



Leadership academy rejects constitutional amendments

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Forum take stand against constitutional amendments

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## Will a Constitution amendment make Zimbabwe more democratic?

### Staff Reporter



Rashid Mahiya, CIZC Chairperson

Leaders of various civil society organisations have described attempts by President Emmerson Mnangagwa's government to amend the 2013 national Constitution as a mockery to democracy as amendments will

erode the democratic gains achieved in 2013 when a people driven constitution was voted for by at least 94 percent of voters during the constitutional referendum.

The proposed amendments approved by Cabinet in December 2019 relate to the appointments of Vice Presidents, the Prosecutor General, Public Protector, promotion of judges and the terms of office of judges.

Crisis in Zimbabwe Coalition Chairperson Rashid Mahiya reminded government and political parties that the 2013 constitution was a result of various contributions by citizens and as such any amendments to the Constitution must seek to further entrench democracy and deepen the enjoyment of rights by citizens.

**"We remind political parties and Cabinet that the 2013 Constitution of Zimbabwe was bred out of popular and concerted advocacy by citizens and civil society and through its adoption in 2013 is an expression of the will of citizens. In our view, the proposed amendments seek to entrench the interests of individuals and dent the independence of an already captured judiciary", said Mahiya. He added that "As an umbrella body of civic society organizations in Zimbabwe advocating for democratic development, we reiterate that the preservation and full implementation of the Constitution is a duty of every citizen regardless of political preferences and that the Constitution, if fully imple-**

mented and adhered to, is a lasting solution to Zimbabwe's problems."

In a statement, the Law Society of Zimbabwe also indicated that there is need to guard the constitution jealously.

**"The proposed amendments to the Constitution at most, are unnecessary, retrogressive and are not in the interest of transparency, good governance and respect for the rule of law. Accordingly, the LSZ categorically denounces them."**

The Law Society of Zimbabwe further emphasised that the provisions to the Constitution ought to be **guarded jealously...and protected in pursuance of the supremacy of the rule of law.** Any proposed amendments to the Constitution should be for the people and by the people.

Speaking to New Zimbabwe.com recently ERC Director Tawanda Chimhini said more had to be done in strengthening the Constitution instead of creating a wall on other stakeholders who supported the Constitution in 2013.

"It is disturbing that the same government that is calling for dialogue and national cohesion on one hand is shutting the door on all other stakeholders in an important exercise such as amending a Constitution that was overwhelmingly supported by Zimbabweans in 2013," Chimhini said.

"While recognising that government can initiate changes to the legislation, political context of extreme polarisation and encouragement for Zimbabweans to work together by regional partners, Zanu PF and government would have more to gain from an inclusive approach to changing policies than stubbornly doing it alone banking on their parliamentary majority.

"It is of great concern that the developments are coming at a time when reforms should define the country's attempt to extricate itself from current challenges including international isolation claw-

ing back the gains of the 2013 Constitution will only serve to widen the rift between those in authority and those outside of it."

The ERC director said judges who are appointed at the discretion of the Executive undermined perceptions of fairness in the event of disputed elections given that the Executive is an interested party in elections.

"It is unfortunate that the proposed changes have a direct bearing on future elections particularly on issues of inclusion and election dispute resolution given the disputed nature of previous ones.

"The ERC would have hoped that any constitutional changes, once deemed to be necessary and priority seek to strengthen the credibility of future election processes rather than weaken them."

Gwanda Residents Trust Director Bekezela Maduma Fuzwayo rejected in totality constitutional amendments proposed by government.

**"We feel that the government or rather ZANU PF failed to consult with regards to constitutional amendments. The amendments that they are focusing on are not people driven but rather efforts by ZANU PF to strengthen its hold on power. Stakeholders within residents associations will agree with me that what we need amendments to section 14 of the constitution to allow for smooth devolution. This was totally ignored based on the current proposed amendments. We therefore reject the proposed amendments in totality. They are not people driven and do not reflect the will of the people who were at the center of this constitution when it was developed."**

Charles Thole, a Regional Officer for Zimbabwe Civic Education Trust indicated that the constitution amendments are not appealing to the people **and therefore "we reject the amendments. Infact we do not need amendments now. We actually call for the full implementation of the constitution."**



# Bill Summary: Constitution of Zimbabwe Amendment (No. 2) Bill [H.B. 23, 2019]

On January 17, 2020, the Speaker gazetted the Constitution of Zimbabwe Amendment (No. 2) Bill [H.B. 23, 2019] (Bill).

