

# **Zimbabwe**

## **Introductory Note**

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### **1. ORIGINS AND HISTORICAL DEVELOPMENT OF THE CONSTITUTION**

Zimbabwe is a landlocked country situated in Southern Africa.<sup>1</sup> It is a multi-ethnic country with an estimated total population of 13 million people.<sup>2</sup> The major ethnic groups are the Shona and Ndebele speaking peoples. The Shona people constitute 82 percent whilst the Ndebele make up 14 percent of the total population. Other minority groups constitute four percent of the total population.<sup>3</sup>

Present-day Zimbabwe was colonized by the British South African Company in 1890. The name Rhodesia was officially recognized under the British South African Company administration in 1895 and in 1923, Zimbabwe (then Southern Rhodesia) became a self-governing territory under the British Empire. The 1923 Constitution imposed significant restrictions on the powers of the Southern Rhodesian Legislative Assembly as the Assembly did not have the power to amend or repeal certain provisions of the Constitution.<sup>4</sup> In essence, the British Monarch had the power to legislate for and on behalf of Southern Rhodesia and also to disallow any law passed by the Southern Rhodesian Legislative Assembly.<sup>5</sup> Furthermore, the 1923 Constitution did not contain a justiciable bill of rights and the indigenous people were excluded from participating in the spheres of government.

Following from the 1923 Constitution, the colony's second constitution was the 1953 Federal Constitution, which established the Federation of Southern Rhodesia (Zimbabwe), Northern Rhodesia (Zambia), and Nyasaland (Malawi) to form the Federation of Rhodesia and Nyasaland. The 1953 Federal Constitution established a Federal Parliament comprising a Federal Prime Minister, other ministers, and a Federal Governor.<sup>6</sup> Northern Rhodesia and Nyasaland continued to be administered from London while Southern Rhodesia continued with its self-governing rule subject to the powers of Britain. Invariably, the coming into force

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<sup>1</sup> Zimbabwe shares borders with Botswana, Mozambique, South Africa and Zambia.

<sup>2</sup> See the Census Preliminary Report by ZimStat available at <http://www.zimstat.co.zw/documents/CensusPreliminary2012.pdf> accessed on 3 Feb. 2013.

<sup>3</sup> See <http://www.indexmundi.com/zimbabwe/ethnicgroups.html> accessed on 12 Jan. 2013.

<sup>4</sup> See Greg Linington, *Constitutional Law of Zimbabwe*, 20.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid at 22.

of a Federal Constitution did not affect the Southern Rhodesian Constitution, which continued in force.<sup>7</sup>

The Southern Rhodesia government realised the need to revise the 1923 Constitution in early 1960.<sup>8</sup> This culminated in the drafting of the 1961 Southern Rhodesian Constitution. The 1961 Constitution made provisions for the advancement of the rights of Africans for the first time in the history of Southern Rhodesia, by providing for political representation of Africans in the Constitutional Council.<sup>9</sup> Furthermore, it established a justiciable bill of rights<sup>10</sup> and a Constitutional Council whose purpose it was to prevent the enactment of legislation that was inconsistent with the bill of rights.<sup>11</sup>

The white settlers under former Prime Minister Ian Smith subsequently declared independence from Britain in 1965. The 1965 Unilateral Declaration of Independence Constitution removed the residual powers of Britain in respect of Southern Rhodesia including also the bill of rights.<sup>12</sup> The 1965 Constitution was followed by the Constitution of 1969. This Constitution transformed the office of the Officer Administering Government into a non-executive presidency.<sup>13</sup> It further introduced a bi-cameral legislative system consisting of a Senate and a House of Assembly.<sup>14</sup> Unlike the 1965 Constitution, the 1969 Constitution entrenched a bill of rights, but it was not a justiciable one.<sup>15</sup> Significantly, the 1969 constitutional dispensation entrenched white supremacy and racial discrimination within Southern Rhodesia.<sup>16</sup>

However, the rise of African consciousness in the 1950-s led to the struggle for self-rule, which culminated in the Second *Chimurenga* (the war for independence) in the 1970-s. The war for independence ultimately led to the signing of the Lancaster House Agreement in 1979, which ushered in majority rule in 1980 and with it, a new post-independence

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<sup>7</sup> Ibid.

<sup>8</sup> A constitutional conference was held in 1960 and it continued into 1961.

<sup>9</sup> See section 73 of the 1961 Constitution.

<sup>10</sup> See Chapter VI of the 1961 Constitution.

<sup>11</sup> See section 73 of the 1961 Constitution.

<sup>12</sup> Britain reacted to the Unilateral Declaration of Independence by taking the matter to the UN Security Council which imposed economic sanctions on the Smith regime.

<sup>13</sup> See section 1 of the 1969 Constitution.

<sup>14</sup> The House of Assembly was ultimately the decisive law-making body of Southern Rhodesia.

<sup>15</sup> See Linington, n4 at 39.

<sup>16</sup> Ibid.

constitution.<sup>17</sup> The elections of 1980 were won by the Zimbabwe African National Union Patriotic Front (ZANU PF) which subsequently formed the first post-colonial government.<sup>18</sup>

Since the adoption of the Lancaster House Constitution,<sup>19</sup> Zimbabwe has followed a multi-party democracy system, despite a failed attempt to introduce a one-party state in the late 1980's.<sup>20</sup> However, internal disturbances between 1982 and 1987, fuelled by disgruntled former liberation fighters from the Zimbabwe African Peoples Union (PF-ZAPU), culminated in the signing of the 1987 Unity Accord between the PF-ZAPU and the ZANU PF. The Unity Accord merged the two liberation parties into one, with the name ZANU PF being retained.<sup>21</sup>

ZANU PF dominated Zimbabwe's political landscape and won every election from independence until the year 2000.<sup>22</sup> With the birth of a strong opposition party in 1999, called the Movement for Democratic Change (MDC), which contested the March 2000 parliamentary elections,<sup>23</sup> ZANU PF lost a considerable number of seats. In June 2002, presidential elections were held, which also saw ZANU PF facing stiff competition from the MDC, amid allegations that the elections were massively rigged in favour of the former.<sup>24</sup>

However, the year 2000 is significant in Zimbabwe's politics, in so far as the constitutional reform process is concerned. The need for a new constitution arose out of a general consensus by several interest groups that the Lancaster House Constitution was deficient, in that it

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<sup>17</sup> Two liberation movements, the Zimbabwe African National Union Patriotic Front (ZANU PF) and the Zimbabwe African Peoples Union (PF-ZAPU) participated in the war that led to Zimbabwe's independence.

<sup>18</sup> The year 1980 marked the turning point in the history of Zimbabwe, with independence being attained on 18<sup>th</sup> April.

<sup>19</sup> In this work, any references to the “-Constitution-” unless the context clearly indicates otherwise, should be taken to refer to the 2013 Constitution.

<sup>20</sup> See a report by the UN Special Envoy on Human Settlements Issues in Zimbabwe available at <http://www.unhabitat.org/documents/ZimbabweReport.pdf> accessed on 6 Feb. 2013.

<sup>21</sup> According to the report by the UN Special Envoy on Human Settlements Issues in Zimbabwe available at <http://www.unhabitat.org/documents/ZimbabweReport.pdf> accessed on 6 Feb. 2013, '[t]he historical relationship of ZANU PF and the minority party PF-ZAPU during the liberation struggle and the subsequent civil war formed the basis of the ZANU PF policy and attitude towards political opposition.'

<sup>22</sup> Ibid. More than 12 opposition parties were formed in the early 1990s, but these were weak and small, poorly led and had almost no political impact.

<sup>23</sup> The MDC was formed out of an alliance of civil society organizations such as the National Constitutional Assembly and the Zimbabwe Congress of Trade Unions. The alliance was by and large driven by a shared abhorrence to ZANU PF's bad governance and concerns about the authority of the President which appeared to have no limit.

<sup>24</sup> See J. Makumbe, 'Zimbabwe's Hijacked Elections' 2002 *Journal of Democracy*, 13,4,97. See also D. Shumba, 'A critical reflection on the 2002 presidential election in Zimbabwe', 2002, *African Human Rights Law Journal*, 2, 327; L. Sachikonye, 'Political Parties and the Democratisation Process in Zimbabwe', 2005 EISA Research Report No. 16.

concentrated too much power in the executive arm of government.<sup>25</sup> Essentially, these executive powers made the country's judiciary and legislature subservient to the executive.<sup>26</sup> Furthermore, the Lancaster House Constitution had been amended nineteen times albeit in a piecemeal manner and without any comprehensive national constitutional reform strategy.<sup>27</sup> Most of these amendments were swayed in favour of the executive and were engineered by the ruling party to enable it to further centralise its power and galvanise executive authority.<sup>28</sup>

A Constitutional Commission was set up by the President on 28 April 1999,<sup>29</sup> whose purpose was to review the Lancaster House Constitution, extract the views of ordinary Zimbabweans on what they wanted to be entrenched in the new constitution, and come up with recommendations. The Constitutional Commission was comprised of 400 presidential appointees who were predominantly members of the ruling party. The constitution proposed by the Constitutional Commission was presented to the public in a referendum which was conducted in February 2000, but it was overwhelmingly rejected by the people. The 2000 draft constitution was rejected primarily because the process was dominated and controlled by the President. The Constitutional Commission which led the process was established in terms of the Commissions of Inquiry Act.<sup>30</sup> The use of the Commission of Inquiry Act allowed the President to control the whole process, as he determined the composition of the Commission.<sup>31</sup> Significantly, the Constitutional Commission was only tasked with submitting recommendations for a new constitution and the President was under no legal obligation to abide by these recommendations. Hatchard observed that 'the membership of the Constitutional Commission emphasized the intention of the President to maintain control of the whole process.'<sup>32</sup>

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<sup>25</sup> See G.A. Dzinesa, 'Zimbabwe's Constitutional Reform Process: Challenges and Prospects' available at <http://www.ijr.org.za> accessed on 16 July 2013.

<sup>26</sup> See W. Ncube, 'Constitutionalism, Democracy and Political Practice in Zimbabwe', in I. Mandaza and L. Sachikonye (eds.) *The One Party State and Democracy: The Zimbabwe Debate*. (Harare: Sapes, (1991).

<sup>27</sup> See Zimbabwe Lawyers for Human Rights, *Zimbabwe's Constitutional Drafts: Comparison and Recommendations*- (Harare: ZLHR. (2011).

<sup>28</sup> See J. Hatchard, 'The Constitution of Zimbabwe: Towards a Model for Africa?' (1991) 35(1-2) *Journal of African Law*, 79-101.

<sup>29</sup> The Constitutional Commission was set up under Proclamation No. 6 of 1999, contained in Statutory Instrument No. 138 of 1999 and used the Presidential Powers in terms of the Commission of Inquiry Act (Chapter 10:07).

<sup>30</sup> See J. Hatchard, 'Some lessons on constitution making', (2001) 45(2) 2 *Journal of African Law*, 210-216, 210.

<sup>31</sup> The Constitutional Commission was comprised mostly of ZANU (PF) members and sympathizers. These included all 150 Members of Parliament, of whom only three were from other political parties.

<sup>32</sup> See G. Linington, n4, at 39.

The consultation process undertaken by the 2000 Constitutional Commission was, however, broader and more comprehensive than the 2009 Select Committee of Parliament (COPAC) process.<sup>33</sup> The consultation process was carried out over a space of 5 months. The Constitutional Commission produced a 'List of Constitutional Issues and Questions' that were widely publicized in the national media, the objective being to "-promote public discussion and debate-" on the new constitution.<sup>34</sup> However, the legitimacy of the draft constitution that was produced by the Constitutional Commission was undermined by the fact that the President unilaterally effected changes to the draft, thereby rendering the draft constitution an executive document. Under such circumstances, it is hardly surprising that the 2000 draft constitution was rejected by the people in a referendum. Significantly, the rejection of the proposed constitution marked the first political defeat for the ZANU PF leadership.<sup>35</sup> A backlash subsequently ensued against perceived political opponents. The judiciary was not spared, and judges who were perceived to be compliant were appointed to dilute the bench, while other judges were forced to resign, including the then Chief Justice, Anthony Gubbay.<sup>36</sup>

An equally significant turn in Zimbabwean politics was witnessed in the 2008 elections. Prior to the elections, there were allegations of violence and intimidation being perpetrated against opposition political party supporters.<sup>37</sup> The 2008 disputed elections culminated in the formation of a Government of National Unity (GNU) by the three major political parties in February 2009.<sup>38</sup> The Global Political Agreement (GPA), which facilitated the GNU,

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<sup>33</sup> See S.R. Dorman, 'NGOs and the Constitutional Debate in Zimbabwe: From Inclusion to Exclusion', (2003) 29(4) *Journal of Southern African Studies*, 845–863, 852. The Commission organised 4,321 public meetings which were attended by a total of 556, 276 individuals, and 700 special ad hoc meetings attended by a total of 150,000 people. In addition, the Commission received 4,000 written submissions, and aired 31 programmes on ZBC TV, as well as 143 programmes on Zimbabwe's four public radio stations: 16 programmes on Radio 1 that were conducted in English; 55 programmes on Radio 2 that were conducted in Shona and Ndebele; 2 programmes on Radio 3 that were conducted in English; and 70 programmes on Radio 4 that were conducted in minority languages such as Tonga and Venda.

