

# Executive Powers

## Introduction

In the previous paper we outlined the doctrine of separation of powers between the three branches of government, namely the Executive, the Legislature and the Judiciary. We noted that although the doctrine shows how important it is for the three branches to be autonomous, it does not deal with the nature and extent of the powers that each of those branches should exercise within their own spheres. In this and subsequent papers we shall deal with the powers of the individual branches, starting with those of the Executive.

The Executive, the branch of government headed by the President, is currently the most powerful of the three branches. The President and his Ministers control the Defence Forces, the Police and the civil administration; they represent the country in its dealings with foreign governments; and generally they are responsible for running the day-to-day affairs of the country. The Executive is the branch of government which impinges most frequently on the lives of ordinary people.

## What are the Powers of the Executive?

Under the present Zimbabwean Constitution, the President's powers can be grouped roughly into the following categories:

- Power over the Legislature, namely the power to summon, adjourn and dissolve Parliament, and the power to appoint members of Parliament.
- Power over the Judiciary, namely the power to appoint judges and other members of the judiciary.
- Power to appoint members of the Executive, namely Cabinet Ministers and administrative officers such as public servants.
- Power to appoint ambassadors and members of constitutional Commissions.
- Power over the security forces, namely the Defence Forces and the Police.
- Legislative power, namely the power to enact legislation.
- Power to declare war and make peace
- Miscellaneous powers, such as the exercise of the prerogative of mercy and the power to confer honours and precedence.

In addition to the specific powers mentioned in the Constitution, the President is vested with "the executive authority of Zimbabwe". This seems to give him power, through his Ministers, to run the general administration of the country.

The Global Political Agreement [GPA] has not altered the nature of these powers, though it has made some changes to the persons who can exercise them [i.e. the President or Prime Minister or the Cabinet] and the way in which they are exercised [i.e. with or without consultation].

## Need for restraints on Executive's powers

The fundamental issue facing the Constitution Parliamentary Select Committee [COPAC] in its preparation of a new constitution for Zimbabwe is how to limit the powers of the Executive so as to create a real democracy with a proper balance between the three branches of government, while at the same time ensuring that the country is run efficiently. The question of who should be vested with executive

powers — President or Prime Minister — though an important one, is not so crucial. If there are too few limits or safeguards on the exercise of executive power then the country may develop into a dictatorship, whether the power is exercised by a President or a Prime Minister; too many restrictions, on the other hand, may lead to governmental paralysis and anarchy.

It is obvious, particularly in the light of Zimbabwe's history, that constitutional restraints must be imposed on the powers of the Executive, whether those powers are exercised by a President, a Prime Minister or a Cabinet of Ministers. The reason is clear: power tends to corrupt, and absolute power corrupts absolutely. The fewer restraints there are on Executive powers, the more likely it is that those powers will be exercised corruptly or in such a way as to violate peoples' rights, and the more likely it is that the Executive will try to extend its powers unlawfully.

On the other hand, it is unwise to restrain the Executive too much. The Executive must be able to govern the country, which means not only managing its day-to-day affairs but also coping with crises when they occur. The Executive must be able to act promptly and effectively in a crisis, though not necessarily unilaterally or in such a way as to violate peoples' fundamental rights and freedoms. Crises have overwhelmed even old-established democracies such as France: in 1958 the French Fourth Republic proved incapable of dealing with the Algerian war and had to give way to General de Gaulle and the current Fifth Republic. Crises are particularly dangerous for a young democracy such as Zimbabwe, and the institutions of State must be strong enough to overcome them.

Where the constitution requires the Executive to co-operate with other branches of government, it should contain provisions that facilitate such co-operation in order to avoid governmental paralysis or gridlock like that in the United States between President and Congress over a budget to deal with the financial crisis of 2008.

So a balance must be struck between an Executive whose powers are limited to prevent it evolving into a dictatorship and one which has enough power to govern effectively.

### **Nature of restraints needed**

What sort of restraints should the new constitution impose on the Executive, to give Zimbabwe an effective government while preserving democracy, separation of powers and the rule of law?