Under Section 328 of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (Constitution), a Constitutional Bill (i.e. a Bill that seeks to amend the Constitution) may not be presented in either the Senate or National Assembly unless the Speaker has given at least 90 days' notice in the Gazette of the precise terms of the Bill. As such, April 17, 2020, is the earliest date on which the Constitutional Bill may be tabled in Parliament for its First Reading. In the interim, Parliament is required to invite and convene meetings for the public to express their views on the proposed Bill immediately after the Speaker has given notice of the Constitutional Bill (Section 328(4)).

To pass, the Bill will require at its last reading in the National Assembly and the Senate, the affirmative votes of two-thirds of the membership of each House. Section 328(5). Because the Bill does not seek to amend Chapter 4 or Chapter 16 of the Constitution, it will not be put to a referendum. Section 328(6).

Summary of proposed amendments  
Proposed amendments on the same subject will be discussed under the same headings:

Clauses 2 to 8 – *remove the constitutional provisions relating to the nomination of Vice-Presidents as running mates prior to an election and the taking over by the first Vice-President to finish off the President's term if the President ceases to hold office before the end of his or her term.* These provisions were due to become operational in 2023. The proposed amendment retains the status quo

where the President appoints Vice Presidents after being elected into office. In turn, clause 9 adopts the provisions in the Sixth Schedule as the operative provisions relating to the question of succession to the presidency, i.e. if the President ceases to hold office before the end of his or her term, the Vice-President who last acted as President **takes over until the former President's party nominates a successor.**

Clause 10 – proposes to *increase the number of Ministers (and deputy Ministers) who can be appointed from outside Parliament from five to seven.*

Clause 12 – proposes to amend section 161 so as to *remove the link between delimitation and population censuses.*

Clause 11 – *extends the provision for the party-list women members of the National Assembly by another two extra Parliaments (from two to four Parliaments), and makes provision for the party-list representation of youths in the National Assembly adding a further 10 youths to the National Assembly.*

Clauses 13 – *amends the constitutional provisions for the appointment of judges.* The President, on the recommendation of the JSC, will be able to appoint (promote) a sitting judge of the Supreme Court or High Court to a higher court without the judge having to be interviewed and without the JSC having to interview other possible candidates for the post.

Clause 14 – *amends the constitutional provisions judges' tenure in office.* On reaching 70 years of age, Judges and acting judges of the Constitutional Court and the Supreme Court, if they wish, may be allowed to continue in office for periods of one year at a time so long as the President, after consultation with

the JSC, is satisfied that they are fit to continue. However, under section 328(7) **of the Constitution, if a "term-limit provision", i.e. a constitutional provision that limits the length of time a person may hold office, is amended so as to extend that time, the amendment will not apply to anyone who held the office before the amendment.**

Clauses 15, 24, 26 and 27 – *rename the Civil Service.* Once the amendment is passed, the Civil Service will once again be referred to as the Public Service. The amendment clarifies that the Public Service is there to implement the policies of the Executive branch of the Government, to assist the Executive in the administration of the country and to deliver public services to the people. Currently, the Constitution gives the Civil Service responsibility for the administration of Zimbabwe.

Clause 16 – *introduces provisions for the appointment and role of the Chief Secretary to the Office of the President and Cabinet and his or her deputies.* It empowers the President to fix their terms of office even if the Chief Secretary is "the most senior member of the Public Service". **Conditions for other members of the Public Service are fixed by the Civil Service Commission (to be renamed the Public Service Commission).**

Clauses 17 and 18 – *reintroduce the office of the Public Protector who will take over the function of protecting the public against abuse of power and maladministration by the State and public institutions and by officers of such institutions.* The Public Protector will be appointed by the President subject to *consultation* with the JSC and the Committee on Standing Rules and Orders.

Clause 19 – *amends provisions relating*

*to the appointment of the Prosecutor-General.* The President will still appoint the Prosecutor General on the advice of the JSC, but without the post being advertised and intervention of a public interview procedure. The JSC will nominate a suitable candidate (rather than come up with a list) who the President will appoint. Clause 19 makes special provision for the Prosecutor-General's removal from office: it shall be for "serious" rather than "gross" misconduct and by way of a Tribunal appointed by the President at his own initiative. The President is not bound to follow the tribunal's findings.

Clauses 20, 21, 22 and 25 – *remove members of Parliament from the membership of provincial councils,* merge the provisions relating to provincial and metropolitan councils by removing the special provisions relating to the latter (they will no longer be chaired by mayors, but be elected in terms of section 272 like provincial councils), and provide for the election of 10 of the members of Metropolitan Councils by a system of party-list proportional representation.

