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Act No. 11 of 2007

Published in a Government Gazette Extraordinary on 30th October, 2007

Commencement: 30th October 2007.

ACT

To amend the Constitution of Zimbabwe.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Constitution of Zimbabwe Amendment (No. 18) Act, 2007.

2 Amendment of section 28 of Constitution

(1) Section 28 (“Qualifications and election of President”) of the Constitution is amended—

(a) by the repeal of subsections (2) and (3) and the substitution of—

“(2) Subject to subsection (3)(b), the President shall be elected by voters.

(3) An election to the office of President shall take place—

(a) on the day or days fixed in a proclamation in terms of section 58(1) as the day or days on which elections are to be held for the purpose of electing members of Parliament and members of the governing bodies of local authorities; or

(b) in accordance with the Electoral Law by members of the Senate and the House of Assembly sitting jointly as an electoral college within ninety days after the office of President becomes vacant by reason of his death or his resignation or removal from office in terms of this Constitution;

as the case may be.”;

(b) by the repeal of subsections (5) and (6) and the substitution of—

“(5) A person elected as President shall, on the day upon which he is declared to be elected or no later than forty-eight hours thereafter, enter office by taking and

subscribing before the Chief Justice or other judge of the Supreme Court or the High Court the oaths of loyalty and office in the forms set out in Schedule 1.”.

(2) The amendments made by subsection (1) apply to the President in office on the date of commencement of this Act, notwithstanding anything contained in section 29 before its amendment by this Act.

3 Amendment of section 29 of Constitution

(1) Section 29 (“Term of office of President”) of the Constitution is amended by the repeal of subsection (1) and the substitution of the following subsection—

“(1) The term of office of the President shall be a period of five years concurrent with the life of Parliament referred to in section 63(4), or—

- (a) a lesser period where the President earlier dissolves Parliament in terms of section 63(2), or the President is elected pursuant to section 28(3)(b); or
- (b) a longer period where the life of Parliament referred to in section 63(4) is extended under section 63(5) or (6);

in which event term of office of the President shall terminate on the expiration of such lesser or longer period, as the case may be:

Provided that the President shall continue in office until the person elected as President at the next election of President enters office.”.

(2) The amendments made by subsection (1) apply to any President elected after the date of commencement of this Act.

4 Amendment of section 31H of Constitution

Section 31H (“Executive functions of President”)(5)(c2) of the Constitution is amended by the deletion of “section 38(1)(d)” and the substitution of “section 34(1)(e)”.

5 Amendment of section 31J of Constitution

Section 31J (“Public emergencies”) of the Constitution is amended—

- (a) in subsection (3)—
 - (i) in paragraph (a) by the deletion of “Parliament” wherever it occurs and the substitution of “the House of Assembly”;
 - (ii) in the proviso by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (b) in subsection (4) by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (c) in subsection (5)—
 - (i) by the deletion of “Parliament” where it occurs for the first time and the substitution of “the House of Assembly”;
 - (ii) in paragraph (b) by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (d) in subsection (6) by the deletion of “Parliament” and the substitution of “the House of Assembly”;

- (e) in subsection (7) by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (f) in subsection (8) by the deletion of “Parliament” and the substitution of “The House of Assembly”;
- (g) in subsection (9)—
 - (i) by the deletion of “Parliament” where it occurs for the first time and the substitution of “the House of Assembly”;
 - (ii) in paragraph (b) by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (h) in subsection (11) by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (i) in subsection (12) by the deletion of “Parliament” where it occurs for the first time and the substitution of “the House of Assembly”.

6 New section substituted for section 34 of Constitution

For the purpose of the general election to be held after the date of commencement of the Constitution of Zimbabwe Amendment (No. 18) Act, 2007, and all subsequent elections held for the purpose of electing members of Parliament, section 34 of the Constitution is repealed and the following is substituted—

“34 Composition of Senate

(1) There shall be a Senate which, subject to the provisions of section 76(3b), shall consist of ninety-three Senators, of whom—

- (a) six shall be elected in each of the ten provinces by voters registered in the sixty senatorial constituencies referred to in section 61A(7); and
- (b) ten shall be Provincial Governors; and
- (c) two shall be the President and the Deputy President of the Council of Chiefs; and
- (d) sixteen shall be Chiefs, being two Chiefs from each of the provinces, other than the metropolitan provinces, elected in accordance with the Electoral Law; and
- (e) five shall be appointed by the President.

