



Some Preliminary Comments on the Agreement
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Background

On 28 March 2008, elections were held for the presidency as well as parliamentary and local government seats. For the first time since independence in 1980, the two MDC formations together won more seats in the House of Assembly than ZANU PF. The MDC thus became the majority party in the lower House. The MDC also won the Presidential election, but its candidate did not obtain the required absolute majority of the votes and there had to be a second presidential vote. In the lead up to this second vote for the presidency, ZANU PF engaged in extensive violence and intimidation to force people to vote for its candidate. The violence was so intense that the MDC felt obliged to protect its supporters by withdrawing from this election. The ballot nonetheless went ahead and Mugabe won overwhelmingly. However, the second presidential election was widely condemned as not being a free and fair election in which the outcome reflected the democratic will of the people.¹

Thus, on the basis of the March election, the MDC had a legitimate claim to being the governing party in Zimbabwe. However, the Mugabe regime did not see it that way and continued to act as if it was the government of Zimbabwe.

The situation in Zimbabwe continued to worsen and it was decided that the only way to address the crisis was for there to be negotiations between ZANU PF and the two formations of the MDC. Mr Mbeki, then President of South Africa, was given the continued mandate by SADC to be the mediator in this political dialogue.

After protracted discussions, the parties finally reached an agreement. The parties formally signed this agreement at a public ceremony on 15 September 2008. However, since the signing of the agreement, a government has yet to be formed as the parties continue to wrangle over the allocation of ministerial portfolios, and more recently have recalled the mediator to Harare to assist in this process.

The agreement does not result in the handing over of power to the party that won the parliamentary and presidential elections in March 2008. Rather it results in a complex power sharing arrangement in which Mr Mugabe remains in the dominant position in the so-called inclusive government. Mr Mugabe retains the post of President, he will chair the Cabinet, he is still the Commander in Chief of the army and he will be chair of what will be called the National Security Council. Mr Tsvangirai, on the other hand will be the Prime Minister, but he

¹ Detailed analyses of these elections have been provided by Idasa and RAU. See SITO (2008), *Zimbabwe Elections 2008. Examining The Popular and Presidential Choice - Hiding or Run Off?* IDASA: Pretoria; SITO (2008), *The Inconvenient Truth. A complete guide to the delay in releasing the results of Zimbabwe's presidential poll.* Prepared by Derek Matyszak of the Research and Advocacy Unit, Zimbabwe. IDASA: PRETORIA; SITO (2008), *The Inconvenient Truth (Part II). A complete guide to the recount of votes in Zimbabwe's "harmonised" elections.* Derek Matyszak, Research and Advocacy Unit, Zimbabwe. IDASA: Pretoria; SITO (2008), *What happened in the Presidential election?* Research & Advocacy Unit, Zimbabwe. IDASA: PRETORIA; Matyszak, D. M (2008), *Opinion on the legality of the presidential election which took place in Zimbabwe on June 27th 2009, and the legitimacy of any incumbent assuming office on the basis of the result of such an election.* SITO: IDASA.

will only be deputy chair of the Cabinet and will chair a new Council of Ministers.

The Cabinet will formulate government policy, although the Prime Minister is supposed to have a role in the formulation of government policy.

1.1 Underwriting of agreement (article 22)

Article 22.6 provides that "the implementation of this agreement shall be guaranteed and underwritten by the Facilitator, SADC and the AU."

Given the inherent vagueness of many of the provisions of the agreement it is difficult to see how this guarantee will work. However, the parties should be able to refer disputes over the interpretation and implementation of the agreement to the guarantors.

1.2 Implementation mechanism (article 22)

There will be a Joint Monitoring and Implementation Committee consisting of four senior members drawn from the ZANU PF and four from each of the formations of the MDC. This committee will be co-chaired by persons from the parties. Its main function will be to ensure that the agreement is implemented in its letter and spirit.

1. The Agreement

The agreement does have positive features. It contains many general statements calling for the restoration of democracy and adherence to the rule of law. It has provisions intended to strengthen democratic institutions and to restore economic stability. It also contains a commitment to create a new people driven constitution within a period of eighteen months. However, the extent to which these aspirations are realised remains under Mugabe's control.

On the other hand, there are considerable problems attached to the power sharing arrangements, and there is considerable doubt that these arrangements will be workable and will produce the necessary changes that will restore democracy and the rule of law in Zimbabwe.

Overall, the pivotal issue is whether Mugabe is prepared to work with his bitter antagonists in the national interest to implement the spirit of the agreement and extricate the country from the terrible crisis into which it has been plunged.

2.1 The Preamble

The Preamble appears to place far more emphasis on the concerns of ZANU-PF than on those of the MDC. The second, third, and arguably the sixth and eleventh paragraphs are concerned solely with ZANU-PF issues: national independence, the memories of the liberation war and respect for "national institutions, symbols and national events". The tenth paragraph recognises that the land question "has been at the core of the contestation in Zimbabwe",

which is a ZANU-PF mantra, while the 14th paragraph recognises the need for African problems to be solved by African institutions, which is a contention frequently raised by ZANU-PF and Mr Mbeki to deflect western criticism. The prominence given to these paragraphs suggests either that the ZANU-PF negotiators were able to dominate their MDC counterparts, or (more reassuringly) that the mediators were anxious to reassure ZANU-PF that if they gave up some power their concerns would not be ignored.

The preamble contains several statements supporting human rights, both political and social, for example "equal protection of the law" and "equal opportunity to compete and prosper in all spheres of life". Paragraph six commits the parties to respect for the rule of law, while paragraph 8 recognises that:

"the values of justice, fairness, openness, tolerance, equality, non-discrimination and respect of all persons without regard to race, class, gender, ethnicity, language, religion, political opinion, place of origin or birth are the bedrock of our democracy and good governance."

In paragraph 12 the parties rather tautologically state their determination to respect those values. All these paragraphs are couched very broadly but non-specifically, and there is no attempt to relate them to what has happened in Zimbabwe. The only exception is paragraph 9, in which the parties declare their determination to:

"build a society free of violence, fear, intimidation, hatred, patronage, corruption and founded on justice, fairness, openness, transparency, dignity and equality."

This, regrettably, is the only paragraph in which good governance is touched upon. It should be noted that throughout the crisis in Zimbabwe, ZANU PF and Zimbabwe's government has claimed adherence to these principles. There is also no mention in the preamble of misgovernment, corruption and failed economic policies, and no suggestion that they may have played a part in creating the crisis in Zimbabwe. Indeed, the only real indication that Zimbabwe faces economic problems is contained in paragraph 5, in which the parties commit themselves to "arresting the fall in living standards and reversing the decline of our economy".

A preamble in an agreement such as this is supposed to state, amongst other things, the problem to be addressed by the agreement. In this respect, the preamble is not very reassuring.

