

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

Section & Title	Summarised and Simplified Draft Provisions	General Comments
Preamble	Recognises the supremacy of God; recalls the liberation struggle; celebrates Zimbabwe's natural resources, various cultures, and democratic values such as the rule of law and fundamental human rights.	<ul style="list-style-type: none"> ▪ Inspires, informs about historical basis of Constitution. ▪ '<i>We the People</i>' acknowledges ownership of the Constitution by the people of Zimbabwe. ▪ Includes values such as rule of law to be respected. ▪ Does not recall atrocities such as <i>Gukurahundi</i> and Operation <i>Murambatsvina</i> as a caution and the requirement for redress and non-repetition. ▪ Does not emphasise adherence to constitutionalism and the "just" rule of law.
Chapter 1: Founding Provisions	<p><u>Country</u> – Defined as "unitary, democratic and sovereign republic."</p> <p><u>Status</u> – Constitution is the supreme law, binds everyone and all institutions, including government.</p> <p><u>Values and principles</u> – Includes the rule of law, fundamental human rights and freedoms, gender equality, good governance, adequate representation of electorate, orderly transfer of power after elections, devolution of governmental power and functions. Refers to national flag, anthem, coat of arms and public seal.</p> <p>Recognises 14 languages. Sign language also official language, Parliament can add other languages. State to ensure languages are treated equally and promote advancement, development and use of languages.</p> <p><u>State's duty</u> - To promote public knowledge of Constitution by translating and educating people (even members of the uniformed forces and the public service); teaching it in schools; encouraging civil society to disseminate it.</p>	<ul style="list-style-type: none"> • The unitary state remains protected even where there is devolution. ▪ Guarantee of supremacy of Constitution is key, as is the specific mention of government institutions being bound. ▪ These are key values that can be used to hold duty-bearers to account. ▪ Positively recognises 14 languages including sign language. State must be sensitive to language preferences. ▪ Places affirmative duty on State to educate people about the Constitution.
Chapter 2: National Objectives	These direct and guide all agencies and state institutions and spell out State obligations in Constitution and other laws. They include: good governance, foreign policy, development, empowerment, food security, culture, gender balance, fair regional representation, children, youth, elderly persons, persons with disabilities, war veterans, work and labour relations, protection of the family, marriage, education, shelter, health services, social welfare, legal aid, environment, sporting, recreational facilities, preserving traditional knowledge, unity, stability, fostering rights and freedoms, domesticating international instruments. State to ensure all international conventions, treaties and agreements it joins become part of domestic law.	<ul style="list-style-type: none"> ▪ Makes reference to courts and permits application of national objectives to interpret laws and pass judgments. ▪ An impressive list of objectives that can guide interpretation and application of constitutional rights and duties. However actual compliance with these by duty-holders will be harder to achieve in practice. ▪ Commendable that State has a duty to ensure provisions of international treaties, conventions and agreements are in our national law and must be complied with.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

<p>Chapter 3: Citizenship</p>	<p><u>Acquired</u> - By birth, descent and registration.</p> <p><i>Citizen by birth</i> – (a) Born in Zimbabwe, 1 or both parent(s) or grandparent(s) is citizen by birth or descent (b) Born outside country, 1 or both parent(s) is citizen ordinarily resident in Zimbabwe or works for State or international organisation abroad (c) Child below 15 years or looks below 15 and parents or citizenship not known.</p> <p><i>Citizen by descent</i> – (a) Born out of Zimbabwe and 1 or more parent(s), grandparent(s) is citizen by birth or descent (b) Born out of Zimbabwe and either parent(s) is a citizen by registration.</p> <p><i>Citizen by registration</i> – (a) Married to Zimbabwean citizen for 5 years (b) Continuously and lawfully resident for 10 years (c) Satisfies conditions in laws (d) Child adopted by citizen entitled on application to be registered as citizen.</p> <p><u>Loss and Continuity</u> - Citizenship not lost after 'dissolution of marriage'; revocation of citizenship only possible if person does not become stateless. Status of citizen born in Zimbabwe before Constitution came into force is citizen by birth when 1 or both parent(s) is citizen of SADC country and person is "ordinarily resident in Zimbabwe on effective date".</p> <p><u>Dual citizenship</u> – Can be prohibited or permitted by parliament if citizenship is acquired by registration and descent.</p> <p><u>Citizenship and Immigration Board</u> - Appointed by President with power to grant or revoke citizenship by registration, more functions can be specified in law passed by Parliament.</p> <p><u>Rights and obligations of citizens</u> – They have a right to passport, travel documents, birth certificates, protection by state wherever they may be. Citizens must be loyal, observe the Constitution, respect the flag and anthem, and defend Zimbabwe and its sovereignty.</p>	<ul style="list-style-type: none"> ▪ Recognises citizenship by birth, descent and registration. ▪ Citizenship is gender neutral and can be obtained through either the maternal or paternal side of the family ▪ Protects rights of abandoned children, but age of 15 that is imposed is arbitrary. ▪ Does not permit citizenship to be revoked if a person will become stateless and this is a good and necessary protection ▪ It preserves citizenship after dissolution of marriage. ▪ It ensures people whose parents migrated from SADC countries retain citizenship by birth. However there is an arbitrary discrimination between those Zimbabweans whose parents migrated from SADC and those who migrated from other regions and this is problematic. ▪ Dual citizenship issue has still not been resolved and gives excessive powers to parliament to prohibit, making parliament more powerful than the constitution in this aspect. Problematic. ▪ Citizenship and Immigration Board appointed solely by President. Too much executive control and interference in matters of citizenship. ▪ Obligation on State to protect citizens abroad, citizens have right to documents.
<p>Chapter 4: Declaration of Rights</p>	<p><u>Binding</u> - On all person(s) including juristic persons, all branches, agencies and institutions of the State. Their interpretation by the courts must take into account international law, all treaties and conventions to which Zimbabwe is a State Party, and courts can also consider foreign law. Other entitlements can be provided by law.</p>	<ul style="list-style-type: none"> ▪ Courts are required to use and respect international law when deciding cases, which is positive.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

Limit to rights – Rights can be limited by law of general application and to extent the limitation is fair, reasonable, necessary and justifiable in an open, just and democratic society. Must take into account the purpose of limitation and the nature of the right or freedom. Any limitation of rights in emergency situations must be proportionate to the circumstance and cannot justify unlawful acts by the State; the State will still be held to account for such acts.

