

CONSTITUTION OF ZIMBABWE AMENDMENT (No. 2) BILL, 2019

MEMORANDUM

The present Constitution of Zimbabwe became fully operational on the 22nd August, 2013, having been assented to on the 22nd May, 2013, by the President as the Constitution of Zimbabwe Amendment (No. 20) Act, and published on that same day.

Below is a clause-by-clause analysis of the Bill:

Clause 1

This clause sets out the Bill's short title.

Clauses 2, 3, 4, 5, 6, 7 and 8

These clauses dispense with the "running-mate" concept of the Vice-Presidency. Instead, the 2 Vice-Presidents will be chosen on the President's own authority.

Clauses 9

This clause adopts the provisions of paragraph 14 of the 6th Schedule to the Constitution as the operative provisions relating to the question of the succession to the Presidency (given that the Vice-Presidents are not elected as running mates).

Clause 10

Under this clause the President may appoint up to 7 (instead of 5) additional Ministers from outside Parliament.

Clause 11

This clause extends the provision for the party-list women members of the National Assembly by another two extra Parliaments (from 2 to 4 Parliaments), and makes provision for the party-list representation of youths in the National Assembly.

Clause 12

This clause de-couples ZEC's delimitation function from the population census held every 10 years.

Clause 13

This clause will allow the President acting on the recommendation of the JSC to appoint sitting judges to vacancies in the higher courts, without subjecting them to the public interview procedure.

Clause 14

This clause will allow Judges of the Constitutional Court and Supreme Court to extend their tenure after reaching the age of 70 annually for up to 5 years, subject to a favourable medical report as to the mental and physical fitness of the judge so to continue in office.

Clause 15

This clause rewords the functions of the Public Service (previously called the Civil Service).

Clause 16

This clause provides for the appointment and role of the Chief Secretary to the Office of the President and Cabinet and his or her deputies.

Clauses 17 and 18

These clauses create the office of the Public Protector, who will take over certain functions concerning public maladministration, etc, from the Zimbabwe Human Rights Commission.

Clause 19

This clause will provide for the appointment of the Prosecutor-General by the President on the advice of the JSC, without the intervention of a public interview procedure, and makes special provision for his or her removal for cause by a Tribunal.

Clauses 20, 21, 22 and 25

These clauses remove members of Parliament from the membership of provincial councils, merge the provisions relating to provincial and metropolitan councils by removing the special provisions relating to the latter (they will no longer be chaired by mayors, but be elected in terms of section 272 like provincial councils), and provide for the election of 10 of the members of Metropolitan Councils by a system of party-list proportional representation.

Clause 23

This clause uses the defined term “international organisations” in subsection (3)(a) instead of “foreign organisations or entities”, which term is undefined in the Constitution.

Clause 24

This clause repeals the definition of “Civil Service” and replaces it with a definition of “Public Service”.

Clause 27 and Schedule

This clause provides for minor amendments to the Constitution (mainly the substitution of references to the “Civil Service” or “Civil Service Commission” by references to the “Public Service” and “Public Service Commission”)

BILL

To amend the Constitution of Zimbabwe.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

5 This Act may be cited as the Constitution of Zimbabwe Amendment (No. 2) Act, 2019.

2 Interpretation

In this Act—

10 “the Constitution” means the Constitution of Zimbabwe set forth in the Schedule to the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

3 Amendment of section 91 of Constitution

Section 91 (“Qualifications for election as President and Vice-President”) of the Constitution is amended—

- 15 (a) in subsection (1) by the deletion of “or Vice-President”;
(b) in subsection (2) by the deletion of “or Vice-President”.

4 Amendment of section 92 of Constitution

Section 92 (“Election of President and Vice-Presidents”) of the Constitution is amended—

H.B. 23, 2019.]

- (a) by the deletion of the heading and the substitution of “Election of President”;
- (b) in subsection (1) by the deletion of “and two Vice-Presidents”;
- (c) by the repeal of subsections (2) and (3);
- (d) in subsection (4) by the deletion of “and Vice-Presidents”; 5
- (e) in subsection (5) by the deletion of “and Vice-Presidents”.

