

NATIONAL CONSTITUTIONAL ASSEMBLY

PROPOSED DRAFT

CONSTITUTION FOR ZIMBABWE

STATEMENT BY THE NCA

This Draft Constitution is being put forward to the people of Zimbabwe by the National Constitutional Assembly (NCA). In doing this, the NCA is acting on behalf, and under the instructions, of a wide spectrum of stakeholders who include: thousands of individual Zimbabweans in the NCA; churches and other religious groups; trade unions; women's organisations; youth groups and student movements; human rights organisations; media groups, political parties and Members of Parliament.

These stakeholders met as an ALL STAKEHOLDERS CONFERENCE on 31 March 2001 under the auspices of the NCA to agree on, and define, a process of bringing about a new, democratic and genuinely people driven constitution. The conference itself was the culmination of work on constitutional reform by the NCA stretching over a period of four years.

At its inception in May 1997, the NCA insisted that constitutional reform in this country must be guided by the golden principle that ***IT IS AN INALIENABLE RIGHT*** of the ***PEOPLE TO MAKE A CONSTITUTION FOR THEMSELVES***. This principle remains at the core of the NCA.

This draft constitution was put together after taking into account all the inputs which the NCA, working through its own structures and those of its member institutions, received between May, 1997 and 01 December 2001 (a period of 4 1/2 years). It also accommodates the views, which Zimbabweans have expressed in other fora such as the Constitutional Commission of Zimbabwe.

The All Stakeholders Conference of 31 March 2001, mandated the NCA to publish the first Draft Constitution by 30 September 2001. Acting in terms of that mandate, the NCA launched the 1st Draft on 28 September 2001 and thereafter the following events took place.

- For the whole of October and November 2001, members of the public studied and debated the 1st Draft Constitution.
- The NCA, during that period of October and November 2001, facilitated an extensive exchange of views on the draft, isolating areas of consensus and dissensus.
- On 01 December 2001, the NCA convened an ALL STAKEHOLDERS CONSTITUTIONAL CONFERENCE, which was attended by the widest possible cross-section of Zimbabweans to debate the draft and agree on a Final Draft.

This is now the Final Draft, which from the evidence available to the NCA, has been endorsed by a broad section of the people of Zimbabwe. It is being presented to the government of Zimbabwe with a DEMAND that it be enacted into law. The Government must among other things, facilitate the holding of a referendum on any future

Constitution of Zimbabwe. The NCA will be leading a process of ensuring that Zimbabwe eventually has a new, democratic and people-driven constitution. This Final Draft represents such a constitution and the NCA will advocate for its enactment into law.

SUMMARY OF THE MAIN FEATURES OF THIS DRAFT CONSTITUTION

In order to understand the main features of this Draft Constitution, it is important to revisit the main reasons why the NCA rejected the Draft by the Constitutional Commission of Zimbabwe and vigorously campaigned for a NO vote in the referendum of February 2000. The reasons are repeated here.

Some of the reasons why NCA campaigned for a NO Vote

1. Process

The process of making a constitution is as important as the content. The people must determine a process of constitution – making which they can dominate. In this way, the principle of democracy is fully entrenched as people will not, thereafter, allow any future government to change the constitution as it wishes. At the same time, a process determined and dominated by the people will ensure that their wishes are put into the constitution. The Constitutional Commission failed in this regard. It was appointed by the President, its timetable was set by the President and the President had the final say over what went into its Draft Constitution. After the Commission produced its draft, it did not go back to the people to check with them whether or not their inputs had been incorporated. Instead, it hurriedly submitted its Draft to the President, who actually changed some of the provisions. The Commission itself also ignored a number of issues raised by the people.

The NCA process is totally different. For instance, the First Draft produced at the end of September 2001, unlike the Draft of the Constitutional Commission, was presented to the people for further debate and for them to say whether or not it reflected their views. In this way, the real views of the people could not be ignored. This Final Draft was produced at the Second All Stakeholders Conference in December 2001 and takes into account all the views expressed by the people.

2. Content

The Draft of the Constitutional Commission had a number of provisions, which were not only contrary to what the people said, but were also not good for Zimbabwe. Some of them are as follows:

- ***Executive Presidency***

The most serious problem in our current constitution is an all-powerful president with all sorts of powers. The Draft of the Constitutional Commission still provided for an executive president with almost similar powers to the current president, such as

appointing and dismissing most public figures, exercising the prerogative of mercy, dissolving Parliament, declaring a state of emergency and so on.

- ***An Unworkable System of government***

In order to mislead the people into believing that it had answered their call for reduced executive powers, the Draft of the Constitutional Commission introduced a Prime Minister whose role was unclear and who could not work without hindrance from the President. For instance, the Prime Minister was said to be the head of government, yet his/her cabinet was chaired by the President. The system had every potential to lead to political instability and an ineffective government.

- ***A weak Parliament***

The current Parliament cannot easily pass a vote of no confidence in an incompetent government of the day. On the contrary, the President has powers to dissolve Parliament at anytime. The Draft of the Constitutional Commission did not change this and continued with a situation where a law passed by Parliament could be overridden by the President.

- ***A Window dressing Senate***

The Draft of the Constitutional Commission created a Senate, which had no powers at all. The Senate in the Draft was used to create the impression that the President's powers were being checked by the Senate when in fact it was so weak that it could not effectively provide checks against the President.

- ***A narrow Bill of Rights***

The Bill of Rights in the Draft of the Constitutional Commission was narrow in scope and did not protect some fundamental rights and freedoms. For instance, the freedom of the press, the right to education, the right of workers to strike, the right to health and full gender equality were not covered in the Bill of Rights.

- ***Inadequate provisions for free and fair elections***

The Draft of the Constitutional Commission did not provide for a truly independent Electoral Commission. It only used the word "Independent" but the Commission provided therein was nothing of the sort.

- ***No devolution of governmental powers to the people at appropriate levels***

The Draft of the Constitutional Commission did not provide an appropriate framework for devolution of governmental powers to provinces and other local structures.

Key Features of this Draft

This draft seeks to address the key issues of governance in Zimbabwe and has taken into account the NCA's major concerns about the Draft of the Constitutional Commission. Its main focus is on having an accountable government through various checks and balances. Here are the main features:

- ***Non Executive President and an Executive Prime Minister***

The executive presidency was overwhelmingly rejected. This draft proposes a ceremonial President and an executive Prime Minister. The latter is a member of the National Assembly and is responsible and accountable to it. A unique feature demanded by the people of Zimbabwe is that the Prime Minister be directly elected by voters, not by Parliament.

- ***Parliamentary System of Government***

The Prime Minister, as head of government, is required to appoint most of his or her ministers from Parliament. Parliament has been given power to pass a vote of no confidence in the government, in which case, the Prime Minister will be required to resign. Parliament is also empowered to pass a vote of no confidence in a Minister, in which case that Minister must be removed. Although the Prime minister is directly elected by voters, Parliament may, by a 60% majority, remove him or her from office and this emphasises a fundamental departure from the executive President who has powers to dissolve Parliament should it pass a vote of no confidence in him or her.

- ***Two Chamber Parliament***

Parliament is composed of two chambers; a National Assembly and a Senate. There are adequate provisions to make Parliament really powerful. For example, most appointments by the executive require the approval of either the National Assembly or the Senate.

- ***Representation of Interest Groups in the Senate***

The Draft proposes the representation of interest groups in the Senate. The groups include women, youths, the disabled, trade unions, ex-combatants, farmers and business. These representatives will replace presidential appointees and will be elected by the National Assembly from a shortlist submitted by members of the public.

- ***Mixed Electoral System***

It is proposed that for the National Assembly, half the MPs be elected to represent constituencies under the "winner-take-all" system and the other half under a system of proportional representation.

- ***Recall of Members of Parliament***

There is a proposed provision for the electorate to be able to recall an incompetent or underperforming Member of Parliament.

- ***Meaningful Bill of Rights***

The Bill of Rights proposed in this Draft is broad and meaningful. In addition to the well known civil and political rights, some of the rights included are: right to education, right to health, right to a clean environment, right to strike, rights of disabled persons and so on. Minority rights have also been protected.

- ***Death Penalty***

As part of the Bill of Rights, this Draft proposes that the death penalty be abolished in Zimbabwe in respect of all other offences except serious cases of murder.

- ***Free and Fair Elections***

The Draft guarantees a multi-party system based on regular, free and fair elections. To achieve this ideal, the Bill of Rights provides a set of political rights and the Draft creates a truly Independent Electoral Commission to manage the whole electoral process.

- ***Independent Commissions to enhance democracy***

A number of independent bodies are created to enhance democracy. These include a Human Rights Commission, an Anti-Corruption Commission and a strong Auditor-General.

- ***Devolution***

The Draft answers the call by many Zimbabweans for the devolution of governmental powers to people in provinces and other levels. To this extent, it provides for a system of provincial governments with a provincial assembly and an executive council headed by an elected Governor.

- ***Land Question***

This Draft recognises the critical importance of land. It therefore allows government to compulsorily acquire land for equitable redistribution but requires fair compensation to be paid.

CONSTITUTION OF ZIMBABWE

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PREAMBLE

We, the people of Zimbabwe

ACCEPTING the supremacy of God:

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

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

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

IN SOLEMN commitment to the future of Zimbabwe, as a nation of people with diverse cultures and guaranteeing the development of all the people of Zimbabwe in national harmony and in a spirit of friendship and peace with all peoples of the world;

AND HAVING fully participated in the constitution-making process.

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

CHAPTER 1

THE REPUBLIC, THE CONSTITUTION, NATIONAL EMBLEMS AND LANGUAGES

1. The Republic of Zimbabwe

The Republic of Zimbabwe is one sovereign and democratic state founded on the following principles and values:

- (a) Supremacy of the constitution and rule of law;
- (b) The inherent dignity and worth of each human being;
- (c) The derivation of all legal and political authority of the state from the people, universal adult suffrage, a multi-party system of democratic government and regular, free and fair elections;
- (d) Equal status of all persons;
- (e) Respect for fundamental human rights and freedoms;
- (f) National unity, peace and stability;
- (g) Devolution of governmental functions and powers to the people in the provinces and other appropriate levels;

2. Supremacy of the Constitution

- (i) This Constitution is the supreme and fundamental law of Zimbabwe, and if any other law, custom, conduct, practice or measure is inconsistent with this Constitution, that other law, custom, conducts, practice or measure will be void.
- (ii) The obligations imposed by this Constitution must be fulfilled.
- (iii) This Constitution binds all executive, legislative and judicial organs of the state at all levels of government and all other persons.

