

**POSITION PAPER**

**PROPOSED CONSTITUTIONAL AMENDMENT: BILL NUMBER TWO**

1. **EXECUTIVE SUMMARY**

This paper articulates the Zimbabwe Council of Churches (ZCC) position on the proposed constitutional amendments (Bill Number 2). This position is based on the findings of the various consultations conducted by the Zimbabwe Council of Churches (ZCC) with church leaders in Zimbabwe. The ZCC facilitated 3 dialogue meetings where over 400 church leaders drawn from different sectors that is men, women and youth. This position paper is therefore a result of the participation of church leaders from across the ten (10) provinces of Zimbabwe. The dialogues established the views and consolidated the position of our constituency of 29 member churches with regards the proposed constitutional amendments which sought to establish the views and consolidated position of our constituency of 29 member churches with regards to the proposed constitutional amendments. In addition, the ZCC participated in consultative meetings with other CSO’s with regards to the proposals as it is part of the Zimbabwe Human Rights NGO Forum. This position paper is an outcome of the processes highlighted.

The critical concerns raised for consideration during the dialogues meetings include:

1. Concentration of authority away from the electorate to either government or the Executive arm of state,
2. Whether the cumulative proposed amendments warrant a wholesome constitutional alteration,
3. The weight of the proposals against the necessity of implementation via the constitutional amendment route,
4. The need to weigh in on alternatives outside of tinkering with the constitution,
5. The subtraction from the principle of separation of powers, precisely, independence of the judiciary,
6. The necessity of extending the women’s parliamentary quota system until 2028 vis a vis implementation of the equality clause in the Constitution,
7. The financially strained status of Government and the intention to undermine or reduce parliament’s oversight role in the fiscal obligations of the state and the principles of good governance.

These concerns are raised against the backdrop that alignment of subsidiary laws to the constitution remains incomplete and the quality remains questionable. The alignment that has taken place so far is of laws that have little bearing or impact to electoral reform as the current legislative framework is characterized by failure to guarantee enjoyment of broad support of main political parties and the public in general Furthermore, the 2013 constitution is fairly young and still embedding its roots in constitutionalism thus any attempt to change its contents would be premature in nature.

The paper concludes by laying bare the recommendations towards the proposed amendments which may proffer solutions that will see the realization of the desires as envisaged in the preamble of the Constitution in the, “*we the people*” of Zimbabwe document.

1. **BACKGROUND AND CONTEXT**

The ZCC concerns itself with any constitutional developments as the organization believes that participation in such a process is not just our constituency given mandate but one that is consequently God given.

The constitutional journey in Zimbabwe has been characterized by the Church playing a critical role. This involvement spans through the late 90’s to the early 2000’s where the Church made the call for a home grown constitution. This involvement birthed the National Constitutional Assembly to facilitate mobilization of the people of Zimbabwe in the direction of coming up with a new Constitution. The Churches convened this important constitutional conversation.

In addition the Church was instrumental in advocating for putting together of a people centered constitution through the “Zimbabwe We Want” proposal. A move premised on the recognition that a home grown constitution is the cornerstone of good governance and development. There was the understanding that the Constitution then being the Lancaster House Constitution was not inspired by the collective consent and consensus amongst the people of Zimbabwe.

Thereafter, there was the Constitution Parliamentary Select Committee (COPAC), the national constitution making process in which the Church together with other key stakeholders undertook various initiatives that culminated in the birth of the 2013 Constitution. The current constitution is a monumental achievement where the Church played a critical role through a rigorous consultative process that resulted in the YES vote.

The 2013 constitution is deemed one of the most progressive constitutions to date. It is a constitution drawn from a people driven process. It is a document that encapsulates the will of the people of Zimbabwe. And the Church played a pivotal role in that process. The Church is endowed with the capacity to convene dialogue and conversations around the constitution and constitutional developments. Consequently, the Church, representing the people, is capable of defending the constitution such that any proposal to alter it should be a people driven and people centered process.

