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**In the National Assembly Tuesday 9th May 2017**

SECOND READING SPEECH

 **CONSTITUTION OF ZIMBABWE AMENDMENT (NO. 1) BILL**

**THE VICE PRESIDENT AND MINISTER OF JUSTICE LEGAL AND PARLIAMENTARY AFFAIRS (HON. MNANGAGWA**):

Madam Speaker, allow me at the outset, to reaffirm the commitment of Government in its constitutional implementation, to deepen the sacrosanct principles of constitutionalism in our flourishing constitutional democracy. The long and arduous constitutional development of our young nation has taught us that there is more to gain in religiously adhering to the dictates of constitutionalism including the principles of separation of powers, judicial independence and rule of law. These principles can only be of utility towards sound constitutional implementation if both the content and substance and adjectival aspects of our constitutional, legislative and administrative frameworks are above board.

Madam Speaker, the constitutional framework for judicial independence in any jurisdiction is paramount in determining the quality of justice delivery, access to justice and the administration of justice. These aspects are indeed intricately linked to the procedure of appointment of heads of the judiciary and other judges. Such appointment must be executed in a manner that does not compromise the constitutional, legislative and administrative values and etiquette expected of such crucial officials. The appointment procedure must be in tandem with international best practice and be subjected to proper administrative processes with no internal and external influence whatsoever. This can only be achieved when the constitutional bedrock on which such appointments should be anchored is solid enough to arrest any mischief, perceptions and challenges that may arise in the administration of justice. This Bill is brought before this august House in order to reflect the spirit and letter of the above espoused values.

Madam Speaker, the purpose of proposing this constitutional Amendment Bill stems from serious concerns regarding the procedures of appointment for the Chief Justice, Deputy Chief Justice and the Judge President of the High Court. It has become public knowledge that, with the current constitutional framework on appointment of the heads of the judiciary, the probability of subjecting some judicial officers to public interviews by members of the Judicial Service Commission to which they are also members is high. This will also create a probable situation where junior members of the JSC find themselves in an invidious position to interview their superiors.

Furthermore, the possibility of the outgoing Chief Justice, who invariably and by virtue of him or her being the Chairperson of the JSC of presiding over the interview process of his or her potential successor are inescapable under the current constitutional regime. This without doubt is irregular, inappropriate and stands firm to violate the principle of separation of powers, checks and balances and good governance. In any event, it is quite unexampled and has no precedent in the American, Asian, African, Caribbean, Pacific and Scandinavian jurisdictions.

Madam Speaker, this Bill seeks to regularise the above. It will amend the Constitution by substituting section 180, which provides for the appointment of judges. The appointment procedure for all judges will remain as it is except for the Chief Justice, Deputy Chief Justice and the Judge President of the High Court. It is proposed by this amendment that these three officials will be appointed by the President after consultations with the Judicial Service Commission (in various jurisdictions around the world, and under the previous Constitution the appointment of all judges was done in this way except for the Judge President who was appointed by the Chief Justice). If the appointment of a Chief Justice, Deputy Chief Justice or Judge President of the High Court is not consistent with any recommendation made by the Judicial Service Commission made during the course of the consultation, then the President will have to inform the Senate of that fact as soon as possible.

Consequent to the foregoing amendment, paragraph 18(3) of the Sixth Schedule to the Constitution, titled Commencement of this Constitution, Transitional Provisions and Savings, is also amended by excluding vacancies in the offices of Chief Justice and Deputy Chief Justice from the scope of that provision.

Further, paragraph 18 (6) of the sixth schedule of the Constitution has been misconstrued to mean that judges of the Labour Court and the Administrative Court are at par with judges of the High Court and that the Judge President of the Labour Court is at par with the Judge President of the High Court when in actual fact the High Court has inherent jurisdiction in terms of Sections 171 and 176 of the Constitution respectively. Given the fact that the Administrative Court and the Labour Court are specialised courts meant to deal with particular areas of law, it was never the original intent to place these courts at the same level with the High Court which has original jurisdiction on any area of the law.

Madam Speaker, in view of the foregoing, the proposed Constitution Amendment (No.1) Bill, therefore seeks to introduce a separate appointment procedure for the Chief Justice, Deputy Chief Justice and the Judge President of the High Court. Furthermore, it seeks to bring more clarity to Section 174 by providing an explicit provision to the effect that the Labour Court and the Administrative Court are subordinate to the High Court.

Madam Speaker, this brings me to the specific contents of the Bill before Hon. Members. The Constitution Amendment Bill contains eight clauses.

Clause 1 of the Bill sets out the Short Title of the Bill which we all have become familiar of.

Clause 2 is the Interpretation section and defines the term “Constitution” as the Constitution of Zimbabwe as set forth in the Schedule to the Constitution of Zimbabwe Amendment (No. 20) Act of 2013.

Clause 3 amends Section 172 (1) (a) by insertion of a new paragraph (a) which says “a senior judge.”

Clause 4 amends Section 173 (1) (a) by its substitution with the phrase “a senior judge”.

Clause 5 amends Section 174 by the insertion of a new subsection 2 which clarifies that the Labour Court and the Administrative Court are subordinate to the High Court without taking away the salaries, allowances and benefits of the judges of the subordinate courts.

Clause 6 amends Section 180 by the insertion of a new section that clearly sets out the appointment of the Chief Justice, Deputy Chief Justice and the Judge President of the High Court as being done by the President in consultation with the Judicial Service Commission.

Clause 7 amends Section 181 (2) (b) and (c) of the Constitution by changing the titles of the ‘Judge President’ of the Labour Court and the Administrative Court to ‘senior judge’.

Finally, Clause 8 amends the Sixth Schedule of the Constitution, paragraph 18 (3) by excluding the vacancies of the Chief Justice, Deputy Chief Justice and the Judge President of the High Court from the scope of the provision.

Madam Speaker, Hon. Members will note that this Bill is crucial as it ensures that the appointment procedure for the Chief Justice, Deputy Chief Justice and Judge President of the High Court is regularised in line with the sacrosanct principles of separation of powers, checks and balances and good governance. It also seeks to bring the appointment procedure in line with good international best practices implemented in other jurisdictions the world over, in a manner that promote and deepens our deep seated democratic principle of constitutionalism.

Madam Speaker, I now commend the Constitution of Zimbabwe Amendment (No. 1) Bill (H.B. 1. 2017), to the House and move that the Bill be now read a second time. I thank you.

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