3. National Flag, National Anthem, Public Seal and coat of arms

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

4. Languages

- (1) The official languages of Zimbabwe are English, Shona, Ndebele, Venda, Nambya, Shangaan, Kalanga, Suthu and Tonga.
- (2) English is the language of record.
- (3) Institutions and agencies of government at every level must-
 - (a) ensure that all the official languages are respected and treated equitably; and

- (b) take into account the language preferences of people affected by any governmental measure or communication.
- (4) The State must take positive measures to promote and advance the use of all languages spoken in Zimbabwe, including sign language and must create conditions for the development of these languages.

CHAPTER 2

CITIZENSHIP

5. *Continuation of Citizenship*

Every person who, immediately before the appointed day, was a citizen of Zimbabwe under any existing law will continue to be a citizen of Zimbabwe after the appointed day.

6. *Citizenship by birth*

Everyone born in or outside Zimbabwe is a Zimbabwean citizen by birth if either of his or her parents is a Zimbabwean citizen at the time of his or her birth.

7. *Powers of Parliament regarding citizenship*

An Act of Parliament must make provision for the acquisition or loss of citizenship by registration, provided any person who marries a Zimbabwean citizen will be entitled to become a Zimbabwean citizen by registration.

CHAPTER 3

BILL OF RIGHTS

Part 1

BINDING NATURE OF RIGHTS AND INTERPRETATION OF RIGHTS

8. *Application of Chapter 3*

- (a) This Chapter binds the Executive, Parliament, the Judiciary and all institutions and agencies of government at every level.
- (b) This Chapter binds not only human beings but also juristic persons to the extent that it is applicable to them, taking into account the right or freedom concerned and any duty imposed by it.
- (c) Juristic persons as well as human beings are entitled to the rights and freedoms set out in this Chapter, to the extent that those rights and freedoms can appropriately be extended to juristic persons.

9. *Interpretation of Chapter 3*

- (1) When interpreting this Chapter, a court, tribunal, forum or body must—
 - (a) give full effect to the rights and freedoms set out in this Chapter;
 - (b) promote the values that underlie an open and democratic society based on human dignity, equality and freedom and in particular, the values set out in Section 1.
 - (c) take into account international law, treaties and conventions;
 - (d) consider relevant foreign law interpreting international law, treaties and conventions;in addition to considering all other relevant factors that are to be taken into account in the interpretation of an enactment such as a Constitution.
- (2) When interpreting a written law, and when developing the common law or traditional customary law, every court, tribunal and forum must be guided by the spirit and objects of this Chapter.

10. *Chapter 3 does not preclude existence of other rights*

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

11. ***Protection of fundamental human rights and freedoms and application of Chapter 3***

- (1) The fundamental human rights and freedoms enshrined in this Chapter must be respected and upheld by the executive, legislature and judiciary and all organs of the government and its agencies, including local government.
- (2) Where applicable, the fundamental human rights and freedoms enshrined in this Chapter must be respected and upheld by all natural and juristic persons.
- (3) Enforcement of the fundamental rights and freedoms enshrined in this Chapter will be in the manner prescribed in this Constitution.

12. ***Enforcement of rights***

- (1) Anyone listed in subsection (2) is entitled to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights and award of compensation.
- (2) The persons who may approach a court are:-
 - (a) anyone acting in their own interest;
 - (b) anyone acting on behalf of another person who cannot act in their own name;
 - (c) anyone acting as a member, or in the interests, of a group or class of persons;
 - (d) anyone acting in the public interest;
 - (e) an association acting in the interest of its members.
- (3) The persons referred to in subsection (1) and (2) of this section are also entitled to make an application to the Human Rights Commission for an appropriate redress for violations of the rights and freedoms contained in the Bill of Rights.

13. ***Limitation of rights***

- (1) Parliament may not pass laws that derogate from or restrict or limit the following rights and no person or body may violate or limit or restrict these rights:
 - (a) the right to life;
 - (b) the right to freedom from torture;
 - (c) the right not to be placed in slavery;
 - (d) the right to human dignity;
 - (e) the right to equality;
 - (f) the right to freedom of conscience, belief, thought and religion;
 - (g) the right to fair labour practices and standards.
- (2) Subject to subsection (1) of this section or any other provision of this Constitution, the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable, is recognised by international human rights standards and is necessary and justifiable in an open and democratic society.

- (3) No Act of Parliament authorizing a declaration of a state of emergency and no legislation enacted or other action taken in consequence of such declaration may permit or authorize:
 - (a) the granting of immunity, indemnity or amnesty in respect of unlawful acts committed during the state of emergency;
 - (b) the derogation from or limitation or restriction of the following rights
 - (i) the right to life;
 - (ii) the right not to be tortured or subjected to inhuman or degrading punishment or treatment;
 - (iii) the right to human dignity;
 - (iv) the right not to be placed in slavery.

Part 2

THE RIGHTS

14. *Right to life*

- (1) Everyone has the right to life.
- (2) Subject to sub-section 3 of this section, no law may prescribe death as a competent sentence and no executions may take place in Zimbabwe.
- (3) Parliament may pass a law that provides for the imposition of the death penalty upon the perpetrators of the most heinous murders.
 - (a) This law may only be passed after public debate about which types of murder should attract the death penalty.
 - (b) This law must clearly and precisely define the aggravating circumstances that must be present before the death penalty may be imposed and must lay down procedures to ensure that all persons charged with murder receive fair trials, are legally represented by competent and experienced legal practitioners and the mental competence of the persons charged is fully investigated, and the Human Rights Commission established in terms of this Constitution must certify that the law properly sets out what it is required to contain.
 - (c) After a period of one year from the commencement of this Constitution, the Human Rights Commission, after consultation with the public, will decide whether the death penalty will continue to be imposable for murder or should be totally abolished and Parliament must act in accordance with the decision taken by the Human Rights Commission.
- (4) The law must protect the life of the unborn child and a pregnancy may only be lawfully terminated in accordance with strict provisions to be prescribed in an Act of Parliament.

15. *Right to personal liberty*

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

- (2) No one may be imprisoned merely on the ground of inability to fulfil a contractual obligation.
- (3) Anyone who is arrested or detained—
- (a) must be informed promptly of the reason for the arrest or detention;
 - (b) must be permitted, without delay—
 - (i) to contact their next of kin or close relative; and
 - (ii) at their own expense, to choose, contact and consult with a legal practitioner;
 - (c) must be treated with humanity and with respect for their inherent human dignity.
 - (d) must be permitted to challenge the lawfulness of the arrest or detention in person before a court, and must be released promptly if the detention is unlawful.
- (4) Anyone may challenge the lawfulness of another person's arrest or detention under subsection (3)(d) of this section if there are reasonable grounds to believe that the arrested or detained person is unable to do so.
- (5) Anyone who is arrested or detained—
- (a) for the purpose of bringing him or her before a court; or
 - (b) for allegedly committing or being about to commit an offence;
- and who is not released must be brought before a court as soon as reasonably possible and in any event not later than forty-eight hours after the arrest was effected or the detention began, as the case may be.
- (6) Anyone who is detained pending trial for an offence and is not tried within a reasonable time must be released from detention, either unconditionally or on reasonable conditions to ensure that after being released the person—
- (a) attends the trial;
 - (b) does not interfere with the evidence to be given at the trial; and
 - (c) does not commit any other offence before the trial begins.
- (7) Anyone who has been illegally arrested or detained is entitled to compensation from the person responsible for the arrest or detention, but a law may protect the following persons from liability under this section—
- (a) a judicial officer acting in a judicial capacity reasonably and in good faith;
 - (b) any other public officer acting reasonably and in good faith and without culpable ignorance or negligence.

16. ***Human dignity***

Everyone, including a marginalised group, has inherent and inviolable dignity in their private or public life.

17. ***Freedom from torture or inhuman or degrading treatment***

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

18. ***Slavery, servitude and forced labour***

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

19. ***Equality and freedom from discrimination***

- (1) All persons are equal before the law and have the right to equal protection and benefit of the law.
- (2) Everyone has a right not to be treated in an unfairly discriminatory manner on such grounds as their race, colour, tribe, custom, place of birth, ethnic or social origin, language, class, religious belief, creed, political or other opinion, culture, sex, gender, marital status, age, disability or natural difference or condition or political, economic, social or other status.
- (3) A person is treated in a discriminatory manner for the purposes of subsection (1) if he or she is prejudiced—
 - (a) by being subjected to a condition, restriction or disability to which other people are not subjected; or
 - (b) through other people being accorded a privilege or advantage, which he or she is not accorded.
- (4) Discrimination on one or more of the grounds listed in subsection (1) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- (5) To promote the achievement of equality, reasonable legislative and other measures may be taken by way of affirmative action to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and no such measure is to be regarded as unfair for the purposes of subsection (1) of this section.

20. ***Right to privacy***

Everyone has the right to privacy and no one may interfere with a person's right to privacy in his or her home and in his or her correspondence or communications.

21. ***Freedom of Association***

Every person has the right to freedom of association.

22. ***Freedom of assembly, demonstration, picketing and petition***

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

23. ***Freedom of conscience***

- (1) Everyone has the right to freedom of conscience, which includes—
 - (a) freedom of thought, opinion, religion or belief;
 - (b) freedom to change their thought, opinion, religion or belief;
 - (c) freedom to practise and propagate and give expression to their thought, opinion, religion or belief, whether in public or in private and whether alone or together with others; and
 - (d) academic freedom in institutions of higher learning.

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

- (2) The State must respect the right of parents and guardians of children to ensure their children's religious and moral education in conformity with their own convictions.

- (4) Any religious community may ensure that religious instruction is given in educational courses or institutions provided by the community, even if the community or institution receives a subsidy or other financial assistance from the State.

24. ***Freedom of speech and expression and freedom of the media***

- (1) Everyone has the right to freedom of speech and expression, which includes—
 - (a) freedom to hold opinions;
 - (b) freedom to seek, receive and communicate ideas and information regardless of frontiers;
 - (c) freedom of artistic creativity;
 - (d) freedom of the press and other media of communication.

- (2) Freedom of the press and other media of communication includes—
 - (a) a right of access to public information;
 - (b) respect for the professional independence of persons employed by the media; and
 - (c) protection of the confidentiality of their sources of information.

- (3) Freedom of speech and expression does not include—
 - (a) incitement to violence;
 - (b) advocacy of hatred which is based on nationality, race, colour, tribe, custom, place of birth, ethnic or social origin, language, class, religious belief, culture, sex, gender, marital status, age, disability or natural difference or condition, and which amounts to incitement to discrimination, hostility or violence.

25. *Access to information*

Every person has the right of access to any information held by the state or any of its organs and to any information held by anyone else, in so far as that information is required for the exercise of any of the person's rights under this Constitution.

