

## CONSTITUTION OF ZIMBABWE AMENDMENT (NO. 19) BILL, 2008

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This Bill is intended to give effect, from the MDC's perspective, to the agreement signed by the three party leaders on the 11th September, 2008 — which differs in important respects from the agreement that was signed in public a few days later, on the 15th September. In this memorandum the agreement of the 11th September will be referred to as “the original inter-party agreement”, and that of the 15th September will be called “the publicly signed inter-party agreement”. Where there is no difference between the two versions, they will be referred to collectively as “the inter-party agreements”.

It should be noted at the outset that the Bill will insert a new Schedule into the Constitution, Schedule 8, which will deal with transitional matters and political aspects of the inter-party agreements such as the allocation of ministerial portfolios between the parties to the agreement. All the other clauses of the Bill must be read in the light of that Schedule.

The individual clauses of the Bill will have the following effect:

### *Clause 1*

This gives the Bill a short title. There is no provision for a delayed date of commencement, so the Bill will come into operation on the date of its promulgation in the *Gazette*.

### *Clause 2*

This clause will insert a new section in the Constitution which will create a board to deal with matters of citizenship and immigration. This will give effect to article 24.2 of the inter-party agreements, since the creation of such a board was dealt with in Chapter IV of the “Kariba draft” constitution.

### *Clause 3*

The new section 9 which this clause will insert in the Constitution will limit the powers of Parliament, contained in the current section 9, to enact laws depriving citizens of their citizenship.

### *Clause 4*

The new subsection which this clause will insert in section 18 of the Constitution will require public officers to observe the law and to uphold the rule of law. It will give effect to articles 11 and 13(2)(b) of the inter-party agreements.

### *Clause 5*

The amendments which this clause will make to section 20 of the Constitution will strengthen the protection of freedom of expression, giving effect to articles 18(5)(a) and 19 of the inter-party agreements.

The amendment to section 20(1) will make it clear that interference with all forms of communication, not just written correspondence, is prohibited.

The new subsection (1a) will make express what is only implied at present, that freedom of expression includes press freedom and the right of the public to enjoy the benefits of free and diverse news media, together with a concomitant duty to tolerate diverse opinions.

Although existing State monopolies in telecommunications, broadcasting and television services have been found to be unconstitutional (*Retrofit (Pvt) Ltd v PTC & Anor* 1995 (2) ZLR 199 (S) and *Capital Radio (Pvt) Ltd v Broadcasting Authority of Zimbabwe & Ors* 2003 (2) ZLR 236 (S)), section 20(2)(b)(iv) of the Constitution envisages that such monopolies may be created and regulated. Paragraph (c) of this clause will render unconstitutional any monopoly in these fields.

Paragraph (c) of the clause will also outlaw “hate speech”.

#### *Clause 6*

This clause will amend section 21 of the Constitution to give effect to articles 10 and 12 of the inter-party agreements.

The new section 21(1) differs from the existing provision in that it will make it clear that freedom of assembly and association includes the right to further the interests of a political party, trade union or other association.

The amendment to section 21(4) will give persons the right to assemble in streets so long as they do not hinder unreasonably the lawful passage of other persons or vehicles. At present that right is expressly excluded.

#### *Clause 7*

This clause will insert a new section 23A into the Declaration of Rights giving citizens the right to free, fair and regular elections and referendums, as well as the right to vote and to stand for elective office. The new section will reinforce the inter-party agreements by creating a culture of political participation which will allow the new democratic constitution to be properly debated.

#### *Clause 8*

Section 27 of the Constitution states that the President is Head of State, Head of Government and Commander-in-Chief of the Defence Forces. This clause will remove the reference to his role as Head of Government, since executive power will now be shared between the President, the Prime Minister, the Council of Ministers and the Cabinet (see the new section 31GA(1), inserted by clause 15).

#### *Clause 9*

The new section 31CA which this clause will insert in the Constitution will create the office of Prime Minister and indicate his responsibilities, in particular the key role he will play in the formulation of government policies.

The Prime Minister will be appointed in accordance with the inter-party agreement, which is set out as an appendix to the new Schedule 8.

The new section 31CB will give the Prime Minister power to designate a person to act in his place whenever he himself is outside the country or unable to exercise his functions. This provision will not apply if the Prime Minister resigns or vacates his office: in such an

eventuality the President will have to appoint a new Prime Minister, acting on the advice of the MDC-T (see paragraph 7 of the new Schedule 8, to be inserted in the Constitution by clause 52).

*Clause 10*

The effect of the amendment made to section 31D of the Constitution by this clause is that, when appointing Ministers and Deputy Ministers and assigning functions to them, the President will have to act in accordance with the inter-party agreement.

*Clause 11*

This clause will replace section 31E of the Constitution with a new section dealing with the tenure of office of members of the Executive other than the President. This section, too, will have to be read in conjunction with Schedule 8.

Vice-Presidents, as at present, will hold office at the pleasure of the President, in consultation with (i.e. with the agreement of) the other parties to the Inter-party Agreement. The Prime Minister will retain office unless he resigns or unless a new President is elected after a general election. Deputy Prime Ministers, Ministers and Deputy Ministers may be dismissed by the President acting in consultation with (i.e. with the agreement of) the Prime Minister.

Whereas at present all members of the Executive, other than the President, have to be members of Parliament in order to retain office for more than three months, in future this will apply only to Ministers and Deputy Ministers; according to article 20.1.8 of the original inter-party agreement the Prime Minister and all Vice-Presidents and Deputy Prime Ministers will be *ex officio* members of Parliament, without having to be elected or appointed to either House.

*Clause 12*

The effect of this clause is that where Parliament has passed a vote of no confidence in the Government, the President will have to dissolve Parliament and call a general election to be held within two months after the dissolution of Parliament. He will no longer have the option of replacing his Ministers: he and all the members of Parliament will have to face a general election.

*Clause 13*

This clause will insert a new section in the Constitution creating a Council of Ministers, chaired by the Prime Minister, in accordance with article 20.1.5 of the inter-party agreements. Note that under the new section the Cabinet will be obliged to comply with directions given to it by the Council.

*Clause 14*

The new section 31G which this clause will insert in the Constitution will reconstitute the Cabinet, giving it the functions set out in article 20.1.2 of the inter-party agreements.

The Cabinet will be presided over by the President or, in his absence by the Prime Minister or, in the absence of either of them, by a Deputy Prime Minister.

Note that in addition to the President and the Prime Minister, all the Vice-Presidents, Deputy Prime Ministers and Ministers will be members of the Cabinet. The Attorney-General, however, will no longer be a member.

*Clause 15*

The new section 31GA will give effect to article 20.1.1 of the inter-party agreements, though it will also confer some additional executive authority on the Council of Ministers.

*Clause 16*

The new section 31H will give effect to article 20.1.3 of the inter-party agreements, setting out the President's executive powers and how they may be exercised.

It should be noted that although this draft Bill will not repeal the President's power to enact regulations under the Presidential Powers (Temporary Measures) Act (because the inter-party agreements do not provide for this) the President will not be able to enact such regulations without the approval of the Cabinet, so all parties represented in the inclusive government will play a part in deciding whether or not such regulations should be enacted.