There are several possible restraints, which may be grouped very roughly under three broad headings:

- Restraints on the nature of the powers that may be exercised by the Executive.
- Restraints directed at the persons who exercise Executive powers.
- Restraints directed at the way in which Executive powers are exercised.

### **Extent of Powers over Arms of Government**

#### **1. Power over the Legislature**

Under this heading falls the President's power to appoint members of the Senate and to summon, adjourn and dismiss Parliament.

##### **(a) Power to appoint Senators**

The President appoints five Senators directly and an additional 28 indirectly through

his power to appoint Provincial Governors and chiefs. Under the Global Political Agreement (GPA) he can appoint an additional six Senators nominated by the MDC formations. Quite clearly this power violates the doctrine of separation of powers, which envisages an independent legislature. Under the new constitution all Senators (assuming there is a Senate) should be elected directly by the people or elected or appointed by interest groups who are not themselves part of the Executive.

**(b) Power to summon, adjourn or dissolve Parliament**

Under the present Constitution the President can summon, prorogue [i.e. stop Parliament sitting until he re-summons it], and dissolve Parliament [in which case there has to be a new election] at any time, though under the GPA he must now get the Prime Minister's consent before dissolving Parliament. The only limit which the Constitution places on these powers is to require Parliament to sit at least once every six months.

Careful consideration should be given to abolishing or severely restricting this power in the new Constitution. It limits Parliament's independence, and has a chilling effect on freedom of debate because members may fear that if they discuss sensitive matters the Executive will respond by proroguing or dissolving Parliament.

In many countries, for example the United States and South Africa, the legislature is elected for a fixed term, and during its term can decide when and how often it sits. Even the United Kingdom, where our President's current power originates, is reconsidering the right of the Executive to dissolve Parliament before its term has expired. Zimbabwe should reconsider it too.

**2. Legislative power, namely the power to enact legislation**

In Zimbabwe, the President and his Ministers have extensive legislative powers conferred on them by various Acts of Parliament. The most notorious of these Acts is the Presidential Powers (Temporary Measures) Act, which allows the President to make regulations on virtually any subject, if he thinks urgent action is needed in the general public interest. The only limits on his power are, firstly, that he must revoke his regulations if Parliament requires him to do so [it has never done this]; and, secondly, that the regulations expire after six months [though they can be replaced by similar ones].

The Presidential Powers (Temporary Measures) Act is not the only Act that gives extensive legislative powers to the President: some old statutes, particularly those inherited from the Federation of Rhodesia and Nyasaland, are almost as broad. The Control of Goods Act, for example, empowers the President to make regulations controlling the import, export, distribution, rationing, disposal, purchase and sale of goods, as well as the prices of goods and the charges for services relating to goods. So wide is the Act, that the President could, if he were so minded, use it to make regulations controlling the entire economy. Other statutes giving the President similarly broad powers are the Exchange Control Act, the Animal Health Act and the Plant Pests and Diseases Act. Many other Acts give Ministers wide powers to make regulations and statutory instruments.

All these statutes should be repealed or amended to reduce Executive legislative powers, and the new Constitution should try so far as possible to prevent Parliament from delegating its legislative powers to the Executive. Any delegation should extend

no further than allowing Ministers to fill in details in Acts, for example specifying forms to be used in applications, etc. In addition, the new constitution should require the President and Ministers to consult widely with interested parties before making regulations; at the very least this may improve the efficacy of their regulations.

### **3. Power over the Judiciary**

#### **(a) Power to appoint judicial officers**

*Appointment of judges* - under the present Constitution, the President appoints judges of the Supreme Court and the High Court after consultation with the Judicial Service Commission; he does not have to take the Commission's advice, but if he goes against it the Senate must be informed [though the Senate cannot compel him to revoke appointments made contrary to the Commission's recommendation]. Judicial officers presiding over specialised courts such as the Administrative Court and the Labour Court are similarly appointed by the President after consultation with the Judicial Service Commission — though there is no provision for the Senate to be informed if the President goes against the Commission's advice. Since the inception of the GPA, the President has, at least in theory, had to get the Prime Minister to agree to judicial appointments. For all practical purposes this obligation to consult or agree is impossible to enforce.