2.2 *Power sharing provisions*

2.2.1 Imprecision of power sharing provisions

The agreement is couched in imprecise language, leaving the meaning and scope of several provisions unclear. This may have been deliberate, of course: it is certainly in the interests of ZANU-PF to obfuscate the true nature of its commitments and the South African mediators may also have been inclined to do so in order to paper over differences between the parties. The general impression given by the agreement, however, is that it was drafted in a hurry.

Under the terms of the agreement, there are many instances in which the President can take action “after consultation” with others. In legal terms, if you act “*in consultation with*” or “*after consultation with*” someone else, you do not have to act in accordance with that other person’s advice or recommendations. All you have to do is to give the other person a reasonable opportunity to state his or her views on the issue concerned. You are then free to accept or reject those views as you wish. So when, under the agreement, the President is required to consult the other parties before doing something — for example, appointing Ministers — it does not mean he must appoint persons suggested or recommended by the other parties. He can appoint whoever he likes, so long as he goes through the motions of asking the other parties for their views on the appointment.

2.2.2 Executive Powers and Authority (article 20)

The agreement states that the Executive Authority of the Inclusive Government vests in, and is shared among, the President, the Prime Minister and the Cabinet, as provided for in this “Constitution” and legislation.

The President, the Prime Minister and the Cabinet will exercise executive authority, subject to the Constitution and the law.

In exercising executive authority, the President, Vice Presidents, the Prime Minister, the Deputy Prime Ministers, Ministers, Ministers and Deputy Ministers must all have regard to the principles and spirit underlying the formation of the Inclusive Government, and, accordingly, act in a manner that seeks to promote cohesion both inside and outside government.

2.2.3 President and Vice Presidents

Mr Mugabe will be the President, and there will be two Vice Presidents, both of whom will come from ZANU PF.

The President retains considerable power.

He remains the Commander-in-Chief of the Army and will chair the National Security Council. (The Prime Minister will only be a member of this Council.)

He will chair meetings of the Cabinet.

His power to appoint Constitutional Commissions such as the Police, Defence Forces, Prison Service Commission, and executive Commissions have to be exercised in consultation with the Prime Minister. (Thus he only has to consult with the Prime Minister, but does not necessarily have to follow his advice.)

He will allocate Ministerial portfolios after consultation with the Vice Presidents, the Prime Minister, and the Deputy Prime Ministers. This provides considerable leeway to Mr Mugabe. Again, he is only required to consult, so he does not have to follow the advice he has been given. Additionally, he may decide to follow the advice of his Vice Presidents (both ZANU PF) and disregard the advice given by the Prime Minister and the two Deputy Prime Ministers.

The agreement also stipulates that the President and the Prime Minister will agree on the allocation of Ministries between them for the purpose of day-to-day supervision. (It does not specify how any disagreements in this regard will be resolved.) This will mean that the President will be able to interfere with the implementation of policies in respect of the Ministries he is supposed to supervise under this arrangement. Mugabe retains the power to dismiss Ministers under section 31E of the Constitution.

The President will, in consultation with the Prime Minister, make the key appointments which he is required to make in terms of the Constitution or any Act of Parliament. (This only requires consultation; he does not necessarily have to follow the advice of the Prime Minister.)

The President's power to dissolve Parliament must be exercised in consultation with the Prime Minister. (Again, this only requires consultation; he does not necessarily have to follow the advice of the Prime Minister)

The President's power to grant pardons and remit sentences must be exercised on the advice of Cabinet. That the President is obliged to act on the advice of Cabinet should be a constraint on the President in granting a series of pardons to his party members who have perpetrated acts of political violence in the past. However, section 31K of the Constitution specifically precludes any judicial remedy if the President fails to act on this advice.

2.2.4 Prime Minister

Mr Tsvangirai will be the Prime Minister and there will be two Deputy Prime Ministers, one drawn from MDC-T and one drawn from MDC-M – though they cannot in law occupy such posts until the appropriate constitutional amendment is in place.

By comparison with the powers of the President, the powers of the Prime Minister and his deputies are more limited.

The Prime Minister will only be the Deputy chair of Cabinet but, as Deputy Chair, he will be the person who chairs Cabinet in the absence of the President. (If the President is out of the country, one of the Vice Presidents will be appointed as Acting President, but this will not mean that this person will chair Cabinet in the absence of the President - otherwise, there would be no need for a deputy chairperson in the form of the Prime Minister).

He will only be an ordinary member of the National Security Council.

He will chair the Council of Ministers, but this body does not formulate policy and initiate legislation - it only supervises the implementation of executive policies. However, the agreement provides that the Prime Minister "shall oversee the formulation of government policies by the Cabinet" [Article 20.1.4 (c)], and he "shall ensure that the policies so formulated are implemented by the entirety of government." The Prime Minister is thus ostensibly in a strategic position to influence the formulation and implementation of government policy. It remains to be seen how far he will be able to exercise this function as the powers he has to do so are not indicated. The power to appoint, dismiss and allocate portfolios to Ministers remains solely the prerogative of Mugabe and given the fact that the President chairs Cabinet Mugabe is likely to have the most assertive role in the shaping of government policy.

2.2.5 Ministers and Deputy Ministers

The distribution of the 31 Ministerial posts and 15 Deputy Ministerial posts is set out in the table below.

Ministers (31)	Deputy Ministers (15)
15 nominated by ZANU PF (1 may be appointed from outside MPs but have no vote)	8 nominated by ZANU PF
13 nominated by MDC-T (1 may be appointed from outside MPs but have no vote)	6 nominated by MDC-T
3 nominated by MDC-M (1 may be appointed from outside MPs but have no vote)	1 nominated by MDC-M.

2.2.6 The Cabinet and the Council of Ministers

Apart from the President, the main organ of executive power is Cabinet.

Cabinet will evaluate and adopt all government policies and the consequential programmes.

It will also allocate finance for policies with approval of Parliament and prepare, for approval by Parliament, legislation required to implement policies.

It is further provided that the Prime Minister must “oversee” the formulation of government policies by the Cabinet. The Prime Minister is only the Deputy Chair of Cabinet and it is not indicated how the Prime Minister is supposed to exercise this oversight function.

The Prime Minister, as Leader of Government Business in Parliament, is also supposed to ensure legislation necessary to enable the government to carry out its functions is in place.

The Council of Ministers is there simply to supervise the implementation of the policies formulated by Cabinet.

2.2.7 Balance of power in Cabinet

Decisions of Cabinet are supposed to be made by consensus. But what happens if there is a deadlock or there is no clear consensus?

Mr Mugabe chairs Cabinet. There is no provision giving the President a casting vote. That means that they do not have such a vote. According to Lewin *The Law, Procedure and Conduct of Meetings* (5th ed p. 68)

“There is no common-law rule giving a chairman a second or casting vote.

