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Act No. 1 of 2009

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(General Notice 7A of 2009)

Date of commencement: 13th February 2009.

ACT

To amend the Constitution of Zimbabwe.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Constitution of Zimbabwe Amendment (No. 19) Act, 2008.

2 Interpretation

In this Act—

“fixed date” means the date of commencement of this Act.¹

3 New Chapter substituted for Chapter II of Constitution

Chapter II of the Constitution is repealed and the following is substituted—

“CHAPTER II

CITIZENSHIP

4 Zimbabwean citizenship

(1) There is a common Zimbabwean citizenship and all citizens are equal, that is to say citizens are entitled, subject to this Constitution, to the rights, privileges and benefits of citizenship and are subject to the duties and obligations of citizenship.

(2) It is the duty of every Zimbabwean citizen—

- (a) to observe this Constitution and to respect its ideals and institutions; and
- (b) to respect the national flag and the national anthem; and
- (c) to the best of his or her ability, to defend Zimbabwe in time of need.

(3) Every Zimbabwean citizen is entitled to the protection of the State wherever he or she may be.

¹ *Note by Veritas.* 13th February 2009 [date of publication in the Government Gazette].

(4) Zimbabwean citizenship may be acquired by birth, descent or registration.

5 Citizenship by birth

(1) Everyone born in Zimbabwe is a Zimbabwean citizen by birth if, when he or she was born—

- (a) either of his or her parents was a Zimbabwean citizen; or
- (b) either of his or her grandparents was a Zimbabwean citizen by birth or descent.

(2) Anyone born outside Zimbabwe is a Zimbabwean citizen by birth if, when he or she was born, either of his or her parents was a Zimbabwean citizen and was—

- (a) ordinarily resident in Zimbabwe; or
- (b) working outside Zimbabwe for the State or an international organisation.

6 Citizenship by descent

(1) Anyone born outside Zimbabwe is a Zimbabwean citizen by descent if, when he or she was born—

- (a) either of his or her parents or grandparents was a Zimbabwean citizen by birth or descent; or
- (b) either of his or her parents was a Zimbabwean citizen by registration;

and the birth is registered in Zimbabwe in accordance with the law relating to the registration of births.

(2) This section does not affect a person's right to citizenship by birth under section 5.

7 Citizenship by registration

(1) Anyone who has been voluntarily and ordinarily resident in Zimbabwe for at least ten years, or for a shorter period fixed in an Act of Parliament, may apply to become a Zimbabwean citizen by registration.

(2) If a Zimbabwean citizen legally adopts someone who is not a Zimbabwean citizen, the adopted person becomes a Zimbabwean on the date of the adoption order and must be regarded as a citizen by registration.

(3) A minor child of a person who has become a Zimbabwean citizen by registration is entitled, on application, to become a Zimbabwean citizen by registration.

(4) A person who is married to a Zimbabwean citizen and who has been ordinarily resident in Zimbabwe for at least five years since the marriage is entitled, on application, to become a Zimbabwean citizen by registration.

(5) An Act of Parliament may provide for—

- (a) the acquisition of citizenship by registration by persons other than those mentioned in subsections (1), (2), (3) and (4); and
- (b) the procedure for acquiring citizenship by registration.

8 Citizenship and Immigration Board

An Act of Parliament must provide for the establishment of a Citizenship and Immigration Board consisting of a chairperson and at least two other members, appointed by the President, to be responsible for—

- (a) granting and revoking citizenship by registration;
- (b) permitting persons, other than citizens, to reside and work in Zimbabwe, and fixing the terms and conditions under which they may so reside and work;
- (c) exercising any other functions that may be conferred or imposed on the Board by or under an Act of Parliament.

9 Powers of Parliament in relation to citizenship

An Act of Parliament may provide for—

- (a) the prohibition of dual citizenship;
- (b) procedures for the renunciation of citizenship;
- (c) the circumstances in which persons qualify for or lose their citizenship by descent or registration; and
- (d) any other matters regarding citizenship.

10 Interpretation and supplementary provisions regarding citizenship

(1) A reference in this Chapter to the citizenship of a person's parent or grandparent at the time of the person's birth must be construed, in relation to a person born after the death of the parent or grandparent, as a reference to the citizenship of the parent or grandparent when he or she died.

(2) Where a person became a citizen of Zimbabwe by virtue of his or her marriage to a citizen, the person remains a citizen of Zimbabwe even if the marriage is subsequently annulled or dissolved."