1. **ISSUES ARISING FROM THE PROPOSALS**

**(i) Removal of the election of vice presidents**

The succession clause in the 2013 new constitution was deliberately crafted in the presidential system to solve the succession question which has been problematic in the history of Zimbabwe. Zimbabwe has a long history of succession challenges that were fueled by Mugabe’s long stay in power and ultimately resulted in a “soft coup” in November 2017. The succession clause was therefore meant to guard against the usurping of people power through unconstitutional means.

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 that the president appoints vice presidents.

**Consequences**

In the event of the President’s unexpected resignation, incapacitation or death there is anticipation of a situation where someone who was not elected by the people taking over the presidium. This creates potential for bloody and messy succession processes. Zimbabwe can afford any more turmoil and should ensure that successions are constitutional.

It is clear that the proposal lacks the mandate of the people and is only meant to manage succession politics at political party level. This goes against the spirit of constitutionalism that was agreed upon by the people of Zimbabwe through a YES vote in 2013.

**(ii)Increasing the number on the number of Parliamentary Ministers from 5 to 7**

The constitution allows for the President to appoint 5 people who are not members of Parliament or Senators as Ministers of State. These people are chosen for their professional skills and abilities.

**Consequences**

On one hand the increase in the number of non-parliamentary Ministers means that there will be an unnecessary increase in government expenditure in an environment where government is facing challenges arising from a bloated wage bill. On the other, it is our considered position that such a move consolidates powers on the president as he surrounds himself with people whose allegiance is only to the President, potentially creating a political patronage system which serves the interests of the President and not that of the people of Zimbabwe.

**(iii) Appointment of Judges and the Prosecutor General**

The Bill is proposing to do away with the process of public interviews in the selection of Judges of the Higher Courts. Such a development leaves all the power to appoint judges to the Supreme Court and Constitutional Court and the Prosecutor General in the sole hands of the President.

Zimbabwe is a constitutional democracy and democratic processes are supposed to take place with strict adherence to constitutional rules. A constitutional democracy is always accompanied by an independent judiciary which is a key component of the principle of separation of powers. Furthermore, public participation (public interviews) in the transparent process of selection of judges is a key component in ensuring that selection process of judges is based on merit.

**Consequences**

If the amendment sails through it will mean the President can appoint judges who will sit in cases and disputes that include him. The president would have selected the persons to judge him. This move compromises the independence of the judiciary and prosecutorial authority.

In the event of a proposed impeachment, a President can select judges who will preside over the case and at the same time influencing the judgement through the selected judges who in one way or the other will owe him/her for being appointed into offices. The risk of having “a politically aligned constitutional bench” is imminent if the proposal sails through.

This is not healthy for our democracy. The judges and the Prosecutor General must have an appearance of independence as it is also about a matter of perception.

The proposal that a President can appoint and dismiss the Prosecutor General threatens prosecutorial independence as a facet of the rule of law. The proposal threatens to remove appointment based on meritocracy. The far reaching implication of such an amendment is that we run the risk of having more politically motivated prosecutions in the future brought before the courts.

**(iv)** **Promotion of judges and age of retirement**

The proposal is that judges have to renew their contracts on a yearly basis if they are over 70 years old. A judge who is 70 and intends to continue being on the bench must write a formal letter to the president with a letter of physical fitness. President exercises his discretion on which judge is fit to carry on working on the bench beyond 70 years. Such a position poses a threat to the independence of the judiciary arm of state as a basic tenet of democracy. Judges must have security of tenure as it must be difficult to remove them as long they discharge their duties without bias.

**Consequences**

It is demeaning to the judges and undermines security of tenure and judges will most likely not be independent. If the amendment bill is passed into law, Zimbabwe risks having Supreme Court, High Court and Constitutional Court judges who are either related to the presidium or are an extension of the presidiums agenda. This will have far reaching implications on comprehensively addressing corruption and how electoral contestations will be managed as the playing field is already leaning in favor of one presidential candidate.