*Appointment of magistrates* – magistrates, the workhorses of the judicial system, are appointed by the Judicial Service Commission under the Magistrates Court Act.

The Judicial Service Commission itself is composed entirely of presidential appointees, though again, since the GPA came into force, the President has had to get, again in theory, the Prime Minister's approval for these appointments.

It is therefore fair to say that all judicial officers in Zimbabwe owe their appointment, directly or indirectly, to the President. In view of this it is no surprise that the judiciary has been regarded as unduly submissive towards the Executive; the only surprise is that it ever showed any independence.

This is a most unsatisfactory position because an independent judiciary is one of the pillars of a free and democratic State. To ensure judicial independence, the new constitution must remove or dilute presidential involvement in the appointment of judicial officers and Judicial Service Commission members. This could be done by:

- requiring judges to be selected by the Judicial Service Commission through an open process involving the publication of clear guidelines for the selection of candidates and the ratification of appointments by Parliament;
- making an all-party committee of Parliament responsible for selecting all or most of the members of the Judicial Service Commission, again through an open process involving the publication of clear guidelines for selection.

The current Supreme Court and High Court judges should be required to go through the new selection process if they are to retain their posts under the new Constitution.

#### **(b) Power to control judicial conduct**

The present Constitution goes some way towards ensuring judicial independence, that is limiting the Executive's influence over the way in which judicial officers decide cases. It states that members of the judiciary are not subject to anyone's direction or control when exercising their judicial authority and that a judge's office cannot be

abolished while he or she holds that office, and prohibits any reduction in judges' salaries and allowances. While all these provisions should be repeated in the new Constitution, something more is needed, for the following reasons:

- The provisions apply only to judges, not to magistrates or to the judicial officers who preside over specialised courts such as the Administrative Court. They should apply to all judicial officers.
- The provisions have not prevented the Executive from providing judges with farms expropriated from commercial farmers and with houses and television sets obtained through the Reserve Bank's "quasi-fiscal activities". Judges who have accepted these gifts cannot be expected to rule impartially on the Government's land redistribution programme or the legality of the Reserve Bank's "quasi-fiscal activities". The new constitution should mandate Parliament or the Judicial Service Commission to prepare a code of conduct for judges and all other judicial officers, and to ensure that it is strictly enforced.
- There is nothing in the present Constitution that specifically requires the Executive to respect or enforce judgments and orders issued by the courts. As a result, the Executive has frequently ignored judgments given against it. The new constitution should contain provisions for Parliament to censure public officers who fail or refuse to comply with judgments, and perhaps should disqualify them from holding further public office.

#### **4. Power to appoint Ministers, administrative officers and other members of the Executive**

Under the present Constitution, the President appoints Vice-Presidents, Ministers and Deputy Ministers. His discretion in doing so has been recently limited by the GPA: vice-presidential appointments must be made from nominees of his own party, and ministerial and deputy ministerial posts are allocated between the parties to the GPA in accordance with that Agreement.

There is nothing wrong in principle with vesting the power to make these appointments in the President or whoever else is head of government under the new Constitution. The person in charge of the government must be able to appoint people to share political responsibility for running the country's affairs. His or her discretion in making these appointments will always be limited or at least affected by political considerations, and it is debatable to what extent the Constitution should impose further limits. Under the present Constitution, Ministers must be Members of Parliament, and if they are not members when they are appointed they must somehow obtain a parliamentary seat within three months, so the President's choice of Ministers is restricted to people who are or can become members of the Legislature and are answerable to the Legislature. The same position prevails in most of our neighbouring countries, though South Africa allows two Ministers to be appointed from outside Parliament, Botswana four. If our new constitution were to allow any Ministers to be appointed from outside the Legislature then it would be desirable for their appointment to be subject to approval by the Legislature. All Ministers even if not members of the legislature must have the right to speak in Parliament and must be available to answer questions in Parliament to ensure their accountability.