4 Amendment of section 18 of Constitution

Section 18 ("Provisions to ensure protection of law") of the Constitution is amended by the insertion after subsection (1) of the following subsection—

"(1a) 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 and uphold the rule of law."

5 New section inserted in Constitution after section 23

The Constitution is amended by the insertion after section 23 of the following section—

"23A Political rights

(1) Subject to the provisions of this Constitution, every Zimbabwean citizen shall have the right to—

- (a) free, fair and regular elections for any legislative body, including a local authority, established under this Constitution or any Act of Parliament;
- (b) free, fair and regular elections to the office of President and to any other elective office;

(c) free and fair referendums whenever they are called in terms of this Constitution or an Act of Parliament.

(2) Subject to this Constitution, every adult Zimbabwean citizen shall have the right—

(a) to vote in referendums and elections for any legislative body established under this Constitution, and to do so in secret; and

(b) to stand for public office and, if elected, to hold office.”.

6 Amendment of section 31G of Constitution

Section 31G (“Cabinet”) of the Constitution is amended by the repeal of subsection (3) and the substitution of—

“(3) Every member of the Cabinet, other than the President shall, before entering upon his or her office as such, take and subscribe before the President or some other person authorised by the President in that behalf, the oath of a member of the Cabinet in the form set out in Schedule 1.”.

7 Amendment of section 41 of Constitution

Section 41 (“Tenure of seats of members”) of the Constitution is amended —

(a) in subsection (1) —

(i) in paragraph (e) —

A. by the deletion of “section 38(1)(a)” and the substitution of “section 34(1)(a) or 38(1)”;

B. by the deletion of “the Speaker” and the substitution of “the President of the Senate or the Speaker, as the case may be”;

(ii) in paragraph (h) by the deletion of “section 38(1)(a)” and the substitution of “section 34(1)(a) or 38(1)”

(iii) by repeal of paragraph (i) and the substitution of—

“(i) if, being a member referred to in section 34(1)(b), he ceases to hold office as Provincial Governor;”;

(b) in subsection (2) by the repeal of paragraph (a) and the substitution of—

“(a) being a Vice-President, the Prime Minister, a Deputy Prime Minister, a Minister, a Deputy Prime Minister or Provincial Governor;”.

8 Amendment of section 57 of Constitution

Section 57 (“Standing Orders”) of the Constitution is amended by the repeal of subsection (2) and the substitution of—

“(2) There is, for the life of Parliament, a Committee to be known as the Committee on Standing Rules and Orders consisting of—

(a) the Speaker; and

(b) the President of the Senate; and

(c) the Deputy Speaker; and

(d) the Deputy President of the Senate; and

(e) members appointed by the Speaker and the President of the Senate from their respective Houses of Parliament which shall include the Leader of Government Business, the Leader of the Opposition and the Chief Whips; and

(f) members elected by each of the Houses of Parliament.

(3) With respect to the number of members of the Committee on Standing Rules and Orders from either House of Parliament, the number of members elected in terms of subsection (2)(f) is to be greater than that of members appointed in terms of subsection (2)(e).

(4) The election of members of the Committee on Standing Rules and Orders is to be based on the political and gender composition of the Parliament and is to be conducted as soon as possible after the commencement of each session.

(5) The Speaker is the Chairperson of the Committee on Standing Rules and Orders and the President of the Senate is to be its Deputy Chairperson.

(6) The procedure of the Committee on Standing Rules and Orders shall be as prescribed in Standing Orders.

(7) A vacancy occurring in the Committee on Standing Rules and Orders is to be filled in terms of the procedure applicable to the category of the position.

(8) The Committee on Standing Rules and Orders is responsible for—

- (a) supervising the administration of Parliament; and
- (b) appointing the staff of Parliament and fixing their conditions of service; and
- (c) considering and deciding all matters concerning Parliament; and
- (d) performing such other functions as are provided for under the Constitution.

(9) An Act of Parliament or Standing Orders may confer further functions on the Committee on Standing Rules and Orders.”.

9 Repeal of sections 61 and 61A of Constitution

Sections 61 and 61A of the Constitution are repealed.

10 Amendment of section 109 of Constitution

Section 109 (“General provisions as to Commissions, etc”) of the Constitution is amended by the repeal of subsection (1) and the substitution of—

“(1) Subject to this Constitution the Commissions—

- (a) are independent and are not subject to the direction or control of anyone; and
- (b) must exercise their functions without fear, favour or prejudice.”.