<sup>34</sup> Ibid.

<sup>35</sup> See <http://www.unhabitat.org/documents/ZimbabweReport.pdf>, at 18.

<sup>36</sup> See A. De Bourbon, 'Human rights litigation in Zimbabwe: Past, present and future', (2003) 3 *African Human Rights Law Journal*, 221. See also a report by International Bar Association Human Rights Institute available at [www.ibanet.org/Document/Default.aspx?DocumentUid=268BE2D5...](http://www.ibanet.org/Document/Default.aspx?DocumentUid=268BE2D5...) accessed on 13 September 2013.

<sup>37</sup> Zimbabwe Lawyers for Human Rights 'Zimbabwe 2008 Harmonised Elections' (2008),- 41.

<sup>38</sup> The Government of National Unity was formed by the three major political parties represented in Parliament: the ZANU PF, led by President Robert Mugabe, the Morgan Tsvangirai-led MDC, and the MDC led by Arthur Mutambara, which split from the Tsvangirai-led MDC.

provided for the adoption of a new constitution before the holding of fresh elections.<sup>39</sup> The GPA ended the political deadlock in the country and ushered in a transitional inclusive government that assumed office in February 2009.

A constitution-making process which began in April 2009 culminated in the promulgation of the new Zimbabwean Constitution on 22 May 2013. The new Constitution was a product of the constitution-making process that was established in terms of Article 6 of the GPA.<sup>40</sup> Article 6 of the GPA recognised the shortcomings of the previous constitution, acknowledging that primarily ‘it was a document made to transfer power from the colonial authority to the people of Zimbabwe.’<sup>41</sup> Furthermore, Article 6 emphasized the need for a truly home-grown constitution, made by the people of Zimbabwe in a process that was to be ‘owned and driven by the people being inclusive and democratic-.’<sup>42</sup>

The provisions of Article 6 of the GPA basically provided for the framework for the constitution-making process as a parliamentary-driven one. Article 6.1(a) provided for the composition of a Select Committee of Parliament (COPAC) which was constituted by representatives of the three main political parties.<sup>43</sup> In line with the requirements of Article 6, COPAC was set up in April 2009 and its members were appointed by the Committee on the standing rules and orders of Parliament.<sup>44</sup> The terms of reference of COPAC, which were set out extensively in Article 6 can be summarised as follows:

- COPAC was to set up sub-committees composed of Members of Parliament and civil society to assist in the performance of its duties;-
- COPAC was to hold public consultations, and to convene an All –Stakeholders’- Conference to consult with the relevant stakeholders and their representatives;-
- COPAC was to table the draft constitution to a second All Stakeholders’ Conference followed, by a report to Parliament. Thereafter, the draft constitution would be put to a referendum.<sup>45</sup>

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<sup>39</sup> Article 6 of the GPA. The new political dispensation resulted in the promulgation of Constitution Amendment No. 19.

<sup>40</sup> The GPA was signed on 15<sup>th</sup> September 2008. It was facilitated by the former South African President, Thabo Mbeki, and brokered by the Southern African Development Community (SADC).

<sup>41</sup> Article 6 of the Global Political Agreement.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> See [www.copac.org.zw](http://www.copac.org.zw) accessed on 1 August 2013.

<sup>45</sup> See Article 6.1(a)(i) (v) of the GPA.

Article 6(1)(c) of the GPA set out an extensive work and time plan as to how the constitution-making process would progress. However, the timelines set out in Article 6(1)(c) were not adhered to, due to a combination of lack of funding and political squabbling amongst the main political parties over the implementation of the constitution-making process.<sup>46</sup> The first All Stakeholders Conference was held in July 2009.<sup>47</sup> The conference was attended by 4,000 delegates, including all parliamentarians as well as nominees from political parties and civil society, and delegates chosen to represent special-interest groups for the purpose of identifying what should be canvassed in the new constitution. A total of seventeen thematic areas were agreed upon.<sup>48</sup> Outreach consultations started in June 2010 and were concluded in October 2010.<sup>49</sup> The consultation process took place in the space of four months. However, the time in which these consultations took place was too short and not sufficient to reach out to all the people. The process was also undermined by political violence emanating from political party influence in the outreach consultations.<sup>50</sup>

The sitting of the thematic committees commenced on 3 May 2011.<sup>51</sup> The thematic committees were mandated with the process of compiling and organizing data, which was gathered from the outreach consultations, and identifying common issues and classifying the views submitted.<sup>52</sup> After the thematic committees finished sitting, the drafting process began. Three principal drafters<sup>53</sup> led the drafting committee and they were assisted in the drafting process by 17 technical experts. After the drafting process was complete, the draft constitution was tabled before the Second All Stakeholders' Conference which was held from 22 to 23 October 2012.<sup>54</sup> The purpose of the Second All Stakeholders' Conference was to

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<sup>46</sup> See *COPAC Blasts Government, Donors over Funds*, Zimbabwe Independent, 14–20 January 2013, p. 4. Due to the fact that the government could not adequately fund the constitution-making process, COPAC also had to rely on donor funds-; see *UNDP Receives Additional Funding from Development Partners for COPAC to Support Constitution Making in Zimbabwe*. UNDP Press Release, 24 November 2011, available at: <http://www.undp.org.zw/media-centre/news/22>

<sup>47</sup> However, this Conference was marred by political violence.

<sup>48</sup> The seventeen thematic areas agreed upon were as follows:-

-Founding Principles, Arms of State, Systems of Government, Citizenship and Bill of Rights, Women and Gender Issues, Youth, Disabled/disability, Media, War Veterans, Land, Natural Resources and Empowerment, Labour, Electoral Systems, Transitional Mechanisms and Independent Commissions, Executive Organs of the State (Public Service, Police, Defence, Prison Commission), Public Finance, Traditional Institutions and Customs, Religion, and Languages and Culture.

<sup>49</sup> The outreach process was managed by 70 outreach teams. A total of 4,943 meetings were held in 1,957 wards.

<sup>50</sup> The outreach process in Harare and Chitungwiza had to be suspended because of violence. See press statement by COPAC in *The Standard*, 26 September, 2010, p.5.

<sup>51</sup> See [www.copac.org.zw](http://www.copac.org.zw).

<sup>52</sup> Ibid.

<sup>53</sup> Justice Moses Chinhengo, Priscilla Madzonga and Brian Crozier.

<sup>54</sup> See Zimbabwe Europe Network, Zimbabwe Special Focus 1/2012: 2<sup>nd</sup> All Stakeholders Conference available at <http://zimassoc.files.wordpress.com/2010/09/zenspecialfocus2ndstakeholders.pdf> accessed on 30 July 2013.

bring together representatives from different stakeholders to review and make recommendations on the draft constitution.<sup>55</sup> Following the Second All Stakeholders' Conference, the draft constitution was tabled before Parliament before it was submitted to the people to decide in a referendum, which was held on 16 March 2013. The adoption of the constitution was voted for by 3,079,966 people with only 179,000 voting against its adoption.<sup>56</sup>

An analysis of the constitution-making process under Article 6 of the GPA reveals that it was heavily dominated by the three main political parties which were the signatories to the GPA. This has raised questions as to whether this process was truly people-driven. Various civil society organisations protested at the way in which the constitution-making process was being handled under the GPA, and argued that ZANU-PF and the two MDC formations had captured the constitutional project and narrowed it to a struggle over party-political interests at the expense of the will of the people.

It is also important to note that the timeframe between the finalization of the draft constitution and the referendum was too short to allow for any meaningful discussion of the draft constitution's contents. In the case of *National Constitutional Assembly v. The President of the Republic of Zimbabwe N.O. and Others*,<sup>57</sup> the applicants argued that the time set by the President for the holding of a referendum was not adequate, as the draft constitution had not been disseminated to various stakeholders to allow for the proper deliberation of its provisions. The High Court dismissed the application, holding that the President, in terms of the Referendums Act,<sup>58</sup> had wide discretion to set whatever date he pleased, and no court could interfere with executive choices. The applicant appealed to the Supreme Court. The appeal was dismissed on the basis that there was no reason at law to warrant the postponement of the referendum.<sup>59</sup>

## II. FUNDAMENTAL PRINCIPLES OF THE CONSTITUTION

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<sup>55</sup> [www.copac.org.zw](http://www.copac.org.zw).

<sup>56</sup> *Ibid.*

<sup>57</sup> HH-68-13.

<sup>58</sup> Chapter [2:10].

<sup>59</sup> *National Constitutional Assembly v. The President of the Republic of Zimbabwe N.O. and Others* SC-81-13.

The new Constitution of Zimbabwe enshrines founding values and principles, which are set out extensively in section 3 of the Constitution, and national objectives which are set out in Chapter 2.<sup>60</sup> This is a notable improvement over the Lancaster House Constitution, which did not provide for any founding values and principles or national objectives. Overall, the founding values and principles establish a general framework for the Constitution. These signify the fundamental beliefs and constitutional principles of Zimbabwean society which unite and bind all Zimbabweans. These principles set out the framework for the interpretation of the Constitution and all public laws and policies.<sup>61</sup> Since these principles and values are established as the basic tenets of the Constitution, it implies that a governmental official, government ministry or governmental policy cannot deviate from these values and principles. It also implies that the courts, in hearing and determining matters which come before them, are to be guided by the values and bound by the principles set out in section 3 of the Constitution. For the purposes of this Introductory Note, we will focus on the key values and principles enshrined in the Constitution that promote constitutionalism.

The establishment of a constitutional state finds expression in the principle of constitutional supremacy.<sup>62</sup> This provision is further reinforced by section 2 of the Constitution, which provides for the supremacy of the Constitution. Unlike, the Lancaster House Constitution, the new Constitution is more comprehensive in setting out the parameters of the supremacy of the Constitution. The Constitution further provides that; '[t]he obligations of this Constitution are binding on every person, natural or juristic, including the state and all executive, legislative and judicial institutions and agencies of the government, and must be fulfilled by them.'<sup>63</sup> The principle of constitutional supremacy also finds expression in the powers of judicial review which are vested in the courts.

The rule of law is established as an important founding principle of the Constitution.<sup>64</sup> The rule of law principle was only introduced into the Lancaster House Constitution by Constitutional Amendment Number 19,<sup>65</sup> which introduced section 18(1)(a).<sup>66</sup> The rule of

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<sup>60</sup> See Section 8 to 34 of the Constitution.

<sup>61</sup> Zimbabwe Women Lawyers Association, 'Gender Audit of the COPAC draft Constitution' available at [www.zwla.co.zw/genderauditofcopacdraft%202012.pdf](http://www.zwla.co.zw/genderauditofcopacdraft%202012.pdf) accessed on 22 September 2013.

<sup>62</sup> Section 3(1)(a) of the Constitution.

<sup>63</sup> Section 2(2).

<sup>64</sup> Section 3(1).

<sup>65</sup> Act No. 1 of 2009.

<sup>66</sup> Section 18 (1)(a) of the Lancaster House Constitution provided that, 'every public officer has a duty towards every person in Zimbabwe to exercise his or her functions as a public officer in accordance with the law and to observe the rule of law'.

law principle has been subjected to different interpretations, and it remains to be seen how the courts in the post 2013 constitutional dispensation will interpret and implement it.<sup>67</sup> It would have been more desirable for the Constitution to stipulate what the principle of rule of law entails. Under the Lancaster House Constitution, the courts and the executive had followed the narrow approach, interpreting the rule of law principle to be merely upholding the letter of the law.<sup>68</sup>

Gender equality is firmly entrenched as a constitutional principle.<sup>69</sup> The Lancaster House Constitution provided for a non-discrimination clause, which prohibited discrimination on the grounds of gender, among other things.<sup>70</sup> However, this non-discrimination clause was undermined by a claw-back clause which provided that in the application of customary law or matters of personal law, customary law should not be held to be discriminatory.<sup>71</sup> This claw-back clause perpetuated discrimination on the grounds of gender. The inclusion of gender equality as a founding value of the Constitution affirms the principles of non-discrimination, which implies that discriminatory cultural practices will not have a place in the new constitutional order.<sup>72</sup> This position is further reinforced by section 80(3) of the Constitution, which provides that, ‘all customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of their infringement.’