**(v) Removal of Parliamentary oversight role on international treaties**

The Parliament has remained an important part of democracy as it is empowered to put checks and balances on the executive and judiciary. Under the 2013 constitution, Parliament is empowered to approve or veto whether Zimbabwe becomes part and parcel of an international treaty or not. The proposed amendments seeks to take away the oversight role of parliament in determining which treaties should be ratified by Zimbabwe. The executive arm of the state will now have the power to conclude and put Zimbabwe into international obligations which might have economic, political or social impact on Zimbabwe without any oversight.

**Consequences**

Completely removing parliamentary oversight weakens the strides that have been made towards democracy since Independence. Zimbabwe risks having an executive president who can decides on behalf of the country and can put the country into contractual or financial obligations that threatens the autonomy and independence of the country.

**(vi)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 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 Bill is successful, the Human Rights Commission’s mandate will no longer extend to investigations of cases of maladministration and abuse of power by public officers. This mandate will now vest in the new office of the Public Protector who will deal specifically with such cases. The proposal does not seem problematic on the face of it but with further interrogation we will see the implications of this proposal.

**Consequences**

The mandate of the Public Protector is already covered by that of the Zimbabwe Human Rights Commission which has earned its mettle. The Zimbabwe Human Rights Commission has done well in the discharge of its duties and has only been crippled by lack of funding. The establishment of the parallel structure of the office of the Public Protector is meant to weaken the Human Rights commission which has been one of the few commissions that have been discharging its mandate without fear or favor. It is clear that the result will be a dilution of the authority of the ZHRC which is detrimental to the effective investigation of human rights violations and maladministration undertaken by public officials. There is the issue of the possibility of conflict that would arise as a result of unclear jurisdictional boundaries of the office of the Public Protector and ZHRC.

**(vii) 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 youth**

The quota system is a constitutional provision that is meant to address the slow pace at which participation of women in parliament is happening. This system is meant to ensure representation of women in the National Assembly and decision making positions. The proposal seeks to extend the quota to the 2023 and 2028 parliaments respectively. This extension only applies to women representation in parliament and not in other levels of leadership like at council level. Introduction of the youth quota with 10 representatives. This is new.

**Consequences**

The purported beneficiaries of such a clause are of the view that the quota system has not yielded the expected results as women representation remains low. They are also of the view that if people are indeed genuine about women representation in leadership positions, the constitutional provisions that speak of equality must be implemented. It has been argued that to increase the number of women in leadership positions, the quota system should not only apply to women in parliament but across the board in all sectors.

The issue of women’s representation does not warrant constitutional change but implementation of the young constitution and possibly amending the Political Parties Act and the Electoral Act by incorporating a clause that demands gender equality in nomination lists and what that gender equality should look like. Introduction of the youth quota has no clarity on the criteria that will be used to select the youth members of parliament.

**(viii) Inclusion of the delimitation clause outlining constituency boundaries**

The reason for setting boundaries for the constituencies after elections is that the Zimbabwe Electoral Commission will be guided by the population in setting the boundaries. This is a welcome amendment because delimitation is necessary as it gives a rough sketch of constituency boundaries.

**(ix)** **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 proposal simply increases government expenditure and increases presidential powers as he can appoint and dismiss the chief secretary and his deputies.

1. **LEGISLATIVE ALTERNATIVES TO AMENDING THE CONSTITUTION**

The following are alternatives to alteration of the constitution that can ensure the entrenchment of principles of good governance and democracy:

1. Proposal to extend the women’s parliamentary quota can be dealt with by the implementation of the provisions on gender equality in the constitution. Extension of the quota system is an interim measure for a deeply seated problem of gender inequality. This recommendation can be applied to the introduction of the youth parliamentary quota as well.
2. The delimitation clause can be remedied by executing the amendment via the Census and Statistics Act.
3. Whilst the rest of the proposals concentrate powers with either government or the executive arm of state, undermine the principle of an independent judiciary, unnecessarily increases government expenditure and dilutes parliament’s oversight role ultimately resulting in drowning out the voice of the electorate.

**CONCLUSION**

Taking into consideration the above analysis, the Zimbabwe Council of Churches acknowledges that the negative impacts of the proposed amendments outweigh the positives. As a result, the proposals are not acceptable.