

THE LAW SOCIETY OF ZIMBABWE

MODEL CONSTITUTION

FOREWORD

More than a year ago, in February 2009, the Council of the Law Society of Zimbabwe decided to participate in the constitution-making process which began with the signing of the Global Political Agreement and is continuing today.

The Council's decision was taken after careful deliberation. The Law Society represents all the lawyers in Zimbabwe. Its role, under section 53 of the Legal Practitioners Act, is to represent the views of the legal profession and to promote reforms in the law. There can be no greater reform in the law than the preparation of a new constitution, and the Law Society and its members have a vital interest in the process: the new constitution will determine whether and to what extent human rights will be respected in Zimbabwe, whether the judiciary will be independent, and whether lawyers will be free to protect their clients' rights and interests; in short, whether the rule of law will be maintained. Moreover, the Law Society is in a unique position to aid the constitutional process. It is a non-political body, so its decisions are not affected by partisan politics. Through its members it is the greatest repository of legal skills in the country, and through its contacts with other professional bodies it can call on legal expertise from elsewhere in the region.

All this persuaded the Council that the Law Society should take the lead in putting forward proposals for the new constitution. These proposals, the Council considered, would be best presented in the form of a draft constitution.

The Law Society began the process by discussing constitutional issues with its members at the Winter School in July 2009. In August that year the Society commissioned researchers to study the 17 thematic areas that had been identified by an All-Stakeholders' Conference organised by the Constitutional Parliamentary Select Committee (COPAC). After much work and debate, these themes were discussed at a conference held concurrently with the Society's Summer School in 2009. Assisting in these debates and discussions were constitutional experts from inside and outside Zimbabwe. Of these I should particularly mention and thank Professor Christina Murray of the University of Cape Town, Professor Jeffrey Jowell Q.C., Mr Patrick M. Mtshaulana a South African advocate and Mr Mkhululi Nyathi. Their expertise and guidance were invaluable in developing and refining the Society's proposals.

Next, the Council engaged a group of drafters from amongst its members to capture the views that had been expressed and to encapsulate them in a draft constitution. The draft they produced was discussed further at a conference in May this year and was further refined as a result of the opinions and suggestions put forward at that conference.

The result is the draft constitution which I present today.

In preparing this draft, the Law Society has tried to produce a constitution that will create a binding social contract between all the people of Zimbabwe, one which will take account of the country's past and its present, and will endure to shape future generations.

The draft seeks to entrench multi-party democracy in Zimbabwe, with significant power devolved to the provinces. A strong Declaration of Rights and a clear separation of powers will protect peoples' freedom against encroachment by the State, but at the same time the Government will have sufficient power to carry out its functions effectively.

Highlights of the draft constitution are as follows:

- An enforceable Declaration of Rights will protect all internationally-recognised human rights, socioeconomic as well as civil rights. Particular protection will be given to the rights of vulnerable groups such as women, children, disabled and detained people.

- There will be a bicameral legislature consisting of a National Assembly and a Senate. Both will be elective bodies (there will be no appointed members) and in each House half the members will be elected on a constituency basis and half by a system of proportional representation. This will give us the best of both electoral systems: close contact with local electorates and adequate representation of smaller parties.
- Parliament will be elected for a fixed five-year term, and each House will determine its own sittings. In this important respect, therefore, Parliament will be independent of the Executive.
- There will be a Parliamentary Appointments Committee to select candidates for appointment to constitutional posts through a fair and public selection process.
- There will be a non-executive President as Head of State, elected by Parliament. The Prime Minister will be Head of Government, and he or she will be elected through a nation-wide ballot for a five-year term though Parliament will have power to vote him or her out of office. Ministers will be appointed by the Prime Minister, not the President.
- The draft constitution will establish three main courts: a Constitutional Court to decide constitutional cases, a Supreme Court to deal with general appeals, and a High Court to deal with cases at first instance; there will also be magistrates courts. Special courts such as the Labour Court and the Administrative Court will be incorporated into the High Court as specialised divisions.
- Judges will be appointed by the President on the advice of an independent Judicial Services Commission. In the case of the Chief Justice and other judges appointed to preside over courts, however, the President will act on the advice of the Prime Minister in choosing from a list of candidates put forward by the Judicial Services Commission. The appointment of all judges will be subject to approval by the Senate.
- The security services — the Defence Forces, the Police Service, the Prison Service and any intelligence services — will be subject to civilian, and particularly parliamentary, scrutiny and control. The commanders of each service will be appointed by the President on the advice of an independent Security Services Commission, and their appointments will be subject to approval by the Senate.
- In addition to the Judicial Services Commission, the Public Service Commission and the Security Services Commission, there will be several other independent commissions — an Independent Electoral Commission to conduct elections; a Human Rights Commission to foster human rights generally; a Gender and Anti-Discrimination Commission to ensure gender equality and prevent unlawful discrimination; a Truth, Justice, Reconciliation and Conflict Prevention Commission to provide remedies for victims of past human-rights abuses and to promote reconciliation; a Media Commission to protect media freedom; a Land Commission to administer State land and to deal with resettlement and issues of land tenure; and an Anti-Corruption Commission to deal with corruption in all spheres.
- There will be extensive devolution of power to the provinces, with each province having its own elected governor and legislature and its own public service and police service.
- Local government institutions — urban and rural councils — will also be recognised and given as much autonomy as is compatible with good governance.

Generally, the draft constitution attempts to capture the broad aspirations of the majority of the people in Zimbabwe while paying due regard to the views of minorities. The degree of consultation we undertook gives me the confidence to assert that the draft is a fair reflection of the people's aspirations.

In preparing this draft constitution, the Law Society does not intend to subvert or interfere with the parliamentary constitution-making process being undertaken by COPAC. The draft is put forward as a proposal to assist COPAC in the preparation of its own draft. But bearing in mind the consultative process in which the Law Society engaged, I am sure that COPAC's drafters will find that the Society's draft encapsulates the views of the people of Zimbabwe.

I therefore confidently commend this draft constitution to COPAC, to Parliament and to the people of Zimbabwe.

Josephat Tshuma
Law Society President.

CONSTITUTION OF ZIMBABWE

ARRANGEMENT OF SECTIONS

CHAPTER 1

THE REPUBLIC, THE CONSTITUTION, NATIONAL EMBLEMS AND LANGUAGES

Section

1. The Republic of Zimbabwe and its principles and values.
2. Supremacy of the Constitution.
3. National Flag, National Anthem, Public Seal and Coat of Arms.
4. Languages.

CHAPTER 2

CITIZENSHIP

5. Citizenship by birth.
6. Citizenship by descent.
7. Citizenship by registration.
8. Deprivation, refusal and restoration of citizenship.
9. Continuation of previous citizenship.

CHAPTER 3

DECLARATION OF RIGHTS

PART 1

APPLICATION, INTERPRETATION AND ENFORCEMENT OF CHAPTER 3

10. Application of Chapter 3.
11. Interpretation of Chapter 3.
12. Saving of other rights.
13. Enforcement of rights.

PART 2

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

14. Right to life.
15. Right to personal liberty.
16. Right to human dignity.

17. Freedom from torture or inhuman or degrading treatment.
18. Freedom from slavery, servitude and forced labour.
19. Equality and freedom from discrimination.
20. Right to privacy.
21. Freedom of association.
22. Freedom of assembly, demonstration, picketing and petitioning.
23. Freedom of conscience.
24. Freedom of speech and expression and freedom of the media.
25. Access to information.
26. Language and culture.
27. Freedom of trade, occupation and profession.
28. Labour relations.
29. Freedom of residence and movement.
30. Political rights.
31. Administrative justice.
32. Property rights.
33. Environment.
34. Housing.
35. Education.
36. Health care.
37. Food and water.
38. Family and marriage.
39. Equal protection of law.
40. Access to courts.
41. Right to a fair hearing.

PART 3

SPECIFIC APPLICATION OF CERTAIN RIGHTS

42. Application and interpretation of Part 3.
43. Rights of children.
44. Rights of older people.
45. Rights of women.
46. Rights of persons with disabilities.
47. Rights of arrested and detained persons.
48. Rights of accused persons.

PART 4

LIMITATION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

49. Limitation of rights and freedoms.

CHAPTER 4

PARLIAMENT

PART 1

GENERAL

- 50. Legislative authority of Parliament.
- 51. Composition of Parliament.
- 52. Acts of Parliament and procedure for their enactment.
- 53. Subsidiary legislation.
- 54. Public access to and involvement in Parliament.
- 55. Parliamentary privileges, immunities and powers.
- 56. Qualifications and disqualifications for membership of Parliament.
- 57. Tenure of seat of Member of Parliament.
- 58. Oath or affirmation of Member of Parliament.
- 59. Quorum in Parliament.
- 60. Voting in Parliament.
- 61. Standing Orders.
- 62. Duration of Parliament.
- 63. Sittings and recess periods.
- 64. Parliamentary Public Appointments Committee.

PART 2

THE NATIONAL ASSEMBLY

- 65. Composition of National Assembly.
- 66. Speaker and Deputy Speaker.
- 67. Powers and functions of National Assembly.

PART 3

THE SENATE

- 68. Composition of Senate.
- 69. President and Deputy President of Senate.
- 70. Powers and functions of Senate.

CHAPTER 5

THE PRESIDENT

71. Office of President.
72. Qualifications for election as President.
73. Election of President.
74. Assumption of office by President.
75. Term of office of President.
76. Functions of President.
77. Removal of President from office.
78. Resignation of President.
79. Acting President.

CHAPTER 6

THE EXECUTIVE

80. Executive authority.
81. Qualification for election as Prime Minister.
82. Election of Prime Minister.
83. Assumption of office by Prime Minister.
84. Term of office of Prime Minister.
85. Tenure of office of Prime Minister.
86. Acting Prime Minister.
87. Functions of Prime Minister.
88. Cabinet.
89. Functions of Cabinet.
90. Vote of no confidence in the Government or Cabinet.
91. Continuation in office after dissolution of Parliament.
92. Prerogative of mercy.
93. State of emergency.
94. Declaration of war.
95. Immunity from civil suit or criminal prosecution.

CHAPTER 7

ELECTIONS AND DELIMITATION OF ELECTORAL BOUNDARIES

96. Timing of elections and electoral processes.
97. State to protect citizens' right to vote.
98. Requirements for elections and referendums.
99. Number of constituencies and wards.

- 100. Delimitation of constituencies and wards.
- 101. Delimitation Commission.
- 102. Electoral Law.

CHAPTER 8

THE JUDICIARY, THE COURTS, LAW OFFICERS AND THE LEGAL SYSTEM

PART 1

THE JUDICIARY AND THE COURTS

- 103. Judicial authority.
- 104. The judiciary.
- 105. Independence of the courts.
- 106. Constitutional Court.
- 107. Supreme Court.
- 108. High Court.
- 109. Magistrates courts.
- 110. Other courts.
- 111. Inherent powers of Constitutional Court, Supreme Court and High Court.

PART 2

APPOINTMENT AND TENURE OF MEMBERS OF JUDICIARY

- 112. Qualifications of judges.
- 113. Appointment of Chief Justice.
- 114. Appointment of Chief Appellate Judge.
- 115. Appointment of Judge President.
- 116. Appointment of other judges.
- 117. Appointment of magistrates.
- 118. Appointment of other members of judiciary.
- 119. Tenure of office of judges.
- 120. Removal of judges from office.
- 121. Conditions of service and tenure of other members of judiciary.
- 122. Remuneration of members of judiciary.
- 123. Oath or affirmation of office of members of judiciary.

PART 3

JUDICIAL SERVICES COMMISSION

- 124. Judicial Services Commission.

125. Advisory role of Judicial Services Commission.

126. Procedure of Judicial Services Commission.

PART 4

LAW OFFICERS

127. Attorney-General.

128. Deputy Attorney-Generals.

129. Independent Prosecutor-General.

PART 5

GENERAL

130. Conclusion of part-heard cases by former members of judiciary.

131. Criminal jurisdiction of courts.

132. Legal profession

CHAPTER 9

PUBLIC SERVICE

133. Public Service.

134. Establishment and membership of Public Service Commission.

135. Functions of Public Service Commission.

136. Ambassadors and other principal representatives of Zimbabwe abroad.

CHAPTER 10

SECURITY SERVICES

PART 1

GENERAL PROVISIONS REGARDING SECURITY SERVICES

137. National security.

138. Security Services.

139. Conduct of members of Security Services.

140. Monitoring of Security Services.

141. Independent complaints mechanism.

PART 2

SECURITY SERVICES COMMISSION

142. Establishment and membership of Security Services Commission.

143. Functions of Security Services Commission.

PART 3

DEFENCE FORCES

- 144. Defence Forces.
- 145. Primary function of Defence Forces.
- 146. Deployment of Defence Forces.
- 147. Command of Defence Forces.

PART 4

POLICE SERVICE

- 148. Police Service and its functions.
- 149. Commissioner of Police.

PART 5

PRISON SERVICE

- 150. Prison Service and its functions.
- 151. Commissioner of Prisons.

PART 6

INTELLIGENCE SERVICES

- 152. Establishment of intelligence services.
- 153. Command or control of intelligence services.

CHAPTER 11

INDEPENDENT COMMISSIONS

PART 1

GENERAL

- 154. General purposes of certain Independent Commissions.
- 155. Powers of Independent Commissions.
- 156. Appointment of members of Independent Commissions.

PART 2

INDIVIDUAL INDEPENDENT COMMISSIONS

- 157. Independent Electoral Commission.
- 158. Human Rights Commission.
- 159. Gender and Anti-Discrimination Commission.

- 160. Truth, Justice, Reconciliation and Conflict Prevention Commission.
- 161. Media Commission.
- 162. Land Commission.
- 163. Anti-Corruption Commission.

CHAPTER 12

FINANCE

- 164. Taxation.
- 165. Parliamentary control of State revenues and expenditure.
- 166. Limits of State borrowings, public debt and State guarantees.
- 167. Division of revenues between national and provincial governments and local authorities.
- 168. Funding for constitutional bodies and other institutions.
- 169. Consolidated Revenue Fund.
- 170. Appropriation of money from Consolidated Revenue Fund.
- 171. Unauthorised expenditure.
- 172. Auditor-General.
- 173. Financial and Fiscal Commission.
- 174. Salaries and Remuneration Commission.
- 175. Procurement.
- 176. Reserve Bank of Zimbabwe.

CHAPTER 13

TRADITIONAL LEADERS

- 177. Recognition of traditional leadership.
- 178. Appointment or election of traditional leaders.
- 179. Role of traditional leaders.

CHAPTER 14

PROVINCIAL GOVERNMENT

PART 1

PROVINCES AND THEIR BOUNDARIES

- 180. Provinces.
- 181. Boundaries of provinces.

PART 2

PROVINCIAL ASSEMBLIES

182. Composition and term of Provincial Assemblies.
183. Legislative authority of Provincial Assemblies.
184. Exercise of legislative authority by Provincial Assembly.
185. Speaker and Deputy Speaker of Provincial Assembly.
186. Procedures and other matters relating to Provincial Assemblies.
187. Conflict between national and provincial legislation.
188. Power of Parliament to nullify provincial laws.

PART 3

PROVINCIAL EXECUTIVE

189. Executive authority of provinces.
190. Election of Provincial Governor.
191. Provincial Cabinet.
192. Assumption of office by Provincial Governor and provincial Ministers.
193. Term of office of Provincial Governor.
194. Functions of Provincial Governor.

PART 4

INSTITUTIONS OF PROVINCIAL GOVERNMENT

195. Provincial Attorney.
196. Provincial Public Service Commission.
197. Provincial Police Department.

PART 5

PROVINCIAL FINANCE

198. Provincial taxation.
199. Provincial Government Revenue Fund.
200. Appropriation of money from Provincial Revenue Fund.
201. Unauthorised expenditure.
202. Provincial Auditor.
203. Provincial procurement.

PART 6

PROVINCIAL CONSTITUTIONS

- 204. Adoption of provincial constitutions.
- 205. Contents of provincial constitutions.
- 206. Certification of provincial constitutions.
- 207. Assent, publication and safekeeping of provincial constitutions.

CHAPTER 15

LOCAL GOVERNMENT

- 208. Local government institutions.
- 209. Purpose and principles of local government.

CHAPTER 16

RELATIONSHIP BETWEEN NATIONAL, PROVINCIAL AND LOCAL GOVERNMENTS

- 210. Principles of national, provincial and local government relations.
- 211. Measures to promote inter-governmental co-operation and settlement of disputes.

CHAPTER 17

GENERAL AND SUPPLEMENTARY PROVISIONS

PART 1

GENERAL PROVISIONS AS TO COMMISSIONS

- 212. Application of Part 1.
- 213. Commissions to be independent.
- 214. Membership of Commissions and conditions of service of members.
- 215. Members of Commissions to take oaths or affirmations of loyalty and office.
- 216. Removal from office of members of Commissions.
- 217. Functions and procedure of Commissions.
- 218. Funding of Commissions.
- 219. Commissions to report annually to Parliament.

PART 2

INTERPRETATION

- 220. Application of Part 2.
- 221. Definitions.
- 222. References to Chapters, sections, etc.

- 223. Words in singular to include plural, and *vice versa*.
- 224. Tables and headings.
- 225. References to time.
- 226. Calculation of person's age.
- 227. References to holders of office.
- 228. Appointments.
- 229. Resignations.
- 230. Exercise of functions, etc.
- 231. When person not regarded as holding public office.
- 232. Quorum and provisions regarding membership of constitutional bodies.
- 233. Interpretation of regulations, etc., made under Constitution.
- 234. Power to make Acts of Parliament or provincial laws for matters dealt with under Constitution.
- 235. Inconsistencies between different texts of Constitution.

PART 3

GENERAL

- 236. Basic values and principles governing public administration.
- 237. Diligent performance of constitutional obligations.
- 238. Customary international law.
- 239. International conventions, treaties and agreements.
- 240. Amendment of Constitution.
- 241. Commencement of this Constitution, transitional provisions and savings.

FIRST SCHEDULE: Oaths and Affirmations.

SECOND SCHEDULE: Boundaries of Provinces.

THIRD SCHEDULE: Commencement of this Constitution, Transitional Provisions and Savings.

CONSTITUTION OF ZIMBABWE

PREAMBLE

WE, the people of Zimbabwe,

In exercise of our natural, inalienable and sovereign right to establish a system of governance that is open, just, democratic and accountable to the people;

Desirous of creating a society based on the principles of inherent dignity of human life, equality, peace and social justice, democracy and good governance, freedom, respect for fundamental human rights, rule of law and social and economic progress;

Recalling our historic heroic and continuing struggles against colonialism, racism, tribalism, oppression against women, dictatorship and economic and political domination and resolving to cherish and protect the gains of these struggles;

Acknowledging that before and after independence gross human rights violations were committed against the people of Zimbabwe;

In solemn commitment to the future of Zimbabwe as a nation of people with diverse races, ethnicities, languages and cultures and guaranteeing the development of all people of Zimbabwe in national harmony and in a spirit of friendship and peace with all peoples of the world,

ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION AS THE SUPREME AND FUNDAMENTAL LAW OF OUR LAND.

CHAPTER 1

THE REPUBLIC, THE CONSTITUTION, NATIONAL EMBLEMS AND LANGUAGES

1 The Republic of Zimbabwe and its principles and values

The Republic of Zimbabwe is a single sovereign and democratic state founded on the following principles and values—

- (a) the supremacy of the Constitution and the rule of law;
- (b) the principle that all legal and political authority of the State derives from the people;
- (c) universal adult suffrage, a multi-party system of democratic government and free, fair and regular elections to ensure openness, justice and accountability;

- (d) the inherent dignity and worth of each human being and the equal status of all human beings, regardless of race, colour, tribe, place of birth, ethnic or social origin, language, class, religious or political belief or opinion, culture, sex, gender, marital status, disability or natural difference or condition;
- (e) respect for fundamental human rights;
- (f) due consideration for vested rights;
- (g) national unity, peace and stability; and
- (h) the devolution of governmental functions and powers to the people at provincial and other appropriate levels.

2 Supremacy of the Constitution

(1) This Constitution is the supreme and fundamental law of Zimbabwe and if any other law, custom, conduct, practice or measure is inconsistent with this Constitution that other law, custom, conduct, practice or measure is void.

(2) The obligations imposed by this Constitution must be fulfilled.

(3) This Constitution binds all executive, legislative and judicial institutions of the State at all levels of government and all other persons.

3 National Flag, National Anthem, Public Seal and Coat of arms

Zimbabwe must have a National Flag, a National Anthem, a Coat of Arms and a Public Seal, details of which are to be prescribed in an Act of Parliament.

4 Languages

(1) The official languages of Zimbabwe are English, Kalanga, Nambya, Ndebele, Sena, Shangaan, Shona, Sotho, Tonga and Venda.

(2) English is the language of record.

(3) All State institutions and agencies at every level must—

- (a) ensure that all the official languages are treated equitably; and
- (b) take into account the language preferences of people affected by governmental measure or communication.

(4) The State must take positive measures to promote and advance the use of all languages used in Zimbabwe, including sign language, and must create conditions for the development of these languages.

(5) An Act of Parliament must provide that—

- (a) within ten years from the commencement of this Constitution, every official language is a language of record, alongside English, where it is predominantly spoken and has been predominantly spoken for the past one hundred years; and
- (b) within twenty-five years from the commencement of this Constitution, all official languages must be recognised as languages of record alongside English.

CHAPTER 2

CITIZENSHIP

5 Citizenship by birth

(1) Everyone born in or outside Zimbabwe is a citizen of Zimbabwe by birth if, at the time of his or her birth, either of his or her parents was a citizen of Zimbabwe.

(2) A child found in Zimbabwe who is, or appears to be, less than eight years old and whose nationality and parents are unknown is presumed to be a citizen of Zimbabwe by birth.

(3) Subsection (2) applies to people who, as children, were found before the commencement of this Constitution in the circumstances described in that subsection.

6 Citizenship by descent

(1) Everyone born outside Zimbabwe is a Zimbabwean citizen by descent if—

- (a) when he or she was born, either of his or her parents was a Zimbabwean citizen by birth or registration; and
- (b) the birth is registered in accordance with the law relating to the registration of births.

(2) This section does not affect a person's right to citizenship by birth under section 5.

7 Citizenship by registration

(1) If a Zimbabwean citizen legally adopts someone who is not a Zimbabwean citizen, the adopted person becomes a Zimbabwean citizen on the date of the adoption order and must be regarded as a citizen by registration.

(2) A minor child of a person who has become a Zimbabwean citizen by registration is entitled, on application, to become a Zimbabwean citizen by registration.

(3) Anyone who is married to a Zimbabwean citizen and who has been ordinarily resident in Zimbabwe for at least five years since the marriage is entitled, on application, to become a Zimbabwean citizen by registration.

(4) An Act of Parliament—

- (a) must provide for the procedure for acquiring citizenship by registration; and
- (b) may provide for the acquisition of citizenship by registration by persons other than those mentioned in subsections (1), (2) and (3).

8 Deprivation, refusal and restoration of citizenship

(1) No one may be deprived of their citizenship of Zimbabwe arbitrarily or if they would be rendered stateless.

(2) No one may be refused citizenship of Zimbabwe or deprived of citizenship of Zimbabwe solely on the ground that he or she is a citizen of another country.

(3) Anyone who, having been a citizen of Zimbabwe by birth, descent or registration, lost that citizenship at any time between the 18th April, 1980, and the commencement of this Constitution, on the ground that he or she was a citizen of another country, is entitled, on application, to recover his or her citizenship of Zimbabwe.

(4) An Act of Parliament must provide for the procedure by which people can recover their citizenship in terms of subsection (3).

9 Continuation of previous citizenship

Everyone who, immediately before the date of commencement of this Constitution, was a citizen of Zimbabwe continues to be a citizen of Zimbabwe after that date.