Rights that cannot be limited - Right to life (except for death penalty in terms of the law); human dignity; not to be tortured or subjected to cruel, inhuman or degrading punishment or treatment; not to be in slavery or servitude; fair trial; and obtaining an order of *habeas corpus* (production of person who is missing).

Enforcement - Person with own interest in matter, person acting for those who cannot act for themselves, members of a class or group of person, acts in public interest or association acting for members. Contravening a law is not a ground to prevent applicant from approaching courts for relief.

Civil and political rights protected - Life, personal liberty, rights of arrested and detained persons, human dignity, personal security, freedom from torture or inhuman or degrading treatment and punishment, freedom from slavery, servitude and forced labour, equality and non-discrimination, privacy, freedom of assembly and association, freedom to demonstrate and petition, freedom of conscience, freedom of expression and freedom of media, access to information, language and culture, freedom of profession, trade or occupation, labour rights, freedom of movement and residence, political rights, administrative justice, right to fair hearing, rights of accused persons, property rights.

Death penalty – Provided by law if murder committed in aggravating circumstances. Death penalty not imposed on women, persons under 21 years or over 70 years when crime committed. Law gives court discretion to impose death penalty, and affected person can petition President for pardon or commutation.

Compulsory acquisition of agricultural land - Compensation for improvements payable by former colonial power. If not paid through such fund, the Zimbabwe Government has no obligation to pay for acquired land. Discrimination not a basis to challenge acquisition of agricultural land.

Social and economic rights - Shelter, education, health care, food and water and marriage.

Rights of vulnerable - Women, children, elderly, persons with disabilities and liberation war veterans included.

Amendments to Declaration of Rights - require 2/3 majority of Senate and National Assembly sitting together and must be submitted to a referendum.

- It remains to be seen whether limitations will be narrow or wide-ranging as the State in the past has abused this provision without adequate justification, and the safeguard here is still not specific enough.
- This is in line with international law. Once again, it will remain to be seen if this will be respected by the State and there are no harsh consequences for any violation. This could be improved by additional safeguards.
- More people can bring constitutional cases; courts are not restricted by 'procedure technicalities'. Welcome addition.
- Rights protected are much broader, including protection of vulnerable groups. However there is no protection of rights of lawyers and judicial officers carrying out their professional duties, even though they have been targeted and had their rights violated in the past. Also no protection of sexual minorities.
- Non-discriminatory clause does not have catch-all phrase "or any other status," thereby narrows it to specific discrimination in section.
- Death penalty retained for men only and this is arbitrary discrimination.
- Provisions relating to agricultural land are in open defiance of SADC Tribunal ruling on discriminatory nature of land reform programme and contradict Chapter 16 of same Constitution. Also deny aggrieved persons the right to challenge this through the courts which is contrary to jurisprudence of the African Commission on Human and Peoples' Rights.
- Progressive inclusion and protection of such rights, including wide-ranging protection of vulnerable groups.
- Silent on rights to development, use of natural resources.
- Ensures Declaration of Rights cannot be arbitrarily amended; but potentially entrenches "bad" provisions and makes it almost impossible to amend or remove them.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

<p>Chapter 5: Executive Authority</p>	<p><u>Who has authority and obligations?</u> - President and Cabinet, with authority from the people. President is Head of State and Government, Commander-in-Chief of Defence Forces. Duty of President to uphold Constitution. There is no position of Prime Minister.</p> <p><u>Election of President and Vices</u> – Carried out together, 2 vice presidents with same qualifications as President (citizen by birth or descent, over 40 years, resident in Zimbabwe, registered voter, elected in general election).</p> <p><u>Disqualification and challenging election</u> – The new Constitutional Court hears election challenges within 14 days of filing. Case to be filed within 7 days of declaration of result. Court can declare winner, invalidate election or make other just and appropriate order. Nullifying a presidential election also invalidates election of Vice Presidents. Nullifying election of 1 or 2 Vice Presidents means President must appoint replacement(s). President, Vice-Presidents start official duty on 9th day after declaration of election or 48 hours after declared winner by Court if challenged.</p> <p><u>Term of office, resignation and removal</u> - Term is 5 years running at same time with Parliament and there is a limit of 2 terms for any individual. A presidential ‘term’ means 3 or more years being in office as President as President or Vice President. The President cannot hold other public office or be employed elsewhere. President or Vice President(s) may resign or be removed after recommendations of a Parliament committee drawn from the two Houses. Recommendations must be passed by 2/3 of total members. If President dies, resigns or is removed, 1st Vice President becomes President for rest of term. Former President receives pension from State.</p> <p><u>Presidential immunity</u> – This exists while President is in office. Running of prescription for debts or liabilities arising before or during office is suspended. Good faith can be raised as defence for proceedings against a former President.</p> <p><u>Appointment of Ministers and Deputies</u> – By President from members of both houses of Parliament. 7 ministers and deputies ministers may be chosen from outside parliament on the basis of their ‘professional skills and competence.’ Ministers and deputies who are not members of parliament can speak but cannot vote. Vice Presidents, Ministers and Deputies not to hold other public office, or do other paid work to avoid conflict of interest. Required to attend parliament, committees and inform on areas of responsible matters.</p> <p><u>Terms of office of Ministers and Deputy Ministers and vote of no confidence</u> – Term of ministers and deputies ends on resignation, removal by President, assuming office by new President, ceasing to be Member of Parliament if minister when elected and if circumstances arise leading to end of tenure of Minister or Deputy who is Parliamentarian. Ministers and Deputy Ministers continue to hold office after dissolution of Parliament until a new President assumes office. Vote of no confidence in Government needs 2/3 resolution of Parliament sitting together. President can dismiss all Ministers and their Deputies, appoint replacements or dissolve Parliament, call general election in 90 days. If President does not do so in 14 days, Parliament remains dissolved.</p>	<p>President still head of state and government and can still make number of decisions on his/her own, which is problematic.</p> <p>The requirement for Vice Presidents to be elected is welcome as they need to derive authority from the people</p> <ul style="list-style-type: none"> ▪ The time-frames for hearing of election challenges is welcome to ensure there are no delays, unlike in the past. ▪ Commendably, there is Presidential term limit of 2 five-year terms. It is also positive that an effective term has been defined as three or more years in office. ▪ Stability and clarity is provided in relation to what happens and who takes control in the event of the death/removal/resignation of the President or Vice Presidents. ▪ No provision for judicial review of Presidential actions. This should have been included in light of past challenges. ▪ Regrettably, there are no limits on number of ministers and deputy ministers who can be appointed. ▪ Is there any real need for Deputy Ministers? ▪ Appointment of ministers on basis of professional skills and competence is welcome; however more safeguards are needed as to how decision on appointment is made to prevent this being used for patronage purposes. The same can be said for other ministers, as all should be appointed for their skills and competence in a clearly defined way. ▪ President has too much power and unchecked discretion in relation to dismissal of ministers and deputies. ▪ Parliament will find it difficult to exercise vote of no confidence due to fear of dissolution by the President; his power in this regard is not acceptable.
--	--	---