A chairman interested in the matter under debate is precluded from exercising both his deliberative and casting vote, and should recuse himself and take no part in the discussion.”

He quotes as authority *Neil v Longbottom* [1894] 1 QB 771.

Mr Tsvangirai is the Deputy Chair and will have a vote, but not a casting vote.

Presumably all 31 Ministers will sit in Cabinet, although this is not explicitly stated in the agreement. This would be consistent with the spirit of the agreement that power will be shared according to the formula for numbers of Ministers to be drawn from MDC-T, MCD-M and ZANU PF. However, section 31G of the current Constitution provides that the Cabinet consists of the President, the Vice Presidents and such Ministers as the President may from time to time appoint to Cabinet. This means that appointment as a Minister does not automatically qualify the person to be a Cabinet Minister. This section also provides that a Minister who is a member of the Cabinet holds office as a member of the Cabinet during the pleasure of the President. Vice-Presidents are members of the Cabinet under the current constitution. Thus unless Deputy Ministers are also included in the Cabinet under the Constitutional amendment creating these posts or the Vice-Presidents are excluded, even if Mugabe appoints all MDC Ministers to Cabinet, ZANU PF will have a majority in the Cabinet.

Constitutional Amendment No 19 should make it clear that the President must appoint all 31 Ministers as Cabinet Ministers. It should also amend section 31G to make it clear that the Vice-Presidents should not sit in Cabinet. Tsvangirai, as Deputy Chairperson of Cabinet will deputise for the President when the President is not available to chair Cabinet.

The provision allowing the President to decide whether a Minister should continue as a Cabinet Minister should also be amended to make it clear that Ministers will continue to be Cabinet Ministers for as long as they continue to be Ministers.

The Constitution also provides that the Attorney-General (appointed by Mugabe) is an *ex officio* member of Cabinet but does not have a vote. The past practice has been to appoint

Cabinet Ministers holding important portfolios such as Finance, Foreign Affairs, Home Affairs and Defence.

Cabinet composition
President (chair)
PM (deputy chair)
2 Vice Presidents
2 Deputy PMs
31 Ministers (15 ZANU PF, 13 MDC-T, & 3 MDC-M)
AG (ex officio – no vote)
Total voting members: 37

If all these persons sit, the maximum potential votes for each of the respective parties would be as follows:

Political parties	Maximum potential votes
ZANU PF	18 (President, Vice-Presidents and 15 Ministers)
MDC - T	15 (PM, one Deputy PM and 13 Ministers)
MDC - M	4 (One Deputy PM and 3 Ministers)
Total	37

If the Mutambara Ministers were to vote with ZANU PF on any issue, then the Tsvangirai Ministers would be outvoted 22-15. On the other hand, if the Mutambara Ministers vote with the Tsvangirai Ministers, then the combined MDC will hold a slender majority of one. Cabinet is supposed to take collective responsibility for all Cabinet decisions, including those originally initiated individually by any member of Cabinet.

2.2.8 Removal of Ministers and Deputy Ministers

Article 20.1.6 (7) states that:

“Ministers and Deputy Ministers may be relieved of their duties only after consultation among the leaders of all the political parties participating in the Inclusive Government.”

It is thus not indicated who can actually remove a Minister or Deputy Minister, or on what grounds he or she can be removed. What this seems to mean is that the President retains his

constitutional power to remove Ministers, but, before doing so, he must consult the leaders of all the “parties” as defined in article 1. The definition of “parties” is by no means clear, but it suggests that the two formations of the MDC are to be regarded as separate parties for the purposes of the agreement. This view is strengthened by the provisions earlier in article 20 which allocate Ministerial posts between the parties: here MDC-T and MDC-M are treated separately.

Ministers and Deputy Ministers may thus be relieved of their duties only after consultation among the three leaders of the respective political parties. The passive tense in this provision (to avoid indicating agency) and poor grammar create some confusion. The President has the power to remove Ministers under the Constitution and the article does not suggest that this power has been removed. The President is also the leader of the ZANU PF political party. Thus the meaning to be accorded to the phrase “consultation among” needs to be unravelled. Since the phrase is after “consultation among” and not after “consultation with” and since the President cannot consult “with” himself as leader of ZANU PF, the sensible construction must be that the leaders of the parties consult amongst themselves on the removal of a Minister. Once this has been done Mugabe, may relieve a Minister of his duties. Once again, there is no indication that the President is obliged to act on the outcome of the consultation.

2.2.9 Balance of power in Parliament

The combined MDC have a majority of 10 in the lower house (presupposing that Mr Jonathan Moyo votes with ZANU PF). However, it is by no means certain that the Mutambara MPs will vote with the Tsvangirai MPs on all issues.

In the upper house, however, ZANU PF has a commanding majority of 33 if the Presidential appointees (33) vote with the elected ZANU PF members. The Senate cannot amend a Bill which is certified by the Speaker to be a Money Bill but it may recommend amendments to the Bill to the House of Assembly.

The Senate can hold up the passing of legislation passed by the House of Assembly but ultimately the House of Assembly can override the Senate (See Clause 3 of Schedule 4 to the Constitution).

House of Assembly	Senate
MDC (T) 100	MDC (24 MDC-T & 6 MDC-M – plus 6 extra presidential appointees (3 each for MDC-T and MDC-M) appointed in terms of article 21.7(b) of agreement.) 36
MDC (M) 10	
ZANU PF 99	ZANU PF (Including President & Deputy President of Senate) – plus 3 extra presidential appointees 33
	Affiliated to ZANU PF - 18 chiefs (traditionally have voted with ZANU PF) ; 10 provincial governors (presently all ZANU PF); 5 presidential appointees (2 posts are still vacant). 33
Independent 1	
Total number 210	Total number 102

2.2.10 Will MDC Ministers have effective control over their Ministries?

At the time of writing, negotiations around the allocation of the various Ministries to the respective parties were still continuing amidst widespread reports of serious deadlock between the parties.

If this matter is finally settled,² the question still remains to what extent the MDC Ministers will be able to control policy direction within their respective Ministries?

For instance, if the MDC secures the Ministry of Home Affairs, will the Minister have effective control over the police force? It must be noted that, under s 93 of the Constitution, as read with s 5 of the Police Act, the President appoints the Commissioner-General of Police after consultation with a board consisting of —

- the chairman of the Police Service Commission, who shall be chairman;
- the retiring Commissioner, if he is available;
- one other member or, in the absence of the retiring Commissioner, two other members, appointed by the President from among the Secretaries of Ministries.

(The recommendation of the board must be made with the concurrence of the majority of the members.)

² More recently, the allocation of Ministries was given in the Government Gazette, published on Friday, 10 October 2008, and immediately criticised by the two MDC parties as negating the spirit of the Agreement.