CHAPTER 3

DECLARATION OF RIGHTS

PART 1

APPLICATION, INTERPRETATION AND ENFORCEMENT OF CHAPTER 3

10 Application of Chapter 3

(1) The fundamental human rights and freedoms enshrined in this Chapter must be respected and upheld by the executive, the legislature and the judiciary and all institutions and agencies of government at every level.

(2) Where applicable, the fundamental human rights and freedoms enshrined in this Chapter must be respected and upheld by all natural and juristic persons.

(3) Juristic persons as well as human beings are entitled to the rights and freedoms set out in this Chapter to the extent that those rights and freedoms can be appropriately extended to juristic persons.

11 Interpretation of Chapter 3

(1) When interpreting this Chapter a court, tribunal, forum or body must—

- (a) give full effect to the rights and freedoms set out in this Chapter;
- (b) promote the values that underlie an open, just and democratic society based on human dignity, equality and freedom, and in particular, the principles and values set out in section 1;
- (c) take into account international law and all treaties and conventions to which Zimbabwe is a party; and
- (d) consider relevant foreign law interpreting international law, treaties and conventions, in addition to considering all other relevant factors that are to be taken into account in the interpretation of an enactment such as a Constitution.

(2) When interpreting an enactment, and when developing the common law, every court, tribunal, forum or body must be guided by the spirit and objects of this Chapter.

12 Saving of other rights

This Chapter does not preclude the existence of other rights and freedoms that may be recognised or conferred by law, to the extent that they are consistent with this Chapter.

13 Enforcement of rights

(1) Any of the following persons, namely—

- (a) anyone acting in their own interests;
- (b) anyone acting on behalf of another person who cannot act for themselves;
- (c) anyone acting as a member, or in the interests, of a group or class of persons;
- (d) anyone acting in the public interest;
- (e) any association acting in the interests of its members;

is entitled to approach a competent court, alleging that a fundamental right or freedom enshrined in this Chapter has been infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.

(2) Anyone referred to in subsection (1) is also entitled to make an application to an Independent Commission for appropriate redress for a violation of any fundamental right or freedom enshrined in this Chapter, and the Commission may grant appropriate relief in accordance with an Act of Parliament.

PART 2

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

14 Right to life

(1) Everyone has the right to life.

(2) An Act of Parliament must protect the lives of unborn children, and that Act must provide that pregnancy may be terminated only in accordance with that law.

(3) No law may prescribe death as a competent penalty and no executions may take place in Zimbabwe.

15 Right to personal liberty

(1) No one may be deprived of their personal liberty except according to law.

(2) No one may be imprisoned on the ground of failure to fulfil a civil obligation, but this does not preclude imprisonment for contempt of court.

16 Right to human dignity

Everyone has inherent dignity in their private and public life, and the right to have that dignity respected and protected.

17 Freedom from torture or inhuman or degrading treatment

No one may be subjected to torture or to cruel, inhuman or degrading punishment or other treatment.

18 Freedom from slavery, servitude and forced labour

No one may be subjected to slavery or servitude or made to perform forced or compulsory labour.

19 Equality and freedom from discrimination

(1) All persons are equal before the law and have the right to equal protection and benefit from the law.

(2) Everyone has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political or other opinion, custom, culture, sex, gender, marital status, age, disability or natural difference or condition or political, economic, social or other status.

(3) A person is treated in a discriminatory manner for the purpose of subsection (1) if he or she is prejudiced—

- (a) by being subjected to a condition, restriction or disability to which other people are not subjected; or
- (b) through other people being accorded a privilege or advantage which he or she is not accorded.

(4) Discrimination on one or more of the grounds listed in subsection (1) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in an open, just and democratic society based on human dignity, equality and freedom.

(5) To promote the achievement of equality, reasonable legislative and other measures may be taken to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and no such measure is to be regarded as unfair for the purposes of subsection (1).

20 Right to privacy

Everyone has the right to privacy, which includes the right not to have—

- (a) their home entered without their permission;
- (b) their person, home or property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications, including electronic and telephonic communications, infringed.

21 Freedom of association

Everyone has the right to freedom of association, which includes the right not to belong to an association.

22 Freedom of assembly, demonstration, picketing and petitioning

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

23 Freedom of conscience

(1) Everyone has the right to freedom of conscience, which includes—

- (a) freedom of thought, opinion, religion or belief;
- (b) freedom to change their thought, opinion, religion or belief;
- (c) freedom to practise and propagate and give expression to their thought, opinion, religion or belief, whether in public or in private and whether alone or together with others; and
- (d) academic and artistic freedom.

(2) No one may be compelled to take an oath that is contrary to their religion or belief or to take an oath in a manner that is contrary to their religion or belief.

(3) The State must not interfere with the rights of parents and guardians of minor children to determine their children's moral and religious education in conformity with the convictions of such parents and guardians.

(4) Any religious community may establish institutions where religious instruction may be given, even if the institution receives a subsidy or other financial assistance from the State.

24 Freedom of speech and expression and freedom of the media

(1) Everyone has the right to freedom of speech and expression, which includes—

- (a) freedom to hold opinions;
- (b) freedom to seek, receive and communicate ideas and other information regardless of content;
- (c) freedom of artistic expression and scientific research and creativity; and
- (d) freedom of the press and other media of communication.

(2) Freedom of the press and other media of communication includes recognition of the professional independence of persons employed by the press and other media of communication, and protection of the confidentiality of their sources of information.

(3) Freedom of speech and expression does not include—

- (a) incitement to violence; or
- (b) advocacy of hatred which is based on nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political or other opinion, custom, culture, sex, gender, marital status, age, disability or natural difference or condition, and which amounts to incitement to discrimination or hostility.

25 Access to information

Everyone, including the press and other media of communication, has the right of access to—

- (a) any information held by the State; and
- (b) information held by anyone else in so far as that information is required for the exercise or protection of any person's rights under this Constitution or any other law.

26 Language and culture

Everyone has the right to use the language, and to participate in the lawful cultural life, of their choice.

27 Freedom of trade, occupation and profession

Everyone has the right to choose and practise any profession or carry on any occupation, trade or business of their choice, and Parliament must not pass a law that prohibits or limits legitimate private or public enterprise.

28 Labour relations

(1) Every worker has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.

(2) Everyone has the right to form and join trade unions, employee or employers' associations of their choice.

(3) Every worker has the right to strike, sit in, withdraw their labour, or to take other such concerted action.

(4) Every worker, trade union, employee organisation, employer or employers' organisation has the right to engage in collective bargaining.

(5) Men and women are entitled to equal remuneration for work of a similar nature.

(6) Women workers are entitled to fully paid maternity leave for a period of at least three months.

(7) Parliament may enact a law giving male workers the right to paternity leave where their absence from work is essential for the well-being of their newly born child.

29 Freedom of residence and movement

(1) Everyone has the right to freedom of movement and the right to leave Zimbabwe.

(2) Every citizen of Zimbabwe has the right to enter, to remain in and to reside anywhere in Zimbabwe.

(3) Every citizen of Zimbabwe has the right to a birth certificate, an identity card and a passport.

30 Political rights

(1) Every citizen of Zimbabwe has the right—

- (a) to form, to join, to participate in the activities of, and to recruit members for, a political party or organisation of their choice;
- (b) to campaign for a political party or cause;
- (c) to free, fair and regular elections for any elective public office established in terms of this Constitution or any other law;
- (d) to participate in peaceful political activity intended to influence the composition and policies of the Government;
- (e) to make political choices freely;
- (f) to participate, individually or through civic organisations, gatherings or groups or in whatever manner in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause; and
- (g) to uphold and defend this Constitution.

(2) Every citizen of Zimbabwe who is of or over the age of eighteen years has the right—

- (a) to vote in all elections and referendums to which this Constitution applies, and to do so in secret; and
- (b) to stand for election for public office and, if elected, to hold such office.

(3) For the purpose of promoting a multi-party democracy, the State must provide funds to political parties, and must ensure that within two years from the commencement of this Constitution a law is enacted—

- (a) setting out the manner and extent of such funding; and
- (b) providing sufficient funding for small political parties to take into account the importance of their participation in an open, just and accountable democracy;

but such funding may be withheld from political parties which do not uphold the principles and values of this Constitution or whose internal structures and procedures are not reasonably democratic.

31 Administrative justice

(1) All decisions and acts of public officers must be lawful, rational, proportionate and procedurally fair.

(2) Anyone whose rights have been adversely affected by a decision or act of a public officer has the right to be given written reasons for the decision or act.

(3) An Act of Parliament must give effect to these rights, and must—

- (a) provide for decisions and acts of public officers to be reviewed by a court or, where appropriate, by an independent and impartial tribunal;
- (b) impose a duty on the State to give effect to the rights in subsections (1) and (2); and
- (c) promote an efficient administration.

32 Property rights

(1) Everyone has the right, in any part of Zimbabwe, to acquire, hold and dispose of all forms of property, either individually or in association with others, irrespective of their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political or other opinion, custom, culture, sex, gender, marital status, age, disability or natural difference or condition or political, economic, social or other status.

(2) No one may be compulsorily deprived of their property or of any interest over property, except where the following conditions are satisfied—

- (a) the deprivation is necessary or expedient for any of the following reasons—
 - (i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement;
 - (ii) in order to secure the development or utilisation of that or other property for a purpose beneficial to the community;
 - (iii) in order to secure the development or utilisation of the mineral resources of Zimbabwe;

and

- (b) provision is made by law—
 - (i) for the prompt payment of adequate compensation; and
 - (ii) ensuring that anyone affected by the deprivation has a right of access to the High Court, either directly or on appeal from another tribunal or authority, for determining—

- A. the existence, nature and value of their interest in the property concerned;
- B. the legality of the deprivation; and
- C. the amount of any compensation to which they are entitled, and for obtaining prompt payment of that compensation.

33 Environment

(1) Institutions of the State at all levels must, in their decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting sustainable economic and social development.

(2) Everyone has the right to a living and working environment that is not harmful to their health, and the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

34 Housing

(1) Everyone has the right of access to adequate and safe housing, and the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(2) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.

(3) No legislation may permit the arbitrary eviction of people from the places where they live.

35 Education

(1) Everyone has the right to State-funded education from pre-school to primary level.

(2) Everyone has the right to establish and maintain, at their own expense, independent educational institutions of reasonable standards, provided they do not discriminate on any basis prohibited by this Constitution.

(3) An Act of Parliament or a provincial law may provide for the registration of schools referred to in subsection (2) and for the disestablishment of any such schools that do not meet reasonable standards prescribed for registration.

36 Health care

(1) Everyone has the right of access to basic health-care services provided or funded by the State.

(2) Everyone has the right to emergency medical treatment.

(3) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the rights set out in this section.

37 Food and water

Everyone has the right to sufficient and safe food and clean water, and the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

38 Family and marriage

(1) The family in all its forms is the fundamental unit of society and is entitled to protection by the State.

(2) Each member of a family is entitled to full and equal recognition and must be protected by law against all forms of neglect, cruelty or exploitation.

(3) Everyone who has attained the age of eighteen years has the right to marry and found a family, and no such person may be prevented from entering into marriage.

(4) No one may be compelled to enter into marriage against their will.

39 Equal protection of law

Everyone is equal before the law and has the right to equal protection and benefit of the law.

40 Access to courts

Everyone has the right of access to the courts for the resolution of any dispute that can be resolved by the application of the law.

41 Right to a fair hearing

(1) Everyone accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court established by law.

(2) In the determination of civil rights and obligations, everyone is entitled to a fair, speedy and public hearing within a reasonable time before an independent and impartial court or tribunal established by law.

PART 3

SPECIFIC APPLICATION OF CERTAIN RIGHTS

42 Application and interpretation of Part 3

(1) This Part elaborates certain rights and freedoms to ensure greater certainty as to the application of those rights and freedoms to particular classes of people.

(2) This Part must not be construed as limiting any right or freedom set out in Part 2.

43 Rights of children

(1) Every child, that is to say every person under the age of eighteen years, is entitled—

- (a) to equal treatment before the law, including the right to be heard;
- (b) to be given a name, family name, immediate birth registration and the right to a nationality;
- (c) to family or parental care, or to appropriate alternative care when removed from the family environment;
- (d) to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect, abuse and degradation;
- (e) to education, health care services, basic nutrition and shelter; and

- (f) not to be detained except as a measure of last resort and, if detained—
 - (i) to be detained for the shortest appropriate period;
 - (ii) to be kept separately from detained persons over the age of eighteen years; and
 - (iii) to be treated in a manner, and kept in conditions, that take account of the child's age.

(2) A child's best interests are of paramount importance in every matter concerning the child.

44 Rights of older people

The State must take measures to ensure the rights of older people—

- (a) to fully participate in the affairs of society;
- (b) to pursue their personal development;
- (c) to live in dignity and respect and be free from abuse; and
- (d) to receive reasonable care and assistance from their families and the State.

45 Rights of women

(1) Every woman has full and equal dignity of the person with men and this includes—

- (a) equal opportunities in political, economic and social activities; and
- (b) equal rights in law.

(2) All laws, customs, traditions and cultures that infringe the rights of women are prohibited and void to the extent of the infringement.

(3) Women have the right to affirmative action for the purpose of redressing the imbalances created by history, custom, tradition or culture.

46 Rights of persons with disabilities

Anyone with a disability is entitled to respect for their human dignity, and the State must take appropriate measures to ensure that disabled persons realise their full mental and physical potential including measures—

- (a) to enable them to become self reliant;
- (b) to enable them to live with their families and participate in social, creative or recreational facilities;
- (c) to protect them from all forms of exploitation; and
- (d) to give them access to medical, psychological and functional treatment.

47 Rights of arrested and detained persons

(1) Anyone who is arrested or detained—

- (a) must be informed promptly of the reason for the arrest or detention;
- (b) must be permitted, without delay—
 - (i) at the expense of the State, to contact their spouse or partner, their next of kin or a close relative, or anyone else of their choice; and

- (ii) at their own expense, to choose and consult with a legal practitioner and a medical practitioner;

and must be informed of this right promptly;

- (c) must be treated humanely and with respect for their inherent dignity; and
- (d) must be permitted to challenge the lawfulness of the arrest or detention in person before a court and must be released promptly if the detention is unlawful.

(2) Anyone who is arrested or detained—

- (a) for the purpose of bringing him or her before a court; or
- (b) for allegedly committing or being about to commit an offence;

and who is not released must be brought before a court as soon as possible and in any event not later than forty-eight hours after the arrest took place or the detention began, as the case may be.

(3) Anyone who is arrested or detained for allegedly committing or being about to commit an offence has the right—

- (a) to remain silent;
- (b) to be informed promptly—
 - (i) of their right to remain silent; and
 - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that may be used in evidence against him or her; and
- (d) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released.

(4) Anyone who is detained, including a sentenced prisoner, has the right—

- (a) to be informed promptly of the reason for their being detained;
- (b) at their own expense, to choose and to consult with a legal practitioner, and to be informed of this right promptly;
- (c) to communicate with, and be visited by, their—
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner.
- (d) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at State expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (e) to challenge the lawfulness of their detention in person before a court and, if the detention is unlawful, to be released.

(5) Anyone who is detained pending trial for an alleged offence and is not tried within a reasonable time must be released from detention, either unconditionally or on reasonable conditions to ensure that after being released they—

- (a) attend trial;

- (b) do not interfere with the evidence to be given at the trial; and
- (c) do not commit any other offence before the trial begins.

(6) Anyone may challenge the lawfulness of another person's arrest or detention if there are reasonable grounds to believe that the arrested or detained person is unable to do so.

(7) Anyone who has been illegally arrested or detained is entitled to compensation from the person responsible for the arrest or detention, but a law may protect the following persons from liability under this section—

- (a) a judicial officer acting in a judicial capacity reasonably and in good faith;
- (b) any other public officer acting reasonably and in good faith and without culpable ignorance or negligence.

48 Rights of accused persons

(1) Anyone accused of an offence has the following rights—

- (a) to be presumed innocent until proved guilty;
- (b) to be informed promptly of the charge, in sufficient detail to enable them to answer it;
- (c) to be given adequate time and facilities to prepare a defence;
- (d) to choose a legal practitioner and, at their own expense, to be represented by that legal practitioner;
- (e) to be represented by a legal practitioner assigned by the State and at State expense, if substantial injustice would otherwise result;
- (f) to be informed promptly of the rights conferred by paragraphs (d) and (e);
- (g) to be present when being tried;
- (h) to adduce and challenge evidence;
- (i) to remain silent and not to testify or be compelled to give self-incriminating evidence;
- (j) to have the proceedings of the trial interpreted into a language that they understand;
- (k) not to be convicted of an act or omission that was not an offence under either national or international law when it took place;
- (l) not to be convicted of an act or omission that is no longer an offence, either because the offence has been abrogated by disuse or, in the case of an offence under a statutory provision, because the provision has expired or been repealed and has not been substantially re-enacted;
- (m) not to be tried for an offence in respect of an act or omission for which they have previously been pardoned or either acquitted or convicted on the merits;
- (n) to be sentenced to the lesser of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing.

(2) Where this section requires information to be given to a person—

- (a) the information must be given in a language the person understands; and
- (b) if the person cannot read or write, any document embodying the information must be explained in such a way that the person understands it.

(3) In any criminal trial, evidence that has been obtained in a manner that violates any provision of this Chapter must be excluded if the admission of the evidence would render the trial unfair or otherwise be detrimental to the administration of justice or the public interest.

(4) Anyone who has been tried for an offence has the right, on payment of a reasonable fee, to be given a copy of the record of the proceedings within a reasonable time after judgment is delivered in the trial.

(5) Anyone who has been tried and convicted of an offence has the right, subject to reasonable restrictions that may be prescribed by law, to—

- (a) have the case reviewed by a higher court; or
- (b) appeal to a higher court against the conviction and any sentence that may have been imposed.

PART 4

LIMITATION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

49 Limitation of rights and freedoms

(1) Subject to this Constitution, the fundamental rights and freedoms set out in this Chapter may be derogated from or limited only in terms of a law of general application and to the extent that the derogation or limitation is reasonable, is recognised by international law and is necessary and justifiable in an open, just and democratic society, taking into account all relevant factors, including—

- (a) the nature of the right or freedom concerned;
- (b) the purpose of the derogation or limitation;
- (c) the nature and extent of the derogation or limitation;
- (d) the relationship between the derogation or limitation and its purpose; and
- (e) whether there are any less restrictive means of achieving the purpose of the derogation or limitation.

(2) No law may derogate from or limit the following rights and freedoms, and no one may violate them—

- (a) the right to life;
- (b) the right not to be tortured or subjected to inhuman or degrading punishment or treatment;
- (c) the right not to be placed in slavery;
- (e) the right to equality;

(3) No law that provides for a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of such a declaration, may permit or authorise the granting of immunity, indemnity or amnesty in respect of unlawful acts committed during the state of emergency.

CHAPTER 4

PARLIAMENT

PART I

GENERAL

50 Legislative authority of Parliament

Subject to this Constitution, and in particular to Chapter 3, the legislative authority in Zimbabwe vests in Parliament.

51 Composition of Parliament

Parliament consists of—

- (a) the National Assembly; and
- (b) the Senate.

52 Acts of Parliament and procedure for their enactment

(1) The legislative authority of Parliament is exercised through the enactment of Acts of Parliament.

(2) An Act of Parliament is a Bill which has been—

- (a) presented in and passed by the National Assembly;
- (b) presented in and passed by the Senate; and
- (c) assented to by the President;

in accordance with this Constitution.

(3) A Bill which is to be enacted must be presented first in the National Assembly, and the Senate has no power to initiate Bills.

(4) When a Bill that has been presented in the National Assembly has been passed by the Assembly in accordance with Standing Orders, the Bill must be presented in the Senate.

(5) Where a Bill has been presented in the Senate in accordance with subsection (4), the Senate may either pass the Bill, with or without amendments, or reject it.

(6) If the Senate passes a Bill without amendments, the President of the Senate must cause the Bill to be presented to the President for assent.

(6) If the Senate passes a Bill with amendments or rejects it, the Bill must be referred back to the National Assembly, which must do one of the following—

- (a) pass the Bill in the form proposed by the Senate, in which case the Speaker must cause the Bill to be presented directly to the President for assent;
- (b) reject, by the votes of at least half of its total membership, the amendments proposed by the Senate, in which case the Speaker must cause the Bill to be presented directly to the President for assent;
- (c) where the Bill has been rejected by the Senate, pass the Bill, with or without amendments, by the affirmative votes of at least two-thirds of its total membership, in

which case the Speaker must cause the Bill to be presented directly to the President for assent; or

(d) reject the Bill.

(7) Where a Bill has been presented to him or her for assent, the President must, within twenty-one days, either assent to it and sign it or, if he or she has reservations about its constitutionality, withhold assent from the Bill.

(8) If the President has withheld his or her assent, he or she must refer the Bill, together with detailed reasons for withholding assent, to a joint sitting of the National Assembly and Senate which must—

(a) reconsider the Bill and fully accommodate the President's reservations; or

(b) pass the Bill, with or without amendments, by the affirmative votes of at least two-thirds of the combined membership of the National Assembly and the Senate;

and in either case the Speaker must cause the Bill to be presented to the President for assent.

(9) The President must within twenty-one days assent to and sign a Bill presented to him or her in terms of subsection (8).

53 Subsidiary legislation

(1) Parliament may, in any Act of Parliament, delegate power to make statutory instruments within the scope and for the purposes laid out in that Act, but—

(a) Parliament's primary law making power must not be delegated;

(b) statutory instruments must not infringe or limit any of the rights and freedoms set out in the Declaration of Rights;

(c) an Act of Parliament must require appropriate consultation with interested parties before statutory instruments are made;

(d) statutory instruments must be laid before the National Assembly in accordance with its Standing Orders; and

(e) an Act of Parliament must make provision for statutory instruments to be repealed or otherwise revoked if they are not approved by the National Assembly.

(2) If a statutory instrument—

(a) is not laid before the National Assembly as provided in subsection (1)(d); or

(b) is repealed or revoked in accordance with the Act of Parliament referred to in subsection (1)(e);

the instrument is to be treated for all purposes as never having been enacted.

(3) By-laws and regulations of local government institutions referred to in section 208 do not have to be laid before or approved by the National Assembly in terms of subsection (1).

54 Public access to and involvement in Parliament

Parliament must—

(a) facilitate public involvement in its legislative and other processes and in the processes of its committees; and

- (b) conduct its business in an open manner and hold its sittings, and those of its committees, in public, though measures may be taken—
 - (i) to regulate public access, including access of the media, to Parliament and its committees;
 - (ii) to exclude the public, including the media, from sittings of committees; and
 - (iii) to provide for the searching of any person and, where appropriate, the refusal of entry to or the removal of any person;but those measures must be reasonable and justifiable in an open and democratic society.

55 Parliamentary privileges, immunities and powers

(1) Every Member of Parliament is entitled to freedom of speech in Parliament and its committees, and no Member of Parliament is liable to civil or criminal proceedings, arrest, imprisonment or damages for anything said in or produced before or submitted to Parliament or any of its committees.

(2) An Act of Parliament may—

- (a) provide for other privileges, immunities and powers of Parliament and its Members and officers; and
- (b) define conduct which constitutes contempt of Parliament, whether committed by Members of Parliament or other persons;

but no such Act may permit Parliament or its members or officers to impose any punishment in the nature of a criminal penalty for contempt of Parliament.

56 Qualifications and disqualifications for membership of Parliament

(1) Every citizen who is qualified to vote is eligible to be elected a Member of Parliament except a person who—

- (a) holds a public office;
- (b) is detained as mentally disordered or intellectually handicapped under an Act of Parliament relating to mental health;
- (c) has been declared by order of a court to be incapable of managing his or her affairs, while the order remains in force;
- (d) has, within the ten years immediately preceding the election, been sentenced to imprisonment of twelve months or more as a result of a conviction of—
 - (i) an offence involving dishonesty committed in Zimbabwe; or
 - (ii) any conduct outside Zimbabwe which, if committed in Zimbabwe, would have constituted an offence involving dishonesty;

or

- (e) has been convicted of an offence under the Electoral Law and, in terms of that law, prohibited by a court from standing for election, while the prohibition remains in force.

