**Constitutional Amendment Bill (No 2) BILL, 2019**

**SIMPLIFIED VERSION WITH CLAUSES AND SECTIONS.**

**Proposed changes to the Constitution**

In 2013 Zimbabweans voted for a new Constitution. Prior to that, the public had participated in the Constitution making process by giving their views on what they wanted to be included in the Constitution. The Constitution is the highest law of the country and all laws, customs, practice and conduct should be in harmony with this law. The Constitution reflects the will and aspirations of the people and as such it should not be tempered with by regularly making changes to it.

The Constitutional Amendment Bill (No.2)-H.B.23, 2019 sets out proposed changes to a number of provisions in the Constitution. A Bill is a proposed law which has not yet been approved by Parliament and the President. The leaflet summarises and simplifies the proposed changes as well as some of the implications of such changes. Before parliament debates the Bill they are going to seek for the views of people across the country. Public hearings are expected to begin in April 2020. In order for you to participate and add your voice you should know what the Bill says.

The Bill seeks to amend various provisions of the Constitution namely:

1. Provisions regulating the election and appointment of the Vice President; ii. Provisions regulating the maximum number of cabinet ministers whom the President can appoint from outside of Parliament; iii. Provisions relating to the women’s parliamentary quota system; iv. Provisions relating to the timing of the carrying out of the delimitation of the boundaries of electoral constituencies; v. Provisions governing the procedures for selecting and appointing judges to the Supreme Court bench and the Constitutional Court bench; vi. Provisions regulating the tenure of office of judges of the Constitutional Court; vii. Provisions governing the procedures for selecting, appointing and removing the Prosecutor General;

2

The following table summarises the proposed changes in light of what the current position is. It also gives a summary of what the proposed changes may mean.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Clause/s** | **What it provides for** | **Section changed in the Constitution** | **Simplified provision** | **Simplified summary** | **Implications** |
| 1 | Bill’s short title | 1 | Not applicable | Constitution of Zimbabwe (No. 2) Act 2019 | None arise |
| 2 | Interpretation | 2 | Existing/new Constitution of Zimbabwe | Constitution means Constitution of Zimbabwe | None arise |
| 3 | Qualifications for election as President and Vice President | 91 | Provides for qualification for election of the President and Vice President | The Bill removes the section which requires presidential candidates to choose two people who will stand for election together with them as the first and second vice presidents. This section is not yet operational. It is supposed to take effect in 2023. Therefore, if the Bill is passed the two vice presidents will be appointed by the president who can remove them as and when he/ she desires to do so.  | People will not participate in choosing their vice presidents as this will be left entirely to the President. |
| 4 | Election of President and Vice Presidents | 92 | Provides for election of President and Vice Presidents |
| 5 | Challenge to Presidential election | 93 | Challenge to presidential election including that of the Vice President |
| 6, 7 | Term of office of the President and Vice President(s) | 94 | Provides for the assumption and term of office of the President and Vice President(s) after election |
| 8 | Removal of President from office | 97 | Provides for the removal of both President and Vice President(s) from office |
| 9 | Succession | 101 | It provides that the first vice president takes over the office of President- in the event the President dies, resigns or is unable to continue as President | The Bill changes this by giving the power to choose the president, to the party to which the former president belonged. | The party therefore is free to choose anyone from their party even if that person may be unpopular with the majority of the people in the country. Should a political party be given the privilege of choosing a successor to the president or this right should be extended to the general populace? |
| 10 | Appointment of ministers and deputy ministers outside parliament | 104 | It provides for the appointment of a maximum of 5 Ministers and Deputy Ministers outside parliament by the President  | The proposed changes if passed will see the President appointing 7 people who are not MPs or Senators as Ministers.   | The increase in the number of Ministers means that there will be an increase in government expenditure. The question that needs to be answered is whether or not it is desirable to increase government expenditure in an environment where the government is facing challenges arising from a huge wage bill. |
| 11 | Composition of National Assembly | 124 | Provides for the appointment of 60 women in National Assembly (6 elected from each of the 10 provinces) in addition to the 210 members elected from the 210 constituencies. This provision was effective for the 2013 and 2018 parliaments. | The Constitution has a provision which reserves seats for women. This system is known as a quota system and it is used to try and address the slow pace of change in participation by women in parliament. In this case the reason for the quota system is ensuring representation of women in the National Assembly and in decision making positions.  | Are there no other ways of achieving equal women representation which can be used apart from amending the Constitution? Should not the government address this by making sure that there is 50:50 representation as required by the Constitution?  |
| 12 | Setting boundaries for elections  | 161 | Provides for the removal of the section which provides that drawing/ setting of electoral constituency boundaries should be done immediately after the Census. | Provides for the setting up of boundaries for elections by the Zimbabwe Electoral Commission without a population census.If the changes are passed the setting of boundaries for constituencies will not be done after the census.  | The reason for setting boundaries for constituencies after elections is that the Zimbabwe Electoral Commission will be guided by the population in setting the boundaries. The next Census is in 2022 and government is arguing that if delimitation is linked to the census then ZEC will not have ample time to carry out delimitation ahead of the 2023 elections.Is the Census not necessary for the setting of electoral constituency boundaries?  |
| 13 | Appointment of judges to higher courts | 180 | Provides for the removal of the section which states that public interviews should be conducted by the JSC for judges who want to be appointed to the Supreme Court and Constitutional Court and replacing it with a provision which gives the President power to appoint judges of the Supreme and Constitutional Courts. | The Constitution provides that whenever there is need to appoint judges the Judicial Service Commission which is the commission responsible for all issues relating to judges will advertise the position. They will then invite the President and the public to nominate prospective judges. Thereafter interviews will be conducted publicly. The JSC will then prepare a list of 3 qualified persons and the president must then appoint 1 nominee from the list.  | This change means that the public will not participate in the appointment of judges. It also means that the appointment may not be on the basis of merit as there is no way that the public will know whether the people appointed have the required skills and competencies. There is also the risk that the judges appointed by the president may find it difficult to be independent as they owe their loyalty to the president who appointed them. |
| 14 | Retirement age of judges | 186 | Provides for changes to the time in office of Judges of the Constitutional Court and Supreme Court | The Bill proposes to change this by allowing those who have reached the retirement age of 70 years who still want to continue to work as judges to continue doing so.  | If the Bill is passed Judges will be allowed to extend their time in office as judges annually for a period of 5 years. They will be required each year to provide a medical report outlining their mental and physical fitness. |
| 15 | Change of Civil Service to Public Service | 199 | Provides for one single civil service responsible for the administration of Zimbabwe | The term “civil service”, wherever it appears, is now replaced by “public service” | Could the proposed change not have been effected through other means and not changes to the Constitution? |
| 16 | Appointment and role of Chief Secretary to the office of the President and Cabinet | 204 | Provides for the appointment of ambassadors and other representatives | Provides for the appointment of the Chief Secretary as the most senior member of the Public Service by the President as well as the role and term of office of the Chief Secretary as fixed by the President | Could the proposed change not have been effected through other means and not changes to the Constitution? |
| 17 | Amendment of functions of the Zimbabwe Human Rights Commission | 243 | Provides for Changes to the functions of the Human Rights Commission and creation of the office of the Public Protector | The Bill introduces a provision which states that the provisions relating to receiving and considering complaints from the public, investigating conduct of authority or person and securing appropriate remedies will not apply to the Human Rights Commission if the issue under consideration relates to complaints of abuse of power or maladministration on the part of any organ of the state, public institutions or officers of those organs or institutions. | If the Bill is passed, the Human Rights Commission’s mandate will no longer extend to issues pertaining to abuse of power and maladministration where state institutions and public officers are perpetrators. The changes will also create the office of the Public Protector which will deal with all issues relating to maladministration and abuse of power. This office was there before the current Constitution and its mandate is currently being covered by the Zimbabwe Human Rights Commission. Is it really necessary to create another mechanism when currently the State is struggling to fund the Human Rights Commission? Is there no risk and likelihood of duplication of effort and a waste of resources? |
| 18 | Creation of the office of the Public Protector (formerly the Ombudsman) | 244 | Provides for the functions of the Zimbabwe Human Rights Commission | Provides for the creation of the Public Protector office and its functions. |
| 19 | Appointment of the Prosecutor General and other officers | 259 | Provides for the appointment of the Prosecutor General, term of office, removal from office and conditions of office | The Bill proposes to change this by removing the public interview process and giving the power to appoint the PG to the president. The Prosecutor General will now be appointed by the President in consultation with the JSC without public interviews and may be removed. Provides for the removal of the Prosecutor General from office on grounds of:1. Failure to perform duties due to physical or mental issues
2. Gross incompetence
3. Misconduct