5 Amendment of section 93 of Constitution

Section 93 (“Challenge to presidential election”) of the Constitution is amended—

- (a) in subsection (1) by the deletion of “or Vice-President”;
- (b) by the repeal of subsection (2); 10
- (c) by the repeal of subsection (5).

6 Amendment of section 94 of Constitution

Section 94 (“Assumption of office by President and Vice-Presidents”) of the Constitution is amended—

- (a) by the repeal of subsection (1) and the substitution of the following subsection— 15

“(1) A person elected as President assumes office when he or she takes before the Chief Justice or the next most senior judge available, the oath of President in the form set out in the Third Schedule, which oath the President must take— 20

- (a) on the ninth day after he or she is declared to be elected; or
- (b) in the event of a challenge to the validity of his or her election, within forty-eight hours after the Constitutional Court has declared him or her to be the winner.”; 25
- (b) by the insertion of the following subsection after subsection (2)—

“(2a) As soon as the President assumes office, he or she shall appoint not more than two persons to be Vice-Presidents, who shall be persons qualified for election as President in terms of section 91(1), and who shall take, before the Chief Justice or the next most senior judge available, the oath of a Vice-President in the form set out in the Third Schedule.”. 30

7 Amendment of section 95 of Constitution

Section 95 (“Term of office by President and Vice-Presidents”) of the Constitution is amended— 35

- (a) in subsection (1) by the deletion of “or Vice-President”;
- (b) in subsection (2)—
 - (i) by the deletion of “or Vice-President”;
 - (ii) by the deletion of “their terms of office” and the substitution of “his or her term of office”; 40

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

“(3) The term of office of Vice-President commences on the day he or she is appointed by the President and sworn in as such in terms of section 94(2a).

(4) A Vice-President vacates his or her office upon resignation or removal from office by the President.”.

8 Amendment of section 97 of Constitution

5 Section 97 (“Removal of President or Vice-President from office”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Removal of President from office”;
- (b) in subsection (1)—
 - (i) by the deletion of “or a Vice-President”;
 - 10 (ii) by the insertion after paragraph (d) of the following paragraph—
 - “or
 - (e) no longer being qualified to hold office as President in terms of section 91(1) (c), or becoming a citizen (other than an honorary citizen) of another country during his or her tenure of office.;
 - 15
- (c) in subsection (2) by the deletion of “or Vice-President as the case may be”;
- (d) in subsection (3)—
 - (i) in paragraph (a) by the deletion of “or Vice-President”;
 - 20 (ii) in paragraph (b) by the deletion of “or Vice-President as the case may be.”;
 - (iii) in the resuming words by the deletion of “or Vice-President”.

9 New section substituted for section 101 of Constitution

Section 101 of the Constitution is repealed and the following is substituted—

25 “101 Succession in event of death, resignation or incapacity of President or Vice-President

(1) Subject to subsections (2) and (3), if the person elected President in any election dies, resigns or is removed from office—

- (a) the Vice-President or, where there are two Vice-Presidents, the Vice-President who was last nominated to act in terms of section 100, acts as President until a new President assumes office in terms of subsection (2); and
- (b) the vacancy in the office of President must be filled by a nominee of the political party which the President represented when he or she stood for election.
- 35

(2) A political party which is entitled to nominate a person in terms of subsection (1)(b) must notify the Speaker of the nominee’s name within ninety days after the vacancy occurred in the office of President, and thereupon the nominee assumes office as President after taking the oath of President in terms of section 94, which oath the nominee must take within forty-eight hours after the Speaker was notified of his or her name.

(3) In the event of the death, resignation or removal from office of a person who is elected President in an election and who did not represent a political party when he or she stood for election, the Vice-President or, if there are two Vice-Presidents, the Vice-President who was last nominated to act in terms of section 100, assumes office as President.”.

10 New section substituted for section 104 of Constitution

Section 104 (“Appointment of Ministers and Deputy Ministers”)(3) of the Constitution is amended by the deletion of “up to five” and the substitution of “up to seven”.