26. *Language and culture*

Every person has the right to use the language, and participate in the lawful cultural life, of his or her choice.

27. *Freedom of trade, occupation and profession*

Every person has the right to practise any profession, or carry on any occupation, trade or business of his or her choice.

28. *Labour relations*

- (1) Every worker has the right to fair and safe labour practices and standards and to be paid and at least a living wage consistent with the poverty datum line.
- (2) Every person has the right to form and join trade unions or employers associations of their choice.
- (3) Every worker has the right to strike, sit-in or stay-away, or such other concerted action.
- (4) Every trade union, employer's organisation and employer has the right to engage in collective bargaining.
- (5) Men and women are entitled to equal remuneration for work of equal value.
- (6) Women workers are entitled to fully paid maternity leave.

29. ***Freedom of movement and residence***

- (1) Every person has the right to freedom of movement and the right to leave Zimbabwe.
- (2) Every citizen has the right to enter, to remain in and to reside anywhere in Zimbabwe.
- (3) Every citizen has the right to a birth certificate, an identity card and a passport.

30. ***Political rights***

- (1) Every citizen has the right –
 - (a) to form, to join, to participate in the activities of, and to recruit members for, a political party, of their choice;
 - (b) to campaign for a political party or cause;
 - (c) to free, fair and regular elections for any elective public office established in terms of this Constitution;
 - (d) to participate in peaceful political activity intended to influence the composition and policies of the Government;
 - (e) freely to make political choices;
 - (f) to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government;
 - (g) To uphold and defend this Constitution;
- (2) Every citizen who has reached the age of eighteen years has the right to vote, to do so in secret, to stand for election for public office and, if elected, to hold office.
- (3) For purposes of promoting a multi-party democracy, the state must provide funds to political parties.

31. ***Administrative justice***

Every person has the right to lawful, reasonable, timely and procedurally fair administrative action and to be furnished with written reasons where administrative action has adversely affected their rights, freedoms, legitimate expectations or interests.

32. ***Property***

- (1) Every person has a right to own property, either individually or in association with others, irrespective of race, sex, gender, pregnancy, tribe, colour, ethnic origin, disability, custom, marital status, religion or social, political or economic status.
- (2) No person may be compulsorily deprived of property or any interest in or rights over property except that:

- (a) Land is the basic resource available for food production and economic development in Zimbabwe and must therefore be used for the benefit of all the people of Zimbabwe, and
- (b) the state is entitled to compulsorily acquire land or other natural resources to achieve an equitable land ownership pattern or resource redistribution either to redress past racial discrimination or for the benefit of the people of Zimbabwe, provided the acquisition is done in terms of a law prescribed for that purpose and fair and equitable compensation determined by an independent court is paid within a reasonable time and
- (c) where land has been compulsorily acquired, farm workers must be given prompt and adequate compensation.

33. ***Citizenship***

No person may be deprived of their citizenship of Zimbabwe by birth.

34. ***Environment***

Every person has a right to an environment that is not harmful to their health or well being and to have the environment protected for the benefit of present and future generations.

35. ***Housing***

Every person has the right to have access to adequate housing.

36. ***Education***

- (1) Every person has a right to state funded education from pre-school to tertiary level.
- (2) Every person has the right to establish and maintain, at their own expense, independent educational institutions of reasonable standards, which are registered by the state and do not discriminate on the basis of race or ethnicity, or on any other ground prohibited in section 19.

37. ***Health care, food, water and environment***

- (1) Every person has a right to bodily and physical integrity and to access basic health care services.
- (2) Every person has a right to a living and working environment that is not harmful to their health or well being and to sufficient food and water.
- (3) Every person has a right to guaranteed emergency medical treatment.

38. ***Access to courts***

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

39. ***Family and marriage***

- (1) The family in all its forms is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- (2) Each member of the family is entitled to full and equal respect and must be protected by law against all forms of neglect, cruelty or exploitation.
- (3) Every man and woman, who has attained the age of eighteen years, has the right to marry and found a family and no person may be forced to enter into marriage or be prevented from entering into marriage.

40. ***Rights of children***

Every child is entitled to-

- (a) equal treatment before the law, including the right to be heard;
- (b) be given a name, a family name, immediate birth registration and the right to a nationality;
- (c) know, and to be raised by, their parents;
- (d) be protected from economic exploitation, from child labour, and from maltreatment, neglect, abuse or degradation;
- (e) education, health care services, basic nutrition and shelter.

41. ***Rights of women***

- (1) Every woman has full and equal dignity of the person with men and this includes -
 - (a) equal opportunities in political, economic and social activities; and
 - (b) equal rights in civil law.
- (2) All laws, customs and cultures that infringe the rights of women are prohibited.
- (3) Women have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

42. ***Rights of persons with disabilities***

Every person with a disability is entitled to respect and human dignity and the state must take appropriate measures to ensure that disabled persons realise their full mental and physical potential including measures:

- (a) to enable them to become self reliant;

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

43. ***Rights of minority groups***

Minority groups have a right to participate in decision-making processes at all levels of State organs.

44. ***Combatants in the liberation struggle***

All persons who took part in the liberation struggle, including ex-detainees, *chibwidos* and *mujibas*, are entitled to respect and recognition and to reasonable social benefits.

45. ***Right of fair hearing***

In the determination of civil rights and obligations or any criminal charge, a person is entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

CHAPTER 4

PARLIAMENT

General

46. Legislative Authority to vest in Parliament

Subject to the provisions of this Constitution, the legislative authority of Zimbabwe vests in Parliament.

47. Composition of Parliament

Parliament consists of -

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

48. Act of Parliament

- (1) The legislative authority of Parliament is exercised through the enactment of Acts of Parliament.
- (2) An Act of Parliament is a Bill which has:-
 - (a) been laid before and passed by the National Assembly; and
 - (b) been laid before and passed by the Senate; and
 - (c) been assented to by the President in accordance with this Constitution.

49. Subsidiary legislation

Parliament may, with respect to any particular Act of Parliament, delegate the power to make subsidiary legislation within the specifications and for the purposes laid out in that Act, provided that -

- (a) Parliament's primary law making power must not be delegated.
- (b) Subsidiary legislation must be laid before the National Assembly in accordance with its Standing Orders.
- (c) Subsidiary legislation must not restrict, infringe or limit any of the rights and freedoms in the Bill of Rights.

50. *Public access to Parliament*

An Act of Parliament must provide for public involvement in the legislative and other processes of Parliament subject to reasonable measures regulating refusal of entry and access of the media.

51. *Parliamentary privilege*

- (1) Every Member of Parliament is entitled to freedom of speech in Parliament and its committees and no Member of Parliament is liable to civil or criminal proceedings, arrest, imprisonment or damages for anything said in, or produced before or submitted to Parliament or any of its committees.
- (2) An Act of Parliament may provide for other privileges and immunities of Members of Parliament.

52. *Oath or affirmation of Members Parliament*

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

53. *Quorum in Parliament*

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

54. *Voting in Parliament*

- (1) Except as otherwise provided for by this Constitution, any question proposed for decision in any Chamber of Parliament must be determined by a majority of votes of the members present and voting.
- (2) The person presiding in any Chamber of Parliament will not have either an original or a casting vote and if on any question before a chamber the votes are equally divided, the motion is lost.
- (3) Voting in Parliament is by secret ballot.
- (4) Members of Cabinet are appointed in terms of paragraph (b) of sub-section 3 of section 84 are entitled to attend and participate in sessions of Parliament but with no right to vote.

55. *Standing Orders*

- (1) The National Assembly and the Senate must establish a joint committee to recommend Standing Orders, which orders will require the approval of each Chamber before implementation.
- (2) Standing Orders may provide for -
 - (a) appointment of committees, provided the composition of committees must reflect, as closely as possible, the proportionate representation of political parties in Parliament; and
 - (b) The regulation and orderly conduct of business in and between the Chambers, including regulating abuse of privilege against private individuals for anything said in, or produced or submitted in Parliament or any of its committees.

56. Duration of Parliament

- (1) Parliament is elected for a term of five years and this term runs from the date of the first sitting of the National Assembly, and Parliament stands dissolved at the expiration of that period.
- (2) For the avoidance of doubt, the duration of the Senate is the same as that of the National Assembly and the Senate automatically stands dissolved at any time that the National Assembly is dissolved in terms of this Constitution.

57. Sitting and recess periods

- (1) The first sitting of either Chamber of Parliament after a general election must take place at a time and date determined by the President, provided this must not be later than twenty-one days after the election.
- (2) Each Chamber determines the time and duration of all its sittings other than the first sitting, provided the President, on the advice of the Prime Minister, may summon Parliament at any time to conduct special business.

58. Dissolution of Parliament

- (1) Parliament may not be dissolved by the President before the expiration of its term unless the National Assembly has adopted a resolution to dissolve with a supporting vote of not less than two thirds of its total membership.
- (2) For the avoidance of doubt, Parliament may not be dissolved solely on the ground that the President has been advised by the Cabinet to dissolve it.

59. Parliamentary Public Appointments Committee

- (1) There must be a Parliamentary Public Appointments Committee consisting of twenty three members of Parliament as follows:
 - (a) fifteen members of the National Assembly appointed by the National Assembly

- (b) eight members of the Senate appointed by the Senate
- (2) The committee must elect from among its members a Chairperson and Deputy Chairperson
- (3) A member of Cabinet is not eligible for membership of the committee.
- (4) The election and term of office of members of the committee must be prescribed in the Standing Orders.

National Assembly

60. *Composition and election*

- (1) The National Assembly consists of one hundred and forty-one members as follows:
 - (a) Seventy members directly elected to represent constituencies and
 - (b) Seventy members elected in terms of a system of proportional representation based on the votes cast in a general election for members in paragraph (a)
 - (c) The Prime Minister
- (2) Zimbabwe must be divided into seventy constituencies, each of which will freely elect a member of the National Assembly.
- (3) An Act of Parliament must provide for the election of members of the National Assembly including –
 - (a) The election of the Prime Minister as provided for in section 80
 - (b) the periodic delimitation of the constituencies referred to in paragraph (a) of subsection (1);
 - (c) an equitable formula for allocating the seats of members referred to in paragraph (b) of subsection (1);
 - (d) the form of proportional representation to be adopted for the purposes of paragraph (b) of subsection (1).