Under s 11 of the Police Act, the President has the power to set policy and to give general directions for the Zimbabwe Republic Police which will override any conflicting policy and directions given by the Minister. Even the Minister's power to make regulations for Police matters is limited by being subject to the approval of the Commissioner-General, who reports directly to the President. Before making such regulations, the Minister must also consult with the Police Commission (s 72 of the Police Act). The Minister is, however, responsible for formulating the Police budget and defending it in Parliament.

If the MDC secures the Ministry of Finance, the scope of the Ministers' powers and responsibilities needs to be clarified. Over recent years, the Reserve Bank has in practice taken over many of the traditional functions and responsibilities of the Ministry of Finance, enabling the Government to by-pass constitutional requirements for Parliamentary control of public moneys. Many of these "quasi-fiscal" measures by the Reserve Bank Governor were of questionable legality. (See the judgment in the case of *Chapfika v Reserve Bank of Zimbabwe* HH-77-2007.)

The Governor of the Reserve Bank is appointed by the President, who is obliged to consult the Minister, but is not obliged to follow the Minister's advice.

2.2.11 President withholding assent to legislation

There is nothing in the agreement dealing with the President's power to assent or to refuse his assent to legislation, so his powers under the Constitution are unchanged. Section 31H (5) of the Constitution states:

"In the exercise of his functions the President shall act on the advice of the Cabinet, except in cases where he is required by this Constitution or any other law to act on the advice of any other person or authority"

A proviso goes on to list instances in which the President can act on his own judgement: the power to refuse assent to legislation is not listed, so he must act on the advice of the Cabinet. A question arises here: if the Cabinet discusses whether or not to advise the President to assent to a particular piece of legislation, is the President "interested" in the question. If he is, then he is not allowed to take part in the debate, and cannot vote on it (see the quotation from Lewin above).

However, it must be noted that in terms of s 31K (2) of the Constitution, no court of law may inquire into the nature of advice given to the President or the manner in which the President has exercised his discretion.

In terms of s 51(3b), if after 6 months of withholding of assent by the President, the House of Assembly passes by a two-thirds majority a motion to present the Bill for approval by the President once more, the President must assent to the Bill within 21 days, unless he dissolves Parliament before the end of the 21 day period. (Under the agreement the President can dissolve Parliament in consultation with the PM).

2.2.12 Continued use of Presidential Powers (Temporary Measures) Act

There is a danger that the President could continue to make use of this legislation to take unilateral action. However, these powers cannot be used to authorise withdrawals from the Consolidated Revenue Fund, or to condone unauthorised withdrawals from this fund³.

If such a measure is created, it must be laid before Parliament no later than eight days after Parliament next sits, and, if Parliament resolves by a simple majority that it must be repealed, the President must repeal it. However, if Parliament is not sitting, then the President would only have to lay it before the House within eight days of it commencing its next session.

The relevant sections of this Act are reproduced in the Appendix at the end of this document.

2.2.13 Standing Rules and Orders Committee of Parliament

This is a very important body. Not only does it nominate the members of the Parliamentary Portfolio Committee, but it also provides nominees to the President to sit on various important constitutional and legislative bodies.

The agreement provides that Constitutional Amendment No 19 will incorporate s 121 of the Kariba Draft Constitution. These provisions deal with the composition of the Standing Rules and Orders Committee, and they have been taken from the current Standing Orders contained in the 2005 Booklet for Parliamentarians, entitled *House of Assembly Standing Orders Public Business* (First edition). Under these provisions, ZANU PF will have significant representation on the Standing Rules and Orders Committee. Under s 121 the membership of this Committee will be as follows:

³ Nonetheless, the President has considerable powers in relation to budgetary matters when parliament is not sitting [section 103(4) of the Constitution as read with Section 25 of the Audit and Exchequer Act Chapter 22:03].

- the Speaker (who will chair the Committee) (incumbent MDC-T);
- the President of Senate (incumbent ZANU PF);
- the Deputy Speaker (incumbent MDC-T);
- the Deputy President of Senate (incumbent ZANU PF);
- members appointed by the Speaker and the President of the Senate from their respective Houses of Parliament which shall include the Leader of Government Business, the Leader of the Opposition and the Chief Whips;
- an unspecified number of members elected by each of the Houses of Parliament, but the members elected by the Houses must be greater than those appointed by the Speaker and the President of the Senate.

The last two provisions are incredibly vague. The numbers of persons appointed by the Speaker and the President of Senate are not stated, and it is unclear also how the number of elected members is to be fixed, and whether the number of elected members from each House is to be the same.

2. Independent Commissions under Constitution

The Independent Commissions established under the Constitution as amended by Constitutional Amendment No 19 will play pivotal roles. The Parliamentary Rules and Orders Committee will play a key role in the composing of these Commissions. This can be seen from the following summary of how these commissions will be constituted and what functions and powers these bodies will have. This summary is taken from Chapter 13 of the "Kariba Draft Constitution", which Chapter will, under the Agreement, be incorporated into the present constitution by Constitutional Amendment No. 19. (In this summary the Parliamentary Standing Rules and Orders Committee will be referred to as "the SROC" and the Judicial Service Commission will be referred to as "the JSC.")

Zimbabwe Human Rights Commission	Zimbabwe Anti-Corruption Commission
Chairperson (qualified legal practitioner)	4 to 9 members.
President appoints after consulting with JSC & SROC. If President doesn't follow	President appoints in consultation with SROC.

8 members (at least 4 women) President appoints from list of at least 12 nominees submitted by SROC	
Functions: ➤ to promote awareness of & respect for human rights & freedoms at all levels of society; ➤ to promote the development of human rights & freedoms & social justice; ➤ to monitor & assess the observance of human rights & freedoms in Zimbabwe; ➤ to recommend to Parliament effective measures to promote human rights & freedoms & social justice; ➤ to investigate the conduct of any authority or person, where it is alleged that any provision of Chapter III has been violated by that authority or person; ➤ to assist in the preparation of reports which the Government is required to submit in terms of any international treaty for the protection of human rights & freedoms; and ➤ to exercise any other functions that may be conferred or imposed on it by or under an Act of Parliament.	Functions: ➤ to combat corruption, theft, misappropriation, abuse of power & other improprieties in the conduct of affairs in both the public and private sectors; ➤ to make recommendations to the Government & to organisations in the private sector on measures to enhance integrity & accountability & to prevent improprieties.
Powers: Commission may require any person, body, organ, agency or institution, whether belonging to or employed by the State, a Local Authority or otherwise to	Powers: An Act of Parliament may confer powers upon it, including power– ➤ to conduct investigations & inquiries on its own initiative or on