*Clause 17*

This clause will make several changes to section 34 of the Constitution, which deals with the membership of the Senate.

In the first place, it will increase the number of appointed Senators from the existing five to eleven, in accordance with article 20.1.9 of the original inter-party agreement. The parties to which the new senatorial seats are allocated are indicated in Schedule 8.

Secondly, the clause will give effect to article 20.1.8 of the original inter-party agreement, which provides that if a Senator is appointed as Vice-President, Prime Minister or Deputy Prime Minister, the party of which he or she is a member has the right to nominate a non-constituency member of the Senate. Although the article does not say so expressly, the implication is that the Prime Minister and all Vice-Presidents and Deputy Prime Ministers cease to be voting Senators or members of Parliament but can sit and speak in either House.

*Clause 18*

This clause will give effect to article 20.1.8 of the original inter-party agreement, which provides that if a member of the House of Assembly is appointed as Vice-President, Prime Minister or Deputy Prime Minister, the party of which he or she is a member has the right to nominate a non-constituency member of the House.

*Clause 19*

The new sections 40C and 40D which this clause will insert in the Constitution will give effect to article 24.2 of the inter-party agreements by establishing the parliamentary Committee on Standing Rules and Orders and setting out its functions.

In regard to section 40C, note that the Committee's membership will be composed of members of the House of Assembly and Senators, in the proportions 10:6. This is justified, first because the House of Assembly is twice the size of the Senate and, secondly, because the House has a greater role in the enactment of legislation than the Senate.

*Clause 20*

This clause is taken from clause 4 of the ZANU-PF draft, and will correct cross-references in section 41 of the Constitution.

*Clause 21*

This clause will amend section 47 of the Constitution to give the Prime Minister and each Deputy Prime Minister an automatic right to sit, speak and vote in both Houses of Parliament.

*Clause 22*

The amendment which this clause will make to section 57 of the Constitution is consequential on the amendments effected by clause 19.

*Clause 23*

The effect of this clause is that, in fixing the dates of elections, the President will have to consult the Prime Minister.

*Clause 24 and Clauses 26 to 45*

These clauses will give effect to article 24.2 of the publicly-signed inter-party agreement, which states that the provisions in the “Kariba draft” constitution relating to Commissions should be incorporated into the Constitution, and article 20.1.3 (n), (o) and (p) of the same agreement, which require the President to consult the Prime Minister when making appointments to constitutional commissions and “key appointments”.

Effect is also given (in clauses 27 to 31, 35, 37, 39 and 41) to article 20.1.7 of the original inter-party agreement, which states that appointments to “senior government positions” must be made with the agreement of the President, the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers.

*Clause 25*

This clause will amend section 63 of the Constitution so as to require the President to consult the Prime Minister before proroguing (i.e. adjourning) Parliament, and to consult all the parties to the inter-party agreement before dissolving Parliament.

*Clause 46*

The effect of this clause is to guarantee the independence of all constitutional commissions. The clause will give effect to article 13 of the inter-party agreements.

*Clause 47*

The new section 109A which this clause will insert in the Constitution will enjoin all public officers to be politically neutral when exercising their functions, thereby giving effect to article 13.1 of the inter-party agreements.

*Clause 48*

This clause will reinforce clause 47 by requiring traditional leaders to be politically neutral, thereby giving effect to article 14 of the inter-party agreements.

*Clause 49*

This clause will insert a new definition of “Committee on Standing Rules and Orders” into section 113 of the Constitution; the definition is a consequence of the new section 40C (as to which, see clause 19). The clause will also insert a definition of “Inter-party Agreement” and

one of “Minister” to make it clear that, unless the context otherwise requires, the term does not include the Prime Minister or Deputy Prime Minister.

*Clause 50*

The effect of the new section 114(1b) which this clause will insert in the Constitution is that when the President is required to consult a person or authority before doing anything, he will have to secure the agreement of that person or authority. If he has to consult two such persons or authorities and they give him different advice, he will be allowed to choose which person’s advice to follow; if he has to consult three or more, he will be bound to accept the advice given by a majority of them. In all cases, however, the President and the persons he is consulting will be enjoined to try to agree on the action to be taken; this, it is to be hoped, will encourage co-operation between the different parties in the new government.

*Clauses 51 and 52*

These clauses will insert a new Schedule into the Constitution which will deal with transitional matters including the political arrangements necessary to give effect to the inter-party agreements.

Generally, the provisions of the Schedule are self-explanatory but the following points should be noted:

*Paragraph 2:* The numbers of Senators to be appointed will give effect to article 20.1.9 of the original inter-party agreement, not the significantly different article 20.1.7 of the publicly-signed agreement.

*Paragraph 3:* Article 21 of the inter-party agreements states that elections are divisive and confrontational; this paragraph will therefore obviate the need for by-elections during the first year of the Inclusive Government’s life.

*Paragraph 4:* For the same reason, this paragraph will bring an end to all election petitions brought to challenge results of the March 2008 general election.

*Paragraph 10:* This paragraph will set up a national security council to oversee the Defence Forces, the Police Force and the CIO.

*Paragraph 11:* This paragraph will require the Inclusive Government to implement the Inter-party Agreement.

*Paragraph 12:* This paragraph will give effect to the last paragraph of article 20.1.1 of the inter-party agreements.

*Paragraph 13:* The purpose of this paragraph is to ensure that citizenship matters can continue to be dealt with by the existing authorities until the new Citizenship and Immigration Board is established.

*Per contra,* paragraphs 14 and 15 will ensure that the existing Committee on Standing Rules and Orders is dissolved immediately the Bill is enacted, and that certain commissions are reconstituted with nominees put forward by the new committee.

*Paragraph 16:* This paragraph deals with the preparation of a new democratic constitution. The paragraph will give effect to article 6 of the inter-party agreements.

*Paragraph 17:* This is probably unnecessary, since the inter-party agreement (presumably the original one) is to be set out in an Appendix to the Schedule and hence courts will be able to take judicial notice of its terms. Nonetheless, there is no harm in making assurance double sure.

Fifth draft: 24th November, 2008  
Fourth draft: 23rd November, 2008  
Third draft: 19th November, 2008  
Second draft: 19th October, 2008  
First draft: 9th October, 2008

# BILL

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. 19) Act, 2008.

## 2 New section inserted in Constitution

The Constitution of Zimbabwe (hereinafter called “the Constitution”) is amended by the insertion after section 7 of the following section—

### 8 Citizenship and Immigration Board

An Act of Parliament shall provide for the establishment of a Citizenship and Immigration Board consisting of a chairman and at least two other members, appointed by the President from a list of at least five names submitted by the Committee on Standing Rules and Orders, to be responsible for—

- (a) granting and revoking citizenship by registration;
- (b) permitting persons, other than citizens, to reside and work in Zimbabwe, and fixing the terms and conditions under which they may so reside and work;
- (c) exercising any other functions that may be conferred or imposed on the Board by or under an Act of Parliament.”.