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p><u>Cabinets and Executive functions</u> – Cabinet is composed of the President (head), Vice Presidents and Ministers. Cabinet conducts government business, directs government operations, develops national policy, laws and advises President.</p> <p>President signs bills into law, calls elections and referenda, gives awards and honours, appoints ambassadors and other diplomats, deploys defence Forces, refers bills to Constitutional Court for opinions and advice, summons Houses of Parliament for extraordinary sittings and receive foreign representatives. S/he concludes agreements with foreign states, governments and international organisations. Decisions taken in terms of legislation must be written. President declares war and peace unilaterally; this is subject to approval by both Houses of Parliament within 7 days of the declaration. President exercises prerogative of mercy after consulting Cabinet and publishing in Gazette. President also proclaims state of public emergency unilaterally, subject to Parliamentary approval; if parliament does not approve, the state of emergency ceases after 14 days, and when approved it can last up to 3 months. Parliament has power to extend state of emergency for a maximum of 3 months and can limit geographical location where it applies. State of emergency and/or extension can be challenged by any interested person in the Constitutional Court. Other courts can determine validity of any law enacted or action taken as result of declaration of public emergency.</p> <p><u>Attorney General, appointment, qualification and functions</u> - Appointed by President, who is also the only person who can remove him from office. The AG is the Government’s principal adviser, and represents Government in civil and constitutional proceedings. The AG is responsible for drafting laws, is obliged to uphold the rule of law and defend the public interest, and has other functions that may be stated in other laws. The AG may attend Cabinet meetings, sit, speak in both Houses of Parliament, but cannot vote. AG may appear as friend of the court in civil proceedings in which Government is not a party.</p>	<ul style="list-style-type: none"> ▪ Legislative approval required for declaration of war, state of emergency and for international treaties to bind Zimbabwe, which is welcome. ▪ The President should not have authority to call for elections, as this allows for arbitrariness. Instead, the date of an election which is constant and predictable should be included as a constitutional provision. ▪ To allow the President to unilaterally declare war and also a state of emergency is not a good practice. This allows too much discretion and arbitrariness. Approval or non-approval by parliament after the fact will not be helpful. Such powers should be exercised by Cabinet or the legislature. ▪ AG has no role in criminal prosecutions, which is now the responsibility of a Prosecutor-General who is not controlled by AG. ▪ The AG is not accountable to any person, and it may prove problematic that only the President can remove him/her. This will also affect independence, as s/he will owe allegiance to the person appointing him/her. Actions should be subject to scrutiny by a body other than the executive. Currently Parliament cannot even start disciplinary proceedings against the AG. ▪ AG does not have to report to Parliament annually, and this is problematic for purposes of accountability and public scrutiny of actions.
<p>Chapter 6: The Legislature</p>	<p><u>Composition and powers</u> – Legislature is composed of Parliament and the President, with powers to amend the Constitution, makes laws and provide for passing of subsidiary legislation. Parliament is composed of the Senate and House of Assembly which exist to hold all government institutions and agencies (and the Executive) accountable.</p> <p><u>Senate</u> - 88 members from provinces, including governors, chiefs and other persons elected to represent persons with disabilities. 6 senators are elected from provinces on a party-list system of proportional representation based on votes cast in general election for members of the National Assembly. Female and male candidates are listed alternately, with every list starting with female candidate.</p>	<ul style="list-style-type: none"> ▪ Retention of Senate burdens the fiscus and is unnecessary ▪ Senate still retains parliamentarians who are not voted into office, which is problematic. Provincial governors and chiefs are not elected through popular elections and therefore owe allegiance to the appointing authority.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p><u>National Assembly</u> – Consists of 210 members, and an additional 60 women for the first 2 parliaments after the adoption of the Constitution. The 60 women members are elected from provinces on proportional representation system based on votes cast in general election for members of National Assembly.</p> <p><u>Powers of Parliament and Quorum</u> – To override Presidential reservations on law passed through 2/3 majority votes of National Assembly. President still has option to send such law to Constitutional Court for a ruling on constitutionality, but is required to sign it into law if Court rules that it is constitutional. Quorum for Parliament determined by Members through Standing Orders. Further, parliament controls its own sitting and can dissolve itself.</p> <p><u>Voting, Dissolution</u> - Voting by someone not entitled to vote does not invalidate proceedings. Houses of Parliament determine own sittings except the first sitting (determined by President but not later than 30 days after s/he assumes office). Unless provided otherwise, decisions are made on any motion by a majority of those present and voting. Any equality of votes means the motion is lost. Parliament can undertake a vote of no confidence in government by resolution of 2/3 majority. In that case, an election must be called within 90 days. The Parliamentary Legal Committee considers constitutionality of all enactments, amendments and subsidiary legislation.</p> <p><u>Term of office</u> – This ends for a parliamentarian upon written notice to Speaker of Parliament that the individual has ceased to belong to the political party they were members of upon election. It also ceases upon an individual joining a political party if the member was not a member of that political party upon election.</p>	<ul style="list-style-type: none"> ▪ The affirmative action will boost women’s representation in House of Assembly. However quality of candidates and popularity are not guaranteed. In addition the number of parliamentarians will balloon, which is not affordable for a small country like Zimbabwe. ▪ Investing power in Parliament to control its own sittings is a welcome addition so that the Legislature is not held hostage by the Executive; this improves separation of powers and its independence. ▪ No provision stating that opinions of Parliamentary Legal Committee are binding. ▪ Parliamentarians remain subject to control by their political parties to retain their seats. Floor-crossing remains prohibited, which impacts individual independence.
<p>Chapter 7: Elections</p>	<p><u>Conduct of Elections and state obligations</u> – Provides for peaceful, free and fair elections, free from violence and other electoral malpractices. State to ensure that every eligible citizen has opportunity to vote. State to facilitate voting by persons with disabilities or special needs and ensure fair and equal access to electronic and print media. Provision for electoral disputes to be resolved in a “timely” manner. Parties and candidates must have ‘reasonable’ access to material and information on elections. Election results must be announced ‘<i>as soon as possible after close of polls</i>’.</p> <p><u>Delimitation of constituencies</u> - Done by Zimbabwe Electoral Commission (ZEC) once every 10 years. President and either House of Parliament can refer 1st delimitation report back to ZEC for reconsideration of ‘any matter or issue.’ ZEC’s decision is final on matters referred to it.</p> <p><u>Voter registration</u> – Requirements for registration are left to Electoral Act. Any changes made to Electoral law or law relating to an election after the calling of election is irrelevant for purpose of that election already called for.</p>	<ul style="list-style-type: none"> ▪ Does not specify clearly if system is “first past the post”, proportional representation, or a mixture. ▪ Silent about observers and monitors. ▪ Does not stipulate role of law enforcement agencies and agents during elections. ▪ No specific provision to safeguard process for constitutional amendment of electoral provisions. ▪ This is progressive as the process needs to be in the control of the election management body. However the Registrar General’s role in elections has not been clarified. ▪ Leaving voter qualifications to an Act of Parliament is problematic as it is vague and open to abuse. ▪ No Diaspora vote