11 Amendment of section 124 of Constitution

5

Section 124 (“Composition of National Assembly”) of the Constitution is amended in subsection (1)—

(a) in paragraph (b) by the deletion of “first two Parliaments” and the substitution of “first four Parliaments”;

(b) by the insertion of the following paragraph after paragraph (b)— 10

“(c) a further additional ten youth members, that is, persons aged from twenty-one to thirty-five years of age, one from each of the provinces into which Zimbabwe is divided, elected under a party-list system of proportional representation—

(i) which is based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces; and 15

(ii) in which male and female candidates are listed alternately.”.

12 Amendment of section 161 of Constitution

Section 161 (“Delimitation of electoral boundaries”)(1) of the Constitution is amended by the deletion of “so as to fall as soon as possible after a population census”. 20

13 Amendment of section 180 of Constitution

Section 180 (“Appointment of judges”) of the Constitution is amended—

(a) in subsection (4) by the deletion of “Whenever it is necessary to appoint a judge other than the Chief Justice, Deputy Chief Justice or Judge President of the High Court” and the substitution of “Subject to section (4a), whenever it is necessary to appoint a judge other than the Chief Justice, Deputy Chief Justice, Judge President of the High Court or a sitting judge of the Supreme Court or High Court,”; 25

(b) by the insertion of the following subsection after subsection (4)— 30

“(4a) Notwithstanding subsection (4) the President, acting on the recommendation of the Judicial Service Commission, may appoint a sitting judge of the Supreme Court or High Court to be a judge of a higher court whenever a vacancy arises in such court.”.

14 New section substituted for section 186 of Constitution

35

Section 186 of the Constitution is repealed and the following is substituted—

“186 Tenure of office of judges

(1) Judges of the Constitutional Court are appointed for a non-renewable term of not more than fifteen years, but—

(a) they must retire earlier if they reach the age of seventy years, unless they elect to continue in office for a further period of one year at a time not exceeding a continuous period of an additional five years, in which case each such election shall be subject to the submission to, and acceptance by, the President, after consultation with the Judicial Service 40 45

Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office;

- (b) after the completion of their term, they may be appointed as judges of the Supreme Court or the High Court, at their option, if they are eligible for such appointment.

(2) Judges of the Supreme Court hold office from the date of their assumption of office until they reach the age of seventy years, when they must either retire or elect to continue in office for a further period of one year at a time not exceeding a continuous period of an additional five years, in which case each such election shall be subject to the submission to, and acceptance by, the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office.

(3) Judges of the High Court and any other judges hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire.

(4) A person may be appointed as a judge of the Supreme Court, the High Court and any other court for a fixed term, but if a person is so appointed, other than in an acting capacity, he or she ceases to be a judge on reaching the age of seventy-five years (in the case of a judge of the Supreme Court) or seventy years (in the case of a judge of the High Court or any other court) even if the term of his or her appointment has not expired.

(5) Even though a judge has resigned or reached the age of retirement or, in the case of a judge of the Constitutional Court, reached the end of his or her term of office, he or she may continue to sit as a judge for the purpose of dealing with any proceedings commenced before him or her while he or she was a judge.

(6) A judge may resign from his or her office at any time by written notice to the President given through the Judicial Service Commission.

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

15 Amendment of section 199 of Constitution

Section 199 (“Civil Service”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Public Service”;
- (b) by the repeal of subsection (1) and the substitution of—

“(1) There is a single Public Service to implement the policies of the Executive branch of the Government, to assist it in the administration of Zimbabwe and to deliver public services to the people.”;

- (c) in subsections (2) and (3) by the deletion of “Civil Service” wherever it occurs and the substitution of “Public Service”.

16 New section inserted in Constitution

The Constitution is amended in Chapter 10 by the insertion after section 204 of the following section—

“204A Chief Secretary to office of President and Cabinet

(1) The Chief Secretary to the office of the President and Cabinet and his or her deputies are appointed by the President after consultation with the Public Service Commission.