### **3 New section substituted for section 9 of Constitution**

Section 9 (“Powers of Parliament in relation to citizenship”) of the Constitution is repealed and the following is substituted—

#### **9 Powers of Parliament in relation to citizenship**

“An Act of Parliament may make provision, not inconsistent with this Chapter, in respect of citizenship and, without prejudice to the generality of the foregoing, for—

- (a) the acquisition of citizenship of Zimbabwe by persons who are not eligible or who are no longer eligible to become citizens of Zimbabwe under this Chapter;
- (b) depriving any person, other than a citizen by birth or descent, of his citizenship of Zimbabwe

Provided that no person shall be deprived of his citizenship of Zimbabwe if he is thereby rendered stateless; and

- (c) the renunciation by any person of his citizenship of Zimbabwe.”.

### **4 Amendment of section 18 of Constitution**

Section 18 (“Provisions to ensure protection of law”) of the Constitution is amended by the insertion after subsection (1) of the following subsection—

“(1a) Every public officer has a duty towards every person in Zimbabwe to exercise his functions as a public officer in accordance with the law and, within the scope of his employment, to observe and uphold the rule of law.”.

### **5 Amendment of section 20 of Constitution**

Section 20 (“Protection of freedom of expression”) of the Constitution is amended—

- (a) in subsection (1) by the insertion after “correspondence” of “and other forms of communication”;

- (b) by the insertion after subsection (1) of the following subsection—

“(1a) Without derogation from subsection (1), freedom of expression includes—

- (a) the right of the press and other media of communication to impart diverse ideas and information freely;
- (b) the right of every member of the public to receive diverse ideas and information from free media of communication; and
- (c) a duty on the part of every public officer and every member of the public to tolerate the expression of ideas that are different from or contrary to his own.”;

- (c) in subsection (2)—

- (i) by the insertion after “subsection (1)” of “or (1a)”;

- (ii) in paragraph (b)—

A. by the deletion from subparagraph (iv) of “or creating or regulating any monopoly in these fields”;

B. by the insertion after subparagraph (v) of the following subparagraph—

“(vi) preventing incitement to violence or advocacy of hatred which is based on nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, political opinions, religious belief, culture, sex, gender, marital status, pregnancy, age, disability or natural difference or condition, and which amounts to incitement to unfair discrimination, hostility or violence;”.

## **6 Amendment of section 21 of Constitution**

Section 21 (“Protection of freedom of assembly and association”) of the Constitution is amended—

(a) by the repeal of subsection (1) and the substitution of—

“(1) Except with his own consent or by way of parental discipline, no person shall be hindered in his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and, in particular—

- (a) to form or belong to political parties and trade unions and other associations for the protection of his interests; and
- (b) by peaceful means, to further the interests of a political party, trade union or other association or to further the interests of its members.”.

(b) in subsection (4) by the deletion of “which exists for the free passage of persons or vehicles” and the substitution of “, if the exercise of that freedom hinders or obstructs unreasonably, or is likely to hinder or obstruct unreasonably, the lawful passage of persons or vehicles”.

## **7 New section inserted in Constitution**

The Constitution is amended by the insertion after section 23 of the following section—

### **23A Political rights**

“(1) Subject to the provisions of this Constitution, every Zimbabwean citizen shall have the right to—

- (a) free, fair and regular elections for any legislative body, including a local authority, established under this Constitution or any Act of Parliament;
- (b) free, fair and regular elections to the office of President and to any other elective office; and
- (c) free and fair referendums, whenever they are called in terms of this Constitution or an Act of Parliament.

(2) Subject to this Constitution, every adult Zimbabwean citizen shall have the right—

- (a) to vote in referendums and elections for any legislative body established under this Constitution, and to do so in secret; and
- (b) to stand for public office and, if elected, to hold office.”.

## **8 Amendment of section 27 of Constitution**

Section 27 (“The President”) of the Constitution is amended in subsection (1) by the deletion of “and Head of Government”.

## **9 New sections inserted in Constitution**

The Constitution is amended by the insertion after section 31C of the following sections—

### **31CA Prime Minister**

“(1) There shall be a Prime Minister who, subject to the provisions of this Constitution, shall—

- (a) oversee the formulation of governmental policies by the Cabinet;
- (b) have supervisory authority over Ministers and Deputy Ministers;
- (c) be the Leader of Government Business in the House of Assembly;
- (d) ensure that the policies formulated by the Cabinet are properly implemented by the Government; and
- (e) generally, be responsible for the proper functioning of the Government.

(2) The Prime Minister shall be the person who, under the Inter-party Agreement, is declared to be the Prime Minister.

(3) During his tenure of office, the Prime Minister shall not directly or indirectly hold any other public office or any paid office in the employment of any person.

### **31CB Acting Prime Minister**

Whenever the Prime Minister is absent from Zimbabwe or is unable to perform the functions of his office by reason of illness or any other cause, his functions shall be assumed and performed—

- (a) by the Deputy Prime Minister whom the Prime Minister has designated for such eventuality; or
- (b) by the Deputy Prime Minister who last acted as Prime Minister in terms of this section, where neither Deputy Prime Minister has been designated for such an eventuality in terms of paragraph (a); or
- (c) during the absence or incapacity of both Deputy Prime Ministers, by such Minister as may be designated for such an eventuality—
  - (i) by the Prime Minister; or
  - (ii) by the Cabinet, where no Minister has been designated by the Prime Minister in terms of subparagraph (i).”.

## **10 Amendment of section 31D of Constitution**

Section 31D (“Ministers and Deputy Ministers”) of the Constitution is amended by the repeal of subsection (1) and the substitution of—

“(1) The President, acting in accordance with the Inter-party Agreement, shall appoint Ministers and Deputy Ministers and assign functions to them including, in the case of—

- (a) Ministers, the administration of any Act of Parliament or of any Ministry or department;
- (b) Deputy Ministers, power to exercise or perform on behalf of a Minister any of the functions entrusted to that Minister.”.

#### **11 New section substituted for section 31E of Constitution**

Section 31E (“Tenure of office of Vice-Presidents, Ministers and Deputy Ministers”) of the Constitution is repealed and the following is substituted—

##### **31E Tenure of office of Vice-Presidents, Prime Minister, Deputy Prime Ministers, Ministers and Deputy Ministers**

- “(1) The office of a Vice-President shall become vacant—
- (a) if, in consultation with the other Vice-President, the Prime Minister and the Deputy Prime Ministers, the President removes him from office;
  - (b) if he resigns his office by notice in writing addressed and delivered to the President; or
  - (c) upon the assumption of office of a new President.
- (2) The office of the Prime Minister shall become vacant—
- (a) if he resigns his office by notice in writing addressed and delivered to the President; or
  - (b) upon the assumption of office of a new President following a general election.
- (3) The office of a Deputy Prime Minister, Minister or Deputy Minister shall become vacant—
- (a) if the President, in consultation with the Prime Minister, removes him from office;
  - (b) if he resigns his office by notice in writing addressed and delivered to the President; or
  - (c) upon the assumption of office of a new President.
- (4) No person shall hold office as Minister or Deputy Minister for longer than three months unless he is a member of Parliament:
- Provided that if during that period Parliament is dissolved, he may continue to hold such office without being a member of Parliament until Parliament first meets after the dissolution.
- (5) A person who has held office as Minister or Deputy Minister without also being a member of Parliament shall not be eligible for reappointment to that office before Parliament is next dissolved unless in the meantime he has become a member of Parliament.”.