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

<p>Chapter 8: Judiciary & Courts</p>	<p><u>Authority lies in</u> - Constitutional Court, Supreme Court, High Court, Labour Court, Administrative Court, Magistrates' Courts, Customary Law Courts and other courts established by law.</p> <p><u>Exercise of authority and guiding principles</u> – Provides for independence and impartiality. All State and government bodies are bound by court decisions. Justice, reasonable promptness, safeguarding human rights and the rule of law guide the work of the judiciary.</p> <p><u>Hierarchy of courts and powers</u> –</p> <p>Constitutional Court – Highest court in constitutional matters. Decisions bind all other courts. Deals only with constitutional matters or related issues. It has the powers to 'determine whether Parliament or the President has failed to fulfil a constitutional obligation.' It also deals with electoral disputes from the election of a President, Vice-President or both and makes the final decision whether an Act of Parliament or conduct of the President or Parliament is constitutional. It must confirm any order of constitutional invalidity made by another court before that order has any force.</p> <p>Supreme Court – Last court of appeal unless Constitutional Court can hear matter. No power to hear constitutional matters.</p> <p>High Court – Hears and decides all civil and criminal matters, decides constitutional matters except those to be heard by Constitutional Court. Supervises lower courts. Other function can be provided by law.</p> <p>Labour Court and Administrative Court – Hear labour, employment and administrative issues as provided by law.</p> <p>Other courts - Law can provide for establishing, composition and power of magistrates' courts, customary law courts and other courts lower than High Court. Referrals to Constitutional Court can be made from other courts.</p> <p><u>Laws administered</u> - Those 'in force on the effective date, as subsequently modified.' Criminal jurisdiction resides with the Constitutional Court, Supreme Court, High Court, Magistrates Courts and courts or tribunals for enforcement of discipline in the 'disciplined force.</p> <p><u>Judicial Service Commission</u> – Consists of Chief Justice, Deputy Chief Justice, Judge President of High Court, judge nominated by judges of the higher courts, the Attorney-General, 3 lawyers with at least 7 years' experience nominated by bar association, Chief Magistrate, Chairperson of Civil Service Commission, person with 7 years experience as human resources practitioner nominated by association, person with 7 years experience as public accountant or auditor nominated by association, and 1 professor or senior lecturer in law nominated by association. Salaries, allowances, other benefits for judicial officers are fixed by JSC after consulting the Minister of Justice and obtaining the approval of the Minister of Finance.</p> <p><u>Appointment of judges</u> – By President from 3 names provided by Judicial Services Commission (JSC) after advertising vacancy and public interviews. JSC can provide another list of 3 names if President not satisfied with 1st list. Appointments to be diverse and reflect gender composition. Judges of Constitutional Court appointed for non-renewable term of 15 years and can go to Supreme or High Court after term if eligible. Judges retire at 70.</p>	<ul style="list-style-type: none"> ▪ Guarantees of independence of judiciary are important. However both institutional and individual independence should be specifically guaranteed in the Constitution which is not the case at present. ▪ The introduction of a Constitutional Court is welcome as the ultimate protector of this new constitutional order. ▪ Independence of JSC remains subject to question and executive/political control due to the number of people on the Commission who are appointed by the President. ▪ Commendably budget and conditions of service of judiciary determined by judges through JSC, but after consultation with Minister of Justice and the approval of Minister of Finance. Regrettably budget and conditions of service remain subject to approval by executive. ▪ Advertising vacancy and having public interviews increases openness, transparency of the appointment process and allows scrutiny of potential choices. This is likely to increase professionalism of judiciary.
---	--	--

