A Summary of the Amendments to the 1980 Constitution of Zimbabwe (Lancaster House Constitution)

Introduction

On 18th April 1980, Prince Charles formally conferred independence on Zimbabwe and on this day, a new Constitution agreed under the Lancaster House Agreement came into force. The Lancaster House Agreement was signed on 21st December 1979 after the conclusion of negotiations which had begun in September of the same year. The parties represented at the conference were the British Government, the Patriotic Front under the leadership of Robert Mugabe and the Zimbabwe African Peoples Union (ZAPU) led by Joshua Nkomo. Also represented was the Zimbabwe-Rhodesia government represented by Bishop Abel Muzorewa and Ian Smith. The 1980 Constitution was amended nineteen times before it was finally replaced in May 2013. The following is a descriptive summary of these amendments.

Amendments - 1980-1987

Constitution of Zimbabwe Amendment Act, No. 27 of 1981 was the first amendment to the Constitution agreed at Lancaster. The amendment reduced qualification period of lawyers to the judiciary and the Senate Legal Committee so as make these various offices accessible to black lawyers. This was followed by Constitution of Zimbabwe Amendment (No. 2) Act, 1981 which separated the Supreme Court and the High Court. This amendment also specified the qualification period for judges, reducing them and making them more attainable by blacks. Through Constitution of Zimbabwe Amendment (No. 3) Act, 1983 Parliament was afforded the power to abolish dual citizenship. The introduction of the Office of Ombudsman and the reconstitution of the Judicial Services Commission were effected through Constitution of Zimbabwe Amendment (No. 4) Act, 1984. Constitution of Zimbabwe Amendment (No. 5) Act, 1985 allowed for appointment of Provincial Governors by the President. The abolition of the separate roll for white voters was achieved through Constitution of Zimbabwe Amendment (No. 6) Act, 1987 (enacted through Act No. 15 of 1987).

Constitution of Zimbabwe Amendment (No. 7) Act, 1987

Perhaps the most far reaching amendment to the 1980 document was Constitution of Zimbabwe Amendment (No. 7) Act, 1987 (Act No. 23 of 1987). The amendment created the Executive Presidency and abolished the office of the Prime Minister. The original Lancaster House Constitution provided for a largely ceremonial president, with most of the executive political powers concentrated in the office of the Prime
Minister (Linington). The new executive President was to hold office for a period of six years with a provision for re-election with no term limits. This was distinct from the former ceremonial president whose tenure was limited to a maximum of two six-year terms of office. [1]

Amendments â€“ 1987 - 1990

Act No. 4 of 1989 introduced Constitution of Zimbabwe Amendment (No. 8) Act, 1989. This provided for the Attorney General becoming a member of Cabinet. The Attorney General became a member of cabinet by virtue of office but did not have the right to vote on issues before it. The Attorney General was also responsible for prosecuting criminal matters in the courts and also represented the government in civil matters. 1989 also saw the abolition of the Senate making way for a one chamber Parliament. In 1990, Act No. 15 of 1990 amended the Constitution to create the position of a second Vice-President. [2] Constitution of Zimbabwe Amendment (No. 11) Act, 1990 terminated land provision for â€œwilling buyer, willing sellerâ€ in favour of â€œfair compensationâ€. Constitution of Zimbabwe Amendment (No. 12) Act, 1993 reorganised the prison services, the public services and the armed services.

The Supreme Court Decisions

In S v A Juvenile, the Supreme Court held that corporal punishment of minor boys convicted of criminal offences amounted to inhuman and degrading treatment not reasonably justifiable in a democratic society. [3] Through Constitution Amendment (No. 11), provision was made for derogation to the right to protection from inhuman or degrading treatment or punishment. This derogation expressly allowed corporal punishment as a competent sentence which does not amount to inhuman or degrading treatment or punishment towards male minors. Constitution of Zimbabwe Amendment (No. 13) Act 1993 provided that delayed execution of the death sentence did not amount to inhuman and degrading punishment or treatment. This amendment had the effect of reversing the decision of the Supreme Court in Catholic Commission for Justice and Peace in Zimbabwe v. Attorney-General & Ors which had concluded that the delay by the Executive in carrying out the sentences of death imposed by the courts, together with the conditions under which the condemned prisoners were incarcerated and the anguish that they were then subjected to, rendered the proposed executions contrary to s 15(1) of the Constitution as being inhuman or degrading punishment or treatment. [4] Constitution of Zimbabwe Amendment (No. 14) Act, 1996 also reversed the decisions of the Supreme Court in Rattigan & Ors v. Chief Immigration Officer & Ors and Salem v. Chief Immigration Officer, Zimbabwe & Another. The decisions were reversed in two material aspects. First, whilst the court in Rattigan had held that s 11 of the Constitution embodied substantive rights, and that it was not a mere preamble, the amendment clarified that s 11 was only a preamble which did not contain substantive rights. Second and whilst the court held that the rights of the applicant wives under s 22 (Freedom of Movement) of the former Constitution had been breached as they had a right to have their husbands reside with them in Zimbabwe, the amendment sought to escape this ruling. The explanatory note to the Amendment Bill stated that the judiciary had said that foreign husbands had a right to reside in Zimbabwe. The purpose of the amendment, continued the explanatory note, was to take away this right (Linington). [5]

Constitution of Zimbabwe Amendment (No. 15) Act, 1998 changed the start date of the government financial year from 1 July to 1 January.

