

Committee Stage Proceedings on Constitution of Zimbabwe (No. 2) Bill

13. COMMITTEE: *Constitution of Zimbabwe Amendment (No. 2) Bill* (H.B. 23, 2019) – *The Minister of Justice, Legal and Parliamentary Affairs*).

(House in Committee)

Clauses 1 and 2, put and agreed to.

On clause 3,

The Minister of Justice, Legal and Parliamentary Affairs moved:

In line 12 on page 1 of the Bill, to insert before “Vice President” the words “appointment as”

In line 14 on page 1 of the Bill, to delete Paragraph (a)

In line 15 on page 1 of the Bill, to insert before “Vice President” the words “appointment as”

Amendment put and agreed to.

Clause 3, as amended, put and agreed to.

Clauses 4 to 10, put and agreed to.

On Clause 11,

Hon. Misihairabwi – Mushonga moved:

On page 4 in line 19, clause 11 of the Bill is amended by the insertion of the following proviso to paragraph (b);

“Provided that political parties must ensure that-

(a) Ten of the sixty women members are under the age of thirty-five;

(b) Women with disabilities are represented on their party lists; and

(c) Young women with disabilities are represented on their party lists in terms of an Act of Parliament”.

Amendment put and agreed to.

Clause 11, as amended, put and agreed to.

On Clause 12,

The Minister of Justice, Legal and Parliamentary Affairs moved:

On page 4 of the Bill, to delete clause 12 and renumber the subsequent clauses accordingly.

Amendment, put and agreed to.

On Clause 13 (now Clause 12),

The Minister of Justice, Legal and Parliamentary Affairs moved:

On page 4 of the Bill, in clause 13, to substitute the following:

“12 Amendment of section 180 of Constitution

Section 180 (“Appointment of judges”) of the Constitution is amended—

(a) by the repeal of subsection (4) and the substitution of the following—

“(4). Subject to subsection (4a), whenever it is necessary to appoint a judge, other than the Chief Justice, Deputy Chief Justice, Judge President or a sitting judge of the Supreme Court, High Court, Labour Court or Administrative Court to be a judge of the next higher court, the Judicial Service Commission must –

- (a) advertise the position; and
- (b) invite the President and the public to make nominations; and
- (c) conduct public interviews of prospective candidates; and
- (d) prepare a list of three qualified persons as nominees for the office; and
- (e) submit the list to the President, whereupon, subject to subsection (5), the President must appoint one of the nominees to the office concerned.”;

(b) by the insertion of the following subsection after subsection (4)

“(4a). Notwithstanding subsection (4) the President, acting on the recommendation of the Judicial Service Commission may, at any time whenever it is necessary to do so, appoint a sitting judge of the Supreme Court, High Court, Labour Court or Administrative Court to be a judge of the next higher court.”.

Amendment, put and agreed to.

Clause 13 (now 12), as amended, put and agree to.

On Clause 14 (now 13),

The Minister of Justice, Legal and Parliamentary Affairs moved:

On pages 4 and 5 of the Bill, in clause 14, to substitute the following:

13 New section substituted for section 186 of Constitution

Section 186 of the Constitution is repealed and replaced by—

“186 Tenure of office of judges

(1) The Chief Justice and the Deputy Chief Justice hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire unless, before they attain that age, they elect to continue in office for an additional five years:

Provided that such election shall be subject to the submission to, and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to their mental and physical fitness so to continue in office.

(2) Judges of the Constitutional Court are appointed for a non-renewable term of not more than fifteen years, but—

- (a) they must retire earlier if they reach the age of seventy years unless, before they attain that age, they elect to continue in office for an additional five years:

Provided that such election shall be subject to the submission to, and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office;

- (b) after the completion of their term, they may be appointed as judges of the Supreme Court or the High Court, at their option, if they are eligible for such appointment.

(3) Judges of the Supreme Court hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire unless, before they attain that age, they elect to continue in office for an additional five years:

Provided that such election shall be subject to the submission to, and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office.

(4) Notwithstanding subsection (7) of section 328, the provisions of subsections (1), (2) and (3) of this section shall apply to the continuation in office of the Chief Justice, Deputy Chief Justice, judges of the Constitutional Court and judges of the Supreme Court.

(5) Judges of the High Court and any other judges hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire.

(6) A person may be appointed as a judge of the Supreme Court, the High Court or any other court for a fixed term, but if a person is so appointed, other than in an acting capacity, he or she ceases to be a judge on reaching the age of seventy-five years (in the case of a judge of the Supreme Court) or seventy years (in the case of a judge of the High Court or any other court) even if the term of his or her appointment has not expired.

(7) Even though a judge has resigned or reached the age of retirement or, in the case of a judge of the Constitutional Court, reached the end of his or her term of office, he or she may continue to sit as a judge for the purpose of dealing with any proceedings commenced before him or her while he or she was a judge.

(8) A judge may resign from his or her office at any time by written notice to the President given through the Judicial Service Commission.