Under the present Constitution, administrative officers — i.e., members of the Public Service — are indirectly appointed by the President as their appointments are governed by an Act of Parliament, namely the Public Service Act, which confers the power of appointment on the Public Service Commission, which is itself appointed by the President [*see below*]. The Attorney-General and Permanent Secretaries, are appointed directly by the President after consultation with the Commission, though since the GPA, when appointing them the President is supposed to get the agreement of the Vice-Presidents, the Prime Minister and the Deputy Prime Ministers.

While there can be no objection to the President appointing politicians as Ministers to assist him in running the government, appointing members of the civil service is a very different matter. They are supposed to form the permanent administration of the country, and if the political head of government chooses them either directly or indirectly then political considerations will inevitably influence their appointment. Although suggestions have been made for provision of parliamentary oversight of senior appointments by requiring them to be ratified by Parliament, that also might introduce an undesirable political element into what should be a non-partisan process. Under the new constitution, the appointment of at least senior members of the civil service and in particular the Attorney-General and Permanent Secretaries should be made by an independent commission.

#### **5. Power to appoint members of constitutional commissions**

Under the present Constitution, the President appoints the members of all constitutional commissions. In appointing members to the service commissions — the commissions responsible for the security forces and the Public Service — he must act on the advice of his Cabinet and with the approval of the Prime Minister. When appointing members of the so-called independent commissions, namely the Electoral Commission, the Anti-Corruption Commission, the Media Commission and the Human Rights Commission, he is limited to nominees chosen by Parliament's Standing Rules and Orders Committee — and under the GPA in theory he must also get the consent of Cabinet and the Prime Minister to these appointments.

Obviously, the new constitution must ensure that the members of all constitutional commissions are appointed through a process that enables the commissions to exercise their functions even-handedly and without partisan interference. The procedure currently applicable to the independent commissions should be extended to the service commissions. It could also be improved by involving the public more closely in the nomination process, for example by:

- publishing the criteria for selection of candidates, so that the public know, and can criticise, if necessary, the basis on which candidates will be considered;
- publishing lists of candidates for nomination, and inviting the public to comment on those candidates;
- selecting candidates through interviews conducted in public.

In addition, the selection of candidates should be put in the hands of a special parliamentary appointments committee rather than the Standing Rules and Orders Committee, as suggested in the NCA draft constitution and the model constitution produced by the Law Society.

## **6. Power to appoint ambassadors**

Under the present Constitution the President appoints ambassadors acting on the advice of Cabinet; under the GPA he must get the agreement of his Vice-Presidents, the Prime Minister and the Deputy Prime Ministers to all such appointments.

Ambassadorial appointments fall somewhere between Ministerial appointments, which are essentially a political matter, and appointments to the civil service, which should be non-partisan. Ambassadors are supposed to represent the country as a whole, but must also be able to communicate the views of the government currently in power. Under the new Constitution, therefore, the head of government should continue to choose ambassadors, acting on the advice of his or her Cabinet, but the appointments should be subject to parliamentary approval.

## **7. Power over the Defence Forces and the Police Force**

Under the present Constitution the President has considerable personal control over the security forces. He is the supreme commander of the Defence Forces and appoints their operational commanders after consultation with the Minister of Defence. He appoints the Commissioner-General of Police after consultation with a board consisting of the chairperson of the Public Service Commission, the retiring Commissioner-General, and one permanent secretary. These powers of appointment have been reduced somewhat by the GPA, under which the President must, again in theory, get the Prime Minister's consent to "key appointments ... under and in terms of the Constitution", and must get the consent, not only of the Prime Minister, but also of his Vice-Presidents and Deputy Prime Ministers when appointing people to "senior government positions". It is not clear which of the two provisions concerned applies to appointments of members of the security forces, but either of them would, if put into practice, curtail the President's discretion in making such appointments.