Provides for removal of the Prosecutor General by the President through a tribunal | The appointment of the Prosecutor General by the president has implications on the principles of independence, impartiality and competence of the Prosecutor General.The question is whether it is desirable to have such an important appointment being made without public participation. Public participation enhances openness and allows people to assess whether the appointment is on merit or otherwise. Furthermore, will the office be able to maintain its independence from the executive in light of the fact that the appointment is made solely by the President? |
| 20, 21, 22 | Provincial and metropolitan councils and their committees | 268, 269 271, 272 | Section 268 provides for the set up and composition of provincial and section 269 for the metropolitan/city councils | The Bill proposes to remove MP’s from membership of provincial councils, merge the provisions relating to provincial and metropolitan councils by removing the special provision relating to the latter in that they will no longer be chaired by mayors but be elected. | MP’s will be removed from the provincial and metropolitan councils. Mayors will no longer automatically chair the metropolitan councils. The increase from 2 to 10 members may have cost implications on the residents who have to fund the proposed changes.  |
| 23 | International laws and agreements | 327 | Provides for international agreements and laws and how they are concluded and executed | Substitutes “foreign organisations” with “international organisations” | Substitution of the term foreign organization with international organisations limits parliament’s oversight functions in the conclusions and execution of international agreements thereby weakening the need for checks and balances amongst the three arms of government.What does this mean for the oversight role? |
| 24 | Definition of public service | 332 | Provides definitions of words and services in the Constitution | Now defines “public service” which replaces “civil service” | These are minor amendments to the Constitution that have no serious bearing on it. |
| 25 | Resignations | 341(f) and (g) | Provides for members of the provincial councils to resign to the chairperson of the council and metropolitan councils to the mayor of the province | Both members of the provincial and metropolitan councils send their resignations to the chairperson of the council |
| 26, 27 | Minor amendments | Sixth Schedule, other minor amendments | Talks about arrangement of paragraphs | “civil service” is now “public service” wherever it appears |

**Sources**

Constitution of Zimbabwe Amendment (No. 2) Bill, 2019

International Commission of Jurists, Legal Advisory Opinion, Re: Zimbabwe’s Constitutional Amendment No. 2 Bill, 17 January 2020

Zimbabwe Lawyers for Human Rights, Analysis of the Constitution of Zimbabwe, Amendment (No. 2) Bill, 2019

Legal Resources Foundation-Understanding the Constitution of Zimbabwe Amendment (No. 2) Bill, 2019