(2) A person is disqualified for election at an election for filling a casual vacancy in the National Assembly or the Senate if he or she is already a member of Parliament.

(3) For the purposes of subsection (1)(a), a person is not regarded as holding public office through being—

- (a) a member of the Cabinet;
- (b) a chief or other traditional leader.

(4) For the purposes of subsection (1)(d)—

- (a) two or more terms of imprisonment that are required to be served consecutively are to be regarded as a single term for the aggregate period of the terms;
- (b) two or more terms of imprisonment that are required to be served concurrently are to be regarded as a single term of imprisonment for the period of the longest of the terms;
- (c) a person is regarded as sentenced even though the execution of the sentence or any part of it has been suspended;
- (d) no account must be taken of a sentence of imprisonment imposed as an alternative to or in default of—
 - (i) the payment of a fine; or
 - (ii) the undergoing of any other form of non-custodial punishment.

(5) A prohibition referred to in subsection (1)(e) may not remain in force for longer than five years.

57 Tenure of seat of Member of Parliament

(1) A person ceases to be a Member of Parliament if that person—

- (a) ceases to be eligible for election to Parliament;
- (b) is elected Speaker or President of the Senate;
- (c) is absent from the House of which he or she is a member for fourteen consecutive sitting days during any session without the leave of the Speaker or the President of the Senate, as the case may be;
- (d) resigns his or her seat by written notice to the Speaker or the President of the Senate, as the case may be; or
- (e) having been elected as a member of a political party, ceases to be a member of that political party.

58 Oath or affirmation of Member of Parliament

Every Member of Parliament must, before taking his or her seat, take and subscribe before the Chief Justice, in the House in which he or she will sit, the oath or affirmation of loyalty in the form prescribed in the First Schedule.

59 Quorum of Parliament

The quorum of each House of Parliament is one-third of its total membership.

60 Voting in Parliament

(1) Except as otherwise provided for by this Constitution, any questions proposed for decision in either House of Parliament must be determined by a majority of votes of the members of that House present and voting.

(2) The person presiding in either House of Parliament does not have either a deliberative or a casting vote, and if on any motion before a House the votes are equally divided, the motion is lost.

(3) Ministers are entitled to sit and speak in both Houses of Parliament but have no right to vote in a House of which they are not Members.

61 Standing Orders

(1) The proceedings of the Senate and the National Assembly are to be regulated by rules known as Standing Orders, which may provide for—

- (a) the passing of Bills;
- (b) the appointment and functions of committees;
- (c) the manner in which the powers, privileges and immunities of Parliament may be exercised and upheld; and
- (d) generally, the regulation and orderly conduct of business and proceedings in and between the Houses.

(2) The procedures and processes of Parliament and its committees, as provided for in Standing Orders, must promote transparency, must encourage the involvement of members of minority parties, and must be fair and just.

(3) Standing Orders must provide for the questioning of the President, the Prime Minister, and Cabinet Ministers by Members of Parliament.

(4) Any committee established by or under Standing Orders must reflect, as closely as possible, the relative strength of political parties in Parliament or in the House to which the Standing Orders apply, as the case may be, and the members of the committee who represent minority political parties must be elected or appointed by those parties.

(5) Standing Orders may not permit Parliament or its members or officers to impose any punishment in the nature of a criminal penalty for contempt of Parliament.

(6) The National Assembly and the Senate must establish a joint committee to recommend Standing Orders, but before such Orders apply to a House they must be approved by resolution of the House concerned.

62 Duration of Parliament

(1) Parliament is elected for a term of five years running from the date of the first sitting of the National Assembly, and at the expiry of that term Parliament stands dissolved.

(2) The Senate's term is the same as that of the National Assembly, and the Senate stands dissolved at the same time as the National Assembly.

(3) Parliament may not be dissolved by the President before the expiry of its term unless the National Assembly, by the affirmative votes of at least two-thirds of its total membership, has passed a resolution to dissolve, whereupon the President must dissolve Parliament.

63 Sittings and recess periods

(1) The first sitting of either House of Parliament after a general election must take place at a time and date determined by the President, but the date must not be later than twenty-one days after the general election.

(2) Each House determines the time and duration of all its sittings, other than the first sitting, though the President, on the advice of the Prime Minister, may summon Parliament at any time to conduct special business.

64 Parliamentary Public Appointments Committee

(1) Parliament must appoint a Parliamentary Public Appointments Committee consisting of twenty-three Members of Parliament as follows—

- (a) fifteen members of the National Assembly appointed by the National Assembly; and
- (b) eight members of the Senate appointed by the Senate.

(2) The Parliamentary Public Appointments Committee must elect from among its members a chairperson and a deputy chairperson.

(3) A member of the Cabinet is not eligible for membership of the Parliamentary Public Appointments Committee.

(4) The election and term of office of members of the Parliamentary Public Appointments Committee must be prescribed in Standing Orders.

(5) The functions of the Parliamentary Public Appointments Committee are to select persons for appointment to posts or offices in terms of this Constitution and to exercise any other function that is conferred or imposed on the Committee by an Act of Parliament.

(6) In the exercise of its functions the Parliamentary Public Appointments Committee must take whatever measures are appropriate to involve the public in all the processes of selecting appointees.

PART 2

THE NATIONAL ASSEMBLY

65 Composition of National Assembly

The National Assembly consists of one hundred and forty members elected as follows—

- (a) seventy Members directly elected to represent the seventy constituencies into which Zimbabwe must be divided; and
- (b) seventy Members elected in terms of a system of proportional representation based on votes cast in a general election for the members referred to in paragraph (a).

66 Speaker and Deputy Speaker

(1) There must be a Speaker and a Deputy Speaker of the National Assembly, elected by the National Assembly at its first sitting after a general election or whenever a vacancy for one of these posts has arisen.

(2) The Chief Justice or a Judge designated by the Chief Justice for that purpose must preside over the election of a Speaker and Deputy Speaker.

(3) A person is qualified for election as Speaker if he or she is a Member of the National Assembly or is qualified to be elected a Member of the National Assembly.

(4) The Deputy Speaker must be elected from among Members of the National Assembly.

(5) The Speaker or Deputy Speaker may be removed from office by a resolution supported by at least half of the total membership of the National Assembly.

67 Powers and functions of National Assembly

(1) In addition to its legislative functions, the National Assembly has power to ensure that the provisions of this Constitution are upheld at all times and that all executive institutions of the State act in the national interest.

(2) For the purposes of subsection (1), all executive institutions of the State are accountable to the National Assembly.

(3) In exercising its legislative functions, the National Assembly has the power to initiate, prepare, consider or reject any legislation, but a Money Bill may be introduced into the House only by a Minister.

PART 3

THE SENATE

68 Composition of Senate

(1) The Senate consists of sixty-four Senators elected as follows—

- (a) thirty-two Senators directly elected to represent the thirty-four senatorial constituencies referred to in subsection (2); and
- (b) thirty-two Senators elected in terms of a system of proportional representation based on votes cast in a general election for the Senators referred to in paragraph (a).

(2) For the purposes of electing Senators, each of the eight provinces into which Zimbabwe is divided must be divided into four senatorial constituencies.

69 President and Deputy President of Senate

(1) There must be a President and Deputy President of the Senate, elected by the Senate at its first sitting after a general election or whenever a vacancy for one of these posts has arisen.

(2) The Chief Justice or a Judge designated by the Chief Justice for that purpose must preside over the election of a President and Deputy President of the Senate.

(3) A person is qualified for election as President of the Senate if he or she is a Senator or is qualified to be elected a Senator.

(4) The Deputy President of the Senate must be elected from among Senators.

(5) The President or Deputy President of the Senate may be removed from office by a resolution supported by at least half of the total membership of the Senate.

70 Powers and functions of Senate

In the exercise of its legislative function, the prime role of the Senate is to check, scrutinise and amend Bills passed by the National Assembly, and in addition it has power to—

- (a) debate and vote on motions on any matter, whether on its own initiative or on reference from the National Assembly;
- (b) hold the executive institution of the State to account and to protect and uphold this Constitution; and

- (c) exercise any other functions that are conferred on it by this Constitution or by an Act of Parliament.

CHAPTER 5

THE PRESIDENT

71 Office of President

(1) The President is a non-executive head of State and Commander-in-Chief of the Defence Forces.

(2) The President must uphold, defend and respect this Constitution and all other laws of Zimbabwe.

72 Qualifications for election as President

Every citizen of Zimbabwe by birth who is qualified to vote is eligible for election as President provided that, on polling day in the election, he or she—

- (a) has or will have reached the age of thirty-five years; and
- (b) is not or will not be prohibited by section 75(2) from serving a full six-year term of office.

73 Election of President

(1) The President is elected by an electoral college consisting of all the Members of Parliament.

(2) An election to the office of President must be held not later than twenty-one days before the end of the term of office of the incumbent President or not later than twenty-one days after the occurrence of a vacancy in the office.

(3) The Chief Justice presides at an election to the office of President.

(4) In order to be elected President, a candidate must obtain the support of a majority of the total membership of the electoral college.

(5) Subject to this section, an Act of Parliament must provide for the procedures for the nomination and election of the President.

74 Assumption of office by President

The President must assume office—

- (a) within five days after the end of the incumbent President's term of office, where he or she was elected while the incumbent was in office; or
- (b) within five days after being elected, where he or she was elected to fill a vacancy in the office of President;

by swearing or affirming before the Chief Justice the oath or affirmation of the President which is set out in the First Schedule.

75 Term of office of President

- (1) The term of office of the President is six years from his or her assumption of office.

(2) No one may serve in the office of President for more than two six-year terms, whether or not the terms are consecutive, or for a total of more than twelve years.

76 Functions of President

(1) The President has the functions conferred or imposed on him or her by this Constitution or by an Act of Parliament, and in exercising those functions the President, as a non-executive Head of State, must act on the advice of—

- (a) the Prime Minister or some other institution of the State, where he or she is required to do so by this Constitution;
- (b) the Cabinet, in any other case.

(2) An Act of Parliament may require the President to act in consultation with or on the advice or recommendation of some other person or authority, and in such event the President must consult or take the advice or recommendation of that person or authority and, in addition, act on the advice of the Cabinet.

(3) The President is responsible for—

- (a) summoning Parliament for its first sitting after a general election;
- (b) dissolving Parliament pursuant to a resolution by the National Assembly to dissolve Parliament;
- (c) assenting to Bills;
- (d) referring Bills back to Parliament for reconsideration of their constitutionality;
- (e) making any appointments that he or she is required to make in terms of this Constitution; and
- (f) doing anything else that he or she is required to do in terms of this Constitution or an Act of Parliament.

77 Removal of President from office

The National Assembly and Senate may, by a resolution passed at a joint sitting by the affirmative votes of at least two-thirds of their total membership, remove the President from office on the grounds of—

- (a) gross misconduct rendering the President unfit to continue in office;
- (b) inability to perform the functions of his or her office through infirmity of body or mind; or
- (c) a violation of this Constitution.

78 Resignation of President

The President may resign his or her office by giving written notice to the President of the Senate, who must cause the resignation to be announced immediately to the nation.

79 Acting President

The President of the Senate acts as President if for any reason the President is unable to fulfil the duties of his or her office or if the office of President becomes vacant.

CHAPTER 6

THE EXECUTIVE

80 Executive authority

The executive authority of Zimbabwe vests in the Prime Minister and the Cabinet.

81 Qualification for election as Prime Minister

A person is eligible for election as Prime Minister if he or she is eligible for election as a Member of the National Assembly, provided that on polling day in the election he or she is not or will not be prohibited by section 84(2) from serving a full five-year term of office.

82 Election of Prime Minister

The Prime Minister is elected directly by voters in a general election.

83 Assumption of office by Prime Minister

Within five days after being elected, the Prime Minister must assume office by swearing or affirming before the President the oath or affirmation of the Prime Minister which is set out in the First Schedule.

84 Term of office of Prime Minister

(1) The term of office of the Prime Minister is five years from the date of his or her assumption of office.

(2) No one may serve or act in the office of Prime Minister for more than two five-year terms, whether or not the terms are consecutive, or for a total of more than ten years.

85 Tenure of office of Prime Minister

The office of Prime Minister becomes vacant—

- (a) if he or she resigns from office by notice in writing to the President; or
- (b) if the National Assembly, by the affirmative votes of least two-thirds of its total membership, has passed a resolution removing the Prime Minister from office.

86 Acting Prime Minister

(1) The Deputy Prime Minister or, in his or her absence, a Minister designated by the Cabinet, acts as Prime Minister whenever the Prime Minister is for any reason unable to exercise his or her functions.

(2) Where the office of Prime Minister has become vacant in any of the circumstances specified in section 85, a joint sitting of the National Assembly and the Senate must elect a Member of Parliament to act as Prime Minister for the following periods—

- (a) for the unexpired term of office of the Prime Minister, if the vacancy has occurred not more than one year before the date on which a general election of Members of Parliament is required to be held; or
- (b) for not more than ninety days, if the vacancy has occurred more than a year before the date on which a general election of Members of Parliament is required to be held.

(3) A person is not eligible for election under subsection (2) if he or she is prohibited by section 84(2) from acting as Prime Minister for the full period specified in that subsection.

(4) Whenever a vacancy in the office of Prime Minister occurs more than one year before the date on which general elections for members of Parliament are required to be held, an election to the office must be held in accordance with section 82, within ninety days from the date of the vacancy.

(5) A Prime Minister elected under subsection (4) serves until the next general election of members of Parliament.

87 Functions of Prime Minister

(1) The Prime Minister as head of government is responsible for—

- (a) appointing Ministers and assigning functions to them;
- (b) presiding over Cabinet meetings;
- (c) directing the operations of the Government; and
- (d) doing anything else that the Prime Minister is required or permitted to do in terms of this Constitution or any other law.

(2) The Prime Minister is entitled to sit and speak in both Houses of Parliament, but is not entitled to vote in either House.

(3) The Prime Minister must answer questions and respond to motions in Parliament at such times as may be prescribed in Standing Orders.

88 Cabinet

(1) The Cabinet consists of the Prime Minister and not more than fifteen Ministers appointed by the Prime Minister, one of whom the Prime Minister must designate as Deputy Prime Minister.

(2) All Ministers are members of the Cabinet and, subject to its rules of procedure, are entitled to attend and vote at meetings of the Cabinet.

(3) The Prime Minister must normally appoint Ministers from Members of the National Assembly but, where he or she considers it appropriate the Prime Minister may appoint as Ministers—

- (a) not more than three Senators; and
- (b) not more than three persons who are neither Senators nor members of the National Assembly.

(4) A Minister must assume office by swearing or affirming before the President the oath or affirmation of office which is set out in the First Schedule.

(5) A Minister holds office at the absolute discretion of the Prime Minister.

(6) A Minister's office becomes vacant—

- (a) if he or she resigns by written notice to the Prime Minister; or
- (b) upon the assumption of office by a new Prime Minister.

89 Functions of Cabinet

The Cabinet has the following functions—

- (a) to advise the Prime Minister;
- (b) to advise the President in accordance with this Constitution;
- (c) to direct, co-ordinate and supervise the activities of the Government; and
- (d) to be accountable to Parliament for the Government's activities.

90 Vote of no confidence in the Government or Cabinet

(1) The National Assembly may, by the affirmative votes of at least two-thirds of its total membership, pass a resolution of no confidence in the Government.

(2) A motion for a resolution of no confidence in the Government must be signed by at least one-third of the total membership of the National Assembly and must be served on the Speaker and the Prime Minister at least ten days before it is debated in the National Assembly.

(3) If the National Assembly passes a resolution of no confidence in the Government—

- (a) the Prime Minister must resign; and
- (b) the National Assembly must, subject to section 86, elect an Acting Prime Minister.

(4) If the National Assembly, by the affirmative votes of a majority of all its members, passes a resolution of no confidence in the Cabinet, excluding the Prime Minister, the Prime Minister must reconstitute the Cabinet.

91 Continuation in office after dissolution of Parliament

When Parliament has been dissolved in terms of this Constitution, the Prime Minister and the Cabinet continue in office until a person elected as Prime Minister assumes office.

92 Prerogative of mercy

(1) Subject to this Constitution, the President may exercise the prerogative of mercy, that is to say, may—

- (a) grant a pardon to anyone convicted of an offence;
- (b) grant a respite from the execution of a sentence for an offence, for a indefinite or a specified period;
- (c) substitute a less severe punishment for that imposed for an offence; or
- (d) suspend for a specified period or remit the whole or part of a sentence for an offence or any forfeiture imposed in respect of an offence.

(2) Subject to this Constitution, where a resident of Zimbabwe has been convicted in another country of an offence against the law of that country, the President may declare that the conviction is not to be regarded as a conviction for the purposes of this Constitution or any other law in force in Zimbabwe.

(3) When exercising his powers under subsection (1) or (2), the President must act on the advice of an Advisory Committee on the Prerogative of Mercy consisting of—

- (a) two Ministers designated by the Prime Minister, one of whom must be designated by the Prime Minister as the committee's chairperson; and
- (b) five prominent citizens of Zimbabwe appointed by the National Assembly on the recommendation of the Parliamentary Public Appointments Committee.

(4) The terms of office of members of the Advisory Committee on the Prerogative of Mercy must be fixed on their appointment by—

- (a) the Prime Minister, in the case of the Ministers; and
- (b) the National Assembly, in the case of the other members;

but no one may serve as a member of the Committee for one or more periods exceeding five years in aggregate.

93 State of emergency

(1) The President, acting on the advice of the Prime Minister, may by proclamation in the *Gazette* declare that a state of emergency exists in the whole or any part of Zimbabwe, if—

- (a) Zimbabwe is at war or is threatened by war, invasion, natural disaster or other public emergency; and
- (b) the declaration is necessary to protect Zimbabwe or Zimbabwe's interests or to restore peace and order or to deal with the disaster or emergency.

(2) A declaration of a state of emergency under subsection (1) ceases to have effect after fourteen days unless, before the end of that period, the declaration is approved by at least two-thirds of all the Members of Parliament at a joint sitting of the National Assembly and the Senate, in which event—

- (a) the declaration remains in effect for three months from the date on which the proclamation was published in the *Gazette*; and
- (b) the President must immediately give notice of that fact in the *Gazette*.

(3) A declaration of a state of emergency that has been approved under subsection (2) may be extended for one or more further three-month periods if, before it ceases to have effect, it is approved by at least two-thirds of all the Members of Parliament in a joint sitting of the National Assembly and the Senate, in which event the President must give immediate notice in the *Gazette* of its extension.

(4) If a declaration of a state of emergency is not approved after consideration by Parliament, or if for any reason it is not considered by Parliament within the period specified in this section, the declaration ceases to have effect and the President must immediately give notice of that fact in the *Gazette*.

(5) If by a resolution passed by a majority of all the Members of Parliament in a joint sitting of the National Assembly and the Senate, Parliament resolves that a declaration of a state of emergency should be revoked or should apply within a smaller area, the President must immediately, by proclamation in the *Gazette*, revoke the declaration or provide that it relates to that smaller area.

(6) An Act of Parliament may provide for the making of laws while a declaration of a state of emergency is in effect, which laws may derogate from or limit rights and freedoms set out in the Declaration of Rights, except to the extent provided in section 49.

94 Declaration of war

The President, acting on the advice of the Prime Minister, may declare war, but such a declaration has no effect unless, within three days, it is approved by a resolution passed by the

affirmative votes of two-thirds of the total membership of Parliament in a joint sitting of the National Assembly and the Senate.

95 Immunity from civil suit or criminal prosecution

No public officer, including the President, the Prime Minister, a Minister and a Judge, is immune from criminal prosecution or civil proceedings for acts performed in his or her personal capacity.

CHAPTER 7

ELECTIONS AND DELIMITATION OF ELECTORAL BOUNDARIES

96 Timing of elections and electoral processes

(1) Elections to the office of Prime Minister, other than an election to fill a vacancy in that office occurring in terms of section 85, must take place concurrently with general elections of Members of Parliament.

(2) Polling in a general election must take place not later than the day after the dissolution of the current Parliament unless the President has dissolved Parliament following a resolution of the National Assembly in terms of section 62, in which event the election must be called within fourteen days after the dissolution.

(3) A casual vacancy in the National Assembly or the Senate must be filled within sixty days after the seat fell vacant.

(4) The Independent Electoral Commission must fix the dates of the processes in every—

- (a) election to the office of Prime Minister;
- (b) general election and election to fill a casual vacancy in the National Assembly or the Senate; and
- (c) referendum;

and, at least ninety days before the proposed polling day in the election or referendum concerned, must publicly announce those dates.

(5) Unless the Independent Electoral Commission finds that there are exceptional circumstances, which circumstances the Commission must make public, in every election and referendum to which this Constitution applies—

- (a) polling must be completed within one day;
- (b) counting of votes must start in polling stations immediately after the close of polls; and
- (c) the results of the election or referendum must be announced within forty eight hours after the close of polls.

(6) The courts, and everyone concerned directly or indirectly in an appeal against the results of an election or referendum to which this Constitution applies, must ensure that the appeal is determined finally within ninety days.

97 State to protect citizens' right to vote

The State must ensure that everyone who is eligible to vote in an election or referendum to which this Constitution applies has an opportunity to cast a vote.

98 Requirements for elections and referendums

In every election and referendum to which this Constitution applies—

- (a) voting must be by secret ballot;
- (b) the State must provide all political parties and candidates contesting the election or referendum with equal access to news media controlled by the State.

99 Number of constituencies and wards

(1) The number of constituencies into which Zimbabwe is to be divided for the purpose of electing Members of the National Assembly and Senators shall be the numbers specified in sections 65 and 68 respectively.

(2) The number of constituencies and wards into which Provinces and local authority areas are to be divided for the purpose of elections to Provincial Assemblies and local authorities must be determined by the Independent Electoral Commission.

100 Delimitation of constituencies and wards

(1) Once every ten years, on a date or within a period fixed by the Independent Electoral Commission, there must be a delimitation of the electoral boundaries into which Zimbabwe is to be divided for the purpose of electing Members of Parliament, Provincial Assemblies and local authorities.

(2) If a delimitation of electoral boundaries is completed less than eighteen months before polling day in an election, the boundaries so delimited do not apply to that election, and instead the boundaries that existed immediately before the delimitation are applicable.

(3) Electoral boundaries must be delimited in terms of this section by a Delimitation Commission appointed in terms of section 101.

(4) The boundaries of constituencies for elections of Members of the National Assembly must be such that, so far as possible, at the time of delimitation equal numbers of voters are registered in each constituency.

(5) In delimiting—

- (a) the boundaries of wards, a Delimitation Commission must ensure that no ward is divided between two or more local authority areas;
- (b) the boundaries of constituencies, a Delimitation Commission must ensure that no ward is divided between two or more constituencies.

(6) In dividing Zimbabwe into wards and constituencies a Delimitation Commission must, in respect of any area, give due consideration to—

- (a) its physical features;
- (b) the means of communication within the area;
- (c) the geographical distribution of registered voters;
- (d) any community of interest as between registered voters; and

(e) in the case of any delimitation after the first delimitation, existing electoral boundaries; and to give effect to these considerations, the Delimitation Commission may depart from the requirement that constituencies for elections to the National Assembly must have equal number of voters, but no such constituency may have more than twenty per cent more or fewer registered voters than the other such constituencies.

(7) In delimiting each province into four constituencies for elections to the Senate, a Delimitation Commission must be guided but is not bound, by the considerations set out in subsection (6).

(8) After delimiting wards and constituencies, a Delimitation Commission must submit to the President a preliminary report containing—

- (a) a list of the wards and constituencies, with the names assigned to each and a description of their boundaries;
- (c) a map or maps showing the wards and constituencies; and
- (d) any further information or particulars which the Commission considers necessary.

and the President must cause the preliminary delimitation report to be laid before the National Assembly and the Senate within seven days.