#### **12 Amendment of section 31F of Constitution**

Section 31F (“Vote of no confidence in Government”) of the Constitution is amended by the repeal of subsection (3) and the substitution of—

“(3) Where a vote of no confidence is passed by Parliament in terms of this section, the President shall within seven days dissolve Parliament and fix a date for a general election, which date shall be not later than two months after the issue of the proclamation dissolving Parliament.”.

### **13 New section inserted in Constitution**

The Constitution is amended by the insertion after section 31F of the following section—

#### **31FA Council of Ministers**

“(1) There shall be a Council of Ministers consisting of the Prime Minister, the Deputy Prime Ministers and all Ministers.

(2) The functions of the Council of Ministers shall be—

- (a) to assist the Prime Minister co-ordinate the activities of the Government;
- (b) to keep the Prime Minister informed on the activities of committees of the Cabinet;
- (c) to monitor the implementation of decisions made by the Cabinet; and
- (d) generally, to supervise the conduct of the business and activities of the Government.

(2) The Prime Minister or, in his absence, a Deputy Prime Minister authorised by the Prime Minister, shall preside at meetings of the Council of Ministers.

(3) The Cabinet, and every member thereof, shall comply with any directions or recommendations given to it or him, as the case may be, by the Council of Ministers.”.

### **14 New section substituted for section 31G of Constitution**

Section 31G (“Cabinet”) of the Constitution is repealed and the following is substituted—

#### **31G Cabinet**

“(1) There shall be a Cabinet consisting of the President, the Prime Minister and every Vice-President, Deputy Prime Minister and Minister.

(2) The functions of the Cabinet shall be—

- (a) to formulate and adopt Government policies under the direction of the Prime Minister;
- (b) subject to Chapter XI, to allocate resources for the implementation of Government policies;
- (c) to prepare governmental legislation and ensure its enactment and implementation;
- (d) subject to section 111B, to approve all international conventions, treaties and agreements; and
- (e) generally, to conduct the business and activities of the Government.

(3) The President or, in his absence, the Prime Minister or a Deputy Prime Minister authorised by the President, shall preside at meetings of the Cabinet.

(4) Decisions at meetings of the Cabinet shall be reached, where possible, by consensus of the members present at the meeting:

Provided that if it is not possible to reach a consensus on any matter, a decision reached with the concurrence of a majority of all the members of the Cabinet shall be deemed to be the decision of the Cabinet on the matter.

(5) Members of the Cabinet shall be collectively responsible for decisions and actions of the Cabinet.

(6) Every member of the Cabinet, other than the President, shall, before entering upon his office as such, take and subscribe before the President or some other person authorised by the President in that behalf, the oath of a member of the Cabinet in the form set out in Schedule 1.”.

### **15 New section inserted in Constitution**

Chapter IV (“The Executive) of the Constitution is amended by the insertion in Part 3, before section 31H, of the following section—

#### **31GA Executive authority**

“(1) The executive authority of Zimbabwe shall vest, subject to this Constitution, in the President, the Prime Minister, the Council of Ministers and the Cabinet, all of whom shall co-operate to ensure that the functions of government are co-ordinated and efficiently exercised.

(2) It shall be the duty of the President, the Prime Minister and every member of the Cabinet to uphold this Constitution and ensure that the provisions of this Constitution and of all other laws in force in Zimbabwe are faithfully executed.”.

### **16 New section substituted for section 31H of Constitution**

Section 31H (“Executive functions of President”) of the Constitution is repealed and the following is substituted—

#### **31H Executive functions of President**

“(1) The President shall have such functions as are conferred upon him by this Constitution or by any Act of Parliament or other law, including—

- (a) power to appoint, accredit, receive and recognise diplomatic agents and consular officers;
- (b) power to enter into international conventions, treaties and agreements;
- (c) power to declare war and make peace;
- (d) power to confer honours and precedence.

and in exercising those functions the President shall act in consultation with the Prime Minister and the Cabinet, except with respect to any matters which, in terms of the Inter-party Agreement, he is entitled to act in his own discretion or in consultation with any other person or authority.

(2) Nothing in this section shall prevent Parliament from conferring or imposing functions on persons other than the President.”.

## **17 Amendment of section 34 of Constitution**

Section 34 (“Composition of Senate”) of the Constitution is amended—

- (a) in subsection (1)—
  - (i) by the deletion of “section 76(3b)” and the substitution of “subsections (4) and (5) and section 76(3b)”;
  - (ii) in paragraph (e) by the deletion of “five” and the substitution of “eleven”;
- (b) by the insertion after subsection (3) of the following subsections—

“(4) Where a Senator is appointed as Vice-President, Prime Minister or Deputy Prime Minister, the political party of which he was a member at the time of his election to the Senate shall nominate a person to take his place as a Senator.

(5) A person nominated under subsection (4) shall become a non-constituency Senator as if he had been declared duly elected to the Senate on the date on which he was so nominated.”.

## **18 Amendment of section 38 of Constitution**

Section 38 (“Composition of House of Assembly”) of the Constitution is amended—

- (a) in subsection (1) by the deletion of “section 76(3b)” and the substitution of “subsections (3) and (4) and section 76(3b)”;
- (b) by the insertion after subsection (2) of the following subsection—

“(3) Where a member of the House of Assembly is appointed as Vice-President, Prime Minister or Deputy Prime Minister, the political party of which he was a member at the time of his election to the House shall nominate a person to take his place as a member.

(4) A person nominated under subsection (3) shall become a non-constituency member of the House of Assembly as if he had been declared duly elected to the House on the date on which he was so nominated.”.

## **19 New sections inserted in Constitution**

Chapter V of the Constitution is amended in Part 3 by the insertion after section 40B of the following sections—

### **40C Committee on Standing Rules and Orders**

“(1) There shall be a committee of Parliament to be known as the Committee on Standing Rules and Orders, consisting of—

- (a) the Speaker and Deputy Speaker of the House of Assembly;
- (b) the President and Deputy President of the Senate;
- (c) the Prime Minister and the Leader of the Opposition in the House of Assembly;
- (d) the Chief Whip of the largest political party represented in the House of Assembly;
- (e) subject to the provisions of this section, six members of the House of Assembly appointed by the Speaker;

- (f) the Leader of Government Business and the Leader of the Opposition in the Senate;
- (g) the Chief Whip of the largest political party represented in the Senate;
- (h) subject to the provisions of this section, two Senators appointed by the President of the Senate;
- (i) subject to the provisions of this section, ten members of the House of Assembly and six members of the Senate elected by the House of Assembly and the Senate respectively in accordance with Standing Orders.

(2) The members referred to in paragraphs (e), (h) and (i) of subsection (1) shall be appointed or elected, as the case may be, as soon as possible after Parliament first meets following a general election, and any vacancies occurring in the Committee’s membership shall be filled by like appointment or election, as the case may be, as soon as possible after they occur.

