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HUMAN RIGHTS CRISIS IN ZIMBABWE MUST BE ADDRESSED AT G8 SUMMIT IN CANADA

Lawyers Committee Briefing Paper for the G8 countries

Introduction

At the end of June, the G8 countries will meet in Canada for their annual summit. One of the items on the G8 agenda is development in Africa, and the meeting will be used to launch the G8's Action Plan for Africa. Key to this discussion is the New Partnership for Africa's Development (NEPAD), an African initiative endorsed by the OAU summit held in July 2001.

NEPAD's governing document contains a number of commitments agreed upon by all African states. These include commitments to democracy and good governance, and a "peer review" mechanism is being set up that will oblige the NEPAD states to monitor each other's compliance with these commitments. This mechanism is still in a formative stage, and its discussion is being held at government level, led by South Africa, Nigeria, Senegal and others. Human rights and civil society groups in these countries are, however, not as yet being involved in the process.

For this process to be beneficial, there are two basic requirements of NEPAD peer review that must be incorporated into the mechanism that is established. First, such review must be conducted using international human rights standards as the benchmark. Standards contained in conventions such as the *International Covenant on Civil and Political Rights* are recognized as having universal application, and their respect is central to democracy and good governance. Second, when a country is being reviewed, both its domestic and its foreign policies should be taken into consideration. Some states which might fare well in a review of their internal governance, are not complying with their obligations to ensure respect for human rights in neighboring countries and their record on this must also be examined.

It is crucial that the G8 countries raise these aspects of NEPAD at the summit, and demand that peer review of democracy and good governance incorporate these two elements. It is also incumbent upon the G8 leaders to raise the human rights situation in Zimbabwe with the main players in NEPAD, particularly South Africa and Nigeria. It must be made clear that without the immediate restoration of democracy and the rule of law in Zimbabwe, NEPAD will be critically compromised. The attempts by South Africa and Nigeria to broker talks between Robert Mugabe's Zanu-PF party and the opposition Movement for Democratic Change (MDC), to achieve a government of national unity, are not sufficient. The process may be exploited by the ruling party to extend its grip on power. The Zimbabwean people can only have their right to participate in government through freely chosen representatives restored by the holding of a new, fair and free election.

The Human Rights Crisis in Zimbabwe

The absence of democracy and the rule of law in Zimbabwe was clearly demonstrated in early March of this year, when Robert Mugabe declared himself winner of a deeply flawed presidential election. Conditions created by President Mugabe in the pre-election period were far from conducive to a fair electoral process, and its conduct was marked by widespread irregularities, condemned by numerous local and international independent observers. The opposition Movement for Democratic Change (MDC) has contested the election results in the courts. Zimbabwe was subsequently suspended from the Commonwealth and several countries imposed sanctions targeted at President Mugabe and his close supporters. [See Lawyers Committee Background Paper, March 15, 2002]

In the three months since the election, President Mugabe and his Zanu-PF party have sought to strengthen their grip on power, by launching attacks on the political opposition and suppressing the voices of all who dare criticize the government. Conforming to a pattern begun many months ago, the Mugabe regime is using physical violence and intimidation, arrest and detention on spurious charges brought under recently adopted legislation, the barring or disruption of public meetings and demonstrations, and threats and verbal attacks published in the government-controlled press. A variety of groups and individuals have been subjected to this treatment, including not only opposition leaders and supporters, but also independent journalists, non-governmental organizations, civil society activists, teachers, judges and lawyers.

Zimbabwe's human rights crisis is multi-faceted, involving issues of access to food as famine looms, the implementation of the controversial land redistribution program, political violence carried out by private militias and youth gangs, as well as the right of all citizens to participate in government. Several recent reports from local and international organizations, such as the Zimbabwean coalition Human Rights NGO Forum and the Danish Physicians for Human Rights, describe the extent of the crisis in great detail. The focus here, however, is on the repression of rights defenders, broadly defined to include all persons and groups who speak out against violations of human and constitutional rights and who work to secure basic rights for all Zimbabweans. The work of such individuals and organizations is crucial to ensuring an open, rights-respecting society, where democracy and the rule of law can flourish.

Three aspects of President Mugabe's persecution of rights defenders are here discussed: his continued use of the Public Order and Security Act; his attempts to prevent the functioning of non-governmental organizations; and his subversion of the judiciary and harassment of legal professionals.

The Public Order and Security Act

The Public Order and Security Act (POSA) was passed by the Zimbabwean Parliament (dominated by the ruling Zanu-PF party) in January 2002. At that time, local and international human rights activists, raised serious objections to the new legislation and voiced great concern that it would be used both in the run up to the election and in the post-election period to prevent peaceful political organising and speech and to harass government critics. [See Lawyers Committee statement, January 11, 2002] These fears have proved justified in the five months since the POSA was adopted.