11 New Chapter inserted in Constitution

The Constitution is amended by the insertion of the following Chapter after Chapter XA—

“CHAPTER XB

OTHER INDEPENDENT COMMISSIONS

PART I

ZIMBABWE ELECTORAL COMMISSION

100B Establishment and composition of Zimbabwe Electoral Commission

- (1) There is a Zimbabwe Electoral Commission consisting of—
- (a) a chairperson appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and
 - (b) eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.

(2) The chairperson of the Zimbabwean Electoral Commission must be a judge or former judge of the Supreme Court or the High Court, or a person qualified for appointment as such a judge.

(3) At least four members of the Zimbabwean Electoral Commission, apart from the chairperson, must be women.

(4) Persons appointed to the Zimbabwean Electoral Commission must be chosen for their integrity and their experience and competence in the conduct of affairs in the public or private sector.

(5) Members of the Zimbabwean Electoral Commission must be appointed for a term of six years, and their appointment may be renewed for one further term only.

100C Functions and powers of Zimbabwe Electoral Commission

- (1) The Zimbabwe Electoral Commission has the following functions—
- (a) to prepare for, conduct and supervise—
 - (i) elections to the office of President and to Parliament; and
 - (ii) elections to the governing bodies of local authorities; and
 - (iii) referendums;and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law;
 - (b) to supervise the registration of voters by the authority charged with that responsibility under the Electoral Law; and
 - (c) to compile voters' rolls and registers; and
 - (d) to ensure the proper custody and maintenance of voters' rolls and registers; and
 - (e) to design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres; and
 - (f) to determine, subject to section 100J, limits of boundaries of local authority wards, House of Assembly constituencies and Senatorial constituencies; and
 - (g) to conduct voter education; and

- (h) to accredit observers of elections and referendums in accordance with an Act of Parliament; and
- (i) to give instructions to persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of any election or referendum; and
- (j) to exercise any other functions that may be conferred or imposed on the Commission by the Electoral Law or any other law.

100D Disqualification for appointment to Zimbabwe Electoral Commission

A person who is—

- (a) a Member of Parliament; or
- (b) a public officer, other than a judge; or
- (c) a member or employee of a statutory body, a Provincial council or a local authority;

is not qualified for appointment to the Zimbabwe Electoral Commission.

100E Members of Zimbabwe Electoral Commission not to be members of political parties

(1) Persons who are members of a political party on their appointment to the Zimbabwe Electoral Commission must relinquish that membership without delay and in any event within fourteen days of their appointment.

(2) If a member of the Zimbabwe Electoral Commission becomes a member of a political party, he or she ceases immediately to be a member of the Commission.

100F Remuneration, allowances and benefits of members of Zimbabwe Electoral Commission

Members of the Zimbabwe Electoral Commission are entitled to such remuneration, allowances and other benefits as may be fixed by or under an Act of Parliament.

100G Removal of member of Zimbabwe Electoral Commission from office

A member of the Zimbabwe Electoral Commission may be removed from office by the President, in the case of the chairperson, with the approval of the Judicial Service Commission and the Committee on Standing Rules and Orders and, in the case of other members, with the approval of the Committee on Standing Rules and Orders—

- (a) for inability to exercise the functions of his or her office arising out of physical or mental incapacity; or
- (b) for misconduct; or
- (c) for incompetence; or
- (d) if he or she becomes disqualified for appointment to the Commission.

100H Provisions to ensure independence of Zimbabwe Electoral Commission

The State must make adequate and suitable provision, through legislation and other appropriate means, to ensure that—

- (a) the Zimbabwe Electoral Commission is able to exercise its functions under the Constitution efficiently and independently; and
- (b) the Zimbabwe Electoral Commission's staff carry out their duties conscientiously, fairly and impartially.

100I Reports of Zimbabwe Electoral Commission

In addition to any other report the Zimbabwe Electoral Commission is required to make under this Constitution or any other law, the Commission must without delay submit a report to Parliament on the conduct of every presidential, parliamentary, provincial council and local authority election and every referendum.

100J Delimitation of wards and constituencies

(1) The Zimbabwe Electoral Commission shall, no later than the date notified to it by the President, being a date no later than three months before the date fixed or to be fixed by a proclamation as the date on which Parliament is dissolved under section 63(7) or, as the case may be, the date of the dissolution of Parliament under section 63(4), determine, in accordance with subsections (2) to (7), the limits of the wards and constituencies into which Zimbabwe is to be divided for the purpose of electing members of the governing bodies of local authorities and members of Parliament respectively:

Provided that the Commission shall produce a preliminary report in terms of subsection (8) no later than one month before the date fixed or to be fixed by a proclamation as the date on which Parliament is dissolved under section 63(7) or, as the case may be, the date of the dissolution of Parliament under section 63(4).