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p><u>Removal of judges from office</u> - President sets up tribunal to investigate a judicial officer; the JSC is not involved in the investigation and can only recommend that a judicial officer be investigated. President to act on recommendations of the tribunal.</p>	<ul style="list-style-type: none"> ▪ Role of President in appointment process has been reduced, but still unacceptable that he can reject names of those who have been approved by JSC. ▪ No limit on number of judges to be appointed, open to manipulation by additions to alter majority. ▪ Either the JSC must deal with disciplinary issues, or it must be done by an independent body. The involvement of the President is not acceptable. It impacts independence of the judiciary and violates the principle of the separation of powers.
<p>Chapter 9: Principles of Public Administration & Leadership</p>	<p><u>What is public administration and what qualities are required</u> - Government and state agencies and institutions, government controlled entities make up the public administration. They must be guided by ethics, be development-oriented, responsive, transparent, and representative of the diversity of communities of Zimbabwe. They must reflect equality of men and women, show inclusion of persons with disabilities and exhibit employment based on merit. In addition, State-controlled commercial entities are to maintain commercial viability and abide by generally accepted standards of good corporate governance.</p> <p><u>Role and accountability of public officials</u> - Exercise authority objectively, impartially and openly while demonstrating willingness to serve the people rather than rule them. Law to provide enforcement provisions, measures requiring public officers to regularly disclose their assets and establish a code of conduct for public officers.</p> <p><u>Terms of office</u> - 5-year terms renewed subject to competence, performance and delivery for heads of statutory bodies and government-controlled entities.</p>	<ul style="list-style-type: none"> ▪ Contains many positive provisions requiring enactment from Parliament for enforcement to achieve these ideals. ▪ No specific tackling of the issue of corruption, which is pervasive within the public service. ▪ Positively lays basis for legislation requiring disclosure of assets by public officials. ▪ Benchmarks for performance are welcome additions; it remains to see whether there will be compliance and enforcement.
<p>Chapter 10: Civil Service</p>	<p><u>Members</u> - State employees are members of civil service, except for security service members, judges, magistrates and persons presiding over courts established by statute. Members of Constitutional Commissions and staff of Parliament are also not part of the civil service.</p> <p><u>Status and duties of civil service</u> - Members to be politically neutral and are not obey manifestly illegal orders.</p> <p><u>Civil Service Commission</u> - Consists of chairperson, deputy, and a minimum of 2 and maximum of 5 other members appointed by President. Members chosen for 'knowledge of or experience in administration, management or provision of public service.' This Commission is responsible for all appointments, conditions of service, remuneration and discipline of the Civil Service. Functions in accordance with written policy directives of the responsible Minister.</p> <p><u>Ambassadors and other principal representatives of Zimbabwe</u> - Appointed by the President after consulting Civil Service Commission. This includes Permanent Secretaries, except that President must first consult the Civil Service Commission. They have a 5-year term, renewable once, subject to competence, performance and delivery.</p>	<ul style="list-style-type: none"> ▪ The inclusion of this constitutional obligation is positive; it remains to be seen how it will be enforced and what consequences will be imposed on transgressors. ▪ The independence of the Civil Service Commission is questionable as the members are appointed by the President and therefore executive control is likely. ▪ It is not proper that ambassadors and other principal representatives of Zimbabwe are appointed unilaterally by the President without approval or input of anyone.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

<p>Chapter 11: Security Services</p>	<p><u>Composition</u> - Defence forces, Police Service, Intelligence Service, Correctional Service and others established by law.</p> <p><u>Status and duties</u> - Politically neutral and not be 'active members or office-bearers of political party or organisation.'</p> <p><u>National Security Council and independent complaints mechanism</u> – Chaired by President, other members stated in law. Complaints mechanism to be provided by law to hear and remedy harm caused by members of security services.</p> <p><u>Service Commissions</u> – Defence, Police, Correctional. All are chaired by Chairperson of Civil Service Commission and have a minimum of 2 and maximum of 6 members appointed by President. Responsible for conditions of service, discipline and general well-being of their members.</p> <p><u>Appointment of Commanders/Commissioners General</u> - Defence Forces, Police, Intelligence, Correctional Service commanders/commissioners general appointments done by President after consulting responsible Ministers. All serve maximum of 2 terms only and each term not more than 5 years.</p> <p>Defence Forces – Army and Air Force, not partisan, professional and subordinate to civilian authority. Deployed in Zimbabwe to assist police maintain public order or support civilian authority in emergency or disaster. Deployed by President. Deployed outside Zimbabwe but subject to approval of 2 Houses of Parliament sitting together within 7 sitting days, except when fulfilling multilateral international commitment or on peacekeeping mission. All deployments to be quickly reported to Parliament with details – numbers, location, duration and reasons.</p> <p>Police Services - Deals with crime, law and order, internal security, security of lives and property. Under command of Commissioner-General of Police. Commissioner-General cannot command other security service after serving here.</p> <p>Intelligence services - Established by law or Presidential or Cabinet directive or order. Not be partisan, be national and professional. Commander discharges duties according to general written policy directives from Minister.</p>	<ul style="list-style-type: none"> ▪ Establishes a police 'service' rather than a 'force', and starts to regulate the Intelligence Service for the first time. ▪ A good constitutional obligation; however it remains to be seen how this will be implemented and consequences that will be imposed for violations of this obligation. ▪ Independent mechanism to hear and remedy complaints by members is welcome, but it does not necessarily have to be civilian, which is problematic. Too generalised. ▪ Chairperson of Civil Service Commission appointed by President, chairs all Commissions, can influence all security services. No provision for scrutiny, transparency and accountability of security services. The Commissions are not independent and are subject to excessive executive control. ▪ Commanders and commissioners of security services have fixed term which is positive as it allows for renewal. However, appointment of commanders and commissioners in security services by President does not involve any relevant commissions or public oversight. Rather, the President consults Ministers that s/he appoints; this allows too much executive control and compromises independence. ▪ Parliament approval required for deployment of troops outside Zimbabwe commendable. However, this approval should be sought before deployment and not after, as this can be problematic. ▪ Regrettable that a Civilian Complaints Authority has not been constitutionally established to ensure accountability and transparency of operations and actions of police. ▪ This still allows too much discretion from the Executive.
---	---	--