provide the Commission– ➤ with information on the measures they have taken towards the realisation of the rights & freedoms in the Constitution; ➤ with information needed to prepare reports which the Government is required to submit in terms of any international treaty for the protection of human rights & freedoms. Commission may– ➤ take over & continue any investigation instituted by Public Protector, where the investigation raises issues that are primarily the concern of the Commission; ➤ refer to Public Protector any matter which it considers raises issues that are primarily the concern of the Public Protector. An Act of Parliament may confer power on Commission to– ➤ conduct investigations on its own initiative or on receipt of complaints; ➤ visit & inspect prisons, places of detention, refugee camps & related facilities in order to ascertain the conditions under which inmates are kept there, & to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places or facilities; ➤ visit & inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, & to make recommendations regarding those conditions to the Minister responsible for administering the law; and ➤ secure or provide appropriate redress for violations of human rights & freedoms.	receipt of complaints; ➤ to require assistance from members of the Police Service & other investigative agencies of the State; & ➤ through the Attorney-General, to secure the prosecution of persons guilty of corruption, theft, misappropriation, abuse of power & other improprieties.
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Zimbabwe Media Commission	Public Protector
Chairperson & 8 other members. All appointed by President from a list of at least 12 nominees submitted SROC. Persons appointed must be chosen for their knowledge of & experience in the press, print or electronic media, or broadcasting.	Public Protector & Deputy Public Protector President appoints after consultation with JSC & SROC. If President doesn't follow the recommendation of the JSC must inform Parliament.
Functions: ➤ to uphold & develop press freedom; ➤ to promote & enforce good practice & ethics in press, print & electronic media, & broadcasting; ➤ to ensure that people have equitable & wide access to information; ➤ to ensure equitable use & development of all indigenous languages.	Functions: to investigate action taken by any officer, person or authority in the exercise of their administrative functions where it is alleged that a person has suffered injustice in consequence of that action & it does not appear that there is any remedy reasonably available by way of proceedings in a court or on appeal from a court.
Act of Parliament may confer powers including power to– ➤ conduct investigations & inquiries into- (i) any conduct or circumstance that appears to threaten press freedom; & (ii) the conduct of the press, print and electronic media, and broadcasting; & (b) take disciplinary action against journalists & other persons employed in the press, print or electronic media, or broadcasting who are found to have breached any law or any code of conduct applicable to them.	

3. Legislative programme (article 17)

It is provided that the legislative agenda of the new Parliament will be prioritized to reflect the letter and spirit of the agreement.

It further provides that the Government will discuss and agree on further legislative measures which may become necessary to implement the Government's agreed policies, and, in particular, with a view to entrenching democratic values and practices.

This legislative programme must include the repeal or complete overhaul of all legislation that unduly curtails fundamental rights. The legislation that must be dealt with includes the following:

- The Presidential Powers (Temporary Measures) Act [*Chapter 10:20*]
- The Public Order and Security Act [*Chapter 11:17*]
- The Access to Information and Protection of Privacy Act [*Chapter 10:27*]
- The Broadcasting Services Act [*Chapter 12:07*]
- The Interception of Communications Act [*Chapter 11:20*]
- The Unlawful Organisations Act [*Chapter 11:13*]
- The political offences contained in the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]
- Undesirable provisions in the Criminal Procedure and Evidence Act [*Chapter 9:07*]
- The University of Zimbabwe Act [*Chapter 25:16*]
- The Private Voluntary Organisations Act [*Chapter 17:05*]

4.1 Basic freedoms

In the past, the Mugabe administration has drastically curtailed basic freedoms which are essential in any democratic society. The agreement contains provisions which may be read as intended to lead to the restoration of these freedoms. However, ZANU PF and government spokespersons have consistently denied human and civil rights violations by their supporters or government. This must be borne in mind when considering the value of ZANU PF's undertakings in this regard and the possibility of these provisions being implemented in a way which represents a real return to democracy and the rule of law.

4.1.2 Free political activity (article 10)

In the past, MDC has been unable to campaign freely. The law enforcement agencies have greatly obstructed its campaigning and supporters of ZANU PF have used violence and intimidation to stop them from campaigning.

In the Agreement, the parties observe that “the right to canvass and freely mobilise for political support is the cornerstone of any multi-party democratic system.”

The parties agree that there should be free political activity throughout Zimbabwe within the ambit of the law, in which all political parties are able to propagate their views and canvass for support, free of harassment and intimidation.

The implications of the phrase “within the law” need to be considered. There are presently some laws that unreasonably restrict political campaigning which need to be changed. In some instances, it is not so much the laws but the way in which the laws are applied by the law enforcers that has led to unfair restrictions being imposed. Both the laws and their application on the ground need to be considered. No doubt the phrase “within the ambit of the law” was included at ZANU PF insistence and signals an intention by ZANU PF to use an overreaching ambit of the law to continue to curtail rights.

4.1.3 Freedom of assembly and association (article 12)

The parties recognised the importance of these freedoms in a multi-party democracy and note that public meetings have to be conducted in a free, peaceful, and democratic manner in accordance with the law.

It was agreed that the parties will work together in a manner which guarantees the full implementation and realisation of the right to freedom of association and assembly. It was further agreed that the Government will mount training programmes, workshops, and meetings for the police and other enforcement agencies that will lead these agencies to appreciate properly the rights of freedom of assembly and association, and the proper interpretation, understanding and application of the provisions of security legislation.

4.1.4 Freedom of expression and communication (article 19)

Under the Agreement, the parties recognise the importance of the right to freedom of expression and the role of the media in a multi-party democracy.

The previous ZANU PF government imposed huge restrictions on freedom of expression and freedom of the press. The removal of these restrictions and the re-establishment of this vitally important democratic right will require not only wide ranging legislative reforms but also a complete change in the mindset of government.

The parties also noted that while the provisions of the Broadcasting Services Act permit the issuance of licences, no licences have been issued other than a licence for the public broadcaster

The parties expressed their desire to ensure the opening up of the air waves and ensuring the operation of as many media houses as possible, and, to this end, they agreed that the government must ensure the immediate processing by the appropriate authorities of all applications for re-registration and registration in terms of both the Broadcasting Services Act, as well as the Access to Information and Protection of Privacy Act.

This seems to presuppose that the present system of registration of broadcasters under control of the Broadcasting Services Authority, whose members are appointed by Mugabe, will be maintained. Since it is this very system that has prevented the establishment of independent broadcasters, legislative reform is required. The agreement thus appears contradictory in this regard.

The parties also agreed that steps be taken to ensure that the public media provides balanced and fair coverage to all political parties for their legitimate political activities.

They further agreed that appropriate measures be taken to ensure that the public and private media refrain from using abusive language that may incite hostility, political intolerance and ethnic hatred or that unfairly undermines political parties and other organisations.

4.2 The rule of law (article 11)

The parties affirm that it is the duty of all political parties and individuals to:

- respect and uphold the Constitution and other laws of the land;
- adhere to the principles of the Rule of Law.