(2) For the purpose of the election of members of the governing bodies of local authorities, local authority areas shall be divided into such number of wards as the Commission shall determine.

(3) Zimbabwe shall, for the purpose of the election of members of Parliament, be divided into two hundred and ten House of Assembly constituencies and sixty senatorial constituencies.

(4) Subject to subsections (5) and (6), the boundaries of the House of Assembly constituencies shall be such that at the time of delimitation the number of voters registered in each House of Assembly constituency is as nearly as may be equal to the number of voters registered in each of the other House of Assembly constituencies.

(5) In delimiting—

- (a) the boundaries of wards, the Commission shall ensure that no ward is divided between two or more local authority areas; and
- (b) the House of Assembly constituencies, the Commission shall ensure that no ward is divided between two or more House of Assembly constituencies.

(6) In dividing Zimbabwe into wards and House of Assembly constituencies the Zimbabwe Electoral Commission shall, in respect of any area, give due consideration to—

- (a) its physical features;
- (b) the means of communication within the area;

- (c) the geographical distribution of registered voters;
- (d) any community of interest as between registered voters; and
- (e) in the case of any delimitation after the first delimitation consequent upon an alteration in the number of House of Assembly constituencies, existing electoral boundaries;

and whenever it appears necessary to do so in order to give effect to the provisions of this subsection in relation to House of Assembly constituencies, the Commission may depart from the requirements of subsection (4), but in no case to any greater extent than twenty *per centum* more or less than the average number of registered voters in House of Assembly constituencies.

(7) After delimiting the wards and House of Assembly constituencies, the Commission shall divide each province into six senatorial constituencies by assigning to each senatorial constituency a House of Assembly constituency or two or more contiguous House of Assembly constituencies, and in so doing the Commission may be guided but not bound by any principle or consideration specified in subsections (4) and (6).

(8) The Zimbabwe Electoral Commission shall submit to the President a preliminary report comprising—

- (a) a list of wards and House of Assembly constituencies delimited by the Commission, with the names assigned to each and a description of their boundaries;
- (b) a list of senatorial constituencies delimited by the Commission, with the names assigned to each and a description of their boundaries;
- (c) a map or maps showing the wards and House of Assembly and senatorial constituencies into which Zimbabwe has been divided by the Commission; and
- (d) any further information or particulars which the Commission considers necessary;

and the President shall cause the report to be laid before Parliament within the next seven days after he has received it.

(9) No earlier than seven days after the President has caused the preliminary report of the Zimbabwe Electoral Commission to be laid before Parliament in terms of subsection (8), the President may refer back to the Commission for its further consideration and final decision any matter arising out of its report.

(10) If there appears to be any discrepancy between the description of the boundaries of any ward or House of Assembly constituency and the map or maps, the description shall prevail.

(11) Within fourteen days after receiving the Zimbabwe Electoral Commission's final report the President shall publish a proclamation in the *Gazette* declaring the names and boundaries of the wards and the House of Assembly and senatorial constituencies as finally determined by the Commission to be the wards and House of Assembly and senatorial constituencies of Zimbabwe, and those boundaries shall have effect for the purposes of the next and any subsequent general election.

PART II

ZIMBABWE ANTI-CORRUPTION COMMISSION

100K Establishment and composition of Zimbabwe Anti-Corruption Commission

(1) There is a Zimbabwe Anti-Corruption Commission consisting of at least four and not more than nine members appointed by the President in consultation with the Committee on Standing Rules and Orders.

(2) Persons appointed to the Zimbabwe Anti-Corruption Commission must be persons of integrity chosen for their knowledge of and experience in administration or the prosecution or investigation of crime or for their general suitability for appointment, and—

- (a) at least one must be entitled to practise as a legal practitioner; and
- (b) at least one must be entitled to practise as an auditor or public accountant in Zimbabwe; and
- (c) at least one shall have had at least ten years' experience in the investigation of crime.