61. *Qualifications for membership of National Assembly*

- (1) Every citizen who is qualified to vote is eligible to be a Member of the National Assembly except a person who-
 - (a) is an unrehabilitated insolvent;
 - (b) is of unsound mind and has been declared to be such by a competent court;
 - (c) has, within a period of five years immediately preceding the election, been convicted of a criminal offence and sentenced to more than twelve months' imprisonment;
 - (d) is a member of the Senate or is in the service of the state and receives remuneration for that service.
- (2) A person ceases to be a Member of the National Assembly if that person:
 - (a) ceases to be eligible;
 - (b) is elected Speaker;

- (c) is absent from the National Assembly for (twenty-one) consecutive sitting days of any session without the leave of the Speaker;
 - (d) resigns their seat by written notice to the Speaker;
 - (e) being a member elected in terms of paragraph (b) of subsection (1) of section 65, ceases to belong to the political party on whose ticket he or she became a Member of Parliament;
 - (f) is recalled in accordance with section 67.
- (3) For the avoidance of doubt, a Member of the National Assembly elected in terms of paragraph (a) of subsection (1) of section 65 does not cease to be a Member solely by reason of the fact that he or she is no longer a member of the political party to which he or she belonged at the time of election.
- (4) Any vacancies in the National Assembly must be filled within sixty days of the date when the seats fell vacant, provided that vacancies arising from members elected in terms of paragraph (b) of subsection (1) of section 65 must be filled by persons from the same political relevant parties, from which the persons previously holding the seats belonged.

62. *Right to recall Members of National Assembly*

- (1) The electorate of any constituency has the right to recall the Member elected in terms of section 60 (1) (a) before the expiry of the term of the National Assembly.
- (2) A Member of the National Assembly may be recalled from office on any of the following grounds-
- (a) physical or mental incapacity; or
 - (b) misconduct or misbehavior; or
 - (c) incompetence or persistent deserting of the electorate.
- (3) The recall of a Member must be initiated by a petition in writing signed by at least 60% of the persons who cast their votes in the election of the Member in question, and must be delivered to the Independent Electoral Commission.
- (4) On receipt of the petition, the Independent Electoral Commission must conduct an enquiry and if satisfied with the genuineness of the petition, must declare the seat vacant and conduct new elections.

63. *Speaker and Deputy Speaker*

- (1) There must be a Speaker and a Deputy Speaker of the National Assembly who will be elected by the National Assembly at its first sitting after the election or whenever a vacancy for one of these posts has arisen.
- (2) The Chief Justice or a judge designated by the Chief Justice for that purpose, must preside over the election of a Speaker and Deputy Speaker.
- (3) A person is qualified for election as Speaker if he or she is a Member of the National Assembly or is qualified to be elected a Member of the National Assembly.

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

64. Powers and functions of National Assembly

- (1) The National Assembly has the power to ensure that all executive organs of the state act in the national interest and are accountable to it.
- (2) In exercising its legislative power, the National Assembly has power to:-
 - (a) initiate or prepare legislation, provided that a money bill may be introduced only by a Minister;
 - (b) consider or reject any proposed legislation

Senate

65. Composition and election

- (1) The Senate consists of fifty-eight members as follows:
 - (a) eight members must be elected from each of the five provinces into which Zimbabwe is divided, and the election must be in terms of a system of proportional representation to be prescribed in an Act of Parliament;
 - (b) ten must be chiefs elected in accordance with the provisions of an Act of Parliament;
 - (c) eight must be elected by the National Assembly at its first sitting and all the eight will be elected from the following interest groups in such a way that each interest group must have at least one representative: the women, the disabled, the youth, combatants of the armed struggle, trade unions, religious groups, business and farmers.
- (2) An Act of Parliament must prescribe the manner in which the interest groups in paragraph (c) of subsection (1) must present nominations to the National Assembly.
- (3) The persons elected by a province in terms of sub-section (1)(a) of this section must liaise and consult with the persons elected to the Provincial Assembly for that Province in terms of section 163 of this Constitution.

66. Qualifications for Senators

The qualifications and disqualifications applicable to members of the National Assembly apply to membership of the Senate, except that the minimum age for membership of the senate is thirty years, with the exception of the youth representative.

67. President and Deputy President of Senate

- (1) There must be a President and a Deputy President of the Senate who must be elected by the Senate at its first sitting after the election or whenever a vacancy has arisen.
- (2) The Chief Justice or Judge designated by the Chief Justice for the purpose must preside over the election of President and Deputy President of the Senate.
- (3) A person is qualified for election as President of the Senate if he or she is a member of the Senate or is qualified to be elected a member of the Senate.
- (4) The Deputy President of the Senate must be elected from among members of the Senate.
- (5) The President or Deputy President may be removed from office by a resolution supported by at least half of the total membership of the Senate.

68. *Powers and functions of Senate*

- (1) The primary purpose of the Senate is to exercise checks on the National Assembly and the executive and it has power to-
 - (a) receive, scrutinize and amend bills from the National Assembly;
 - (b) debate and vote on motions in respect of any matter whether on own initiative or on reference from the National Assembly;
 - (c) hold the executive arms of the state to account, protect and uphold this Constitution
 - (d) exercise such other functions and powers as conferred by this Constitution or by an Act of Parliament.
- (2) The Senate may not initiate legislation.

69. *Scrutiny of Bills by Senate*

- (1) All Bills passed by the National Assembly must be laid before the Senate.
- (2) The Senate may either approve the Bill with or without amendments or reject it.
- (3) If the Senate passes a Bill with amendments or rejects it, the Bill must be referred back to the National Assembly which must do the following:
 - (a) pass the Bill in the form proposed by the Senate, in which case the Bill will then be presented directly to the President; or
 - (b) reject, by a supportive vote of at least half of its total membership, the amendments by the Senate in which case the Bill will then be presented directly to the President; or
 - (c) where the Bill has been rejected by the Senate, pass the Bill, with or without amendments, by an affirmative votes of at least two-thirds of its total membership, and thereafter present it to the President; or
 - (d) reject the Bill.

70. *Assent by President*

- (1) The President must either assent to or sign a Bill passed in terms of this Chapter or withhold his or her assent if he or she has reservations about its constitutionality.
- (2) If the President has withheld his or her assent, he or she must refer the Bill, together with the detailed reasons for the withholding of the Bill, to a joint sitting of the National Assembly and Senate which must:
 - (a) reconsider the Bill and fully accommodate the President's reservations; or
 - (b) pass the bill, with or without amendments, with an affirmative vote supported by at least two-thirds of the total membership of the two Chambers.
- (3) The President must assent to and sign a Bill presented to him or her in terms of subsection (2).

CHAPTER 5

THE PRESIDENT

71. *Office of President*

- (1) There must a President who will be a non- executive and titular Head of State and Commander - in - Chief of the Defence Forces.
- (2) The President is the symbolic head of the Republic of Zimbabwe and must uphold, defend and respect this Constitution and all other laws of Zimbabwe.

72. *Qualifications for election as President*

Every citizen of Zimbabwe by birth who is qualified to vote is eligible for election as President provided he or she is between the ages of thirty-five and sixty-five.

73. *Election of President*

- (1) The President will be elected by an Electoral College consisting of all members of Parliament.
- (2) The Chief Justice presides at an election of the President.
- (3) An Act of Parliament must provide for the nomination and election procedures for the President provided:
 - (a) an election to the office of President must be held within twenty-one days of the end of the term of office of the incumbent President or not later than twenty-one days after the occurrence of a vacancy; and
 - (b) the winning candidate in an election must obtain the support of a majority of the total membership of the electoral college

74. *Term of office of President*

The term of office of the President is five years and a person is eligible for re-election to one further term only.

75. *Powers and functions of President*

- (1) The President has the powers and functions conferred on him or her by this Constitution or by an Act of Parliament.
- (2) In exercising any of his powers and functions, the President must be guided by the principle that he or she is a non-executive head of state and must act on the advice of

Cabinet or some other organ of state as specified in this Constitution or an Act of Parliament.

- (3) The President is responsible for:-
- (4) summoning Parliament for its first sitting;
- (5) dissolving Parliament pursuant to a resolution to dissolve by the National Assembly;
- (6) assenting to, and signing Bills;
- (7) referring a Bill back to Parliament for reconsideration of the Bill's constitutionality;
- (8) making any appointments that he or she is required to make in terms of this Constitution.

76. *Removal of President*

The National Assembly and Senate may, by a resolution adopted with the support of not less than two thirds of their total membership, remove the President from office on the grounds of: -

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

77. *Resignation of President*

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

78. *Acting President*

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

CHAPTER 6

THE EXECUTIVE

79. *Executive Authority*

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

80. *Election of Prime Minister*¹

- (1) The Prime Minister will be elected directly by voters in the same general election where other members of the National Assembly are elected.
- (2) A person will be qualified for election as Prime Minister if he/she qualifies for election as a member of the National Assembly in terms of section 59.

81. *Assumption of office by Prime Minister*

- (1) Before taking office, and within five days of being elected, the Prime Minister must assume office by swearing or affirming faithfulness to Zimbabwe and obedience to the Constitution.
- (2) The oath or affirmation is in the form set out in the First Schedule and must be administered by the President.

82. *Term of office of Prime Minister*

No person may hold office as Prime Minister for an aggregate period of more than ten years.

83. *Functions and powers of Prime Minister*

- (1) The Prime Minister is head of government and is responsible for: -
 - (a) appointing Ministers and assigning functions to them
 - (b) chairing Cabinet meetings

¹ The view that the Prime Minister be directly elected by the people was overwhelming, not only at the 2nd All Stakeholders Conference of 1 December 2001, but also in most public and door to door meetings conducted by stakeholders. However, this presents fundamental problems in constitutional practice because it is difficult to fit such a Prime Minister into a system of a parliamentary executive. This final draft has accommodated the peoples wish for a directly elected Prime Minister but still ensures that apart from this factor of being directly elected, the Prime Minister still retains all other features of a parliamentary system of government

- (c) directing the operations of government
 - (d) exercising any other powers and functions as provided for in this Constitution or in any other law.
- (2) The Prime Minister must answer questions and respond to motions in Parliament at such times as may be prescribed in Standing Orders.

84. *Cabinet*

- (1) There must be a Cabinet consisting of the Prime Minister and not more than fifteen Ministers appointed by the Prime Minister.
- (2) One of the Ministers must be designated as Deputy Prime Minister.
- (3) The Prime Minister must normally appoint Cabinet Ministers from Members of the National Assembly, but where he or she considers it appropriate, the Prime Minister may appoint as Cabinet Ministers
- (a) up to three members of Senate; and
 - (b) up to three persons who are neither Senators nor Members of the National Assembly.
- (4) No Minister may assume office without swearing or affirming before the President the oath of loyalty in the form set out in the First Schedule.
- (5) A Minister holds office at the absolute discretion of the Prime Minister provided his or her office becomes vacant:
- (a) if he or she resigns by written notice to the Prime Minister or
 - (b) upon the assumption of office by a new Prime Minister.
- (6) The Prime Minister may not appoint any Deputy Ministers.

