VERITAS

STATUTES REQUIRING CONSTITUTIONAL ALIGNMENT

Note: Acts marked with an asterisk (*) were purportedly aligned to the Constitution by the General Laws Amendment Act, 2016 (No. 3 of 2016) or by the Criminal Procedure and Evidence Amendment Act, 2016 (No. 2 of 2016). The extent of their alignment was only partial at best, as the following list shows.

*1. Access to Information and Protection of Privacy Act [Chapter 10:27]**

The Act should be repealed or, at the very least amended:

- To guarantee and facilitate access to information; some sections unnecessarily restrict access to information. "Excluded information", to which access cannot be obtained, includes:
    - information about how the President exercised his discretionary powers (section 4 and First Schedule to the Act);
    - parliamentary records protected by parliamentary privilege (ditto);

  Also, individuals who are neither citizens nor permanently resident, and unregistered media organisations, have no right to information under the Act (section 5(3)).
- To remove the restrictions on foreigners participating in the production of local newspapers and other media. Under section 65 of the Act, foreigners cannot be mass media owners in Zimbabwe, and under section 79(3) journalists cannot be accredited, save for short periods, unless they are citizens or permanent residents of Zimbabwe. The restrictions stifle investment in the media and violate freedom of expression – a right which is enjoyed by foreigners as well as Zimbabweans.
- To remove the restrictions on the activities of journalists who are not accredited under the Act. Under sections 78(4) and 79(7) of the Act unaccredited journalists cannot be employed on a full-time basis by media publishers and news agencies, and this unjustifiably restricts the scope of their work, thereby violating their own freedom of expression and that of their employers.
- To abolish the criminal offence of abuse of journalistic privilege (section 80). At the very least, journalists charged under the section should be given a defence of "reasonable publication" if they rely in good faith on information provided by sources which they have no real reason to believe to be unreliable. The defence should be available if it was reasonable for a person in the position of the defendant journalist to have published the material in the manner and form he or she did.

2. Acquisition of Farm Equipment or Material Act [Chapter 18:23]

The Act should be amended to ensure that "fair and adequate" compensation is paid for farm equipment seized under the Act, as provided in section 71(3)(c)(ii) of the Constitution. The Act merely provides for farm equipment to be valued by govern-

ment valuers, without laying down any criteria whatever for their valuation (section 5) and states that if the acquisition or proposed compensation is contested the Administrative Court may fix any compensation it deems reasonable in the circumstances (section 8(4)).

*3. Administrative Court Act [Chapter 7:01]**

The Act was amended by the General Laws Amendment Act, 2016, purportedly to bring it into line with the Constitution. Some of the amendments are themselves unconstitutional:

- Section 5(2), as amended, states that the President, on the recommendation of the Judicial Service Commission, fixes the conditions of service of judges of the court, including their salaries, allowances and pensions. Under section 188(1) of the Constitution their salaries and benefits should be fixed by the JSC with the approval of the President. Their pensions should be fixed under the Judges Salaries, Allowances and Pensions Act [*Chapter 7:08*], since they are judges. [Chapter 7:08 is itself unconstitutional, however; see below]
- Section 5(3) states that magistrates with seven years' experience are eligible to be appointed to the Administrative Court. This is unconstitutional: section 179 of the Constitution lays down the qualifications for judges of, *inter alia*, the Administrative Court and seven years' experience as a magistrate is not one of those qualifications.

*4. Administrative Justice Act [Chapter 10:28]**

The Act should be amended:

- to extend the definitions of "administrative action" and "administrative conduct" in section 2 of the Act to correspond with the wider meaning of "administrative conduct" used in section 68, as read with section 332, of the Constitution. This will have the effect of extending the application of the Act.
- to amend section 3:
    - to incorporate the requirements of proportionality, impartiality and substantive fairness (sec 68(1) of the Constitution). This will allow administrative action to be set aside on the ground that it is substantively unfair, and will greatly extend the High Court's power to review such action;
    - to repeal subsection (3), which allows illegal and unfair decisions to be made.
- to incorporate time-limits within which courts and tribunals must deliver judgments to ensure that justice is not unduly delayed.

The list in the Schedule excluding certain administrative actions from the Act should be revised – e.g. why should disciplinary action against members of the security forces be excluded?

*5. Agricultural Finance Act [Chapter 18:02]**

Section 38 of the Act empowers the AFC to seize property of a defaulting debtor without obtaining a court order allowing it to do so. This amounts to self-help and is regarded as contrary to public policy by courts in Zimbabwe and in every other country which has even a passing regard for the rule of law. It violates the constitutional

right to a fair hearing (section 69 of the Constitution) and should be removed from the Act.

The same applies to section 48 of the Act (seizure and sale of designated livestock of defaulting debtor) and, probably, the Second Schedule (procedure for sale by the AFC of debtor's property).

6. Animal Health Act [Chapter 19:01]

This Act, like other Acts originating from the Parliament of the Federation of Rhodesia and Nyasaland (e.g. the Control of Goods Act, the Plant Pests and Diseases Act and the Exchange Control Act) is unconstitutional because it gives excessive regulatory power to the President or a Minister. Section 134(a) of the Constitution states that Parliament's primary law-making power must not be delegated: this means that an Act of Parliament can confer power to make regulations filling in details that are not covered in the Act itself, but cannot go further.

This Act gives the Minister of Agriculture plenary law-making power, allowing him or her to prohibit the import or export of animals, pests and infectious things; to prohibit the movement of people or vehicles; and to make regulations for anything whatever that he or she thinks necessary or expedient to prevent the spread of a disease or pest. The Act confers primary law-making powers on the Minister and is therefore unconstitutional.

*7. Anti-Corruption Commission Act [Chapter 9:22]**

The Act needs to be aligned with the Constitution in the following respects:

- The appointment of the chairperson requires consultation with the Committee on Standing Rules and Orders (section 254 of the Constitution).
- Members must hold office for five years, not two (section 320 of the Constitution).
- The disqualifications of members set out in section 9 of the Act are inconsistent with sections 236(3) and 320(3) of the Constitution.
- The grounds for dismissing members under section 10 of the Act are inconsistent with section 237(2) as read with section 256 of the Constitution.
- The Commission's objects and functions set out in sections 11 and 12 of the Act are not consistent with section 256 of the Constitution.

8. Births and Deaths Registration Act [Chapter 5:02]

The Act should be amended to reinforce the right of children to birth certificates (section 81(1)(c) of the Constitution), e.g.:

- to provide for the issue of birth certificates to children found in the country (foundlings) whose parents are not known, to avoid statelessness (section 36 of the Constitution;
- to provide that either parent or any grandparent with adequate documentation can apply for the birth certificate for a child, where a parent is unavailable.

*9. Broadcasting Services Act [Chapter 12:06]**

The Act needs to be amended in the following respects:

- To ensure that members of the Broadcasting Authority of Zimbabwe are politically neutral or represent a reasonably wide spectrum of opinions, as re-

quired by section 61(4) of the Constitution. At present members of the Broadcasting Authority of Zimbabwe are appointed by the President after consultation with the Parliamentary Committee on Standing Rules and Orders and the responsible Minister [who is of course appointed by the President]. There is no provision to ensure their neutrality or the breadth of their opinions.

- To limit the Minister's currently absolute power under section 4A of the Act to give policy directions to the Broadcasting Authority of Zimbabwe.
- To require the boards of the Zimbabwe Broadcasting Company [the successor to the ZBC] and the Mass Media Trust to be politically neutral so as to ensure compliance with section 61(4) (b) of the Constitution [which obliges State-owned media to be impartial]. Members of the boards are appointed in terms of the company's articles and the trust's trust deed respectively, but legislation can and should be enacted to require members to be neutral.
- To ensure that public broadcasters are free to determine their editorial content, are impartial, and afford fair opportunity for the presentation of divergent views and dissenting opinions (section 61(4) of the Constitution).