(2) The Chief Secretary to the office of the President and Cabinet is the most senior member of the Public Service, and Permanent Secretaries of Ministries appointed in terms of section 205 shall report to the Chief Secretary on any matter affecting them as a class. 5

(3) The terms of office and conditions of service of the Chief Secretary to the office of the President and Cabinet and his or her deputies shall be as fixed by the President.”. 10

17 Amendment of section 243 of Constitution

Section 243 (“Functions of Zimbabwe Human Rights Commission”) of the Constitution is amended—

(a) in subsection (1) by the repeal of paragraph (e); 15

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

“(1a) Subsection (1)(d), (f), (g), and (h) do not apply to alleged or complained abuses of power or maladministration on the part of any organ of the State or public institutions or officers of those organs or institutions, for the investigation or redress of which the Public Protector appointed in terms of section 244A shall be responsible.”; 20

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

“(3) 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 244B(1), where it determines that the dominant question in issue involves a matter pertinent to its function referred to in subsection (1)(f); or 25

(b) refer to the Public Protector for investigation in terms of section 244B(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.”. 30

18 New Part inserted in Chapter 13 of Constitution

Chapter 13 (“Independent Commissions and Offices Supporting Democracy”) of the Constitution is amended by the insertion of the following Part after Part 3— 35

“PART 3A

PUBLIC PROTECTOR

244A 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. 40

(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.

5

(4) The Deputy Public Protector shall —

(a) assist the Public Protector in the exercise of his or her functions and duties and the Public Protector may authorise him or her to exercise any of his or her functions or duties on his or her behalf;

10

(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 or her office.

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

15

244B Functions of Public Protector

(1) Subject to section 243(3), 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.

20

(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 —

25

(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.

30

(3) The Public Protector shall have the functions and powers of the Zimbabwe Human Rights Commission referred to in section 243(1) (d), (f), (g), and (h) where the person, authority or offender concerned is an organ of the State or a public institution or any officer of that organ or institution.

35

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

40 19 Amendment of section 259 of Constitution

Section 259 (“Prosecutor-General and other officers”) of the Constitution is amended —

(a) in subsection (2) by the deletion of “Civil Service” and the substitution of “Public Service”;

45

(b) in subsection (3) by the deletion of “following the procedure for the appointment of a judge”;

(c) by the repeal of subsection (7) and the substitution of the following subsections —

“(7) The Prosecutor-General may be removed from office on the following grounds—

- (a) inability to perform the functions of his or her office due to mental or physical incapacity; or
- (b) gross incompetence; or
- (c) serious misconduct.”.

5

(7a) If the President considers that the question of removing the Prosecutor-General from office ought to be investigated, the President must appoint a tribunal to inquire into the matter.

(7b) A tribunal appointed under subsection (7a) must consist of at least three members appointed by the President, of whom—

10

- (a) two must qualify to be or have served as Supreme Court judges; and
- (b) one must qualify to be or has served as a High Court judge or holds or has held office as a judge of a court with unlimited jurisdiction in criminal or civil matters in a country whose common law is Roman-Dutch or English, and English is an officially recognised language.

15

(7c) The President must designate one of the members of the tribunal to be chairperson of the tribunal.

20

(7d) The tribunal must inquire into the question of removing the Prosecutor-General concerned from office and, having done so, must report its findings to the President and recommend whether or not the Prosecutor-General should be removed from office.

(7e) A tribunal appointed under this section has the same rights and powers as commissioners under the Commissions of Inquiry Act [*Chapter 10:07*], or any law that replaces that Act.

25

(7f) If the question of removing the Prosecutor-General from office has been referred to a tribunal under this section, the Prosecutor-General is suspended from office until the President, on the recommendation of the tribunal, revokes the suspension or removes the judge from office.

30

(7g) The Act of Parliament referred to in subsection (10) may empower the Board of the National Prosecuting Authority or a tribunal appointed under this section to require the Prosecutor-General to submit to a medical examination by a medical board established for that purpose, in order to ascertain his or her physical or mental health.”.

35

20 New section substituted for sections 268 and 269 of Constitution

Sections 268 and 269 of the Constitution are repealed and the following sections are substituted—

40

“268 Provincial and metropolitan councils

(1) There is a provincial council for each province and a metropolitan council for each metropolitan province, consisting of—

- (a) a chairperson of the council, elected in terms of section 272;
- (b) the mayors and chairpersons, by whatever title they are called, of all urban and rural local authorities in the province concerned; and

45

- (c) ten persons elected by a system of proportional representation referred to in subsection (3).

