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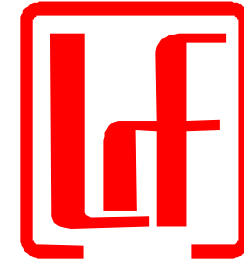
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Legal Resources  
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# Constitution of Zimbabwe

## Amendment (No. 2) BILL, 2019

[SUMMARISED VERSION]

With support from



### **13) Changes in terminology from foreign organisation to International Organisation**

Substitution of the term “foreign organisation” with “international organisations” limits parliament’s oversight functions in the conclusion and execution of international agreements thereby weakening the need for checks and balances amongst the three arms of government.

### **14) Changes in the term Civil Service to Public Service**

The Bill proposes to change the title from “civil service” and replace it with “public service.”

These are minor amendments to the Constitution that have no serious bearing on it.

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Constitution in 2013 in line with the principle of devolution. Provincial Councils are made up of the Council Chairperson, MPs, mayors and chairpersons of all urban and rural councils in the province, 10 people elected by proportional representation and the President and deputy of president of the National Council of Chiefs where their areas are within that particular Province.

On the other hand, Metropolitan Councils are made up of mayors for Bulawayo and Harare. In Harare they will also have a mayor or chairperson of the second largest city in the province, MPs and mayors, deputy mayors, chairperson and deputy chairpersons of local councils in the metropolitan province. The Bill proposes to change this by removing all MPs from the councils. In terms of the Bill both the Metropolitan and Provincial Councils will consist of an elected chairperson, mayors, deputy mayors, chairpersons and deputy chairpersons of all local authorities within the province and 10 people elected by proportional representation.

What will be the effect of these changes on the ordinary citizens?

## **12) Introduction of a provision which provides for the appointment and role of the Chief Secretary and his or her deputies to the office of the President and Cabinet**

This is a new provision in the Constitution. These amendments could have been made in subsidiary legislation and not through a Constitutional Amendment.

## **1) INTRODUCTION**

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 tampered with by regularly making changes to it.

In December 2019, the President, Vice-Presidents and Ministers (Cabinet) proposed changes to the Constitution. These suggested changes were made known to the public in the Government *Gazette* on 31 December 2019 and 17 January 2020 through a Bill which is titled Constitution Amendment Bill (No. 2) 2019, A Bill is a proposed law which has not yet been approved by parliament and the President.

Before Parliament debates the Bill they are going to seek for the views of people across the country. In order for you to participate and add your voice you should know what the Bill says. This leaflet summarizes what is covered in the Bill.

## **2) Removal of sections relating to elected Vice-Presidents**

The Bill proposes to remove 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. It is being proposed through the changes that the vice-presidents should not be elected together with the President but the elected President should appoint his/her vice-presidents. 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.

## **3) Changes to the section which covers issues to do with succession in the event of death, resignation or incapacity of the president**

The Constitution states that if the president dies, resigns or is unable due to either ill-health or any other condition to continue as president the first vice-president who would have been elected by the people together with the president becomes president until the expiry of the term of the former president. This provision is going to take effect in 2023 if it is not changed by this Bill. The Bill proposes to change this by giving the power to choose the president, to the party to which the former president belonged. The party therefore has the liberty 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 choose a successor to the president or this should be done by the general populace through a provision such as the one in the current Constitution?

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?

## **10) Changes to the appointment process of the Prosecutor-General**

The Prosecutor-General is the head of all prosecutors. Prosecutors through the National Prosecuting Authority are responsible for handling criminal cases on behalf of the State being led by the Prosecutor-General. The Constitution provides that when there is need to appoint a Prosecutor-General the JSC advertises the position, invites the President and the public to nominate candidates, conducts public interviews and provides the president with a list of 3 nominees from which the President chooses the Prosecutor-General.

The Bill proposes to change this by removing the public interview process and giving the power to appoint the P-G to the president. 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?

## **11) Changes to provisions relating to Provincial Councils and Metropolitan Councils**

Provincial and Metropolitan Councils were introduced by the

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 they will be allowed to extend their time in office as judges annually for up to 5 years. They will be required each year to provide a medical report outlining their mental and physical fitness.

This could mean that pliant judges could stay in office well after the normal retirement age, while those who the Executive does not regard as pliant would retire.

## **9) 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

## **4) Increasing the number of Ministers who are not elected as MPs and Senators who can be appointed by the President**

The Constitution allows the President to appoint 5 people who are not MPs or Senators as Ministers. These people are chosen for their professional skills and abilities. 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.

## **5) Extending the provision which reserves 60 seats for women in the National Assembly by two more parliaments (2023 and 2028) and introducing a provision which reserves 10 seats for the youths**

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 quota system is meant to ensure representation of women in the National Assembly and in decision making positions. This provision was effective during the 2013 parliament as well as 2018 parliament. The Bill proposes to extend the provision to the 2023 and 2028 parliaments. Are there no other ways of achieving equal women representation apart from amending the Constitution?

## **6) Removing the provision which provides that drawing/setting of electoral constituency boundaries should be done immediately after the Census**

The Bill proposes to change the provision which states that boundaries for electoral constituencies should be drawn immediately after the census. If the changes are passed the setting of boundaries for constituencies will not be linked to 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.

## **7) Removing the provision 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 (one) nominee from the list. This is the procedure that has been followed for the past 6 years and it has allowed for people to participate as well as debate on the process and appointments.

The Bill is proposing to do away with this process giving power to the President to appoint sitting judges to the Supreme Court and Constitutional Court after consultations with the Judicial Service Commission. It is important to note that though the President must consult with the JSC, he/she is not obliged to follow their recommendations.

This change means that the public may not participate in the appointment of judges of the Supreme Court and Constitutional Court. 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.

## **8) Changes to the provision on tenure of office of Judges of the Constitutional Court and Supreme Court**

The Constitution provides that judges of the Constitutional Court can only serve for one term of 15 years. If they reach the age of 70 years before the end of their term they should retire. It also provides that judges of the Supreme Court will retire at the age of 70 years.