85. *Functions of Cabinet*

Members of the Cabinet have the following functions:

- (a) to advise the Prime Minister;
- (b) to advise the President in matters prescribed by this Constitution;
- (c) to direct, coordinate and supervise the activities of government departments;
- (d) to be accountable to Parliament in reporting Government's activities.

86. *Tenure of office of Prime Minister*

The office of Prime Minister becomes vacant:

- (a) if he or she resigns from office by notice in writing to the President; or
- (b) if he or she ceases to command the support of the majority in the National Assembly and the National Assembly has, by a resolution supported by at least three-fifths of its total membership, voted for the removal of the Prime Minister from office.

87. *Acting Prime Minister*

- (1) The Deputy Prime Minister or, in his or her absence, a Minister designated by Cabinet, acts as Prime Minister where the Prime Minister is for any reason unable to exercise his or her functions.
- (2) Where the office of Prime Minister has become vacant in any of the circumstances specified in section 86, the National Assembly will elect one of its members to act as Prime Minister for the following periods:
 - (a) for the unexpired term of office of the Prime Minister if the vacancy occurs not more than one year before the date on which general elections for members of Parliament are required to be held.
 - (b) for a period of not more than ninety (90) days if the vacancy occurs more than one year before the date on which general elections for members of Parliament are required to be held.
- (3) Whenever a vacancy in the office of the Prime Minister occurs more than one year before the date on which general elections for members of Parliament are required to be held, an election for the Prime Minister must be held within ninety (90) days from the date of the vacancy.
- (4) A Prime Minister elected under subsection (3) will serve for the unexpired period before the next general elections for members of Parliament.

88. *Vote of no confidence in the Government*

- (1) The National Assembly may, by resolution passed by at least three-fifth of its total membership pass a vote of no confidence in the government.
- (2) A motion for the resolution of a vote of no confidence in the government must be signed by at least one third of the total membership of the National Assembly and must be served on the Speaker and the Prime Minister at least ten days before it is debated in the National Assembly.
- (3) If Parliament passes a vote of no confidence in the Government:-
 - (a) the Prime Minister must resign; and
 - (b) the National Assembly must, subject to section 87, elect an Acting Prime Minister.
- (4) It is competent for the National Assembly, by a majority vote, to pass a vote of no confidence in the Cabinet, excluding the Prime Minister, in which event the Prime Minister is obliged to reconstitute the Cabinet.

89. Continuation in office after dissolution of Parliament

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

90. Prerogative of mercy

- (1) There must be an Advisory Committee on the Prerogative of Mercy consisting of:-
 - (a) two cabinet ministers designated by the Prime Minister, one of whom must be the chairperson
 - (b) five prominent citizens of Zimbabwe appointed by Parliament on the recommendations of the Parliamentary Public Appointments Committee
- (2) No person may serve as a member of the Advisory Committee on the Prerogative of Mercy under paragraph (b) of subsection (1) for a period in excess of five years.
- (3) The function of the Advisory Committee on the Prerogative of Mercy is to advise the President on the exercise of the prerogative of mercy in respect of granting pardon to convicted offenders and granting remissions of sentences being served by convicted offenders.

91. State of emergency

- (1) The President may, on the advice of the Prime Minister, declare a state of emergency if -
 - (a) Zimbabwe is at war or is threatened by war, invasion, natural disaster or other public emergency; and
 - (b) the declaration is necessary to restore peace and order or deal with the disaster.
- (2) Any declaration made under subsection (1) is valid for a maximum period of fourteen days and thereafter a continuation of the state of emergency requires approval by a joint sitting of Parliament, provided -
 - (a) the approval is supported by two-thirds of the total membership of Parliament; and
 - (b) the state of emergency has validity for a maximum period of three months at a time.
- (3) Parliament may, during a state of emergency, enact laws necessary to deal with the emergency, but no Act of Parliament authorizing a declaration of a state of emergency and no legislation enacted or other action taken in consequence of such declaration may permit or authorize:
 - (a) the granting of immunity, indemnity or amnesty in respect of unlawful acts committed during the state of emergency;
 - (b) the derogation from or limitation or restriction of the following rights

- (i) the right to life;
- (ii) the right not to be tortured or subjected to inhuman or degrading punishment or treatment;
- (iii) the right to human dignity;
- (iv) the right to equal treatment;
- (v) the right not to be placed in slavery.

92. *Declaration of war*

- (1) The President may, on the advice of the Prime Minister, declare war provided the declaration is, within three days, approved by two-thirds majority of the total membership of Parliament.
- (2) Where there has been no declaration of war, no deployment of Zimbabwean troops outside Zimbabwe may take place unless the deployment has been approved by two-thirds of the total membership of Parliament.

93. *Immunity from civil suit or criminal prosecution*

No official of the State, including the President, the Prime Minister, a Minister, a Judge and a Member of Parliament, is immune from criminal prosecution or civil suit for acts performed in his or her personal capacity.

CHAPTER 7

Elections

94. *Provision of elections*

- (1) Every citizen of Zimbabwe of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for all elections and referenda
- (2) The State must ensure that all persons qualified to vote have an opportunity to exercise their right to vote.
- (3) Elections to Parliament must be held not later than thirty days before the expiration of the term of office of the current Parliament.
- (4) The Independent Electoral Commission must publicly announce the exact dates of the election at least ninety days before the proposed date.
- (5) At any election or referendum, voting must be by secret ballot.
- (6) Unless there are exceptional circumstances determined by the Independent Electoral Commission, the voting process for any election or referendum must be completed within a day and counting of votes must start immediately after the close of polls.
- (7) The State must provide equal access to the State-owned media to all political parties.
- (8) An Act of Parliament must provide for appeals against election results by candidates and political parties and such law must provide for final determination of the appeal within thirty days.
- (9) There must be a code of conduct for persons and political parties participating in elections.

CHAPTER 8

THE JUDICIARY, THE COURTS AND THE ATTORNEY-GENERAL

95. *Judicial authority*

- (1) The judicial authority of Zimbabwe vests in the courts which comprise –
 - (a) the Constitutional Court;
 - (b) the Supreme Court;
 - (c) the High Court;
 - (d) the Labour Appeal Court;
 - (e) the Administrative Court;
 - (f) the Labour Court
 - (g) the Family Court;
 - (h) Magistrates Courts;
 - (i) Customary Law Courts; and
 - (j) such other courts subordinate to the Supreme Court and High Court as may be established by, or under, an Act of Parliament.
- (2) An Act of Parliament may allocate functions other than adjudicating functions in a court referred to in subsection (1) or in a member of the judiciary such as conducting investigations or inquiries.

96. *The Judiciary*

The judiciary of Zimbabwe consists of -

- (a) The Chief Justice, who is the head of the judiciary and also President of the Constitutional Court;
- (b) The judges of the Supreme Court;
- (c) The Judge President, who is in charge of the High Court,
- (d) The judges of the High Court and the Labour Appeal Court
- (e) Judges of the Administrative Court, Labour Court and Family Court.
- (f) Magistrates,
- (g) Traditional leaders presiding over customary-law courts and
- (h) Persons presiding over the courts which may be established by an Act of Parliament.

97. *Independence of the Courts*

- (1) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (2) The courts must protect and uphold the Constitution.
- (3) No person or organ of state may interfere with the functioning of the courts.

- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility, and effectiveness of the courts.
- (5) An order or decision issued by a court binds all persons and organs of state to which it applies.

98. *Constitutional Court*

- (1) There will be a Constitutional Court composed of judges as follows;
 - (a) the President of the Court who will be the Chief Justice;
 - (b) the other Supreme Court judges;
 - (c) two judges of the High Court selected by the Judge President; and
 - (d) two teachers of law selected by the Judicial Service Commission.
- (2) A matter before the Constitutional Court must be heard by the full bench of the Court.
- (3) The Constitutional Court –
 - (a) is the highest court in all constitutional matters;
 - (b) may decide only constitutional matters, and issues connected with decisions on constitutional matters; and
 - (c) makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.
- (4) Only the Constitutional Court may –
 - (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, power or functions of any of those organs of state;
 - (b) decide the constitutionality of any law, whether contained in legislation, subsidiary legislation, the common law or customary law;
 - (c) decide whether the Prime Minister, Parliament, the President, a public authority or a public official has breached the Constitution or has failed to comply with any constitutional duty;
 - (d) decide on the constitutionality of any proposed law.
- (5) The Constitutional Court makes the final decision whether an Act of Parliament a Provincial Act, or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force.
- (6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court:
 - (a) to bring a matter directly to the Constitutional Court or
 - (b) to appeal directly to the Constitutional Court.
- (7) A Constitutional matter concludes any issue involving the interpretation, protection or enforcement of the Constitution.

99. *Supreme Court*

- (1) The Supreme Court is a superior court of record and the final court of appeal for Zimbabwe save for constitutional matters and has the jurisdiction and powers conferred on it by this Constitution or any Act of Parliament.
- (2) The Supreme Court consists of the Chief Justice and four other judges of the Supreme Court.

100. *High Court*

- (1) The High Court is a superior court of record and has the jurisdiction and powers conferred on it by this Constitution or any Act of Parliament.
- (2) The High Court consists of -
 - (a) the Chief Justice;
 - (b) the judge President who is in charge of the High court, but is subject to the directions of the Chief Justice and
 - (c) the other judges of the High Court.
- (3) The Judicial Service Commission may determine from time to time the number of judges that constitute the High Court.
- (4) After consultation with the Judge President, the Chief Justice may appoint a judge of the Supreme Court to act as a judge of the High Court.

101. *Administrative Court*

An Act of Parliament must provide for the establishment, composition and jurisdiction of the Administrative Court.

102. *Labour Court and Labour Appeal Court*

An Act of Parliament must provide for the establishment of a Labour Court and a Labour Appeal Court, which will have original and exclusive jurisdiction in labour matters.

103. *Family Court*

An Act of Parliament must provide for the establishment, composition and jurisdiction of a Family Court and family law divisions of the Magistrates Courts.

104. Magistrates Courts

An Act of Parliament must provide for the establishment, composition and jurisdiction of the Magistrates Courts.

105. Customary law courts

An Act of Parliament must provide for the establishment, composition and jurisdiction of Customary-law Courts whose jurisdiction consists in the application of customary law.