Clause 23 – *removes reference to "foreign organizations or entities" from the provision entitling Parliament to approve or veto agreements concluded with non-State institutions, e.g. foreign banks. Parliament's authority is limited to agreements concluded with "international organizations", i.e. organizations whose members include independent States.*

Source: Southern African Parliamentary Support Trust (SAPST)

## WALPE Statement on Gazetting of Constitutional Amendment to Extend



Sitabile Dewa, WALPE Director

Women's Academy for Leadership and Political Excellence (WALPE) notes with serious concern the recent gazetting of far reaching constitutional amendments by the Government of Zimbabwe through the Clerk of Parliament. Of grave disquiet to WALPE is the envisaged extension of the women's Parliamentary proportional representation quota system which gives 60 seats to women based on the House of Assembly votes garnered by a political party in each of the 10 provinces. In the gazette, the Government proposes to extend the **women's parliamentary quota system** by amending Section 124b of the Constitution which provided that the system would run for the first two Parliaments from 2013 and thus was scheduled to expire in 2023.

This proposed amendment means that the system will continue for a further 10 years in its current format. According to

our research published in October 2019 titled **'The Efficacy of the Women's Parliamentary Proportional Representation Quota System'**, 64% of the participants preferred that the gender balance provided for in Sections 17, 56 and 80 of the constitution be fulfilled. To note is that research participants were drawn from ZANU PF, MDC, MDC T, **independent candidates, women's rights activists, civil society leaders, Parliament, the Zimbabwe Electoral Commission (ZEC), the Zimbabwe Gender Commission, youth representatives, disability rights organizations, aspiring women leaders, women and councillors etc).**

Furthermore, participants indicated that in the event that the proportional representation quota system is continued, there is need to change its structure and format so that it becomes meaningful to women. The current structure and format opens it up for abuse and manipulation by political parties whose top decision making bodies are dominated by men. In addition, the system has not resulted in the envisaged increase in the number of elected women with the 2018 parliament realizing a drop in directly elected women from 26 in 2013 to 25 in 2018. It is thus self-evident that the system is not yielding the desired results hence the need to change approach. Women also felt that the extra 60 seats were a bur-

den to the fiscus and in the event of an extension, the 60 seats should be taken from the existing 210 constituency seats so that resources are directed to social service delivery in areas such as education, water, sanitation and health.

The proposed changes also fly in the face of the progressive realization of the rights of women set out in Sections 17, 56 and 80 of the Constitution. By seeking to amend the Constitution instead of fulfilling its current provisions on gender equality at all levels, the State seeks to reward itself for dereliction of duty. It is the duty of the State and all its organs to adhere to the supreme law of the land and by amending the Constitution without just cause, the Government has clearly failed in this regard. In any event, there was need to have allowed the Zimbabwe Gender Commission to evaluate the success of the system and propose solutions that could be implemented in order to fulfill Sections 17, 56 and 80. Thus the act of pushing for a constitutional amendment without allowing the institution responsible for ensuring gender equality an opportunity to do its work is disingenuous on the part of Government.

As WALPE, we therefore reject in totality the proposed amendments and we are in the process of finalizing a court challenge to seek the intervention of the

Constitutional court to order the Government to implement the 2013 constitution in letter and spirit especially gender parity provisions. We will also mobilize women across Zimbabwe to reject the proposed amendments during Parliamentary public hearings. WALPE will also petition Government to reconsider the piecemeal gender equality amendment. Democracy demands that the voice of the people should be heard on all important matters and gender equality is a critical issue to national development and thus cannot be left to be decided only by a few representatives who can easily be compromised by the whipping system. Therefore, the State can do justice to the issue of extending the quota system by calling for a referendum if it considers its proposal to be in the best interest of the nation.

As an organization, we underscore our commitment to promote gender equality in leadership and appeals to the Government to fully implement the constitution which is of paramount importance to national development. We also stand ready to defend the Constitution which has given women extensive rights and was overwhelmingly endorsed by 96% of the voters in the 2013 referendum.

# Constitution of Zimbabwe Amendment (No. 2) Bill: Forum Takes Stand Against Democratic Retrogression

The Zimbabwe NGO Forum (the Forum), notes with concern ongoing attempts by the government of Zimbabwe to amend the Constitution following recent gazetting by the Clerk of Parliament of the Constitution of Zimbabwe Amendment (No. 2) Bill (the Bill), initially on 31 December 2019 and then on 17 January 2020, presumably to correct procedural anomalies in the original gazetting. If the Bill was to pass through, the government would have amended the Constitution twice within a period of just over six years. This move is retrogressive and erodes the tenets of democracy.