5 (2) A person is qualified to be elected to a provincial or metropolitan council in terms of subsection (1)(c) if he or she is qualified for election as a Member of the National Assembly.

(3) Elections to provincial and metropolitan councils must be conducted in accordance with the Electoral Law, which must ensure that the persons referred to in subsection (1)(c) are elected under a party-list system of proportional representation—

- 10 (a) which is based on the votes cast for candidates representing political parties in the province concerned in the general election for Members of the National Assembly; and
 (b) in which male and female candidates are listed alternately, every list being headed by a female candidate.

15 (4) The seat of a member of a provincial or metropolitan council referred to in—

- (a) paragraph (b) of subsection (1) becomes vacant if the member ceases to be a mayor or chairperson of a local authority in the province concerned;
 20 (b) paragraph (c) of subsection (1) becomes vacant in the circumstances set out in section 129, as if the member were a Member of Parliament.”.

21 New section substituted for section 271 of Constitution

Section 271 of the Constitution is repealed and the following is substituted—

25 “271 Committees of provincial and metropolitan councils

For the better exercise of their functions, provincial and metropolitan councils may establish committees but each such committee must be presided over by a member referred to in section 268(1)(c).”.

22 Amendment of section 272 of Constitution

30 Section 272 (“Chairpersons of provincial councils”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Chairpersons of provincial and metropolitan councils”;
 (b) in subsection (1) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
 35 (c) in subsection (2) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
 (d) in subsection (3)—
 (i) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
 40 (ii) by the deletion of “Civil Service” and the substitution of “Public Service”;
 (e) in subsections (4) and (5) by the deletion of “provincial council” wherever it occurs and the substitution of “provincial or metropolitan council”;
 45 (f) in subsections (6)—
 (i) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;

- (ii) in paragraphs (a), (b) and (c) by the deletion of “the provincial council” and the substitution of “the provincial or metropolitan council”;
- (g) in subsection (7) by the deletion of “provincial councils” and the substitution of “provincial or metropolitan councils”; 5
- (h) in subsection (8) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
- (i) by the repeal of subsection (9).

23 Amendment of section 327 of Constitution

Section 327 (“International conventions, treaties and agreements”) (3) is amended in paragraph (b) by the deletion of “foreign organisations or entities” and the substitution of “international organisations”. 10

24 Amendment of section 332 of Constitution

Section 332 (“Definitions”) of the Constitution is amended—

- (a) by the repeal of the definition of “Civil Service”; 15
- (b) by the insertion of the following definition—
 ““Public Service” has the meaning given to it by section 199;”.

25 Amendment of section 341 of Constitution

Section 341 (“Resignations”)(1) of the Constitution is amended by the repeal of paragraphs (f) and (g) and the substitution of— 20

- “(f) member of a provincial or metropolitan council, the notice must be addressed to the chairperson of the council;”.

26 Amendment of Sixth Schedule to Constitution

The Sixth Schedule (“Commencement of this Constitution, Transitional Provisions and Savings”) to the Constitution is amended by the repeal of subparagraphs (d) and (e) of paragraph 11 (“Interpretation of existing enactments”)(1). 25

27 Minor amendments to Cap. 2:13

The provisions of the Constitution specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

SCHEDULE (Section 27) 30

MINOR AMENDMENTS TO CONSTITUTION

| <i>Provision</i> | <i>Extent of Amendment</i> | |
|---|--|----|
| Sections 7(b), 154(5)(b), Chapter 19 (Title), 200(1), (2), (3), (4) and (5), 201 (heading and provision), 203(1)(a), (b), (c), (d), (e), (f), (g) and (h), 309(1) | By the deletion of “the Civil Service” and the substitution of “the Public Service”. | 35 |
| Sections 189(1)(g), 202 (heading), (1) and (2), 203 (heading), (1); 203 (4), 205(1), 217(1), 222(1) | By the deletion of “Civil Service Commission” and the substitution of “Public Service Commission”. | 40 |
| Sections 203(2) and (3) | By the deletion of “Civil Service Commission” and “Civil Service” and the substitution of “Public Service Commission” and “Public Service” respectively. | |
| Section 203(4) | By the deletion of “Civil Service” wherever it occurs and the substitution of “Public Service”. | |