In the past, ZANU PF leaders and their supporters have been the main violators of the rule of law and it remains to be seen whether in the future this will cease to be the case, given their

previous denials. Additionally, the law enforcement agents have often refused to obey court orders. In the future these agents must be instructed to obey court orders.

4.3 Political violence (article 18) and national healing (article 7)

Overwhelmingly in the past, it has been members of ZANU PF that have perpetrated acts of political violence. The provisions of the agreement, however, do not attribute responsibility for political violence to any particular political party, suggesting the ZANU PF still refuses to accept responsibility. This casts doubt on the value of clauses such as these. The clause points out the harmful nature of such violence and the parties agree to take various steps to prevent and deal with such violence. They have agreed not to use violence to achieve political aims, to promote political tolerance, and to use dialogue to resolve political differences. Political leaders will do everything possible to stop and prevent all forms of political violence. They will also refrain from using hate speech. They will also work together to ensure the security of all persons and property and to ensure the safety of displaced persons, their safe return home, and their enjoyment of the full protection of the law.

These provisions also seem to imply that there will not be amnesty or immunity for perpetrators of political violence. It is provided that it has been agreed that:

- the Government will apply the laws of the country fully and impartially in bringing all perpetrators of politically motivated violence to book (Article 18(5)(i));
- that while having due regard to the Constitution of Zimbabwe and the principles of the rule of law, the prosecuting authorities will expedite the determination as to whether or not there is sufficient evidence to warrant the prosecution or keeping on remand of all persons accused of politically related offences arising out of or connected with the March and June 2008 elections (Article 18(5)(j)).

Regrettably, the agreement does not provide for the dismantling of the National Youth Training Programme. In the past, the graduates of this programme have been a major source of political violence and repression against opposition party members. The parties agreed that in the future this programme will be run on a completely apolitical basis, and will promote non-violence. The trainees will be given skills training, and the programme will be aimed at engendering a spirit of community service.

The parties must also “give consideration to the setting up of a mechanism to properly advise

on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre and post independence political conflicts.”

The agreement offers little scope for dealing with the past. It does not provide for any formal transitional justice mechanisms such as a truth commission. Article 7 provides only a very tentative mechanism for addressing the rights of victims. It says that the parties should give "consideration" to the "setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity and respect of victims of pre and post independence political conflicts.”

The agreement also fails to deal properly with the important issue of reparations for victims of past political violence.

4.4 Equal treatment and tolerance (article 7)

The parties agreed that the new government must:

- ensure equal treatment of all regardless of gender, race, ethnicity, place of origin and will work towards equal access to development for all;
- ensure equal and fair development of all regions of the country and in particular to correct historical imbalances in the development of regions;
- strive to create an environment of tolerance and respect among Zimbabweans and to ensure that all people will be treated with dignity and decency.

4.5 State organs and institutions (article 13)

ZANU PF has attempted to politicise all state institutions, including the uniformed services. Rather than appointing public officers on the basis of merit and aptitude, public officers have been appointed on the basis of loyalty to ZANU PF. Public offices have been used for the purposes of providing political patronage. The agreement provides that in the future there must be no political favouritism when recruiting personnel to the public service.

In the uniformed services, there have been massive purges of personnel, and officers suspected of having sympathy for the MDC have been weeded out. Fanatically pro-ZANU-PF war veterans and youth militia have been placed in positions of authority within these services. The restoration of the professional neutrality of these forces will not be easy. The re-orientation process can be assisted by using the core professional officers still in the force

and bringing back some of the previous officers who were unfairly forced out of the service. There is bound, however, to be resistance to change from those heavily politicised officers who have been prepared to abandon professionalism. They have also been prepared to engage in brutal suppression of supporters of the MDC and have often ignored court orders.

Regarding the uniformed services, the agreement provides that the training programmes of personnel in these services must include "the subjects of human rights, international humanitarian law and statute law so that there is greater understanding and full appreciation of their roles and duties in a multi-party democratic system." The agreement also requires that there be adherence to the rule of law.

Rather than providing public services on a non-discriminatory basis, political appointees to public offices have often operated in a grossly discriminatory fashion. For instance, supporters of the MDC have frequently been refused food assistance.

The agreement provides for the de-politicisation of state institutions and for the rendering of public services on a non-discriminatory basis. The political contamination of these institutions is so deep-seated that it will take time to achieve the objective of restoring the public service to an institution that operates efficiently and effectively in the interests of the public as a whole. The agreement provides that public officials must be non-partisan and impartial in the way in which they perform their duties.

Finally, the agreement provides that laws and regulations governing state organs and institutions must be strictly adhered to and those violating them be penalised without fear or favour.

5. Constitutional reform process

5.1 Interim measures (article 24)

Under the Agreement, there will be various interim constitutional amendments. The parties will firstly unconditionally support the passing of constitutional amendment No.19 for the purpose of making the "constitutional amendments necessary for the implementation of this agreement." Constitutional amendment No.19 will also incorporate certain provisions from the Kariba Draft Constitution. The provisions from this draft constitution that will be incorporated relate to citizenship, the Standing Rules and Orders Committee of Parliament, and the establishment of independent constitutional commissions.

5.2 Long term measures (article 6)

Under the Agreement, within eighteen months after the swearing in of the new government, Zimbabweans will have a new democratic constitution, provided that they approve the new draft constitution in a referendum.

The preambular provisions to this article emphasise the need for a new constitution to “deepen our democratic values and principles” and to “protect the equality of all citizens.”

There are specific provisions on the creation of a new Constitution for Zimbabwe.

These set out in some detail the process that will be followed and the time frame for completing this process. The preambular provisions stress that the new constitution “must be owned and driven by the people, and must be inclusive and democratic.” However, the constitution making process will be conducted by Parliament with some feed-in of views from civil society.

Within two months of the inception of a new government, Parliament must set up a Select Committee of Parliament composed of representatives of the political parties. This committee in turn will establish such subcommittees chaired by a Member of Parliament, and composed of members of Parliament and representatives of Civil Society as may be necessary to assist the Select Committee in performing its mandate.

The Parliamentary Select Committee will hold such public hearings and such consultations as it may deem necessary in the process of public consultation over the making of a new constitution for Zimbabwe.

Within three months of the date of its appointment, the Select Committee will then convene an All Stakeholders Conference to consult stakeholders on their civic society representation in the sub-committees and such related matters as may assist the Committee in its work. The public consultation process must be completed not later than four months from the date of the first All Stakeholders Conference.

Within three months of the completion of the public consultation process, the Select Committee must table its draft Constitution to a Second All Stakeholders Conference.

Within one month of the Second All Stakeholders Conference, the Select Committee must table, in Parliament, the draft Constitution and accompanying report on its recommendations

concerning the content of a new Constitution. The parliamentary debate on the draft constitution must be complete within one month.

The draft Constitution emerging from Parliament must be gazetted before the holding of a referendum.