The founding principles further provide for respect for fundamental human rights and freedoms, recognition of the inherent dignity and worth of each human being, and recognition of the equality of all human beings.<sup>73</sup> Section 11 provides that the State must take all possible measures to ensure the protection of the fundamental rights and freedoms that are protected by the Constitution and to ensure their full realisation and fulfilment. These principles find their expression in the Bill of Rights in Chapter 4 of the Constitution.

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<sup>67</sup> The narrow approach to the rule of law prescribes supremacy of the law and equality before the law; however the content of the law is irrelevant in this narrow approach. A wider approach to the principle of rule of law argues that the law must have a minimum moral content and must abide, uphold and respect the basic human rights of an individual. An unjust law cannot be held to be a law.

<sup>68</sup> For example, as seen in the case of *Mike Campbell (Pvt) Ltd and Another v. Minister of National Security Responsible for Land, Land Reform and Resettlement* SC 124/06.

<sup>69</sup> Section 3(1)(g) of the 2013 Constitution.

<sup>70</sup> Section 23 (2) of the Lancaster House Constitution.

<sup>71</sup> Section 23(3)(a) (b) of the 2013 Constitution.

<sup>72</sup> See Zimbabwe Women Lawyers Association, ‘Gender Audit of the COPAC draft Constitution’, 4.

<sup>73</sup> Section 3(1)(c), (e) and (f) of the 2013 Constitution.

The founding principles further contain, ‘principles of good governance which bind the state and all institutions and agencies of government’.<sup>74</sup> The principles of good governance entrench democracy, the right to vote, and political freedom.<sup>75</sup> It appears that the principle of good governance is explained in detail in order to provide clarity in respect of the manner in which the constitutional state as enshrined in the Constitution must be governed. To complement the good governance principle, the values of transparency, justice, and accountability also bind government institutions. This represents a complete departure from the Lancaster House Constitution, which did not even provide for the right to access information, thereby limiting the accountability of government institutions.

Other fundamental values and principles enshrined in the Constitution include;-

- recognition of the nation’s diverse cultural, religious and traditional values;-<sup>76</sup>
- recognition of the inherent dignity and worth of each human being; and<sup>77</sup>
- recognition of and respect for the liberation struggle.<sup>78</sup>

### **A. National objectives of the Constitution**

The extensive national objectives set out in Chapter 2 of the Constitution ‘guide the state and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives.’<sup>79</sup> For the first time, the Constitution lays down guiding principles for the exercise of executive power. These national objectives direct government policy to address the socio-economic needs of the people of Zimbabwe. The Constitution also lays down that regard should be had to these national objectives when interpreting and determining the State’s obligation under the Constitution or any other law.<sup>80</sup> The wording of this provision is directory and this seems to suggest that the provisions contained in Chapter 2 are not binding

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<sup>74</sup> Section 18(2).

<sup>75</sup> Section 18(2)(a), (b), (d).

<sup>76</sup> Section 3(1)(d).

<sup>77</sup> Section 3(1)(e).

<sup>78</sup> Section 3(1)(i).

<sup>79</sup> Section 8(1).

<sup>80</sup> Section 8(2).

on the State per se but could be used to support other state obligations enshrined in the Constitution. The national objectives enshrined in the Constitution include;

- good governance;<sup>81</sup>
- national unity, peace and stability;<sup>82</sup>
- fostering of fundamental rights and freedoms;<sup>83</sup>
- foreign policy;<sup>84</sup>
- national development,<sup>85</sup> empowerment and employment creation;<sup>86</sup>
- food security,<sup>87</sup> culture;<sup>88</sup>
- gender balance<sup>89</sup> and fair regional representation;<sup>90</sup>
- children,<sup>91</sup> youths,<sup>92</sup> elderly persons,<sup>93</sup> persons with disabilities,<sup>94</sup> and veterans of the liberation struggle;<sup>95</sup>
- work and labour relations, protection of the family, marriage, education, shelter and health services and social welfare;<sup>96</sup>
- legal aid, sporting and recreational facilities, preservation of traditional knowledge;<sup>97</sup> and
- domestication of international instruments.<sup>98</sup>

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<sup>81</sup> Section 9.

<sup>82</sup> Section 10.

<sup>83</sup> Section 11.

<sup>84</sup> Section 12.

<sup>85</sup> Section 13.

<sup>86</sup> Section 14.

<sup>87</sup> Section 15.

<sup>88</sup> Section 16.

<sup>89</sup> Section 18.

<sup>90</sup> Section 18.

<sup>91</sup> Section 19.

<sup>92</sup> Section 20.

<sup>93</sup> Section 21.

<sup>94</sup> Section 22.

<sup>95</sup> Section 23.

<sup>96</sup> Sections 24-30.

<sup>97</sup> Sections 31-33.

<sup>98</sup> Section 34.

The major drawback, however, is that most of these provisions are not justiciable as they are ultimately dependant on the State's resources.<sup>99</sup> While the Constitution contains a comprehensive list of national objectives compared to its predecessor, it remains to be seen whether or not the courts will interpret the provisions of Chapter 2 in a progressive manner.

### **III. FUNDAMENTAL RIGHTS PROTECTION**

#### **A. The spectrum of rights**

Human rights have generally been classified as first generation rights, second generation rights, and third generation rights although the United Nations Resolution of 1977 has affirmed that these rights should be considered as 'indivisible'.<sup>100</sup> Unlike the Lancaster House Constitution, which provided for civil and political rights only, the Constitution of 2013 contains all three generations of rights.

First generation rights (civil and political rights) are regarded as negative rights, in that they places an obligation on the government to refrain from doing certain acts such as arbitrarily depriving a person of his or her right, and they can be applied without any cost to the government.<sup>101</sup> Examples of first generation rights enshrined in the Constitution include the right to life, the right to personal liberty, the rights of arrested and detained persons, the right to demonstrate and to petition, the right to freedom of expression, and freedom of the media.

Unlike first generation rights, second generation rights (socio-economic and cultural rights) impose a positive duty upon the State to provide its citizens with socio-economic amenities. These rights include the right to housing, food, education, and health, and these rights have cost implications for the government.

Third generation rights (solidarity rights) are still a developing part of international human rights law. This category also includes community rights.<sup>102</sup> As their name suggests, solidarity rights cannot be enforced individually, but collectively. Examples of third generation rights include the right to self-determination, the right to a clean, safe, and healthy environment, and the rights of ethnic minorities. What follows below is an analysis of the

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<sup>99</sup> See section 22(1), section 19 (2) and section 21(2) of the Constitution.

<sup>100</sup> D. Matyszak, 'Human Rights and Zimbabwe's Draft Constitution', (Research and Advocacy Unit: Harare, (2013).

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

rights protected under Chapter 4 of the 2013 Constitution falling under the three categories discussed above.

## **B. Civil and political rights**

In relation to the protection of civil and political rights, the Constitution is more progressive than its predecessor. This is so because the Constitution has broadened the already existing civil and political rights. Most civil and political rights, for example, the right to freedom of expression<sup>103</sup> are now written in more specific terms, with very minimal claw-backs.<sup>104</sup> The same also applies to the rights of arrested, and accused persons, which are now extensively articulated in precise terms.<sup>105</sup>

An important change pertaining to the right of accused persons relates to the issues of bail. While the Lancaster House Constitution was silent on matters pertaining to bail, the new Constitution provides in express terms that unless there are compelling reasons requiring that the accused person be kept in custody, he or she should be released on bail.<sup>106</sup> In a practical sense, this will make it very difficult for the State to abuse section 122 of the Criminal Procedure and Evidence Act,<sup>107</sup> which has over the years been used to deny accused persons of their right to bail.

In addition to the above, the inclusion of media freedom<sup>108</sup> as well as the right to access information held by the State<sup>109</sup> is also probably one of the most progressive aspects of the Constitution. However, access to information is still restricted in the interests of public safety, defence, and professional confidentiality, but only to the extent that the restriction is reasonably justifiable in an open, just, and democratic society.<sup>110</sup> It should, however, be noted

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<sup>103</sup> Section 61 of the 2013 Constitution.

<sup>104</sup> A. Magaisa, *Why you should vote yes for Copac Draft*, Zimbabwe Independent of 15 February 2013.

<sup>105</sup> While the old Constitution provided that an arrested person could be informed of the reasons for his or her arrest within a reasonable time, that is to say as was reasonably practicable, this was very indeterminate and vague as it could mean several days. The new Constitution is very precise and specific because it provides that an arrested person must be informed of the reasons for his or her arrest at the time of apprehension. While the previous Constitution provided that an arrested person could be brought before a court of law and afforded a fair hearing within a reasonable time, this phrase was also vague as it could mean several days. The new Constitution has changed this and it requires the accused person to be brought before a court of law within 48 hours after his or her arrest.

<sup>106</sup> See section 50 (1) (d) of the 2013 Constitution.

<sup>107</sup> Chapter 9:07.

<sup>108</sup> See section 61(2) of the 2013 Constitution.

<sup>109</sup> Section 62(1).

<sup>110</sup> *Ibid.*

that these limiting factors are undefined in the Constitution, as was the case under the Lancaster House Constitution.

In relation to property rights, the Constitution limits the right “... in the interests of defence, public safety, public health, or town planning’.” With regards to land rights, the Constitution provides that any right or interest in land can be compulsorily acquired by the State for the purposes of settling people for agricultural purposes, land re-organisation, and relocation of dispossessed persons.<sup>111</sup> Despite the above limitations, persons affected by the acquisition process will now be entitled to legal recourse to establish the legality, as well as the nature and value of compensation.<sup>112</sup> This is a complete departure from the approach under the Lancaster House Constitution, whereby Constitutional Amendment Number 17 ousted the jurisdiction of the courts to determine the legality of land acquisitions. The case of *Mike Campbell (Pvt) Ltd and Others v. The Republic of Zimbabwe*<sup>113</sup> is instructive on this point. The Southern African Development Community (SADC) Tribunal held that Constitutional Amendment No. 17 had eliminated the applicants’ access to the domestic courts and deprived them of their right to a fair hearing before being deprived of their rights.<sup>114</sup>

Another important aspect relates to the death penalty. The new Constitution retains the death penalty. However, it adheres to some of the internationally accepted limitations on the use of capital punishment in that capital punishment can only be imposed on people convicted of murder committed in aggravating circumstances. Capital punishment cannot be meted out to people who were under the age of 18 when the offence was committed and courts now have discretion whether or not to impose the punishment. A somewhat controversial aspect of the capital punishment clause in the Constitution is the exemption of women from the imposition of capital punishment.<sup>115</sup>

Lastly, the Constitution enshrines the right to vote.<sup>116</sup> Prior to the introduction of section 23A, the Lancaster House Constitution did not include the right to vote. The new Constitution expressly provides that every Zimbabwean citizen who is over the age of 18 has the right to vote. However, the Constitution does not make a distinction between a Zimbabwean citizen by birth, by descent, or by registration. Of utmost importance also is the fact that the

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<sup>111</sup> Section 72(2).

<sup>112</sup> *Ibid.*

<sup>113</sup> [2008] SADC 2, 28 November, SADC Tribunal.

<sup>114</sup> *Ibid.* See also A. Moyo ‘Defending human rights and the rule of law by the SADC Tribunal: Campbell and beyond: recent developments’ (2009) 9(2) African Human Rights Law Journal.

<sup>115</sup> Section 48(2)(d) of the 2013 Constitution.

<sup>116</sup> Section 67(3)(a).

Constitution recognizes dual citizenship.<sup>117</sup> The provisions in the Constitution were tested in the case of *Mutumwa Mawere v. Registrar General and Others*.<sup>118</sup> The applicant sought to compel the Registrar General to issue him with a national identity document after the latter had refused, insisting that the applicant had first to renounce his foreign citizenship. The court held that the refusal to issue the national identity document was unlawful and violated section 36(1) of the Constitution which relates to citizenship, and the applicant's right to vote enshrined in section 67(3)(a).

### **C. Socio-economic and cultural rights**

An important area in which the Constitution has taken some bold steps is the inclusion of second generation rights, such as the right to health care services<sup>119</sup>, the right to food security and clean water<sup>120</sup>, labour rights,<sup>121</sup> and the right to education.<sup>122</sup> As pointed out above, the effective realization of these rights is undermined by limitation clauses couched in the following terms;- "The State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the right..."<sup>123</sup> This renders the effective enforcement of second generation rights problematic as the government is likely to plead poverty as a defence to the violation of these constitutionally guaranteed rights. While the progressive inclusion of second generation rights has broadened and deepened democratic values in Zimbabwe, the standard limitation clause can operate as an impediment both to the enjoyment and enforcement of the same rights, with the result that the rights will become a mere declaration of intent.<sup>124</sup> Consequently, it remains to be seen whether the courts will give meaning to these rights by progressively interpreting them and establishing a clear criterion to ascertain the extent to which the Government can work towards implementing these rights.

