

29 August 2005.

## STATEMENT BY THE LAW SOCIETY OF ZIMBABWE

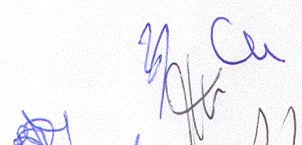
In respect of the Constitution of Zimbabwe Amendment (No. 17) Bill

The Law Society of Zimbabwe has considered the Constitution of Zimbabwe Amendment (No. 17) Bill and condemns it in the strongest terms. The Amendment if promulgated will seriously erode if not remove the enjoyment of the fundamental rights to property [section 16], secure protection of the law [section 18(9)] and freedom of movement [section 22] from the people of Zimbabwe who rely on the Constitution for protection against unchecked State action. The bill also seeks to reconstitute the Parliament of Zimbabwe as a bi-cameral legislature consisting of a Senate and a House of Assembly, with a significant number of representatives being appointed by the President. The resultant bloated Parliament imposes fiscal obligations on the State which are not inconsequential given the state of our economy.

There are a number of reasons why the Bill fully merits censure.

First and foremost, it seeks to negate the most fundamental principle of democratic government, that is the separation of the powers of the Legislative, the Executive and the Judiciary.

The effect of the bill, if enacted, will be to elevate to constitutional provisions, legislation which will allow the executive to deprive property owners of their property, contrary to the declaration of rights, and to oust the jurisdiction of the courts. The deprivation of the property owners of their property in terms of the proposed amendment can be done in essence, upon a mere whim. This serves to trivialise the constitution, which is the bedrock of the law of Zimbabwe. As stated earlier, it is vital in any democratic country that there are checks and balances between the various arms of Government, to prevent abuse of power, and capriciousness on the part of those who wield power on behalf of the people. The effect of ousting the jurisdiction of the courts in these matters is to arrogate to the Executive a monopoly of wisdom, and to treat the judiciary with disrespect. This is a direct and undisguised frontal assault on the independence of the judiciary.

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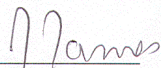
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
Furthermore the bill will render those cases regarding land which have been finalised or a pending in the courts an exercise in futility. The bill has a retrospective effect on those who had acquired rights, or were seeking to have their rights enforced, and deprive them of these rights. This is patently wrong and unfair,

The bill will allow the Executive to restrict the movement of people : this again is contrary to the basic rights of people. This is of concern because the Executive can act on the basis of vague and undefined criteria, such as the national interest : this clearly brings in an element of subjectivity and can lead to abuse.

The bill also provides for the creation of a senate : it allows the President of Zimbabwe to appoint a certain number of Senators, which is contrary to the principles of democratic government, where the people elect their own representatives. This is a perpetuation of the undemocratic practice of the appointment of members of parliament, as presently constituted, by the President.

In the circumstances the Law Society of Zimbabwe urges the Government of Zimbabwe to abandon its current moves through Constitutional Amendment No 17 to remove protection of the law and oust the power and jurisdiction of the judiciary to adjudicate past, current and future cases of alleged breach of the Zimbabwe bill of rights, but instead commence an open, free and fair consultative constitutional review process leading to the enactment of a new constitution.

  
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J JAMES      President Law Society of Zimbabwe

  
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JAMES P MUTIZWA      Vice President Law Society of Zimbabwe

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29 August 2005.



COLIN KUHUNI Councillor



JOSPHAT TSHUMA Councillor



PERPETUA DUBE Councillor



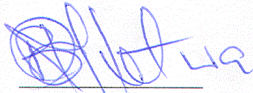
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