(9) If, within seven days after a preliminary delimitation report has been laid before the House concerned, the National Assembly or the Senate resolves that it should be referred back to the Delimitation Commission for further consideration, the President must refer the report back to the Commission.

(10) After receiving a preliminary report back from the President under subsection (9), the Delimitation Commission may attend to any comments or concerns raised by Parliament, and must immediately submit a final delimitation report to the President.

(11) Within fourteen days after receiving a Delimitation Commission's final report, the President must publish a proclamation in the *Gazette* declaring the names and boundaries of the wards and constituencies as finally determined by the Commission.

(12) If there is a discrepancy between the description of the boundaries of any ward or constituency and the map or maps prepared by a Delimitation Commission, the description must prevail.

101 Delimitation Commission

(1) Whenever it is necessary for the purposes of this Constitution, a Delimitation Commission must be appointed, consisting of—

- (a) a Chairperson, who must be a judge or former judge of the Constitutional Court, the Supreme Court or the High Court, or a person qualified for appointment as such a judge; and
- (b) four other members;

appointed by the President in accordance with section 156.

(2) Members of a Delimitation Commission are appointed for as long as may be necessary to enable the Commission to complete its functions in terms of Chapter 7.

(3) The functions of a Delimitation Commission are—

- (a) to delimit constituencies and wards in terms of this Chapter; and

- (b) to exercise any other functions that are conferred or imposed on such a Commission by this Constitution, the Electoral Law or any other enactment.

102 Electoral Law

(1) An Act of Parliament must provide for the conduct of elections and referendums to which this Constitution applies, and in particular for the following matters—

- (a) the periodic delimitation of constituencies and wards;
- (b) the registration of voters, and residence qualifications for registration on particular voters' rolls;
- (c) a code of conduct for political parties, candidates and other persons participating in elections or referendums;
- (d) a system of proportional representation for the election of persons to the seats in the National Assembly referred to in section 65(b) and the seats in the Senate referred to in section 68(1)(b), and the procedure for filling vacancies in those seats, which vacancies must be filled by persons belonging to the same political parties as those who previously held the seats;
- (e) appeals against election results by political parties and candidates.

(2) No amendments may be made to the Electoral Law, or to any subsidiary legislation made under that law, unless the Independent Electoral Commission has been consulted and any recommendations made by the Commission have been duly considered.

CHAPTER 8

THE JUDICIARY, THE COURTS, LAW OFFICERS AND THE LEGAL SYSTEM

PART 1

THE JUDICIARY AND THE COURTS

103 Judicial authority

(1) The judicial authority of Zimbabwe vests in the courts, which comprise—

- (a) the Constitutional Court;
- (b) the Supreme Court;
- (c) the High Court;
- (d) magistrates courts; and
- (e) such other courts subordinate to the Supreme Court as may be established by an Act of Parliament.

(2) An Act of Parliament may vest functions other than adjudicating functions in a court referred to in subsection (1) or to a member of the judiciary, provided that the exercise of those functions does not compromise the independence of the court or the judicial officer concerned.

104 The judiciary

The judiciary of Zimbabwe consists of—

- (a) the Chief Justice, who is the head of the judiciary and also in charge of the Constitutional Court;
- (b) the judges of the Constitutional Court;
- (c) the Chief Appellate Judge who, subject to the directions of the Chief Justice, is in charge of the Supreme Court;
- (d) the judges of the Supreme Court;
- (e) the Judge President who, subject to the directions of the Chief Justice and the Chief Appellate Judge, is in charge of the High Court;
- (f) the judges of the High Court;
- (g) magistrates; and
- (h) persons presiding over courts which may be established by an Act of Parliament.

105 Independence of the courts

(1) The courts are independent and subject only to this Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

(2) The courts must protect and uphold this Constitution.

(3) No institution of the State or other person may interfere with the functioning of a court, except to the extent that the interference is authorised by law and does not compromise the independence of the court.

(4) In the exercise of judicial authority, a member of the judiciary is not subject to the direction or control of any person or authority, except to the extent that a written law may place him under the administrative direction or control of a higher-ranking member of the judiciary.

(5) Institutions of the State, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

(6) An order or decision issued by a court binds all persons and institutions of the State to which it applies, and must be obeyed accordingly.

106 Constitutional Court

(1) There is a Constitutional Court, which is a superior court of record composed of the Chief Justice and six other judges of the Court.

(2) The Constitutional Court—

- (a) is the highest court in all constitutional matters;
- (b) decides constitutional matters, and issues connected with decisions on constitutional matters;
- (c) may decide other matters which are referred to it by the Supreme Court, where the Constitutional Court considers that its decision is likely to aid the development of Zimbabwean law;
- (d) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.

(3) Only the Constitutional Court may—

- (a) decide disputes between institutions of the State in the national, provincial or local sphere concerning their constitutional status or functions;
- (b) finally determine the constitutionality of any law, whether contained in legislation or the common law;
- (c) decide whether the President, the Prime Minister, Parliament, a public authority or a public officer has breached this Constitution or has failed to comply with any constitutional duty; or
- (d) determine the constitutionality of any proposed law.

(4) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial law, or the conduct of the President, the Prime Minister, any public officer or any other person is constitutional, and must confirm any order of invalidity made by the Supreme Court, the High Court, or a court of similar status, before that order has any force.

(5) An Act of Parliament or rules of the Constitutional Court must allow a person, when it is in the interests of justice—

- (a) to bring a constitutional matter directly to the Constitutional Court;
- (b) to appeal directly to the Constitutional Court from any other court.

(6) Matters before the Constitutional Court must be heard by the full bench of the Court, though an Act of Parliament or rules of the Court may provide for interlocutory matters to be heard by one or more individual judges of the Court.

107 Supreme Court

(1) There is a Supreme Court, which is a superior court of record consisting of the Chief Appellate Judge and four other judges of the Supreme Court.

(2) The Supreme Court is the final court of appeal in Zimbabwe, except in—

- (a) matters over which the Constitutional Court has jurisdiction; and
- (b) other matters, other than constitutional matters, on which the Supreme Court has given judgment but which it has directed should be referred to the Constitutional Court for final determination in order to assist the proper and co-ordinated development of Zimbabwean law.

(3) The Supreme Court has the jurisdiction and powers conferred on it by this Constitution or an Act of Parliament.

108 High Court

(1) There is a High Court, which is a superior court of record consisting of the Judge President and the other judges of the High Court.

(2) The High Court has—

- (a) original jurisdiction over all civil and criminal matters, except to the extent that this jurisdiction is limited by this Constitution or an Act of Parliament; and
- (b) such appellate jurisdiction as is conferred on it by an Act of Parliament.

(3) An Act of Parliament—

- (a) must provide for the High Court to be divided into divisions specialising in labour matters, family matters and administrative matters; and

(b) may provide for the High Court to be divided into any other specialised divisions; but each such division must be able to exercise the general jurisdiction of the High Court in any matter that is brought before the division.

109 Magistrates courts

An Act of Parliament must provide for—

- (a) the establishment, composition and jurisdiction of magistrates courts to adjudicate on civil and criminal cases; and
- (b) the appointment of a chief magistrate to exercise administrative control over magistrates courts, subject to any instructions given to him or her by the Judge President.

110 Other courts

An Act of Parliament may provide for the establishment, composition and jurisdiction of other courts subordinate to the High Court.

111 Inherent powers of Constitutional Court, Supreme Court and High Court

The Constitutional Court, the Supreme Court and the High Court have inherent power to protect and regulate their own process and to develop the common law, taking into account the interests of justice and the provisions of this Constitution.

PART 2

APPOINTMENT AND TENURE OF MEMBERS OF JUDICIARY

112 Qualifications of judges

(1) A person is qualified for appointment as a judge if he or she is at least forty years old and—

- (a) has been entitled to practise as a legal practitioner for at least seven years—
 - (i) in Zimbabwe; or
 - (ii) if he or she is a citizen of Zimbabwe, in a country whose common law is Roman-Dutch or English and English is the official language; or
- (b) has been a judge of a court with unlimited jurisdiction in civil or criminal matters in a country whose common law is Roman-Dutch or English and English is the official language;

and, in the opinion of the Judicial Services Commission, is a fit and proper person to be appointed as a judge.

(2) Judges appointed to the Constitutional Court or the Supreme Court must, at the time of their appointment, be citizens of Zimbabwe.

113 Appointment of Chief Justice

(1) Whenever the office of Chief Justice is vacant, the Judicial Services Commission must—

- (a) prepare a list of three qualified persons as nominees for the office; and

- (b) submit the list to the Prime Minister;

whereupon the Prime Minister must select one of the nominees for appointment as Chief Justice unless he or she is of the opinion that none of the nominees is suitable for appointment to the office, in which event the Prime Minister must advise the Judicial Services Commission of his or her opinion, and must give the Commission his or her reasons for holding that opinion.

(2) If the Prime Minister has advised the Judicial Services Commission that he or she considers that none of the Commission's nominees is suitable for appointment as Chief Justice, the Commission must either—

- (a) submit a fresh list of nominees to the Prime Minister; or
- (b) re-affirm its nominations, in which case the Prime Minister must select one of the nominees, or some other suitable person, for appointment as Chief Justice.

(3) When the Prime Minister has selected a person for appointment as Chief Justice, he or she must inform the President of the Senate of the selection, providing details of the person selected and of all the other persons who were nominated by the Judicial Services Commission, and the Senate must consider the matter and approve or disapprove the person for appointment as Chief Justice.

(4) If the Senate disapproves a person for appointment to the office of Chief Justice, the President of the Senate must inform the Prime Minister and the Judicial Services Commission of that fact and the Commission must submit a fresh list of nominees to the Prime Minister in accordance with subsection (1), whereupon the provisions of this section will apply to the selection of a person from that list for appointment as Chief Justice.

(5) Where the Senate has approved a person for appointment to the office of Chief Justice in terms of this section, the President, acting on the advice of the Prime Minister, must appoint that person to the office.

114 Appointment of Chief Appellate Judge

(1) Whenever the office of Chief Appellate Judge is vacant, the Judicial Services Commission must—

- (a) prepare a list of three qualified persons as nominees for the office; and
- (b) submit the list to the Prime Minister;

whereupon the Prime Minister must select one of the nominees for appointment as Chief Appellate Judge unless he or she is of the opinion that none of the nominees is suitable for appointment to the office, in which event the Prime Minister must advise the Judicial Services Commission of his or her opinion, and must give the Commission his or her reasons for holding that opinion.

(2) If the Prime Minister has advised the Judicial Services Commission that he or she considers that none of the Commission's nominees is suitable for appointment as Chief Appellate Judge, the Commission must either—

- (a) submit a fresh list of nominees to the Prime Minister; or
- (b) re-affirm its nominations, in which case the Prime Minister must select one of the nominees, or some other suitable person, for appointment as Chief Appellate Judge.

(3) When the Prime Minister has selected a person for appointment as Chief Appellate Judge, he or she must inform the President of the Senate of the selection, providing details of the person selected and of all the other persons who were nominated by the Judicial Services Commission, and the Senate must consider the matter and approve or disapprove the person for appointment as Chief Appellate Judge.

(4) If the Senate disapproves a person for appointment to the office of Chief Appellate Judge, the President of the Senate must inform the Prime Minister and the Judicial Services Commission of that fact, and the Commission must submit a fresh list of nominees to the Prime Minister in accordance with subsection (1), whereupon the provisions of this section will apply to the selection of a person from that list for appointment as Chief Appellate Judge.

(5) Where the Senate has approved a person for appointment to the office of Chief Appellate Judge in terms of this section, the President, acting on the advice of the Prime Minister, must appoint that person to the office.

115 Appointment of Judge President

(1) Whenever the office of Judge President is vacant, the Judicial Services Commission must—

- (a) prepare a list of three qualified persons as nominees for the office; and
- (b) submit the list to the Prime Minister;

whereupon the Prime Minister must select one of the nominees for appointment as Judge President unless he or she is of the opinion that none of the nominees is suitable for appointment to the office, in which event the Prime Minister must advise the Judicial Services Commission of his or her opinion, and must give the Commission his or her reasons for holding that opinion.

(2) If the Prime Minister has advised the Judicial Services Commission that he or she is considers that none of the Commission's nominees is suitable for appointment as Judge President, the Commission must either—

- (a) submit a fresh list of nominees to the Prime Minister; or
- (b) re-affirm its nominations, in which case the Prime Minister must select one of the nominees, or some other suitable person, for appointment as Judge President.

(3) When the Prime Minister has selected a person for appointment as Judge President, he or she must inform the President of the Senate of the selection, providing details of the person selected and of all the other persons who were nominated by the Judicial Services Commission, and the Senate must consider the matter and approve or disapprove the person for appointment as Judge President.

(4) If the Senate disapproves a person for appointment to the office of Judge President, the President of the Senate must inform the Prime Minister and the Judicial Services Commission of that fact, and the Commission must submit a fresh list of nominees to the Prime Minister in accordance with subsection (1), whereupon the provisions of this section will apply to the selection of a person from that list for appointment as Judge President.

(5) Where the Senate has approved a person for appointment to the office of Judge President in terms of this section, the President, acting on the advice of the Prime Minister, must appoint that person to the office.

116 Appointment of other judges

(1) The President appoints judges, other than the Chief Justice, the Chief Appellate Judge and the Judge President, on the recommendation of the Judicial Services Commission.

(2) A person who has been appointed as a judge in terms of subsection (1) does not assume office as such until his or her appointment has been approved by the Senate.

(3) If the Senate refuses to approve an appointment of a judge referred to in subsection (1), the President of the Senate must inform the President and the Judicial Services Commission of that fact, and the Commission must make a fresh recommendation to the President in accordance with that subsection.

117 Appointment of magistrates

Magistrates are appointed by the Judicial Services Commission in terms of an Act of Parliament which must ensure that their appointment is effected transparently and without favour or prejudice.

118 Appointment of other members of judiciary

Judicial officers other than judges and magistrates must be appointed in terms of an Act of Parliament which must ensure that—

- (a) their appointment is effected transparently and without favour or prejudice; and
- (b) no such judicial officer is appointed without the approval of the Judicial Services Commission.

119 Tenure of office of judges

(1) Judges of the Constitutional Court are appointed for a non-renewable term of twelve years, but—

- (a) they must retire earlier if they reach the age of seventy years; and
- (b) after their retirement, they may be appointed as judges of the Supreme Court or the High Court, if they are eligible for such appointment.

(2) Judges other than judges of the Constitutional Court hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire.

(3) A judge may resign his or her office at any time by written notice to the President and the Judicial Services Commission.

(4) The office of a judge must not be abolished during his or her tenure of office.

120 Removal of judges from office

(1) A Judge may be removed from office by the President on the advice of the Judicial Services Commission only if the Commission, after a full and fair inquiry, finds that the judge—

- (a) is suffering from a physical illness or mental incapacity that prevents him or her from performing his or her judicial functions properly; or
- (b) has displayed such gross incompetence as to make him or her unsuitable to continue to exercise judicial functions; or
- (c) is guilty of gross misconduct.

(2) The President, on the advice of the Judicial Service Commission, may suspend from office a judge who is the subject of an inquiry in terms of subsection (1).

121 Conditions of service and tenure of other members of judiciary

Subject to section 122, the conditions of service of judicial officers other than judges must be prescribed in an Act of Parliament which must ensure that their appointment, promotion, transfer, disciplining or dismissal takes place—

- (a) with the approval of the Judicial Services Commission; and
- (b) in a fair and transparent manner and without fear, favour or prejudice.

122 Remuneration of members of judiciary

(1) Members of the judiciary are entitled to the salaries, allowances and other benefits fixed from time to time by the Judicial Services Commission in consultation with the Salaries and Remuneration Commission.

(2) Parliament must act on the advice of the Judicial Services Commission in prescribing and appropriating, under an Act of Parliament, the salaries, allowances and other benefits referred to in subsection (1).

(3) The salaries, allowances and other benefits of members of the judiciary are a charge on the Consolidated Revenue Fund.

(4) The salaries, allowances and other benefits of members of the judiciary must not be reduced during the members' tenure of office.

123 Oath or affirmation of office of members of judiciary

Before taking office, a member of the judiciary must take before—

- (a) the President or the Chief Justice, in the case of a judge; or
- (b) the person prescribed in an Act of Parliament, in the case of any other member of the judiciary;

the judicial oath or affirmation in the form set out in the First Schedule.

PART 3

JUDICIAL SERVICES COMMISSION

124 Judicial Services Commission

(1) There is a Judicial Services Commission consisting of—

- (a) the Chief Justice, who is the chairperson of the Commission;
- (b) the Chief Appellate Judge;
- (c) the Judge President;
- (d) the Attorney-General;
- (e) three practising legal practitioners designated by the body which is established under an Act of Parliament to represent and supervise the legal profession; and
- (f) two teachers of law designated by an association representing a majority of the teachers of law at Zimbabwean universities.

(2) The terms of office of members of the Judicial Services Commission referred to in paragraphs (e) and (f) of subsection (1) must be fixed on their appointment by the body which designated them, but none of those members may serve on the Commission for one or more periods exceeding five years in aggregate.

125 Advisory role of Judicial Services Commission

The Judicial Services Commission may tender advice to the Government on any matter relating to the judiciary or the administration of justice, and the Government must pay due regard to any such advice.

126 Procedure of Judicial Services Commission

(1) In the exercise of its functions, the Judicial Services Commission must take whatever measures are appropriate to involve the public in all the processes of selecting persons for nomination or appointment as members of the judiciary.

(2) Decisions of the Judicial Services Commission must be supported by a majority of all its members.

PART 4

LAW OFFICERS

127 Attorney-General

(1) The office of Attorney-General is established, and he or she must be appointed by the President on the advice of the Judicial Services Commission and with the approval of the Senate.

(2) The Attorney-General must be qualified for appointment as a judge and must not be an office bearer in a political party.

(3) The Attorney-General has a right to attend and participate in meetings of the Cabinet, but does not have the right to vote in decisions before the Cabinet.

(4) The functions of the Attorney-General are—

- (a) to act as the principal legal adviser to the Government;
- (b) to represent the Government, either personally or through the agency of others, in civil and constitutional proceedings; and
- (c) to exercise any other functions that may be assigned to the Attorney-General by an Act of Parliament.

(5) Before assuming office, the Attorney-General must take before the President the judicial oath in the form set out in the First Schedule.

(6) The procedures applicable to the removal of a judge from office apply to the removal of the Attorney-General from office.

128 Deputy Attorney-Generals

(1) There may be one or more Deputy Attorneys-General appointed by the President on the advice of the Judicial Services Commission.

(2) A Deputy Attorney-General must be qualified for appointment as a judge and must not be an office-bearer in a political party.

(3) A Deputy Attorney-General must assist the Attorney-General in the exercise of his or her functions, and must perform any other functions that the Attorney-General may assign to him or her.

(4) The Deputy Attorney-General or, if there is more than one, a Deputy Attorney-General designated by the President, acts as Attorney-General whenever the office of Attorney-General is vacant or the Attorney-General is unable to perform the functions of his or her office, but a Deputy Attorney-General does not have the right to attend or participate in meetings of the Cabinet.

(5) The procedures applicable to the removal of a judge from office apply to the removal of a Deputy Attorney-General from office.

129 Independent Prosecutor-General

(1) The office of Independent Prosecutor-General is established, and he or she is appointed by the President on the advice of the Judicial Services Commission and with the approval of the Senate.

(2) The Independent Prosecutor-General must be qualified for appointment as a judge and must not be an office-bearer in a political party.

(3) The functions of the Independent Prosecutor-General are—

- (a) to undertake criminal prosecutions on behalf of the State in any court, other than a court established by a disciplinary law or by martial law;
- (b) to prosecute or defend appeals from decisions in criminal proceedings undertaken on behalf of the State;
- (c) to take over and continue criminal proceedings that have been instituted by other persons in courts, other than courts established by a disciplinary law or by martial law;
- (d) to prosecute or defend appeals from decisions in proceedings taken over by him or her; and
- (e) at any stage before judgment is delivered, to discontinue—
 - (i) criminal proceedings he or she has undertaken or taken over; or
 - (ii) any appeal from a decision in criminal proceedings he or she has taken over;

and, subject to this Constitution, these powers are vested exclusively in the Independent Prosecutor-General and in persons acting in accordance with his or her general or specific instructions.

(4) The Independent Prosecutor-General may direct the Commissioner of Police to investigate and report to him on anything which, in the Independent Prosecutor-General's opinion, relates to an offence or alleged or suspected offence, and the Commissioner of Police must comply with that direction.

(5) Subject to this Constitution, in the exercise of his functions and powers the Independent Prosecutor-General is not subject to the direction or control of any person or authority, but must

-
- (a) comply with any law that does not remove his or her independence; and

(b) formulate and publicly disclose the general principles by which he or she decides whether and how to institute and conduct criminal proceedings.

(6) An Act of Parliament must provide for the appointment of persons to assist the Independent Prosecutor-General in the exercise of his or her functions, and must also provide—

(a) for the qualifications of those persons; and

(b) that in exercising their functions, those persons must be independent and impartial and subject only to the law and to the direction and control of the Independent Prosecutor-General.

(7) Before taking office, the Independent Prosecutor-General must take the judicial oath in the form set out in the First Schedule.

(8) The procedures applicable to the removal of a judge from office apply to the removal of the Independent Prosecutor-General from office.

PART 5

GENERAL

130 Conclusion of part-heard cases by former members of judiciary

A member of the judiciary who has resigned or retired may continue to sit as a judicial officer in order to conclude or otherwise dispose of proceedings that commenced before his or her resignation or retirement.

131 Criminal jurisdiction of courts

Only the following courts may exercise or be given jurisdiction in criminal cases—

(a) the Constitutional Court, the Supreme Court, the High Court and magistrates courts;

(b) a court or tribunal that deals with cases under a disciplinary law, to the extent that the jurisdiction is necessary for the enforcement of discipline in the disciplined force concerned; and

(c) any other court, provided that the jurisdiction does not permit the court to impose a sentence involving deprivation of liberty.

132 Legal profession

(1) The legal profession is an integral part of the administration of justice and the rule of law, and legal practitioners have the right, subject to any law regulating their profession—

(a) to perform all their professional functions without intimidation, hindrance, harassment or improper interference;

(b) to consult their clients freely;

(c) not to be prejudiced through being identified with their clients or their clients' causes as a result of discharging their functions; and

(d) to appear before and represent their clients in any court or tribunal in which legal representation is permitted.

(2) Legal practitioners must not be prosecuted or held liable for relevant statements made by them reasonably and in good faith in pleadings or submissions to a court, tribunal or authority.

(3) Legal practitioners must be given ready access to documents, records and information held by officers and institutions of the State at all levels, to enable the legal practitioners to provide effective legal assistance to their clients.

(4) Legal practitioners are entitled to form and join self-governing professional associations to represent their interests, to regulate their discipline, to promote their continuing education and training, and to protect their professional integrity.

CHAPTER 9

PUBLIC SERVICE

133 Public Service

(1) There is a Public Service, which is responsible for the administration of Zimbabwe.

(2) The Public Service consists of persons employed by the State other than—

- (a) members of the Defence Forces, the Police Service, the Prison Service and other Security Services;
- (b) judges and magistrates;
- (c) members of Commissions established by this Constitution; and
- (d) anyone else whose office or post is stated, by this Constitution or an Act of Parliament, not to form part of the Public Service.

(3) An Act of Parliament referred to in paragraph (d) of subsection (2) must, at its final reading in each House of Parliament, be passed by the affirmative votes of two-thirds of the membership of the House concerned.

134 Establishment and membership of Public Service Commission

(1) There is a Public Service Commission consisting of a Chairperson and six other members appointed in accordance with this section.

(2) Whenever it is necessary to appoint a member to the Public Service Commission, the senior administrative officer of the Commission must inform—

- (a) the Speaker; and
- (b) the President;

and the Parliamentary Public Appointments Committee must invite the public and Members of Parliament to submit nominations of suitable persons for appointment to the Commission.