100L Functions of Zimbabwe Anti-Corruption Commission

The Zimbabwe Anti-Corruption Commission has the following functions—

- (a) to combat corruption, theft, misappropriation, abuse of power and other improprieties in the conduct of affairs in both the public and private sectors; and
- (b) to make recommendations to the Government and to organisations in the private sector on measures to enhance integrity and accountability and to prevent improprieties; and
- (c) to exercise any other functions that may be conferred or imposed on the Commission by or under an Act of Parliament.

100M Powers of Zimbabwe Anti-Corruption Commission

An Act of Parliament may confer powers on the Anti-Corruption Commission, including power—

- (a) to conduct investigations and inquiries on its own initiative or on receipt of complaints; and
- (b) to require assistance from members of the Police Force and other investigative agencies of the State; and
- (c) through the Attorney-General, to secure the prosecution of persons guilty of corruption, theft, misappropriation, abuse of power and other improprieties.

PART III

ZIMBABWE MEDIA COMMISSION

100N Establishment of Zimbabwe Media Commission

(1) There is a Zimbabwe Media Commission consisting of a chairperson and eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.

(2) Persons appointed to the Zimbabwe Media Commission must be chosen for their knowledge of and experience in the press, print or electronic media, or broadcasting.

100P Functions of Zimbabwe Media Commission

- (1) The Zimbabwe Media Commission has the following functions—
- (a) to uphold and develop freedom of the press; and
 - (b) to promote and enforce good practice and ethics in the press, print and electronic media, and broadcasting; and
 - (c) to ensure that the people of Zimbabwe have equitable and wide access to information; and
 - (d) to ensure the equitable use and development of all indigenous languages spoken in Zimbabwe; and
 - (e) to exercise any other functions that may be conferred or imposed on the Commission by or under an Act of Parliament.

100Q Powers of Zimbabwe Media Commission

An Act of Parliament may confer powers on the Zimbabwe Media Commission, including power to—

- (a) conduct investigations and inquiries into—
 - (i) any conduct or circumstance that appears to threaten the freedom of the press; and
 - (ii) the conduct of the press, print and electronic media, and broadcasting;and
- (b) the disciplinary action against journalists and other persons employed in the press, print or electronic media, or broadcasting, who are found to have breached any law or any code of conduct applicable to them.

PART IV

ZIMBABWE HUMAN RIGHTS COMMISSION

100R Zimbabwe Human Rights Commission

(1) There is a commission to be known as the Zimbabwe Human Rights Commission which shall consist of—

- (a) a chairman who has been qualified for at least five years to practise as a legal practitioner and who is appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and
- (b) eight other members, at least four of whom shall be women, appointed by the President from a list of sixteen nominees submitted by the Committee on Standing Rules and Orders.

(2) If the appointment of a chairman of the Zimbabwe Human Rights Commission is not consistent with any recommendation of the Judicial Service Commission in terms

of subsection (1)(a), the President shall cause the Senate to be informed as soon as practicable.

(3) Persons appointed to the Zimbabwe Human Rights Commission shall be chosen for their knowledge of and experience in the promotion of social justice or the protection of human rights and freedoms.

(4) A member of the Zimbabwe Human Rights Commission shall, before entering upon his or her office, take and subscribe before the President or some person authorized by the President in that behalf the oath of loyalty and the oath of office in the forms set out in Schedule 1.

(5) The Zimbabwe Human Rights Commission shall have the following functions—

- (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
- (b) to promote the development of human rights and freedoms;
- (c) to monitor and assess the observance of human rights in Zimbabwe;
- (d) to recommend to Parliament effective measures to promote human rights and freedoms;
- (e) to investigate the conduct of any authority or person, where it is alleged that any of the rights in the Declaration of Rights has been violated by that authority or person; and
- (f) to assist the Minister responsible for the Act of Parliament referred to in subsection (8) to prepare any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

(6) The Zimbabwe Human Rights Commission may require any person, body, organ, agency or institution, whether belonging to or employed by the State, a local authority or otherwise, to provide the Commission annually with such information as it may need for the purpose of preparing and submitting any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

(7) The Zimbabwe Human Rights Commission shall have power—

- (a) to take over and continue any investigation that has been instituted by the Public Protector in terms of section 108(1), where it determines that the dominant question in issue involves a matter pertinent to its function referred to in subsection (5)(e); or
- (b) refer to the Public Protector for investigation in terms of section 108(1) any matter in respect of which it determines that the dominant question in issue involves a matter pertinent to the functions of Public Protector.