The prohibition against issuing broadcasting licences to non-citizens may violate section 56 of the Constitution, in that it discriminates against non-citizens.

10. Censorship and Entertainments Control Act [Chapter 10:04]

The Act clearly violates freedom of expression guaranteed by section 61 of the Constitution:

- No one is allowed to distribute, televise or show in public any film unless it has been approved by the Censorship Board, and the Board must not approve any film which, *in the Board's opinion*, "is indecent or obscene or is offensive or harmful to public morals", or is "likely" to be contrary to the interests of defence, public safety, public order or the economic interests of the State. The guidelines set out in section 33 of the Act as to what is deemed to be indecent or obscene are so vague and broad that the Board has an unduly wide discretion to approve or prohibit films.
- Under section 14 of the Act the Board has power to declare publications, pictures and statues to be "undesirable", i.e. *in the Board's opinion* indecent or obscene or offensive or harmful to public morals. If the Board makes such a declaration then the article concerned cannot be printed, published, made or imported into Zimbabwe. Again the Board has an unduly wide discretion.
- Members of the Board of Censors are appointed by the Minister; there are no provisions requiring members to be independent from the executive and ensuring representation of a wide range of opinions and interest groups.

*11. Children's Act [Chapter 5:06]**

There should be a general provision at the beginning of the Act stating that all decisions made under the Act must be made in the best interests of the children concerned and so as to confer on the children the rights guaranteed them by section 81 of the Constitution.

12. Citizenship of Zimbabwe Act [Chapter 4:01]

The Act must be amended to bring it into line with Chapter 3 of the Constitution, which protects the rights of citizens and limits the circumstances in which people can be deprived of their citizenship. In particular:

- Citizens by birth must be protected from being deprived of their citizenship, and the grounds on which citizenship may be revoked must be adjusted.
- The fact that spouses of citizens, and persons who have been resident in Zimbabwe for at least 10 years, are entitled to be registered as citizens in terms of section 38 of the Constitution, must be reflected in the Act (i.e. the grant of citizenship to these people cannot be discretionary).
- The grounds on which citizens by registration may be deprived of their citizenship must be limited to those set out in section 39 of the Constitution.
- Foundlings [children under the age of 15 of unknown parentage who are found in Zimbabwe] must be accorded their right to Zimbabwean citizenship.
- The new Citizenship and Immigration Board mandated by section 41 of the Constitution must be established.
- The circumstances in which citizenship by registration may be lost or revoked must be limited to those set out in section 39 of the Constitution. This means that children of persons whose citizenship has been revoked cannot be deprived of their citizenship (section 12 of the Act) and citizens by registration cannot lose their citizenship through absence from Zimbabwe (section 13 of the Act).
- The Minister must be obliged to give reasons for his decisions under the Act (section 16): this will ensure respect for administrative justice (section 68 of the Constitution).

13. Companies Act [Chapter 24:03]

Section 238 of this Act provides that where a company is wound up compulsorily and the Master has reported that he or she suspects there has been fraud in relation to the formation or running of the company, anyone suspected of the fraud may be examined before the High Court. Section 238(4) states that persons so examined must answer all questions put to them even if the answers may tend to incriminate them. Their answers may be used in evidence against them (subsection (6)). Clearly this violates the right to silence and the right against self-incrimination, both guaranteed by sections 50 and 70 of the Constitution.

14. Control of Goods Act [Chapter 14:05]

What was said above in relation to the Animal Health Act applies equally to this Act, which also dates back to the Federation of Rhodesia and Nyasaland. It confers enormous regulation-making power on the President: he can control imports and exports and the distribution, disposal, purchase, sale and prices of goods – in fact, he can control the entire economy through regulations. Section 134(a) of the Constitution prohibits the delegation of Parliament's primary law-making power, which means that regulations should not go further than filling in details. Regulations under this Act go much further, and because the Act allows such regulations to be made it is unconstitutional.

The Act should be repealed and any regulations made under it should be re-enacted as Acts of Parliament.

*15. Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04]**

Section 4 of the Act states that Ministers can issue notices prohibiting parties in civil and criminal proceedings from passing information to each other. A Minister could therefore prohibit the prosecution in a criminal case from revealing information to the accused which might be vital for his defence. The section therefore violates the fair-trial provision contained in section 69 of the Constitution.

*16. Criminal Law (Codification and Reform) Act [Chapter 9:23]**

The Act is inconsistent with the Constitution in several respects:

- Section 31, which criminalises making false statements prejudicial to the State, is over-broad and stifles freedom of expression. It must be reduced in scope.
- Section 33 of this Act, which makes it a crime to insult the President, should either be repealed entirely or be amended so as to reduce its scope. An executive President is a politician and should be open to the same criticism and satire, whether fair or unfair, as all other politicians.
- Section 47, which lays down what amount to aggravating circumstances justifying the imposition of the death penalty for murder, unduly limits the discretion of the High Court. This is contrary to the rule of law and the right to a fair trial (section 69 of the Constitution).
- Section 81, on soliciting, needs to be amended to prevent selective and discriminatory application against women for loitering, and to ensure it is not applied so as to restrict the free movement of women.
- Section 114, which lays down a mandatory minimum penalty of nine years' imprisonment for stock theft, offends against the right to a fair trial guaranteed by section 69 of the Constitution, in that the sentence is disproportionate to the offence.

*17. Criminal Procedure and Evidence Act [Chapter 9:07]**

The Act must be amended to bring it in line with sections 50, 69 and 70 of the Constitution. The urgency of this cannot be over-emphasised; the fairness of criminal trials that are now taking place must be judged against the Declaration of Rights in the Constitution, not against the law as it used to be. In particular, the following provisions of the Criminal Procedure and Evidence Act are unconstitutional:

- Section 32, which allows arrested persons to be detained for longer than 48 hours either because the 48-hour period expires on a non-court day or because a justice of the peace has issued a warrant for their further detention. Under the new constitution only a court can extend the period beyond 48 hours.
- Section 42(2), which allows persons to be killed if they try to escape from a lawful arrest. The right to life under section 48 of the Constitution cannot be limited by any law (section 86(3)(a) of the Constitution).

- Sections 66(6) and 68(6), which require accused persons to disclose their defence cases before trial. Under sections 50 and 70 of the Constitution they have a right to remain silent.
- Sections 67, 115, 189, 199 and 257, which allow adverse inferences to be drawn from an accused person's silence. Adverse inferences cannot be drawn from an exercise of a constitutional right.
- Section 117, which imposes severe restrictions on an accused person's right to bail. Under section 50(1) (d) of the Constitution, on the other hand, arrested persons are entitled to bail "unless there are compelling reasons justifying their continued detention".
- Section 258A, which purports to limit the circumstances in which courts can refuse to allow illegally-obtained evidence to be admitted.
- Section 353, which allows corporal punishment to be imposed on young boys. This amounts to cruel and inhuman punishment, prohibited by section 53 of the Constitution, as our Supreme Court held in 1989 and judgments of the High Court have held since then.

The list is by no means exhaustive. Further amendments are needed to tighten provisions about how law enforcement authorities obtain search warrants (only magistrates or judges should be allowed to issue search warrants).

18. Customary Law and Local Courts Act [Chapter 7:05]

Provision should be added in Part II of the Act (dealing with the application of customary law) ensuring that men and women must be accorded equal rights under customary law.

Section 20 of the Act should be amended to allow litigants the right to be represented by lawyers before local (i.e. traditional) courts because section 69(4) of the Constitution gives everyone a right to legal representation before "any court, tribunal or forum".