(3) After receiving nominations in response to an invitation under subsection (2), the Parliamentary Public Appointments Committee must assess the nominees and draw up a short-list of suitable appointees, which short-list must contain at least fifty per cent more names than the number of vacancies to be filled, and must then submit the short-list to the National Assembly.

(4) The National Assembly, by the affirmative votes of at least two-thirds of its membership, must select the required number of appointees from the short-list drawn up by the

Parliamentary Public Appointments Committee, and the Speaker must cause the names of the selected appointees to be submitted to the President.

(5) The President must fill every vacancy on the Public Service Commission with a person selected by the National Assembly in terms of subsection (4), unless the President is of the opinion that the person is unsuitable for appointment, in which event he or she may advise the Speaker of his or her opinion, giving the Speaker his or her reasons for holding the opinion, and may ask the National Assembly to reconsider the person taking into account those reasons.

(6) If the President has advised the Speaker that he or she is of the opinion that a selected appointee is unsuitable for appointment to the Public Service Commission, the National Assembly must either—

- (a) through the Speaker, submit to the President the name of another person on the original short-list, or cause a new short-list to be prepared in accordance with this section and submit to the President the name of a person on that new list; or
- (b) through the Speaker, resubmit the name of the appointee originally selected, in which case the President must appoint that person to the Public Service Commission.

(7) Members of the Public Service Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

135 Functions of Public Service Commission

(1) The Public Service Commission has the following functions—

- (a) to appoint qualified and competent persons to hold posts or grades in the Public Service;
- (b) to fix and regulate conditions of service of members of the Public Service;
- (c) to exercise control and disciplinary powers over members of the Public Service;
- (d) to investigate grievances of members of the public service concerning official acts or omissions, and to recommend appropriate remedies;
- (e) to ensure the general well-being and administration of the Public Service and its maintenance in a high state of efficiency;
- (f) to promote the values and principles set out in this Constitution, in particular section 236, throughout the Public Service;
- (g) to ensure that members of the Public Service carry out their duties impartially without discrimination; and
- (h) to exercise any other function that is conferred or imposed on the Commission by this Constitution or an Act of Parliament.

(2) The Public Service Commission may make regulations for any of the purposes set out in subsection (1).

136 Ambassadors and other principal representatives of Zimbabwe abroad

(1) The President may appoint persons to be ambassadors or other principal representatives of Zimbabwe in other countries or accredited to international organisations, and may at any time remove those persons from their posts.

(2) In appointing or removing a person as ambassador or principal representative of Zimbabwe, the President must act on the advice of the Prime Minister, given after consultation with the Public Service Commission, and the appointment or removal must be approved by the Senate.

(3) An Act of Parliament may require the appointment and removal of diplomatic staff, in addition to ambassadors and principal representatives, to be approved by the Senate.

CHAPTER 10

SECURITY SERVICES

PART 1

GENERAL PROVISIONS REGARDING SECURITY SERVICES

137 National security

(1) The national security of Zimbabwe must reflect the resolve of Zimbabweans to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life.

(2) The national security of Zimbabwe must be pursued in compliance with this Constitution and the law, including international law.

138 Security Services

The Security Services of Zimbabwe consist of—

- (a) the Defence Forces;
- (b) the Police Service;
- (c) the Prison Service; and
- (d) any intelligence service established by the State.

139 Conduct of members of Security Services

(1) The Security Services must act, and must teach and require their members to act, in accordance with this Constitution and the law, including customary international law and international agreements binding on Zimbabwe.

(2) No member of a Security Service may obey an order that is manifestly illegal.

(3) Neither the Security Services nor any of their members may, in the exercise of their functions—

- (a) prejudice any lawful interest of a political party; or
- (b) further, in a partisan manner, any interest of a political party.

(4) An Act of Parliament must make provision to ensure the political neutrality of the Security Services.

140 Monitoring of Security Services

An Act of Parliament must provide for the monitoring of the activities of the Security Services by—

- (a) a committee of Parliament on which there are at least three representatives of civil society; and
- (b) an inspector appointed by the President on the recommendation of the Parliamentary Public Appointments Committee and with the approval of at least two-thirds of the members of the National Assembly.

141 Independent complaints mechanism

An Act of Parliament must provide an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the Security Services, and for remedying harm caused by any such misconduct.

PART 2

SECURITY SERVICES COMMISSION

142 Establishment and membership of Security Services Commission

(1) There is a Security Services Commission consisting of—

- (a) the Chief Justice; and
- (b) ten other members appointed in accordance with this section.

(2) Whenever it is necessary to appoint a member to the Security Services Commission, the senior administrative officer of the Commission must inform—

- (a) the Speaker; and
- (b) the President;

and the Parliamentary Public Appointments Committee must invite the public and Members of Parliament to submit nominations of suitable persons for appointment to the Commission.

(3) After receiving nominations in response to an invitation under subsection (2), the Parliamentary Public Appointments Committee must assess the nominees and draw up a short-list of suitable appointees, which short-list must contain at least fifty per cent more names than the number of vacancies to be filled, and must then submit the short-list to the National Assembly.

(4) The National Assembly, by the affirmative votes of at least two-thirds of its membership, must select the required number of appointees from the short-list drawn up by the Parliamentary Public Appointments Committee, and the Speaker must cause the names of the selected appointees to be submitted to the President.

(5) The President must fill every vacancy on the Security Services Commission with a person selected by the National Assembly in terms of subsection (4), unless the President is of the opinion that the person is unsuitable for appointment, in which event he or she may advise the Speaker of his or her opinion, giving the Speaker his or her reasons for holding the opinion, and may ask the National Assembly to reconsider the person taking into account those reasons.

(6) If the President has advised the Speaker that he or she is of the opinion that a selected appointee is unsuitable for appointment to the Security Services Commission, the National Assembly must either—

- (a) through the Speaker, submit to the President the name of another person on the original short-list, or cause a new short-list to be prepared in accordance with this section and submit to the President the name of a person on that new list; or
- (b) through the Speaker, resubmit the name of the appointee originally selected, in which case the President must appoint that person to the Security Services Commission.

(7) Members of the Security Services Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

143 Functions of Security Services Commission

(1) The Security Services Commission has the following functions—

- (a) to appoint qualified and competent persons to hold posts or ranks in the Security Services;
- (b) to fix and regulate conditions of service of members of the Security Services;
- (c) to determine the nature of disciplinary powers to be exercised over members of the Security Services, and the manner and circumstances in which they are to be exercised;
- (e) to ensure the general well-being and administration of the Security Services and their maintenance in a high state of efficiency;
- (c) to ensure that members of the Security Services comply with section 139;
- (d) to advise the Government on the remuneration and other benefits of members of the Security Services;
- (e) to make recommendations to the National Assembly for ensuring that expenditure by the Security Services is not excessive; and
- (f) to exercise any other function conferred or imposed on the Commission by this Constitution or an Act of Parliament.

(2) The Security Services Commission may make regulations for any of the purposes set out in subsection (1).

PART 3

DEFENCE FORCES

144 Defence Forces

(1) The Defence Forces of Zimbabwe consist of an army, an air force and any other branches that may be established under an Act of Parliament.

(2) No person may form armed militias or para-military bodies outside the Defence Forces of Zimbabwe.

145 Primary function of Defence Forces

The primary functions of the Defence Forces are to defend and protect Zimbabwe, its people, its Constitution, its national security and interests and its territorial integrity.

146 Deployment of Defence Forces

(1) With the authority of the President, acting on the advice of the Prime Minister and with the prior approval of the National Assembly, the Defence Forces may be deployed in Zimbabwe—

- (a) in defence of Zimbabwe;
- (b) in support of the Police Service in the maintenance of public order; or
- (c) in support of the Police Service and civilian authorities in the event of an emergency or disaster.

(2) The President, on the advice of the Prime Minister and with the approval of the National Assembly, may order the deployment of the Defence Forces outside Zimbabwe in fulfilment of an international commitment or in defence of Zimbabwe's national security or national interests.

(3) If it is not reasonably possible to obtain the prior approval of the National Assembly for a deployment of the Defence Forces, the deployment may be made without that approval but the deployment must be rescinded unless it is approved by the National Assembly within fourteen days thereafter.

(4) Whenever the Defence Forces are deployed the Prime Minister must cause the National Assembly and the Senate to be informed, promptly and in appropriate detail, of—

- (a) the reasons for the deployment;
- (b) the place where the Defence Forces are deployed; and
- (c) the period for which the Defence Forces are expected to be deployed.

147 Command of Defence Forces

(1) An Act of Parliament may provide that—

- (a) the Defence Forces are to be under the command of a single Commander; or
- (b) each branch of the Defence Forces, or any two or more of them jointly, are to be under the command of a separate Commander.

(2) Every Commander of the Defence Forces, and every Commander of a branch of the Defence Forces, must be appointed by the President on the advice of the Security Services Commission and with the approval of the Senate.

(3) Commanders of the Defence Forces, and Commanders of branches of the Defence Forces, are appointed for one non-renewable five-year term.

(4) A person who has served as Commander of a branch of the Defence Forces may be appointed as Commander of the Defence Forces, but a person who has served as—

- (a) a Commander of the Defence Forces may not be appointed as Commander of a branch of the Defence Forces or to the command of any other Security Service;
- (b) a Commander of a branch of the Defence Forces may not be appointed to the command of any other Security Service.

(5) Every Commander of the Defence Forces, and every Commander of a branch of the Defence Forces, must exercise his or her command in accordance with the general directions of the Minister responsible for defence acting under the authority of the Prime Minister.

PART 4

POLICE SERVICE

148 Police Service and its functions

- (1) There is a Police Service which is responsible for—
 - (a) detecting, preventing and investigating crime;
 - (b) preserving internal security;
 - (c) maintaining public order;
 - (d) protecting and securing the inhabitants of Zimbabwe and their property; and
 - (e) upholding the law and enforcing this Constitution without fear or favour.
- (2) The Police Service must exercise its functions in co-operation with—
 - (a) any intelligence service that may be established by law;
 - (b) any body that may be established by law for the purpose of detecting, preventing or investigating particular classes of offences; and
 - (c) regional and international bodies formed to combat crime.

149 Commissioner of Police

- (1) The Police Service is under the command of a Commissioner of Police appointed by the President on the advice of the Security Services Commission and with the approval of the Senate.
- (2) The Commissioner of Police is appointed for one non-renewable five-year term.
- (3) A person who has served as Commissioner of Police may not be appointed to the command of any other Security Service.
- (4) The Commissioner of Police must exercise his or her command in accordance with general directions of policy given by the Minister responsible for the Police Service.
- (5) Policy directions referred to in subsection (4) cease to have effect thirty days after their issue unless they have been approved by the National Assembly.

PART 5

PRISON SERVICE

150 Prison Service and its functions

- There is a Prison Service which is responsible for—
- (a) the administration of prisons in Zimbabwe; and
 - (b) the protection of society from criminals through the incarceration and rehabilitation of convicted persons and others who are lawfully required to be detained, and their re-integration into society.

151 Commissioner of Prisons

(1) The Prison Service is under the command of a Commissioner of Prisons appointed by the President on the advice of the Security Services Commission and with the approval of the Senate.

(2) The Commissioner of Prisons is appointed for one non-renewable five-year term.

(3) A person who has served as Commissioner of Prisons may not be appointed to the command of any other Security Service.

(4) The Commissioner of Prisons must exercise his or her command in accordance with general directions of policy given by the Minister responsible for prisons.

(5) Policy directions referred to in subsection (4) cease to have effect thirty days after their issue unless they have been approved by the National Assembly.

PART 6

INTELLIGENCE SERVICES

152 Establishment of intelligence services

Any intelligence service of the State, other than an intelligence division of the Defence Forces or the Police Service, must be established in terms of an Act of Parliament which, subject to this Constitution, defines the structure, powers, functions and accountability of the intelligence service.

153 Command or control of intelligence services

(1) The Act of Parliament establishing an intelligence service of the State must make the following provisions for the person in command or control of the service—

- (a) he or she must be appointed by the President on the advice of the Prime Minister and with the approval of the Senate;
- (b) no one may continue to command or control such a service after having commanded or controlled the service for one or more periods, whether continuous or not, amounting to five years;
- (c) no one who has commanded or controlled such a service may be appointed to the command of any other Security Service;
- (d) he or she must exercise his or her command in accordance with general directions of policy given by the Prime Minister or some other Minister specified in the Act.

(2) Policy directions referred to in subsection (1)(e) cease to have effect thirty days after their issue unless they have been approved by the National Assembly.

CHAPTER 11

INDEPENDENT COMMISSIONS

PART 1

GENERAL

154 General purposes of certain Independent Commissions

The following Independent Commissions, namely—

- (a) the Independent Electoral Commission;
- (b) the Human Rights Commission;
- (c) the Gender and Anti-Discrimination Commission;
- (d) the Truth, Justice, Reconciliation and Conflict Prevention Commission;
- (e) the Media Commission;

have the following general objectives and functions in addition to those given to the individual Commissions—

- (i) to support and entrench human rights and democracy;
- (ii) to ensure that injustices are remedied and to address past economic and human-rights injustices; and
- (iii) to create mechanisms for conflict prevention and resolution.

155 Powers of Independent Commissions

(1) Each Independent Commission has all the powers necessary for it to fulfil its objectives and functions, including the power to obtain access to and to inspect all relevant documents and records held by the Government and statutory bodies.

(2) An Act of Parliament may prescribe additional powers for any Independent Commission.

156 Appointment of members of Independent Commissions

(1) Whenever it is necessary to appoint a member to an Independent Commission, the senior administrative officer of the Commission must inform—

- (a) the Speaker; and
- (b) the President;

and the Parliamentary Public Appointments Committee must invite the public and Members of Parliament to submit nominations of suitable persons for appointment to the Commission concerned.

(2) After receiving nominations in response to an invitation under subsection (1), the Parliamentary Public Appointments Committee must assess the nominees and draw up a short-list of suitable appointees, which short-list must contain at least fifty per cent more names than the number of vacancies to be filled, and must then submit the short-list to the National Assembly.

(3) The National Assembly, by the affirmative votes of at least two-thirds of its membership, must select the required number of appointees from the short-list drawn up by the Parliamentary Public Appointments Committee, and the Speaker must cause the names of the selected appointees to be submitted to the President.

(4) When drawing up a short-list of suitable appointees, and when selecting appointees from a short-list, the Parliamentary Public Appointments Committee and the National Assembly must try to ensure that, on every Independent Commission—

- (a) at least half the members are women; and
- (b) the members fairly represent all the different sections of the community whose interests are likely to be affected by the exercise of the Commission's functions.

(5) The President must fill every vacancy on the Independent Commissions with a person selected by the National Assembly in terms of subsection (3), unless the President is of the opinion that the person is unsuitable for appointment, in which event he or she may advise the Speaker of his or her opinion, giving the Speaker his or her reasons for holding that opinion, and may ask the National Assembly to reconsider the person taking into account those reasons.

(6) If the President has advised the Speaker that he or she is of the opinion that a selected appointee is unsuitable for appointment to an Independent Commission, the National Assembly must either—

- (a) through the Speaker, submit to the President the name of another person on the original short-list, or cause a new short-list to be prepared in accordance with this section and submit to the President the name of a person on that new list; or
- (b) through the Speaker, resubmit the name of the appointee originally selected, in which case the President must appoint that person to the Independent Commission.

PART 2

INDIVIDUAL INDEPENDENT COMMISSIONS

157 Independent Electoral Commission

(1) There is an Independent Electoral Commission consisting of—

- (a) a Chairperson, who must be a judge or former judge of the Constitutional Court, the Supreme Court or the High Court, or a person qualified for appointment as such a judge; and
- (b) eight other members;

appointed by the President in accordance with section 156.

(2) Members of the Independent Electoral Commission are appointed for a six-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, that amount to twelve years.

(3) Members of the Independent Electoral Commission must be chosen for their integrity and experience and for their competence in the conduct of affairs in the public or private sector.

(4) A person who is—

- (a) a Member of Parliament;

- (b) a public officer, other than a judge; or
- (c) a member or employee of a statutory body, a provincial assembly or a local authority;

is not qualified for appointment to the Independent Electoral Commission.

(5) Person who are members of a political party on their appointment to the Independent Electoral Commission must relinquish that membership without delay and in any event within fourteen days of their appointment.

(6) If a member of the Independent Electoral Commission becomes a member of a political party, he or she ceases immediately to be a member of the Commission.

(7) The functions of the Independent Electoral Commission are—

- (a) to prepare for, conduct and supervise—
 - (i) elections to the office of Prime Minister and to Parliament;
 - (ii) elections to provincial assemblies and the governing bodies of local authorities; and
 - (iii) referendums;
- (b) to register voters in consultation with the person or authority charged with the registration of births and deaths;
- (c) to compile voters' roll and registers;
- (d) to ensure the proper custody and maintenance of voters' roll and registers;
- (e) to design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres;
- (f) to conduct voter education;
- (g) to accredit observers of elections and referendums in accordance with an Act of Parliament;
- (h) to declare the results of elections and referendums;
- (i) to undertake research into electoral matters and to advise the Government on amendments to the Electoral Law;
- (j) to exercise any other functions that are conferred or imposed on the Commission by this Constitution, the Electoral Law or any other enactment; and
- (k) generally, to ensure the efficient, proper, free and fair conduct of elections and referendums.

(8) The Government must make adequate and suitable provisions, through legislation and other appropriate means, to ensure that—

- (a) the Independent Electoral Commission is able to exercise its functions efficiently and independently; and
- (b) persons employed by the Independent Electoral Commission carry out their duties conscientiously, fairly and impartially.

(9) The Independent Electoral Commission must submit a report to the National Assembly on the conduct of every election and every referendum.

158 Human Rights Commission

(1) There is a Human Rights Commission consisting of a Chairperson and five other members appointed by the President in accordance with section 156.

(2) Members of the Human Rights Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

(3) The functions of the Human Rights Commission are—

- (a) to promote the protection, development and attainment of human rights and freedoms;
- (b) to monitor, assess, investigate and ensure observance of human rights and freedoms in Zimbabwe;
- (c) to protect the public against abuse of power and maladministration by executive institutions of the State and by public officers; and
- (d) to exercise any other functions that are conferred or imposed on the Commission by this Constitution or any enactment.

(4) Persons in charge of all State institutions must inform the Human Rights Commission about measures they have taken to give effect to the rights and freedoms set out in the Declaration of Rights.

159 Gender and Anti-Discrimination Commission

(1) There is a Gender and Anti-Discrimination Commission consisting of a Chairperson and five other members appointed by the President in accordance with section 156.

(2) Members of the Gender and Anti-Discrimination Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

(3) The functions of the Gender and Anti-Discrimination Commission are—

- (a) to ensure gender equality as provided in the Declaration of Rights;
- (b) to ensure that there is no discrimination based on sex or gender;
- (c) to investigate possible violations of rights relating to sex or gender;
- (d) to conduct research into issues relating to sex and gender, and to recommend changes to laws and practices which lead to discrimination based on sex and gender;
- (e) to advise public and private institutions on steps to be taken to ensure gender equality;
- (f) to recommend affirmative action programmes to achieve gender equality;
- (g) to do everything necessary to promote gender equality and to prevent gender discrimination; and
- (h) to exercise any other functions that are conferred or imposed on the Commission by an Act of Parliament.

160 Truth, Justice, Reconciliation and Conflict Prevention Commission

(1) There is a Truth, Justice, Reconciliation and Conflict Prevention Commission consisting of a Chairperson and five other members appointed by the President in accordance with section 156.

(2) Members of the Truth, Justice, Reconciliation and Conflict Prevention Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

(3) The functions of the Truth, Justice, Reconciliation and Conflict Prevention Commission are—

- (a) to investigate any matter relating to past abuses of human rights and freedoms, including—
 - (i) the use of armed forces, the police and intelligence personnel against civilians within Zimbabwe;
 - (ii) the misuse of powers to prosecute or decline to prosecute persons for crimes; and
 - (iii) the misuse of powers to pardon convicted persons;
- (b) to provide remedies for victims of abuses referred to in paragraph (a);
- (c) to promote national reconciliation in order to avoid conflicts in the future;
- (d) to prevent conflicts in the future by promoting mediation and dispute settlement in disputes that could lead to conflict.

(4) In addition to the powers set out in section 155, the Truth, Justice, Reconciliation and Conflict Prevention Commission has the following powers—

- (a) to summon and examine witnesses;
- (b) to impose penalties on anyone who obstructs, interferes with or fails to assist it in its work;
- (c) to order that wrongdoers apologise to their victims or pay compensation to their victims; and
- (d) to intervene in situations which the Commission considers may lead to conflict, and to seek to mediate and settle disputes in order to avoid future conflict in Zimbabwe.

161 Media Commission

(1) There is a Media Commission consisting of a Chairperson and five other members appointed by the President in accordance with section 156.

(2) Members of the Media Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

(3) The functions of the Media Commission are—

- (a) to promote and develop freedom of the press and other media of communication;

- (b) to regulate broadcasting in the public interest and, in particular, to ensure fairness and diversity of views broadly representing Zimbabwean society;
- (c) to encourage people working for the press and for other media of communication to develop codes of conduct; and
- (d) to exercise any other functions that are conferred or imposed on the Commission by an Act of Parliament.

(4) The Media Commission must encourage self-regulation of the press and other media of communication, in preference to control by the State or an agency of the State.

162 Land Commission

(1) There is a Land Commission consisting of a Chairperson and five other members appointed by the President in accordance with section 156.

(2) Members of the Land Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

(3) The functions of the Land Commission are—

- (a) to supervise and regulate the administration of land in Zimbabwe that is vested in the State;
- (b) to make recommendations on the acquisition of private land for the resettlement of persons requiring land;
- (d) to make recommendations to Parliament and public bodies to ensure the adoption and implementation of sustainable environmental policies in Zimbabwe;
- (e) to monitor the Government's actions in matters relating to land and report on them to Parliament;
- (f) to ensure the equitable distribution of resources; and
- (g) to exercise any other functions that are conferred or imposed on the Commission by an Act of Parliament.

163 Anti-Corruption Commission

(1) There is an Anti-Corruption Commission consisting of a Chairperson and five other members appointed by the President in accordance with section 156.

(2) Members of the Anti-Corruption Commission are appointed for a five-year term and may be re-appointed for one further such term, but no one may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

(3) The functions of the Anti-Corruption Commission are—

- (a) to investigate cases of corruption in the public and private sectors;
- (b) to combat corruption and abuse of power;
- (c) to promote honesty, financial discipline and transparency in the public and private sectors;

- (d) to direct the Commissioner of Police to investigate cases of suspected corruption and to report to the Commission on the results of any such investigation; and
- (e) to exercise any other functions that are conferred or imposed on the Commission by an Act of Parliament.

(4) The Commissioner of Police must comply with any directive given to him or her by the Anti-Corruption Commission under subsection (3)(d).

CHAPTER 12

FINANCE

164 Taxation

No taxes may be levied except under the specific authority of this Constitution or an Act of Parliament or a provincial law.

165 Parliamentary control of State revenues and expenditure

(1) It is a function of the National Assembly to monitor and control expenditure by the State and all institutions of Government, as well as statutory bodies, in order to ensure that—

- (a) their expenditure has been properly made and does not exceed the amount appropriated; and
- (b) any limits and conditions on appropriations have been observed.

(2) An Act of Parliament must provide mechanisms for the National Assembly to monitor and control expenditure by the State and statutory bodies, including the submission of regular reports by public officers and institutions of the State and by officers of statutory bodies.

166 Limits of State borrowings, public debt and State guarantees

(1) An Act of Parliament must set limits on—

- (a) borrowings by the State;
- (b) the public debt; and
- (c) debts and obligations whose payment or repayment is guaranteed by the State.

(2) The National Assembly must establish a standing committee to consider loans negotiated by or on behalf of the Government, and the responsible institutions of government must consult this committee before concluding such loans.