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p>Correctional Services - Deal with detention, incarceration and rehabilitation of persons. Commissioner-General cannot command other security service after serving here. Commands according to general written policy directives given by responsible Minister.</p>	
<p>Chapter 12: Independent commissions supporting democracy</p>	<p><u>Which ones?</u> - Zimbabwe Electoral Commission (ZEC), Zimbabwe Human Rights Commission (ZHRC), Zimbabwe Gender Commission (ZGC), Zimbabwe Media Commission (ZMC) and National Peace and Reconciliation Commission (NPRC).</p> <p><u>Independence and removal of Commissioners</u> – Provides for independence and subjects them to the Constitution. Members to be non-partisan and non-political. Commissioners can be removed via the same procedure as judges.</p> <p><u>Chairpersons of commissions and other Commissioners</u> – They lead Commissions. ZEC, ZHRC, NPRC chairs appointed by President after consultation with JSC and Committee on Standing Rules and Orders (CSRO). If chairperson appointed against advice of JSC, the CSRO must be informed. The ZMC, ZGC chairpersons are appointed by President after consulting CSRO. Other commissioners of ZEC, ZHRC, ZMC, NPRC - 8 other members appointed by President from 12 names provided by CSRO. ZGC has 7 other members appointed from 12 names provided by CSRO and 1 more nominated by Council of Chiefs.</p> <p>Zimbabwe Electoral Commission – Responsible for elections for President and Parliament, provincial assemblies and local authorities, President of Senate, Speaker, members of Council of Chiefs and referendums. Does voter education, and compiles and maintains voter’s roll and registers. Voter registration left to be prescribed by Electoral Law. Accredits election and referendum observers, receives complaints from public and takes action. Required to table report to National Assembly on conduct of every election, referendum through the Minister of Justice.</p> <p>Zimbabwe Human Rights Commission – Protects the public against abuse of power, maladministration by State, provide remedies, including recommending prosecution of offenders and directs Commissioner-General of Police to investigate cases. Tables reports to Parliament and requires reports to be submitted from any person, institution or agency.</p>	<ul style="list-style-type: none"> ▪ Commendable that specific commissions relating to human rights, gender issues, and national peace and reconciliation are established. However the retention of the ZMC is retrogressive in light of civic position advocating media self-regulation. The ZMC should be scrapped. ▪ Positive that independence of commissioners is made clear. ▪ The same concerns relating to removal of judges above applies to the removal process for commissioners. ▪ Problematic that the President can overlook advice from JSC for appointment of ZEC, ZHRC and NPRC chairpersons as long as he informs CSRO. ▪ Commissioners not have capacity to choose their own leaders from amongst themselves, which impacts negatively on independence and effectiveness as the Chair owes his/her position to the President. ▪ Positive provision that ZEC is required to table a report on each election and referendum before parliament, opening it to legitimate scrutiny and criticism. ▪ Role of Minister is problematic as s/he can block the report from being tabled in Parliament, which adversely affects transparency, accountability and independence of commission. ▪ Voter registration issue has not been resolved; nor has the role of the Registrar General, so previous problems relating to these remain unresolved. ▪ Role of Minister is problematic as s/he can block the report from being tabled in Parliament, which adversely affects transparency, accountability and independence of commission. ▪ Protective mandate still not strong enough and independence is not properly safeguarded.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p>Zimbabwe Gender Commission – Researches on gender and social justice issues and makes appropriate recommendations. Does everything necessary to promote gender equality. May table reports before Parliament.</p> <p>Zimbabwe Media Commission - Regulates broadcasting in the public interest, ensures fair and wide access to information and use and development of all official languages, encourages adoption of new technology. Provides that ZMC must encourage self-regulation of press and may table reports to Parliament through appropriate Minister.</p> <p>National Peace and Reconciliation Commission - Ensures post-conflict justice, healing and reconciliation, encourages truth telling, provides justice and makes amends. It develops rehabilitative programmes for victims of persecution, torture and other abuse. Facilitates dialogue between political parties and other groups nationally and receives complaints from public. May report to parliament through relevant Ministry.</p>	<ul style="list-style-type: none"> ▪ As previously stated, this ZMC should be scrapped. The civic position and best practice regionally and internationally favours media self-regulation. Anything else is a violation of constitutional freedom of expression and media freedom. It is not enough to 'encourage' self-regulation. ▪ This is a welcome addition to deal with past conflicts and provides for a range of forms of redress. ▪ Greater efforts need to be made to improve provisions safeguarding this commission's independence, as for the ZHRC and setting a comprehensive framework for its establishment and mandate. ▪ Role of Minister is problematic as s/he can block the report from being tabled in Parliament, which adversely affects transparency, accountability and independence of commission.
<p>Chapter 13: Institutions to Combat Corruption and Crime</p>	<p><u>Zimbabwe Anti-Corruption Commission (ZACC)</u> – ZACC's mandate is to combat corruption, misappropriation, theft, and other improper conduct in public and private sectors. Can direct Commissioner-General of Police to investigate cases and can refer cases to NPA for prosecution. May submit reports to Parliament through relevant Minister. Government is responsible for ensuring power to secure arrest of suspects. Other provisions on conduct of staff, independence and political neutrality of independent commissions also apply to ZACC. Chairperson appointed by President after consulting CSRO. 8 members appointed by President from 12 names provided by CSRO.</p> <p><u>National Prosecuting Authority (NPA)</u> - Responsible for prosecutions on behalf of the State. Led by Prosecutor-General (PG), appointed by President on advice of JSC (same procedure as appointment of judges). PG appointed for 6 years and can only serve maximum of 2 terms (12 years). PG has powers to direct Commissioner General of Police to investigate cases. PG is accountable to Parliament, reporting to it annually through the Minister. PG is independent and not subject to direction or interference. PG and NPA officers bound by Zimbabwean law and must be politically neutral, non-partisan and professional. PG removed in same way as judge.</p>	<ul style="list-style-type: none"> ▪ The power to investigate corruption and refer matters to NPA is welcome as corruption needs to be fought intensively. ▪ CSRO has huge influence over the appointment of ZACC and can be problematic where it is politically polarised. ▪ No mandatory requirement for ZACC to report to Parliament or some other independent body. Also Ministerial authority required, which is problematic. ▪ Removal of criminal prosecutions from AG (a political appointee) to NPA commendable, as is creation of Prosecutor-General. The fixed term of office for PG good; prevents abuse and increases independence. However appointment should be through independent and public process not by JSC as this violates separation of powers. ▪ Reporting to Parliament increases accountability and transparency of NPA, but Minister should not have a role. ▪ Removal of Prosecutor-General same procedure as that of judge, with same concerns as previously expressed.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

