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SWAZILAND: New Decree endangers fundamental rights and the rule of law

Amnesty International is gravely concerned over the threat posed for human rights in Swaziland by the recently issued law, Decree No.2. The Decree, issued by the Head of State, King Mswati III, on 22 June 2001 further restricts the exercise of fundamental rights that had already been hampered by the longstanding suspension of the country's constitution and bill of rights.

"This Decree comes as a culmination of recent trends marked by the government's tendency to swiftly issue "legal notices" in order to nullify the effect of court rulings or prevent legal challenges and by its direct criticism of judges and law officers for their rulings and other actions," Amnesty International said.

In May 2001 the organization's representatives visiting the country received information indicating that the rule of law and the impartial administration of justice are being eroded and that organizations or individuals, including judges, attempting to challenge this situation or to report on it are being subjected to harassment.

"This Decree represents an attack on the independence of the judiciary, and, on key issues, removes the right to legally challenge actions of the Executive. Furthermore, the law creates new offences which may result in the imprisonment of government critics solely for the non-violent expression of their political views," Amnesty International added.

The Decree confirms that the appointment of judges is at the sole discretion of the King who also determines the terms and conditions of such appointments. The independence of the judiciary is further undermined by other provisions which limit the jurisdiction of the courts or which overturn existing court rulings.

In recent months the High Court and Court of Appeal have made rulings favourable to applicants appealing against actions of the Executive. Some of these actions have amounted to violations of internationally recognized human rights, including the politically-motivated banning of news publications and the removal at gunpoint from their homes of two rural communities protesting against the imposition of a Chief. Decree No. 2 prohibits any legal challenge in a court of law to any matter relating to the appointment, removal or functions of the Chiefs, or to the proscription of any publication, for which latter act the government minister concerned "shall not" give any reasons.

In another instance of contempt for judicial rulings, the Decree reinstates and extends the 1993 Non-Bailable Offences Order which, on 14 June 2001, the Court of Appeal had found to be a "draconian" law, "inconsistent with the presumption of innocence and an invasion of the liberty of the subject."

The United Nations (UN) General Assembly calls on all states to uphold its 'Basic Principles on the Role of the Judiciary' and to "respect and observe the independence of the Judiciary". As a member of the UN, Swaziland should respect and implement these principles which are vital to ensuring the impartial administration of justice and respect for the rule of law.

The African Charter on Human and Peoples' Rights, which Swaziland has ratified, enshrines in Article 7 the right to be presumed innocent until proper court proceedings have proved otherwise.

The Decree lays down harsh penalties for any person who disobeys an order in any law made by the King or offends against the dignity or office of the King or the Queen Mother. Anyone convicted of such offences could be imprisoned for up to ten years and/or fined up to Emalangeni 50,000 [=£4,410 or \$6,202]. The wide and vaguely phrased offences, together with the reinstatement of the Non-Bailable Offences Order, have increased fears that government critics will be subjected to arbitrary detention or politically-motivated prosecutions solely on the grounds of peacefully held political beliefs.

"The impact of these provisions combined with the unchecked powers of the government to ban publications, can only contribute to a culture of silence and fear," Amnesty International concluded.

Background

In appointing judges, the King has to act on the advice of the Minister of Justice and Constitutional Affairs alone who is a politician reportedly without legal qualifications. The already weakened Judicial Services Commission has no role. The Decree entrenches the untrammelled discretion of the Executive, including by validating and removing from the jurisdiction of the courts "all acts done by a Minister or public officer...before the coming into operation of this Decree..."

The Decree gives the Attorney General wide discretion to prohibit any inquiry into any matter pending before the King. The position of the Attorney General has been made newly powerful under the Decree, notwithstanding a recent High Court challenge to the appointment of the current post-holder. The Decree entrenches the role of the Attorney General as the principal legal adviser to the King and subordinates to him all legal advisers and the prosecution service. The Attorney General is also given wide discretion to appoint government law officers as "special magistrates" to hear any case.

The Decree once again obliges courts to refuse bail to any person charged with any of a number of common law or statutory offences, including High Treason, or contraventions of sections of the Public Order Act or the Sedition and Subversive Activities Act. The police or prosecuting authorities do not have to prove the existence of a prima facie case against the accused. In June 2001 some 1,000 people were reportedly in custody awaiting trial after being denied bail under the 1993 Order. Some of them had been held for more than two years awaiting the start of their trial. Amnesty International's representatives were informed that a significant number of accused, when finally brought to trial, are acquitted for lack of evidence against them.

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