(8) An Act of Parliament may confer power on the Zimbabwe Human Rights Commission—

- (a) to conduct investigations on its own initiative or on receipt of complaints;
- (b) to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places or facilities;
- (c) to visit and inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places; and
- (d) to secure or provide appropriate redress for violations of human rights and for injustice.”.

12 Repeal of sections 108A and 108B of Constitution

Sections 108A and 108B of the Constitution are repealed.

13 Amendment of section 113 of Constitution

Section 113 (“Interpretation”) of the Constitution is amended by the repeal of the definition of “Committee on Standing Rules and Orders” and the substitution of—

““Committee on Standing Rules and Orders” means the committee established in terms of section 57;”.

14 New section inserted in Constitution after section 114

The Constitution is amended by the insertion after section 114 of the following sections²—

“115 Transitional provisions: Schedule 8

(1) In this section and section 118 and Schedule 8³—

“after consultation” means that the person required to consult before arriving at a decision makes the consultation but is not bound by the advice or opinion given by the person so consulted;

“in consultation” means that the person required to consult before arriving at a decision arrives at the decision after securing the agreement or consent of the person so consulted;

“Interparty Political Agreement” means the agreement between the Presidents of the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two formations of the Movement for Democratic Change (MDC), on resolving the

² *sic.* Only one section (115) is inserted. In the Bill for this Act four sections (115 to 118) were inserted, but sections 116 to 118 do not appear in the Act. The omitted sections referred to Schedules 9, 10 and 11, which also do not appear in the Act.

³ *Note by Veritas.* In the Bill for this Act this line read: “(1) In this section and section 118 and Schedules 8, 9, 10 and 11 “. Schedules 9, 10 and 11 do not appear in the Act.

challenges facing Zimbabwe, as set in Schedule 11⁴, which was signed at Harare on the 15th September, 2008, and witnessed by the President of the Republic of South Africa as facilitator mandated the Southern African Development Community (SADC), as subsequently amended;

“Prime Minister” means the Prime Minister whose appointment is referred to in Article 20.1.4 of the Interparty Political Agreement.

(2) Schedule 8 shall have effect from the date of commencement of the Constitution of Zimbabwe Amendment (No. 19) Act, 2008, and continue in force during the subsistence of the Interparty Political Agreement.

(3) The provisions of this Constitution shall, for the period specified in subsection (2), operate as amended or modified to the extent or in the manner specified in Schedule 8.”.

15 Insertion of Schedules 8 to Constitution

The Constitution is amended by the insertion of the following Schedule after Schedule 7—

“SCHEDULE 8 (Section 115(2) and (3))

TRANSITIONAL AMENDMENTS AND PROVISIONS

Framework for a New Government

1. For the avoidance of doubt, the following provisions of the Interparty Political Agreement, being Article XX thereof, shall, during the subsistence of the Interparty Political Agreement, prevail notwithstanding anything to the contrary in this Constitution—

“20. Framework for a new Government

Acknowledging that we have an obligation to establish a framework of working together in an inclusive government;

Accepting that the formation of such a government will have to be approached with great sensitivity, flexibility and willingness to compromise;

Recognising that the formation of such a Government would demonstrate the respect of the Parties for the deeply-felt and immediate hopes and aspirations of the millions of our people.

Determined to carry out sustained work to create the conditions for returning our country to stability and prosperity;

Acknowledging the need for gender parity, particularly the need to appoint women to strategic Cabinet posts;

20.1 The Parties hereby agree that:

20.1.1 Executive Powers and Authority The Executive Authority of the Inclusive Government shall vest in, and be shared among the President, the Prime Minister and the Cabinet, as provided for in this Constitution and legislation.

⁴ (*sic*) *Note by Veritas*. Error. In the Bill for this Act the entire Interparty Political Agreement was set out in Schedule 11 “for the information of the public”, but the Schedule does not appear in the Act.

The President of the Republic shall exercise executive authority subject to the Constitution and the law.

The Prime Minister of the Republic shall exercise executive authority subject to the Constitution and the law.

The Cabinet of the Republic shall exercise executive authority subject to the Constitution and the law.

In the exercise of executive authority, the President, Vice Presidents, the Prime Minister, the Deputy Prime Ministers, Ministers and Deputy Ministers must have regard to the principles and spirit underlying the formation of the Inclusive Government and accordingly act in a manner that seeks to promote cohesion both inside and outside government.