Constitution of Zimbabwe Amendment (No. 16) Act, 2000
Constitution of Zimbabwe Amendment (No. 16) Act, 2000 purported to transfer responsibility for compensation to disposed former white farmers from the Government of Zimbabwe to the British Government. The new provision, appearing as s 16A of the former Constitution, now read as follows:

(1) In regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a programme of land reform, the following factors shall be regarded as of ultimate and overriding importance

(a) Under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation;

(b) The people consequently took up arms in order to regain their land and political sovereignty, and this ultimately resulted in the Independence of Zimbabwe in 1980;

(c) The people of Zimbabwe must be enabled to reassert their rights and regain ownership of their land; and accordingly—

(i) The former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement, through an adequate fund established for the purpose; and

(ii) If the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay compensation for agricultural land compulsorily acquired for resettlement.

Constitution of Zimbabwe Amendment (No. 17) Act, 2005

Constitution of Zimbabwe Amendment (No. 17) Act, 2005 reintroduced Senate as the upper House of Parliament. This amendment also introduced a new section 16B to the Constitution titled "Agricultural land acquired for resettlement and other purposes". The section sought to introduce a new provision to confirm the acquisition of land for resettlement purposes which took place pursuant to the Land Reform Programme beginning in 2000, and provide for the acquisition in the future of agricultural land for resettlement and other purposes. Specifically, the amendment ensured that the Constitution now provided that a person having any right or interest in the land so acquired could not apply to a court to challenge the acquisition of the land by the State, and no court could entertain any such challenge. This amendment was to be the subject of the long and fierce legal battle between Mike Campbell (Pvt) Ltd (a Zimbabwean farming company) and the Government of Zimbabwe.

Constitution Amendment (No. 17) Act, 2005 also amended section 22 of the Constitution by increasing the grounds upon which freedom of movement could be limited. Section 4 of the Amendment Act (No. 17) amended section 23 (Protection from discrimination) of the Constitution by the deletion of the word "gender" and its substitution with "sex, gender, marital status or physical disability." A new paragraph was also introduced to widen the limitations to the discrimination clause. The new paragraph was to the effect that "the implementation of affirmative action programmes for the protection or advancement of persons or classes of persons who have been previously disadvantaged by unfair discrimination." did not constitute discrimination. A further paragraph was inserted into section 23 which envisaged that in implementing any programme of land reform, the Government was to treat men and women on an equal basis.
Constitution of Zimbabwe Amendment (No. 17) Act also established and outlined the functions of the Zimbabwe Electoral Commission. The new Commission was to be mentioned and provided for by the Constitution itself. The effect of the amendment was to abolish the Electoral Supervisory Commission.

**Constitution Amendment of Zimbabwe (No. 18) 2007**

Constitution Amendment of Zimbabwe (No. 18) 2007 amended the Constitution in two material respects. First, it provided that the presidential, parliamentary and local authority elections were to be conducted concurrently. [10] The ripple effect of this provision, also present in the new Constitution, has been seen in cases such as *Jameson Zvidzai Timba v. Chief Elections Officer and Ors* where the Electoral Court dismissed an application to open and inspect the election residue of a House of Assembly election on the basis that the "harmonised" nature of the elections would have the effect of granting the applicant access to materials which related to the presidential election (something that is now within the exclusive jurisdiction of the Constitutional Court). [11]

Second, s 29 of the Amendment Act provided for the insertion of a new section in the Constitution titled "Zimbabwe Human Rights Commission". The amendment laid out the composition and the functions of the new Commission. Essentially, the Commission was given functions to promote awareness and development of human rights, to monitor and assess the observance of human rights and to recommend to Parliament effective ways to promote human rights and freedoms. It was also charged with investigating the conduct of any authority or person where it is alleged that there has been a human rights violation. It would also assist Ministers in preparing any report required to be submitted to a regional or international body under any human rights treaty to which Zimbabwe is a party.

**Amendment (No. 19), 2009**

Constitution Amendment (No. 19), 2009 amended the Constitution in a number of ways. First, it repealed Chapter II (Citizenship) of the Constitution and replaced it with a new Chapter. The new Chapter provided for common citizenship on the grounds of birth, descent and registration. The new Chapter also imposed duties on every citizen to observe and respect the Constitution, to respect the national flag and the national anthem and to the best of his/her ability, to defend Zimbabwe in time of need. The provision further stated that every citizen was entitled to the protection of the State wherever he or she may be. More importantly, the Constitution now entitled a person married to a Zimbabwean citizen to Zimbabwean citizenship by registration.

