



W/O 3/93

Campaigners for Human Rights

WHAT YOU MUST KNOW ABOUT CONSTITUTION AMENDMENT BILL (No.2)-H.B.23 2019

Background to the Amendment Bill

On 17 December 2019 Cabinet approved the formulation of the Constitutional Amendment (No.2)-H.B.23, 2019 that would amend several provisions of the Constitution of Zimbabwe. The Bill was published in a Government Gazette Extraordinary on 31 December 2019. The Bill was published again on 17 January 2020 to correct the anomaly which had occurred in the initial publication where the clerk and not the speaker had gazetted the Bill contrary to the Constitution.

The proposed changes in the Amendment Bill

Among a number of issues, the Bill proposes amendments to provisions relating to the following areas

- Judiciary: Appointment of judges to the superior courts, retirement ages of judges
- Prosecution: Appointment and removal of the Prosecutor General
- Composition of executive: Number of ministers
- Legislative oversight role: Approval of agreements

Key issues

Erosion of the Mandate of the Zimbabwe Human Rights Commission - The proposal seeks to create the office of the Public Protector, appointed by the President, who will take over certain functions concerning public maladministration, from the Zimbabwe Human Rights Commission.

Removal of Parliamentary Oversight - The removal of the Parliament's power to approve the government's bi-lateral loan agreements paralyses Parliament in playing its oversight role of holding the executive to account regarding fiscal accountability

Appointment of Judges - The proposed changes to the process of appointing judges without subjecting them to a public interview and extending the retirement age of judges in office erodes the independence of the judiciary and subjects it to the control of the executive.

Appointment of the Prosecutor General - The proposed changes to the appointment of the Prosecutor-General who will be appointed by the President on the advice of the Judicial

Services Commission, without the intervention of a public interview procedure, and makes special provision for his or her removal for cause by a Tribunal.

The critical weaknesses of the amendment bill

The Amendment Bill is anti-rights, anti-democracy, anti-democracy and anti-transparency. It seeks to reverse the gains that were celebrated in the 2013 Constitution which was, through the COPAC process, endorsed by 94,5% of the Zimbabweans. The Bill bi-literally and unjustifiably consolidates power into the hands of the President. This creates an autocratic government which is ring fenced against the checks and balances presented by other arms of government.

The Bill seeks to introduce the office of the Office of the Public Protector. Where the offender is a public official, the Public Protector would overtake the following functions from the Zimbabwe Human Rights Commission (ZHRC):

- Receiving and acting complaints from the public
- Investigate human rights abuses by public officials
- Secure redress for victims of human rights abuses by public officials
- To direct the Commissioner General of Police to investigate cases of human rights violations

There is no justifiable reason why the above functions should be taken from an independent body such as the ZHRC to be placed in the hands of an official appointed by the President. This is a threat against transparency and separation of powers. It further threatens the independence and impartiality of both the Public Protector and Zimbabwe Human Rights Commission.

The Bill is anti-transparency as it takes away the power from parliament to approve the government's bi-lateral loan agreement. This paralyses the parliament's oversight role of holding the Executive to account regarding its fiscal accountability.

Currently, judges are subjected to a public interview which are normally televised on national TV. The amendment proposes to scrap this practice and instead have judges appointed by the President in consultation with the Judicial Services Commission. In addition, the amendment seeks to extend the retirement age of judges to a maximum of 75 years of age if they pass unspecified mental and physical fitness tests. This proposed amendment undermines the independence of judges. They will no longer be appointed on merit but on political loyalty. In addition, any extension of the in tenure in office before retirement may be subjected to the whims of the President. Without security of tenure, judges become more susceptible to political interference. Judicial independence requires 'the absence of certain connections' between the judiciary and other arms of government to secure impartiality in the conduct of the judicial role. As custodians of the constitution, with the duty of applying the Constitutional provisions and value, to enable the judiciary to apply the law without fear or favour, the authority must not be derived or seemingly appear to be derived from appointments and approvals from the President.

