



THE LAW SOCIETY OF ZIMBABWE

Statement on the introduction of Constitutional Amendment Bill No.1 of 2016

The Law Society of Zimbabwe (LSZ) would like to express disquiet over the introduction of Constitutional Amendment Bill No. 1 of 2016 published in General Notice 434 of 2016 which seeks to amend section 180 of the Constitution of Zimbabwe ('the Constitution') with a view to give the President of Zimbabwe an unfettered discretion to appoint a Chief Justice, Deputy Chief Justice and Judge President of his choice whenever such vacancies arise. The Bill seeks to amend section 180 of the Constitution and do away with conducting of public interviews of prospective candidates for the above posts.

The Law Society of Zimbabwe is generally dismayed by the attitude of the Government towards the Constitution. The swiftness to introduce a Constitutional Amendment Bill this shortly in the lifespan of the Constitution is a cause of concern. The Constitution has many progressive provisions which the Executive is yet to implement. This raises serious concern and a perception that the Executive is looking at the earliest opportunity to seek to amend the Constitution. The spectre of multiple amendments should not revisit the nation so soon after it overwhelmingly voted for a new Constitution which consigned the patched up Lancaster House Constitution to the dustbins of history. The Executive does not appear to share the same vision with the nation as seen by its determined effort to resuscitate the provisions of the old Constitution.

Whilst we are not privy to the principles that informed the proposed amendments, we have no illusion that the effect of the proposed amendment is to substitute a relatively transparent system of judicial appointments with a murky executive driven system, resurrected from the old Constitution. The targeted section 180 of the Constitution which provides for the appointment of judges seeks to ensure the independence of the judiciary. It safeguards the doctrine of Separation of Powers by ensuring that the appointment of judges is largely in the hands of the judiciary. Executive discretion is severely curtailed under the current provisions as it should, to maintain the doctrine of separation of powers.

On the other hand the proposed amendments will place the appointing process for three strategic judicial officers solely in the hands of the Executive. The amendment seeks to make the President both the selecting and the appointing authority. Although providing for consulting of the Judicial Services Commission (JSC), the consultation is a mere token as the views of the commission can be ignored without any adverse consequences to the President's decision. The amendment provides that where the President proceeds against the advice of the JSC he shall inform the Senate. The Senate however has no power to

overturn the appointment by the President. It will merely note. Of what relevance then is such a reference to the Senate? In the interest of accountability of arms of the State the consultations with the JSC and then the reference to the Senate should be about providing checks and balances. The proposed amendment does not achieve that, instead it negates the spirit of accountability and transparency. The proposed amendment gives unfettered power to a single individual to appoint the most influential positions in the judiciary. This has dire consequences on judicial independence.

Although the Constitution does provide for its own amendment, this should be done in the spirit of advancing constitutionalism. Section 9(1) of the Constitution which advances good governance provides, among other things;

(1) The State must adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution,

The proposed amendments seek to do exactly the opposite of the foregoing.

We believe there could be weaknesses with the current composition of JSC. The Law Society however strongly believes those weaknesses can be addressed to reflect the values of transparency, fairness and objectivity. In correcting the weaknesses, the Executive need not usurp the functions currently reposed in the JSC and place them under an authority with no accountability to anyone or any other institution. **The amendment does not seek to improve good governance.**

The timing of the amendment is equally disconcerting as it comes when a constitutionally mandated process was already underway. In an unprecedented manner the Executive has sought the suspension of the operation of the Constitution in order to allow the proposed amendment to pass through. This approach is wrong and unlawful. The Constitution is the Supreme law of Zimbabwe. All other laws and directives are subordinate to it.

Therefore the Law Society urges the Executive to adopt a progressive approach towards constitutional supremacy and desist from circumventing it through such capricious amendments. It is the duty of the Government to safeguard and uphold Constitutional supremacy which guarantees realisation of fundamental rights.

The Law Society further calls upon the Government to urgently attend to implementation of the constitution and fully align all outstanding laws to the Constitution.

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