It is obviously undesirable for the head of government to have unrestricted control over the coercive forces of the State, whether through his power of appointment or through a power to deploy those forces. The new Constitution must ensure that:

- Defence Forces and Police Force commanders are appointed by an independent, impartial process similar to that outlined above for members of the civil service;
- there is civilian oversight over the deployment of the Defence Forces either inside or outside the country. This can be achieved by:
  - prohibiting any deployment of the Defence Forces without the consent of the Cabinet as a whole, and
  - requiring parliamentary ratification as soon as possible after the Defence Forces have been deployed.
- the conduct of the Police Force is likewise subject to civilian control, which can be ensured by:
  - creating a Police Authority composed of members of Parliament and civil society, to give policy directives to the Commissioner-General of Police, and
  - creating a Police Complaints Commission, to investigate complaints against the Police.

[The Constitution should at least mandate the establishment of these two bodies while leaving details of their composition and functions to be regulated by an Act of Parliament.]

And like the judges, senior security forces officers should be required to go through a new selection process if they are to retain their posts under the new constitution.

## **8. Miscellaneous powers**

(a) The power to declare war and make peace This power is specifically mentioned in the present Constitution and again in the GPA. It should not be mentioned in the new constitution because, as a member State of the United Nations, Zimbabwe has renounced the use of force. The South African, Zambian and Botswana constitutions do not mention such a power.

(b) Prerogative of mercy Under the present Constitution the President exercises the prerogative of mercy [i.e. the power to grant amnesties and pardons and to reduce sentences imposed by courts] and is supposed to do so on the advice of Cabinet. This means that political motives can influence its exercise — as undoubtedly they have done in the past. The new Constitution should limit the exercise of the prerogative of mercy to cases where an independent body has recommended it. Provisions for this independent body should be made in the Constitution with provision for an enabling Act to lay down guidelines for the exercise of the prerogative.

(c) Power to confer honours and precedence As with the prerogative of mercy, this power should be exercised only on the recommendation of an independent body, again making provision for this body and for an enabling Act to lay down guidelines. Otherwise honours such as the conferring of National Hero status will continue to be awarded on a partisan basis.

Finally: one strong check on excesses by the executive is to oblige all public officers without exception to make a full, regular and public disclosure of their assets.

## **Restraints on the Persons who Constitute the Executive**

### **1. Elections**

Regular, free and fair elections make President and Ministers accountable to the electorate and constitute the most important check on their conduct. Politicians who know that within five years or less they must account to the people for what they have done will tend to moderate their excesses. Elections are an essential component of democracy and that is why our Constitution makes the right to participate in free, fair and regular elections a fundamental human right. Nevertheless, elections are not in themselves an adequate safeguard against dictatorship, the perpetuation of a political elite or corruption:

- Electoral procedures are easily manipulated. Voters' rolls can be filled with the names of fictitious/deceased people to facilitate vote-rigging. State resources can be misused to ensure the return of an incumbent President and ruling party.
- For an election to be free and fair, the political atmosphere must be conducive to participatory democracy. Hence there must be freedom of conscience, so that people are not persecuted for their beliefs; there must also be freedom of speech and freedom of association, sufficient to allow opposing views to be given a full hearing and for opposition parties to flourish. To the extent that the law restricts these freedoms (for example, to prevent defamation, obstruction of the streets and armed insurrection) the law must be moderate and clear so that everyone knows precisely what they can and cannot do. In brief, there must be tolerance for the views and attitudes of other people, and an acceptance that the incumbent President



and party can lose an election and opposition candidates can be returned and take over the reins of government.

In the absence of a tolerant political atmosphere, elections will do little to curb the excesses of the Executive.

## **2. Term-limits**

Restricting the number of times a person may hold a particular post is another important check on the exercise of Executive power, as has been recognised since the days of ancient Rome. If politicians know that their time in office will come to an end within a relatively short period, they are more likely to moderate their conduct so as to avoid retribution when they cease to hold office.

Because term-limits are so effective in curbing one-man rule, rulers have frequently tried to abolish them, sometimes unsuccessfully (Zambia's President Chiluba in 2001), sometimes successfully (Uganda's President Museveni before the 2006 elections).

