



Policy Brief #2/2020

The good, the bad and those in between: a simple, non-legal analysis of the proposed constitutional amendment in Zimbabwe.

Introduction

Constitution of Zimbabwe Amendment (No. 2) Bill gazetted on the 31st of December 2019 proposes a myriad of changes to the Constitution of Zimbabwe Amendment (No. 20) Act, 2013. This has received mixed reactions from many interest groups expressing either displeasure and or gratitude. This brief aims at providing a simple, non legal understanding of the proposed constitutional changes, possible implications and opportunities, if any. Overall, the brief posits that the quantum of changes are ill-timed and rushed, thereby leaving a sense of possible “chickenery” and underhand intentions. However, its not as bad as some lobbyists will make you believe!

The Good

The proposed changes consist of some good proposals, particularly extension of the quota system and inclusion of youth representation, tying loose ends on devolution implementation and decoupling of delimitation from census. It is critical, from the onset, to state that there are obviously side effects to all good things and expressions of displeasure by different interest groups cannot be totally ignored. Some proposals, for example, from Women’s Academy for Leadership and Political Empowerment (WALPE)¹, arguing for complete introduction of 50/50 gender representation, have their merits.

The introduction of the Public Protector can be a good amendment allowing for citizens to complaint mechanisms and redress against public institutions abuse and failure to deliver. The possible conflation with the Zimbabwe Human Rights Commission (ZHRC) mandate must however, be clearly delineated at law.

Lastly, the removal of possible duplication on devolution is welcome as it can open doors for full and meaningful devolution that has little influence from national institutions. The amendment to remove Mayors as automatic chairpersons is at first sight a direct attack at the opposition control of cities, but in reality was defeating the very proportional representation used to come up with provincial and metropolitan councils.

¹ <https://walpe.org.zw/wp-content/uploads/2019/11/Parliamentary-Qouta-system-research-report.pdf>

The Bad

On the negative is the proposed changes allowing the President to have powers to appoint judges and the Prosecutor General. These changes, at face value, smack of regression to democratic practice as enshrined in the present constitution and an attempt to consolidate state capture of the judiciary. This should be avoided at all costs.

However, the public interviews of judges had little “public” followership and at the end, the President still had the final say.

Those in between

The brief further posits that the removal of running mates, as was impending in 2023, has no real effect on our democracy. It was a conundrum faced on both sides of the political landscape. It, the running mate idea, is not local and has no real buy in. It was a law established with issues of succession during the Mugabe era but might have no real consequence in present day politics. Rather, it might serve to entrench factionalism ahead of elections which might result in a lot of purging and splits.

Effectively, the intended end to the law, is well covered under the sections addressing succession after the demise of present leader, that is, allowing the ruling political party to nominate replacement within three months. Further, the two term limits, if not tempered with, has the effect of forcing parties to have a succession plan. The idea of having a directly elected vice president, might not be as democratic as the first thought would make one believe!

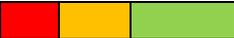
The clause allowing the president to appoint seven ministers from outside parliament has both merits and demerits. In a normal, functioning and mature democracy, where technocracy is cherished, this is certainly a welcome move. Our parliament is populated by party zealots, ground operators who have experience in sloganeering and engineering local community coups. It is therefore only prudent that the president is allowed to have wider options. The challenge is when the party is supreme to government, conflation of power is rife and there is little room for technocrats to maneuver. Such is our crisis!

The proposed changes making the the Chief Secretary to the President the public service supreme, has little effect on their performance as permanent secretaries are presidential appointees anyway. Question is whether the Chief secretary takes over from the Public Service Commission chairman or if both are maintained, how do they relate?

Proposed Amendment ²	Status	Comment
Clauses 2, 3, 4, 5, 6, 7 and 8 These clauses dispense with the “running-mate” concept of the Vice-Presidency. Instead, the 2 Vice-Presidents will be chosen on the President’s own authority.		The amendment is not priority and is not urgent. But if amended it has no real effect to the country’s struggling democracy.

² Veritas bill watch

<p>Clauses 9</p> <p>This clause adopts the provisions of paragraph 14 of the 6th Schedule to the Constitution as the operative provisions relating to the question of the succession to the Presidency (given that the Vice-Presidents are not elected as running mates).</p>		<p>If running mates are removed, this amendment becomes necessary in further clarifying succession.</p>
<p>Clause 10</p> <p>Under this clause the President may appoint up to 7 (instead of 5) additional Ministers from outside Parliament.</p>		<p>Addition of number of Ministers from outside Parliament can be a positive as it allows the president more choice to appoint technocrats. It should however not be abused!</p>
<p>Clause 11</p> <p>This clause extends the provision for the party-list women members of the National Assembly by another two extra Parliaments (from 2 to 4 Parliaments), and makes provision for the party-list representation of youths in the National Assembly.</p>		<p>This is largely positive since it provides for continued presence of women in Parliament. Our political landscape does not favor women and youth participation.</p>
<p>Clause 12</p> <p>This clause de-couples ZEC's delimitation function from the population census held every 10 years.</p>		<p>This is a good amendment allowing ZEC to delimit constituencies well in time since census comes in 2022. However, without census, ZEC can only use number of registered voters, not eligible population which can mean some constituencies will still be above 20% threshold in 2023.</p>
<p>Clause 13</p> <p>This clause will allow the President acting on the recommendation of the JSC to appoint sitting judges to vacancies in the higher courts, without subjecting them to the public interview procedure.</p>		<p>This entrenches executive interference in the judiciary thereby undermining democracy. However, the changes are not significantly different as the president still</p>

		had final say in the appointments.
<p>Clause 14</p> <p>This clause will allow Judges of the Constitutional Court and Supreme Court to extend their tenure after reaching the age of 70 annually for up to 5 years, subject to a favorable medical report as to the mental and physical fitness of the judge so to continue in office.</p>		International best practice allows for this. 65 could be very early for judges. In some countries, judges are appointed for life.
<p>Clause 16</p> <p>This clause provides for the appointment and role of the Chief Secretary to the Office of the President and Cabinet and his or her deputies.</p>		There is no significant change to previous process but will now be codified.
<p>Clauses 17 and 18</p> <p>These clauses create the office of the Public Protector, who will take over certain functions concerning public maladministration, etc, from the Zimbabwe Human Rights Commission.</p>		The amendment is positive if allowed autonomy during implementation. The law must be clear to avoid possible conflation of mandates with the ZHRC.
<p>Clause 19</p> <p>This clause will provide for the appointment of the Prosecutor-General by the President on the advice of the JSC, without the intervention of a public interview procedure, and makes special provision for his or her removal for cause by a Tribunal.</p>		This entrenches executive interference in the judiciary thereby undermining democracy. However, the changes are not significantly different as the president still had final say in the appointment.
<p>Clauses 20, 21, 22 and 25</p> <p>These clauses 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.</p>		The amendment will further clarify devolution and removes a dual role that had been imposed on parliament. Provincial and metropolitans must operate independently.

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Conclusion

The proposed changes would have done better as separated entities to allow for effective and meaningful public input during the public hearings. As a quantum, they serve to confuse the general population as they will be bombardments with piecemeal information aimed at discrediting sections of the amendment number 2, but effectively discrediting the whole document.

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