Several provisions of the Act are in violation of fundamental human rights protected by international law and contained in instruments to which Zimbabwe is a party:

- The terms of the Act render “coercing or attempting to coerce the Government” a criminal offence, punishable by imprisonment for up to twenty years. “Coercing” is defined to include “constraining, compelling or restraining” through “civil disobedience or resistance to any law, whether such resistance is active or passive.” Anyone who engages in, advocates or organizes acts of civil disobedience, or threatens to do so, may be subject to prosecution under this provision.
- “Publishing or communicating false statements prejudicial to the State” are criminalized. A person may be fined or imprisoned for up to five years for publishing a false statement which carries the risk of promoting public disorder, or undermining public confidence in the police, armed forces, or prison services.
- The Act makes it an offence to make a public statement with the intention to, or knowing there is a risk of “undermining the authority of or insulting” the President. This prohibition includes statements likely to engender “feelings of hostility towards” the President, cause “hatred, contempt or ridicule” of the President, or any “abusive, indecent, obscene or false statement” about him personally, or his office. The use of the word “or” here indicates that even true statements are considered criminal.
- The Act contains broad provisions regulating the organization and conduct of public gatherings. By these provisions, a senior police officer is designated as a “regulating authority” and given the power to issue directions concerning a public gathering, to disperse a gathering (using “reasonable force” if necessary), to prohibit a gathering, or even to prohibit all public gatherings in an area for up to three months.

The language of the POSA contravenes freedom of expression, association and assembly, which are basic human rights contained in the *International Covenant on Civil and Political Rights*, the *African Charter of Human and Peoples’ Rights* and protected by the Zimbabwean Constitution. These rights are key to the existence of democracy and for the protection of other basic human rights. Nonetheless, the government has used the Act on numerous occasions, to ban rallies and demonstrations and to arrest, detain and prosecute individuals who have criticized its policies.

For example, the government used the powers contained in the POSA to break up a peaceful demonstration by a coalition of rights activists in April 2002. Several hundred activists were also arrested under the Act (see below). A number of journalists have also been arrested and charged with violating the terms of the POSA and the draconian Access to Information and Protection of Privacy Act.

Persecution of non-governmental organizations

The threat of arrest and prosecution under the POSA hangs over all human rights defenders, whose exposure of government-sponsored violence and other human rights violations is considered threatening by President Mugabe. Even before the enactment of the Act, such groups and individuals had been subjected to a variety of tactics seeking to silence them.

Throughout 2001, the government sought to discredit human rights organizations, such as the Amani Trust, an independent group that provides assistance to torture victims and seeks to expose the practice of torture in Zimbabwe. Using government-controlled newspapers, the authorities accused such groups of supporting neo-colonialism and engaging in fraudulent activity. In 2002, and particularly in the post-election period, the Amani trust, and other NGOs have been subject to even more virulent attacks, and staff have been threatened with physical harm.

In April 2002, the *Chronicle* newspaper reported that a war veterans leader, associated with the Zanu-PF regime, had called for the removal of passports from NGO representatives and said that they should be “punished” for spreading “anti-Zimbabwe propaganda.” The paper also quoted this leader as issuing a threat that “after the commercial farmers we will move to the NGOs and remove all employees working against the interests of Zimbabwe.”

Also in April, over 350 women members of the National Coalition Assembly (NCA) were arrested in Harare, as they gathered to plan their participation in public demonstrations. The NCA is an alliance of church, civic, labor and human rights organizations, which campaigns for a new constitution in Zimbabwe that would better protect human rights. The NCA demonstrations were scheduled for Saturday April 6, despite a government ban under the POSA. The women, some reported to be with infants and children, were held in detention for 24 hours, before appearing in court and being charged under the POSA with holding an illegal gathering.

The NCA demonstrations went ahead on April 6, despite the threat of arrest and attack by the police and armed forces. Sections of Harare, Bulawayo, Gweru and Mutare were sealed off by armed police and groups of demonstrators were reportedly chased as they tried to assemble. Over 60 demonstrators, all members of the NCA, were arrested and reports indicate that several were physically mistreated by the police.

In May 2002, press reports quoted the Home Affairs Minister, John Nkomo as stating that the government was moving to adopt measures for the deregistration of NGOs engaged in activity that it considered “anti-Zimbabwe.” Another government official reportedly stated that the government wants all NGOs operating in Zimbabwe to be registered so that their activities can be monitored. The government also ordered the Catholic Commission for Justice and Peace to disband its structures in the Matabeleland region, accusing it of undermining state activities.