20.1.2 The Cabinet

- (a) shall have the responsibility to evaluate and adopt all government policies and the consequential programmes;
- (b) shall, subject to approval by Parliament, allocate the financial resources for the implementation of such policies and programmes;
- (c) shall have the responsibility to prepare and present to Parliament, all such legislation and other instruments as may be necessary to implement the policies and programmes of the National Executive;
- (d) shall, except where the Constitution requires ratification by Parliament, or action by the President, approve all international agreements;
- (e) shall ensure that the state organs, including the Ministries and Departments, have sufficient financial and other resources and appropriate operational capacity to carry out their functions effectively; and
- (f) shall take decisions by consensus, and take collective responsibility for all Cabinet decisions, including those originally initiated individually by any member of Cabinet.
- (g) The President and the Prime Minister will agree on the allocation of Ministries between them for the purpose of day-to-day supervision.

20.1.3 The President

- (a) chairs Cabinet;
- (b) exercises executive authority;
- (c) shall exercise his/her powers subject to the provisions of the Constitution;
- (d) can, subject to the Constitution, declare war and make peace;
- (e) can, subject to the Constitution, proclaim and terminate martial law;
- (f) confers honours and precedence, on the advice of Cabinet;
- (g) grants pardons, respites, substitutes less severe punishment and suspends or remits sentences, on the advice of Cabinet;
- (h) chairs the National Security Council;
- (i) formally appoints the Vice Presidents;
- (j) shall, pursuant to this Agreement, appoint the Prime Minister pending the enactment of the Constitution of Zimbabwe Amendment No. 19 as agreed by the Parties;
- (k) formally appoints Deputy Prime Ministers, Ministers and Deputy Ministers in accordance with this agreement;

- (l) after consultation with the Vice Presidents, the Prime Minister and the Deputy Prime Ministers, allocates Ministerial portfolios in accordance with this Agreement;
- (m) accredits, receives and recognizes diplomatic agents and consular officers;
- (n) appoints independent Constitutional Commissions in terms of the Constitution;
- (o) appoints service/executive Commissions in terms of the Constitution and in consultation with the Prime Minister;
- (p) in consultation with the Prime Minister, makes key appointments the President is required to make under and in terms of the Constitution or any Act of Parliament;
- (q) may, acting in consultation with the Prime Minister, dissolve Parliament;
- (r) must be kept fully informed by the Prime Minister on the general conduct of the government business and;
- (s) shall be furnished with such information as he/she may request in respect of any particular matter relating to the government, and may advise the Prime Minister and Cabinet in this regard.

20.1.4 The Prime Minister

- (a) chairs the Council of Ministers and is the Deputy Chairperson of Cabinet;
- (b) exercises executive authority;
- (c) shall oversee the formulation of government policies by the Cabinet;
- (d) shall ensure that the policies so formulated are implemented by the entirety of government;
- (e) shall ensure that the Ministers develop appropriate implementation plans to give effect to the policies decided by Cabinet: in this regard, the Ministers will report to the Prime Minister on all issues relating to the implementation of such policies and plans;
- (f) shall ensure that the legislation necessary to enable the government to carry out its functions is in place: in this regard, he/she shall have the responsibility to discharge the functions of the Leader of Government Business in Parliament;
- (g) shall be a member of the National Security Council;
- (h) may be assigned such additional functions as are necessary further to enhance the work of the Inclusive Government;
- (i) shall, to ensure the effective execution of these tasks, be assisted by Deputy Prime Ministers; and
- (j) shall report regularly to the President and Parliament.

20.1.5 Council of Ministers To ensure that the Prime Minister properly discharges his responsibility to oversee the implementation of the work of government, there shall be a Council of Ministers consisting of all the Cabinet Ministers, chaired by the Prime Minister, whose functions shall be:

- (a) to assess the implementation of Cabinet decisions;
- (b) to assist the Prime Minister to attend to matters of coordination in the government;
- (c) to enable the Prime Minister to receive briefings from the Cabinet Committees;
- (d) to make progress reports to Cabinet on matters of implementation of Cabinet decisions;
- (e) to receive and consider reports from the Committee responsible for the periodic review mechanism; and

- (f) to make progress reports to Cabinet on matters related to the periodic review mechanism.

20.1.6 Composition of the Executive (1) There shall be a President, which Office shall continue to be occupied by President Robert Gabriel Mugabe.

(2) There shall be two (2) Vice Presidents, who will be nominated by the President and/or Zanu-PF.

(3) There shall be a Prime Minister, which Office shall be occupied by Mr Morgan Tsvangirai.

