

CONSTITUTION OF ZIMBABWE AMENDMENT (No. 14) BILL, 1995

MEMORANDUM

This Bill will amend Chapter II of the Constitution, which deals with citizenship; will clarify the effect of section 11 as a preamble to the Declaration of Rights; will protect property rights guaranteed to foreign investors and other persons under international treaties and conventions to which Zimbabwe is a party; will allow limits to be placed on the right of foreigners married to Zimbabwean citizens to enter and live in Zimbabwe; will prohibit discrimination on the ground of gender; will permit the Attorney-General's remuneration to be fixed directly in terms of section 76 of the Constitution; and will allow the Ombudsman to investigate human-rights abuses. The Bill will also make minor and consequential amendments to certain provisions of the Constitution.

The individual clauses of the Bill provide as follows:

*Clause 1*

This clause sets out the Bill's short title.

*Clause 2*

Section 5 of the Constitution provides that, subject to certain exceptions, children born in Zimbabwe to parents who are ordinarily lawfully resident in this country become citizens of Zimbabwe by birth, even if their parents are not themselves citizens. Similarly, children born outside Zimbabwe to parents who are ordinarily lawfully resident in this country become citizens by birth, so long as their births are registered in this country. This clause will restrict citizenship by birth to children both or either of whose parents are citizens of Zimbabwe. This position will apply whether or not the child's parents are married.

*Clause 3*

Section 6 of the Constitution deals with citizenship by descent, and distinguishes between persons whose parents were married and persons who were born out of wedlock. This clause will abolish that distinction.

*Clause 4*

Subsections (1) and (6) of section 7 of the Constitution permitted certain persons to become citizens of Zimbabwe provided they applied for registration before the 18th April, 1985. Now that the time-limit for such applications has expired the two subsections no longer serve a useful purpose and this clause will repeal them.

*Clauses 5 and 15 and Schedule*

Chapter II of the Constitution refers to children born to parents who are not married to each other as "illegitimate children". These clauses, as read with the Schedule to the Bill, will alter that pejorative term to "children born out of wedlock".

*Clause 6*

This clause will re-enact section 11 of the Constitution as a preamble to the Declaration of Rights.

*Clause 7*

This clause will, firstly, render disputes over compensation for the acquisition of land justiciable by the courts except where agricultural or unutilised land is acquired for the purposes of resettlement, land reorga-

nization, forestry, conservation or similar purposes. In the second place, the clause will guarantee property rights granted to foreign investors and other persons under treaties and conventions to which Zimbabwe is a party.

*Clause 8*

Foreign men who are married to Zimbabwean citizens have been held to have a right to enter and remain in Zimbabwe to be with their wives. This clause will remove that right. In future such foreigners will be subjected to ordinary immigration selection procedures.

*Clause 9*

This clause will extend section 23 of the Constitution so that it prohibits discrimination on the ground of gender. The clause will also remove references in section 23 to provisions which have been or will be repealed by the Constitution of Zimbabwe Amendment (No. 12) Bill, 1993.

*Clause 10*

This clause will amend section 61 of the Constitution to give the Electoral Supervisory Commission responsibility for supervising local authority elections and elections to the office of President.

*Clause 11*

Section 76 of the Constitution provides that the Attorney-General's salary and other conditions of service are to be prescribed under an Act of Parliament, while the Deputy Attorney-General's conditions are fixed by the President in terms of the Constitution. This clause will amend section 76 to allow the President to fix the conditions of service of both the Attorney-General and his deputy.

*Clause 12*

Section 92 of the Constitution vests in the President the exclusive right to appoint persons to preside over "special courts", and the term "special court" is defined in such a way as to include small claims courts, many of whose presiding officers are part-time legal practitioners. This clause will amend the definition of "special court" to exclude small claims courts.

*Clause 13*

This clause will give the Ombudsman the power to investigate human-rights abuses committed by public officials. His new power will not limit or take away the power of any other authority to investigate or punish such abuses.

*Clause 14*

The effect of this clause is to make it clear that permanent residents who are entitled to vote at elections in terms of paragraph 3(1)(b) of the Constitution, will lose their right to vote if they cease to be permanent residents.

*Clause 15 and Schedule*

This clause will effect the amendments to the Constitution which are set out in the Schedule to the Bill. In addition to altering references to "illegitimate children", as explained above, the clause will also make certain other minor consequential amendments to various sections of the Constitution.

# BILL

To amend the Constitution of Zimbabwe and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the Parliament of Zimbabwe.

5       1. This Act may be cited as the Constitution of Zimbabwe Amend- Short title.  
ment (No. 14) Act, 1996.