A referendum on the new draft Constitution must be held within three months of the conclusion of the debate.

If the draft Constitution is approved in the referendum, it must be gazetted within one month of the date of the referendum, and the draft Constitution must be introduced in Parliament not later than one month after the expiration of the period of thirty days from the date of its gazetting. If the people reject the draft constitution, then the previous constitution will obviously continue to be in force. The constitution so introduced will need to be approved by a two thirds majority meaning that with parliament's current composition ZANU PF members may wield a veto.

The reference, in this article, to the Kariba Draft Constitution agreed to previously in September 2007, and in the preamble seems to imply that this draft may form the initial basis for the drafting of the new constitution.

6. Restoration of Economic Stability and Growth (article 3)

The economic collapse in Zimbabwe has been caused almost entirely by a series of "economic strategies and plans" developed by the present Government.

The parties are committed to working together on a comprehensive economic programme to resuscitate the economy, which will urgently address the issues of production, food security, poverty, unemployment, and the challenges of high inflation, interest rates, and the exchange rate. The parties also agreed to create conditions that will ensure that 2008/2009 agricultural season will be productive.

This provision does not vest control of economic affairs in the MDC, which it should have done. As it stands, the article will allow ZANU PF to continue to dominate economic policy, and the MDC will be tied to that policy. In other words, the MDC will not be able to withdraw from the agreement on the ground that the new Government's economic policies are continuing the abuses of the past, and, as an integral part of the new Government, the MDC will share the blame for the failure of those policies.

The provision does shed a ray of hope, however. Article 3.1(c) calls on the parties to establish a National Economic Council, composed of representatives of all sectors of the economy and “academia” to advise government on economic matters. If this Council is given a sufficiently prominent position, if its recommendations are made public, and if ZANU PF representation on it is kept to a minimum, there is a chance that it may be able to steer the Government in the right direction. However, similar such Councils established in the past have been totally ineffective.

The MDC has indicated a preference for an MDC Minister to be in charge of the Ministry of Finance. It rightly believes that only it can mobilize international community to provide a full scale economic rescue package for Zimbabwe. Even if MDC gets the Ministry of Finance, however, the international community will probably be cautious about committing large amounts of economic assistance until it sees that the agreement is working to bring about meaningful democratic transformation. If MDC has the Finance Ministry, and it fails to garner adequate economic assistance from outside, and the economic woes continue, it will be blamed and this could lead to disillusionment with this party. Furthermore, it will be recalled from what was said above that the role of the Minister of Finance has been largely marginalised by the policies of the Mugabe appointed Governor of the Reserve Bank. There is nothing in the agreement suggesting that this situation will not continue.

6.1 Economic sanctions (article 4)

The agreement refers to the question of economic sanctions. It lists:

- the US Zimbabwe Democracy & Economic Recovery Act which prevents the access of credit by Zimbabwe from international financial Institutions in which US government is represented or has a stake;
- the IMF suspension of Zimbabwe’s voting and related rights, suspension of balance of payment support, declaration of ineligibility to borrow Fund resources and suspension of technical assistance to Zimbabwe;
- the suspension of World Bank grants and infrastructural development support to Zimbabwe;
- the imposition of targeted travel bans against members of the ZANU PF government and some business leaders.

The parties agreed that that all sanctions against Zimbabwe should be lifted to facilitate a sustainable solution to current challenges, and to work together to end the international

isolation of Zimbabwe. This provision is aimed primarily at the MDC, but clearly MDC cannot deliver on the undertaking to have sanctions lifted if the governments who imposed the sanctions decide not to lift the sanctions until it is clear that the agreement will actually result in the restoration of democracy and the rule of law. In addition, the government will need to make due payments to the IMF which led to its suspension in the first place.

It is provided in article 22.7, that the parties and the new Government will seek the support and assistance of SADC and the AU in mobilizing the international community to support the new Government's economic recovery plans and programmes, together with the lifting of sanctions taken against Zimbabwe and some of its leaders.

6.2 Land (article 5)

The agreement starts by accepting that land acquisitions and redistribution are irreversible.

It purports to impose the primary obligation of compensating former land owners upon Britain, a provision which is clearly not enforceable.

The parties agree to:

- conduct a comprehensive, transparent and non-partisan land audit, during the tenure of next Parliament for the purpose of ensuring accountability and the elimination of multiple farm ownerships.
- ensure that in future there must be no discrimination in allocation of land for resettlement.
- ensure security of tenure to all land holders.
- work together to secure international support and finance for the land reform programme in terms of compensation former land owners and supporting new farmers; and
- work together for the restoration of full productivity on all agricultural land.

7. Periodic review mechanism (article 23)

The incoming government will set up a committee composed of two representatives from each party to review on an annual basis progress on the implementation and achievement of the priorities and objectives set out in this agreement.

This committee will make recommendations to the parties on measures and programmes that may be necessary to realise full implementation of this agreement.

The agreement and the relationships under it will be reviewed at the conclusion of the constitution-making process.

The parties will continually review the effectiveness and any other matter relating to the functioning of the Inclusive Government established by the Constitution in consultation with the Guarantors.

8. Conclusions

Whilst the Agreement marks a shift in the politics of Zimbabwe, it is not evident that the Agreement on its own will be sufficient to move Zimbabwe out of the troubled waters into which it has been sailed. As was seen in this analysis, there are many areas of vagueness, and much will depend on whether the political parties will be able to create the climate of trust and respect that will be necessary to make it work. The current deadlock in discussions about the allocation of Ministerial posts does not create any confidence that this trust and respect will come easily. Much depends upon compliance with the "spirit" rather than the letter of the agreement. The "spirit" of the agreement may prove to be highly subjective.

Perhaps the most disturbing aspect of the Agreement is the obvious way in which ZANU PF has overcome the result of the March 2008 elections. For a party that was comprehensively beaten in nearly every one of the four polls, including the Presidential poll, it is remarkable that the Agreement leaves ZANU PF in the position of the senior party in government. This is clearly not what was desired by the electorate, and thus this new government will not govern with the consent of the people, which is always an undesirable and risky basis for ruling a country.

Appendix 1

Summary of power sharing arrangements

The Cabinet

- evaluate and adopt all government policies and consequential programmes;
- with approval of Parliament, allocate financial resources for implementation of policies and programmes;
- prepare & present to Parliament, all such legislation and other instruments necessary to implement policies and programmes of National Executive;
- ensure state organs, including the Ministries and Departments, have sufficient financial and other resources and appropriate operational capacity to carry out their functions effectively.

Must take decisions by consensus, and take collective responsibility for all Cabinet decisions, including those originally initiated individually by any member of Cabinet.

President and PM will agree on allocation of Ministries between them for the purpose of day-to-day supervision.

