members of the committee have legal experience.
- * Neither staff nor students are to be any longer allowed legal representation before their respective disciplinary committee.

These measures have excited a considerable amount of popular opposition, both for their content and for the manner in which they have been hurried through the parliamentary process. Even the Vice-Chancellor, Professor Walter Kamba, who is a close confidant of President Mugabe, is believed to oppose some sections of the Bill. There has been wide support for many of the student protests of the past two years which are seen as having identified important political issues, such as the extent of government corruption and the dangers of a one-party state. Even many of those who believe that greater discipline is needed at the university consider that the new Bill is disproportionately severe and will compromise the university's generally good record of academic freedom and independence from government. Under the Zimbabwean Constitution, the President is entitled not to sign the Bill but to refer it back to Parliament for further consideration. In light of the public opposition to the Bill, Africa Watch urges President Mugabe to follow this course.

The amendments to the Constitution

Zimbabwe achieved independence in 1980 under the terms of a settlement agreed at the Lancaster House conference in London the previous year. Among other things this settlement provided that the Declaration of Rights in the Zimbabwean Constitution was entrenched for 10 years: it could only be amended by a 100 per cent vote in Parliament. Now, however, it can be amended by a two-thirds majority. A constitutional amendment Bill now before Parliament seeks to make a number of changes, including three which affect the Declaration of Rights. One of these, which falls outside Africa Watch's mandate, concerns the government's ability compulsorily to acquire land for redistribution. The other two amend Section 15 of the Constitution, which forbids inhuman or degrading treatment or punishment. The amendment states that neither "moderate corporal punishment" of juveniles nor the carrying out of the death penalty by hanging may be considered a form of inhuman or degrading punishment.

The sentence of whipping of juvenile offenders was found to be unconstitutional in a celebrated judgment of the Supreme Court in 1989. Justice Anthony Gubbay (now Chief Justice of Zimbabwe) said that whipping could have a brutalizing effect and would hinder efforts to

rehabilitate the offender. He concluded that the decision to render whipping unconstitutional "will prove acceptable to all who care for the reputation of the legal system in this country and are anxious for it to be thought humane and civilized... we must never be content to keep upon our Criminal Code provisions for punishment having their origins in the Dark Ages."

The latest government move is strange, given that its initial response to the Supreme Court ruling was to repeal those sections of the Criminal Procedure and Evidence Act which allowed the courts to impose the punishment of whipping. The apparent reason is that whipping is a cheaper and easier sentence to carry out than a term of imprisonment. However, Africa Watch considers that such a consideration can never be a consideration in favour of using a form of punishment which is inhuman, barbaric and brutalizing.

The reason for the amendment on the use of hanging is that the Supreme Court had been due on 5 November to hear a test case in which there would have been an attempt to demonstrate that hanging was an inhuman or degrading punishment. However, the government prevented this from coming to court by issuing an amnesty for a number of prisoners facing the death penalty. Now it is pre-empting any Supreme Court ruling by explicitly declaring hanging to be constitutional. Once again the measure is curious, given that the Minister of Justice, Emmerson Mnangagwa, is a known opponent of capital punishment and the trend over the past two years has been to reduce the scope of the death penalty, in line with United Nations standards.

Aside from the substantive issues involved, these amendments have dangerous implications for the future protection of fundamental rights. If the government succeeds in passing the amendments it creates a precedent for amending the constitution whenever the Supreme Court rules in future that there has been a breach of the Declaration of Rights. Over the past decade the justiciable Declaration of Rights has been an important protection for Zimbabweans against government excesses.

In response to the proposed amendments the Catholic Commission for Justice and Peace in Zimbabwe, the country's leading human rights organization, made this comment:

The strength of a justiciable Declaration of Rights is that the power of interpretation of the rights is taken out of the hands of the Executive and the Legislature and is given to the Judiciary. For the legislature to cut down the scope of a fundamental right after it has been defined by the judiciary, or even before the judiciary has exercised its judgment, establishes a dangerous precedent and flies in the face of the separation of power and the independence of the judiciary.

Fundamental human rights provisions must be inviolable. They cannot be viewed in the same light as other constitutional provisions, to be amended when convenient to Government. Any attempt to diminish or dilute these rights, as the proposed amendments to section 15 seek to do, must be firmly resisted.

What you can do to help

Please write politely worded letters to the Zimbabwean government authorities listed below:

- * calling on President Mugabe to refer the University of Zimbabwe Amendment Bill back to Parliament in order to incorporate changes which will reflect popular criticisms of the measures;
- * urging that a majority of members of the University Council be independent appointees and that the Minister of Education have no direct say in the appointment of the Vice-Chancellor;
- * calling for independent judicial representation on university disciplinary committees to be maintained;
- * urging that the government withdraw the proposed amendments to Section 15 of the Constitution.

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Africa Watch publications on Zimbabwe:

- * Lawyer and opposition politicians detained (News from Africa Watch, June 13, 1989)
- * Release of Detainees (News from Africa Watch, July 4, 1989)
- * Trade unionists and politicians detained; Government closes university, arrests student leaders (News from Africa Watch, October 12, 1989)
- * Government defies courts to hold trade unionist, students; University reopened but student activity curbed (News from Africa Watch, October 23, 1989)
- * *A Break with the Past - Human Rights and Political Unity* (Africa Watch Report, October 1989)
- * Harassment of opposition party members; Africa Watch calls for election safeguards (News from Africa Watch, March 21, 1990)
- * After the general election; Opposition politicians detained and beaten (News from Africa Watch, April 12, 1990)
- * Release of detained politicians (News from Africa Watch, May 18, 1990)

Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Executive Director is Rakiya Omaar; Richard Carver is Research Director; Alex de Waal is Research Consultant; Janet Fleischman and Karen Sorensen are Research Associates; Jo Graham and Ben Penglase are Associates.

Africa Watch is part of Human Rights Watch, an organization that also comprises Americas Watch, Asia Watch and Helsinki Watch. The Chairman of Human Rights Watch is Robert L. Bernstein and

the Vice-Chairman is Adrian DeWind. Aryeh Neier is Executive Director of Human Rights Watch, the Deputy Director is Kenneth Roth, Holly Burkhalter is Washington Director and Susan Osnos is Press Director.