2. Section 5 of the Constitution is amended— Amendment of section 5 of  
Constitution.

10       (a) in subsections (1) and (2) by the insertion after "the  
appointed day" of "but before the date of commencement  
of the Constitution of Zimbabwe Amendment (No. 14)  
Act, 1996";

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

15       “(3) A person born in Zimbabwe on or after the  
date of commencement of the Constitution of Zimba-  
bwe Amendment (No. 14) Act, 1996, shall be a citizen  
of Zimbabwe by birth if at the time of his birth his father  
or his mother is a citizen of Zimbabwe.

(4) A person born outside Zimbabwe on or after the date of commencement of the Constitution of Zimbabwe Amendment (No. 14) Act, 1996, shall be a citizen of Zimbabwe if—

- (a) at the time of his birth his mother or his father is a citizen of Zimbabwe and lawfully ordinarily resident in Zimbabwe or resident outside Zimbabwe by reason of his or her service under the Government; and
- (c) his birth is registered in accordance with the law relating to the registration of births.

Amendment of section 6 of Constitution.

3. Section 6 of the Constitution is amended in paragraph (a) by the deletion of “, in the case of an illegitimate child,”.

Amendment of section 7 of Constitution.

4. Section 7 of the Constitution is amended by the repeal of subsections (1) and (6).

Amendment of section 10 of Constitution.

5. Section 10 of the Constitution is amended by the insertion after subsection (2) of the following subsection—

“(3) For the purposes of this Chapter, a person shall be regarded as—

- (a) born out of wedlock if—
  - (i) his parents were not married to each other at the time of his conception or birth and have not subsequently married each other; and
  - (ii) he has not been adopted by order made under any law relating to the adoption of children in terms of which his status becomes that of a lawful child of the person adopting him;
- (b) born in wedlock if—
  - (i) his parents were married to each other at the time of his conception or birth, or have subsequently married each other; or
  - (ii) his parents were not married to each other or have not married each other as provided in subparagraph (i), but he has been adopted by order made under any law relating to the adoption of children in terms of which his status becomes that of a lawful child of the person adopting him;

and, for the purpose of determining whether or not such a person's parents were or have been married to each other, a putative or voidable marriage shall be regarded as a valid marriage.”.

6. Section 11 of the Constitution is repealed and the following is substituted—

New section substituted for section 11 of Constitution.

Preamble.

5 "11. Whereas persons in Zimbabwe are entitled, subject to the provisions of this Constitution, to the fundamental rights and freedoms of the individual specified in this Chapter, and whereas it is the duty of every person to respect and abide by the Constitution and the laws of Zimbabwe, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations on that protection as are contained herein, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the public interest or the rights and freedoms of other persons."

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7. Section 16 of the Constitution is amended—

Amendment of section 16 of Constitution.

(a) in subsection (1) in paragraph (f)—

- (i) by the deletion of "except where the property concerned is land or any interest or right therein,";
- 20 (ii) by the insertion of the following proviso—

"Provided that the law need not make such provision where—

- (i) the property concerned is land or any interest or right therein; and
- 25 (ii) the land is substantially unused or is used wholly or mainly for agricultural purposes or for environmental conservation or the utilization of wild life or other natural resources; and
- 30 (iii) the land or interest or right therein, as the case may be, is acquired for a purpose referred to in paragraph (a)(i).";

35 (b) in subsection (2) by the deletion of "or any interest or right therein" where it occurs for the first time and the substitution of "described in the proviso to subsection (1) (f), or any interest or right in such land,";

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

"(2a) In determining the nature of the use of any land for the purposes of subsections (1) (f) and (2), no regard shall be had to a use which is not permitted under any law relating to town and country planning unless, when such use commenced, it was a lawful use of the land concerned.";

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(d) by the insertion after subsection (9a) of the following subsection—

"(9b) Nothing in this section shall affect or derogate from—

- (a) any obligation assumed by the State; or
- (b) any right or interest conferred upon any person in relation to the protection of property and the payment and determination of compensation in respect for the acquisition of property;

in terms of any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the President with one or more foreign states or governments or international organizations."

Amendment of section 22 of Constitution.

8. Section 22 of the Constitution is amended in subsection (3) by the repeal of paragraph (d) and the substitution of—

"(d) for—

- (i) the imposition of restrictions on the movement or residence within Zimbabwe of any person who is neither a citizen of Zimbabwe nor regarded by virtue of a written law as permanently resident in Zimbabwe; or
- (ii) excluding or expelling from Zimbabwe any person who is not a citizen of Zimbabwe;

whether or not he is married or related to another person who is a citizen of or permanently resident in Zimbabwe;".

Amendment of section 23 of Constitution.