The Forum notes with concern that despite the significance of the changes being sought through the Amendment Bill, there has not been any attempts by the government to explain why it is necessary to tinker with the Constitution, which is the supreme law of the land in the manner proposed or at all. This goes to the core of constitutionalism and rule of law, considering the amendments are being sought against the backdrop of non-compliance with the Constitution by the government, evidenced by the unduly prolonged constitutional alignment process and non-implementation of some of the provisions of the Constitution. Some of the provisions being amended have not even seen the light of day. The people of Zimbabwe have not been given the opportunity to experience fully the Constitution which the citizens adopted through a decisive referendum in 2013. This move by the government disregards the wishes and aspirations of the people of Zimbabwe. Parliamentarians and the executive must hold sacrosanct the will of the people and not undermine it.

The proposed amendments follow the first amendment to the 2013 Constitution which came into effect on 7 September 2017, giving the President powers to unilaterally appoint the Chief Justice, Deputy Chief Justice and a Judge President of the High Court. The omnibus Bill proposes sweeping changes to allow the President to unilaterally appoint and remove the Vice President(s) outside a popular mandate; giving the President more powers in the appointment and

extension of tenure of judges of superior courts; extending the women's quota system and creating additional 10 seats for the youth; limiting the powers of the Zimbabwe Human Rights Commission by placing some of its functions in the hands of a Public Protector appointed solely by the President; cutting on Parliamentary oversight over agreements entered into by the executive with foreign organizations and companies; extending Presidential powers in the appointment and removal of the Prosecutor-General, and extending executive representation by un-elected officials in Cabinet, among others.

The running theme in the proposed amendments is cutting back on checks and balances and separation of powers. This undermines the foundational tents of democracy as power is concentrated in a medieval monarch-type of executive head of State and government with extended powers to hire and fire constitutional officers and make far-reaching decisions with limited oversight. The nature of the amendments violates established international norms, accepted into our constitutional order by the Constitution. The proposed amendments take Zimbabwe back to the Lancaster House Constitution whose executive powers and attenuated oversight mechanisms were overwhelmingly rejected by Zimbabweans on 16 March 2013 as they elected unto themselves a more democratic and progressive Constitution more in tune with their wishes and aspirations.

Amendments ostensibly proposed to further equal representation by extending the women's parliamentary quota and introducing a youth quota mask reality and have unintended consequences of achieving the opposite. Global trends make clear that driving women and youth representation in key decision-making organs of State by means of quota allocation undermine real gender and youth empowerment and amounts to treating symptoms instead of the problem.

Real transformation is achieved when more women and youth access the top

echelons of power through efforts made to ensure level competing turf for women and youth. In any event, the Constitution mandates as 50/50 gender representation. It is also fact that under the current 9th Session of Parliament, elected Parliamentary representation of women dropped relative to the 8th Session. Extending the women's quota is a way to mask these real trends. Likewise, the token creation of 10 youth quota seats in Parliament inadvertently displays the skewed demographic representation in Parliament in a country in which youth constitute the majority of the adult population, undermining actual work needed to ensure effective, meaningful and demographically-proportionate youth representation in Parliament.

The gazetted Bill wholesomely undermines constitutionalism, separation of powers, and checks and balances on the executive power of the President. As such, the Forum as a principled collective vested in fostering a culture of rule of law, human rights and respect to constitutionalism, takes a firm position against attempts to re-arrange the constitutional order in an undemocratic and unprincipled manner that is devoid of consultation which should be pivotal considering that it is citizens who voted for the constitution. The Forum questions the basis and the influences of the amendments. Even if there was a "mischief" to be corrected, resorting to mutilating the supreme law is reserved as the last resort.

Zimbabwe's nearly 7-year-old Constitution was adopted through a nation-wide referendum that was supported by over 95% of the voters – making it a product of an almost unanimous vote. Through the COPAC process, the country made significant investment into its future. Barely a decade, those entrusted with the mandate to lead the operationalization of that social contract and charter the country into its future, are leading a process of dismantling and decimating that social contract for no apparent reason of progress and national advancement. A government that cuts back on a social contract to which it fully participated in its making un.masks insincerity

on its part. The executive is seeking to reverse the democratic virtues encoded in the supreme law, and for the second time in a short space of time, is seeking to cut back on democratic tenets and re-arrange the democratic order. While the Constitution does allow for amendment, it is the Forum's position that any such amendments have to be reasonable, necessary and advance respect for the rule of law and the founding values as captured in section 3 of the Constitution. Amending the Constitution for partisan and self-propelling political ends is a history whose undemocratic dividends Zimbabweans know all too well.