(9) The office of a judge must not be abolished during his or her tenure of office.

Amendment put and agreed to.

Clause 14 (now 13), as amended, put and agreed to.

Clause 15 (now 14), put and agreed to.

One new Clause inserted after 15 (now 14),

Hon. Misihairabwi-Mushonga moved:

15 Amendment of section 203 of the Constitution

Section 203 (“Functions of Public Service Commission”) of the Constitution of Zimbabwe is amended by the deletion of subsection (1) (a) and the substitution of-

“(a) to appoint qualified and competent persons to hold posts in the Public Service, of which ten *per centum* shall be persons with disabilities”.

Amendment put and negatived.

Clause 16 (now 15), put and agreed to.

On clause 17 (now 16),

The Minister of Justice, Legal and Parliamentary Affairs, moved:

To delete clause 16 and renumber subsequent clauses accordingly

Amendment put and agreed.

On clause 18 (now 16),

The Minister of Justice, Legal and Parliamentary Affairs, moved:

To delete clause 17 and renumber subsequent clauses accordingly

Amendment put and agreed.

Clause 19 (now 16), put and agreed to.

On clause 20 (now 17),

The Minister of Justice, Legal and Parliamentary Affairs moved:

In line 1 on page 9 of the Bill, to delete the word, “persons” and substitute with “women”.

Between lines 12 and 15 on page 9 of the Bill, to delete lines 13 and 14.

Amendment put and agreed to.

Hon. Misihairabwi- Mushonga moved:

On page 9 in line 14 to insert the following paragraph after paragraph (b)-

“(b) in which persons with disabilities are included”

Amendment put and agreed to.

Clause 20 (now 17), as amended, put and agreed to.

Clauses 21 and 22 (now 18 and 19), put and agreed to.

On new clause inserted after clause 22 (now 19),

The Minister of Justice, Legal and Parliamentary Affairs moved:

On page 10 of the Bill between lines 8 and 9 to insert the new clause 22A
(Amendment of section 277 of the Constitution)

Section 277 (**Elections to local authorities**) is amended by the insertion after subsection (3) of

“(4) An Act of Parliament may provide for the election, by a system of proportional representation referred to in subsection (5), of at least thirty *per centum* of the total members of the local council elected on ward basis as women.

(5) elections to local authority councils must be conducted in accordance with the Electoral Law, which must ensure that the persons referred to in subsection (4) are elected under a party list system of proportional representation which is based on the votes casts for candidates representing political parties in the local authority concerned in the general election for Members of the local authority”.

Amendment put and agreed to.

(Clause 22 (now 19), as amended, put and agreed to.

On clause 23 (now 20),

The Minister of Justice, Legal and Parliamentary Affairs moved:

On page 10 of the Bill, to delete between lines 9 and 13 and substitute with the following-

Section 327 (“International conventions, treaties and agreements”) (3) is substituted with the following:

“(3) Save for loan agreements and guarantees referred to in section 300 (3) and (4), an agreement which is not an international treaty but which-

(a) Has been concluded or executed by the President or under the President’s authority with one or more foreign organisations or entities; and

(b) Imposes fiscal obligations on Zimbabwe;

Does not bind Zimbabwe until it has been approved by Parliament”.

Amendment put and agreed to.

Clause 23 (now 20) as amended, put and agreed to.

Clauses 24 to 27 (now 21 to 24) and Schedule, put and agreed to.

Bill to be reported with amendments.

(House resumed)

Bill reported with amendments.

Consideration- Tuesday, 20th April, 2021.

40. On the motion of the Minister of Justice, Legal and Parliamentary Affairs: The House adjourned at a twenty minutes past eight o'clock pm until Tuesday 20 April, 2021 at a quarter past two o'clock in the afternoon.

HON. ADV. J. F. N. MUDENDA,
Speaker

TUESDAY, 20TH APRIL, 2021

ORDERS OF THE DAY AND NOTICES OF MOTIONS

1. CONSIDERATION: *Constitution of Zimbabwe Amendment (No. 2) Bill* (H.B. 23, 2019) as amended– ***The Minister of Justice, Legal and Parliamentary Affairs.***

(Clauses 3, 11, 12, 13, 17, New clause 19A and 20 under consideration)

2. COMMITTEE: *Forest Amendment Bill* (H.B. 19, 2019)– ***The Minister of Environment, Climate, Tourism and Hospitality Industry***

(See Notice of Amendments)

3. COMMITTEE: *Cyber Security and Data Protection Bill* (H.B. 18, 2019)
The Minister of Information and Communication Technology, Postal and Courier Services.

(See Notice of Amendments)

4. SECOND READING: *Pensions and Provident Funds Bill* (H.B. 17, 2019) – ***The Minister of Finance and Economic Development.***

5. Adjourned debate on motion on the SECOND READING of the *Centre for Education, Innovation, Research and Development Bill* (H.B. 1, 2020) (Adjourned 17th February, 2021– ***The Minister of Home Affairs and Cultural Heritage***)