106. Other Courts

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

107. Inherent Power of Constitutional Court, Supreme Court and High Court

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

108. Qualifications of Judges

- (1) A person is qualified for appointment as a judge if he or she is at least forty years old and is a fit and proper person to be appointed as a judge and;
 - (a) has been entitled to practise as a legal practitioner for at least seven years
 - i. in Zimbabwe, or
 - ii. if he or she is a citizen of Zimbabwe in a country whose common law is Roman Dutch or English, and English is an official language or
 - (b) has been a judge of a court with unlimited jurisdiction in civil or criminal matters in a country whose common law is Roman Dutch or English and English is the official language.
- (2) Any person to be appointed to the Constitutional Court or Supreme Court must also be a citizen of Zimbabwe.

109. Appointment of Judicial Officers

- (1) The Chief Justice
 - (a) The Judicial Services Commission must prepare a list of three nominees for the

- post of Chief Justice and must submit this list to the President.
- (b) The President, on the advice of the Prime Minister and with the approval of Senate, will appoint one of the nominees;
 - (c) If the President is of the opinion that none of the nominees is suitable for appointment to this post he or she must advise the Judicial Services Commission, with reasons, and the Judicial Services Commission may re-affirm its nominations, in which case the President must select for appointment one of the nominees or on the advice of the Prime Minister and with the approval of the Senate, appoint some other suitable person.

(2) The Judge President

- (a) The Judicial Services Commission must prepare a list of three nominees for the post of Judge President and must submit this list to the President.
- (b) The President on the advice of the Prime Minister and with the approval of Senate will appoint one of the nominees;
- (c) If the President is of the opinion that none of the nominees is suitable for appointment to this post he or she must advise the Judicial Services Commission, with reasons, and the Judicial Services Commission may re-affirm its nominations, in which case the President must select for appointment one of the nominees or on the advice of the Prime Minister and with the approval of the Senate, appoint other some suitable person.

(3) Other judges

The President will appoint all other judges on the recommendations of the Judicial Services Commission and with the approval of Senate.

(4) Magistrates

Magistrates will be appointed by the Judicial Services Commission.

(5) Other judicial officers

Any other judicial officers must be appointed in terms of an Act of Parliament, which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.

110. Tenure of Office of Judges

- (1) A judge must retire at the age of seventy five years
- (2) A judge may resign his or her office at any time by written notice to the President and the Judicial Services Commission
Judge President and must submit this list to the President.
- (3) The office of a member of the judiciary must not be abolished during his or her tenure of office.

111. Removal of Judges from Office

- (1) A judge may be removed from office only if the Judicial Services Commission, after a full and fair inquiry, finds that the judge
 - (a) is suffering from a physical illness or mental incapacity that prevents him or her from performing his or her judicial functions properly; or
 - (b) has displayed such gross incompetence as to make him or her unsuitable to continue to exercise judicial functions; or
 - (c) is guilty of gross misconduct.
- (2) The President must remove a judge from office if the Judicial Services Commission makes a finding in terms of subsection (1) of this section.
- (3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of procedure in terms of subsection (1) of this section.

112. Oath of Office of members of Judiciary

Before taking office, a member of the judiciary must take the judicial oath in the form set out in the first schedule.

113. Remuneration of Members of Judiciary

- (1) The salaries, allowances and other benefits of the members of the judiciary are to be set from time to time by the Judicial Services Commission.
- (2) Parliament must act on the advice of the Judicial Service Commission in prescribing, under an Act of Parliament, the salaries, allowances and other benefits referred to in subsection (1).
- (3) The salaries, allowances and other benefits of the judiciary must be charged upon and paid out of the Consolidated Revenue Fund.
- (4) The salaries, allowances and other benefits of the judiciary must not be reduced during the member's tenure of office.

114. Conclusion of Part-Heard Cases By former Member of Judiciary

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

115. Judiciary Services Commission

There is a Judicial Services Commission, consisting of:

- (a) the Chief Justice who is the Chairperson of the Judicial Services Commission;

- (b) the Judge President;
- (c) the Attorney General;
- (d) the Cabinet member responsible for the administration of justice, or an alternate designated by that Cabinet member;
- (e) three practicing legal practitioners designated from within the legal practitioners profession to represent the profession as a whole;
- (f) two teachers of law who are not members of the Constitutional Court, designated by teachers of law at Zimbabwean universities.
- (g) five persons designated by the National Assembly from among its members, at least two of whom must be members of the opposition parties represented in the Assembly and at least two of whom must be women;
- (h) two customary law judicial officers designated by the judicial officers of the customary law courts;

Members who are designated to the Judicial Services Commission serve for a period of five years and may serve only for one further term of five years.

116. Functions and Procedures of Judicial Services Commission

- (1) The Judicial Services Commission has the powers and functions assigned to it in the Constitution and national legislation, which include:
 - (a) a central role in the appointment and removal of judges; and
 - (b) fixing judicial conditions of service.
- (2) The Judicial Services Commission may advise the national government on any matter relating to the judiciary or the administration of justice, but when it considers any matter, except the appointment of a judge, it must sit without the members designated by the members of the National Assembly.
- (3) The Judicial Services Commission may determine its own procedure, but its decisions must be supported by a majority of its members.

117. The Attorney General

- (1) There will be an Attorney - General who will be appointed by the President on the advice of the Judicial Services Commission and with the approval of the Senate.
- (2) The person appointed as Attorney - General must be qualified for appointment as a judge and must not be an office bearer in a political party.
- (3) The functions of the Attorney - General will be:
 - (a) to act as the principal legal adviser to the government; and
 - (b) to be in charge of all criminal prosecutions including prosecuting and defending appeals from decisions in criminal proceedings and, in appropriate cases, requiring the Commissioner of Police to investigate and report on an alleged criminal offence.
- (4) When exercising his or her powers and duties in relation to criminal prosecutions, the

Attorney - General will be absolutely independent and subject only to the law.

- (5) The procedures applicable to the removal of a judge from office will, with necessary modifications, apply to the removal of the Attorney - General from office.

CHAPTER 9

INDEPENDENT COMMISSIONS

118. *General Provisions relating to Commissions*

- (1) There are Commissions to perform each of the following functions:
 - (a) to support and entrench human rights, democracy, ensure that injustices are remedied and address past historical, economic and human rights injustices;
 - (b) to ensure the efficient provision of social services;
 - (c) to ensure financial discipline and financial transparency.
- (2) The Commissions are accountable to Parliament for the efficient performance of their functions but Parliament may not interfere with the functioning of the Commissions in such a way as to stop them performing their functions vigorously and impartially.
- (3) Each Commission must make a full annual report to Parliament and must also provide Parliament with a six monthly report.
- (4) The members of Commissions will be -
 - (a) appointed by the President in accordance with the specified procedures
 - (b) impartial and independent and no public or private bodies or persons may interfere with the functioning of a Commission in such a way as to stop it performing their functions vigorously and impartially;
 - (c) only removable in accordance with the provisions for the removal of judges with necessary modifications.
 - (d) permitted to serve a maximum of two terms of five years each.
- (5) The method of appointment of members of Commissions will be as follows:
 - (a) the Parliamentary Public Appointments Committee will call for nominations of suitable persons to sit on each Commission from the public, non-governmental organizations and from Parliamentarians;
 - (b) after receiving these nominations, the Parliamentary Appointments Committee will assess the suitability of nominees and draw up a short list of suitable appointees, which short list will contain at least fifty per cent more nominees than the number of seats on the particular Commission in question;
 - (c) the National Assembly will select the required number of appointees from the short list drawn up by the Parliamentary Appointments Committee, providing that each appointee must be approved by at least two-thirds of the members of the National Assembly;
 - (d) the President must appoint the persons recommended for appointment by the National Assembly, provided that if the President considers a recommended person to be unsuitable for appointment, he or she may ask the National Assembly to reconsider the recommended person taking into account the President's reasons for objection to that person. If the National Assembly decides that President's objections are well founded, it may recommend another short listed person instead. If the National Assembly considers that the President's objections are not well founded, it will be entitled to recommend once against the original person, in which case the President will be obliged to appoint the recommended person.

- (6) An Act of Parliament must make provisions relating to the terms and conditions of service and the payment of salaries and allowances of Commissioners and employees of the respective Commissions.
- (7) Parliament must ensure that sufficient funds are allocated to each of the Commissions and institutions to enable them to have adequate staff and facilities so as to be able to carry out their functions efficiently and effectively.
- (8) (a) For purposes of effectively fulfilling its objectives and mission, each Commission will have all necessary powers, including the power
 - (i) to have access to or demand production of all relevant documentation held in government departments;
 - (ii) to issue directives and orders to any person or body violating fundamental human rights to stop or take measures to stop violations;
 - (iii) to order the payment of compensation to persons who have been the victims of such violations;
 - (iv) where necessary, to require the prosecution authorities to institute prosecutions.
- (b) These powers, and any additional powers for each Commission, will be specified in an Act of Parliament in respect of each Commission.

119. *The Commissions*

- (1) The Commissions to support and entrench human rights, and democracy, ensure that justices are remedied and address past historical, economic and human rights injustices are:
 - (a) the Independent Electoral Commission;
 - (b) the Human Rights Commission;
 - (c) the Gender and Anti-Discrimination Commission;
 - (d) the Public Protector Commission;
 - (e) the Truth, Justice, Reconciliation and Conflict Prevention Commission;
 - (f) the Labour Commission; and
 - (g) the Media Commission.
 - (h) the Youth and Children Commission
 - (i) the Culture and Arts Commission
- (2) The Commissions to ensure equitable distribution of resources and the efficient provision of social services are:
 - (a) the Land Commission;
 - (b) the Health and Education Services Commission
- (3) The Commission to detect and counteract corruption and to promote honesty and transparency in financial transactions is the Anti-Corruption Commission.

Independent Electoral Commission

120. Composition

- (1) The Independent Electoral Commission will consist of a chairperson and five members appointed by the President after the procedures set out in section 118(5) of this Constitution have been followed.
- (2) Members of the Commission serve a five-year term and may be re-appointed for one further term of five years.

121. Functions

The functions of the Electoral Commission are:

- (a) to monitor the registration of voters to ensure that all eligible voters are able to register if they wish to do so;
- (b) to organise, conduct and supervise Parliamentary Elections and Local Authority Elections;
- (c) to ensure that elections are free and fair;
- (d) to declare the results of these elections within a period that must be prescribed by Parliament;
- (e) to perform such other functions relating to the electoral process as prescribed in this Constitution or by an Act of Parliament.

Human Rights Commission

122. Composition

- (1) The Human Rights Commission will consist of a chairperson and seven members appointed by the President after the procedures set out in section 118 (5) of this Constitution have been followed.
- (2) Members of the Commission serve a five-year term and may be re-appointed for one further term of five years.