19. Customary Marriages Act [Chapter 5:07]

This Act must be amended to prohibit child marriage. Section 81 of the Constitution protects children against all forms of abuse, and child marriage is regarded throughout the world as an abuse. The Constitutional Court has outlawed child marriage (in the case of *Mudzuru & Anor v Minister of Justice & Ors* CC-12-2015, instituted by Veritas) and the Act must be amended to reflect this.

Section 12, which states that Africans who want to get married under the Marriage Act (i.e. to enter into a non-customary marriage) must get a certificate from a magistrate in order to do so, should be repealed.

*20. Defence Act [Chapter 11:02]**

The Act should be amended:

- to state that the powers to appoint, promote and dismiss members of the Defence Forces under the Act must be exercised impartially and in order to ensure proper representation of all the diverse peoples of Zimbabwe;
- to prohibit members of the Defence Forces from participating in politics [unlike the Police Act, there is no such provision in the Defence Act at present];

- to provide for members of the Defence Forces Service Commission to serve five-year terms as provided in section 320 of the Constitution.
- to increase the powers of the Defence Forces Service Commission to investigate the conduct of members of the Defence Forces in order to ensure compliance with section 208;
- to comply with the requirement in section 218(2) of the Constitution that the Defence Forces Service Commission should make service regulations; under section 113 of the Act it is the Minister who does so.
- to establish an independent complaints mechanism for dealing with complaints from the public about misconduct on the part of members of the Defence Forces. This is mandated by section 210 of the Constitution.
- to prohibit the deployment/secondment of army personnel in civilian institutions except in times of national emergency (section 208 of the Constitution).

21. District Development Fund Act [Chapter 29:06]

Section 13 of the Act empowers the Secretary for Local Government to impose a surcharge on anyone responsible for loss of the DDF's funds, and section 16 allows the Secretary to make orders for the repayment of money to compensate the DDF for loss or damage to its property. Appeals against surcharges and orders lie to the responsible Minister, not to a court. The amount of any surcharge or order is a debt due to the Fund and can be recovered by court action. Appeals against surcharges and orders should lie to a court, not the Minister.

22. Education Act [Chapter 25:04]

The Act should be amended:

- to reduce the State's now illegal power to control non-government schools (section 75(2) & (3) of the Constitution);
- to include a provision that the State must ensure the paramountcy of the best interests of children in education (section 81(2) of the Constitution);
- to confer on adults who are citizens or permanent residents a right to adult basic education as provided in section 75(1) of the Constitution;
- to set out a framework for the progressive realisation of "further education" for children and adults, as provided for in section 75(1)(b) of the Constitution;
- to make it clear that no child can be excluded from a government school for non-payment of fees if it would deny the child the right to a basic State-funded education guaranteed by section 75(1)(a) of the Constitution;
- to encourage the use of all the official languages in the provision of education, in accordance with section 6 of the Constitution.

*23. Electoral Act [Chapter 2:13]**

The Act should be replaced entirely because it has been amended so often that it is difficult to find out what its provisions actually are. Many of its provisions, to the extent that they can be ascertained, contain errors and anomalies. The new Act should be prepared by or under the supervision of the Zimbabwe Electoral Commission [ZEC] after all interested parties have been consulted.

The new Act, or amendments to the existing Act, should deal with the following issues:

- **The right to vote.** Under section 67(3) of the Constitution, every citizen has the right to vote in all elections. The present Act denies the vote to members of the Diaspora, to prisoners, to hospital patients and even to electoral officers and members of the security services who are deployed outside their constituencies on polling days.
- **Voter registration:** The Act must lay down clear selection criteria for temporary staff used in the voter registration exercise and how ZEC will control them.
- **Removing ZEC's monopoly over the provision of voter education**, which infringes freedom of expression guaranteed by section 61 of the Constitution.
- **The election of the President and Vice-Presidents** under section 92 of the Constitution. The current Act does not provide for their election, though the need for these provisions will not arise until 2023 (see paragraph 14 of the Sixth Schedule to the Constitution).
- **The Electoral Court**. This is constituted as a separate court under the Act, though it is staffed by judges of the High Court. Under section 183 of the Constitution, judges cannot be appointed to sit in more than one court, so their appointment to both the High Court and the Electoral Court is unconstitutional. The simple remedy is to re-create the Electoral Court as a specialised division of the High Court. The Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Bill, 2016 (H.B. 4, 2016) says fatuously that "for the avoidance of doubt" the Electoral Court is a specialised division of the High Court, but the Electoral Act – which states the contrary – must be amended to make this a reality.
- **Electoral disputes**: Rules must be prepared for hearing election petitions, applications and other disputes.

*24. Emergency Powers Act [Chapter 11:04]**

This Act gives the President powers to make regulations when a state of public emergency is in force in terms of section 113 of the Constitution. Regulations can limit the fundamental human rights in Chapter 4 of the Constitution, but only to the extent specified in section 87 and the Second Schedule to the Constitution.

Under section 3(3)(b) of the Act, the President's regulations can authorise other authorities and persons to make orders. In so far as these orders are legislative they must be published in the *Gazette* (section 87(2) of the Constitution). The Act should be amended to make this clear.

*25. Exchange Control Act [Chapter 22:05]**

This Act gives the President power to make "such regulations … as he deems fit" relating to gold, currency, securities, exchange transactions, and the control of imports and exports, the transfer or settlement of property, payments and transactions in relation to debts. As with the Control of Goods Act, the President could control the entire economy through regulations made under this Act.

Section 134(a) of the Constitution prohibits the delegation of Parliament's primary law-making power, which means that regulations should not go further than filling in details. Regulations under this Act go infinitely further, and because the Act allows such regulations to be made it is unconstitutional.

The Act should be repealed and regulations made under it should be re-enacted as Acts of Parliament.

*26. Gazetted Land (Consequential Provisions) Act [Chapter 20:28]**

This Act makes it a criminal offence for people (farmers and their agricultural labourers) whose agricultural land has been seized by the State to continue occupying the land after it has been gazetted for resettlement. For those who were living on the land, this amounts to eviction from their homes. The Act does not provide for a court order to be obtained as required by section 74 of the Constitution, and to that extent is unconstitutional.

27. Geneva Conventions Act [Chapter 11:06]

Section 3 of the Act states that anyone who commits a grave breach of a Geneva Convention is guilty of an offence and, if the offence amounts to wilful killing, liable to be sentenced to death. Under section 48 of the Constitution the death sentence is reserved for men guilty of murder committed in aggravating circumstances, and breaching a Geneva Convention even gravely is not such a murder (And of course if women commit such a breach they cannot be sentenced to death). The provision is unconstitutional and should be amended to provide for life imprisonment as the only penalty. If the death penalty is sought for an offender, he should be charged with murder.

28. Genocide Act [Chapter 9:20]

Section 4 of this Act states that anyone who commits genocide involving the killing of a person is liable "to the same penalty that may be imposed by law for murder". Genocide covers a variety of conduct, and culpable homicide could amount to genocide. As noted under the Geneva Conventions Act, section 48 of the Constitution reserves the death penalty for men who commit murder in aggravating circumstances. This is not the same as genocide, which may be committed by women.

Section 4 of the Act should be amended to make it clear that the death penalty cannot be imposed for genocide. If the prosecution seeks the death penalty for a man who has committed genocide, it should charge him with murder.

29. Guardianship of Minors Act [Chapter 5:08]

The Act needs to be revised so that, as required by section 80(2) of the Constitution, it confers equal rights on mothers and fathers — at present it assumes that fathers are the guardians of children (section 3) and favours mothers in regard to the custody of children.

There should also be a provision in the Act stating that the best interests of children are the paramount consideration in all matters relating to custody and guardianship.