### **D. Solidarity rights**

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<sup>117</sup> Section 36(1).

<sup>118</sup> CC21/13.

<sup>119</sup> Section 76.

<sup>120</sup> Section 77.

<sup>121</sup> Section 65.

<sup>122</sup> Section 75.

<sup>123</sup> Sections 75(4), 76(4) and 77.

<sup>124</sup> See supra note 100.

The Constitution provides for one solidarity right, namely environmental rights.<sup>125</sup> Section 73 of the Constitution clearly states that every person has the 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, through reasonable legislative provisions that prevent pollution, promote conservation, and support sustainable development. Just like the socio economic and cultural rights, the progressive realization of environmental rights is also undermined by the standard limitation clause.<sup>126</sup>

The Constitution further provides for the right to self-determination by stipulating that every person has a right to participate in the cultural life of their choice, albeit subject to the provisions of the Bill of Rights.<sup>127</sup> Moreover, the right to language of ethnic minorities has been broadened. Under the old Constitution, only three languages were recognized namely English, which was the official language, and Shona and Ndebele which were the national languages. The 2013 Constitution provides for sixteen official languages: this in itself is a recognition of the diverse ethnic groups in the country.<sup>128</sup>

### **E. Application and enforcement**

The enforcement mechanisms of the Bill of Rights are contained in section 85 of the Constitution. The Bill of Rights makes it clear that the rights contained therein are binding on the State and on the executive, legislative, and judicial institutions, and agencies of government at every level.<sup>129</sup> Furthermore, the Bill of Rights binds natural persons and juristic persons to the extent that it is applicable to them, taking into consideration the nature of the right concerned and the duty imposed on them.<sup>130</sup> It is also the duty of the State and every person, including juristic persons, and every institution and agency of the government at every level to respect, protect, promote, and fulfil the rights, and freedoms enshrined in the Constitution.<sup>131</sup> The Constitution thus incorporates the concept of the horizontal application

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<sup>125</sup> See section 73 of the 2013 Constitution. The Lancaster House Constitution did not provide for any solidarity rights.

<sup>126</sup> See generally T. Murombo, 'The utility of environmental rights to sustainable development in Zimbabwe : A contribution to the constitutional reform debate', (2011) 11(1) African Human Rights Law Journal.

<sup>127</sup> Section 63(b) of the 2013 Constitution.

<sup>128</sup> See section 6 as read with section 63 of the Constitution.

<sup>129</sup> Section 45(1) of the Constitution.

<sup>130</sup> Section 45(2).

<sup>131</sup> Section 44 of the 2013 Constitution.

of the Bill of Rights. This represents a complete departure from the provisions of the Declaration of Rights under the Lancaster House Constitution, which construed rights in purely vertical terms.<sup>132</sup> The Constitution further categorizes the class of persons who are entitled to the protection of the Bill of Rights. Bearers of the rights are identified either as, “everyone or where applicable juristic persons,<sup>133</sup> arrested and detained persons,<sup>134</sup> children<sup>135</sup>, accused persons’,<sup>136</sup> workers,<sup>137</sup> women,<sup>138</sup> the elderly,<sup>139</sup> persons with disabilities,<sup>140</sup> and war veterans.<sup>141</sup>

In order to give meaning to the entrenched fundamental rights, the requirements for *locus standi* have been broadened. Section 85 provides for the enforcement of the rights by all, including by persons;- acting in their own interests, acting on behalf of others who cannot act for themselves, acting in the public interest, and persons representing associations. Under the Lancaster House Constitution, a litigant had to demonstrate a substantial and direct legal interest peculiar to him or herself on the issue, which is different from that of the public at large.<sup>142</sup> The net effect of such a narrow construction of *locus standi in judicio* had been to bar persons who would have represented those whose rights would have been infringed. Significantly, section 85 of the Constitution is in tandem with the jurisprudence of the court. In an earlier decision, in the case of Catholic Commission for Justice and Peace in Zimbabwe (CCJP) v. Attorney General and Others,<sup>143</sup> the court lamented the idea of circumscribing categories of persons who might have the requisite standing to approach the Supreme Court on behalf of condemned prisoners to seek redress for the infringement of constitutionally guaranteed rights.

## **F. Limitation and interpretation**

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<sup>132</sup> G. Linington, n4 supra at 220.

<sup>133</sup> See section 45(3) of the 2013 Constitution.

<sup>134</sup> Section 50.

<sup>135</sup> Section 81.

<sup>136</sup> Section 70.

<sup>137</sup> Section 65(6).

<sup>138</sup> Section 80. See also the case of *Magaya v. Magaya* 1999 (1) ZLR 100 (S); *Katekwe v. Muchabaiwa* 1984 (2) ZLR 112.

<sup>139</sup> Section 82.

<sup>140</sup> Section 83. See also the case of *Simon Mvindi and Others v. The President of the Republic of Zimbabwe and Others* SC 106/08 wherein the court found the failure by the Zimbabwean Government to consider the provision of voting in accessible formats so as to accommodate visually impaired voters to be an infringement of the right of persons with visual impairments to elect representatives of their choice in elections.

<sup>141</sup> Section 84.

<sup>142</sup> Ibid.

<sup>143</sup> 1993 (1) ZLR 242 at 250.

The Bill of Rights contains very specific provisions on the limitation of rights. Firstly, section 86 of the Constitution is devoted as a whole to the limitation of all the fundamental rights<sup>144</sup> but also provides for the non-derogability of certain rights, including the right to life,<sup>145</sup> the right to human dignity, the right to freedom from torture, inhuman and degrading treatment or punishment, the right not to be placed in slavery or servitude, and the right to a fair trial. Rights can only be limited in terms of a law of a general application and to the extent that the limitation is fair, reasonable, necessary, and justifiable in an open, just, and democratic society. However, it remains to be seen whether the limitations will be narrow or wide-ranging. Secondly, section 87 of the Constitution further provides for the limitations of the fundamentally entrenched rights in times of public emergency.<sup>146</sup> Thirdly, there are provisions in the Constitution which contain limitation clauses in general terms. For example, section 61(5) provides that the right to freedom of expression and freedom of the media does not extend to incitement to violence, advocacy of hatred or hate speech, malicious injury to one's reputation or dignity, or malicious or unwarranted breach of a person's right to privacy.

In relation to the interpretation of the provisions of the Bill of Rights, the Constitution provides that the courts, tribunals, and or any forum or body must give full effect to the rights enshrined in the Bill of Rights and must promote the values that underlie an open, just, and democratic society based on humanity, equality, and freedom.<sup>147</sup> Further, the interpretation must also consider Zimbabwe's obligations under international laws, treaties, and conventions to which it is a party.<sup>148</sup> However, with regards to the constitutional status of human rights guarantees, section 34 of the Constitution is worth noting. The section provides that the State must ensure that all international conventions, treaties, and agreements to which Zimbabwe is a party are incorporated into domestic law. For international human rights instruments to become operational in Zimbabwe, they require domestication of the instrument in addition to mere ratification. In reality, there is no difference between the Lancaster House

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<sup>144</sup> The provision states that the fundamental rights and freedoms set out in Chapter 4 of the Constitution may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary, and justifiable in a democratic society based on openness, justice, human dignity, equality, and freedom.

<sup>145</sup> Except to the extent specified in section 48.

<sup>146</sup> However, such a limitation has to be in terms of a written law, published in the Gazette, and the limitation in terms of such a written law must not be greater than is strictly required by the emergency

<sup>147</sup> See section 46(1)(a) and (b) of the 2013 Constitution.

<sup>148</sup> Section 46(1)(c).

Constitution and the Constitution of 2013 with regards to the issue of the constitutional status of human rights guarantees in international treaties to which Zimbabwe is a party.<sup>149</sup>

#### **IV. SEPARATION OF POWERS**

The doctrine of separation of powers is entrenched as one of the founding principles of the Constitution. The Constitution provides for three branches of government: namely; the executive,<sup>150</sup> the legislature,<sup>151</sup> and the judiciary.<sup>152</sup> Section 3(2)(e) of the Constitution deals with the observance of the principle of separation of powers. The courts have since recognized the operation of this doctrine in Zimbabwe's constitutional discourse. In the case of *Commissioner of Police v Commercial Farmers Union*,<sup>153</sup> it was held that '....it is therefore recognized that there must be a separation of powers to perform the three jobs which have to be done...These pillars of state act together. They are not isolated from each other. They however act as brakes on each other.' A detailed analysis of each of these three pillars of state ensues.

##### **A. The Executive**

The Constitution establishes an executive presidential system of government. Section 89 states that the President is the head of state and government and the Commander-in-chief of the defence forces. Section 88(1) qualifies the exercise of executive power by the President through Cabinet subject to the Constitution. To be elected as President, a person must be a Zimbabwean citizen by birth or descent, be over 40 years, be ordinarily resident in Zimbabwe, and be a registered voter.<sup>154</sup> The President is elected directly by registered voters.<sup>155</sup>

The Constitution incorporates the American system of presidential running mates. Every presidential candidate is required to nominate two persons to stand for election with him or

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<sup>149</sup>This is so because both section 34 of the 2013 Constitution, and section 111B of the Lancaster House Constitution are couched in more or less similar terms, and the provisions are clear that Zimbabwe follows a dualist approach to international human rights law.

<sup>150</sup> Chapter 5 of the Constitution.

<sup>151</sup> Chapter 6 of the Constitution.

<sup>152</sup> Chapter 8 of the Constitution.

<sup>153</sup> HH 84-2000.

<sup>154</sup> Section 91 of the Constitution.

<sup>155</sup> Section 92(3).

her as Vice- Presidents. The candidate must designate one of them as the first Vice-President and the other as the second Vice-President.<sup>156</sup> This means that the two Vice-Presidents will be jointly elected with the President. In the event of the President's death, resignation, or incapacity, the first Vice-President will automatically become President for the entire unfinished term of the President. The second Vice-President will become the first Vice-President and another person will be appointed by the new President to become the second Vice-President.<sup>157</sup>

The President exercises executive functions on the advice of Cabinet.<sup>158</sup> The President appoints and assigns functions to ministers and deputy ministers who are members of Cabinet.<sup>159</sup> The Constitution further provides that the President must nominate the majority of his or her ministers from the Senate and the National Assembly. However, up to five ministers may be appointed from outside Parliament.<sup>160</sup> The unfettered discretion of the President in the appointment of ministers was confirmed in the case of *Kufa and Another v. The President N.O. and Others*.<sup>161</sup> In appointing ministers, the Constitution directs the President to be guided by regional and gender balance.<sup>162</sup> The President can remove any minister from office at any time according to his or her own discretion. Accordingly, the Vice Presidents, ministers, and deputy ministers are collectively and individually accountable to the President for the performance of their duties.<sup>163</sup> It is apparent from the foregoing that Cabinet is a weak check against Presidential excesses, in part due to the power of the President to appoint and dismiss Cabinet members at any time.

The executive functions of the President are set out extensively in section 110 of the Constitution.<sup>164</sup> However, there are constitutional safeguards on the exercise of executive

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<sup>156</sup> Section 92(2).

<sup>157</sup> Section 101.

<sup>158</sup> Sections 110(6) and 105(1).

<sup>159</sup> Section 104.

<sup>160</sup> Section 105(3).

<sup>161</sup> HH-86-11.

<sup>162</sup> Section 105(4).

<sup>163</sup> Section 107(1).

<sup>164</sup> Section 110(2) provides that: - ' subject to this Constitution, the President is responsible for—

- (a) assenting to and signing Bills;
- (b) referring a Bill to the Constitutional Court for an opinion or advice on its constitutionality;
- (c) summoning the National Assembly, the Senate or Parliament to an extraordinary sitting to conduct special business;
- (d) making appointments which the Constitution or legislation requires the President to make;
- (e) calling elections in terms of this Constitution;
- (f) calling referendums on any matter in accordance with the law;
- (g) deploying the Defence Forces;
- (h) conferring honours and awards;

power to ensure that such power is exercised in conformity with the Constitution. The President may be removed from office where the Senate and the National Assembly resolve, by a joint resolution passed by at least two-thirds of their total membership, that the President should be removed from office.<sup>165</sup> The grounds for removal, which must be recommended by an investigative joint committee of Parliament formed for this purpose, include serious misconduct; failure to obey, uphold, or defend the Constitution; wilful violation of the Constitution; or the inability to perform the functions of the office because of physical or mental disability.<sup>166</sup> These removal grounds are however the same as those provided for in section 29(3) of the Lancaster House Constitution. Parliament also has the power to revoke a declaration of war and a state of emergency by the President.<sup>167</sup> The position in the 2013 Constitution differs remarkably from the Lancaster House Constitution, which gave the President wide discretionary powers. The constitutional safeguards which were put in place to check the power of the President under the former Constitution were often ineffective. For example, in terms of section 63(1) of the former Constitution, the President had discretionary powers to dissolve Parliament.

