



THE LAW SOCIETY OF ZIMBABWE

Press Statement on passing of the Constitutional Amendment Bill (No.1) of 2016 by the National Assembly

The Law Society would like to express its concern and dissatisfaction over the adoption of the Constitutional Amendment Bill No. 1 of 2016 by the members of the National Assembly on Tuesday 25 July, 2017. The effect of passing of this Bill is to give exclusive and unfettered discretion to the President of Zimbabwe to appoint the Chief Justice, Deputy Chief Justice and Judge President of the High Court whenever vacancies for such posts arise. Thus the conducting of public interviews of prospective candidates for these posts will no longer be applicable.

Whereas section 328 of the Constitution provides for amendments to the Constitution, it is without doubt that such amendments to constitutional provision ought to be progressive rather than retrogressive. Importantly the motive behind the amendment has to be representative of the wishes of the majority not narrow political interests and security of few individuals. The amendments ought not negate the values of good governance as enshrined in the Constitution. The Law Society of Zimbabwe has been consistent in its position that where a Constitutional provision is deemed unreasonable, absurd or unpractical it should be substituted by a reasonable and progressive provision. The reason why the amended provision found its way into the Constitution was the desire to enhance the independence of the judiciary. There was a desire to remove the judicial appointment system from Executive manipulation. In the interest of ensuring the equality of the arms of the state there was a real need to remove the perception of a Judiciary that is beholden to the Executive and therefore liable to Judicial manipulation. Whilst the current position remained unsatisfactory the process had already started to give a measure of public confidence in the appointment process. Regrettably this development has been rolled back for what can only be attributed to political expediency.

The Bill in our considered view is an attack to the Constitution and constitutionalism. It is disappointing that Parliament has portrayed no commitment to protect and defend the Constitution and promote democratic governance as provided for in the Constitution.

This Bill impairs the positive progression which currently obtains where the public was empowered to participation in the selection of judges through a public nomination process. The Bill takes us back to the abandoned Lancaster Constitution whereby appointments would be done uncodimously. It is imperative that judicial officers should not be seen to be “*owned*” by the Executive. Section 3 of the Constitution provides for principles of good governance which bind the State and all institutions at all levels, which include observance of principles of separation of powers, transparency, justice, accountability and responsiveness. The appointment of judges and appointing authorities are State institutions and accordingly obligated to observe and apply these principles in all decisions.

Section 3(2)(g) further obligates State and all its institutions to be responsive. Responsiveness means the institutions of government should serve all stakeholders. This is one of the major element of good governance and Government should seriously consider the views of various stakeholders raised on this proposed amendment. It is therefore not only wrongful but equally irresponsible for Parliament to abuse a majority presence and vote to undermine the concerns of the people. During the Public Hearing witnessed by the Society, on this Bill, the majority of the people who attended the hearings rejected this amendment.

Thus the Law Society of Zimbabwe calls upon Parliament of Zimbabwe to recall and remember the essence of its representative function and stop the mutilation mutiny of the Constitution overwhelmingly voted for by the people and resoundingly defended by the people during the public hearings. We urge the Parliament to uphold, defend and respect the Constitution and ensure that the constitutionalism is adhered to. We especially appeal to the Upper house to exercise their Wisdom and maturity to defend the people’s Constitution.

The Law Society of Zimbabwe remains committed to rule of law and Justice.