(2) The qualifications for election or appointment as a Senator are set out in Schedule 3.

(3) The procedure for the nomination of candidates for election under subsection (1)(a), the election of Senators and the filling of vacancies among elected Senators shall be as prescribed in the Electoral Law.”

7 New section substituted for section 38 of Constitution

For the purpose of the general election to be held after the date of commencement of the Constitution of Zimbabwe Amendment (No. 18) Act, 2007, and all subsequent elections held for the purpose of electing members of Parliament, section 38 of the Constitution is repealed and the following is substituted—

“38 Composition of House of Assembly

(1) There shall be a House of Assembly which, subject to the provisions of section 76(3b), shall consist of two hundred and ten members qualified in accordance with Schedule 3 for election to the House of Assembly and elected by voters registered in the two hundred and ten constituencies delimited in accordance with section 61A.

(2) The procedure for the nomination of candidates for election under subsection (1), the election of members of the House of Assembly and the filling of vacancies shall be as prescribed in the Electoral Law.”.

8 Amendment of section 39 of Constitution

Section 39 (“Election of Speaker and Deputy Speaker”)(4) of the Constitution is amended by the deletion of “Parliament” where it occurs for the second time and the substitution of “the House of Assembly”.

9 Amendment of section 43 of Constitution

Section 43 (“Expulsion or suspension of members convicted of certain offences”)(1) of the Constitution is amended—

- (a) in paragraph (a) by the deletion of “Parliament” and the substitution of “the Senate or the House of Assembly”;
- (b) by the deletion of “Parliament” and the substitution of “the Senate or the House of Assembly, as the case may be.”.

10 Amendment of section 58 of Constitution

For the purpose of the general election to be held after the date of commencement of the Constitution of Zimbabwe Amendment (No. 18) Act, 2007, and all subsequent elections held for the purpose of electing members of Parliament, section 58 (“Elections”) (1) of the Constitution is amended by the deletion of “A general election” and the substitution of “A general election and elections for members of the governing bodies of local authorities”.

11 Repeal of sections 59 and 60 of Constitution

Sections 59 and 60 of the Constitution are repealed.

12 Amendment of section 61 of Constitution

Section 61 (“Zimbabwe Electoral Commission”) of the Constitution is amended—

- (a) in subsection (2) by the deletion of “Parliament” and the substitution of “the Senate”;
 - (b) in subsection (4) by the insertion of the following paragraph after paragraph (h)—
 - “(h1) to determine the limits—
 - (i) of the constituencies into which Zimbabwe is to be divided; and
 - (ii) of wards into which local authority areas to be divided;
- and perform other functions in accordance with section 61A; and”.

13 New section inserted in Constitution

For the purpose of the general election to be held after the date of commencement of the Constitution of Zimbabwe Amendment (No. 18) Act, 2007, and all subsequent elections held for the purpose of electing members of Parliament, the Constitution is amended by the insertion of the following section after section 61—

“61A Delimitation of wards and constituencies

(1) The Zimbabwe Electoral Commission shall, no later than the date notified to it by the President, being a date no later than three months before the date fixed or to be fixed by a proclamation as the date on which Parliament is dissolved under section 63(7) or, as the case may be, the date of the dissolution of Parliament under section 63(4), determine, in accordance with subsections (2) to (7), the limits of the wards and constituencies into which Zimbabwe is to be divided for the purpose of electing members of the governing bodies of local authorities and members of Parliament respectively:

Provided that the Commission shall produce a preliminary report in terms of subsection (8) no later than one month before the date fixed or to be fixed by a proclamation as the date on which Parliament is dissolved under section 63(7) or, as the case may be, the date of the dissolution of Parliament under section 63(4).

(2) For the purpose of the election of members of the governing bodies of local authorities, local authority areas shall be divided into such number of wards as the Commission shall determine.

(3) Zimbabwe shall, for the purpose of the election of members of Parliament, be divided into two hundred and ten House of Assembly constituencies and sixty senatorial constituencies.

(4) Subject to subsections (5) and (6), the boundaries of the House of Assembly constituencies shall be such that at the time of delimitation the number of voters registered in each House of Assembly constituency is as nearly as may be equal to the number of voters registered in each of the other House of Assembly constituencies.