(4) There shall be two (2) Deputy Prime Ministers, one (1) from MDC-T and one (1) from the MDC-M.

(5) There shall be thirty-one (31) Ministers, with fifteen (15) nominated by ZANU PF, thirteen (13) by MDC-T and three (3) by MDC-M.

(6) There shall be fifteen (15) Deputy Ministers, with (eight) 8 nominated by ZANU PF, six (6) by MDC-T and one (1) by MDC-M.

(7) Ministers and Deputy Ministers may be relieved of their duties only after consultation among the leaders of all the political parties participating in the Inclusive Government.

20.1.7 Senior Government appointments The Parties agree that with respect to occupants of senior Government positions, such as Permanent Secretaries and Ambassadors, the leadership in Government, comprising the President, the Vice-Presidents, the Prime Minister and Deputy Prime Ministers, will consult and agree on such prior to their appointment.

20.1.8 Parliament Persons appointed to the posts of Vice-President, Prime Minister and Deputy Prime Minister and who are not already Members of Parliament, become *ex officio* members of the House of Assembly. Should persons so appointed be already members of Parliament, then the Party of which that person is a member or nominee shall have the right to nominate a non-constituency member of the relevant House.

20.1.9 Senate

(a) The President shall, in his discretion, appoint five (5) persons to the existing positions of Presidential senatorial appointments.

(a) There shall be created an additional six (6) appointed senatorial posts, which shall be filled by persons appointed by the President, 4 of whom will be nominated by MDC-T and 2 by MDC-M.

20.1.10 Filling of vacancies In the event of any vacancy arising in respect of posts referred to in clauses 20.1.6 and 20.1.9 above, such vacancy shall be filled by a nominee of the Party which held that position prior to the vacancy arising.”.

Appointment of members of the Committee on Standing Rules and Orders

2.(1) For the duration of the Interparty Political Agreement as stipulated in section 115(2) of the Constitution, and notwithstanding anything contained in section 57 of the Constitution, the Committee on Standing Rules and Orders shall consist of—

- (a) the Speaker; and
- (b) the President of the Senate; and
- (c) the Deputy Speaker; and

- (d) the Deputy President of the Senate; and
- (e) the two Vice-Presidents; and
- (f) the Prime Minister, who is also the leader of Government business; and
- (g) the Minister responsible for constitutional and parliamentary affairs; and
- (h) the Minister responsible for finance; and
- (i) the Whip of each of the political parties that signed the Interparty Political Agreement; and
- (j) the Deputy Leader of Government Business in the House of Assembly; and
- (k) the Deputy Leader of Government Business in the Senate.
- (l) eight members elected by the House of Assembly and four members elected by the Senate, based on the political and gender composition of the relevant House.

(2) The election of members of the Committee on Standing Rules and Orders is to be based on the political and gender composition of the Parliament and is to be conducted as soon as possible after the commencement of each session.

(3) The Speaker is the Chairperson of the Committee on Standing Rules and Orders and the President of the Senate is to be its Deputy Chairperson.

New section inserted in Constitution

3. The Constitution is amended by the insertion after section 31C of the following sections—

“31CA Acting Prime Minister

(1) Whenever the Prime Minister is absent from Zimbabwe or is unable to perform the functions of his office by reason of illness or any other cause, his functions shall be assumed and performed—

- (a) by the Deputy Prime Minister whom the Prime Minister, in consultation with the President, has designated for the eventuality; or
- (b) the Deputy Prime Minister who last acted as Prime Minister in terms of this section, where neither Deputy Prime Minister has been designated for such an eventuality in terms of paragraph (a); or
- (c) during the absence or incapacity of both Deputy Prime Ministers, by such Minister as may be designated for such an eventuality—
 - (i) by the Prime Minister, in consultation with the President; or
 - (ii) by the Cabinet, where no Minister has been designated by the Prime Minister in terms of subparagraph (i).”.

Amendment of section 47 of Constitution

4. Section 47 (“Vice-Presidents, Ministers, Deputy Ministers, Provincial Governors and Attorney-General in Parliament”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Vice-Presidents, Prime Minister, Deputy Prime Ministers, Ministers, Deputy Ministers, Provincial Governors and Attorney-General in Parliament”;
- (b) by the repeal of subsection (1) and the substitution of—

“(1) A Vice-President, the Prime Minister and every Deputy Prime Minister and Minister shall have a right to sit and speak in Parliament but shall only have the right to vote in the House of which they are a member.”.