<p>Chapter 14: Provincial and Local Government</p>	<p><u>Devolution</u> - Government responsibilities devolved 'where appropriate' to recognise right of communities to manage own affairs, ensure equitable sharing of resources, enhance participation and promote democracy. Existing 10 provinces are maintained; a law may provide for alteration of district and provincial boundaries after consulting ZEC and people in areas concerned. All provinces except Harare and Bulawayo have provincial councils, led by Provincial Governor who is appointed by President from 2 names sent by the political party that wins most seats in province or party with most votes in province. Provincial Governor must be an individual eligible for election as Senator. Metropolitan councils are led by Mayors of cities of Harare and Bulawayo.</p> <p>Provincial and metropolitan councils are responsible for social and economic development of provinces through development activities, promotion of tourism, management of natural resources, coordination and implementation of governmental programmes and monitoring and evaluation of use of resources. Responsible to residents of province and to national government. Funds allocated to provincial governments must not be less than 5% of national revenue from financial year.</p> <p><u>Local authorities</u> - For urban areas, managed by councils elected by registered voters. Chairperson or Mayor must be directly elected in order to have executive powers provided by law. Districts shall be provided for through statute as well as local authorities for rural areas and election of their councils. Election of local authorities happens at same time as general elections. Councillor loses his seat in similar circumstances to those of a Member of Parliament. Further, an Act of Parliament may provide for the removal of mayors or chairpersons through a resolution passed by two thirds of the entire council's membership.</p>	<ul style="list-style-type: none"> ▪ Positive that provision has been made for devolution of power and creation of provincial structures for management of provincial matters. ▪ However, there are no substantive provisions to indicate how the process will work, what structures are to be set up, how the provincial councils will work; there are also no legislative or executive powers given to provincial councils. ▪ No reference to any participation in the formulation of the budget.
<p>Chapter 15: Traditional Leaders</p>	<p><u>Who are they and what is their focus area?</u> - Chiefs and headmen are traditional leaders. Their focus area is cultural, customary, and traditions.</p> <p><u>Status, duties, operations, appointment-related matters</u> - Must not be active in politics; must be neutral, treat people in area equally and fairly. They administer communal land, resolve disputes based on customary law, promote and preserve cultural values and traditions and facilitate development in their areas. Operate in communal land, power to decide on matters arising in that communal land. Appointed by President on recommendations of the Council of Chiefs in accordance with the practices and traditions of the community concerned. Act of Parliament provides for the rest of the procedures on suspension, succession and removal.</p> <p><u>Composition of Council of Chiefs, other functions and location</u> - President and Deputy elected for a 5-year term, renewable once. Council of Chiefs elects chiefs to Senate. Provincial council of chiefs set up in all provinces except Harare and Bulawayo Metropolitan provinces.</p> <p><u>Complaints</u> - Against traditional leaders, resolution of disputes between them and enforcement of integrity and ethical conduct done through the Integrity and Ethics Committee established by an Act of Parliament.</p>	<ul style="list-style-type: none"> ▪ Commendable recognition of traditional leaders and their functions, with a role limited to cultural, customary and traditional matters. ▪ Positive inclusion of obligation to be politically neutral. ▪ Good that a body shall be set up to settle their disputes and enforce integrity and ethical conduct. ▪ Further, power to hear civil matters on or arising from communal land. ▪ Regrettably no provisions to protect against negative customary practices and also no provisions to clarify interaction between the traditional courts and other courts established via Constitution and Acts of Parliament.
<p>Chapter 16: Agricultural Land</p>	<p><u>Title/authority over land</u> - Right of usage/occupation of agricultural land vests, after effective date, in State.</p> <p><u>State's obligation and transfer of ownership</u> - Must give lawful owners and occupiers security of tenure.</p>	<ul style="list-style-type: none"> • Continued retention/implementation of land nationalisation policy.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p><u>Ownership</u> can be transferred by individuals or State if they own it, for value. However the State cannot transfer more than 1 piece of land to same person or his/her dependants.</p> <p><u>Right of compensation</u> – Compensation will be provided to any person for land and improvements where the property rights were protected by agreement between Zimbabwe government and the government of another country. Any other person whose land was acquired by the State is only entitled to compensation for improvements. The manner of assessment and payment is to be provided for by Act</p> <p><u>Zimbabwe Land Commission – Functions and composition</u> – Established to ensure accountability, fairness and transparency in administration of agricultural land. Has Chairperson appointed by President after consulting CSRO, 8 other members appointed by President from 12 names given by CSRO. 2 members nominated by Council of Chiefs.</p>	<ul style="list-style-type: none"> ▪ This seems to be an attempt to deal with the long-standing challenge of multiple land ownership although there is no provision for how ownership will be audited. ▪ Payment of compensation is progressive and in line with principles of natural justice. The distinction between compensation for government-to-government protected land and other land can potentially be challenged as discriminatory. There is a further contradiction between provisions here and those in the Declaration of Rights which states that only compensation for improvements can be paid, payment subject to funds being provided by former colonial power. ▪ Creating Zimbabwe Land Commission is welcome, but regrettable that President is not bound by advice of CSRO when appointing its Chairperson.
<p>Chapter 17: Finance</p>	<p><u>State revenues and expenditures</u> - Parliament has oversight. Limits on borrowing by State, public debt, debts and obligations guaranteed by State and allocations to provincial governments to be provided by law. Allocation to provinces and local authorities must be not less than 5% of national revenue in financial year. Minister responsible for Finance must report to Parliament 2 times a year on performance of loans raised or guaranteed by State. When estimates of revenue and expenditure are presented before National Assembly, responsible Minister is required to give comprehensive statement of the public debt of Zimbabwe.</p> <p><u>Consolidated Revenue Fund</u> - Holds all state revenue unless law provides otherwise. State debt charged to Fund and money is appropriated through Appropriations Bill. Law may allow President to withdraw money from Fund for unforeseen expenditure not in excess of 1.5% of total amount appropriated in law. Money for use before an Appropriations Act comes into force in first 4 months of financial year to be provided by law, if not in excess of 1/3 of amount appropriated in previous financial year. Law can provide for appropriation of money if Parliament is dissolved before appropriating money; such appropriation must be included in a law. Unauthorised expenditure requires responsible Minister to table a bill before House of Assembly for expenditure to be allowed.</p> <p><u>Auditor General</u> – Independent office responsible for auditing accounts, financial systems of all departments, institutions and government agencies. Appointed by President with approval of Parliament for 6 years and can serve 2 terms only. Can only be removed from office after a tribunal set up by President recommends such action. Tribunal is set up on recommendation of Finance Minister with agreement of Public Accounts Parliamentary Committee. Recommendations of tribunal bind President.</p> <p><u>Procedure for procurement, other government contracts, terms of office</u> - Provided by law; must be cost-effective, honest, fair, competitive and transparent. Law to provide for management of statutory bodies. Chief executive</p>	<ul style="list-style-type: none"> ▪ No provision to ensure information relating to inflows and expenditure is transparent and easily accessible to public. ▪ No requirement that Ministries publicly report on how they spent resources and neither is Auditor General required to report to any independent body. ▪ No provision for a comprehensive public consultative process prior to drawing up national budget or for gender-sensitive budgeting. ▪ Auditor General appears independent; however is again appointed by President albeit with Parliamentary approval, and can only be removed on recommendations of a tribunal. Undue executive control may impact independence. ▪ Commendable that chief executive officers of statutory bodies have limited time in office that is renewed based