In the same vein, the Prosecutor General would also be appointed without being subjected to an interview. Significantly, if the Prosecutor General commits an offence that may warrant his removal from office, it is the President who appoints a special tribunal to investigate the matter. Such tribunal would report its findings, not to the public, but to the President. It would

also make recommendations on whether or not the Prosecutor general must be removed from office but the President makes the final decision.

In What way is the Bill retrogressive?

- It threatens the independence and impartiality of the Judiciary and the Prosecutor General. Instead of an appointment process that emphasises merit, the Bill wants to promote loyalty. Zimbabwe has a legacy of human rights violations and electoral contestation. This requires a stronger and independent judiciary.
- It ring-fences the Executive against transparency and accountability as it takes away the oversight role of the parliament in so far as fiscal responsibility is concerned. Zimbabwe is rocked by allegations of corruption and abuse of power. It requires more transparency not less.
- It interferes with the duties of the ZHRC, an independent commission established in accordance with the Constitution as it takes away its mandate and vest it in the office of the Public Protector. Zimbabwe does not need more institutions. It requires stronger and independent institutions.

What must the government do?

The government must refrain from amending the Constitution and speed up the process of aligning the Constitution with other legislative enactments of Zimbabwe.

What can the public do now?

The people must reject this bill. This can be done in various ways.

Firstly, the public can write to the Parliament of Zimbabwe with their views on the Bill. Write to: The Clerk of Parliament- Attention: Portfolio Committee on Justice Legal and Parliamentary Affairs; Thematic Committee on Peace and Security; Thematic Committee on Human Rights, P.O. Box CY 298, Causeway, Harare; Or email: bills@parlzim.gov.zw

Secondly, speak to you member of Parliament. Visit www.zimrights.org.zw to get the contact details of your MP.

In addition, the public must make a commitment to attend the Public Hearings on the Constitution Amendment Bill No. 2. All information is tabled below.

Date	Place	Venue	Time
15 June	Chinhoyi	Cookie Hall	10:00-12:00pm
16 June	Gokwe	Nembudziya Governement Complex & Open Space	10am-12:00pm
17 June	Sanyati	Nyimo Growth Point Hall Chief Court	10am-12:00pm
18 June	Ngezi- Zimplats	Baobob Stadium	10am-12:00pm
15 June	Gweru	Chiundura Business Centre	10:00am-12:00pm
16 June	Mberengwa	Mberengwa Education Service	10:00am-12:00pm

17 June	Chivi	Chivi RDC Centre	10:00am-12:00pm
18 June	Masvingo	Mucheke Hall	10:00am-12:00pm
15 June	Lupane	Lupane Community Hall	10:00am-12:00pm
16 June	Gwanda	Gwanda Municipality Hall	10:00am-12:00pm
17 June	Plumtree	TMB Hall	10:00am-12:00pm
17 June	Bulawayo	Bulawayo Selbourne Hotel	14:30pm-16:30pm
18 June	Mbembezi	Fingo Hall	10:00am-12:00pm
15 June	Mt Darwin	Mt Darwin Sports Club	10:00am-12:00pm
16 June	Marondera	Mbuya Nehanda Hall	10:00am-12:00pm
17 June	Mutare	Queens Hall	10:00am-12:00pm
18 June	Rusape	602 Hall	10:00am-12:00pm

Can ZimRights Assist?

ZimRights members will be present in all the provinces. Get in touch with us in the details below for information on information centres close to you. Our coordinators will be able to give you all the information you need about the process, give you the Constitutional Amendment Bill, the detailed analysis, as well as explain to you what the Bill means. If you have problems accessing the Parliament, our Coordinators will gladly receive your submissions for onward submission. Meanwhile, please keep a tag on our social network pages for the latest developments regarding the Bill.

You have the right to know, and to participate!

Zimbabwe Human Rights Association

Tel: +263 242 707278

Hotline: +263 734 053 955

www.zimrights.org.zw

info@zimrights.org.zw