## **B. Parliament**

The Zimbabwean legislature consists of a bicameral Parliament and the President.<sup>168</sup> Parliament consists of the Senate and the National Assembly.<sup>169</sup> The Senate, which is the upper house, consists of 80 Senators, and to be elected as Senator, one must be above the age of 40 years and be a registered voter. Sixty Senators are elected from the provinces of Zimbabwe under a system of proportional representation.<sup>170</sup> Sixteen of the Senators are Chiefs elected by the provincial assembly of chiefs.<sup>171</sup> The President and the Deputy President of the National Council of Chiefs and two persons elected to represent persons with disabilities make up the final complement of Senators.<sup>172</sup>

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(i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives; and  
(j) receiving and recognising foreign diplomatic and consular representatives.’

<sup>165</sup> Section 104.

<sup>166</sup> Section 97.

<sup>167</sup> Section 111.

<sup>168</sup> Section 116.

<sup>169</sup> Section 118.

<sup>170</sup> Section 120(2).

<sup>171</sup> Section 120(1)(b).

<sup>172</sup> Section 120(1)(d).

The National Assembly consists of 210 members, who are elected from the constituencies into which Zimbabwe is divided by secret ballot.<sup>173</sup> To be elected as a member of the National Assembly, one must be a registered voter and be above 21 years of age. The Constitution also provides that for the life of the first two Parliaments, an additional 60 women members, elected through a system of proportional representation, are to be elected to the National Assembly.<sup>174</sup> This affirmative action seeks to ensure that women overcome current societal obstacles and are afforded an opportunity to participate on an equal footing with their male counterparts in the political spheres of government.

Both the Senate and the National Assembly have the power to commence, prepare, consider, or reject any legislation.<sup>175</sup> However, the Senate does not have the power to amend a money bill. It can only recommend that the National Assembly make amendments to that bill.<sup>176</sup> The Constitution further permits Parliament to delegate its legislative authority to the executive for the proper administration of an Act of Parliament.<sup>177</sup> This type of legislation is necessary, as Parliament cannot be reasonably expected to formulate all the rules and regulations needed for a society to function.<sup>178</sup> Despite the necessity of delegated legislation, the Constitution places limitations on the power of Parliament to delegate its law-making powers.<sup>179</sup> Essentially, delegated legislation must be within the scope and purpose of the enabling Act.

The Constitution lays down the procedure for the passage of bills in both Houses of Parliament and sets out the competences of each House in the law-making process.<sup>180</sup> Prima facie, it would appear that the President has a lot of influence in the legislature. On the contrary, the President's powers in relation to legislation have been curtailed. The President's

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<sup>173</sup> Section 124(1)(a).

<sup>174</sup> Section 124(1)(b).

<sup>175</sup> Section 130(1).

<sup>176</sup> See Fifth Schedule of the Constitution.

<sup>177</sup> Section 134.

<sup>178</sup> G. Linington, n4 at 116.

<sup>179</sup> Section 134 (a) - (f) provides for the limitations upon which Parliament may delegate legislation:-

'Parliament may, in an Act of Parliament, delegate power to make statutory instruments within the scope of and for the purposes laid out in that Act, but—

(a) Parliament's primary law-making power must not be delegated;

(b) statutory instruments must not infringe or limit any of the rights and freedoms set out in the Declaration of Rights;

(c) statutory instruments must be consistent with the Act of Parliament under which they are made;

(d) the Act must specify the limits of the power, the nature and scope of the statutory instrument that may be made, and the principles and standards applicable to the statutory instrument;

(e) statutory instruments do not have the force of law unless they have been published in the *Gazette*; and

(f) statutory instruments must be laid before the National Assembly in accordance with its

Standing Orders and submitted to the Parliamentary Legal Committee for scrutiny.'

<sup>180</sup> See Parts 2 and 3 of the Fifth Schedule to the Constitution.

role in the legislature is merely that of assenting bills into law. Once a bill has passed through both Houses, it is presented to the President for assent.<sup>181</sup> The President can object to assenting to a bill on constitutionality grounds and based on any other reservations. In such a scenario, the President must return the bill to Parliament with detailed reasons for his reservations.<sup>182</sup> Parliament may pass the bill into law regardless of the President's reservations. The only recourse the President has is to refer the bill to the Constitutional Court for the determination of its constitutionality. This position differs greatly from the position under the Lancaster House Constitution which gave the President unfettered powers in relation to passing bills into law. In the event of a referral to Parliament and the bill being referred back to the President in its original form, the President had two choices. The President could either sign the bill into law or dissolve Parliament.<sup>183</sup> It is also imperative to note that the judiciary has stood firm in redressing any breaches of parliamentary procedures by Parliament itself. In the case of *Moyo and Others v. Zvoma N.O. and Another*,<sup>184</sup> the Supreme Court held that the failure to observe the standing orders of Parliament in the election of the Speaker and Deputy Speaker invalidated the whole election process.

### **C. Judiciary**

The Constitution vests judicial authority in the courts.<sup>185</sup> Such authority is exercised through the Constitutional Court, the Supreme Court, the High Court; the Labour Court, the Administrative Court, the Magistrates Court, customary law courts, and other courts established by an Act of Parliament.<sup>186</sup> The Constitution also sets out extensively the principles guiding the judiciary in the exercise of judicial authority. These principles are meant to buttress the independence of the judiciary, which is critical if the judiciary is to fulfil its constitutional obligations.<sup>187</sup> A detailed analysis of the judiciary as an institution follows in Part VI of this Introductory Note.

## **V. FEDERALISM/ DECENTRALISATION**

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<sup>181</sup> Section 131(5).

<sup>182</sup> Section 131(6).

<sup>183</sup> Section 51(3).

<sup>184</sup> SC 28-01.

<sup>185</sup> Section 162.

<sup>186</sup> Ibid.

<sup>187</sup> Section 165.

In order to put the discussion of the system of governance in Zimbabwe into perspective, it is imperative to make a distinction between federalism and decentralization (or devolution). Federalism refers to a governance system whereby more power rests with the provincial and local tiers of government than with the central government.<sup>188</sup> The provincial and local tiers of government have their own parliament, executive, and judiciary, distinct from those of the central government.<sup>189</sup> Moreover, under a federal system of governance, the provincial and local tiers have control of their own budgetary allocations, independent of the central government. In relation to taxation, the provincial and local authorities are endowed with fiscal autonomy and the power to collect taxes both for their own use and for the federal government.<sup>190</sup> On the contrary, a devolved system of governance entails the delegation of some autonomy to the local levels, but with the central government remaining *de jure* unitary and retaining overall authority over key legislative, judicial, and executive matters.

It is pertinent at this juncture to explore and inquire into the various constitutional provisions on decentralisation and local government in Zimbabwe. As will more fully appear from the following discussion, Zimbabwe subscribes to a decentralized model of governance. This position is aptly underscored by section 1 of the Constitution, which states that Zimbabwe is a unitary, democratic, and sovereign republic.

### **A. Provincial and local government**

Section 267(1) of the Constitution provides for the division of Zimbabwe into ten provinces: namely; Bulawayo Metropolitan Province; Harare Metropolitan Province; Manicaland Province; Mashonaland Central Province; Mashonaland East Province; Mashonaland West Province; Masvingo Province; Matebeleland North Province; Matebeleland South Province and the Midlands Province. The provinces are governed by Provincial Councils, which are constituted in terms of section 268 of the Constitution. The establishment of these provinces as distinct constitutional entities does not in any way warrant the designation of Zimbabwe as a federal state. The preamble to Chapter 14 of the Constitution of Zimbabwe clarifies matters in the following terms;

“Whereas it is desirable to ensure the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism, the democratic participation in

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<sup>188</sup> See [www.zimbabweprimeminister.org/index.php?option=com\\_content&view=article&id=383:constitution-watch-veritas-on-devolution&catid=41:constitutional-and-parliamentary-affairs&itemid=95](http://www.zimbabweprimeminister.org/index.php?option=com_content&view=article&id=383:constitution-watch-veritas-on-devolution&catid=41:constitutional-and-parliamentary-affairs&itemid=95)

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

government by all citizens and communities of Zimbabwe, and the equitable allocation of national resources and the participation of local communities in the determination of development priorities within their areas, there must be devolution of power and responsibilities to lower tiers of government in Zimbabwe."

Section 264 of the Constitution expressly provides for the devolution of governmental powers and responsibilities to the lower tiers of government. This section provides that whenever appropriate, government powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities. The objectives of such devolution are *inter alia* to give powers of local governance to the people and to enhance their participation in the exercise of powers of the state and in making decisions affecting them; to preserve and foster the peace, national unity, and indivisibility of Zimbabwe; and to recognise the right of communities to manage their own affairs and to transfer responsibilities and resources from the national government in order to establish a financial base for each provincial and metropolitan council and local authority. Section 276(1), however, incorporates federalist principles into the lower tiers of government by giving local authorities the right to govern on their own initiative, the local affairs of the people within their jurisdiction. It can thus be argued that Zimbabwe is an example of a devolved unitary state that uses federal principles of governance to organize its provincial system of government.<sup>191</sup> What is however worrying for the prospects for devolution in Zimbabwe is the appointment of provincial ministers by the President.<sup>192</sup> While the President has discretion in the selection of Cabinet members, the appointment of provincial ministers clearly demonstrates that devolution in the Zimbabwean context is more apparent than real.

#### **B. Principles governing the distribution of legislative, executive and judicial functions between various tiers of government**

Local governance in Zimbabwe has always been and remains a national institution, with the central government retaining most of the legislative, executive, and judicial powers. Furthermore, the principles governing the distribution of power between the various levels of government are still far from settled. This can be attributed partly to the fact that local governance in Zimbabwe has always been a creature of statute and not a constitutional

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<sup>191</sup> See Dele Olowu, *Decentralization and Local Government in the Zimbabwean Constitution*, (Africa Europe Foundation, Netherlands) Paper prepared for the Constitutional Conference, Zimbabwe, 26-29 October 2009, Rainbow Towers, Harare, Zimbabwe.

<sup>192</sup> See The Herald 10 September 2013.

issue.<sup>193</sup> The erstwhile system under the Lancaster House Constitution contains no constitutional instruction on local governance.<sup>194</sup>

The existence of constitutional provisions on local governance is perhaps one of the commendable aspects of the new Constitution. These constitutional provisions are complemented by the Urban Councils Act.<sup>195</sup> Although Zimbabwe subscribes to the devolution model of governance, it is worth noting that the Constitution and the main legal instruments assign legislative, executive, judicial, and/or administrative powers over local government issues to the legislature and the executive. Basically, provincial councils are more or less regional offices of the central government, since these have no legislative, executive, and judicial powers to the extent delegated to them. Moreover, if a Provincial Council resolves to make by-laws, it still has to submit the proposed by-laws to the Minister of Local Government for his approval and the Minister has discretion as to whether to approve them.<sup>196</sup> Section 274(5) of the Constitution does, however, represent transference of executive powers to the lower tiers of government. It states that, “(a)n Act of Parliament may confer executive powers on the mayor or chairperson of an urban local authority, but any mayor or chairperson on whom such powers are conferred must be elected directly by registered voters in the area for which the local authority has been established.”

### **C. Principles governing the distribution of revenue between central government and local authorities**

Neither the Lancaster House Constitution nor the Urban Councils Act had sought to govern the distribution of inter-governmental fiscal transfers between the central government and the lower tiers of government in a transparent manner.<sup>197</sup> In the absence of provisions on funding arrangements for urban and local authorities, the central government always assumed fiscal power in the allocation of funds to local authorities. In stark contrast to the position under the Lancaster House Constitution, where there were no funding arrangements for the local tiers of government, the new Constitution entrenches and clarifies the principles of public

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<sup>193</sup> See a local government policy review document by the Zimbabwe Institute available at [www.zimbabweinstitute.net/File\\_Uploads/.../Local\\_Government\\_Paper.p...](http://www.zimbabweinstitute.net/File_Uploads/.../Local_Government_Paper.p...) accessed on 23 September 2013.

<sup>194</sup> Local tiers of government were barely mentioned in the entire Lancaster House Constitution save for a copious mention of the institution of traditional chiefs and provincial governors in terms of section 111 and 111A of the Lancaster House Constitution respectively.

