

CONSTITUTION OF ZIMBABWE AMENDMENT (No. 1) BILL, 2017

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The present Constitution of Zimbabwe became fully operational on the 22nd August, 2013, having been assented to on the 22nd May, 2013, by the President as the Constitution of Zimbabwe Amendment (No. 20) Act, and published on that same day.

Although sections 171(1)(b) and 174 of the Constitution clearly imply that the Labour Court and Administrative Court are courts subordinate to the High Court despite their members also being called “judges”, this implication appears to be at odds with paragraph 18(6) of the Sixth Schedule, which provides that “Every person who, immediately before the effective date, presided over the Labour Court or the Administrative Court becomes a judge of the Labour Court or the Administrative Court, as the case may be, *on the same conditions of service as apply on that date to judges of the High Court*”. Without affecting the equality of basic conditions of service between, on the one hand, judges of the High Court, and, on the other, judges of the Labour and Administrative Courts, there is a need to make explicit the subordination of these last-mentioned courts to the High Court by an appropriate amendment to section 174.

This Bill 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 in the Constitution before amendment, 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 offices will be appointed by the President after consultation with the Judicial Service Commission (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.

Consequentially 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.

BILL

To amend the Constitution of Zimbabwe.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

5 This Act may be cited as the Constitution of Zimbabwe Amendment (No. 1) Act, 2017.

2 Interpretation

In this Act—

10 “the Constitution” means the Constitution of Zimbabwe set forth in the Schedule to the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

3 Amendment of section 172 of Constitution

Section 172 (“Labour Court”)(1) of the Constitution is amended by the repeal of paragraph (a) and the substitution of—

15 “(a) a senior judge; and;”.

H.B. 1, 2017.]

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4 Amendment of section 173 of Constitution

Section 173 (“Administrative Court”)(1) of the Constitution is amended by the repeal of paragraph (a) and the substitution of—

“(a) a senior judge; and;”.

5 Amendment of section 174 of Constitution

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(1) Subject to subsection (2), section 174 (“Other courts and tribunals”) of the Constitution is amended by the insertion of the following subsection, the existing section becoming subsection (1)—

“(2) For the purpose of this section and section 171(1)(b), it is declared, for the avoidance of doubt, that the Labour Court and Administrative Court are courts subordinate to the High Court.”

(2) In conformity with section 188(4) of the Constitution, the salaries, allowances and other benefits of judges of the Labour Court and Administrative Court holding or acting in office as such on the date of commencement of this Act shall not be reduced.

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6 New section substituted for section 180 of Constitution

(1) Subject to subsection (2), section 180 of the Constitution is repealed and replaced by—

“180 Appointment of judges

(1) The Chief Justice, the Deputy Chief Justice, and the Judge President of the High Court and all other judges are appointed by the President in accordance with this section.

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(2) The Chief Justice, the Deputy Chief Justice, and the Judge President of the High Court shall be appointed by the President after consultation with the Judicial Service Commission.

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(3) 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 in terms of subsection (2), the President shall cause the Senate to be informed as soon as is practicable:

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Provided that, for the avoidance of doubt, it is declared that the decision of the President as to such appointment shall be final.

(4) Whenever it is necessary to appoint a judge other than the Chief Justice, Deputy Chief Justice or Judge President of the High Court, the Judicial Service Commission must—

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- (a) advertise the position;
- (b) invite the President and the public to make nominations;
- (c) conduct public interviews of prospective candidates;
- (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.

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5 (5) If the President considers that none of the persons on the list submitted to him or her in terms of subsection (4)(e) are suitable for appointment to the office, he or she must require the Judicial Service Commission to submit a further list of three qualified persons, whereupon the President must appoint one of the nominees to the office concerned.

(6) The President must cause notice of every appointment under this section to be published in the *Gazette*.

10 (7) The offices of senior judge of the Labour Court and senior judge of the Administrative Court must be filled by another judge or an additional or acting judge, as the case may be, of the court concerned, and are appointed by the Chief Justice after consultation with the Judicial Service Commission.”.

15 (2) For the avoidance of doubt it is declared that the amendment to the Constitution made by subsection (1) applies to the appointment of a Chief Justice to fill the vacancy in that office that exists on the date of commencement of this Act.

7 Amendment of section 181 of Constitution

Section 181 (“Acting judicial appointments”)(2) of the Constitution is amended by the repeal of paragraphs (b) and (c) and the substitution of—

20 “(b) senior judge of the Labour Court; and;”.

(c) senior judge of the Administrative Court;”.

8 Amendment of Sixth Schedule to Constitution

The Constitution is amended in the Sixth Schedule (“Commencement of this Constitution, Transitional Provisions and Savings”) by the insertion of the following proviso to subparagraph (3) of paragraph 18 (“Courts and legal proceedings”)—

25 “Provided that a vacancy in the office of Chief Justice and Deputy Chief Justice occurring during that period must be filled in accordance with section 180(2) and (3).”.