(3) When—

- (a) appointing members to the Committee on Standing Rules and Orders, the Speaker and the President of the Senate;
- (b) electing members to the Committee on Standing Rules and Orders, the House of Assembly and the Senate;

shall ensure that, so far as practicable, the membership of the Committee reflects the membership of the House of Assembly and the Senate, as the case may be, in regard to gender and political affiliation.

(4) The Speaker shall be the chairman of the Committee on Standing Rules and Orders and the President of the Senate shall be the deputy chairman.

(5) The procedure of the Committee on Standing Rules and Orders shall be as prescribed in Standing Orders.

#### 40D Functions of Committee on Standing Rules and Orders

The Committee on Standing Rules and Orders shall be responsible for—

- (a) supervising the administration of Parliament;
- (b) designating and appointing portfolio committees of Parliament;
- (c) appointing the staff of Parliament and fixing their conditions of service; and
- (d) exercising any other function conferred or imposed on the Committee by this Constitution, an Act of Parliament or Standing Orders.”.

### 20 Amendment of section 41 of Constitution

Section 41 “Tenure of seats of members” of the Constitution is amended—

(a) in subsection (1)—

(i) in paragraph (e)—

- A. by the deletion of “38(1)(a)” and the substitution of “34(1)(a) or 38(1)”;
- B. by the deletion of “Speaker” and the substitution of “President of the Senate or the Speaker, as the case may be”;

- (ii) in paragraph (h) by the deletion of “38(1)(a)” and the substitution of “34(1)(a) or 38(1)”;
- (iii) by the repeal of paragraph (i) and the substitution of—
  - “(i) if, being a member referred to in section 34(1)(b), he ceases to hold office as Provincial Governor;”;
- (b) in subsection (2) by the repeal of paragraph (a) and the substitution of—
  - “(a) being the Prime Minister or a Vice-President, Deputy Prime Minister, Minister, Deputy Minister or Provincial Governor; or”;
- (c) in subsection (3) in subparagraph (ii) of the definition of “statutory body” by the deletion of “a Vice-President, a Minister” and the substitution of “the Prime Minister, a Vice-President, a Deputy Prime Minister, a Minister”.

## **21 Amendment of section 47 of Constitution**

Section 47 (“Vice-Presidents, Ministers, Deputy Ministers, Provincial Governors and Attorney-General in Parliament”) of the Constitution is amended by the insertion after subsection (1) of the following subsection—

- “(1a) The Prime Minister and every Deputy Prime Minister shall have a right to sit, speak and vote in both the Senate and the House of Assembly.”.

## **22 Amendment of section 57 of Constitution**

Section 57 (“Standing Orders”) of the Constitution is amended by the repeal of subsection (2).

## **23 Amendment of section 58 of Constitution**

Section 58 (“Elections”) of the Constitution is amended in subsection (1) by the insertion after “fix” of “in consultation with the Prime Minister”.

## **24 Amendment of section 61 of Constitution**

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

- (a) in subsection (1)—
  - (i) in paragraph (a) by the insertion after “Judicial Service Commission” of “and the Committee on Standing Rules and Orders”;
  - (ii) by the repeal of paragraph (b) and the substitution of—
    - “(b) eight other members, at least four of whom shall be women, appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.”;
- (b) by the insertion after subsection (1) of the following subsection—
  - “(1a) A person who is—
    - (a) a Senator or member of the House of Assembly; or
    - (b) a public officer, other than a judge; or
    - (c) a member or employee or a statutory body or a local authority;
 shall not be qualified for appointment to the Zimbabwe Electoral Commission.”;

(c) by the insertion after subsection (2) of the following subsection—

“(2a) Members of the Zimbabwe Electoral Commission shall be appointed for a term of six years, and their appointment may be renewed for one further term only.”;

(d) by the insertion after subsection (3) of the following subsections—

“(3a) A person who is a member of a political party on his appointment to the Zimbabwe Electoral Commission shall relinquish that membership without delay and, in any event, within fourteen days of his appointment.

(3b) If a member of the Zimbabwe Electoral Commission becomes a member of a political party, he shall cease immediately to be a member of the Commission.

(3c) The President may remove a member of the Zimbabwe Electoral Commission from office—

(a) in the case of the chairman, with the approval of the Judicial Service Commission and the Committee on Standing Rules and Orders;

(b) in the case of a member other than the chairman, with the approval of the Committee on Standing Rules and Orders;

on the following grounds only—

(i) inability to exercise the functions of his office, whether through physical or mental incapacity;

(ii) misconduct;

(iii) incompetence;

(iv) if the member becomes disqualified for appointment to the Commission.”.

## **25 Amendment of section 63 of Constitution**

Section 63 (“Prorogation or dissolution”) of the Constitution is amended—

(a) in subsection (1) by the insertion after “President” of “, in consultation with the Prime Minister,”;

(b) in subsection (2) by the insertion after “time” of “, in consultation with the Prime Minister and the other parties to the Inter-party Agreement,”.

## **26 Amendment of section 74 of Constitution**

Section 74 (“Public Service Commission”) of the Constitution is amended in subsection (1) by the insertion after “President” of “in consultation with the Prime Minister”.

## **27 Amendment of section 76 of Constitution**

Section 76 (“Attorney-General”) of the Constitution is amended in subsections (2) and (10) by the insertion after “Commission” of “, the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

## **28 Amendment of section 77 of Constitution**

Section 77 (“Secretaries of Ministries, etc.”) of the Constitution is amended in subsection (1) by the insertion after “Commission” of “, the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

## **29 Amendment of section 78 of Constitution**

Section 78 (“Principal representatives of Zimbabwe abroad”) of the Constitution is amended by the insertion after “President” where it occurs for the first time of “in consultation with the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

## **30 Amendment of section 84 of Constitution**

Section 84 (“Appointment of judges”) of the Constitution is amended in subsection (1) by the insertion after “Commission” of “, the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

## **31 Amendment of section 85 of Constitution**

Section 85 (“Acting judges”) of the Constitution is amended in subsections (1) and (2) by the insertion after “Commission” of “, the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

## **32 Amendment of section 87 of Constitution**

Section 87 (“Removal of judges from office”) of the Constitution is amended in subsection (2) by the insertion after “President” where it occurs for the first time of “, in consultation with the Prime Minister.”.

## **33 Amendment of section 90 of Constitution**

Section 90 (“Judicial Service Commission”) of the Constitution is amended in subsection (1) by the insertion in paragraph (d) after “President” of “in consultation with the Prime Minister”.

## **34 Amendment of section 92 of Constitution**

Section 92 (“Persons presiding over special courts”) of the Constitution is amended in subsection (1) by the insertion after “Commission” of “and the Prime Minister”.

## **35 Amendment of section 93 of Constitution**

Section 93 (“Police Force and Commissioner-General of Police”) of the Constitution is amended in subsection (2) by the deletion of “such person or authority as may be prescribed by or under an Act of Parliament” and the substitution of “the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

## **36 Amendment of section 94 of Constitution**

Section 94 (“Police Service Commission”) of the Constitution is amended in subsection (1) by the insertion in paragraph (b) after “President” of “in consultation with the Prime Minister”.