30. Housing Standards Control Act [Chapter 29:08]

The Act permits housing courts (magistrates courts), on the application of local authorities, to order the demolition of houses and the abatement of overcrowding in houses. There is no requirement that local authorities must find alternative accommodation for people whose homes are to be demolished or who are to be evicted from overcrowded buildings. This is inconsistent with section 28 of the Constitution, which enjoins government at every level to ensure that everyone has access to adequate shelter.

31. Immigration Act [Chapter 4:02]

The Act needs to be amended in the following respects:

- To prohibit the detention of a suspected prohibited person for more than 48 hours unless the person is brought before a court and an order obtained for his or her further detention. This is required by section 50(2) of the Constitution. Under section 8 of the Act, such persons can be detained for up to 14 days.
- To permit a court to order the release on bail of a suspected prohibited person who has been arrested – and who under section 50(1)(d) of the Constitution is entitled to release unless there are compelling reasons for his or her continued detention.
- To accord persons arrested under the Act all the other rights to which they are entitled under section 50 of the Constitution, including the right to contact lawyers, friends, etc.

*32. Indigenisation and Economic Empowerment Act [Chapter 14:33]**

Much of this Act is invalidated by section 64 of the Constitution. Particular trades and occupations cannot be reserved for particular racial groups. Furthermore, the regulatory powers which the Act confers on the responsible Minister are too wide and vague: they amount to a delegation by Parliament of its primary law-making power, which is prohibited by section 134(a) of the Constitution.

33. Inebriates Act [Chapter 9:11]

This Act allows courts which convict habitual drunkards ("inebriates") of any offence to order them to be detained in an "inebriates reformatory" for up to three years – in addition to any sentence that may be imposed on them for the offence.

However desirable it may be to remove inebriates from society, the Act seems drastic – unconstitutionally so. An order of detention under the Act is undoubtedly a sentence, and could well amount to a disproportionate sentence if the inebriate is convicted of a relatively trivial offence. Also, there is no provision in the Act for an order to be revoked if the inebriate is cured of his or her alcoholism, so orders cannot be equated with treatment: they seem to be essentially punitive.

The Act should be repealed. There are adequate powers under the Mental Health Act to detain alcoholics who are mentally disordered, as many of them are.

34. Insolvency Act [Chapter 6:04]

Part IV of this Act provides for an insolvent and other people to be interrogated at meetings of creditors, and section 68(4) states that no one so interrogated is entitled to refuse to answer a question on the ground that it might incriminate him or her, while section 68(8) goes on to say that evidence elicited at such an interrogation is admissible in any proceedings instituted against the person who gave it. Under section 69 of the Act, a person who refuses to answer a question can be detained in prison until he or she answers it.

These provisions are quite obviously unconstitutional in that they violate the right to silence and the right against self-incrimination.

*35. Intellectual Property Tribunal Act [Chapter 26:08]**

Clause 5 of the Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Bill, 2016, states that "for the avoidance of doubt" the Intellectual Property

Tribunal is deemed to be a specialised Division of the High Court for the purposes of section 171(3) of the Constitution. That statement creates a considerable doubt, because section 3 of this Act makes it quite clear that the Tribunal is a separate body and does not form part of the High Court.

To avoid the doubt, this Act should be amended as soon as possible.

36. Interception of Communications Act [Chapter 11:20]

This Act needs to be revised to bring it into line with section 57 of the Constitution, which guarantees everyone's right not to have the privacy of their communications infringed. In particular there is a need for the following changes:

- Interception warrants are issued by the Minister of Transport and Communications, and there is no judicial or independent monitoring of their issue or of the interception activities conducted under their authority. They should be issued by a court or at least by an independent judicial officer.
- Some interception warrants are renewable by the Minister, others by the Administrative Court. All should be renewed by the Court.
- Orders for the detention and examination of postal articles are at present issued by the Minister. Again, they should be issued by a court or an independent judicial officer.
- Warrants issued by the Minister are reviewed by the Prosecutor-General, who is hardly impartial. There is no such review of detention orders. Both warrants and orders should be reviewed by an impartial person or body, preferably a judge.

*37. Interpretation Act [Chapter 1:01]**

Section 17(1)(d) & (e) provide that the repeal of an enactment does not affect offences committed under it, so prosecutions can be instituted for such offences after the repeal. This is contrary to section 70(2)(l) of the Constitution, which states that no one may be convicted of an act or omission that is no longer an offence.

38. Judges Salaries, Allowances and Pensions Act [Chapter 7:08]

The Act applies only to judges of the Supreme Court and the High Court. It should be extended to judges of the Constitutional Court, the Administrative Court and the Labour Court since they are all judges for the purposes of the Constitution and their conditions of service should be fixed in the same way.

Under sections 3 and 4 of this Act, the salaries, allowances and pensions payable to judges are fixed from time to time by the President. This is unconstitutional. Section 188(1) of the Constitution states that judges are entitled to the salaries, allowances and other benefits fixed from time to time by the Judicial Service Commission with the approval of the President given after consultation with the Minister of Justice and on the recommendation of the Minister of Finance.

*39. Labour Act [Chapter 28:01]**

This Act, despite having been aligned to the Constitution by the General Laws Amendment Act, 2016, needs further alignment:

- Section 18 gives women employees a right to 98 days' paid maternity leave provided they have been in employment for at least a year. This proviso is not mentioned in section 65(7) of the Constitution and is unconstitutional.

- Although section 65(2) & (3) of the Constitution gives everyone the right to form and join trade unions and to participate in collective job action, the Act distinguishes between registered unions (which have to meet prescribed criteria) and unregistered unions (which do not). Section 30 of the Act states that unregistered unions may not make representations to the Labour Court (i.e. they are denied a right of access to the court) and they may not recommend collective job action (an essential function of a trade union). In both these respects the Act is unconstitutional.
- Section 84 of the Act, as amended by the General Laws Amendment Act, states that the Labour Court established before the date of commencement of the Constitution continues in operation. It can't, because the Labour Court is now established by section 162 of the Constitution.
- Section 84 says that the conditions of service of judges of the Labour Court are fixed by the President after consultation with the Judicial Service Commission. Under section 188 of the Constitution they must be fixed by the JSC with the approval of the President given after consultation with the Minister of Justice and on the recommendation of the Minister of Finance.
- Section 85 of the Act, as amended by the General Laws Amendment Act, is unnecessary because the qualifications of judges of the Labour Court are laid down in section 179 of the Constitution. If the section remains in the Act it should be corrected to refer to Judges of the court, not "Presidents".
- The Act should be amended to make it clear that, as provided by section 69(4) of the Constitution, parties have the right to legal representation in all disciplinary and other proceedings conducted in terms of a collective bargaining agreement. Incidentally, employers should note that the right to legal representation applies to disciplinary proceedings against employees, whether they are conducted under the Labour Act or under rules drawn up for a particular workplace.

*40. Land Acquisition Act [Chapter 20:10**

Although the Act applies to the compulsory acquisition of land, other statutes such as the Urban Councils Act apply its provisions to the acquisition of other property. Although movable property is compulsorily much less often than immovable property such as land, it would be clearer if the Act itself expressly covered the acquisition of all types of property.

In the context of the Constitution, The Act needs to be redrafted and re-enacted to bring it into line with sections 71 and 72 of the Constitution, distinguishing between agricultural land (which is covered by section 72 of the Constitution and can be acquired by a "fast-track" process) and other property (covered by section 71). In order to align the Act, or the new Act, with the Constitution, the following changes need to be made:

- The Act currently distinguishes between "rural land", which is the subject of fast-track acquisition, and other land. The term "rural land" is defined in the Act more widely than the term "agricultural land" in section 72 of the Constitution. This means that the Act allows fast-track acquisition of some land which, under the Constitution, cannot be fast-tracked. The definitions need to be aligned.