9. (1) Section 23 of the Constitution is amended—

- (a) in subsection (2) by the deletion of "or creed" wherever it occurs and the substitution of ", creed or gender";
- (b) in subsection (3) by the deletion from paragraph (d) of "or creed" and the substitution of ", creed or gender";
- (c) in subsection (4) by the deletion from paragraph (a) of "section 75 (2), 94 (2) or 98 (2), or by";
- (d) by the insertion after subsection (4) of the following subsection—

"(5) Nothing contained in or done under the authority of any law that discriminates between persons on the ground of their gender shall be held to be in contravention of subsection (1) (a) or (b) to the extent that the law in question—

- (a) gives effect to section 7 (2) or any other provision of this Constitution; or
- (b) takes due account of physiological differences between persons of different gender; or
- (c) makes provision in the interests of defence, public safety or public morality;

except in so far as that law or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”.

(2) Paragraph (c) of subsection (1) shall come into operation on the date of commencement of sections 8 and 9 of the Constitution of Zimbabwe Amendment (No. 12) Act, 1993 (No. 4 of 1993), or, if different dates of commencement have been fixed for those sections, on the last such date.

10 **10.** Section 61 of the Constitution is amended by the repeal of subsection (3) and the substitution of—

Amendment of section 61 of Constitution.

“(3) The functions of the Electoral Supervisory Commission shall be—

- 15 (a) to supervise the registration of voters and the conduct of elections to Parliament and to the office of President; and
- (b) subject to any Act of Parliament, to supervise the registration of voters and the conduct of elections to the governing body of any local authority; and
- 20 (c) to consider any proposed Bill or proposed statutory instrument which may be referred to it and which relates to the registration of voters or to any election referred to in paragraph (a) or (b).”.

**11.** Section 76 of the Constitution is amended—

Amendment of section 76 of Constitution.

- (a) by the repeal of subsection (14);
- 25 (b) in subsection (14a) by the deletion of “Every Deputy Attorney-General” and the substitution of “The Attorney-General and every Deputy Attorney-General”.

**12.** Section 92 of the Constitution is amended in section 92 of subsection (4) by the repeal of paragraph (b) and the substitution of—

Amendment of section 92 of Constitution.

- 30 “(b) any court or other adjudicating authority established by law, other than—
- (i) a local court; or
- (ii) a court established by or under a disciplinary law; or
- 35 (iii) a court established by or under an Act of Parliament for the adjudication of small civil claims;

if there is no right of appeal, directly or indirectly, from a decision of that court or adjudicating authority to the Supreme Court or the High Court;”.

40 **13.** Section 108 of the Constitution is amended by the repeal of subsection (1) and the substitution of—

Amendment of section 108 of Constitution.

“(1) The Ombudsman may investigate—

- (a) action taken by any officer, person or authority referred to in subsection (2) in the exercise of the administrative functions of that officer, person or authority in any case where it is alleged that a person has suffered injustice in consequence of that action and it does not appear that there is any remedy reasonably available by way of proceedings in a court or on appeal from a court; or
- (b) allegations that any provision of the Declaration of Rights has been contravened by any officer, person or authority referred to in subsection (2).”

Amendment of section 3 of Constitution.

14. Schedule 3 to the Constitution is amended in paragraph 3 by the repeal of subparagraph (3) and the substitution of—

- “(3) Any person who is registered on the electoral roll of a constituency shall be entitled to vote at an election which is held for that constituency unless—
- (a) he has then ceased to be a citizen of Zimbabwe; or
  - (b) he is then, in accordance with the provisions of subparagraph (2), disqualified for registration; or
  - (c) in the case of a person who was registered on the electoral roll by virtue of qualifications referred to in subparagraph (1)(b), he has ceased to be so qualified.”

Minor amendments to Constitution.

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



**SCHEDULE (Section 15)**

**MINOR AMENDMENTS TO CONSTITUTION**

<i>Provisions</i>	<i>Extent of Amendment</i>
Section 5(1)(c) and (d) and (2)(a)	By the deletion of "an illegitimate child" and the substitution of "a child born out of wedlock".
Section 7(5)	By the deletion of "(1)".
Section 7(7)(a)	By the deletion of "illegitimate" and the substitution of "born out of wedlock".
Section 26(2)	By the deletion of "Subject to the provisions of subsection (3), nothing" and the substitution of "Nothing".
Section 78 (proviso)	By the deletion of "or Defence Forces, the Police Service Commission or the Defence Forces Service" and the substitution of ", the Defence Forces or the Prison Service, the Police Service Commission, the Defence Forces Service Commission or the Prison Service".
Section 109(11)	In the definition of "Commission" by the deletion of "or the Defence Forces Service Commission" and the substitution of ", the Defence Forces Service Commission or the Prison Service Commission".
Section 113(1)	By the repeal of the definition of "advocate" and "attorney".
Section 113(1) (in the definition of "High Court")	By the deletion of "and, in section 18(6)(b), includes the Supreme Court".
Section 113(1) (in the definition of "statutory instrument")	By the insertion after "President" of ", a Vice-President".