(5) In delimiting—

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

(6) In dividing Zimbabwe into wards and House of Assembly constituencies the Zimbabwe Electoral Commission shall, 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 consequent upon an alteration in the number of House of Assembly constituencies, existing electoral boundaries;

and whenever it appears necessary to do so in order to give effect to the provisions of this subsection in relation to House of Assembly constituencies, the Commission may depart from the requirements of subsection (4), but in no case to any greater extent than twenty *per centum* more or less than the average number of registered voters in House of Assembly constituencies.

(7) After delimiting the wards and House of Assembly constituencies, the Commission shall divide each province into six senatorial constituencies by assigning to each senatorial constituency a House of Assembly constituency or two or more contiguous House of Assembly constituencies, and in so doing the Commission may be guided but not bound by any principle or consideration specified in subsections (4) and (6).

(8) The Zimbabwe Electoral Commission shall submit to the President a preliminary report comprising—

- (a) a list of wards and House of Assembly constituencies delimited by the Commission, with the names assigned to each and a description of their boundaries;
- (b) a list of senatorial constituencies delimited by the Commission, with the names assigned to each and a description of their boundaries;
- (c) a map or maps showing the wards and House of Assembly and senatorial constituencies into which Zimbabwe has been divided by the Commission; and
- (d) any further information or particulars which the Commission considers necessary;

and the President shall cause the report to be laid before Parliament within the next seven days after he has received it.

(9) No earlier than seven days after the President has caused the preliminary report of the Zimbabwe Electoral Commission to be laid before Parliament in terms of subsection (8), the President may refer back to the Commission for its further consideration and final decision any matter arising out of its report.

(10) If there appears to be any discrepancy between the description of the boundaries of any ward or House of Assembly constituency and the map or maps, the description shall prevail.

(11) Within fourteen days after receiving the Zimbabwe Electoral Commission's final report the President shall publish a proclamation in the *Gazette* declaring the names and boundaries of the wards and the House of Assembly and senatorial constituencies as finally determined by the Commission to be the wards and House of Assembly and senatorial constituencies of Zimbabwe, and those boundaries shall have effect for the purposes of the next and any subsequent general election.”.

14 Amendment of section 63 of Constitution

Section 63 (“Prorogation or dissolution”) of the Constitution is amended by the repeal of subsection (4) and the substitution of—

“(4) Parliament, unless sooner dissolved, shall last for five years, which period shall be deemed to commence on the day the person elected as President enters office in terms of section 28(5) after an election referred to in section 28(3)(a), and shall then stand dissolved:

Provided that, where the period referred to in this subsection is extended under subsection (5) or (6), Parliament, unless sooner dissolved, shall stand dissolved on the expiration of that extended period.”.

15 Amendment of section 76 of Constitution

Section 76 (“Attorney-General”)(4a) of the Constitution is amended by the deletion of “Commissioner of Police” wherever it occurs and the substitution of “Commissioner-General of Police”.

16 Amendment of section 77 of Constitution

Section 77 (“Secretaries of Ministries, etc.”)(2) of the Constitution is amended by the deletion of “the House of Assembly” and the substitution of “the Senate”.

17 Amendment of section 79A of Constitution

Section 79A (“Judiciary”) of the Constitution is amended by the repeal of paragraph (b) and the substitution of—

“(b) the Deputy Chief Justice and the other judges of the Supreme Court; and”.

18 Amendment of section 80 of Constitution

Section 80 (“Supreme Court”) of the Constitution is amended by the repeal of subsection (2) and the substitution of the following sections—

“(2) The Supreme Court shall consist of—

- (a) the Chief Justice;
- (b) the Deputy Chief Justice;
- (c) such other judges of the Supreme Court, being not less than two, as the President may deem necessary;
- (d) such other judges as have been appointed under subsection (3).

(2a) The Deputy Chief Justice shall act as Chief Justice whenever the office of Chief Justice is vacant or the Chief Justice is absent from Zimbabwe or is unable to perform the functions of his office by reason of illness or any other cause.”.

19 Amendment of section 83 of Constitution

Section 83 (“Oath of office”) of the Constitution is amended by the deletion of “A judge of the Supreme Court or the High Court” and the substitution of “The Chief Justice, Deputy Chief Justice, Judge President and other judges of the Supreme Court and the High Court”.