(3) All loan agreements negotiated by or on behalf of the Government, including loan agreements with international financial institutions, must be approved by the National Assembly before they become binding on Zimbabwe, and their terms must be made public by the Speaker within ninety days after their approval.

(4) The Government may guarantee a loan only if there has been prior consultation with the committee established under subsection (2), and the guarantee will become binding only after it has been approved by the National Assembly.

(5) Within ninety days after a Government guarantee has been approved by the National Assembly under subsection (4), the Speaker must make its terms public.

(6) The Government must publish the criteria for issuing Government guarantees, and at least twice yearly must publish a report on any guarantees it has issued.

(7) The Minister responsible for finance must—

- (a) at least twice a year, report to the National Assembly on the justification and performance of loans raised by public entities; and
- (b) at the same time as the estimates of revenue and expenditure are laid before the National Assembly in terms of section 170, table in the National Assembly a comprehensive statement of the public debt and the assets of Zimbabwe.

(8) In any financial year, the public debt of Zimbabwe must not exceed sixty per cent of the gross domestic product of Zimbabwe for the preceding year, unless the National Assembly, by the affirmative votes of two-thirds of its membership, resolves that the public debt may exceed that figure in the year concerned.

167 Division of revenues between national and provincial governments and local authorities

(1) An Act of Parliament must provide for—

- (a) the equitable division of national revenues between the central government, provincial governments and local authorities; and
- (b) the determination of each provincial government's share of the revenue raised from within the province;

and, in making such provision, the Act must ensure that all provinces receive equal amounts of the national revenues.

(2) A provincial government's share of national revenues is a charge on the Consolidated Revenue Fund.

(3) The Act referred to in subsection (1) must take into account, amongst other objective factors—

- (a) the national interest;
- (b) any provision that must be made in respect of the national debt and other national obligations;
- (c) the needs and interests of the central government, determined by objective criteria;
- (d) the need to ensure that provincial governments and local authorities are able to provide basic services and perform the functions allocated to them;
- (e) the fiscal capacity and efficiency of provincial governments and local authorities;
- (f) developmental and other needs of provincial governments and local authorities;
- (g) economic disparities within and between Provinces;
- (h) obligations of provincial governments and local authorities in terms of any Act of Parliament;
- (i) the desirability of stable and predictable allocations of revenue;
- (j) the need for flexibility in responding to emergencies and other temporary needs;

and the Act must not be enacted unless there has been consultation with the provincial governments and local authorities and with the Financial and Fiscal Commission, and any recommendations made by those bodies have been properly considered.

168 Funding for constitutional bodies and other institutions

- (1) The Government must ensure that adequate funds are provided—
 - (a) to the Commissions and other bodies established by this Constitution, to enable them to perform their functions efficiently; and
 - (b) to any other institution of the State, to enable it to perform its obligations under this Constitution.

(2) The Independent Commissions must be given a reasonable opportunity to make representations to a parliamentary committee as to the funds to be allocated to them in each financial year.

169 Consolidated Revenue Fund

(1) There is a Consolidated Revenue Fund into which must be paid all fees, taxes and revenues of the Government, whatever their source, unless an Act of Parliament—

- (a) requires or permits them to be paid into some other fund established for a specific purpose; or
- (b) permits the authority that received them to retain them, or part of them, in order to meet the authority's expenses.

(2) No money may be withdrawn from the Consolidated Revenue Fund except to meet expenditure authorised by this Constitution or by an Act of Parliament.

(3) Money withdrawn from the Consolidated Revenue Fund must be paid only to the person to whom the payment is due.

(4) All debt charges for which the State is liable must be charged upon the Consolidated Revenue Fund.

(5) The costs and expenses incurred in collecting and managing the Consolidated Revenue Fund form the first charge on the Fund.

- (6) An Act of Parliament must prescribe the way in which—
 - (a) withdrawals are to be made from the Consolidated Revenue Fund and any other public fund; and
 - (b) money in the Consolidated Revenue Fund and any other fund is to be held and invested.

(7) For the purposes of subsection (4)—

“debt charges” includes interest, sinking fund charges, the repayment or amortisation of debt and all expenditure related to the raising of loans on the security of the Consolidated Revenue Fund and the service and redemption of debt created by those loans.

170 Appropriation of money from Consolidated Revenue Fund

(1) Every year the Minister responsible for finance must present to the National Assembly a statement of the estimated receipts and expenditure of the Government in the next financial year.

(2) Separate estimates of revenue and expenditure must be given for each of the following—

- (a) the judiciary;
- (b) each Commission established by this Constitution;
- (c) the office of the Auditor-General;
- (d) the office of the Independent Prosecutor-General.

(3) Before estimates are debated in the National Assembly, the estimates must be referred to an appropriate committee of the House which may review them and make appropriate recommendations to the National Assembly.

(4) When the National Assembly has approved the estimates of expenditure for a financial year, other than expenditure that is specifically charged on the Consolidated Revenue Fund by this Constitution or an Act of Parliament, the Minister responsible for finance must cause a Bill to be known as an Appropriation Bill to be introduced into the National Assembly, and that Bill must—

- (a) provide for money to be issued from the Consolidated Revenue Fund to meet the approved expenditure; and
- (b) appropriate the money to the purposes specified in the estimates, under separate votes for the different heads of expenditure that have been approved.

(5) If the money appropriated to a purpose under an Appropriation Act is insufficient or if expenditure is needed for a purpose for which no money has been appropriated, the Minister responsible for finance must cause an additional or supplementary estimate to be presented to the National Assembly, and if the National Assembly approves the estimate the Minister must cause an additional or supplementary appropriation Bill to be introduced into the Assembly providing for the necessary money to be issued from the Consolidated Revenue Fund.

171 Unauthorised expenditure

(1) Money must not be paid or withdrawn from the Consolidated Revenue Fund unless it has been appropriated from or charged on the Fund in accordance with this Constitution.

(2) A payment or withdrawal made in contravention of subsection (1) is void until it has been ratified or condoned by an Act of Parliament.

172 Auditor-General

(1) The office of Auditor-General is established, and he or she is appointed by the President in accordance with this section.

(2) Whenever it is necessary to appoint an Auditor-General, the Parliamentary Public Appointments Committee must—

- (a) invite the public and Members of Parliament to submit nominations of suitable persons to fill the vacancy; and

- (b) after receiving nominations in response to an invitation under paragraph (a), assess the nominees and draw up a short-list of three suitable appointees and submit the short-list to the National Assembly;

and the National Assembly must appoint one of the persons on the short-list as Auditor-General.

(4) If the National Assembly, by a vote of two-thirds of its membership, resolves that the Auditor-General should be removed from office on the ground that he or she—

- (a) is suffering from a physical illness or mental incapacity that prevents him or her from performing his or her functions properly; or
- (b) has displayed such gross incompetence as to make him or her unsuitable to continue to exercise his or her functions; or
- (c) is guilty of gross misconduct;

the Auditor-General thereupon ceases to hold office.

(5) The functions of the Auditor-General are—

- (a) to audit the accounts, financial systems and financial management of all departments and institutions of Government, and all other bodies which receive public funds;
- (b) to order the taking of measures to rectify any defects in the management and safeguarding of public funds; and
- (c) to exercise any other function that may be conferred or imposed on him or her by an Act of Parliament.

(6) In the exercise of his or her functions the Auditor-General is independent and subject only to the law.

(7) Each year, before the Minister responsible for finance presents the estimates of revenue and expenditure to the National Assembly, the Auditor-General must present to the National Assembly an audit report for that year.

173 Financial and Fiscal Commission

(1) There is a Financial and Fiscal Commission consisting of—

- (a) a Chairperson and four other members appointed by the President in accordance with this section, from nominees selected by the National Assembly;
- (b) eight members to represent the eight Provinces into which Zimbabwe is divided, each of whom is designated by a provincial Cabinet, with each provincial Cabinet designating only one person; and
- (c) one member to represent local authorities, who is designated by an association that is recognised under an Act of Parliament as representing local authorities.

(2) The functions of the Financial and Fiscal Commission are to make the recommendations provided for in this Constitution and any Act of Parliament, and to exercise any other functions that are conferred or imposed on the Commission by an Act of Parliament.

(3) Whenever it is necessary to appoint the Chairperson or another member referred to in subsection (1)(a), the senior administrative officer of the Financial and Fiscal Commission must inform—

- (a) the Speaker; and

(b) the President;

and the Parliamentary Public Appointments Committee must invite the public and Members of Parliament to submit nominations of suitable persons for appointment to the Commission.

(4) After receiving nominations in response to an invitation under subsection (3), the Parliamentary Public Appointments Committee must assess the nominees and draw up a short-list of suitable appointees, which short-list must contain at least fifty per cent more names than the number of vacancies to be filled, and must then submit the short-list to the National Assembly.

(5) The National Assembly, by the affirmative votes of at least two-thirds of its membership, must select the required number of appointees from the short-list drawn up by the Parliamentary Public Appointments Committee in terms of subsection (4), and the Speaker must cause the names of the selected appointees to be submitted to the President.

(6) The President must fill every vacancy amongst the members referred to in subsection (1)(a) with a person selected by the National Assembly in terms of subsection (5), unless the President is of the opinion that the person is unsuitable for appointment, in which event he or she may advise the Speaker of his or her opinion, giving the Speaker his or her reasons for holding the opinion, and may ask the National Assembly to reconsider the person taking into account those reasons.

(7) If the President has advised the Speaker in terms of subsection (6) that he or she is of the opinion that a selected appointee is unsuitable for appointment to the Financial and Fiscal Commission, the National Assembly must either—

- (a) through the Speaker, submit to the President the name of another person on the original short-list, or cause a new short-list to be prepared in accordance with this section and submit to the President the name of a person on that new list; or
- (b) through the Speaker, resubmit the name of the appointee originally selected, in which case the President must appoint that person to the Financial and Fiscal Commission.

(8) Whenever it is necessary to appoint a member referred to in subsection (1)(b) or (c), the senior administrative officer of the Financial and Fiscal Commission must inform—

- (a) the Provincial Governor of the province concerned, in the case of a member representing a Province; or
- (b) the association referred to in subsection (1)(c), in the case of a member representing local authorities;

and the Cabinet of the Province concerned or the association referred to in subsection (1)(c), as the case may be, must designate a suitable person as a member of the Commission.

(9) Members of the Financial and Fiscal Commission are appointed or designated for a five-year term and may be re-appointed or re-designated for one further such term, but no one may serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, amounting to ten years.

174 Salaries and Remuneration Commission

(1) There is a Salaries and Remuneration Commission consisting of—

- (a) a Chairperson appointed by the President, acting on the advice of the Judicial Services Commission;

- (b) one member designated by the National Assembly from a list of nominees prepared by the Parliamentary Public Appointments Committee;
- (c) one member designated by the Judicial Services Commission;
- (d) one member designated by the Public Service Commission;
- (e) one member designated by the Security Services Commission;
- (f) one member designated by an association that is recognised under an Act of Parliament as representing trade unions;
- (f) one member designated by an association that is recognised under an Act of Parliament as representing employers' organisations; and
- (g) two members designated by the Minister responsible for finance.

(2) Public officers, members of Parliament and members of Provincial Assemblies and local authorities are not eligible to be appointed or designated as members of the Salaries and Remuneration Commission.

(3) The functions of the Salaries and Remuneration Commission are to make recommendations as to the remuneration, allowances and benefits of—

- (a) all public officers, including—
 - (i) the President, the Prime Minister and all other Ministers;
 - (ii) Members of Parliament;
 - (iii) members of the judiciary;
 - (iv) members of the Public Service and all Security Services; and
 - (v) members of Commissions established by this Constitution;
- (b) members of Provincial Assemblies and employees of provincial governments; and
- (c) members and employees of local authorities;

and to exercise any other function that may be conferred on the Commission by an Act of Parliament.

(4) In exercising its functions, the Salaries and Remuneration Commission must take into account the following—

- (a) the need to ensure that the costs of remunerating public officers, members of Provincial Assemblies and local authorities, and employees of provincial governments and local authorities, are financially sustainable;
- (b) the need to ensure that the State, provincial governments and local authorities are able to attract persons with the necessary skills to enable those bodies to carry out their functions;
- (c) the need to recognise productivity and performance; and
- (d) transparency and fairness.

(5) Neither the State nor a provincial government nor a local authority may increase, directly or indirectly, the remuneration, allowances or benefits of a person referred to in subsection (3) unless the Salaries and Remuneration Commission has been consulted about the increase.

(6) If, contrary to a recommendation made by the Salaries and Remuneration Commission, the State or a provincial government or local authority increases, directly or indirectly, the remuneration, allowances or benefits of a person referred to in subsection (3), the Commission must report the matter to the Minister responsible for finance and the Minister must lay the Commission's report before the National Assembly on one of the five days that the Assembly next sits after the Minister received it.

175 Procurement

An Act of Parliament must prescribe procedures for the procurement of goods and services by all Government departments and public institutions in a manner that is transparent, fair, honest, economical and competitive.

176 Reserve Bank of Zimbabwe

(1) There is a central bank, to be known as the Reserve Bank of Zimbabwe, whose primary objects are—

- (a) to regulate Zimbabwe's monetary system; and
- (b) to protect the currency of Zimbabwe in the interest of balanced and sustainable economic growth.

(2) An Act of Parliament must provide for the functions of the Reserve Bank of Zimbabwe, and in the exercise of those functions the Bank is independent and subject only to the law.

(3) An Act of Parliament must provide for the structure and organisation of the Reserve Bank of Zimbabwe, and in particular must provide for the responsibilities and functions of a Governor and a Board of Directors appointed by the President in accordance with this section.

(4) Whenever it is necessary to appoint a Governor or a member of the Board of Directors of the Reserve Bank, the Parliamentary Public Appointments Committee must—

- (a) invite the public and Members of Parliament to submit nominations of suitable persons for appointment; and
- (b) after receiving nominations in response to an invitation under paragraph (a), assess the nominees and draw up a short-list of—
 - (i) not more than three suitable appointees, in the case of an appointment to the office of Governor; or
 - (ii) at least fifty per cent more than the number of vacancies, in the case of one or more appointments to the Board of Directors;

and submit the short-list to the National Assembly.

(5) On receipt of a short-list prepared in terms of subsection (4), the National Assembly, by the affirmative votes of two-thirds of its membership, must select—

- (a) one of the persons on the short-list as its nominee for appointment as Governor of the Reserve Bank; or
- (b) the number of persons on the short-list as there are vacancies in the membership of the Board of Directors of the Reserve Bank;

as the case may be.

(6) The Speaker must cause the name or names selected by the National Assembly in terms of subsection (5) to be submitted to the President, and the President must appoint that person or persons to fill the vacancy concerned.

CHAPTER 13

TRADITIONAL LEADERS

177 Recognition of traditional leadership

The institution of traditional leadership, in particular chieftainship, and the role of traditional leaders in the preservation and development of such traditions, customs and cultures as are not contrary to this Constitution, must be recognised by law.

178 Appointment or election of traditional leaders

Traditional leaders must be appointed or elected according to the customary law and procedures applicable within the traditional communities concerned, and no Act of Parliament may confer upon the President or any other public officer the right to determine who should be appointed or elected as a traditional leader of any such community.

179 Role of traditional leaders

An Act of Parliament may provide for the role of chiefs and other traditional leaders in matters affecting local communities, but no law may give judicial or legislative authority to chiefs and other traditional leaders in their capacities as such.

CHAPTER 14

PROVINCIAL GOVERNMENT

PART 1

PROVINCES AND THEIR BOUNDARIES

180 Provinces

Zimbabwe is divided into eight provinces, namely Manicaland, Mashonaland East, Mashonaland Central, Mashonaland West, Masvingo, Matabeleland South, Matabeleland North and Midlands.

181 Boundaries of provinces

- (1) The boundaries of the provinces are set out in the Second Schedule.
- (2) The President may amend the Second Schedule by proclamation in the *Gazette*, but any such amendment—
 - (a) may do no more than correct any error in the description of any boundary or improve the accuracy of any such description; and
 - (b) must have been authorised by a resolution passed by the affirmative votes of at least two-thirds of all the Members of Parliament at a joint sitting of the Senate and the National Assembly.

PART 2

PROVINCIAL ASSEMBLIES

182 Composition and term of Provincial Assemblies

(1) Each province has a legislature called a Provincial Assembly consisting of at least thirty and no more than fifty members, of whom—

- (a) half must be directly elected to represent the constituencies into which the province must be divided; and
- (b) the rest must be elected under a system of proportional representation.

(2) The electorate in an election for a Provincial Assembly is constituted by the persons who are registered as voters for senatorial elections in the province.

(3) A Provincial Assembly must be elected for a term of five years running from the date of the first sitting of the Assembly, and at the expiry of that term the Assembly stands dissolved.

(4) A Provincial Governor must dissolve the Provincial Assembly for his or her province at any time if two-thirds of its members vote in favour of dissolution.

(5) An Act of Parliament must provide for the conduct of elections to Provincial Assemblies, and in particular for the following matters—

- (a) the number of seats of each Provincial Assembly;
- (b) the system of proportional representation for the election of persons to the seats in a Provincial Assembly referred to in subsection (1)(b);
- (c) the periodic delimitation of provincial constituencies, which must ensure that, so far as possible—
 - (i) within each province, equal numbers of voters are registered in each provincial constituency; and
 - (ii) the average number of voters registered in the constituencies in any province is the same as the average number of voters registered in constituencies in the other provinces;

though these requirements may be departed from to give effect to the considerations set out in section 100(6);

- (d) the registration of voters, and residence qualifications for registration, on provincial voters' rolls;
- (e) appeals against election results by political parties and candidates in elections for Provincial Assemblies.

183 Legislative authority of Provincial Assemblies

(1) Subject to this Constitution, a Provincial Assembly has legislative authority within its province in respect of the following matters—

- (a) planning;
- (b) tourism;
- (c) public transport;
- (d) environmental management;

- (e) housing;
- (f) finance and taxation;
- (g) education;
- (h) human and animal health;
- (i) rural development;
- (j) shop licensing and liquor licensing;
- (k) roads;
- (l) water management; and
- (m) any other matter that is prescribed in an Act of Parliament.

(2) Provincial laws apply only within the province of the Provincial Assembly that passed them.

184 Exercise of legislative authority by Provincial Assembly

(1) A Provincial Assembly exercises its legislative authority by enacting provincial laws through the passing of a Bill by the votes of a majority of the Assembly's members.

(2) A Bill that has been passed by a Provincial Assembly requires the assent of the Provincial Governor of the province before it becomes a provincial law.

(3) Where a Bill that has been passed by a Provincial Assembly is presented to the Provincial Governor for assent, the Provincial Governor must assent to it unless one-third or more of the members of the Assembly, in a petition to the Governor, express doubts about the Bill's constitutionality, in which case—

- (a) the Provincial Governor must refer the Bill back to the Provincial Assembly, giving the Assembly an opportunity either to withdraw it or to remove the allegedly unconstitutional provisions from it; and
 - (b) if the Provincial Assembly returns the Bill for assent without having altered it, the Provincial Governor must refer it to the Constitutional Court for an opinion.
- (4) If the Constitutional Court, on a reference under subsection (3)(b), rules that—
- (a) the Bill is constitutional, the Provincial Governor must assent to it;
 - (b) any provision of the Bill is unconstitutional, the Provincial Governor must not assent to it.

185 Speaker and Deputy Speaker of Provincial Assembly

(1) At its first sitting after a general election of members of a Provincial Assembly, or whenever a vacancy arises in the offices, the Provincial Assembly must elect a Speaker and a Deputy Speaker.

(2) The provisions of this Constitution relating to the Speaker and Deputy Speaker of the National Assembly apply, with any necessary changes, in relation to the Speaker and Deputy Speaker of a Provincial Assembly.

186 Procedures and other matters relating to the Provincial Assemblies

(1) Subject to this Chapter, an Act of Parliament may provide for the functions and procedures of Provincial Assemblies, including their privileges and immunities, standing orders and committees.

(2) Every Provincial Assembly must appoint from among its members, other than members who are provincial Ministers, a Public Appointments Committee for the purpose of selecting persons for appointment to such posts and offices in the provincial government as are required, by this Constitution or a provincial law, to be made from persons selected by the Committee.

(3) In the exercise of its functions, a provincial Public Appointments Committee must take whatever measures are appropriate to involve the public in all the processes of selecting appointees.

(4) In regard to any matter that is not provided for in this Chapter or in an Act of Parliament referred to in subsection (1), the provisions of this Constitution relating to the National Assembly apply, with any necessary changes, to Provincial Assemblies.

187 Conflict between national and provincial legislation

(1) National legislation which applies uniformly throughout Zimbabwe prevails over provincial legislation on a matter falling within the province's legislative authority if any of the following conditions are met—

- (a) the national legislation deals with a matter that cannot be regulated effectively by individual provinces;
- (b) the national legislation deals with a matter which, to be dealt with effectively, requires uniformity throughout Zimbabwe, and the national legislation provides that uniformity by establishing standards, frameworks or national policies;
- (c) the national legislation is necessary for any of the following purposes—
 - (i) the maintenance of national security;
 - (ii) the maintenance of economic unity;
 - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - (iv) the promotion of economic activities across provincial boundaries;
 - (v) the promotion of equal opportunity or equal access to governmental services;
 - (vi) the protection of the environment;
- (d) the national legislation is aimed at preventing unreasonable action by a province which—
 - (i) is prejudicial to the economic, health or security interests of another province or Zimbabwe as a whole; or
 - (ii) impedes the implementation of national policy;

and where those conditions are not met, the provincial legislation prevails over the national legislation.

(2) A decision by a court that national legislation or a provincial law prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative while the conflict remains.

(3) When considering an apparent conflict between national legislation and a provincial law, a court must prefer any reasonable interpretation of the legislation or law that avoids a conflict, over any alternative interpretation that results in a conflict.

188 Power of Parliament to nullify provincial laws

(1) A joint sitting of the Senate and the National Assembly may, by a resolution passed by the affirmative votes of at least two-thirds of all the Members of Parliament, declare that a provincial law is void on the ground that the law—

- (a) is prejudicial to the economic or security interests of another province or Zimbabwe as whole; or
- (b) is grossly unreasonable.

and upon the passing of the resolution the provincial law becomes void.

(2) A Provincial Assembly that is aggrieved by a resolution under subsection (1) may, through its Speaker, apply to the Constitutional Court for the resolution to be set aside, and the Court may give such ruling in the matter as the Court considers just.

PART 3

PROVINCIAL EXECUTIVE

189 Executive authority of provinces

The executive authority of a province vests in the Provincial Governor and the provincial Cabinet.

190 Election of Provincial Governor

(1) A Provincial Governor is elected directly by voters in the province in an election held concurrently with a general election of members of the Provincial Assembly.

(2) A person is eligible for election as Provincial Governor if he or she is eligible for election as a Member of the National Assembly.

(3) An Act of Parliament must provide for the procedure for elections to the office of Provincial Governor.

191 Provincial Cabinet

(1) A Provincial Governor must appoint a provincial Cabinet consisting of not more than ten provincial Ministers, all of whom must be members of the Provincial Assembly.

(2) Provincial Ministers hold office at the absolute discretion of the Provincial Governor.

(3) A provincial Minister's office becomes vacant—

- (a) if he or she resigns by written notice to the Provincial Governor; or
- (b) upon the assumption of office by a new Provincial Governor.

(4) A provincial Cabinet has the following functions—

- (a) to advise the Provincial Governor;
- (b) to direct, co-ordinate and supervise the activities of the provincial government; and
- (c) to be accountable to the Provincial Assembly for the provincial government's activities.

192 Assumption of office by Provincial Governor and provincial Ministers

(1) Within five days after being elected, a Provincial Governor must assume office by swearing or affirming, before the Speaker of the Provincial Assembly, the oath or affirmation of a Provincial Governor which is set out in the First Schedule.

(2) A provincial Minister must assume office by swearing or affirming before the Speaker of the Provincial Assembly, the oath or affirmation of a provincial Minister which is set out in the First Schedule.