<sup>195</sup> [Chapter 2.14] of 1996.

<sup>196</sup> See section 228 (7) (a) of the Urban Councils Act, Chapter 29:15.

<sup>197</sup> S. Marumahoko, ‘Fiscal autonomy of urban councils in Zimbabwe: A critical analysis’, (2011) 15, Law, Democracy and Development.

financial management.<sup>198</sup> Section 301 of the Constitution provides principles governing the allocation of revenue between the provincial and the lower tiers of government. Of particular importance is the fact that the Constitution has prescribed the threshold budget for the lower tiers of government. Section 301(3) states that not less than five percent of the national revenues raised in any financial year must be allocated to the lower tiers of government as their share, but the allocations to the lower tiers of government are subject to Parliamentary scrutiny.<sup>199</sup>

#### **D. Whether or not the Constitution protects the right of local communities to self-government?**

As pointed out in the preceding discussion, the Constitution does not confer a considerable measure of autonomy on the lower tiers of government, despite the entrenchment of devolution and decentralization of governmental power and functions as a founding value.<sup>200</sup> Although sections 264(2)(d) and 276 of the Constitution recognise the right of local communities to manage their own affairs and to further their own development, it is worth noting that a host of other constitutional provisions override such a right.<sup>201</sup> The Constitution invariably gives local autonomy with one hand and takes it away with the other.

Although the local tiers of government are given some legislative powers in relation to subsidiary legislation, as well as some latitude to levy rates and taxes, such powers are not without limit. These powers are illusory because the lower tiers of government remain accountable to the central government. In relation to the power to make by-laws, the Minister of Local Government, Public Works and National Housing has the discretion to approve or reject the proposed by-laws. It however remains to be seen whether the Urban Councils Act will be amended so as to accommodate the principle of self-governance by local communities in a real and practical sense, considering the centralization of power which has characterised local governance relations in the past.

## **VI. CONSTITUTIONAL ADJUDICATION**

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<sup>198</sup> See section 298 of the 2013 Constitution of Zimbabwe which states that revenue raised nationally must be shared equitably between the central government and the provincial and local tiers of government.

<sup>199</sup> Section 299 of the Constitution.

<sup>200</sup> Section 3(2)(l).

<sup>201</sup> Sections 270(3) and 299.

The ability of citizens to approach the courts to seek redress for any breaches of fundamental rights lies at the core of constitutionalism and constitutional democracy. An independent judiciary that is able to adjudicate on citizens' rights is also a logical corollary of a constitutional democracy. The independence of the Zimbabwean judiciary is established in section 164(1) of the Constitution, which provides that the courts are independent and subject only to the Constitution and the law. The Constitution further imposes a positive duty on the State to assist and protect the courts to ensure their independence, and not to interfere in the functioning of the courts.<sup>202</sup> It is hoped that the new Constitution will represent a departure from the judiciary's past experiences wherein the judiciary was subjected to political pressure in the course of adjudicating matters.<sup>203</sup> The executive brazenly ignored court orders,<sup>204</sup> and the legislature would often override judicial decisions by effecting amendments to the Constitution.<sup>205</sup>

Section 2 of the Constitution entrenches constitutional supremacy in Zimbabwe in the following terms: 'This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.' It is within this context that the judiciary exercises its constitutional adjudication mandate. The judicial branch is the custodian of the Constitution, and this duty is given meaning by the establishment of a Constitutional Court, which is the final authority on all constitutional matters. Under the Lancaster House Constitution, the judicial review jurisdiction was vested exclusively in the Supreme Court. In this regard, Zimbabwe has traditionally subscribed to a

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<sup>202</sup> Section 164(2) (a) - (b). Section 165 lays down basic principles which should guide the judiciary. These principles assist in ensuring the institutional and individual independence of members of the judiciary

<sup>203</sup> G. Linington, n4 supra, at 564.

<sup>204</sup> P Nherere, 'How can a bill of rights be protected against undesirable erosion and amendment?' (1995) 7(2) Legal Forum, 41. See also *York and Another v. Minister of Home Affairs* HC-H-247-87 where the applicants were arrested and charged with illegal possession of arms of war. The state case against the applicants was not successful and the applicants were acquitted. However, the Government ordered their further detention. The High Court held that such detention was illegal. However, the Government did not comply with the orders of the court and continued with the illegal detention.

<sup>205</sup> To highlight a few examples: in *S v. A Juvenile* 1989(2)ZLR 61 (SC) the Supreme Court ruled that corporal punishment of juveniles in terms of the Criminal Procedure and Evidence Act was unconstitutional. The executive immediately reacted by passing through a constitutional amendment (Constitutional Amendment No. 11) which legalized juvenile whipping in the case of boys.

In *Catholic Commission for Justice and Peace and Others v. Attorney- General of Zimbabwe and Others*, the Supreme Court ruled that inordinate delay in carrying out the death sentence rendered its carrying out unconstitutional on the grounds of inconsistency with the prohibition against inhuman or degrading treatment in terms of Section 15(1) of the Constitution. The Government did not agree and reacted by passing through a constitutional amendment (Constitutional Amendment No. 13) to provide expressly that the delay in carrying out the death sentence did not render its carrying out unconstitutional.

In *Rattigan and Others v. Chief Immigration Officer of Zimbabwe* (unreported judgment S-64-1994) the preamble of the declaration of rights was widely interpreted to give substantive rights to the individual. The Government did not agree and reacted by passing through a constitutional amendment which stripped the preamble of any rights which it purported to have

centralized system of judicial review, with the apex court being the only court with judicial review jurisdiction. Significantly, the 2013 Constitution has departed from a centralized system of judicial review to a decentralized system. The lower tiers of the judiciary now have judicial review jurisdiction, subject to the final determination of constitutionality by the Constitutional Court.<sup>206</sup>

The judicial review powers of the courts have long been recognized in Zimbabwe. In the case of *Smith v. Mutasa*,<sup>207</sup> it was held that;

‘In Zimbabwe, the supremacy of the constitution is protected by the authority of an independent judiciary, which acts as the interpreter of the constitution and all legislation in Zimbabwe. In Zimbabwe, the judiciary is the guardian of the Constitution and the rights of citizens,’<sup>208</sup>

The case of *P.F. Zupu v. Minister of Justice*<sup>209</sup> is instructive on this point. The Supreme Court had to decide whether the courts could enquire into an act of the State and executive prerogatives in areas which ousted the jurisdiction of the courts. P.F. Zupu felt that its members had been unfairly deprived of their legal right to run in a general election because the date set by the President for the sitting of the nomination court afforded them insufficient opportunity to study the voters’ roll to ascertain the newly defined constituencies. The question before the High Court was whether it could redress the applicant’s grievances or whether its hands were tied by the doctrine of executive prerogative. The High Court held that it had no power to review the President’s prerogative. The Supreme Court, overturning the High Court decision on appeal held that;

“The arbitrary exercise by the executive of a prerogative, regardless of its effect on those who may be deprived of their rights or interests or who have legitimate expectations, is nowadays subject to review. The reason for reviewing such executive action is that it would be unfair to deprive a citizens of his rights, interests or legitimate expectations, without hearing what he has to say, or to deny him the opportunity to find out whether the decision emanating from the exercise of an executive prerogative is legal or not, for that matter, irrational or unfair.”<sup>210</sup>

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<sup>206</sup> Section 175 of the Constitution.

<sup>207</sup> 1989 (3) ZLR 183(S).

<sup>208</sup> Ibid at 192 G-H.

<sup>209</sup> 1985(1) ZLR 305 (SC).The summary and commentary of this case is available in a paper prepared by A.R. Gubbay, ‘The separation of powers, with particular reference to the role of the judiciary’, (1991) 3(4).

<sup>210</sup> Ibid.

The Supreme Court had the opportunity to determine on the principles of separation of powers and the rule of law in the case of *Mike Campbell and Another v. The Minister of National Security Responsible for Land, Land Reform and Resettlement and Another*.<sup>211</sup> The applicants argued that Constitutional Amendment No. 17 of 2005 was unconstitutional on the grounds that it violated the applicants' right to protection of the law and the right to a fair hearing within a reasonable time. Constitutional Amendment No. 17 introduced an ouster clause, which precluded the courts from determining any challenge to the acquisition of land by the government carried out in terms of Section 16B of the Constitution. The applicants contended that the legislature had no power to take away the right of access to the court, as this would undermine the balance of powers of the state between the legislature and judiciary. The applicants further argued that Amendment No. 17 was null and void for interfering with the essential features of the Constitution which were separation of powers and the rule of law. The court however held that it was a valid exercise of legislative power because the legislature took away those powers and let them lie dormant. What would have been a violation of the principle of separation of powers was for the legislature to then take those judicial functions and exercise them itself under the guise of the legislature, judging over the facts and circumstances of a case.<sup>212</sup> The court took a narrow interpretation of the rule of law principle and held that there was no violation of the principle of the rule of law. The argument of the court was essentially that the constitutional amendment had been effected in terms of procedures laid down by law.<sup>213</sup>

### **A. Constitutional Court**

The Constitutional Court consists of the Chief Justice, the Deputy Chief Justice, and five others judges of the Constitutional Court.<sup>214</sup> The appointment of judges is provided for in section 180 of the Constitution. Section 180 provides that where a judge is to be appointed, the Judicial Service Commission must advertise the vacancy, invite the President and the public to make nominations, and conduct public interviews of prospective candidates. The Judicial Service Commission in turn submits a list of three qualified persons and presents it to the President, who must appoint from this list. Where the President considers that none of the nominees submitted to him are suitable, he or she must inform the Judicial Service

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<sup>211</sup> SC 124/06.

<sup>212</sup> Ibid.

<sup>213</sup> The Constitution in terms of section 52 provided for the procedure in which the legislature could amend the Constitution, and the legislature had followed the procedure laid down to effect the amendment to the Constitution.

<sup>214</sup> Section 166(1).

Commission to submit a further list of three qualified persons, and the President must accordingly make an appointment from the re-submitted list. The judicial appointment procedures provided for in the 2013 Constitution subject all judges to the same appointment process. The process is much more progressive than the previous judicial appointment process, which gave the executive too much power in the selection of judges.<sup>215</sup>

## **B. Jurisdiction of the Constitutional Court**

The jurisdiction of the Constitutional Court is set out in section 167 of the Constitution. The Constitutional Court is the highest court on all constitutional matters. It adjudicates constitutional matters only, or anything connected with constitutional matters, and it also makes the final decision as to whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.<sup>216</sup> The Court further advises on the constitutionality of any proposed legislation,<sup>217</sup> and determines election disputes relating to the office of the President.<sup>218</sup> In the spirit of the separation of powers principle, the Constitutional Court has the power to determine whether Parliament or the President has failed to fulfil a constitutional obligation.<sup>219</sup> These provisions clearly vest in the Constitutional Court the power to review executive and legislative actions and determine whether they are within the scope of the Constitution. In the case of *Chairman of the Public Service Commission and Others v. Zimbabwe Teachers' Association and Others*,<sup>220</sup> the court held that Zimbabwe is a constitutional democracy and not a parliamentary democracy, and that Parliament must act within the limits of the powers assigned to it by the Constitution. Where Parliament had purported to legislate beyond its powers, the judiciary had the power to strike out such laws on the basis that they were unconstitutional.

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<sup>215</sup> L. Madhuku, 'The Appointment Process of Judges in Zimbabwe and its Implications for the Administration of Justice', (2006) 21SAPR/PL 345; D. Matyszak, 'Creating a Compliant Judiciary in Zimbabwe', in Malleon, *"Appointing Judges in an Age of Judicial Power, Critical Perspectives from Around the World"* (University of Toronto Press 2006) 334; K. Saller, *The Judicial Institution in Zimbabwe*, (Cape Town : Siber Ink in association with the Faculty of Law, University of Cape Town, 2004); L. Van De Vijver, *The Judicial Institution in Southern Africa: A Comparative Study of Common Law Jurisdictions*, (University of Cape Town. Democratic Governance and Rights Unit. Cape Town: Siber Ink, 2006).

<sup>216</sup> See section 167(1) of the Constitution.

<sup>217</sup> In the case of *Nyamandlovu Farmers Association v. Minister of Lands HB-19-03*, it was held that it is only the Supreme Court which has the power to declare a statute unconstitutional.

<sup>218</sup> Section 167(2)(b) of the Constitution. See also the case of *Morgan Tsvangirai v. Robert Gabriel Mugabe N.O. and Others CC71/2013* which was the first presidential petition that the Constitutional Court had to deal with since the Court was established.

<sup>219</sup> Section 167(2)(d) of the Constitution.

<sup>220</sup> 1996 (9) BCLR 1189 (ZS) at 1198.