20 Amendment of section 84 of Constitution

Section 84 (“Appointment of judges”) of the Constitution is amended—

- (a) in subsection (1) by the deletion of “Chief Justice” and the substitution of “Chief Justice, Deputy Chief Justice, Judge President”;
- (b) in subsection (2)—
 - (i) by the deletion of “Chief Justice” and the substitution of “Chief Justice, Deputy Chief Justice, Judge President”;
 - (ii) by the deletion of “the House of Assembly” and the substitution of “the Senate”.

21 Amendment of section 85 of Constitution

Section 85 (“Acting judges”)(1) of the Constitution is amended by the deletion of “If the office of the Chief Justice is vacant or the Chief Justice is for any reason unable to perform the functions of his office” and the substitution of “If the offices of the Chief Justice and the Deputy Chief Justice are vacant or the Chief Justice and the Deputy Chief Justice are for any reason unable to perform the functions of their offices”.

22 Amendment of section 88 of Constitution

Section 88 (“Remuneration of judges”)(1) of the Constitution is amended by the insertion after “Chief Justice” of “, Deputy Chief Justice,”.

23 Amendment of section 90 of Constitution

Section 90 (“Judicial Service Commission”)(1) of the Constitution is amended by the repeal of paragraph (a) and the substitution of—

- “(a) the Chief Justice or, if there is no Chief Justice or the Chief Justice is not available, the Deputy Chief Justice;”.

24 Amendment of section 91 of Constitution

Section 91 (“Functions of Judicial Service Commission”)(2) of the Constitution is amended by the repeal of paragraph (b) and the substitution of—

- “(b) the office of the Public Protector;”.

25 Amendment of section 93 of Constitution

Section 93 (“Police Force and Commissioner of Police”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Police Force and Commissioner-General of Police”;
- (b) in subsection (2) by the deletion of “Commissioner of Police” and the substitution of “Commissioner-General of Police”.

26 Amendment of section 103 of Constitution

Section 103 (“Authorization of expenditure from Consolidated Revenue Fund”) of the Constitution is amended—

- (a) in subsection (2)—

- (i) by the deletion of “Parliament” where it occurs for the second time and the substitution of “the House of Assembly”;
 - (ii) by the deletion of “Parliament” where it occurs for the third time and the substitution of “the House”;
- (b) in subsection (3)—
- (i) by the deletion of “Parliament” where it occurs for the first time and the substitution of “the House of Assembly”;
 - (ii) by the deletion of “Parliament” where it occurs for the second and third times and the substitution of “the House”;
- (c) in subsection (4)—
- (i) by the deletion of “Parliament” where it occurs for the second time and the substitution of “the House of Assembly”;
 - (ii) by the deletion of “Parliament” where it occurs for the third, fourth and fifth times and the substitution of “the House”;
 - (iii) in the proviso thereto by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (d) in subsection (5)—
- (i) by the deletion of “Parliament” where it occurs for the first time and the substitution of “the House of Assembly”;
 - (ii) by the deletion of “Parliament” where it occurs for the second time and the substitution of “the House”;
- (e) in subsection (6) in proviso (a) thereto by the deletion of “Parliament” and the substitution of “the House of Assembly”;
- (f) in subsection (7) by the deletion of “Parliament” where it occurs for the fourth time and the substitution of “the House of Assembly”.

27 Amendment of section 105 of Constitution

Section 105 (“Comptroller and Auditor-General”)(2a) of the Constitution is amended by the deletion of “the House of Assembly” and the substitution of “the Senate”.

28 New sections substituted for sections 107 and 108 of Constitution

Sections 107 and 108 of the Constitution are repealed and the following sections are substituted—

“107 Public Protector and Deputy Public Protector

(1) There shall be a Public Protector and, where the President has deemed it desirable, a Deputy Public Protector, whose offices shall be public offices but shall not form part of the Public Service.

(2) The Public Protector and the Deputy Public Protector shall be appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders.

(3) If the appointment of a Public Protector or Deputy Public Protector is not consistent with any recommendation made by the Judicial Service Commission, the President shall cause the Senate to be informed as soon as is practicable.

(4) The Deputy Public Protector shall—

- (a) assist the Public Protector in the exercise of his functions and duties and the Public Protector may authorize him to exercise any of his functions or duties on his behalf;
- (b) act as Public Protector whenever the office of the Public Protector is vacant or the Public Protector is for any reason unable to perform the functions of his office.

(5) An Act of Parliament may make provision for the qualifications and remuneration of the Public Protector and the Deputy Public Protector.

