

**Constitutional Amendment No 17:
An Attack Of Incalculable Proportions On Right To Fair Trial: By Arnold
Tsonga¹**

The Government of Zimbabwe is a signatory to the Regional and International Instruments guaranteeing the rule of law and independence of the judiciary such as the African Charter on Human and Peoples Rights (African Charter) and the International Covenant on Civil and Political Rights;

Article 26 of the African Charter, compels State parties to the Charter to **guarantee the independence of the Courts** and allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter.

Article 7 of the African Charter provides that every individual shall have the **right to have her/his cause heard** which includes the right to an **appeal to competent national organs** against acts of violating her/his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; **the right to be presumed innocent until proved guilty by a competent court or tribunal**; the right to defense, including the **right to be defended by counsel of her/his choice**; and **the right to be tried within a reasonable time by an impartial court or tribunal**.

It must be noted with grave concern that Constitution of Zimbabwe Amendment (No.17) has the following implications:

The Amendment effectively removes the fundamental rights to property, secure protection of the law and freedom of movement from the people of Zimbabwe. In attacking the right to freedom of movement directly, the amendment also indirectly but significantly attacks the rights to freedom of association and freedom of expression in that the right to travel out of the country will be taken away if one is seen to have associated with real or imaginary government opponents and uttered statements which in the minds of the Executive are against "national interests". National interests are not defined but left to the discretion of the frightened and paranoid State officials who see every one from Zimbabwe who has a different opinion to theirs as wrong and therefore an agent of Bush or Blair!

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 has removed by way of the Amendment.

The amendment **ousts the jurisdiction of the Courts** to deal with pending and future cases involving property disputes in particular land. This reminds the writer of the decrees that **Nigeria** passed during the military dictatorship which **ousted the jurisdiction of the courts** which the African Commission ruled in numerous cases

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as constituting **“an attack of incalculable proportions on article 7 of the African Charter. An attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go unredressed.”**

The African Commission has also previously ruled that **the ousting of the jurisdiction** of the courts **threatens the independence of the judiciary and violates article 26** of the African Charter.

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 amendment will result in 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 in certain cases. Zimbabwe has effectively kissed goodbye to the principle of separation of powers which is the bedrock upon which modern society is founded. Does anyone still doubt that we are in a *defacto* dictatorship?

The SADC, AU and UN and appropriate organs under them need to take immediate action to encourage the President of Zimbabwe to enter into dialogue with his political opponents, captains of industry and civil society so that Zimbabweans can find a lasting solution to the problems bedeviling the country. It must be emphasized that this tendency of passing repressive pieces of legislation to deal with legitimate concerns about issues of governance which the apartheid regime in South Africa and Ian Smith did and has now been perfected by a black government masquerading as a pan-Africanist state can not result in sustainable peace and development in Zimbabwe. We need a change in direction if we are to survive as a country.

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