### **C. Powers of the Court in deciding constitutional matters**

In matters involving human rights violations, the courts are empowered in terms of section 85(1) to grant the relief that is appropriate, including a declaration of rights and an award of compensation. This provision is similar to the one contained in the Lancaster House Constitution, which gave the Supreme Court the power to ‘make any such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the declaration of rights’.<sup>221</sup> It is apparent that the new Constitution has retained the wide discretionary powers that were granted to the court to secure the enforcement of human rights.

In the case of *In Re Mlambo*,<sup>222</sup> the court commenting on section 24(4) of the Constitution, stated that; ‘it is difficult to imagine language which would give this court a wider and less fettered discretion.’ In this case, the applicant was alleging a violation of his right to a fair hearing within a reasonable time. The court found that the applicant’s rights had indeed been violated, and granted the applicant a permanent stay of proceedings in respect of the pending criminal proceedings in order to protect his right to a fair hearing within a reasonable time, as was enshrined by section 18(2) of the Lancaster House Constitution. Similarly, in the case of *T S Masiyiwa Holdings (Pvt) Ltd and Another v. Minister of Information, Post and Telecommunications*,<sup>223</sup> it was held that when the Supreme Court exercises its powers under section 24(4), the court must order the form of redress it deems most appropriate after taking into consideration all of the relevant circumstances. The objective must be to utilise the most equitable method of remedying a legitimate complaint.<sup>224</sup>

The newly created Constitutional Court has had occasion to deal with electoral matters in the case of *Jealousy Mbizvo Mawarire v. Robert Gabriel Mugabe N.O. and Others*.<sup>225</sup> The applicant contended that his right to protection of the law in terms of Section 18(1) of the Lancaster House Constitution were being, or were likely to be violated. The applicant argued that the failure of the first respondent to fix a date for holding presidential, parliamentary, and local government elections violated his right to be protected by the law. The Constitutional Court ruled in favour of the applicant, holding that the failure of the first respondent to announce election dates was a violation of the applicant’s right to be protected by the law.

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<sup>221</sup> Section 24(4) of the Lancaster House Constitution.

<sup>222</sup> 1991(2) ZLR 339 (SC) at 35.

<sup>223</sup> 1997(2) BCLR 275 (ZS) at 285.

<sup>224</sup> See also *S v. Mbire* 1997 (1) ZLR 579(SC); *S v. Chakwinya* 1997 (1) ZLR 109(H).

<sup>225</sup> CCZ 1/13 (Constitutional Application No. 146/2013).

The Constitutional Court, on finding such violation, ordered and directed the first respondent to proclaim as soon as possible a date for the holding of the presidential and general elections. The court directed that the elections should take place no later than 31 July 2013.

## **VII. INTERNATIONAL LAW AND REGIONAL INTEGRATION**

There are various provisions in the Constitution of Zimbabwe that deal with international law and regional integration. The key provisions are sections 326 and 327, which deal with customary international law and international treaties respectively. Section 326(1) provides that customary international law is part of the law of Zimbabwe unless it is inconsistent with the Constitution or an Act of Parliament. The Lancaster House Constitution did not specifically state that customary international law is part and parcel of the Zimbabwean law. The High Court had occasion to rule on the applicability of rules of customary international law in Zimbabwe in the case of *Barker McCormac (Pvt) (Ltd) v. Government of Kenya*.<sup>226</sup> The court held that international customary law is part of the law of Zimbabwe and that consequently the doctrine of restrictive sovereign immunity, a rule of customary international law, was also a rule of Zimbabwean law. Furthermore, section 326(2) states that, “[w]hen interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe, in preference to an alternative interpretation inconsistent with that law.”

In the same vein, section 327(2) provides that international treaties entered into, concluded or executed by the President or under the President’s authority do not become binding on the Republic unless the same have been approved by Parliament. However, this does not preclude the passing of a resolution by Parliament, declaring that certain classes of international agreements do not require approval before they become binding on the Republic.<sup>227</sup> Such a resolution does not apply to treaties whose operation requires the withdrawal or appropriation of funds from the Consolidated Revenue Fund or to treaties whose application would constitute a modification of the laws of Zimbabwe.<sup>228</sup> Furthermore, section 327(6) states that when interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with any international

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<sup>226</sup> 1983 (1) ZLR 137 (H).

<sup>227</sup> See section 327(5) of the Constitution.

<sup>228</sup> *Ibid.* Subsection (a) and (b).

convention, treaty, or agreement which is binding on Zimbabwe, in preference to an alternative interpretation inconsistent with that convention, treaty, or agreement.

Other constitutional provisions that deal with international law include the following:

-Section 12(1)(b), which provides that the foreign policy of Zimbabwe must be based on the respect for international law. Section 12 lays down the principles that must guide the executive in the formulation of Zimbabwe's foreign policy. Zimbabwe's foreign policy is premised on the following principles; the promotion and protection of the national interests of Zimbabwe; respect for international law; peaceful co-existence with other nations; and the peaceful settlement of international disputes.<sup>229</sup> Section 12 further directs that foreign policy must have due regard to and promote African values and political co-operation within the region, thus enhancing regional integration.<sup>230</sup>

- Section 34, which imposes a duty on the State to ensure that all international conventions, treaties, and agreements to which Zimbabwe is a party are incorporated into domestic law.
- Section 46(1)(c), which imposes a duty on courts, tribunals, and forums, when interpreting the Bill of Rights, to take into account international law and all treaties and conventions to which Zimbabwe is a party.
- Section 46(1)(e), which states that when interpreting the Bill of Rights, Zimbabwean courts may consider relevant foreign law.
- Section 165(7), which imposes a duty on members of the judiciary to take reasonable steps to maintain and enhance their professional knowledge, skills, and personal qualities, and in particular that they must keep themselves abreast of developments and international law.

International agreements entered into by the national executive or under the authority of the President become binding on Zimbabwe in terms of section 327(2)(a) and (b) only if:-

- (i) the relevant international agreement has been approved by Parliament; and
- (ii) in addition to parliamentary approval, the relevant international agreement has been incorporated into the existing law of Zimbabwe through an Act of Parliament.

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<sup>229</sup> Section 12(1)(a)-(d).

<sup>230</sup> Section 12(2).

However, there are exceptions to these provisions if an Act of Parliament specifically excludes a particular treaty or treaties.<sup>231</sup> It is apparent that there is a distribution of treaty-making powers between the executive and the legislature. The President cannot unilaterally enter into an international treaty or agreement without seeking parliamentary approval. Basically, section 327 of the Constitution is a reincarnation of section 111B of the Lancaster House Constitution. Section 111B of the old Constitution provided that international treaties signed, ratified or acceded to by the Zimbabwean Government would not become part of domestic law unless they had been so domesticated through an Act of Parliament. Accordingly, the new Constitution is still subscribing to the dualist approach with respect to the relationship between international law and municipal law.<sup>232</sup>

Regional integration is provided for in section 12(2) of the Constitution in the following terms: “The State must promote regional and pan-African cultural, economic and political co-operation and integration and must participate in international and regional organizations that stand for peace and the well-being and progress of the region, the continent and humanity.” Apart from the above, section 219(2)(c) of the Constitution also imposes a duty on the police service to exercise its functions in cooperation with regional and international bodies formed to combat crime.

A thorny issue in relation to regional integration in the Zimbabwean context is brought to the fore by the SADC Tribunal saga. The Zimbabwean government protested a ruling by the SADC Tribunal in the case of *Mike Campbell (Pvt) Limited and Another v. The Republic of Zimbabwe*.<sup>233</sup> The SADC Tribunal had found the Zimbabwean government to be in violation of the SADC Treaty. The protests by the government ultimately led to the suspension of the regional court by the SADC Heads of State and Government on 20 May 2011. The suspension of the Tribunal was a major setback in so far as making SADC states accountable for human rights breaches at the regional level.

## VIII CONCLUSION

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<sup>231</sup> Section 327(4).

<sup>232</sup> Dualism requires the translation of international law into the existing domestic law of a State before the relevant law become binding on the State concerned.

<sup>233</sup> [2008] SADC 2, 28 November, SADC Tribunal.

It is apparent that the Constitution of 2013 represents a new dawn in Zimbabwe's constitutional discourse. It shows a marked departure from the former Lancaster House Constitution in several respects alluded to above. If implemented fully, this new Constitution can usher in a culture of accountability and foster the prospects for the observance of the rule of law and constitutionalism. It is imperative, therefore, that there must be a change of the political mindset in order to have any meaningful progress towards implementation of the new charter. Zimbabwe has previously undergone a period of political turmoil which has paralysed its governance structures, and it is hoped that the new Constitution of 2013 will go a long way towards creating a stable democracy built on constitutional values.

## **SELECT BIBLIOGRAPHY**

### **I. ORIGINS AND HISTORICAL DEVELOPMENT OF THE CONSTITUTION**

#### **Books and Collections**

R. Cary, *African Nationalist leaders in Rhodesia* Books of Rhodesia, Bulawayo, (1977).

L. Madhuku, *An Introduction to Zimbabwean Law* (Weaver Press, 2010).

W. Ncube, *Constitutionalism, Democracy and Political Practice in Zimbabwe*, in I. Mandaza and L. Sachikonye (eds.), *The One Party State and Democracy: The Zimbabwe Debate*. (Harare: Sapes, 1991)

C. Palley, *The Constitutional History and Law of Southern Rhodesia, 1888-1965*, (Clarendon Press, Oxford, 1996).

J. Reid Rowland, 'Constitutional History of Rhodesia: An Outline, Appendix' in Philippa Berlyn, *The Quiet Man*, (M.O. Collins, Salisbury, 1978).

*Zimbabwe 2008 Harmonised Elections* (Zimbabwe Lawyers for Human Rights), Harare (2008).

*Zimbabwe's Constitutional Drafts: Comparison and Recommendations*, (Zimbabwe Lawyers for Human Rights), Harare, (2011).

## Articles

A. De Bourbon, 'Human rights litigation in Zimbabwe: Past, present and future', (2003) 3 African Human Rights Law Journal, 221.

C. Dube, 'Events threatening the rule of Law in Zimbabwe', (1998) 10(1), Legal Forum.

E. Dumbutshena, 'The rule of law in Constitutional democracy with particular reference to the Zimbabwean Experience', (1989) 5 South African Journal on Human Rights.

G.A. Dzinesa, 'Zimbabwe's Constitutional Reform Process: Challenges and Prospects' available at <http://www.ijr.org.za> accessed on 16 July 2013.

A. Gubbay, 'The Progressive Erosion of the Rule of Law in Zimbabwe', Lecture at the Bar Council of England and Wales on 9 December 2009. Full speech available at <http://www.newzimbabwe.com/opinion-1806-Gubbay+lecture+on+rule+of+law/opinion.aspx>

J. Hatchard, 'The Constitution of Zimbabwe: Towards a Model for Africa?' (1991) 35(1-2) Journal of African Law, 79-101.

J. Hatchard, 'Undermining the Constitution by unconstitutional means, some thoughts on the new constitutions of Southern Africa', (1995) XXVIII CILSA.

R.P. Lander, 'The British South Africa Company : An essay on its commercial history', (1992) 7(11).

G. Linington, 'To what extent are the powers of the Zimbabwean President subject to Parliamentary and Judicial Control?' (1997) 9(2), Legal Forum.

J. Makumbe, 'Zimbabwe's Hijacked Elections', (2002) 13 Journal of Democracy, 4,97.

W. Ncube, 'Judges and the rule of law', (1999) 11(1) Legal Forum.

L. Nijzink, 'The Relative Powers of Parliaments and Presidents in Africa: Lessons for Zimbabwe?' in *Constitution in Transition*, (2009) 160-85.

J. Reid Rowland, 'Amendments to Zimbabwe's Constitution; A Summary', (1994) 6(2) Legal Forum.

L. Sachikonye, 'Political Parties and the Democratisation Process in Zimbabwe', (2005) EISA Research Report No.16.

D.Shumba, 'A critical reflection on the 2002 presidential election in Zimbabwe,' (2002) 2, African Human Rights Law Journal, 327.

G.J. Van Niekerk, 'Constitutional protection of common law : the endurance of the civilian tradition in Southern Africa', (2012) 18(1) Fundamina : A Journal of Legal History.