### **37 Amendment of section 96 of Constitution**

Section 96 (“Defence Forces and command thereof”) of the Constitution is amended in subsection (4) by the deletion of “such person or authority as may be prescribed by or under an Act of Parliament” and the substitution of “the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

### **38 Amendment of section 97 of Constitution**

Section 97 (“Defence Forces Service Commission”) of the Constitution is amended in subsection (1) by the insertion in paragraph (b) after “President” of “in consultation with the Prime Minister”.

### **39 Amendment of section 99 of Constitution**

Section 99 (“Prison Service and Commissioner of Prisons”) of the Constitution is amended in subsection (2) by the deletion of “such person or authority as may be prescribed by or under an Act of Parliament” and the substitution of “the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

### **40 Amendment of section 100 of Constitution**

Section 100 (“Prison Service Commission”) of the Constitution is amended in subsection (1) by the insertion in paragraph (b) after “President” of “in consultation with the Prime Minister”.

### **41 Amendment of section 105 of Constitution**

Section 105 (“Comptroller and Auditor-General”) of the Constitution is amended in subsection (2) by the insertion after “Commission” of “, the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers”.

### **42 Amendment of section 107 of Constitution**

Section 107 (“Public Protector and Deputy Public Protector”) of the Constitution is amended in subsection (2) by the deletion of “and the Committee on Standing Rules and Orders” and the substitution of “, the Committee on Standing Rules and Orders and the Prime Minister”.

### **43 Amendment of section 108A of Constitution**

Section 108A (“Anti-Corruption Commission”) of the Constitution is amended in subsection (1) by the insertion after “President” of “in consultation with the Committee on Standing Rules and Orders”.

### **44 Amendment of section 108B of Constitution**

Section 108B (“Zimbabwe Human Rights Commission”) of the Constitution is amended—

- (a) in subsection (1) by the deletion from paragraph (b) of “sixteen” and the substitution of “twelve”;
- (b) in subsection (5) by the insertion after paragraph (f) of the following paragraph—

“and

- (g) to exercise any other functions that may be conferred or imposed on the Commission by or under an Act of Parliament.”;
- (c) in subsection (8) by the insertion in paragraph (d) of the following proviso—
  - “Provided that no such provision shall be construed as limiting the right of any person to approach a court for such redress or the power of any court to provide such redress.”.

#### **45 New section inserted in Constitution**

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

##### **108C Establishment of Zimbabwe Media Commission**

- “(1) There shall be a commission to be known as the Zimbabwe Media Commission consisting of a chairman and eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.
- (2) Persons appointed to the Zimbabwe Media Commission shall be chosen for their knowledge of and experience in the press, print or electronic media, or broadcasting.
- (3) The Zimbabwe Media Commission shall have the following functions—
  - (a) to uphold and develop freedom of the press;
  - (b) to promote and enforce good practice and ethics in the press, print and electronic media, and broadcasting;
  - (c) to ensure that the people of Zimbabwe have equitable and wide access to information;
  - (d) to ensure the equitable use and development of all indigenous languages spoken in Zimbabwe; and
  - (e) to exercise any other functions that may be conferred or imposed on the Commission by or under an Act of Parliament.
- (4) An Act of Parliament may confer powers on the Zimbabwe Media Commission, including power to—
  - (a) conduct investigations and inquiries into—
    - (i) any conduct or circumstance that appears to violate or threaten freedom of the press; and
    - (ii) the conduct of the press, print and electronic media, and broadcasting;and
  - (b) take disciplinary action against journalists and other persons employed in the press, print or electronic media, or broadcasting who are found to have breached any law or any code of conduct applicable to them.”.

#### **46 Amendment of section 109 of Constitution**

Section 109 (“General provisions as to Commissions, etc.”) of the Constitution is amended—

- (a) by the repeal of subsection (1) and the substitution of the following subsection—

“(1) Save as is provided in this Constitution, a Commission shall not, in the exercise of its functions—

- (a) be subject to the direction or control of any person or authority; or
- (b) discriminate against, or favour unfairly, any political party or group.”;

(b) in subsection (11) by the insertion in the definition of “Commission” of the following proviso—

“Provided that in subsection (1) the term “Commission” extends to every commission and board established by or under this Constitution.”.

#### **47 New section inserted in Constitution**

The Constitution is amended by the insertion after section 109 of the following section—

##### **109A Impartiality of public officers**

“Without derogation from the provisions of section 23, every public officer shall exercise his official functions impartially and so as not to discriminate unfairly against, or to favour unfairly, any particular person, political party or group.”.

#### **48 Amendment of section 111 of Constitution**

Section 111 (“Chiefs and Councils of Chiefs”) of the Constitution is amended by the insertion after subsection (2) of the following subsections—

“(2a) Chiefs, Deputy Chiefs and acting Chiefs shall be politically neutral and shall not carry out their functions so as to discriminate against, or unduly favour, any persons on account of their political opinions.”.

#### **49 Amendment of section 113 of Constitution**

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

(a) by the repeal of the definition of “Committee on Standing Rules and Orders” and the substitution of—

““Committee on Standing Rules and Orders” means the committee established in terms of section 40C;”;

(b) by the insertion of the following definitions—

““Inter-party Agreement” has the meaning assigned to it in paragraph 1 of Schedule 8;

“Minister” does not include the Prime Minister or Deputy Prime Minister;”.

#### **50 Amendment of section 114 of Constitution**

Section 114 of the Constitution is amended by the insertion after subsection (1a) of the following subsection—

“(1b) Where the President is required by this Constitution to consult another person or authority before taking any action, he shall not take that action unless that person or authority has agreed to the proposed action:

Provided that—

- (i) where the President is required to consult—

- (a) two other persons or authorities and their advice or recommendations are not the same, he shall act in accordance with the advice or recommendation given by whichever of them he chooses;
- (b) three or more other persons or authorities and their advice or recommendations are not all the same, he shall act in accordance with the advice or recommendation given by a majority of them;
- (ii) in all cases the President and each person or authority whom he consults shall make a reasonable attempt to reach agreement on the action to be taken.”.

## **51 New section inserted in Constitution**

The Constitution is amended by the insertion after section 114 of the following section—

### **115 Transitional provisions**

“The provisions of Schedule 8 shall apply, notwithstanding any other provision of this Constitution, for the purpose of giving effect to—

- (a) the Inter-party Agreement, as defined in that Schedule; and
- (b) the Constitution of Zimbabwe Amendment (No. 19) Act, 2008; and
- (c) the structure, functions and conduct of the Government pending the enactment of the new democratic constitution referred to in paragraph 16 of that Schedule.”.

## **52 New Schedule inserted in Constitution**

The Constitution is amended by the insertion after Schedule 7 of the following Schedule—

### “SCHEDULE 8 (Section 115)

#### TRANSITIONAL PROVISIONS

#### ARRANGEMENT OF PARAGRAPHS

##### PART I

##### PRELIMINARY

###### *Paragraph*

1. Interpretation.

##### PART II

##### PARLIAMENT

2. Appointment of Senators.
3. By-elections.
4. Termination of election petitions.

PART III

INCLUSIVE GOVERNMENT

5. President.
6. Vice-Presidents.
7. Prime Minister.
8. Deputy Prime Ministers.
9. Ministers and Deputy Ministers.
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11. Programme of Inclusive Government.
12. Duty of members of Inclusive Government to promote unity.