There are many courageous individuals and organizations working in Zimbabwe to promote and protect basic human rights. These individuals and groups put themselves at risk on a daily basis in their efforts to improve the human rights situation for all Zimbabweans. The government’s intimidation, harassment, threats against and attacks upon such human rights defenders indicates its disregard for basic human rights principles and standards. The government views those who expose its extensive abuse of power as a threat and seeks to use legal and extra-legal mechanisms to silence them.

Attacks on lawyers and judges

An independent judiciary is key to ensuring the rule of law in any society and in Zimbabwe the judiciary has come under increasing governmental pressure. In November 2000, a mob of war veterans (armed militias allied with the Zanu-PF regime) stormed the Zimbabwean Supreme Court building, shouting threats against the judges and assaulting a guard. No-one was ever prosecuted in connection with the attack. Through such general intimidation as well as specific threats, several judges who demonstrated their independence from government influence were removed. In early 2001, Chief Justice Anthony Gubbay was among those forced to step down. In March 2002, another Supreme Court judge known for his independence, Judge Ahmed Ebrahim, also announced his resignation, only days after issuing a ruling that declared President Mugabe's electoral amendments prior to the presidential election illegal.

Many international human rights groups and legal organizations have condemned the Zimbabwean government's campaign to shape a judiciary that will support its policies and practices. The International Bar Association sent a delegation to Zimbabwe in March 2001 and reported serious concerns about the independence and impartiality of the judiciary and the fair and effective functioning of the justice system. Subsequently, in June 2002, Supreme Court judge Wilson Sandura was accused by the Zimbabwean justice minister of "undermining and not contributing to judicial independence in Zimbabwe" by maintaining contact with the IBA.

Lawyers in Zimbabwe who have sought to uphold basic constitutional and human rights, have also been subjected to attack and persecution. In April 2001, Tawanda Hondora, a well-known lawyer and chairman of the NGO Zimbabwe Lawyers for Human Rights, was assaulted by members of Zanu-PF, while the police stood by. The Zimbabwe Law Society has also been criticized by the government, and its leaders recently charged under the POSA. Sternford Moyo, president of the Law Society, and Wilbert Mapombere, its secretary, were arrested on June 3, 2002. The police alleged that the two lawyers had written a letter calling for the suspension of talks between Mugabe's Zanu-PF party and the opposition Movement for Democratic Change (MDC). The police claimed that Mr. Moyo and Mr. Mapombere intended to encourage public protests and they were subsequently charged with seeking the overthrow of the "constitutional government of Zimbabwe."

In April 2001, Sternford Moyo had sent a letter to the Zimbabwean police commissioner, expressing concern about the rise in incidents of police officers harassing and attacking lawyers. In its 2001 annual report, the Law Society also drew attention to the "growing atmosphere of lawlessness" in Zimbabwe and voiced alarm about the state of the judiciary and the forced resignation of Chief Justice Gubbay. The Law Society has received international recognition for its support of the rule of law in Zimbabwe and for its outspoken defense of the independence of the judiciary. The arrest of Mr. Moyo and Mr. Mapombere immediately sparked international condemnation, including from the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Param Cumaraswamy. The Rapporteur characterized the arrests as reflecting "the continuation of the systematic attacks on the independence of judges and lawyers by the Government and its agencies."

Conclusion and call to action at the G8 summit

The Lawyers Committee continues to receive reports that the government campaign against independent voices in Zimbabwe is escalating. The most recent use of the POSA to charge senior lawyers on spurious grounds represents a new front in the persecution of human rights defenders. The licensing mechanisms contained in the Access to Information and Protection of Privacy Act came into effect on June 16, and will serve to further increase government control over the media and prevent journalists who are critical of the government from operating. Human rights NGOs are being visited by the police and other government agents, in increased efforts to intimidate them into silence.

The human rights crisis in Zimbabwe is continuing to deepen and its damaging consequences are already being felt throughout the region. It is therefore crucial that those who speak out against violations of human rights and who work to assist victims, are themselves protected from attack and persecution. The government's treatment of human rights defenders provides an indicator of the extent of its violations of human rights throughout the country, and without independent documentation and exposure of such violations, they are likely to continue and get worse.

The Lawyers Committee for Human Rights is calling upon the United States government and its partners in the G8 to ensure that these matters are raised at the summit to be held on June 26 and 27. Zimbabwe must not be swept aside at this important meeting and it should be given a central place in the discussion of NEPAD's implementation. The G8 meeting must impress upon South Africa, Nigeria and other African states that the future of NEPAD hangs on their ability and willingness to address the Zimbabwean crisis in accordance with international standards and to ensure the restoration of democratic legitimacy and the rule of law.