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

	<p>officers of such bodies serve limited periods renewed based on efficient performance of duties. Regulation of Zimbabwe's monetary system, protection of currency and formulation and execution of monetary policy done by Reserve Bank of Zimbabwe. Structure, organisation and function provided by law.</p>	<p>on efficiency of performance of duties.</p>
<p>Chapter 18: General & Supplementary Provisions</p>	<p><u>Constitution amendment</u> – Requires 2/3 affirmative votes from each House of Parliament and subject to referendum if amending Declaration of Rights or provisions on Agricultural Land. Amending term-limits to lengthen not applicable to person who held office or equivalent before amendment. Follows same procedure for amending rights but cannot seek to amend the Declaration of Rights and extend term limits in the same constitutional Bill.</p> <p><u>Customary international law</u> – To be applied by Courts, tribunals unless contrary to Constitution or Act of Parliament. International treaties are binding once approved by Parliament and part of Zimbabwe law; international treaties which impose fiscal obligations need parliamentary approval. Parliament can waive need to approve treaty if it has no budgetary implication on Consolidated Revenue Fund or where it does not modify the law.</p> <p><u>Emergency law</u> - Allows preventive detention, but must be reviewed by tribunal appointed by President on advice of JSC after consulting CSRO. Detainees to be informed of reasons of detention, may elect to consult own lawyer or use one provided by State. Detained persons retain rights to access courts to challenge lawfulness of detention.</p> <p><u>Constitutional Commissions</u> – Commissioners have a 5-year term, renewable once, unless Constitution provides otherwise. Members serve at President's pleasure except for Independent Commissions and JSC. Commission Chairs Deputies to be of different gender. No MPs, provincial, metropolitan councils, local authorities or government-controlled entities can be members. Annual activity report to be submitted to Senate and House of Assembly by March every year. Decisions of commissions taken by half of members; presiding individual cast vote in event of tie.</p> <p><u>Appointing power</u> – This power (in many instances exercised by President) includes reappointing, promoting, transferring, fixing and varying conditions of service and suspension or removal from office. If Senate approval required for appointment, no functions of office is performed until approval</p> <p><u>Qualification as voter</u> – Individual must be over 18 years and Zimbabwe citizen. Electoral law may provide additional requirements consistent with political rights in constitution. Disqualified from voting if 'mentally disordered or intellectually handicapped, or incapable of managing affairs, or convicted of offences under Electoral Law, or disqualified by High Court'.</p> <p><u>Transitional provisions</u> – Come into force on publication of Constitution in Gazette together with provisions relating to citizenship; rights; election and assumption of office by President and Vices; election of MPs; summoning Parliament after general election; elections; principles of public administration and leadership; conduct of members of the security services, ZEC, provincial and local government. These override provisions of former constitution until the effective date of new Constitution except for provisions relating to provincial and local government. All other provisions of the constitution come into operation on day the President-elect assumes office; when the former Constitution is also repealed. Provincial and electoral boundaries are maintained as before the publication date.</p>	<ul style="list-style-type: none"> ▪ This is progressive and ensures that amendments to key provisions must have peoples' consent and cannot be done easily or arbitrarily. However problematic provisions will also be difficult to amend. ▪ Correct to ensure compliance with customary international law. What is problematic is an attempt to circumvent such law and international obligations using Constitution or local laws. This is not possible under international law. ▪ Problematic that preventive detention can be done first, and then only reviewed later once rights may already have been violated. ▪ Provisions advance gender parity and equality. ▪ Requirement to submit reports to Parliament increases accountability and transparency of those institutions. ▪ Problematic for commissioners to serve at pleasure of the President. ▪ Problematic that President still has undue influence and control over service commissions ▪ The potential danger is that the Electoral Law may impose additional suspicious or harsh voter registration requirements to may make registration more problematic, in violation of Constitutional safeguards.

An Analysis of the COPAC Consolidated Draft Constitution

(c) reserved, Zimbabwe Lawyers for Human Rights, September 2012

Challenges to first Presidential election and Electoral law - Handled by Supreme Court of Zimbabwe as constituted under former constitution but applying provisions of new Constitution. Electoral Law for first elections must be in line with the draft Constitution after it is published in Gazette.

Existing Laws and Standing Orders - All laws continue in force but must be applied and interpreted in conformity with new Constitution. Standing Orders of Parliament remain in force until amended or replaced in accordance with new Constitution.

Office Bearers – Those in public office continue to hold such office or equivalent in new Constitution on same conditions of service until expiry of their term, or they resign, retire or are removed from office in terms of new Constitution or old conditions of service.

Offices of President, Vice Presidents, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers - will retain current officer holders until the President-elect assumes office under new Constitution.

Judicial officers – Supreme Court, High Court, Labour and Administrative Court judges remain as constituted under new Constitution and their decisions still have effect. Persons presiding over Labour Court and Administrative Court will become judges of Labour Court and Administrative Court on same conditions of service as High Court judges with their service prior to the effective date deemed to have been that of a High Court judge. Magistrates' courts and traditional courts also remain in force and decisions remain effective.

Constitutional Court - For first 7 years after new Constitution is effective, the Constitutional Court will consist of current Chief Justice, Deputy Chief Justice, 4 most senior judges of Supreme Court and 3 new judges appointed in terms of new Constitution. The Court must be set up within 6 months after the first election. Until then, its powers will be exercised by current Supreme Court. Once set up, constitutional cases must be transferred to it from other courts.

Public Protector's Office – This office is removed and its Act repealed. All matters being dealt by that office to be transferred to the Zimbabwe Human Rights Commission.

Decisions by Attorney General – Decisions by the AG relating to criminal proceedings before new Constitution takes effect will be deemed to have been taken by the Prosecutor-General. The current Attorney-General under former Constitution will become the Prosecutor-General when new Constitution becomes effective.

- A slight safeguard is provided by ensuring use of new provisions, but if there is lack of confidence in previous bench, this will be problematic for acceptance of the court's findings in such an electoral challenge.

- It is disappointing to note that all office-bearers within the public service, judiciary, office of the Attorney General, amongst others, will retain their office without some form of audit to assess their work output, efficiency and professionalism, amongst other requirements under the new Constitution. This will not assist in strengthening public confidence in the public administration and state institutions and actors and will adversely affect efforts to strengthen such institutions under this new Constitution.

- This entrenches the status quo, promoting the entire Supreme Court bench upwards without allowing for a public process and scrutiny of acceptability for this important role. Appointment of 6 out of 9 judges of Constitutional Court is already pre-determined.

- This is welcome as the Public Protector's Office has been ineffective and inefficient for many years.

- As for the Constitutional Court, these provisions are highly problematic as there is no possibility of scrutinising the acceptability of the incumbent. The Prosecutor General is a technical, professional position, whilst the Attorney General is a political appointee. To transfer the latter to the new office will ensure political tainting of the new office, lack of public confidence, and a compromised office right from the start. There should be a public appointment process, with proper scrutiny of any candidates.