- Part VA of the Act, which deals with compensation for improvements on "specially designated land", is unconstitutional in that it does not provide for "fair and adequate" compensation as required by section 71 of the Constitution; instead it lays down the principles that must be followed in assessing such compensation. The right of appeal conferred by the Part is nugatory since it does not allow the Administrative Court to assess the compensation payable.

41. Legal Aid Act [Chapter 7:16]

The Act needs to make it clear that accused persons in criminal cases have a right to legal aid at the expense of the State if substantial injustice would result if they are not given that aid (section 70(1)(e) of the Constitution). Section 8 of the Act should be amended to state that in such cases courts must recommend to the Director of the Legal Aid that the accused be granted legal aid.

42. Marriage Act [Chapter 5:11]

This Act needs to be amended in order to prohibit the marriage of persons under the age of 18. This will bring it into line with sections 78 and 81 of the Constitution, as interpreted by the Constitutional Court in *Mudzuru & Anor v Minister of Justice & Ors* CC-12-2015 (the "Child Marriage case", instituted by Veritas).

43. Matrimonial Causes Act [Chapter 5:13]

The Act must be amended to alter the current position under which the law of the husband's domicile governs rights of both parties in a marriage. Under section 26 of the Constitution, the State must take appropriate measures to ensure that there is equality of rights and obligations of spouses during marriage and at its dissolution.

The amendment will necessitate a reconsideration of section 3 of the Act, which gives courts special jurisdiction in cases where the wife is domiciled in Zimbabwe and the husband is not.

44. Medical Services Act [Chapter 15:13]

The Act should include a provision stating that no one may be refused emergency medical treatment at any hospital, government or private, as provided in section 76(3) of the Constitution. For private hospitals, this should be a condition of Ministerial approval in terms of section 11 of the Act.

*45. Mental Health Act [Chapter 15:12]**

Part IV of the Act, which deals with the detention of "mentally disordered or intellectually handicapped patients who are dangerous" – i.e. sociopaths – needs to be re-examined so that adequate safeguards are in place to ensure that they are incarcerated only if there is no other way to protect the public, and that they are released as soon as they cease to be a danger. As the Act stands, they can be detained for life in a special institution without having committed an offence.

*46. National Biotechnology Authority Act [Chapter 14:31]**

This Act establishes an authority to regulate and control, inter alia, research into biotechnology, i.e. the use of living organisms to make or modify products or improve plants and animals. To the extent that the Act covers research, it limits freedom of research guaranteed by section 61 of the Constitution. The Act should contain a pro-

vision protecting this freedom by ensuring that any controls imposed on research are strictly necessary in the interests of public safety.

47. Official Secrets Act [Chapter 11:09]

This Act protects official "secrets" so fiercely that it clearly infringes freedom of expression guaranteed by section 61 of the Constitution.

Section 3 of the Act makes it an offence to communicate to anyone any information that might be useful to an "enemy", where the communication is done for a purpose prejudicial to the safety or interests of Zimbabwe.

Section 4 is even wider. It makes it an offence for anyone who has information that has been entrusted to him or her by a State official, or which he or she has obtained through employment as a State official, to communicate that information to anyone other than a person whom it is his or her duty to communicate it.

A public officer who discloses the number of cups of tea drunk in his or her Ministry would breach the Act, and under section 7 anyone who harbours or conceals that public officer is also guilty of an offence.

The penalties laid down for these offences are draconian, to say the least.

The Act should be repealed or completely revised.

*48. Parliamentary Salaries, Allowances and Benefits Act [Chapter 2:03]**

The Act

The Act is out of date and still does not comply with the Constitution, despite being amended by the General Laws Amendment Act, 2016. Some inadequacies are indicated below. There is an obvious need for an entirely new Act.

- Section 4 (Benefits for Attorney-General): There is no longer any need for this provision. Under section 340(1)(e) of the Constitution the President has adequate powers fix the remuneration of the Attorney-General. The section should not be repeated in any new Act since the Attorney-General is not strictly a member of Parliament and his remuneration is fixed under the Constitution itself.
- Remuneration of Members and Office-bearers of Parliament: Section 153 of the Constitution distinguishes between the remuneration of the Speaker and the President of the Senate (which must be prescribed "in" an Act of Parliament) and the remuneration payable to Members of Parliament (which must be prescribed "under" an Act of Parliament). Section 6 of the Act merely empowers the President to fix the remuneration of the Speaker and Deputy Speaker and other Parliamentary office-bearers. The Constitution, on the other hand, requires the remuneration of the Speaker (and that of the President of the Senate) to be prescribed in the Act itself.
- The President and Deputy President of the Senate are not mentioned at all in the Act. They should be.
- The Speaker and Deputy Speaker are still referred to as "of Parliament" instead as "of the National Assembly".

49. Plant Pests and Diseases Act [Chapter 19:08]

This Act is another one that originates from the Parliament of the Federation of Rhodesia and Nyasaland, and like the others it is unconstitutional because it gives exces-

sive regulatory power to a Minister, in this case the Minister responsible for Agriculture. Section 134(a) of the Constitution states that Parliament's primary law-making power must not be delegated: this means that an Act of Parliament can confer power to make regulations filling in details that are not covered in the Act itself, but cannot go further.

The Minister's powers under this Act are excessively wide. They include:

- determining the scope of the Act, through the power to prescribe organisms that constitute pests under section 2(2);
- making regulations for the eradication of pests, including the fumigation of vehicles, the destruction of harvests, methods of cultivation, and so on;
- prohibiting the importation of plants, growing media and organisms.

However desirable or necessary these regulations may be, they are unconstitutional.

50. Police Act [Chapter 11:10]

The Act should be amended:

- to update the preamble so that it reflects sections 219 to 233 of the Constitution;
- to repeat what is provided in section 207(3) of the Constitution, that the powers to appoint, promote and dismiss police officers under the Act must be exercised impartially and so as to ensure that all the diverse peoples of Zimbabwe are properly represented in the Police Service;
- to enact a code of conduct to be observed by police officers in the course of their duties. The code could be based on that adopted in 2001 by the Southern African Regional Police Chiefs Co-operation Council;
- to make it a serious disciplinary offence for a police officer to contravene section 208, by acting in a partisan manner or by violating the fundamental rights of members of the public — in particular the rights of arrested or detained persons;
- to provide for members of the Police Service Commission to serve five-year terms as provided in section 320(1) of the Constitution; under section 52 of the Act the President may fix a shorter term.
- to increase the powers of the Police Service Commission to investigate the conduct of police officers in order to ensure compliance with section 208;
- to give the Police Service Commission, rather than the Minister, power to make regulations setting out conditions of service for police officers.
- to confer on the Police Service Commission, rather than the Minister, power to make regulations for the conditions of service of police officers, as required by section 223(2) of the Constitution;
- to establish an independent complaints mechanism for dealing with complaints from the public about misconduct on the part of police officers. This is mandated by section 210 of the Constitution.

*51. Postal and Telecommunications Act [Chapter 12:05]**

Section 61(3) of the Constitution states that broadcasting and other electronic media of communication have freedom of establishment, subject only to State licensing pro-

cedures that are necessary to regulate the airwaves and other forms of signal distribution and are independent of control by the government or political or commercial interests. The Postal and Telecommunications Regulatory Authority (POTRAZ), which is a regulatory body established by this Act, does not conform with section 61(3) in that:

- Its members are appointed by the President after consultation with the Minister. No further consultation is required (section 6).
- POTRAZ must abide by Ministerial policy directives given to it under section 25 of the Act.
- The Minister, after consultation with the President, can reverse, suspend or rescind decisions of POTRAZ (section 26).

52. Presidential Powers (Temporary Measures) Act [Chapter 10:20]

This Act should be repealed since it gives the President plenary legislative powers and amounts to a delegation of Parliament's primary law-making power in contravention of section 134 of the Constitution.