Second, section 18 of the Constitution was amended to include a new subsection which imposed on every public officer a duty towards every Zimbabwean to exercise his or her functions in accordance with the law and to uphold the rule of law. A new section 23A was also inserted into the Constitution. This section, titled ""Political Rights", granted every Zimbabwean citizen the right to a free, fair and regular election for local and national political offices. It also guaranteed the right to free and fair referendums whenever they become necessary under law. It gave every adult Zimbabwean the right to vote secretly in elections and referendums and to stand for public office, and if elected, to hold such office.

Third, the amendment touched heavily on the issue of independent commissions. The Constitution now provided that the Commissions are independent and are not subject to the direction or control of anyone and that they must exercise their functions without fear, favour or prejudice. There were changes to the composition of ZEC as well as an introduction of the Zimbabwe Anti-Corruption Commission with the
function of combating corruption, misappropriation, abuse of power and other improprieties in the conduct of public affairs in both the public and private sectors. It was to make recommendations to the Government and to organisations in the private sector on measures to enhance integrity and accountability. It was given the power to conduct investigations and inquiries on its own initiative upon receipt of complaints and to require assistance from the Police Force and other investigative agencies of the State. It was also given the power to secure the prosecution of persons guilty of corruption, theft, misappropriation and abuse of power through the Attorney General. A Media Commission was also established to uphold and develop freedom of the press as well as to promote and enforce good practice and ethics in the press. It had the power to conduct investigations into any conduct that appears to threaten freedom of the press and to institute disciplinary action against journalists and other persons employed in the press who are found to have breached any law or any code of conduct applicable to them.

Amendment No. 19 was also used to lay out the legal framework to implement the power-sharing agreement which included the post of Prime Minister and Deputy Prime Ministers. This was achieved by the insertion of Schedule 8 to the Constitution. The preamble to the schedule acknowledged that there was an obligation to establish a framework for working together in an inclusive government and accepted the formation of such a government which would be "approached with great sensitivity, flexibility and willingness to compromise." The preamble also recognised that the formation of such a Government would demonstrate the respect of the political parties for the deeply-felt and immediate hopes and aspirations of the millions of [our] people. The parties envisioned to carry out work to create the conditions for returning [our] country to stability and prosperity. The Amendment then provided for the sharing of Executive Authority among the President, the Prime Minister and the Cabinet. The Amendment was quite unusual in that it specifically mentioned that there was "to be a President, which Office was to continue to be occupied by President Robert Mugabe." It further provided for two Vice Presidents to "be nominated by the President and/or Zanu PF." It also provided for a Prime Minister (which Office was expressly stated to be occupied by Mr Morgan Tsvangirai). There were to be two Deputy Prime Ministers, each one being nominated by the MDC-T and the MDC-M respectively. The amendment set the powers of the President and the Prime Minister. It made particular mention of senior government appointments such as Permanent Secretaries of Ministries and Ambassadors to foreign missions which had to be agreed by the President, the Vice Presidents, the Prime Minister and the Deputy Prime Ministers prior to appointment.

The new Constitution

On 22nd May 2013, Constitution of Zimbabwe Amendment (No. 20) Act, 2013 was published in the Government Gazette. The Act enacted a new Constitution whose text is set out in the Schedule to the Act. The Constitution has a total of three hundred and forty-five (345) sections and six (6) Schedules. It is divided into eighteen (18) Chapters starting with the Founding Provisions in Chapter 1 and concluding with the General and Supplementary Provisions in Chapter 18. Chapter 2 articulates the National Objectives, Chapter 3 has provisions on Citizenship and Chapter 4 carries the Declaration of Rights. The Executive Branch follows in Chapter 5 with the Legislature being laid out in Chapter 6. Chapter 7 has provisions on Elections and Chapter 8 covers the Judiciary and the Courts. The rest of the Chapters deal with principles of public administration, the civil service, the security services, independent commissions, provincial and local government, traditional leaders, agricultural land and finance.
Section 29 (1) of the Original Lancaster House Independence Constitution “The removal of term limits was described by one commentator as "... most unfortunate given the proclivity for African Heads of State to cling to power for long periods." (John Hatchard “Cited by G Linington)

As Linington writes, the allowance of up to two Vice Presidents has its origins in the merger of the ruling ZANU (PF) party with the opposition (PF) ZAPU party in 1987. The former leader of (PF) ZAPU, Mr Joshua Nkomo, was appointed a Vice President, while the other Vice President, Mr. Simon Muzenda, was a long-standing member of ZANU (PF).

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[5] This argument was obviously faulty as it misinterpreted the judgement of the court. The judgement did not create new rights; it only upheld a violation of the rights of the applicants.

[6] Constitution of Zimbabwe Amendment (No. 17) Act, s 6, s 7


[8] Constitution of Zimbabwe (1980), s 16B (3) (a)

[9] Constitution of Zimbabwe Amendment (No. 17) Act, s 3

[10] Constitution of Zimbabwe Amendment (No. 17) Act, 2005, s 2 (3) (a)