193 Term of office of Provincial Governor

(1) The term of office of a Provincial Governor is five years from the date of his or her assumption of office.

(2) No one may serve or act in the office of Provincial Governor for more than two five-year terms, whether or not the terms are consecutive, or for a total of more than ten years.

194 Functions of Provincial Governor

(1) A Provincial Governor is head of the provincial government in his or her province and is responsible for—

- (a) appointing provincial Ministers and assigning functions to them;
- (b) presiding over provincial Cabinet meetings;
- (c) directing the operations of the provincial government; and
- (d) doing anything else that the Provincial Governor is required or permitted to do in terms of this Constitution or any Act of Parliament or provincial law.

(2) A Provincial Governor must answer questions and respond to motions in the Provincial Assembly of his or her province at such times as may be prescribed in the Provincial Assembly's Standing Orders.

(3) In regard to any matter that is not provided for in this Chapter or in an Act of Parliament referred to in subsection (1), the provisions of this Constitution relating to the Prime Minister and the Cabinet apply, with any necessary changes, to Provincial Governors and provincial Cabinets.

PART 4

INSTITUTIONS OF PROVINCIAL GOVERNMENT

195 Provincial Attorney

(1) Every province must have a Provincial Attorney appointed by the Provincial Governor on the recommendation of the Provincial Assembly.

(2) Before a Provincial Assembly recommends a person for appointment as Provincial Attorney, the Assembly's Public Appointments Committee established in terms of section

186(2) must present to the Assembly a short-list of three suitable persons, and the Assembly, by resolution passed by the affirmative votes of a majority of its members, must select one of those persons as its nominee for appointment.

(3) The person appointed as Provincial Attorney must be qualified for appointment as a judge and must not be an officer-bearer in a political party.

(4) The Provincial Attorney is the principal legal adviser to the provincial government.

(5) If a Provincial Assembly, by the affirmative votes of two-thirds of its membership and after a full and fair inquiry, has resolved that the Provincial Attorney should be removed from office on the ground that he or she—

- (a) is suffering from a physical illness or mental incapacity that prevents him or her from performing his or her functions properly; or
- (b) has displayed such gross incompetence as to make him or her unsuitable to continue to exercise his or her functions; or
- (c) is guilty of gross misconduct;

the Provincial Governor must remove the Provincial Attorney from office.

196 Provincial Public Service Commission

(1) Every province must have a provincial Public Service Commission established by an Act of Parliament or a provincial law.

(2) The functions of a provincial Public Service Commission are—

- (a) to appoint competent and qualified persons to hold posts or grades in the provincial public service;
- (b) to fix and regulate conditions of service of members of the provincial public service;
- (c) to recommend to the provincial government the remuneration and other benefits of persons employed in the provincial public service;
- (d) to exercise control and disciplinary powers over members of the provincial public service;
- (e) to ensure the general well-being and administration of the provincial public service and its maintenance in a high state of efficiency;
- (f) to promote the values and principles set out in this Constitution, in particular section 236, throughout the provincial public service;
- (g) to exercise any other function that is conferred or imposed on the Commission by an Act of Parliament or a provincial law.

197 Provincial Police Department

(1) Every province must have a provincial Police Department established by an Act of Parliament or a provincial law.

(2) The main function of a provincial Police Department is to assist the provincial government enforce provincial laws, but an Act of Parliament or a provincial law may confer or impose additional functions on the Department.

(3) An Act of Parliament or a provincial law may give members of a provincial Police Department power to arrest alleged offenders, but anyone so arrested must be handed over

immediately to a member of the Police Service established by section 148 to be dealt with according to law.

(4) The prosecution of anyone alleged to have contravened a provincial law is to be conducted by a person acting under the instructions of the Independent Prosecutor-General, not the provincial government.

PART 5

PROVINCIAL FINANCE

198 Provincial taxation

(1) No tax may be levied by a provincial government except under the authority of an Act of Parliament or a provincial law.

(2) Provincial Assemblies may enact legislation imposing—

- (a) taxes other than income tax, value-added tax, sales tax or customs duties; and
- (b) flat-rate surcharges on the tax bases of a tax that is imposed by national legislation, other than the tax bases of corporate income tax, value-added tax or customs duties;

but the power to impose taxes and surcharges—

- (i) must not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour; and
- (ii) must be regulated in terms of an Act of Parliament, or a provincial law, which is enacted after consultation with the Financial and Fiscal Commission.

199 Provincial Government Revenue Fund

(1) Every provincial government must establish a Provincial Government Revenue Fund into which will be paid all fees, taxes and revenues of the provincial government, whatever their source, unless an Act of Parliament or a provincial law requires or permits them to be paid into some other fund established for a specific purpose.

(2) No money may be withdrawn from the Provincial Revenue Fund except to meet expenditure authorised by a provincial law.

(3) Money withdrawn from the Provincial Revenue Fund must be paid only to the person to which the payment is due.

(4) An Act of Parliament must prescribe the way in which—

- (a) withdrawals are to be made from a Provincial Revenue Fund; and
- (b) money in a Provincial Revenue Fund is to be held and invested.

200 Appropriation of money from Provincial Revenue Fund

(1) Every year the provincial Minister responsible for finance must present to the Provincial Assembly a statement of the estimated receipts and expenditure of the provincial government in the next financial year.

(2) Before estimates are debated in the Provincial Assembly, the estimates must be referred to an appropriate committee of the Assembly which may review them and make appropriate recommendations to the Assembly.

(3) When the Provincial Assembly has approved the estimates of expenditure for a financial year, the provincial Minister responsible for finance must cause a Bill to be known as an Appropriation Bill to be introduced into the Provincial Assembly, and that Bill must—

- (a) provide for money to be issued from the Provincial Revenue Fund to meet the approved expenditure; and
- (b) appropriate the money to the purposes specified in the estimates, under separate votes for the different heads of expenditure that have been approved.

(4) If the money appropriated to a purpose under a provincial appropriation law is insufficient or if expenditure is needed for a purpose for which no money has been appropriated, the provincial Minister responsible for finance must cause an additional or supplementary estimate to be presented to the Provincial Assembly, and if the Assembly approves the estimate the Minister must cause an additional or supplementary appropriation Bill to be introduced into the Assembly providing for the necessary money to be issued from the Provincial Revenue Fund.

201 Unauthorised expenditure

(1) Money must not be paid or withdrawn from a Provincial Revenue Fund unless it has been appropriated from or charged on the Fund in accordance with this Constitution or a provincial law.

(2) A payment or withdrawal made in contravention of subsection (1) is void until it has been ratified or condoned by a provincial law.

202 Provincial Auditor

(1) Every province must have a Provincial Auditor appointed by the Provincial Governor on the recommendation of the Provincial Assembly.

(2) Before a Provincial Assembly recommends a person for appointment as Provincial Auditor, the Assembly's Public Appointments Committee established in terms of section 186(2) must present to the Assembly a short-list of three suitable persons, and the Assembly, by resolution passed by the affirmative votes of a majority of its members, must select one of those persons as its nominee for appointment.

(3) If a Provincial Assembly, by the affirmative votes of two-thirds of its membership and after a full and fair inquiry, has resolved that the Provincial Auditor should be removed from office on the ground that he or she—

- (a) is suffering from a physical illness or mental incapacity that prevents him or her from performing his or her functions properly; or
- (b) has displayed such gross incompetence as to make him or her unsuitable to continue to exercise his or her functions; or
- (c) is guilty of gross misconduct;

the Provincial Governor must remove the Provincial Auditor from office.

(4) The functions of a Provincial Auditor are—

- (a) to audit the accounts, financial systems and financial management of all departments and institutions of the provincial government;
- (b) to order the taking of measures to rectify any defects in the management and safeguarding of provincial government funds; and
- (c) to exercise any other function that may be conferred or imposed on him or her by an Act of Parliament or a provincial law.

(5) In the exercise of his or her functions a Provincial Auditor is independent and subject only to the law.

(6) Each year, before the provincial Minister responsible for finance presents the estimates of revenue and expenditure to the Provincial Assembly, the Provincial Auditor must present to the Provincial Assembly an audit report for that year.

203 Provincial procurement

A provincial law must prescribe procedures for the procurement of goods and services by all provincial government departments in a manner that is transparent, fair, honest, economical and competitive.

PART 6

PROVINCIAL CONSTITUTIONS

204 Adoption of provincial constitutions

A Provincial Assembly may, by the affirmative votes of at least two-thirds of its members, enact a constitution for the province and in the same manner may amend such a constitution.

205 Contents of provincial constitutions

(1) A provincial constitution may provide for all matters relating to the structure and organisation of the Provincial Assembly, the provincial government and its institutions, officers and members, but—

- (a) it must not be inconsistent with this Constitution;
- (b) it must comply with the values set out in Chapters 1 and 3 of this Constitution; and
- (c) may not confer on the province any function that falls outside the province's area of competence under this Constitution.

(2) Where a provincial constitution provides for a matter which, in terms of any provision of this Chapter, is to be provided for by an Act of Parliament or a provincial law, that provision is to be construed as if the reference to an Act of Parliament or a provincial law were to the provincial constitution.

206 Certification of provincial constitutions

(1) Where a Provincial Assembly has passed or amended a provincial constitution, the Speaker of the Provincial Assembly must, before the Provincial Governor has assented to it, submit the text of the constitution or amendment to the Constitutional Court for certification.

(2) No text of a provincial constitution or constitutional amendment becomes law unless the Constitutional Court has certified—

- (a) that the text has been passed in accordance with this Constitution; and
- (b) that the whole text complies with this Constitution.

207 Assent, publication and safekeeping of provincial constitutions

(1) Where the Constitutional Court has certified the text of a provincial constitution or constitutional amendment, the Provincial Governor must assent to it.

(2) A provincial constitution or constitutional amendment that has been assented to by the Governor must be published in the national *Government Gazette*, and it takes effect on publication or on a later date specified in or determined in terms of that constitution or amendment.

(3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after publication, must be entrusted to the Constitutional Court for safekeeping.

CHAPTER 15

LOCAL GOVERNMENT

208 Local government institutions

(1) An Act of Parliament must provide for local government institutions consisting of councils for urban and rural areas.

(2) The legislative authority of a council must vest in elected councillors, but that legislative authority must be exercised subject to this Constitution as well as national legislation and provincial laws.

(3) An Act of Parliament must provide for the establishment and functions of councils, including—

- (a) the election of councillors under a system which must provide for at least one-third of the councillors to be elected under a system of proportional representation;
- (b) the enactment of by-laws and regulations; and
- (c) the imposition of taxes.

209 Purpose and principles of local government

(1) The purpose of local government is—

- (a) to provide democratic and accountable government for local communities;
- (b) to promote social and economic development; and
- (c) to allow participation by the people in decision-making processes.

(2) Local government institutions must be given as much autonomy as is conducive for the attainment of the objects of local governance.

CHAPTER 16

RELATIONSHIP BETWEEN NATIONAL, PROVINCIAL AND LOCAL GOVERNMENTS

210 Principles of national, provincial and local government relations

All institutions of government within each of the national, provincial and local spheres must—

- (a) preserve the peace, national unity and the indivisibility of Zimbabwe;
- (b) secure the well-being of the people of Zimbabwe;
- (c) provide effective, transparent, accountable and coherent governance for Zimbabwe as a whole;
- (d) be loyal to this Constitution, to Zimbabwe and to its people;
- (e) respect the status, institutions and functions of government in the other spheres;
- (f) not assume any function except those lawfully conferred on them;
- (g) exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (h) co-operate with one another in mutual trust and good faith by—
 - (i) fostering friendly relations;
 - (ii) assisting and supporting one another;
 - (iii) informing one another of, and consulting one another on, matters of common interest;
 - (iv) co-ordinating their actions and legislation with one another;
 - (v) adhering to agreed procedures; and
 - (vi) avoiding legal proceedings against one another.

211 Measures to promote inter-governmental co-operation and settlement of disputes

(1) An Act of Parliament must—

- (a) establish or provide for structures and institutions to promote and facilitate inter-governmental relations and co-operation; and
- (b) provide for mechanisms and procedures to facilitate the settlement of inter-governmental disputes.

(2) An institution of government, whether in the national, provincial or local sphere, which is involved in a dispute with another such institution, whether in the same or a different sphere, must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.

(3) If a court is not satisfied that the requirements of subsection (2) have been met, it may refer a dispute back to the institutions of government involved.

CHAPTER 17

GENERAL AND SUPPLEMENTARY PROVISIONS

PART 1

GENERAL PROVISIONS AS TO COMMISSIONS

212 Application of Part 1

This Part applies to every Commission established by this Constitution, and to the members of every such Commission.

213 Commissions to be independent

Subject to this Constitution, the Commissions—

- (a) are independent and are not subject to the direction or control of anyone; and
- (b) must exercise their functions without fear, favour or prejudice;

and though the Commissions are accountable to Parliament for the efficient performance of their functions, Parliament may not interfere with them in such a way as to prevent them from performing their functions vigorously and impartially.

214 Membership of Commissions and conditions of service of members

(1) Members of Parliament and members of provincial councils and local authorities are not eligible to be appointed as members of a Commission.

(2) Subject to this Constitution, an Act of Parliament may provide for—

- (a) further qualifications and disqualifications for membership of a Commission; and
- (b) the remuneration of members of a Commission.

(3) The salaries payable to members of Commissions must not be reduced during the members' tenure of office.

215 Members of Commissions to take oaths or affirmations of loyalty and office

Before exercising the functions of their office, members of Commissions must take the oaths or affirmations of loyalty and office set out in the First Schedule.

216 Removal from office of members of Commissions

The procedures applicable to the removal of a judge from office apply to the removal from office of a member of a Commission.

217 Functions and procedure of Commissions

(1) An Act of Parliament may confer additional functions on a Commission and may regulate the manner in which a Commission exercises its functions.

(2) An Act of Parliament referred to in subsection (2) may permit a Commission to delegate its functions, but a Commission must not delegate its power to make appointments to, or to make recommendations or give advice on, any office established by this Constitution.

(3) Subject to this Constitution, any decision of a Commission requires the concurrence of a majority of the Commission's members who are present when the decision is taken, and in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to a deliberative vote.

(4) An Act of Parliament may provide for the procedures to be adopted by a Commission, and in any respect that is not so provided for the Commission may determine its own procedures, but any such procedures must be fair and promote transparency in the performance of the Commission's functions.

218 Funding of Commissions

Parliament must ensure that sufficient funds are appropriated to the Commissions to enable them to exercise their functions effectively.

219 Commissions to report annually to Parliament

Every Commission must submit two reports to the Senate and the National Assembly, of which—

- (a) the first report, to be submitted no later than the end of July, must cover the Commission's operations and activities during the first six months of the year;
- (b) the second report, to be submitted no later than the end of January in the following year, must cover the Commission's operations and activities during the whole year.

PART 2

INTERPRETATION

220 Application of Part 2

This Part applies to the interpretation of this Constitution unless the context otherwise requires.

221 Definitions

In this Constitution—

“Act of Parliament” includes—

- (a) any law included in the revised edition of the statute law of Zimbabwe prepared in 1996 under the authority of the Statute Law Compilation and Revision Act [*Chapter 1:03*]; and
- (b) any other Act;

which was in force immediately before the commencement of this Constitution;

“amend” includes vary, alter, modify, add to, delete or adapt;

“competent court”, in regard to any matter, means a court that has jurisdiction to determine that matter;

“Constitutional Court” means the Constitutional Court established by section 106;

“constitutional matter” includes any issue involving the interpretation, protection, or enforcement of this Constitution;

“disciplinary law” means a written law that regulates the discipline of members of a disciplined force, including part-time members, while they are rendering service in the force or in respect of their failure to render service in the force;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) a police force or service;
- (c) a prison service; or
- (d) any other body established for public purposes by or under an Act of Parliament and declared by that Act to be a disciplined force;

“Electoral Law” means the Act of Parliament that regulates the election of the Prime Minister and Members of Parliament;

“financial year” means the twelve-month period ending on the 31st December;

“functions” includes powers and duties;

“*Gazette*” means the official Gazette of the Government and includes any supplement to that Gazette;

“general election” means a general election of Members of Parliament;

“Government” means the Government of Zimbabwe;

“House”, unless otherwise qualified, means the Senate or the National Assembly;

“Human Rights Commission” means the Human Rights Commission established by section 158;

“Independent Commission” means a Commission established by Chapter 11;

“judge” means a judge of the Constitutional Court, the Supreme Court, the High Court, the Administrative Court or the Labour Court;

“law” means—

- (a) any provision of this Constitution or of an Act of Parliament;
 - (b) any provision of a statutory instrument; or
 - (c) any unwritten law in force in Zimbabwe, including customary law;
- and “lawful”, “lawfully”, “legal” and “legally” are to be construed accordingly;

“legal practitioner” means a person who is permitted to practise the profession of law in Zimbabwe and who has the right to represent other persons before all courts in which the right to be legally represented is permitted;

“local authority” means a council referred to in Chapter 15;

“member”, in relation to a statutory body or local authority, means a person who is appointed or elected to a council, board or other authority which—

- (a) is a statutory body or local authority; or
- (b) is responsible for administering the affairs of the statutory body or local authority;

- “Member of Parliament” means a Senator or a Member of the National Assembly;
- “Minister” includes a person exercising the functions of a Minister, whatever his or her title;
- “Money Bill” means a Bill that contains provisions dealing with—
- (a) the appropriation of money from the Consolidated Revenue Fund or from some other fund vested in or controlled by the Government; or
 - (b) the imposition of a tax for the benefit of the State or the Government;
- “national legislation” means an Act of Parliament or subsidiary legislation made under an Act of Parliament;
- “offence” means a criminal offence;
- “Parliamentary Public Appointments Committee” means the committee of that name established by section 64;
- “person” means an individual or a body of persons, whether corporate or unincorporated;
- “President” means the President of Zimbabwe;
- “Provincial Assembly” means a Provincial Assembly established under section 182;
- “Provincial Governor” means a Provincial Governor elected in terms of section 190;
- “provincial law” means a law enacted by a Provincial Assembly;
- “public office” means a paid office in the service of the State;
- “public officer” means a person holding or acting in a public office;
- “Public Service” has the meaning given to it by section 133;
- “Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established by section 174;
- “Security Service” means a security service specified or referred to in section 138;
- “session” means the sittings of Parliament beginning when the National Assembly first meets after a dissolution and ending when Parliament is next dissolved;
- “sitting” means a period during which the Senate or the National Assembly is sitting continuously, including any period during which the Senate or the National Assembly, as the case may be, is in committee;
- “sitting day” means any weekday which is prescribed in the Standing Orders of the National Assembly or the Senate, as the case may be, to be a sitting day, whether or not the House concerned meets on that day;
- “Speaker” means the Speaker of the National Assembly elected in terms of section 66;
- “statutory body” means—
- (a) a Commission established by this Constitution; or
 - (b) a body corporate established directly by or under an Act of Parliament for special purposes specified in that Act, whose membership consists wholly or mainly of persons appointed by the President, a Minister, another statutory body or by a Commission established by this Constitution;

“statutory instrument” means any instrument that has the force of law and that is made by the President, a Minister or any other person or authority under this Constitution or any Act of Parliament;

“tax” includes a duty, rate, levy or due;

“traditional leader” includes a Chief, headperson or village head;

“Zimbabwe” means the Republic of Zimbabwe.

222 References to Chapters, sections, etc.

Any reference in this Constitution, without qualification, to—

- (a) a Chapter, section or Schedule, is to be construed as a reference to a Chapter or section of or Schedule to this Constitution;
- (b) a subsection, is to be construed as a reference to a subsection of the section in which the reference is made;
- (c) a paragraph, is to be construed as a reference to a paragraph of the Schedule, subsection or definition in which the reference is made;
- (d) a subparagraph, is to be construed as a reference to a subparagraph of the paragraph or subparagraph in which the reference is made.

223 Words in singular to include plural, and *vice versa*

In this Constitution, words in the singular include the plural and words in the plural include the singular.

224 Tables and headings

Tables of contents and headings to Chapters, Parts, sections and other provisions of this Constitution do not form part of the Constitution and are inserted for ease of reference only.

225 References to time

(1) In this Constitution, whenever a period of time is expressed—

- (a) to begin on or to be reckoned from a particular day, that day is not to be included in the period;
- (b) to end on or to be reckoned to a particular day, that day is to be included in the period.

(2) Whenever the time for doing anything in terms of this Constitution ends or falls on a Saturday, Sunday or public holiday, the time extends to and the thing may be done on the next day that is not a Saturday, Sunday or public holiday.

(3) A reference in this Constitution to a month is to be construed as a reference to a calendar month.

(4) A reference in this Constitution without qualification to a year is to be construed as a reference to a period of twelve months.

226 Calculation of person’s age

For the purposes of this Constitution, a person is not regarded as having attained a given age until the commencement of the relevant anniversary of the day on which that person was born.

227 References to holders of office

Whenever this Constitution refers to the holder of an office by a term designating the office, the reference includes a reference to anyone who is lawfully acting in or exercising the functions of that office.

228 Appointments

(1) A power under this Constitution to appoint a person to an office includes a similar power—

- (a) to reappoint the person to that office;
- (b) to appoint a person on promotion or transfer to that office;
- (c) to appoint a person to act in that office;
- (d) to appoint a person to that office while it is held by someone else who is on leave of absence pending relinquishment of the office;
- (e) to fix and vary the person's conditions of service in that office, including the person's remuneration and period of appointment and any benefits on termination of service; and
- (f) subject to this Constitution, to suspend or remove the person from office.

(2) Where two or more persons hold the same office as a result of a person being appointed to it while the incumbent is on leave of absence pending relinquishment of the office, the person last appointed must be regarded as the sole holder of the office.

(3) An Act of Parliament may provide for the appointment of one or more deputies to anyone holding an office under this Constitution and may provide for their functions and conditions of service, but this subsection must not be construed as authorising the appointment of a deputy to the President or the Prime Minister or the appointment of a Deputy Minister.

(4) Where provision is made in an Act of Parliament for the appointment of a deputy to a person holding office under this Constitution, the deputy must possess the same qualifications for appointment as are applicable to the substantive holder of the office, and the procedure for his or her appointment must be the same as those for the appointment of the substantive holder.

(5) Where a deputy is appointed to a person holding an office under this Constitution, the deputy may exercise any of the functions of the office whenever the office-holder is for any reason unable to perform them.

(6) Subject to any provision of this Constitution that may limit the period or number of terms that anyone may serve in a particular office, a person who has vacated an office established by this Constitution may, if qualified, be re-appointed or re-elected to the office.

(7) Where the approval of the Senate is required for a person's appointment to any office or post, that person cannot exercise any of the functions of the office until the Senate has approved the appointment.

229 Resignations

(1) Anyone who is appointed or elected to an office established by this Constitution may resign from that office by written notice addressed to the person that appointed or elected the office-holder concerned, but in the case of—

- (a) the President, the notice must be addressed to the President of the Senate;

- (b) the Prime Minister, the notice must be addressed to the President;
- (c) the President of the Senate or his or her deputy, the notice must be addressed to the Senate or to the chief administrative officer of Parliament;
- (d) the Speaker or Deputy Speaker of the National Assembly, the notice must be addressed to the National Assembly or to the chief administrative officer of Parliament;
- (e) a Senator, the notice must be addressed to the President of the Senate;
- (f) a Member of the National Assembly, the notice must be addressed to the Speaker.

(2) A person's resignation from an office established by this Constitution takes effect on the date or at the time indicated in the notice of resignation or, if no date or time is indicated, when the notice is received by the person to whom it is addressed or by anyone else who is authorised by that person to receive it.

230 Exercise of functions, etc.

(1) A power, jurisdiction or right conferred by this Constitution may be exercised, and a duty imposed by this Constitution must be performed, whenever it is appropriate to do so.

(2) Where a power, jurisdiction or right is conferred by this Constitution, any other powers or rights that are reasonably necessary or incidental to its exercise are impliedly conferred as well.