The UN Special Envoy report on Human Settlements Issues in Zimbabwe available at <http://www.unhabitat.org/documents/ZimbabweReport.pdf>

E. Zvobgo, 'The Zimbabwe Constitution After Four Years of Independence', (1984) Public Law.

## **II. FUNDAMENTAL PRINCIPLES OF THE CONSTITUTION**

### **Statute law**

Constitution of Zimbabwe, 2013

The Lancaster House Constitution, 1980

### **Articles**

T. Frank, 'The emerging right to democratic governance', (1992) 86:46 AJIL.

J. Laws, 'The Constitution: morals and rights', (1996) Public Law.

## **III.FUNDAMENTAL HUMAN RIGHTS PROTECTION**

### **Books and Collections**

J. Hatchard, *Individual Freedoms and State Security in the African Context: The Case of Zimbabwe*, (James Currey, London, (1993).

G. Linington, *Constitutional Law of Zimbabwe*, (Legal Resources Foundation), Harare, (2001).

L. Tshuma, *A Matter of Injustice, State and the Agrarian Question in Zimbabwe*, (SAPES), Harare, (1997).

Zimbabwe Lawyers for Human Rights, *An Analysis of the COPAC Consolidated Draft Constitution*, (2012).

### **Articles**

Funmilola Abioye and Freddy Mnyongani, 'Governance, human rights and the public sphere in Africa : The case of Zimbabwe', (2009) 3(2) Malawi Law Journal.

G. Abraham, 'The Commonwealth, human rights and Zimbabwe : Trouble in the family?' (2004) 11(1) South African Journal of International Affairs.

A.B. Chikwanha, 'The trajectory of human rights violations in Zimbabwe', (Oct. 2009) Issue 202, Institute for Security Studies Papers.

B. Chiroro, 'Persistent inequalities : women and electoral politics in the Zimbabwe Elections in 2005' (2005) Special Issue 4(2) Journal of African Elections.

A. De Bourbon, 'Human rights litigation in Zimbabwe: Past, present and future', African (2003) 3, Human Rights law Journal, 22.

D. Matyszak, 'Human Rights and Zimbabwe's Draft Constitution', (Research and Advocacy Unit: Harare, (2013).

Max Du Plessis and Andreas Coutsooudis, 'Serious human rights violations in Zimbabwe : Of international crimes, immunities, and the possibility of prosecutions', (2005) 21(3) South African Journal on Human Rights.

G. Feltoe, 'Towards a stronger human rights culture in Zimbabwe: The special role of lawyer', (1989) 7(7-8) Zimbabwe Law Review.

G. Feltoe, 'The Standing of Human Rights organisations and individuals to bring or be part to legal cases involving issues of human rights', (1995) 7(2) Legal Forum.

A.R. Gubbay, 'Women's Rights', (1989) 1(3) Legal Forum.

A.R. Gubbay, 'The protection and enforcement of fundamental human rights: The Zimbabwean experience', (1997) Human Rights Quarterly, 19.

K.C. Goyer and S. Reddy, 'HIV/Aids and civil rights in Zimbabwe', (June-July 2002) 13(1) AIDS Analysis Africa.

F Henwood, 'Zimbabwe, the African Union and human rights : A new era born or just stillborn?' (Mar./Apr. 2006) 3(2) Human Rights, African Renaissance.

C. Heyns and D. Brand, 'The constitutional protection of religious human rights in Southern Africa', (2000) 33(1) The Comparative and International Law Journal of Southern Africa.

International Bar Association, 'Partisan policing : an obstacle to human rights and democracy in Zimbabwe' (Apr. 2008) 21(1) IBA, Advocate.

G. Linington, 'Enforcement of rights', (1999) 11 *Legal Forum* 147.

- S. Kentridge, 'Civil rights in Southern Africa - The prospect for the future', (1987) 3(1) Lesotho Law Journal.
- J. Hatchard, 'The fall and rise of the cane in Zimbabwe', (Nov. 1991) 35 Issue 1/2 Journal of African law.
- J. Mapuva and L. Muyengwa, 'A critique of the key legislative framework guiding civil liberties in Zimbabwe', (2012) 15(4) Potchefstroom Electronic Law Journal.
- N. Mlambo, 'Between civil rights and property rights. Debating the selective application of human rights in Zimbabwe', (Mar. 2009) 38(4) Africa Insight.
- T. Murombo, 'The utility of environmental rights to sustainable development in Zimbabwe : a contribution to the constitutional reform debate', (2011) 11(1) African Human Rights Law Journal.
- T. Mutangi, 'Religion, law and human rights in Zimbabwe : Focus :The foundations and future of law, religion and human rights in Africa', (Dec, 2008) 8(2) African Human Rights Law Journal.
- G.J. Naldi, 'Land Reform in Zimbabwe, Some Legal Aspects', (1993) 31, The Journal of Modern African Studies, 585-600.
- S. Nel, 'Right to freedom of expression in the Zimbabwe Constitution' (Oct.1995) 36(2) Codicillus.
- W. Ncube, 'The constitutional recognition and popular enjoyment of human rights in Zimbabwe' (Jan. 1987) 1(5), Zimbabwe Law Review.
- P. Nherere, 'How can a bill of rights be protected against undesirable erosion and amendment?' (1995) 7(2) Legal Forum.
- M.B. Ramose 'Title to territory: its constitutional implications for contemporary South Africa and Zimbabwe', (Dec. 2001) 26(2) Journal for Contemporary History.
- S.F. Sacco, 'A comparative study of the implementation in Zimbabwe and South Africa of the international law rules that allows compulsory licensing and parallel importation for HIV/AIDS drugs', (19 Apr. 2005) 5(1) African Human Rights Law Journal.

#### **IV. SEPARATION OF POWERS**

##### **Books**

- G. Feltoe, *A Guide to Zimbabwean Administrative Law*, (3<sup>rd</sup> ed., Legal Resource Foundation, Harare, (1998).
- G. Linington, *Constitutional Law of Zimbabwe*, (Legal Resource Foundation, Harare, (2001).

## Articles

G.E. Devenish, 'The doctrine of separation of powers with special reference to events in South Africa and Zimbabwe'. (Feb. 2003) 66(1) Tydskrif vir hedendaagse Romeins-Hollandse reg.

G. Devenish, 'The rule of law revisited with special reference to South Africa and Zimbabwe', (Jan. 2004) 35(4) Tydskrif vir die Suid-Afrikaanse reg.

E. Dumbutshena, 'The rule of law in a constitutional democracy: The Zimbabwean experience', (July 1989) 2(259) De rebus.

E. Dumbutshena, 'The Rule of law in a constitutional democracy with particular reference to the Zimbabwean experience', (Oct. 1989) 5(3) South African Journal on Human Rights.

J. Hatchard, 'The constitution of Zimbabwe: Towards a model for Africa?' (Dec. 1991) 35(1/2) Journal of African Law.

C. Hendricks, 'Zimbabwe: Beyond the democratic impasse', (Sep. 2005) 14(3) African Security Review.

S. Kentridge, 'Telling The Truth About Law', (1982) 99 South African Law Journal, 652.

G. Linington, 'Can the president be constitutionally removed from office?' (1995) 7(1) Legal Forum.

G. Linington, 'The Prerogative of Mercy: A review of section 311 of the Constitution of Zimbabwe', (1998) 10(3) Legal Forum.

G. Linington, 'To what extent are the powers of the Zimbabwean President subject to Parliamentary and Judicial Control?' (1997) 9(2) Legal Forum.

L. Madhuku, 'The Appointment Process of Judges in Zimbabwe and its Implications for the Administration of Justice' (2006) 21 SAPR/PL 345.

L. Madhuku, 'Constitutional Protection of the Independence of the Judiciary: A Survey of the Position in Southern Africa', (2002) 4 Journal of African Law, 234.

D. Matyszak, 'Creating a Compliant Judiciary in Zimbabwe' in Malleson, *"Appointing Judges in an Age of Judicial Power, Critical Perspectives from Around the World"* (University of Toronto Press 2006) 334.

L. Mhlaba, 'Whither parliamentary democracy : A look at recent constitutional changes in Zimbabwe', (Oct. 1989) 7(7/8) Zimbabwe Law Review.

S. Nthai, 'The independence of the judiciary in Zimbabwe reaffirmed' (Apr. 1998) 61 (363) De rebus.

C. Ndoro, 'The politics of the 2005 parliamentary elections in Zimbabwe' (Oct. 2005) 4(2), *Journal of African Elections* : Zimbabwe's 2005 General Election.

W. Ncube, 'The concept of separation of powers in Zimbabwe: Constitutional Myth or reality?' (1995) 12, *Zimbabwe Law Review*.

W. Ncube and S. Nzombe, 'The constitutional reconstruction of Zimbabwe : Much ado about nothing?' (Jan. 1987) 1(5) *Zimbabwe Law Review*.

L.M. Sachikonye, 'Continuity or reform in Zimbabwean politics? An overview of the 2013 referendum (Jun. 2013) 12(1) *Journal of African Elections*.

L.M. Sachikonye, 'Constitutionalism, the electoral system and challenges for governance and stability in Zimbabwe', (2002) 4(2) *African Journal on Conflict Resolution*.

## **V. FEDERALISM/ DECENTRALIZATION**

### **Articles**

T. Ebobrah Solomon and Nkhata Mwiza, 'Is the SADC Tribunal under judicial siege in Zimbabwe? Reflections on *Etheredge v. Minister of State for National Security Responsible for Lands, Land Reform and Resettlement and Another*', (2010) 43(1) *Comparative and International Law Journal of Southern Africa*.

D. Olowu, 'Decentralization and Local Government in the Zimbabwean Constitution', Africa Europe Foundation, Netherlands, Paper prepared for the Constitutional Conference, Zimbabwe, 26-29 October 2009, Rainbow Towers, Harare, Zimbabwe.

J.D. Jordan, 'Local Government in Zimbabwe: An overview', (Mambo Press, Gweru, (1984).

B. Mhlanga 'Zimbabwe's post-colonial antinomies as the northern problem? : Policy projections: commentary', (Dec. 2010) 19(4) *African Security Review*.

B. Mhlanga, 'Devolution - The 'ticklish' subject : The 'northern problem' and the national question in Zimbabwe', (2012) 1(1/2) *Ubuntu : Journal of Conflict Transformation*.

S. Marumahoko, 'Fiscal autonomy of urban councils in Zimbabwe: A critical analysis', (2011) Vol 15/11, *Law, Democracy & Development*.

## **VI. CONSTITUTIONAL ADJUDICATION**

### **Books**

Greg Linington, *Constitutional law of Zimbabwe*, Legal Resource Foundation, Harare, (2001).

## **Articles**

M.M. Corbett, 'Judicial Review and the Problems of Southern Africa', (1981) 12, *Loyola University Law Journal*, 175.

T. Biti, 'Judiciary Bashing: A predatory State and Rule of Law in Zimbabwe', (1999) 1, *Zimbabwe Human Rights Bulletin*.

R.H. Christie, 'The Executive and Judiciary in Zimbabwe', (1983) 100, *South African Law Journal*.

E. Dumbutshena, 'The rule of law in a constitutional democracy with particular reference to the Zimbabwean experience', (1985) 5, *South African Journal on Human Rights*.

A.R. Gubbay, 'Judicial Review in the Enforcement of Human Rights', (July 1990), *Commonwealth Law Bulletin*.

A.R. Gubbay, 'The protection and enforcement of fundamental human rights: the Zimbabwean experience', (1997), 19, *Human Rights Quarterly*.

G. Linington, 'Enforcement of rights', (1999) 11, *Legal Forum*.

G. Linington, 'Alteration of the Constitution', (1997) 14, *Zimbabwe Law Review*.

L. Madhuku, 'Constitutional protection of the Independence of the Judiciary: A survey of the position in Southern Africa', (2002) 46(2) *Journal of African Law*..

W. Ncube, 'Judges and the rule of law, Judges and the legal profession in Rhodesia and Zimbabwe', (1997) 14, *Zimbabwe Law Review*.

P. Nherere, 'How can a bill of rights be protected against undesirable erosion and amendment?' (1995) 7(2), *Legal Forum*..

K. Saller, *The Judicial Institution in Zimbabwe*, (Cape Town, Siber Ink in association with the Faculty of Law, University of Cape Town, (2004).

L. Van De Vijver, *The Judicial Institution in Southern Africa: A Comparative Study of Common Law Jurisdictions*, (University of Cape Town, Democratic Governance and Rights Unit, Cape Town, Siber Ink, (2006).

## **VII. INTERNATIONAL LAW AND REGIONAL INTEGRATION**

## Articles

G. Linington, 'International Law and Borders in Southern Africa', in Solomon Nkiwane (ed.), *Zimbabwe's International Borders*, University of Zimbabwe Publications: Harare (1997).

A. Moyo, 'Defending human rights and the rule of law by the SADC Tribunal: Campbell and beyond: recent developments' (2009) 9(2) African Human Rights Law Journal.

G.J. Naldi, 'Constitutional developments in Zimbabwe and their compatibility with International Human Rights', (1991) 3, RADIC.