*53. Prisons Act [Chapter 7:11]**

This Act should be amended along the same lines as the Defence Act and the Police Act, and in particular:

- to repeat what is provided in section 207(3) of the Constitution, that the powers to appoint, promote and dismiss prison officers under the Act must be exercised impartially and so as to ensure that all the diverse peoples of Zimbabwe are properly represented in the Prisons and Correctional Service;
- to enact a code of conduct to be observed by prison officers in the course of their duties;
- to include provisions to implement the rehabilitative aspects of incarceration and the need to reintegrate prisoners into society, as outlined in section 227 of the Constitution;
- to make it a serious disciplinary offence for a prison officer to contravene section 208, by acting in a partisan manner or by violating fundamental rights;
- to provide for members of the Prisons and Correctional Service Commission to serve five-year terms as provided in section 320(1) of the Constitution; under section 12 of the Act the President may fix a shorter term.
- to increase the powers of the Prisons and Correctional Service Commission to investigate the conduct of prison officers in order to ensure compliance with section 208;
- to confer on the Prisons and Correctional Service Commission, rather than the Minister, power to make regulations for the conditions of service of prison officers, as required by section 231(2) of the Constitution;
- to establish an independent complaints mechanism for dealing with complaints from prisoners and the public about misconduct on the part of prison officers. This is mandated by section 210 of the Constitution;
- in section 30 of the Act, to make it clear that prison officers cannot in any circumstances use weapons to kill prisoners: no law can permit this (section 86(3)(a) of the Constitution).

54. Private Voluntary Organisations Act [Chapter 17:05]

This Act prohibits charitable organisations and many other types of associations from functioning or seeking funds from any source unless they are registered by the Government. It infringes freedom of association, guaranteed by section 58 of the Constitution, and should be amended to limit its unduly wide scope.

*55. Privileges, Immunities and Powers of Parliament Act [Chapter 2:08]**

This Act was promulgated at a time when Parliament consisted of only the House of Assembly [now the National Assembly], and the amendments made by the General Laws Amendment Act do not rectify this. There are still anomalies in the Act, for example:

- The Act gives the Speaker the same privileges as are enjoyed by Members of Parliament; this is necessary because the Speaker is not a Member of Parliament *[section 126(6) of the Constitution]*. So under the Act the Speaker, like a Member, has the right not to be sued for what he or she says in Parliament and cannot be summoned to court while Parliament is sitting. The President of the Senate who, like the Speaker, is not a Member of Parliament, does not enjoy these privileges.
- A person who has given evidence before the National Assembly can be given a certificate by the Speaker which exempts the person from being sued for defamation arising out of what he or she told the Assembly *[section 13 of the Act]*. The President of the Senate cannot issue such a certificate to persons who give evidence before the Senate.

The General Laws Amendment Act made two amendments to the Privileges, Immunities and Powers of Parliament Act which are highly questionable on constitutional grounds. Both concern Parliament's power to impose punishment on its members and other persons:

- The Act gives Parliament, when sitting as a court, power to impose not only fines for contempt of Parliament but also imprisonment for up to two years in default of payment of the fines. What this means is that if a person who has been convicted of contempt fails to pay the fine imposed by Parliament, he or she will have to serve the period of imprisonment which Parliament has specified as a default punishment.
- The Bill also gives Parliament power to impose an "administrative penalty" of imprisonment on persons who are guilty of contempt.

These provisions are to be inserted in the Act despite section 148(2) of the Constitution, which states:

> "No … Act may permit Parliament or its Members or officers to impose any punishment in the nature of a criminal penalty, other than a fine, for breach of privilege or contempt of Parliament."

56. Produce Export Act [Chapter 18:17]

This Act, like others originating from the Parliament of the defunct Federation of Rhodesia and Nyasaland, confers excessively wide regulation-making powers on the President. Section 134(a) of the Constitution states that Parliament's primary law-making power must not be delegated: this means that an Act of Parliament can confer power to make regulations filling in details that are not covered in the Act itself, but cannot go further.

Under this Act the President can make regulations prohibiting the export of any agricultural produce (which is very widely defined) and imposing quality standards for exported produce.

57. Provincial Councils and Administration Act [Chapter 29:11]

The whole Act needs to be replaced to bring it into line with Chapter 14 of the Constitution, which deals with provincial government and the devolution of powers to provincial and metropolitan councils. Among other things:

- The creation of provinces and the alteration of their boundaries must be done after consultation with the people in the affected provinces and with the Zimbabwe Electoral Commission; the Act does not provide for this.
- The Act gives functions to Provincial Governors, who no longer exist.
- Provincial councils are established by virtue of the Constitution, not the Act.

58. Public Order and Security Act [Chapter 11:17]

In its present form this Act severely restricts freedom of association, and the following amendments should be made as soon as possible:

- Section 25 of the Act, which requires notice of public gatherings to be given to the police, should be amended to make it clear that the police have no power to refuse permission for peaceful gatherings, and that failure to give notice will not render a gathering unlawful or make the convenor liable to criminal prosecution.
- Magistrates, rather than police officers, should be given power to prohibit gatherings, and then only if the gatherings are likely to lead to public disorder.
- Whenever the police use force to disperse a gathering or to quell disorder at a gathering, they should be compelled to prepare a detailed written report and to provide the convenor of the gathering with a copy of the report.

59. Public Service Act [Chapter 16:04]

The Act must be amended to ensure the political neutrality of the Civil Service as required by section 200(5) of the Constitution, and to give effect to applicable principles of public administration laid down by Chapter 9 of the Constitution. The title of the Act should also be changed.

60. Research Act [Chapter 10:22]

This Act permits the Research Council of Zimbabwe to control all types of research conducted in terms of any Act, through its power under section 16(2) and (3) to declare anyone conducting such research to be a research council or institute. This violates freedom of research protected under section 61(1)(b) of the Constitution.

*61. Reserve Bank of Zimbabwe Act [Chapter 22:15]**

Section 317(1)(c) of the Constitution gives the Reserve Bank the objective of formulating and implementing Zimbabwe's monetary policy. Section 45 of this Act says the Bank must do so in consultation with the Minister of Finance. If "in consultation with" has the same meaning as was given to the phrase in the Lancaster House Constitution – i.e. that the Minister must concur in or approve the policy proposed by the Bank – then the section is unconstitutional. It should be amended or clarified.

62. Rural District Councils Act [Chapter 29:13]

The Act must be amended in several respects to give rural district councils the autonomy to which they are entitled under the Constitution and generally to align the Act with the Constitution:

- When establishing districts and altering their boundaries, the President must consult the Zimbabwe Electoral Commission in terms of section 267(2) of the Constitution.
- The Zimbabwe Electoral Commission, not the President, must fix ward boundaries (section 260 of the Constitution).
- The provisions allowing the Minister to appoint councillors must be removed. Under section 265(2) of the Constitution all councillors must be elected. The provision empowering the Minister to appoint members of town boards must similarly be removed.
- The circumstances in which councillors lose their seats must be aligned to section 278 of the Constitution.
- Section 52 of the Act, which allows the Minister to require councils to rescind or alter their resolutions, nullifies the independence of councils guaranteed by section 276 of the Constitution. So too does section 53, which requires councils to submit resolutions to the Minister for approval.
- The provisions (sections 55, 58 and 59) empowering the Minister to appoint members of councils' finance committees, roads committees and ward development committees, also negate the constitutional independence of councils.
- The provisions (sections 66 and 67) requiring councils to get the Minister's approval before appointing employees and fixing their conditions of service infringe councils' constitutional independence.
- Section 69, which requires councils to get the Minister's approval before delegating functions to their employees, also infringes councils' independence.
- There is no provision in the Act requiring councils to get a court order before demolishing homes, as provided by section 74 of the Constitution.
- Section 71 of the Act empowers the Minister to authorise councils to do things additional to those that are specifically authorised by the Act. Under section 276 of the Constitution, councils have all powers necessary to govern local affairs within their areas – in other words, they do not need the Minister's authority to do so.
- Sections 88, 89 and 90 of the Act, which state that councils' by-laws have no legal effect unless the Minister has approved them, are a negation of councils' constitutional independence. Even more so is section 94, which gives the Minister power to make by-laws on behalf of councils.
- The requirements that the Minister must approve levies and rates to be charged by councils negates their independence.
- A provision must be inserted in the Act stating that central government has a duty to ensure that councils are adequately funded, as provided by sections 264 and 325 of the Constitution.
- The provisions of the Act dealing with the suspension of councillors remain unconstitutional.