123. Functions

- (1) The functions of this Commission are:
 - (a) to promote the protection, development and attainment of human rights;
 - (b) to monitor, assess, investigate and ensure observance of human rights in Zimbabwe.
 - (c) to perform such other functions as may be prescribed in an Act of Parliament.

- (2) The persons in charge of all State bodies and organs must inform the Human Rights Commission about the measures taken to implement all the rights contained in the Bill of Rights.

Gender and Anti-Discrimination Commission

124. Composition

- (1) The Gender and Anti-Discrimination Commission consists of a chairperson and five members appointed by the President after the procedures set out in section 118 (5) of this Constitution have been followed.
- (2) Members of this Commission serve a five-year term and may be re-appointed for one further term of five years.

125. Functions

- (1) The functions of this Commission are:
 - (a) to ensure gender equality as provided in the Bill of Rights in the Constitution;
 - (b) to ensure that there is no discrimination based on sex, gender or other grounds that are prohibited in terms of this Constitution;
 - (c) on complaint or on its own initiative, to investigate possible violations of these rights;
 - (d) to conduct relevant research and make recommendation for changes to laws and practices which lead to gender discrimination;
 - (e) to advise public and private institutions about necessary steps that need to be taken to ensure gender equality;
 - (f) to recommend affirmative action programmes to achieve gender equality;
 - (g) to perform such other functions as may be necessary to promote gender equality and to prevent gender discrimination.
 - (h) to perform such other functions as may be prescribed in an Act of Parliament.

Public Protector Commission

126. Composition

- (1) The Public Protector Commission consists of a chairperson and five members appointed by the President after the procedures set out in section 118 (5) of this Constitution have been followed.
- (2) Members of the Commission serve a five-year term and may be re-appointed for one further term of five years.

127. Functions

The functions of this Commission are to protect the public against abuse of power and maladministration by the executive and public officers.

Truth, Justice, Reconciliation and Conflict Prevention Commission

128. Composition

- (1) The Truth, Justice, Reconciliation and Conflict Prevention Commission consists of a chairperson and five members appointed by the President after the procedures set out in section 118 (5) have been followed.
- (2) Members of the Commission serve a five-year term and may be re-appointed for one further term of five years.

129. Functions

The functions of this Commission are:

- (a) to investigate on its own initiative or at the request of Parliament any matter relating to past human rights abuses including;
 - i. the use of armed force internally within the country;
 - ii. the exercise of the powers to prosecute or decline to prosecute persons for crime,
 - iii. the use of Presidential powers to pardon offenders;
- (b) to provide remedies for people injured by such abuses;
- (c) to promote reconciliation in order to avoid conflict in the future;
- (d) to prevent conflict in the future by engaging in mediation and dispute settlement in disputes that could lead to conflict.

130. Powers

- (1) This Commission has all necessary powers to carry out its work effectively, including the following powers:
 - (a) to summon and examine witnesses;
 - (b) to require the production of all relevant documentation;
 - (c) to impose penalties on those who obstruct, interfere with or fail to assist its work.
- (2) In order to correct or remedy past wrongdoing the Truth, Justice and Reconciliation Commission has the following powers:
 - (a) to order that wrongdoers apologise to their victims;
 - (b) to order that wrongdoers pay specified amounts of compensation to victims;
 - (c) to perform any other things as may be specified in an Act of Parliament.
- (3) In order to prevent future conflicts in Zimbabwe the Commission will have the power to intervene in situations which the Commission feels may lead to conflict and to seek to mediate and settle disputes.

Labour Commission

131. Composition

- (1) The Labour Commission consists of a chairperson and five members appointed by the President after the procedures set out in section 118 (5) of this Constitution have been followed.
- (2) Members of this Commission serve a five-year term and may be re-appointed for one further term of five years.

132. Functions

The functions of the Labour Commission are to monitor and enforce the labour rights enshrined in this Constitution.

Media Commission

133. Composition

- (1) The Media Commission will consist of a chairperson and five members appointed by the President after the procedures set out in section 123(5) of this Constitution have been followed.
- (2) Members of this Commission serve a five-year term and may be re-appointed for one further term of five years.

134. Functions

The functions of the Media Commission are:

- (a) to promote and develop freedom of the press;
- (b) to regulate broadcasting in the public interest and in particular to ensure fairness and diversity of views broadly representing Zimbabwean society;
- (c) to exercise any other functions that may be prescribed by an Act of Parliament.

Land Commission

135. Composition

- (1) There will be a Land Commission consisting of a chairperson and five members appointed by the President after the procedures set out in section 118 (5) of this Constitution have been followed.

- (2) Members of this commission serve a five-year term and may be re-appointed for one further term of five years.

136. Functions

The functions of the Land Commission are:

- (a) to administer all public land in Zimbabwe;
- (b) to make recommendations on acquisition of private land for the purpose of resettlement of persons requiring land;
- (c) to receive representations from the Government and any other interested parties with regards to the acquisition and distribution of land for resettlement, development, commercial or any other public purpose;
- (d) to make recommendations to ensure sustainable environmental policies in Zimbabwe;
- (e) to monitor Government actions in matters relating to land and report on these to Parliament.

Health and Education Services Commission

137. Composition

- (1) The Health and Education Services Commission consists of a chairperson and seven members appointed by the President after the procedures set out in section 118 (5) have been followed.
- (2) Members of the Commission serve a five-year term and may be re-appointed for one further term of five years.

138. Functions

Education

The functions of this Commission in relation to education are:

- (a) to monitor provision of education in Zimbabwe in both private and public schools and institutions;
- (b) to monitor the actions of government in the provision of educational services and facilities in the country to determine whether educational needs are being adequately provided for and whether educational facilities are adequately and evenly distributed in the country,
- (c) to define and formulate an educational policy for both Parliament and Government;
- (d) to ensure the existence of uniform educational standards for both public and private educational institutions;

- (e) to review terms and conditions of services of members of the education services and make recommendations to government.
- (f) to perform any other functions specified in an Act of Parliament.

Health

The functions of this Commission in relation to health are:

- (a) to monitor the provision of health services in Zimbabwe in both private and public schools and institutions;
- (b) to monitor the actions of Government in the provision of health services and to determine whether health needs are being adequately and evenly distributed in the country;
- (c) to advise Parliament and the Government in relation to the provision of health services in Zimbabwe;
- (d) to formulate a health policy for both Parliament and the government of Zimbabwe;
- (e) to ensure the existence of uniform standards for both public and private health institutions;
- (f) to review the terms and conditions of service, training and qualifications of members of the health services and matters connected with their management and welfare and make recommendations on these matters to the Government.
- (g) Perform any other functions specified in an Act of Parliament.

Anti-Corruption Commission

139. Composition

- (1) The Anti-Corruption Commission consists of a chairperson and five members appointed by the President after the procedures set out in section 118 (5) have been followed.
- (2) Members of the Commission serve a five-year term and may be re-appointed for one further term of five years.

140. Functions

The functions of the Anti-Corruption Commission are;

- (a) to investigate cases of corruption in both the public and private spheres.
- (b) to combat corruption and abuse of power
- (c) to secure the prosecution of persons involved in corrupt activities
- (d) to exercise such functions and powers as may be prescribed in an Act of Parliament.

141. Youth and Children Commission

An Act of Parliament must provide for the establishment, powers and functions of a Youth and Children Commission whose functions shall include devising and recommending appropriate programmes and policies for the youth and children.

142. Arts and Cultural Commission

An Act of parliament must provide for the establishment, powers and functions of an Arts and Cultural Commission.

CHAPTER 10

FINANCE

143. *Taxation*

- (1) No tax, duty, levy or imposition may be levied for the purposes of government or any provincial government except under the authority of an Act of Parliament.
- (2) An Act of Parliament must provide for
 - (a) the equitable division of revenue raised nationally between the national and provincial spheres of government.
 - (b) The determination of each province's equitable share of the revenue raised from the province.
 - (c) The extent to, and circumstances in, which a provincial government may impose a tax.
 - (d) Limits on borrowings by the State and on the public debt.
 - (e) The mechanisms to be used by Parliament to monitor and control expenditure by the state, including the submission of regular reports to the National Assembly.
 - (f) The equitable, distribution of government expenditure for the fulfillment of the obligations set out in the Bill of Rights which must account for at least half of the national budget.
- (3) A Province's equitable share of the revenue raised nationally will be a charge on the Consolidated Revenue Fund.

144. *Consolidated Revenue Fund*

- (3) There will be a Consolidated Revenue Fund into, which will be paid all revenues, or other moneys raised for the purpose, or on behalf of the Government.
- (4) No money may be withdrawn from the Consolidated Revenue Fund except to meet expenditure authorised by this Constitution or by an Act of Parliament or by an Appropriation Bill.
- (5) Money withdrawn from the Consolidated Revenue Fund must only be paid to the person or authority to whom the payment is due.

145. *Estimates of Revenue and Expenditure*

- (1) The Minister responsible for Finance must lay before a joint sitting of Parliament a statement of the estimated receipts and the expenditure of the Government in the next financial year.
- (2) The statement of estimates must be laid before Parliament in respect of every financial year prior to the commencement of that year.

- (3) Separate estimates of revenue and expenditure must be given for each of the following:
 - (a) the Judiciary;
 - (b) each Commission established in terms of this Constitution;
 - (c) the Public Protector Commission;
 - (d) the office of the Attorney – General;
 - (e) the office of the Auditor – General.
- (4) Before the estimates are debated in the National Assembly, the estimates must be referred to an appropriate committee of the National Assembly, which may discuss and review them and make appropriate recommendations to the National Assembly.

146. Appropriation Bill

- (1) The heads of expenditure contained in the estimates, other than expenditure already charged on the Consolidated Revenue Fund by this Constitution or any Act of Parliament, must be included in a Bill to be known as an Appropriation Bill which must be introduced into Parliament to provide for the issue from the Consolidated Revenue Fund of the sums necessary for the purposes specified in the Bill.
- (2) If the money appropriated under the Appropriation Act is insufficient or if a need has arisen for expenditure for a purpose for which no amount has been appropriated, a supplementary estimate must be laid before the National Assembly, to be followed by a supplementary Appropriation Bill which must be approved by National Assembly before the money is issued from the Consolidated Revenue Fund.

147. Unauthorized Expenditure

Under no circumstances may Government authorise the withdrawal of money from the Consolidated Revenue Fund in advance of appropriation and the procedure laid out in this Constitution.

148. Auditor General

- (1) There will be an Auditor - General who will be appointed by the President on the recommendations of the National Assembly by a resolution supported by a majority of its members.
- (2) The National Assembly will make its recommendations from a list of three persons nominated by the Parliamentary Public Appointments Committee.