To be truly effective, therefore, term-limits must be firmly entrenched in the Constitution. *[It should be noted that, strictly speaking, term-limits are undemocratic in that they prevent voters from re-electing a person whom they wish to continue in office. While this may be true, the beneficial effects of term-limits in preventing permanent one-man rule and moderating the conduct of rulers while they are in power far outweigh any technical quibbles about their democratic nature.]*

## **3. Diffusing Executive power**

Many of Zimbabwe's problems have stemmed from the concentration of Executive power in the hands of one person. Although the Constitution requires the President to carry out most functions in accordance with the advice of a Cabinet of Ministers (and, under the GPA, in some cases with the consent of the Prime Minister) in practice he has tended to make most decisions himself. Reasons for this include:

- The President appoints Cabinet Ministers, without having to take advice from anyone (though under the GPA Ministers from the two MDC formations are nominated by those formations). Ministers who owe their appointment and political futures to the President are naturally reluctant to cross him.
- By virtue of a dubious convention, Cabinet's advice is officially conveyed to the President through documents that are signed by only two Ministers, and the advice is presumed to be that of the Cabinet. There seem to be no safeguards to ensure that the documents do indeed reflect the decision of the whole Cabinet, nor is there provision for the Cabinet to ratify advice given in the documents. As a result, it is possible for the President to by-pass his Cabinet.
- The President heads a former liberation movement with a limited tolerance for internal dissent. Power within the party is wielded by the President and a circle of close associates chosen by himself. Ministers who are appointed from such a party are unlikely to risk their careers by resisting the President's ideas.

A new constitution must try to diffuse Executive power by requiring Executive decisions to be taken collectively rather than by a single individual. Some ways in which this might be done are the following:

1. Increasing the powers of the Cabinet: This can be done by reducing the President's ability to act unilaterally, i.e. by reducing the number of decisions that the

President can make on his own initiative. For example, the power to dissolve or prorogue Parliament, if it is to be vested in the Executive at all, should not be given to the President alone. He should have to do so on the recommendation of Cabinet. Parliament should be elected for a fixed term, as in the United States, and should be able to fix its own sitting periods during that term.

2. Ensuring that Cabinet decisions are really made by the Cabinet: The convention mentioned above, whereby Cabinet decisions are conveyed to the President by documents signed by two Ministers, should be scrapped. A transparent procedure should be evolved for transmitting Cabinet's decisions to the President, and for reporting back to Cabinet how and when the decisions were transmitted to the President and the action he has taken on them. The new constitution should forbid the President from acting without the authority of the full Cabinet. If the Cabinet is to be allowed to delegate its advisory function to any of its individual members, the circumstances in which it may do so should be spelled out in the Constitution and any such delegation should be reported to Parliament.

3. The size of the Cabinet should be limited by the Constitution: It may seem paradoxical to suggest reducing the size of the Cabinet in order to make Executive decisions more collective, but if the Cabinet were reduced to, say, ten members it would be a more efficient decision-making body than Zimbabwe's present large unwieldy Cabinet. A smaller Cabinet would be able to reach decisions promptly and ensure that its decisions were carried out; in brief, it would be more businesslike. It would not be easy for the President to circumvent such a Cabinet. It would also be less easy for the President to establish a "kitchen cabinet" or "inner cabinet" of a few trusted Ministers and advisers, to make decisions which should properly be made by the full Cabinet.

4. Executive powers should be divided between different people: Rather than vesting all Executive power in one person, even if that person has to act on the advice of a body such as the Cabinet, it would be better to divide Executive powers between, say, a President and a Prime Minister. This, at least nominally, is the position in Zimbabwe under the GPA but the division of powers is so vaguely expressed as to be meaningless (the GPA simply says that both the President and the Prime Minister "exercise executive authority"). Creating two or more centres of Executive power would prevent a concentration of power in the hands of one person. The French Constitution, for example, divides power between the President of the Republic and the Prime Minister. There are at least two ways in which this could be done in Zimbabwe:

- The President could be given limited powers to be exercised on his or her own initiative, for example the power to dissolve Parliament, call a general election and choose a Prime Minister. The other functions, for example the selection of Ministers and the right to preside over Cabinet meetings, would be conferred on the Prime Minister.
- Responsibility for the Defence Forces and the Police could be given to an independent Defence Service Commission and Police Service Commission established by the constitution.