231 When person not regarded as holding public office

For the purposes of this Constitution, a person is not to be regarded as holding public office solely on the ground that he or she receives a pension, half-pay, retired pay or some other similar allowance in respect of previous service in a public office.

232 Quorum and provisions regarding membership of constitutional bodies

(1) A body established by or under this Constitution may act even if there are one or more vacancies in its membership, provided that the members of the body who authorise or perform the act are a quorum.

(2) Unless this Constitution or a law regulating the proceedings of the body concerned makes some different provision, half the total membership of any body established by or under this Constitution constitutes a quorum.

(3) Any reference in this Constitution to the votes of—

- (a) half of the membership of a body whose membership is not a multiple of two; or
- (b) two-thirds of the membership of a body whose membership is not a multiple of three;

is to be interpreted to mean that the number of votes must be not less than the whole number next above one-half or two-thirds, as the case may be, of the body's membership.

233 Interpretation of regulations, etc., made under Constitution

The Interpretation Act currently in force in Zimbabwe, and any other law that governs the interpretation of statutory instruments generally, applies to the interpretation of any statutory instrument made under this Constitution and to the interpretation of the extent of the power to make such a statutory instrument.

234 Power to make Acts of Parliament or provincial laws for matters dealt with under Constitution

Where this Constitution requires or permits an Act of Parliament or a provincial law to provide for any matter—

- (a) the power to enact that Act of Parliament or provincial law must be exercised subject to this Constitution; and
- (b) the Act of Parliament or provincial law cannot derogate from any right conferred by this Constitution, unless this Constitution expressly or by necessary implication permits the Act or law to do so.

235 Inconsistencies between different texts of Constitution

In the event of an inconsistency between different texts of this Constitution, the English text prevails.

PART 3

GENERAL

236 Basic values and principles governing public administration

Public administration in the national, provincial and local spheres of government must be governed by the democratic values and principles enshrined in this Constitution, including the following principles—

- (a) a high standard of professional ethics must be promoted and maintained;
- (b) efficient, economical and effective use of resources must be promoted;
- (c) public administration must be development-oriented;
- (d) services must be provided impartially, fairly, equitably and without bias;
- (e) people's needs must be responded to within a reasonable time, and the public must be encouraged to participate in policy-making.
- (f) public administration must be accountable to Parliament and to the people;
- (g) openness must be fostered by providing the public with timely, accessible and accurate information;
- (h) good human-resource management and career-development practices, to maximise human potential, must be cultivated;
- (i) public administration must be broadly representative of the Zimbabwean people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation;

and legislative bodies in all spheres of government must enact legislation promoting these values and principles.

237 Diligent performance of constitutional obligations

All constitutional obligations must be performed diligently and without delay.

238 Customary international law

(1) Customary international law is part of the law of Zimbabwe, unless it is inconsistent with this Constitution or an Act of Parliament.

(2) When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with customary international law, in preference to an alternative interpretation that is inconsistent with that law, convention, treaty or agreement.

239 International conventions, treaties and agreements

(1) An international convention, treaty or agreement which—

- (a) is of a technical, administrative or executive nature; or
- (b) by its terms does not require either ratification or accession;

binds Zimbabwe after it is signed by the President or a Minister, even if it has not been approved by Parliament, but any other international convention, treaty or agreement binds Zimbabwe only after it has been approved by resolution in the National Assembly.

(2) An international convention, treaty or agreement becomes law in Zimbabwe when it is enacted into law through an Act of Parliament, but a self-executing provision of an international convention, treaty or agreement that has been signed by the President or a Minister and approved by resolution in the National Assembly is law in Zimbabwe unless it is inconsistent with this Constitution or an Act of Parliament.

(3) When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with any international convention, treaty or agreement which is binding on Zimbabwe, in preference to an alternative interpretation that is inconsistent with that convention, treaty or agreement.

240 Amendment of Constitution

(1) In this section—

“Constitutional Bill” means a Bill that seeks to amend this Constitution;

“term-limit provision” means a provision of this Constitution which limits the length of time that a person may hold or occupy a public office.

(2) An Act of Parliament that amends this Constitution must do so in express terms.

(3) A Constitutional Bill that seeks to amend any provision in—

- (a) Chapter 1, which deals with the Republic, the Constitution, national emblems and languages; or
- (b) Chapter 2, which deals with citizenship;
- (c) Chapter 3, which deals with the Declaration of Rights;
- (d) Chapter 4, which deals with Parliament;
- (e) Chapter 5, which deals with the President;
- (f) Chapter 6, which deals with the Executive;
- (g) Chapter 7, which deals with elections and the delimitation of electoral boundaries;
- (h) Chapter 8, which deals with the judiciary, the courts, law officers and the legal system;

- (i) Chapter 14, which deals with provincial government;
- (j) Chapter 15, which deals with local government;
- (k) Chapter 16, which deals with the relationship between national, provincial and local governments; or
- (l) this section;

may not be presented in the National Assembly unless it has been approved by a two-thirds majority of the voters voting at a national referendum.

(4) Where a Constitutional Bill referred to in subsection (3) has been approved at a referendum as provided in that subsection, the Bill may be presented in the National Assembly and thereafter passed by the National Assembly and the Senate and assented to by the President in the same way as an ordinary Bill.

(5) A Constitutional Bill that seeks to amend any provision of this Constitution, other than a provision referred to in subsection (3)—

- (a) may not be presented in the National Assembly unless the Speaker has given the public at least ninety days' notice of the precise provisions of the Bill;
- (b) must be passed, at its last reading in the National Assembly and the Senate, by the affirmative votes of two-thirds of the membership of each House.

(6) Immediately after the Speaker has given public notice of a Constitutional Bill in terms of subsection (5), the Human Rights Commission must invite members of the public to express their views on the proposed Bill in public meetings and through written submissions, and must convene meetings and provide facilities to enable the public to do so.

(7) When a Constitutional Bill referred to in subsection (5) is presented in the National Assembly and the Senate, the Human Rights Commission must cause the National Assembly and the Senate to be advised on any views expressed by the public in response to an invitation in terms of subsection (6).

(8) Notwithstanding any other provision of this section—

- (a) an amendment to a term-limit provision, the effect of which is to extend the length of time that a person may hold or occupy any public office, does not apply in relation to anyone who held or occupied that office, or an equivalent office, at any time before the amendment;
- (b) this subsection cannot be amended.

241 Commencement of this Constitution, transitional provisions and savings

The Third Schedule applies to the commencement of this Constitution, the repeal of the former Constitution and the transition to the new constitutional order established by this Constitution.

FIRST SCHEDULE (Sections 58, 74, 83, 88(4), 123, 127(5), 129(7), 192 and 215)

OATHS AND AFFIRMATIONS

OATH OR AFFIRMATION OF LOYALTY

I, swear [*or solemnly affirm*] that I will be faithful and bear true allegiance to Zimbabwe and observe the laws of Zimbabwe.

So help me God. [*To be omitted in affirmation*]

This oath or affirmation is to be taken before the person specified in the appropriate legislation.

OATH OR AFFIRMATION OF OFFICE

I, swear [*or solemnly affirm*] that I will serve Zimbabwe well and truly in the office of.....

So help me God. [*To be omitted in affirmation*]

This oath or affirmation is to be taken before the person specified in the appropriate legislation.

OATH OR AFFIRMATION OF PRESIDENT AND PRIME MINISTER OF ZIMBABWE

I, swear [*or solemnly affirm*] that as President of the Republic of Zimbabwe [*or Prime Minister of Zimbabwe*] I will be faithful to Zimbabwe and will obey, uphold and defend the Constitution and all other laws of Zimbabwe, and—

- that I will promote whatever will advance, and oppose whatever may harm, Zimbabwe;
- that I will protect and promote the rights of the people of Zimbabwe;
- that I will discharge my duties with all my strength to the best of my knowledge and ability and true to the dictates of my conscience; and
- that I will devote myself to the well-being of Zimbabwe and its people.

So help me God. [*To be omitted in affirmation*]

This oath or affirmation is to be taken before the Chief Justice or, in his absence, before the next most senior judge available.

OATH OR AFFIRMATION OF MINISTER

I, swear [*or solemnly affirm*] that I will be faithful to Zimbabwe and, in the office of Minister, will uphold the Constitution and all other laws of Zimbabwe; that I will give my advice to the Prime Minister of Zimbabwe freely and to the best of my judgment whenever I am required to do so, for the good management of the public affairs of Zimbabwe; that I will not disclose, directly or indirectly, any secret that is debated in Cabinet or any secret that is entrusted to me in the course of my duties as Minister; and that in all respects I will perform the duties of my office faithfully and to the best of my ability.

So help me God. *[To be omitted in affirmation]*

This oath or affirmation is to be taken before the President or, in his or her absence, before the Chief Justice or the next most senior judge available.

JUDICIAL OATH OR AFFIRMATION

I, swear *[or solemnly affirm]* that I will be faithful to Zimbabwe and that in the office of I will uphold and protect the Constitution and will administer justice to all persons alike without fear, favour or prejudice in accordance with the Constitution and the law.

So help me God. *[To be omitted in affirmation]*

Where the person taking this oath or affirmation is a judge, it is to be taken before the President or, in his or her absence, before the Chief Justice or the next most senior judge available. In all other cases it is to be taken before the person specified in the appropriate legislation.

OATH OR AFFIRMATION OF OFFICE (MEMBER OF PROVINCIAL GOVERNMENT)

I, swear *[or solemnly affirm]* that I will serve the Province of *[name of province]* well and truly in the office of

So help me God. *[To be omitted in affirmation]*

This oath or affirmation is to be taken by and before the persons specified in the appropriate provincial law.

OATH OR AFFIRMATION OF PROVINCIAL GOVERNOR

I, swear *[or solemnly affirm]* that as Governor of the Province of *[state name of Province]* I will be faithful to Zimbabwe and will obey, uphold and defend the Constitution and all other laws of Zimbabwe, and—

- that I will promote whatever will advance, and oppose whatever may harm, Zimbabwe;
- that I will protect and promote the rights of the people of Zimbabwe;
- that I will discharge my duties with all my strength to the best of my knowledge and ability and true to the dictates of my conscience; and
- that I will devote myself to the well-being of the Province of *[state name of province]* and its people.

So help me God. *[To be omitted in affirmation]*

OATH OR AFFIRMATION OF PROVINCIAL MINISTER

I, swear *[or solemnly affirm]* that I will be faithful to

Zimbabwe and, in the office of Minister of the Province of,
[*state name of province*] will uphold the Constitution and all other laws of Zimbabwe; that I
will give my advice to the Governor of [*state name of
province*] freely and to the best of my judgment whenever I am required to do so, for the good
management of the public affairs of the Province; that I will not disclose, directly or indirectly,
any secret that is debated in the Provincial Cabinet or any secret that is entrusted to me in the
course of my duties as Minister; and that in all respects I will perform the duties of my office
faithfully and to the best of my ability.

So help me God. [*To be omitted in affirmation*]

SECOND SCHEDULE (Section 181)

BOUNDARIES OF PROVINCES

[To be completed later. The boundaries are to be the same as they are at present, though the two “metropolitan” provinces are to be abolished. Harare is to be incorporated into Mashonaland West and Bulawayo into Matabeleland North.]

THIRD SCHEDULE (Section 241)

COMMENCEMENT OF THIS CONSTITUTION, TRANSITIONAL PROVISIONS AND SAVINGS

ARRANGEMENT OF PARAGRAPHS

PART 1

PRELIMINARY

Paragraph

1. Interpretation.
2. Effect of this Schedule.

PART 2

COMMENCEMENT OF THIS CONSTITUTION AND REPEAL OF FORMER CONSTITUTION

3. Commencement of this Constitution.
4. Repeal of former Constitution.

PART 3

FIRST ELECTIONS, FIRST EXECUTIVE AND SUMMONING OF FIRST PARLIAMENT

5. First delimitation of electoral boundaries.
6. Date by which first elections must be held.
7. Electoral Law.
8. First Executive and summoning of first Parliament.

PART 4

PROVINCIAL ASSEMBLIES

9. First elections to Provincial Assemblies.

PART 5

SAVINGS AND TRANSITIONAL PROVISIONS

10. Government succession.

11. Continuation of existing laws.
12. Interpretation of existing enactments.
13. Amendment of existing enactments.
14. Standing Orders of Parliament.
15. Existing officers.
16. Transfer of funds in old Consolidated Revenue Fund.
17. Courts and legal proceedings.
18. Citizenship.
19. Rights to pension benefits.

PART 1

PRELIMINARY

Interpretation

1. In this Schedule, unless inconsistent with the context—
 - “commencement day” means the day on which this Constitution comes into operation in terms of paragraph 3;
 - “existing enactment” means a written law that was in force in Zimbabwe immediately before the commencement day, whether as an Act of Parliament or a statutory instrument;
 - “existing law” means an existing enactment or any other law, whatever its nature, that was in force in Zimbabwe immediately before the commencement day;
 - “first elections” means—
 - (a) the first election for the office of Prime Minister; and
 - (b) the first general election;held after the publication day;
 - “former Constitution” means the Constitution of Zimbabwe that came into operation on the 18th April, 1980, as subsequently amended;
 - “publication day” means the day on which this Constitution, or the statute by which it is enacted, is published in the *Gazette* in accordance with section 51 of the former Constitution.

Effect of this Schedule

2. This Schedule prevails, to the extent of any inconsistency, over all other provisions of this Constitution.

PART 2

COMMENCEMENT OF THIS CONSTITUTION AND REPEAL OF FORMER CONSTITUTION

Commencement of this Constitution

3. This Schedule comes into operation on the publication day and, except as otherwise provided in this Schedule, the rest of this Constitution comes into operation on the day on which the Prime Minister elected in the first elections assumes office in terms of section 83.

Repeal of former Constitution

4. Subject to this Schedule, the former Constitution is repealed with effect from the commencement day.

PART 3

FIRST ELECTIONS, FIRST EXECUTIVE AND SUMMONING OF FIRST PARLIAMENT

First delimitation of electoral boundaries

- 5.(1) To enable the first elections to be held by the date specified in paragraph 6—
- (a) Chapter 7 of this Constitution, and the provisions of Chapter 11 that relate to the Independent Electoral Commission, come into operation on the publication day;
 - (b) anyone who, immediately before the publication day, was a member or employee of the Zimbabwe Electoral Commission established under the former Constitution is deemed, on and after the publication day, to be a member or employee, as the case may be, of the Independent Electoral Commission;
 - (c) a Delimitation Commission must be appointed in terms of section 101 and must commence the first delimitation of wards, constituencies and electoral boundaries under this Constitution as soon as possible after the publication day.

Date by which first elections must be held

6. The day fixed for polling in the first elections must be not later than ... [*the date will need to be inserted after it has been worked out by political negotiation*].

Electoral Law

7. For the purposes of the first elections the Electoral Law is the enactment which, under the former Constitution, constituted the Electoral Law, but that enactment must be construed with any modifications, adaptations, qualifications and exceptions that may be necessary to bring it into conformity with this Constitution.

First Executive and summoning of first Parliament

8.(1) The person who held office as President of Zimbabwe immediately before the commencement day holds office as President, subject to this Constitution, until a President is elected in accordance with section 73 as read with subparagraph (4).

(2) The President must ensure that the Prime Minister elected in the first elections assumes office in terms of section 83 within five days after he or she was declared to be elected.

(3) The President, acting on the advice of the Prime Minister, must summon both Houses of Parliament in terms of section 63 so that their first sittings take place within fifteen days after the commencement day.

(4) The Speaker of the National Assembly and the president of the Senate must ensure that an election to the office of President is held within ten days after the National Assembly first sits after the commencement day.

PART 4

PROVINCIAL ASSEMBLIES

First elections to Provincial Assemblies

9. The Act of Parliament referred to in section 182(5) must be enacted not later than six months after the commencement day, and the first elections to all Provincial Assemblies must be held not later than one year after the commencement day.

PART 5

SAVINGS AND TRANSITIONAL PROVISIONS

Government succession

10. The Government constituted under this Constitution is in all respects the successor to the Government of Zimbabwe constituted under the former Constitution.

Continuation of existing laws

11. Subject to this Schedule, all existing laws continue in force but must be construed with any modifications, adaptations, qualifications and exceptions that may be necessary to bring them into conformity with this Constitution.

Interpretation of existing enactments

12.(1) Unless inconsistent with the context, a reference in any existing enactment to—

- (a) the President or the Prime Minister must be construed as a reference to the President or the Prime Minister, as the case may be, acting in accordance with this Constitution;
- (b) Parliament must be construed as a reference to—
 - (i) the Senate, where the reference relates to any function that is to be exercised by the Senate alone under this Constitution;
 - (ii) the National Assembly, where the reference relates to any function other than one referred to in subparagraph (i) or the enactment of legislation;
- (c) the House of Assembly must be construed as a reference to the National Assembly;
- (d) the Comptroller and Auditor-General must be construed as a reference to the Auditor-General;
- (e) the Director of Public Prosecutions must be construed as a reference to the Independent Prosecutor-General.

(2) Where this Constitution vests power in a particular person or authority to enact legislation on any matter, and that matter is provided for in an existing enactment made by some other person or authority, the existing enactment has effect as if it had been made by the person or authority with the power to make it under this Constitution.

Amendment of existing enactments

13.(1) Subject to this paragraph and to the Statute Law Compilation and Revision Act [Chapter 1:03], the Law Reviser appointed under that Act may publish notices in the *Gazette* making whatever amendments he or she considers should be made to the existing enactments in order to bring them into conformity with this Constitution.

(2) A notice made under subparagraph (1)—

- (a) must be approved by the Minister responsible for justice before it is published; and
- (b) must be amended or repealed if the Senate or the National Assembly by resolution requires the Law Reviser to do so.

(3) The Law Reviser's power under this paragraph ceases three years after the commencement day but may be extended by an Act of Parliament.

Standing Orders of Parliament

14. The Standing Orders that were in force immediately before the commencement day continue in force as standing orders of the Senate and the National Assembly until they are replaced or amended in accordance with this Constitution.

Existing officers

15.(1) In this paragraph—

“public officer” means a person holding or acting in a paid office in the service of the State, and—

- (a) includes a chief and a person employed by Parliament or by a Commission established by the former Constitution;
- (b) does not include a member of a Commission established by the former Constitution;

“statutory body” means a body corporate established directly by or under an Act for special purposes specified in that Act, whose membership consists wholly or mainly of persons appointed by the President, a Minister, another statutory body or by a Commission established by the former Constitution.

(2) Subject to this paragraph, anyone who was a public officer immediately before the commencement day continues to hold or act in the same office or in the corresponding office established by this Constitution as if—

- (a) he or she had been appointed to the office in accordance with this Constitution; and
- (b) his or her appointment had received any necessary approval under this Constitution; and
- (c) he or she had taken any necessary oath under this Constitution;

and the conditions of service, including conditions relating to tenure of office, that applied to him or her immediately before the commencement day continue to apply until they are amended in accordance with any applicable law.

(3) For the purpose of subparagraph (2)—

- (a) the office of Commissioner of Police corresponds with the office of Commissioner-General of Police established by section 93 of the former Constitution;
- (b) the office of Auditor-General corresponds with the office of Comptroller and Auditor-General established by section 105 of the former Constitution.

(4) Anyone who, immediately before the commencement day, held office as—

- (a) Attorney-General or Deputy Attorney-General, continues to hold that office as if he or she had been appointed in terms of section 127 or 128, as the case may be;
- (b) Director of Public Prosecutions, is deemed to hold office as Independent Prosecutor-General for three months after the commencement day or until he or she or someone else is appointed to that office in terms of section 129, whichever occurs sooner.

(5) Anyone who, immediately before the commencement day, held office as Provincial Governor ceases to hold that office on that day.

(6) Subject to this paragraph, anyone who, immediately before the commencement day, held office as a member or employee of—

- (a) the Zimbabwe Human Rights Commission established under the former Constitution is deemed, on and after commencement day, to be a member or employee, as the case may be, of the Human Rights Commission established by section 158;
- (b) the Zimbabwe Media Commission established under the former Constitution is deemed, on and after commencement day, to be a member or employee, as the case may be, of the Media Commission established by section 161;
- (c) the Zimbabwe Anti-Corruption Commission established under the former Constitution is deemed, on and after the commencement day, to be a member or employee, as the case may be, of the Anti-Corruption Commission established by section 163.

(7) Subject to this paragraph, anyone who, immediately before the commencement day, held office as a member of a statutory body continues to hold that office, on the same conditions of service, as if his or her appointment had received any necessary approval under this Constitution.

(8) Subject to this paragraph, anyone who, immediately before the commencement day, held office as—

- (a) Chief Justice, continues to hold office as Chief Appellate Judge;
- (b) Deputy Chief Justice, continues to hold office as judge of the Supreme Court;
- (c) Deputy Judge President, continues to hold office as judge of the High Court.

(9) Where the period that a person may hold a particular office is limited by this Constitution—

- (a) any period during which the person held that office or a corresponding office before the commencement day must be taken into account in calculating the total period that the person has held that office; and

- (b) if, on the commencement day, the person has held that office or a corresponding office for longer than the maximum period prescribed in this Constitution, he or she must relinquish that office one month after the commencement day.

Transfer of funds in old Consolidated Revenue Fund

16. The funds which, immediately before the commencement day, stood to the credit of the Consolidated Revenue Fund established by the former Constitution become the Consolidated Revenue Fund established by this Constitution.

Courts and legal proceedings

17.(1) In this paragraph—

“pending constitutional case” means—

- (a) an appeal, application or reference in which an alleged contravention of the Declaration of Rights contained in the former Constitution is in issue; or
- (b) any case in which a constitutional matter, as defined in section 221 of this Constitution, is in issue;

and which, immediately before the Constitutional Court is constituted, is pending before the Supreme Court.

(2) The Supreme Court of Zimbabwe and the High Court of Zimbabwe, as established immediately before the commencement day, are constituted as the Supreme Court and the High Court respectively under this Constitution, and any decision of those courts given before the commencement day has effect accordingly.

(3) The Administrative Court and the Labour Court which were in existence immediately before the commencement day are deemed to be the Administrative Division and the Labour Division respectively of the High Court, and—

- (a) the members of those courts are deemed to have been appointed as judges of the High Court and to have been assigned to the Administrative Division and the Labour Division, respectively, of the High Court;
- (b) any rules of court applicable to the Administrative Court and the Labour Court are deemed to be rules of the High Court applicable to the Administrative Division and the Labour Division respectively, and may be amended or repealed accordingly.

(4) All proceedings that were pending before a court immediately before the commencement day may be continued and concluded before the corresponding court established by this Constitution.

(5) The Constitutional Court must be constituted by the appointment, as soon as possible after the first elections, of the Chief Justice and the six other judges of the court referred to in section 106.

(6) Until the Constitutional Court is constituted, its jurisdiction is exercisable by the Supreme Court.

(7) As soon as the Constitutional Court is constituted, any pending constitutional case—

- (a) in which the Supreme Court has not heard argument from the parties, must be transferred to the Constitutional Court;

- (b) in which the Supreme Court has heard argument from the parties, must be completed by the Supreme Court unless all the parties to the case agree to it being referred to the Constitutional Court, in which event the Supreme Court must refer the case to that Court.

(8) Where the Supreme Court hears a pending constitutional case which is an appeal, application or reference in which an alleged contravention of the Declaration of Rights contained in the former Constitution is in issue, section 24 of the former Constitution continues to apply to the case.

(9) Where the Constitutional Court hears a case in which an alleged contravention of the Declaration of Rights contained in the former Constitution is in issue, whether or not the case is a pending constitutional case, the Court must determine the case as if it concerned an alleged infringement of a right or freedom set out in the corresponding provision of this Constitution.

Citizenship

18. Anyone who, immediately before the commencement day, had a vested right to become a citizen of Zimbabwe may exercise that right at any time on or after that day.

Rights to pension benefits

19. A vested or contingent right in regard to a pension benefit which existed immediately before the commencement day and was protected by the former Constitution continues to exist and enjoy the same protection under this Constitution.