The President

- chairs Cabinet;
- exercises executive authority;
- grants pardons, respites, substitutes less severe punishment and suspends or remits sentences, on the advice of Cabinet;
- chairs National Security Council;
- formally appoints Vice Presidents;
- appoints PM pending the enactment of the Constitution of Zimbabwe Amendment No.19;
- formally appoints Deputy PMs, Ministers and Deputy Ministers in accordance with this agreement;
- after consultation with the Vice Presidents, the PM and the Deputy PMs, allocates Ministerial portfolios in accordance with this agreement;
- appoints independent Constitutional Commissions in terms of the Constitution;
- appoints service/executive Commissions in terms of the Constitution and in consultation with the PM;
- in consultation with the PM, makes key appointments the President is required to make under and in terms of the Constitution or any Act of Parliament;
- may, acting in consultation with the PM, dissolve Parliament;

Must be kept fully informed by PM on general conduct of government business and must be furnished with such information as may request in respect of any particular matter relating to the government, and may advise PM and Cabinet in this regard.

The Prime Minister

- chairs Council of Ministers and is Deputy Chairperson of Cabinet;
- exercises executive authority;
- oversees formulation of government policies by Cabinet;
- ensures policies are implemented by the entirety of government;
- ensures Ministers develop appropriate implementation plans to give effect to policies: in this regard, the Ministers will report to the Prime Minister on all issues relating to the implementation of such policies and plans;
- ensures legislation in place which is necessary to enable the

- government to carry out its functions: must do so by discharging functions of Leader of Government Business in Parliament;
- is member of National Security Council;
- may be assigned (presumably by the President) such additional functions as are necessary further to enhance the work of the Inclusive Government;
- ensures effective execution of these tasks, assisted by Deputy PMs; and
- must report regularly to President and Parliament.

Council of Ministers

Ensure that PM properly discharges his responsibility to oversee the implementation of the work of government, there shall be a Council of Ministers consisting of all the Cabinet Ministers, chaired by PM, whose functions will be:

- to assess the implementation of Cabinet decisions;
- to assist the PM to attend to matters of coordination in the government;
- to enable PM to receive briefings from the Cabinet Committees;
- to make progress reports to Cabinet on matters of implementation of Cabinet decisions;
- to receive and consider reports from the Committee responsible for the periodic review mechanism; and
- to make progress reports to Cabinet on matters related to the periodic review mechanism.

President and Prime Minister

President (Mugabe)	Prime Minister (Tsvangirai)
2 VPs nominated by President and/or ZANU PF	1 Deputy PM (MDC -T) & 1 Deputy PM (MDC-M)
Chair of Cabinet	Deputy Chair of Cabinet
	Chair of Council of Ministers

Ministers and Deputy Ministers

Ministers (31)	Deputy Ministers (15)
15 nominated by ZANU PF (1 may be appointed from outside MPs but no vote) 13 nominated by MDC-T (1 may be appointed from outside MPs but no vote) 3 nominated by MDC-M (1 may be appointed from outside MPs but no vote)	8 nominated by ZANU PF 6 nominated by MDC-T 1 nominated by MDC-M.

Functions of Council of Ministers and Cabinet

Cabinet	Council of Ministers
Chaired by Mugabe. Tsvangirai Deputy Chair <i>Main functions to formulate policies, allocate finance for policies with approval of Parliament & prepare legislation for implementation of policies for approval by Parliament</i>	Chaired by Tsvangirai <i>Main function to ensure that PM properly discharges responsibility to oversee implementation of the work of government.</i>

Functions: ➤ responsibility to evaluate & adopt all government policies & consequential programmes; ➤ subject to approval by Parliament, allocates financial resources for implementation of such policies & programmes; ➤ responsibility to prepare & present to Parliament, all such legislation & other instruments as may be necessary to implement policies & programmes of the National Executive; ➤ must ensure that state organs, including Ministries & Departments, have sufficient financial & other resources & appropriate operational capacity to carry out their functions effectively.	Functions: ➤ assess the implementation of Cabinet decisions; ➤ assist PM to attend to matters of coordination in the government; ➤ enable PM to receive briefings from the Cabinet Committees; ➤ make progress reports to Cabinet on matters of implementation of Cabinet decisions; ➤ receive and consider reports from Committee responsible for the periodic review mechanism; and ➤ make progress reports to Cabinet on matters related to the periodic review mechanism. PM will oversee the formulation of government policies by Cabinet & must ensure these policies are implemented by the entirety of government.
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Senate

President will, in his discretion, appoint five persons to existing positions of Presidential senatorial appointments. An additional nine appointed senatorial posts will be filled by persons appointed by President - three nominated by ZANU PF, three by MDC-T and three by MDC-M.

Appendix 2

Excerpts from the Presidential Powers (Temporary Measures) Act

2. Making of urgent regulations

(1) When it appears to the President that—

- (a) a situation has arisen or is likely to arise which needs to be dealt with urgently in the interests of defence, public safety, public order, public morality, public health, the economic interests of Zimbabwe or the general public interest; and
- (b) the situation cannot adequately be dealt with in terms of any other law; and
- (c) because of the urgency, it is inexpedient to await the passage through Parliament of an Act dealing with the situation;

then, subject to the Constitution and this Act, the President may make such regulations as he considers will deal with the situation.

(2) Regulations made in terms of subsection (1) may provide for any matter or thing for which Parliament can make provision in an Act:

Provided that such regulations shall not provide for any of the following matters or things—

- (a) authorizing the withdrawal or issue of moneys from the Consolidated Revenue Fund or prescribing the manner in which withdrawals may be made there from; or
- (b) condoning unauthorized expenditure from the Consolidated Revenue Fund; or
- (c) providing for any other matter or thing which the Constitution requires to be provided for by, rather than in terms of, an Act; or
- (d) amending, adding to or repealing any of the provisions of the Constitution.

3 Notice of intention to make regulations

(1) Unless he considers it inexpedient to do so because of the urgency of the situation, before making any regulations in terms of section *two* the President shall cause a notice to be published in the *Gazette* or in any other manner he considers appropriate—

- (a) stating that he proposes to make the regulations concerned and summarizing their content; and
- (b) calling upon any person who wishes to make representations in regard to the proposed regulations to lodge his representations at such place and in such manner and within such time as may be specified in the notice.

4 Regulations to be laid before Parliament

(1) Copies of all regulations made in terms of section *two* shall be laid before Parliament no later than the eighth day on which Parliament sits next after the regulations were made.

(2) If Parliament resolves that any regulations that have been laid before it in terms of subsection (1) should be amended or repealed, the President shall forthwith amend or repeal the regulations accordingly.

(3) Where any regulations have been amended or repealed in terms of subsection (2) in accordance with a resolution of Parliament, the President shall not, within a period of six months thereafter, make any further regulations in terms of section *two* that are identical in substance to the regulations before they were so amended or repealed, as the case may be.