### **3. Subordinating the Executive to the Legislature**

In the original Lancaster House constitution, Executive power was vested in the Prime Minister, who was a member of the House of Assembly chosen by the President as the person best able to command a majority in the House — usually the leader of the majority party in the House. The President himself was elected by Parliament. This arrangement went some way to ensure that the Executive was answerable to Parliament because neither President nor Prime Minister had an independent mandate from the people.

The South African constitution has a variant of this idea. The State President, who is an executive President, is elected by Parliament so he too does not have an independent mandate from the people.

Both arrangements give Parliament, at least nominally, the ability to rein in the Executive, but need to be backed up by further procedures (such as impeachment against individual members of the executive and votes of no confidence in the Government) if Parliament is to be truly able to curb Executive power.

#### **Restraints on the Way Executive Powers are Exercised**

Although the present Constitution states that the President has a duty to uphold the Constitution and the law, it does not develop this by specifying how the President should exercise his powers. Indeed, it provides that courts cannot enquire into the way in which the President has exercised his discretion, nor can they enquire into whether any advice was given to him, a provision the new constitution should not contain. Executive decisions of Ministers, on the other hand, are generally reviewable by the courts and may be set aside if they contravene a statute or are grossly unreasonable or were arrived at by illegal or unfair practices.

Section 18(1a), inserted in the present Constitution by Amendment No. 19, goes a little further by stating that *“Every public officer [a term which includes the President and Ministers] has a duty towards every person in Zimbabwe to exercise his or her functions ... in accordance with the law and to observe and uphold the rule of law.”* This provision not only requires all public officers to observe the law, but seems to give all Zimbabweans a right to take legal action to ensure that they do so.

The new constitution should develop the idea behind section 18(1a) by specifying measures to ensure that all public officers observe the section and through which Zimbabweans can enforce their rights under the section. These could include the following (the first two are taken from the Law Society’s model constitution):

- A provision should be inserted in the Declaration of Rights guaranteeing Zimbabweans the right to administrative justice, including the right to be given reasons for all decisions affecting them, and requiring Parliament to enact a law that allows judicial review of all administrative decisions, including those made by the President.
- The mechanisms for enforcing the Declaration of Rights should be strengthened, by specifying that all courts (not just the Supreme Court or the Constitutional Court) may issue orders protecting fundamental rights and freedoms and extending the classes of people who may apply for such orders to cover associations acting in the interests of their members and people acting in the public interest.

- Decisions of all public bodies, including the Cabinet, and parastatals should be published subject to safeguards to protect national security. If public officers know their decisions will be published they may take more care to ensure that the decisions are lawful.
  - Parliamentary control over public expenditure should be strengthened:
    - All Government expenditure and revenue should be subject to scrutiny by the Public Accounts Committee of Parliament and should be audited by the Comptroller and Auditor-General. At present some funds of the President's Office are neither scrutinised nor audited. Such lack of accountability encourages unlawfulness.
    - Government officials who delay submitting their accounts to the Public Accounts Committee or who are responsible for over-expenditure by their Ministries should be subject to automatic disciplinary action and possible dismissal.
  - Parliament's power to impeach members of the Executive should be extended. Under the present Constitution it requires a two-thirds majority of both the Senate and the House of Assembly to impeach the President or to pass a vote of no confidence in the Government. The new constitution should allow Parliament, by a simple majority, to pass a vote of no confidence in individual Ministers and require the President or Prime Minister to replace the Minister concerned if such a vote is passed. The new constitution should also reduce the majority needed for a vote of no confidence in the Government — a government that can no longer command a majority in Parliament should not remain in office.
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