PART IV

GENERAL

13. Citizenship.
14. Committee on Standing Rules and Orders.
15. Membership of certain Commissions.
16. Preparation of new democratic constitution.
17. Evidence of Inter-party Agreement.

APPENDIX: Inter-party Agreement.

PART I

PRELIMINARY

*Interpretation*

1. In this Schedule—

“inception date” means the date on which the Inclusive Government is established:

Provided that, if the Inclusive Government has not been established before the date of commencement of the Nineteenth Amendment, that date of commencement shall be deemed to be the inception date;

“Inclusive Government” means the inclusive government established in accordance with the Inter-party Agreement;

“Inter-party Agreement” means the agreement, the terms of which are set out in Appendix 1 to this Schedule, which was signed at Harare on the 11th September, 2008, by—

- (a) Mr Robert Gabriel Mugabe, as president of ZANU-PF;
- (b) Mr Morgan Tsvangirai, as president of MDC-T;
- (c) Mr A. Mutambara, as president of MDC-M; and

(d) Mr T. Mbeki, the then President of the Republic of South Africa, as facilitator;

“MDC-M” means the formation of the political party known as the Movement for Democratic Change which is led by Mr Arthur Mutambara;

“MDC-T” means the formation of the political party known as the Movement for Democratic Change which is led by Mr Morgan Tsvangirai;

“Nineteenth Amendment” means the Constitution of Zimbabwe Amendment (No. 19) Act, 2008;

“ZANU-PF” means the political party known as the Zimbabwe African National Union (Patriotic Front).

## PART II

### PARLIAMENT

#### *Appointment of Senators*

2. (1) Of the eleven Senators appointed by the President in terms of section 34(1)(e) as amended by the Nineteenth Amendment—

- (a) five shall be appointed by the President in his own discretion;
- (b) four shall be appointed by the President, acting on the advice of the Prime Minister; and
- (c) two shall be appointed by the President, acting on the advice of the leader of MDC-M;

and any vacancies occurring among those Senators shall be filled in the same manner.

(3) The President shall ensure that the Senators referred to in subparagraph (1) are appointed without delay after the date of commencement of the Nineteenth Amendment, and that any vacancies occurring among the Senators so appointed are likewise filled without delay.

#### *By-elections*

3. If a vacancy occurs before the 15th September, 2009—

- (a) in the membership of the House of Assembly, among the members who represented a political party at the time of their election;
- (b) in the membership of the Senate, among the Senators who represented a political party at the time of their election in terms of section 34(1)(a); or
- (c) in the membership of a local authority, among the elected councillors who represented a political party at the time of their election;

a poll shall not be held to fill the vacancy, but instead the political party which the member or Senator concerned represented at the time of his election shall nominate, in accordance with the Electoral Law, a qualified person to fill the vacancy, and that person shall thereupon be declared to be duly elected to the House of Assembly or the Senate, as the case may be.

*Termination of election petitions*

4. No petition or other proceeding that was instituted before the date of commencement of the Nineteenth Amendment, to challenge the election of a Senator or member of the House of Assembly shall be proceeded with in any court, and no such petition or proceeding shall be instituted on or after that date to challenge the election of a Senator or member of the House of Assembly in the general election that was held in March 2008.

PART III

INCLUSIVE GOVERNMENT

*President*

5. Mr Robert G. Mugabe shall continue to hold office as President on and after the inception date, subject to the provisions of this Constitution.

*Vice-Presidents*

6. The President shall appoint not more than two Vice-Presidents and, in consultation with the Prime Minister, any remaining Vice-President and the Deputy Prime Ministers, may appoint persons to fill any vacancies in the office of Vice-President that may occur while the Inclusive Government remains in existence.

*Prime Minister*

7. (1) Mr Morgan R. Tsvangirai shall hold office as Prime Minister on and after the inception date, subject to the provisions of this Constitution:

(2) The President shall without delay, and in consultation with MDC-T, appoint a person to fill any vacancy in the office of Prime Minister that may occur while the Inclusive Government remains in existence.

*Deputy Prime Ministers*

8. (1) The offices of Deputy Prime Minister shall be held, on and after the inception date, by—

- (a) Mr Arthur G. O. Mutambara; and
- (b) a person nominated by the Prime Minister.

(2) The President shall without delay, and in consultation with the leader of the appropriate formation of the MDC, appoint a person to fill any vacancy in the office of Deputy Prime Minister that may occur while the Inclusive Government remains in existence.

(3) The President may remove a Deputy Prime Minister from office in consultation with the leader of the appropriate formation of the MDC.

*Ministers and Deputy Ministers*

9. (1) The President shall without delay appoint sufficient Ministers and Deputy Ministers to ensure that there are—

- (a) thirty-one Ministers, of whom—

- (i) fifteen are nominated by ZANU-PF;
  - (ii) thirteen are nominated by MDC-T; and
  - (iii) three are nominated by MDC-M;
- and
- (b) fifteen Deputy Ministers, of whom—
    - (i) eight are nominated by ZANU-PF;
    - (ii) six are nominated by MDC-T; and
    - (iii) one is nominated by MDC-M.
- (2) The portfolios of the Ministers and Deputy Ministers shall be determined by the President in consultation with the Prime Minister.
- (3) The President shall without delay, and in consultation with the appropriate party or formation concerned, appoint a person to fill any vacancy in the office of Minister or Deputy Minister that may occur while the Inclusive Government remains in existence.
- (4) The President may remove a Minister or Deputy Minister from office in consultation with the Prime Minister and ZANU-PF, MDC-T or MDC-M, as the case may be.

*National Security Council*

10. (1) In this paragraph—
- “Central Intelligence Organisation” means the intelligence service which, by whatever name called, formed part of or was based in the President’s Office before the inception date;
- “Director-General” means the person, by whatever title called, in command of the Central Intelligence Organisation.
- (2) The Inclusive Government shall without delay establish a National Security Council consisting of—
- (a) the President;
  - (b) the Prime Minister;
  - (c) the Vice-Presidents;
  - (d) the Deputy Prime Ministers;
  - (e) the chairman of the Public Service Commission;
  - (f) the Ministers responsible for the Defence Forces and the Police Force; and
  - (g) three other Ministers, of whom one each shall be nominated by the appropriate decision-making bodies of MDC-M, MDC-T and ZANU-PF.
- (3) The President or, in his absence, the Prime Minister shall preside at meetings of the National Security Council.
- (4) The National Security Council shall be responsible for—
- (a) overseeing and directing the operations and activities of the Defence Forces, the Police Force and any intelligence service of the Government, whether that service falls within or outside the Defence Forces or the Police Force;

- (b) ensuring that the operations and activities of the forces and services referred to in subparagraph (a) comply with this Constitution and any applicable law; and
  - (c) exercising any other function that the Cabinet may delegate to the Council.
- (5) An Act of Parliament may confer additional functions on the National Security Council.
- (6) To enable the National Security Council to exercise its responsibilities—
- (a) the Commanders of the Defence Forces;
  - (b) the Commissioner-General of the Police Force;
  - (c) the Director-General of the Central Intelligence Organisation;
- shall report to the National Security Council at such intervals and on such matters as the Council may direct, and shall carry out promptly any directions that the Council may give in regard to the operations and activities of the Force or organisation concerned.
- (7) Decisions of the National Security Council shall be made with the concurrence of at least five of its members, including the President and the Prime Minister.
- (8) Any decision of the National Security Council shall cease to have effect after seven days unless it has been ratified by the Cabinet.