149. Functions of Auditor - General

- (1) In the exercise of his or her functions, the Auditor - General will be absolutely independent and subject only to the law.
- (2) The functions of the Auditor-General are:
 - (a) to audit the accounts, financial systems and financial management, of all government departments and institutions which receive public funds;
 - (b) to order the taking of measures to rectify any defects in the management and safeguarding of public funds; and
 - (c) to report on any other function which may be imposed by an Act of Parliament.

150. Procurement

An Act of Parliament must provide for procedures for the procurement of goods and services by all government departments and public institutions in a manner that is transparent, fair, non-corrupt, cost-effective and competitive.

151. Reserve Bank of Zimbabwe

- (1) There will be a central bank of Zimbabwe to be known as the Reserve Bank of Zimbabwe.
- (2) The Reserve Bank of Zimbabwe will be independent and subject only to the law.
- (3) The primary object of the Reserve Bank of Zimbabwe will be to protect the currency of Zimbabwe in the interest of balanced and sustainable economic growth.
- (4) The Governor of the Reserve Bank of Zimbabwe and seven other members of the Board of Governors will be appointed by the President on the recommendation of the National Assembly by a resolution supported by at least two thirds of its members.
- (5) An Act of Parliament will provide for the functions of the Reserve Bank of Zimbabwe.

CHAPTER 11

The Public Service Commission

152. *Composition of Public Service Commission*

- (1) There will be a Public Service Commission, which consists of a Chairperson and six other members.
- (3) The Chairperson and other members of the Commission will be appointed by the President on the recommendations of the National Assembly by a resolution adopted by two thirds of its membership, the persons having been nominated by the Parliamentary Public Appointments Committee.
- (4) An Act of Parliament must provide for the participation of the public in submitting nominations to the Parliamentary Public Appointments Committee.

153. *Term of Public Service Commission*

The term of office of a member of the Public Service Commission will be five years and a member is eligible for one further term of five years only.

154. *Independence and Impartiality*

The Public Service Commission will be independent and impartial and not be subject to the control or direction of any person or authority.

155. *Removal of Commissioners*

The provisions relating to the removal of a judge from office will apply with necessary modifications to the removal of a member of the Public Service Commission.

156. *Functions of Public Service Commission*

The functions of the Public Service Commission will be:

- (a) to appoint competent and qualified persons for employment in the public service;
- (b) to promote a high standard of professional ethics in the public service and ensure that services are provided impartially, fairly and without bias;
- (c) to recommend to Government, the remuneration and other benefits of persons employed in the public service;
- (d) to exercise disciplinary control over persons employed in the public service.

157. *Accountability of Public Service Commission*

The Public Service Commission will be accountable to the National Assembly and must report annually to the National Assembly on its activities for the year.

The Security Services Commission

158. *Composition of Security Services Commission*

- (1) There will be a Security Services Commission which will consist of the Chief Justice as chairperson and ten other members.
- (2) Members of the Commission will be appointed by the President on the recommendations of the National Assembly by a resolution adopted by two thirds of its membership, the persons having been nominated by the Parliamentary Public Appointments Committee.
- (3) An Act of Parliament must provide for the participation of the public in submitting nominations to the Parliamentary Public Appointments Committee.

159. *Term of Office of Security Services Commission*

The term of office of a member of the Security Services Commission will be five years and a member is eligible for re-appointment for one further term of five years only.

160. *Functions of Security Services Commission*

- (1) The Security Services Commission will exercise its functions in relation to;
 - (a) The Defence Force
 - (b) The Police Force
 - (c) The Prison Service
 - (d) The Intelligence Service
- (2) An Act of Parliament must provide for the functions of the Security Services Commission and the appointment and removal from office of the heads of the Defence Force, the Police Force, the Prison Service and the Intelligence Services provided that the following functions and principles must be enshrined;
 - (a) to recommend to the National Assembly persons to be appointed to head the various components of the Security Services;
 - (b) to advise the Government on the remuneration and other benefits and conditions of service of persons employed in the Security Services;
 - (c) to exercise disciplinary control over persons employed in the Security Services

- (d) to ensure that Security Services are impartial and operate in compliance with the law and that under no circumstances Security Services or any of their members perform their duty to the prejudice of any political party;
- (e) to make recommendations to the National Assembly to ensure that military spending is not excessive.

CHAPTER 12

TRADITIONAL LEADERS AND CUSTOMARY LAW

161. Traditional Chiefs and other Traditional Leaders

- (1) The institution, status and role of traditional chiefs and other traditional leaders, according to customary law, will be recognized.
- (2) An Act of Parliament will provide for the role of traditional chiefs and other traditional leaders in matters affecting local communities, including the application of customary.
- (3) Customary law will, subject to this Constitution, be recognized.

CHAPTER 13

PROVINCIAL GOVERNMENT

162. Provinces

- (1) Zimbabwe will be divided into five provinces as follows:
 - (a) Manicaland;
 - (b) Mashonaland;
 - (c) Masvingo;
 - (d) Matebeleland; and
 - (e) Midlands.
- (2) The boundaries and capitals of these Provinces will be as prescribed in a Schedule to this Constitution.

163. Provincial Assembly

- (1) There will be, in each province, a provincial legislature, to be called a Provincial Assembly consisting of not less than thirty members and not more than fifty members elected on an electoral system based on proportional representation.
- (2) The electorate for a Provincial Assembly will be the voters enrolled on the National voter's roll in that Province.
- (3) An Act of Parliament must provide for an equitable formula determining the exact number of members of each Provincial Assembly.
- (4) A Provincial Assembly will be elected for a term of five years and thereafter stand dissolved.

164. Legislative Authority of Provinces

- (1) Subject to the provisions of this Constitution, the legislative authority of a Province vests in its Provincial Assembly.
- (2) A Provincial Assembly will have power to
 - (a) initiate and pass legislation dealing with any matters listed in Section 10.
 - (b) perform such other functions and exercise such other powers as may be prescribed in an Act of Parliament.
- (3) A Provincial Assembly may, subject to an Act of Parliament, impose a tax or levy.

165. *Provincial Executive Authority*

- (4) The Executive authority of a Province will vest in a Provincial Governor and an Executive Council.
- (5) The Provincial Governor will be elected by the Provincial Assembly from among its members at its first sitting or as soon as possible to fill a vacancy.
- (6) The Provincial Governor will appoint not more than ten members from the Provincial Assembly to constitute an Executive Council, which will act as a Cabinet for the Province.
- (7) The provisions of this Constitution relating to the Prime Minister and the Cabinet will, with necessary modification, apply in relation to the Provincial Governor and the Executive Council and an Act of Parliament must give specifications and guidelines on this aspect.

166. *Exercise of Legislative Authority by Provincial Assembly*

- (8) The Provincial Assembly will exercise its legislative powers by enacting provincial laws through the passing of a Bill with a supportive vote of at least two-thirds of its total membership.
- (9) A Bill passed by the Provincial Assembly will require the assent of the Provincial Governor before becoming law.
- (10) The Provincial Governor will be obliged to assent to and sign a Bill passed by the Provincial Assembly except if at least one third of the members express reservations about its constitutionality, in which case it must be referred to the Constitutional Court for an opinion.
- (11) Before referring a Bill to the Constitutional Court, the Provincial Governor must give the Provincial Assembly an opportunity to either withdraw the Bill or remove the alleged received unconstitutional aspects.
- (12) The Provincial Governor must:
 - (a) sign the Bill, if the Constitutional Court rules it to be constitutional.
 - (b) not sign the Bill, if the Constitutional Court rules it to be unconstitutional.

167. *Moderator and Deputy Moderator of Provincial Assembly*

- (13) At its first sitting after the election, or wherever a vacancy exists, the Provincial Assembly must elect a Moderator and Deputy Moderator.
- (14) The provisions of this Constitution relating to the Speaker and Deputy Speaker will, with necessary modification, apply in relation to the Moderator and Deputy Moderator and an Act of Parliament, must give specifications and guidelines on this aspect.

168. Authority of Parliament over Provincial Assembly

- (15) Parliament may, at a joint sitting and by a vote supported by at least two-thirds of its total membership, nullify a piece of provincial legislation, if and only if, that legislation is prejudicial to the economic or security interests of another province or the country as a whole or is grossly unreasonable.
- (16) The Constitutional Court will have jurisdiction to determine any dispute between a Provincial Assembly and Parliament over the exercise of the power in subsection (1).

169. Procedures and other matters of the Provincial Assembly

The provisions of this Constitution relating to parliament, including matters of privilege and immunities, public participation and passing of Bills will, with necessary modifications, apply to a Provincial Assembly and an Act of Parliament must give specifications and guidelines on this aspect.

170. Dissolution of the Provincial Assembly

The President may dissolve the Provincial Assembly at any time if three-quarters of its total membership vote in favour of dissolution.

171. A Provincial Assembly

A Provincial Assembly will have power to pass legislation over the following matters:

- (a) provincial planning;
- (b) provincial tourism;
- (c) public transport;
- (d) soil conservation
- (e) housing;
- (f) provincial tax;
- (g) education;
- (h) health;
- (i) rural development;
- (j) roads.

CHAPTER 14

LOCAL GOVERNMENT

172. Local Government Institutions

- (1) There will be local government institutions consisting of urban councils in urban areas and rural district councils in rural areas.
- (2) An Act of Parliament will provide for the establishment and powers of local government institutions, including by-laws and regulations and to levy rates and taxes.
- (3) A local government institution will govern the affairs of its community subject to national and provincial legislation.

173. Principles of Local Government

- (1) The purpose of local government will be:
 - (a) to provide democratic and accountable government for local communities.
 - (b) to promote social and economic development
 - (c) to provide participation by the people in decision-making.
- (2) Local government institutions must be given as much autonomy as is conducive for the attainment of the objects of local governance.
- (3) Traditional leaders will be incorporated in local government structures.

CHAPTER 15

MISCELLANEOUS PROVISIONS

174. Amendment of the Constitution

The provisions of this Constitution may only be amended as follows:

- (a) Proposed amendments to any provisions of Chapters 1 - 6 and chapter 15 will be put to a referendum and if the majority of those voting have voted for the amendment, Parliament may, by a simple majority, pass a Bill for the amendment.
- (b) Any other amendments will require an affirmative vote of at least three-quarters of the membership of each chamber, provided thirty days notice of the amendments has been given to members of the public before they are introduced in Parliament.

175. Transitional and supplementary provisions

The Third Schedule applies to transitional and supplementary provisions to enable this Constitution to have effect on or after the appointed day.