After 90 days from gazetting, the Bill will be eligible for introduction to Parliament. In terms of Section 328(4) of the Constitution, immediately after the Speaker has given notice of a Constitutional Bill in the Gazette Parliament must invite members of the public to express their views on the proposed Bill in public meetings and through written submissions and must convene meetings and provide facilities to enable the public to do so. Citizens are duty bound to take a firm stand against unprincipled constitutional mutilation and democratic retrogression. The Forum has no doubt that citizens will be emphatic in registering their displeasure over the amendments and will defend the Constitution against amendments for which they deprive no gain. In the same vein, Members of Parliament, who swore to uphold the Constitution and its values on assumption of duty, are duty-bound to work for democratic consolidation.

To that end, the Forum calls upon: All responsible and people-centered Parliamentarians to take a stand against the Bill. The Constitution is not only the supreme law of the land, but an embodiment of the aspirations of the people and an expression of the social contract; The government of Zimbabwe to withdraw the Bill and refocus its energies on popularizing the Constitution and meeting its obligations to fully implement it, including substantive alignment of the legislation that is still at odds with the supreme law.

**Why Citizens Must Reject The Constitution Amendment Bill No.2 of 2019**

The Bill is a violation of Sections 17, 56 and 80 of the Constitution, which guarantee gender parity at all levels of leadership. The Government of Zimbabwe should be taking a cue from progressive countries such as South Africa, Senegal and Rwanda where a lot of progress is being made towards gender parity. In addition, the Government has not undertaken consultations to evaluate the impact of Proportional Representation (PR) seats in genuinely empowering women and increasing their voice in leadership, policy formulation and the development of the country.

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**FREE**  
the judiciary, STOP the amendments to the constitution

#WE DEMAND RETURN TO RULE OF LAW

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The Crisis in Zimbabwe Coalition is a broad based civil society network of over 72 active members comprising churches, women's groups, social movements, residents associations, labour unions, human rights lawyers, and health professionals. It was formed in August of 2001 to focus on democracy, human rights, good governance and sustainable development issues – working locally, regionally and internationally.

# Why Citizens Must Reject Constitution Amendment Bill No.2 of 2019

The Constitution Amendment Bill No.2 of 2019 is one of the biggest threats to civil and political rights in Zimbabwe. Single handedly, the Bill seeks to take Zimbabwe back to the legacy of the Lancaster House Constitution:

1. The Constitution is a product of the tireless efforts by citizens to develop and entrench democratic ethos in Zimbabwe as a solution to decades of crisis. In this regard the Constitution represents the views and aspirations of citizens as demonstrated by 94.49% of the voters who voted in favour of the Constitution in 2013.

2. The Bill is a violation of Sections 17, 56 and 80 of the Constitution, which guarantee gender parity at all levels of leadership. The Government of Zimbabwe should be taking a cue from progressive countries such as South

Africa, Senegal and Rwanda where a lot of progress is being made towards gender parity. In addition, the Government has not undertaken consultations to evaluate the impact of Proportional Representation (PR) seats in genuinely empowering women and increasing their voice in leadership, policy formulation and the development of the country.

3. Beginning 2023, the Constitution provides that an elected Vice President will takeover in the event that the President vacates office before the end of their tenure. This means that the party from which the president comes from will now have the sole discretion to choose a successor regardless of whether or not they are popular.

4. Beginning 2023, the Constitution provides that the President together

with two Vice Presidents will now be elected. The Bill removes this provision by giving the president the power to appoint Vice Presidents. The right of citizens to choose leaders of their choice must be respected and citizens should be accorded the right to self-determination.

5. The Bill seeks to increase the number of appointed Ministers from five (5) to seven (7) thereby increasing the number of Ministers and government expenditure.

6. The Bill returns the Constitution Amendment Bill No.1 of 2017, which was rejected by citizens. It removes the role of citizens in nominating and monitoring the appointments of senior officers of the judiciary and gives the President the power to appoint Judges and the Prosecutor General will

now serve at the mercy of the President. This means that the Judiciary will no longer be independent.

Zimbabwe is at risk of sliding into a defacto one party state where the ruling party has the sole discretion to determine the governance of this country. The gains made through the new Constitution of 2013 risk becoming moot if these amendments sail through.

What You Can DO To **STOP** Constitution Amendment Bill No.2:

- a. Defend The Constitution By Rejecting All Amendments During The Public Consultations By Parliament in Your Area
- b. Call your MP NOW and Register Your Disapproval to Amending the Constitution
- c. Monitor Parliamentary Processes on the Amendments
- d. Share This Information With Others!!!!

“Don't interfere with anything in the Constitution. That must be maintained, ~ for it is the only ~ safeguard of our Liberties.”

- Abraham Lincoln