- Provision needs to be made for the allocation of revenues between provincial and local tiers of government, as required by section 301 of the Constitution.

63. State Liabilities Act [Chapter 8:14]

This Act needs the following amendments:

- Repeal of the provision (section 5) barring execution against state property to satisfy a judgment debt, as this currently perpetuates non-compliance and impunity by state agents of their constitutional obligations. This section was declared unconstitutional recently by the High Court (Mushore J) in the case of *Mangwiro v Minister of Justice & Others*.
- Inclusion of a step-by-step process for the payment of a final court order for damages against government sounding in money, including the attachment and sale in execution of movable property belonging to the state and/or department concerned.

64. Suppression of Foreign and International Terrorism Act [Chapter 11:21]

Section 8 of this Act allows the Minister of Home Affairs to publish a notice in the *Gazette* designating any organisation to be a foreign or an international terrorist organisation for the purposes of the Act; the effect of such a designation renders its members liable to heavy criminal penalties. The designation can be published without prior notice, and no criteria are laid down for the Minister to follow. There is no appeal, except in the form of an application to the Minister to revoke the notice under section 8(4). The section obviously infringes freedom of association. It should be repealed or the Minister's powers under it should be severely curtailed.

*65. Traditional Leaders Act [Chapter 29:17]**

The Act must be amended to bring it into line with sections 283 and 284 of the Constitution, and to provide for provincial assemblies (rather than councils) of chiefs. It should also provide for the Integrity and Ethics Committee referred to in section 287 of the Constitution.

66. University of Zimbabwe Act [Chapter 25:16]

This Act is taken as typical of the other Acts establishing State universities, which are all closely modelled on it. The Act infringes freedom of expression, in the form of academic freedom guaranteed by section 61(1)(c) of the Constitution, in the following respects:

- The President is *ex officio* Chancellor of the University with power to appoint the Vice-Chancellor, the University's CEO. In making the appointment the President must act on the advice of his Cabinet but merely consults the Council of the University (sections 7 & 8 of the Act).
- The Pro-Vice-Chancellors are appointed by the University Council with the approval of the Minister of Higher and Tertiary Education (section 9).
- Thirty out of 44 members of the University Council are appointed by the Minister. Among the other members are the Chancellor (i.e. the President), the Vice-Chancellor (a presidential appointee) and the Pro-Vice-Chancellors (appointed with the Minister's approval).

- The Minister must approve amendments to the University's statutes and must approve ordinances made by the Council.

The government's control over the University is near-absolute.

67. Unlawful Organisations Act [Chapter 11:13]

Section 3 of this Act empowers the President to issue a proclamation declaring any organisation to be unlawful if it appears to him that its activities, or the activities of any of its members, are likely to endanger, disturb or interfere with defence, public safety or public order. A proclamation cannot be questioned in a court, but must be confirmed by a resolution of Parliament within 21 days.

Clearly the section infringes freedom of association (section 58 of the Constitution) and the right of access to the courts (section 69(3)).

*68. Urban Councils Act [Chapter 29:15]**

Like the Rural District Councils Act, this Act must be amended to align the Act with the Constitution and give councils the autonomy to which they are entitled.

- Section 4 of the Act must be amended to require the Zimbabwe Electoral Commission to be consulted whenever the President establishes or abolishes a council or alters its boundaries, and to confer on the Commission rather than the President the function of fixing and altering ward boundaries. Under section 160 of the Constitution it is ZEC's responsibility to fix electoral boundaries. Furthermore, there is inadequate provision in the Act for consultation of the inhabitants of the areas concerned.
- Section 4A of the Act gives the Minister power to appoint councillors. Sections 265(2) and 274(2) of the Constitution requires all councillors to be elected by voters.
- Section 5 of the Act should be amended to require the President to get the consent of the councils involved before he combines councils in extended systems of local government. As it stands the section infringes councils' constitutional autonomy.
- Section 7 of the Act gives the Minister power to vest the administration of a local government area in a person (e.g. a company like Hwange Colliery). This deprives the inhabitants of the local government area of their right to vote for their councillors as envisaged by sections 265 and 274 of the Constitution.
- Section 78(2) of the Act sets out various grounds on which a councillor's seat becomes vacant; they are contrary to section 278 of the Constitution, which lays down very limited grounds on which councillors can be removed from office.
- Section 80 of the Act allows the Minister to appoint caretakers to act in place of a council where, inter alia, all the councillors have been suspended. The Minister's power of suspension under the Act is unconstitutional. The appointment of caretakers by the Minister also contradicts the constitutional provision that councils should be responsible for the management of their own affairs.
- Sections 114 and 114A of the Act deal with suspension and removal of councillors and mayors. Despite recent amendments they remain unconstitutional.

- Councils should have power to appoint and dismiss their own staff, subject to the ordinary labour laws. Provisions in the Act requiring councils to get approval of the Local Government Board, or to appoint staff through the Board, are unconstitutional in that they derogate from the autonomy conferred on councils by the Constitution.
- Under section 198 of the Act the Minister can authorise councils to do things additional to those that are specifically authorised by the Act. Under section 276 of the Constitution, councils have all powers necessary to govern local affairs within their areas – in other words, they do not need the Minister's authority to do so.
- Section 206 of the Act gives the Minister power to direct councils to establish townships, and to establish such townships if councils refuse or fail to do so. This clearly derogates from councils' independence under section 276 of the Constitution.
- Under sections 221 and 222 of the Act councils may engage in income-generating projects and establish co-operatives, but only if the Minister allows them to do so and only if they comply with any conditions imposed by the Minister. These sections, too, are inconsistent with councils' independence guaranteed by section 276 of the Constitution.
- Under section 223 of the Act, councils must co-operate with the State or other persons if the Minister orders them to do so, while under section 225 the Minister can compel councils to combine into joint committees and joint boards. The Minister's powers are inconsistent with councils' constitutional independence.
- The Minister has a veto power over councils' by-laws – i.e they have to be approved by him before they can be promulgated – and under sections 232 and 233 of the Act he can adopt and make by-laws on behalf of councils. Clearly these powers infringe councils' independence.
- Under sections 272 and 273 of the Act councils must get the Minister's permission to levy minimum or special rates. Again, this is inconsistent with councils' constitutional independence.
- There is no provision in the Act requiring the State to ensure that councils are properly funded, as required by section 325 of the Constitution.
- Section 313 of the Act empowers the Minister to give councils policy directives "in the national interest". This clearly infringes councils' independence.
- Under section 314 of the Act the Minister has power to direct councils to reverse, suspend or rescind resolutions and other action taken by them. It would be difficult to think of a provision that more clearly infringes councils' constitutional independence.

69. Vagrancy Act [Chapter 10:25]

This Act empowers the police to arrest vagrants and bring them before a magistrate, who may commit them to "re-establishment centres". The term "vagrant" is widely defined to cover not only homeless wanderers but also people who maintain themselves by begging "or in some other disreputable manner".

The Act clearly infringes vagrants' right to liberty and human dignity. The powers of the police and magistrates need to be curtailed.