*Programme of Inclusive Government*

11. The Inclusive Government and all its members shall take whatever legislative or administrative measures are necessary or appropriate to implement the objectives and programmes set out in the Inter-party Agreement.

*Duty of members of Inclusive Government to promote unity*

12. The President, the Prime Minister and all Vice-Presidents, Deputy Prime Ministers and Ministers shall exercise their functions in a manner that will promote cohesion within the Government and with due regard to the principles underlying the Inter-party Agreement.

PART IV

GENERAL

*Citizenship*

13. Before the establishment of the Citizen and Immigration Board referred to in section 8A applications for—
- (a) citizenship by registration may be made and authorised or rejected by the responsible authority in terms of the Citizenship of Zimbabwe Act [*Chapter 4:01*]; and
  - (b) permits to reside or work in Zimbabwe may be made and authorised or rejected by the responsible authority in terms of the Immigration Act [*Chapter 4:02*].

*Committee on Standing Rules and Orders*

14. The Committee on Standing Rules and Orders which was in existence immediately before the date of commencement of the Nineteenth Amendment shall stand dissolved on that date, and Parliament shall forthwith establish a new committee in accordance with section 40C.

*Membership of certain Commissions*

15. (1) The persons who, immediately before the date of commencement of the Nineteenth Amendment, were members of—

- (a) the Zimbabwe Electoral Commission established by section 61;
- (b) the Anti-Corruption Commission established by section 108A; and
- (c) the Zimbabwe Human Rights Commission established by section 108B;

shall cease to hold office on that date, and the President, the Committee on Standing Rules and Orders and the Judicial Service Commission shall forthwith take measures to reconstitute those Commissions in terms of the appropriate provisions of this Constitution as amended by the Nineteenth Amendment.

(2) With effect from the date of commencement of the Nineteenth Amendment, section 38 of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] is repealed, and any references in that Act to the Zimbabwe Media Commission shall be construed as references to the Commission established by section 108C as inserted by the Nineteenth Amendment.

(3) Any persons who, immediately before the date of commencement of the Nineteenth Amendment, were members of the Zimbabwe Media Commission established by section 38 of the Access to Information and Protection of Privacy Act [*Chapter 10:27*] shall cease to hold office on that date, and the President and the Committee on Standing Rules and Orders shall forthwith take measures to constitute the Commission in terms of section 108C as inserted by the Nineteenth Amendment.

*Preparation of new democratic constitution*

16. (1) In this paragraph—

“Select Committee on the Constitution” means the select committee of Parliament referred to in subparagraph (1).

(2) The members of the Inclusive Government and of Parliament shall take all appropriate steps to secure the appointment, within two months after the inception date, of a select committee of Parliament to prepare a new democratic constitution for Zimbabwe which is broadly acceptable to the people of Zimbabwe.

(3) The Select Committee on the Constitution shall be constituted by such number of members of the House of Assembly and the Senate as the Committee on Standing Rules and Orders may determine:

Provided that the Committee shall be generally representative of all the parties to the Inter-party Agreement.

(4) In preparing the new constitution, the Select Committee on the Constitution shall solicit views from as broad a spectrum of Zimbabwean society as possible, including—

- (a) women and associations representing women's interests;
- (b) traditional leaders;
- (c) trade unions and employers' associations;
- (d) representatives of commerce, industry, agriculture and mining;
- (e) non-governmental organisations and associations concerned with all aspects of governance and human rights; and
- (f) ordinary citizens.

(5) The Select Committee on the Constitution shall have all the powers that are necessary or appropriate to enable it to carry out its objects, including power—

- (a) to appoint subcommittees consisting wholly or partly of persons who are not Senators or members of the House of Assembly:

Provided that every such subcommittee shall be chaired by a Senator or a member of the House of Assembly; and

- (b) to conduct public hearings;

and the Inclusive Government shall ensure, if necessary by the enactment of appropriate legislation, that the Committee is able to exercise those powers to the fullest extent.

(6) Without derogation from subparagraph (4), the Select Committee on the Constitution shall—

- (a) within three months after its appointment, convene a fully representative conference of interested parties for the purpose of obtaining representations and suggestions for—

(i) matters to be contained in the new constitution; and

(ii) the manner in which the Committee should proceed in preparing the new constitution;

and

- (b) solicit views from Zimbabwean society for a period of four months after the conference referred to in subparagraph (a); and

- (c) within three months after the four-month period specified in subparagraph (b), present a draft of the new constitution to a second representative conference, and take into account any views that persons attending the conference may express in regard to the draft.

(7) Within one month after the conference referred to in subparagraph (c) of subparagraph (6), the Select Committee on the Constitution shall cause a draft of the new constitution to be tabled before the House of Assembly, whereupon the House may consider the draft for a period of not more than one month.

(8) Within three months after the House of Assembly has considered the draft of the new constitution in terms of subparagraph (7), the Inclusive Government shall cause the draft, amended to incorporate any changes that the House may have resolved should be made to it, to be put to the vote at a national referendum at which all registered voters shall be eligible to vote:

Provided that the draft shall be published in the *Gazette* at least one month before the date of the referendum.

(9) If the draft constitution is approved by a majority of the voters voting at the referendum referred to in subparagraph (8), the Inclusive Government shall cause the draft, as approved, to be presented as a Bill in the House of Assembly not later than three months after the date of the referendum, and—

- (a) Parliament shall consider the Bill without delay; and
- (b) if Parliament passes the Bill, the Inclusive Government shall cause it to be enacted within one month after the date of the Bill's final reading in the Senate or the House of Assembly, as the case may be.

(10) If—

- (a) the draft constitution is not approved by a majority of the voters voting at the referendum referred to in subparagraph (8); or
- (b) Parliament does not pass the Bill referred to in subparagraph (9), substantially in the same terms as it was approved at the referendum;

the Select Committee on the Constitution shall prepare a fresh draft of a new Constitution, and the provisions of subparagraphs (4) to (9) shall apply, *mutatis mutandis*, in regard to the fresh draft:

Provided that the reference in subparagraph (4) to the date of the Committee's appointment shall be construed as the date on which the draft constitution was rejected at the referendum or the date on which the Senate or the House of Assembly, as the case may be, failed to pass the Bill.

#### *Evidence of Inter-party Agreement*

17. A document purporting to be a copy of the Inter-party Agreement, and purporting to be certified as such by a responsible representative of any of the political parties or formations on whose behalf the Agreement was signed, shall be admissible in any court on its production by any person, as *prima facie* evidence of the provisions of the Agreement.

## APPENDIX

### INTER-PARTY AGREEMENT

*[Set out the terms of the Agreement]*