108 Functions of Public Protector

(1) Subject to section 108B(7), the Public Protector may investigate action taken by any officer, person or authority referred to in subsection (2) in the exercise of the administrative functions of that officer, person or authority in any case where it is alleged that a person has suffered injustice in consequence of that action and it does not appear that there is any remedy reasonably available by way of proceedings in a court or on appeal from a court.

(2) Subject to such exceptions and conditions as may be prescribed by or under an Act of Parliament, the provisions of subsection (1) shall apply in respect of any action taken by the following officers and authorities—

- (a) any Ministry or department or any member of such Ministry or department; and
- (b) such other persons or authorities as may be prescribed by or under an Act of Parliament for the purposes of this paragraph.

(3) An Act of Parliament may confer other functions on the Public Protector, and may make provision for the exercise of his functions including, without prejudice to the generality of the foregoing, the officers and authorities whose actions are not subject to investigation by him.”.

29 New section inserted in Constitution

The Constitution is amended by the insertion after section 108A of the following section—

“108B Zimbabwe Human Rights Commission

(1) There shall be a commission to be known as the Zimbabwe Human Rights Commission which shall consist of—

- (a) a chairman who has been qualified for at least five years to practise as a legal practitioner and who is appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and

- (b) eight other members, at least four of whom shall be women, appointed by the President from a list of sixteen nominees submitted by the Committee on Standing Rules and Orders.

(2) If the appointment of a chairman of the Zimbabwe Human Rights Commission is not consistent with any recommendation of the Judicial Service Commission in terms of subsection (1)(a), the President shall cause the Senate to be informed as soon as practicable.

(3) Persons appointed to the Zimbabwe Human Rights Commission shall be chosen for their knowledge of and experience in the promotion of social justice or the protection of human rights and freedoms.

(4) A member of the Zimbabwe Human Rights Commission shall, before entering upon his office, take and subscribe before the President or some person authorized by the President in that behalf the oath of loyalty and the oath of office in the forms set out in Schedule 1.

(5) The Zimbabwe Human Rights Commission shall have the following functions—

- (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
- (b) to promote the development of human rights and freedoms;
- (c) to monitor and assess the observance of human rights in Zimbabwe;
- (d) to recommend to Parliament effective measures to promote human rights and freedoms;
- (e) to investigate the conduct of any authority or person, where it is alleged that any of the rights in the Declaration of Rights has been violated by that authority or person; and
- (f) to assist the Minister responsible for the Act of Parliament referred to in subsection (8) to prepare any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

(6) The Zimbabwe Human Rights Commission may require any person, body, organ, agency or institution, whether belonging to or employed by the State, a local authority or otherwise, to provide the Commission annually with such information as it may need for the purpose of preparing and submitting any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

(7) The Zimbabwe Human Rights Commission shall have power—

- (a) to take over and continue any investigation that has been instituted by the Public Protector in terms of section 108(1), where it determines that the dominant question in issue involves a matter pertinent to its function referred to in subsection (5)(e); or

- (b) refer to the Public Protector for investigation in terms of section 108(1) any matter in respect of which it determines that the dominant question in issue involves a matter pertinent to the functions of Public Protector.

(8) An Act of Parliament may confer power on the Zimbabwe Human Rights Commission—

- (a) to conduct investigations on its own initiative or on receipt of complaints;
- (b) to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places or facilities;
- (c) to visit and inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places; and
- (d) to secure or provide appropriate redress for violations of human rights and social injustice.”.

30 Amendment of section 110 of Constitution

Section 110 (“Tenure of certain persons”)(1) of the Constitution is amended by the repeal of paragraph (a1) and the substitution of—

“(a1) the Public Protector and Deputy Public Protector; and”.

31 Amendment of section 113 of Constitution

Section 113 (“Interpretation”) (1) of the Constitution is amended—

- (a) by the repeal of the definitions of “Provincial Governor” and the substitution of—

““Provincial Governor” means a governor appointed in terms of an Act of Parliament referred to in section 111A;”;

- (b) by the insertion of the following definitions—

““local authority area” means an area the limits of which have been fixed in terms of the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*] or any other laws substituted for the same;

““ward” means one of several subdivisions of a local authority area delimited for the purpose of electing members of the governing body of that authority;”.

32 Amendment of Schedule 3 to Constitution

Schedule 3 (“Qualifications for Members of Parliament and Voters”) of the Constitution is amended in paragraph 3 (“Qualifications and disqualifications for voters”) (1) by the deletion of “on the common roll”.