*70. War Veterans Act [Chapter 11:15]**

This Act must be extended to accord veterans their "due recognition" and the right to basic health care provided for in section 84 of the Constitution.

*71. Water Act [Chapter 20:24]**

There should be a provision in this Act stating that the right to water is a fundamental right, as provided in section 77 of the Constitution.

*72. Zimbabwe Council for Higher Education Act [Chapter 25:27]**

This Act prohibits anyone from operating a private institution of higher education, including a university, unless it is provisionally registered by the Council or permanently registered by the President. Registration is dependent on the Council or the President being satisfied that establishment of the institution is in the interests of higher education in Zimbabwe.

This conflicts with section 75(2) of the Constitution, which gives everyone the right to establish and maintain educational institutions of reasonable standards.

73. Zimbabwe Gender Commission Act [Chapter 10:31]

Although this Act is intended to make a constitutional commission operational, it contains at least two provisions that conflict with the Constitution:

- Section 16 gives the Minister of Women's Affairs power to issue policy directives to the Commission, and the Commission is obliged to comply with them. This infringes section 235 of the Constitution, which states that the independent commissions (and the Gender Commission is one of them) are independent and not subject to the direction or control of anyone.
- In terms of paragraph 3(2) of the First Schedule to the Act the President can require a commissioner to vacate his or her office if he or she has been absent from three meetings of the Commission. This conflicts with section 237 of the Constitution, which sets out the only grounds on which commissioners can be removed from office – failure to attend meetings is not one of them.

*74. Zimbabwe Human Rights Commission Act [Chapter 10:30]**

The Act was promulgated when the Lancaster House Constitution was still in force and it does not reflect some of the provisions of the new Constitution. In particular, the Act makes no provision for the following functions which are conferred on the Commission by section 243 of the Constitution:

- ensuring observance of human rights in Zimbabwe;
- protecting the public against abuse of power and maladministration;
- directing the Police to investigate suspected crimes involving human rights violations;
- requiring State agencies and other persons to provide information and reports to the Commission (this function is conferred on the Commission by section 244 of the Constitution).

Furthermore, there is no provision in the Act for the Commission to co-operate with other constitutional commissions such as the Gender Commission and the National Peace and Reconciliation Commission. Such co-operation is essential if the independent commissions are to carry out their functions effectively.

There are many other inconsistencies between the existing Act and the Constitution, though most of them are fairly minor. For example:

- Section 5 of the Act does not state that the gender of the Commission's deputy chairperson must be different from that of the chairperson, as required by section 320(4) of the Constitution.
- Under section 8 of the Act the Commission must submit its annual report to the Minister within 60 days after the end of each year. Section 323 of the Constitution, on the other hand, gives the Commission 90 days.
- Paragraph 4 of the First Schedule to the Act sets out the circumstances in which commissioners must relinquish their office. These are inconsistent with section 237 of the Constitution. By the same token, the disqualifications for appointment as commissioner, set out in paragraph 2 of the same Schedule, are probably also unconstitutional.

By virtue of sections 331 and 46 of the Constitution, all constitutional provisions, including those establishing the Commission and conferring functions upon it, must be interpreted in the light of international law and all treaties and conventions to which Zimbabwe is a party. Hence any legislation which supplements those constitutional provisions must conform to international law and the treaties and conventions which bind Zimbabwe.

The standards to which the Commission should conform are embodied in a document known as the Paris Principles, which were adopted by the United Nations Human Rights Commission in 1992 and by the United Nations General Assembly in 1993.

The ZHRC must comply fully with the Paris Principles if it is to take its place internationally in the field of human rights. In particular, compliance will give it access to the UN Human Rights Council and the African Commission on Human and Peoples' Rights:

- only fully compliant national human-rights institutions (NHRIs) are recognised by the UN Human Rights Council and permitted to make statements or submit documents to the Council;
- the African Commission on Human and Peoples' Rights has made conformity with the Paris Principles one of the conditions that must be met by an NHRI seeking special observer status with the African Commission. This status entitles an NHRI to be invited to sessions of the African Commission, to be represented in its public sessions, to participate in its deliberations on issues which are of interest to it and to submit proposals to the Commission.

The Co-ordinating Committee has drawn up a set of "general observations" to guide it in deciding whether or not an NHRI conforms to the Paris Principles. Although the existing Act complies with quite a number of these general observations, it fails to comply with several important ones, in particular the following:

- An NHRI must be given as broad a mandate as possible, and be able to monitor any situation of violation of human rights which it decides to take up.

  The existing Act does not meet this requirement. The only human rights violations which the Commission is empowered to investigate are those which infringe the Declaration of Rights in the Constitution or an international convention which has been "domesticated" as part of Zimbabwean law. Most such conventions and treaties have not been domesticated and probably never will be: examples are the International Convention on Civil and Political

Rights, the African Charter on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women.

- An NHRI must be able to advise the Government, Parliament and any other competent body on specific violations, as well as on issues related to legislation and on general compliance with and implementation of international human rights instruments.

  The existing Act contains no provision for the Commission to advise the Government or Parliament on whether legislation or Bills comply with international human-rights standards.

- Some NHRIs are given quasi-judicial powers.

  The Commission has no such powers under the existing Act.

- An NHRI must be able to hear any person and obtain any documents and information necessary for assessing questions falling within its mandate.

  There is nothing in the existing Act allowing the Commission to obtain documents and information.

- An NHRI must develop relations with NGOs that promote and protect human rights.

  NGOs are not mentioned in the existing Act.

All these deficiencies need to be met.

NEW ACTS THAT MUST BE ENACTED TO COMPLY WITH CONSTITUTION

In order to bring our law into line with the Constitution, several new Acts need to be promulgated:

1. Citizenship and Immigration Board

An Act must provide for a Citizenship and Immigration Board to be responsible for granting and revoking citizenship, and issuing residence and work permits (*section 41 of the Constitution*).

2. Provincial and metropolitan councils

A new Act must set up provincial and metropolitan councils in accordance with Chapter 14 of the Constitution, in particular, sections 270(2) and 273. An Act must also:

- facilitate co-operation between central government and provincial councils and local authorities (*section 265(3) of the Constitution*);
- ensure the political neutrality of employees of provincial councils and local authorities (*section 266(4) of the Constitution*);
- establish independent tribunals to remove from office chairpersons of provincial councils, and mayors and councillors of local authorities (*sections 272(7) and 278(2) of the Constitution*).

3. Codes of conduct for public officers

One or more Acts of Parliament must prescribe codes of conduct for Vice-Presidents, Ministers, Deputy Ministers and all public officers (*sections 106 & 198 of the Constitution*).

4. Disclosure of assets by public officers

An Act must provide for the disclosure of assets by all public officers, including the President, Ministers, judges, permanent secretaries, army officers — perhaps even office messengers (*section 198 of the Constitution*).

5. Corporate governance for parastatals and government enterprises

Again under section 198 of the Constitution, an Act of Parliament must lay down standards of good corporate governance to be observed by State-controlled entities, including companies controlled by the State.

All the Acts setting up parastatals must be looked at and amended where necessary to provide term-limits for chief executive officers and performance-related contracts (*section 316 of the Constitution*).

6. Independent complaints mechanism for security services

An Act of Parliament must establish an effective and independent mechanism for investigating complaints against the police and other members of the security services (*section 210 of the Constitution*).

7. Alienation of agricultural land by the State

An Act of Parliament must lay down fair principles for the alienation and allocation of agricultural land by the State (*section 293(3) of the Constitution*).

8. Parliamentary oversight of government expenditure

An Act of Parliament must provide for Parliament's oversight of expenditure by the State and by all institutions of government, including parastatals and provincial councils and local authorities (*section 299 of the Constitution*).