

CONSTITUTION WATCH 2/2018

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Now elections are over Veritas is continuing its series of bulletins on implementation of the Constitution

Leader of the Opposition

On several occasions, according to reports, the President has offered the post of Leader of the Opposition to Mr Nelson Chamisa. Most recently, in an interview with an American news agency in New York, he is reported to have said:

“We are going to introduce the office of the leader of the opposition in Parliament. ... Under the former administration, there was no formal recognition of the opposition leader but now under my administration, we are embracing the Commonwealth approach to parliamentary democracy where we recognise the leader of the opposition who is given certain conditions and perks in Parliament.”

The reports raise two questions:

- What is meant by Leader of the Opposition?
- Can such a post be given to Mr Chamisa?

Leader of the Opposition in Westminster-style Parliaments

In countries that have adopted the Westminster model of parliamentary government, the post of Leader of the Opposition is a semi-official parliamentary post given to the leader of the main opposition party or group in Parliament. The post is largely symbolic, but the symbolism is very important:

- It confers legitimacy on the opposition, by recognising that differing views must be permitted in every democratic system. In a parliamentary democracy those different views must be heard and respected in Parliament.
- It reminds the opposition – the main opposition party, anyway – that they are part of the system of governance and have responsibilities towards it. In Britain the title of the leader of the opposition is “Leader of Her Majesty’s most loyal opposition”, a reminder that the opposition must be loyal to the State.
- It is an acknowledgement that an essential feature of a multi-party democracy [*which Zimbabwe aspires to be*] is that governments change. Parties cannot rule forever. A party that is now in opposition may become the governing party at the next election.

Leader of the Opposition in Zimbabwe

Zimbabwe has had a parliamentary system since 1923 and the post of Leader of the Opposition was recognised at an early date.

It fell into abeyance in the 1960s, however, due to a reluctance on the part of the white government to recognise an African parliamentarian as leader of the opposition.

After Independence the post was not revived, probably because the first Prime Minister and then President, Mr Mugabe, was not inclined to recognise opposition in any form whatever.

Nonetheless the post of leader of the opposition is still recognised in our law:

- The Constitution, in section 151, makes “the Leader of the Opposition in each House” [*i.e. the Senate and the National Assembly*] members of the parliamentary Committee on Standing Rules and Orders.
- Order 14 of the National Assembly’s Standing Rules and Orders makes the Leader of the Opposition a member of another important committee, the Business of the House Committee.
- The Parliamentary Salaries, Allowances and Benefits Act, in section 6, provides for a salary and other benefits to be paid to the leader of the opposition.

So the post is recognised by law. Indeed Mr Chamisa has already held it, albeit briefly. On the 29th May this year, the Speaker announced in the National Assembly:

“I would like to inform this House that at its meeting held on 21st May, 2018 the Committee on Standing Rules and Orders was advised by the MDC T that Hon. Advocate Nelson Chamisa is now the leader of the opposition in Parliament.”

Can Mr Chamisa Now be Leader of the Opposition?

Leader of the Opposition is a parliamentary post, which means that its holder must be a Senator or Member of the National Assembly. Mr Chamisa ceased to be a Member of the National Assembly when Parliament was dissolved on the 29th July, immediately before polling in the general election. In the election he stood as a candidate for President and so was not re-elected to either House of Parliament.

Under the law as it currently stands, therefore, Mr Chamisa cannot be Leader of the Opposition unless he wins a parliamentary seat. There are only two ways he could do this:

- first, by winning a by-election for a constituency seat in the National Assembly;
- second, by inducing an MDC Alliance Senator to step down and allow him to fill the Senate seat in accordance with section 39 of the Electoral Act.

That is the position under the current law.

It seems however that the President is thinking of changing the law, because he has spoken of introducing the post of Leader of the Opposition and offering it to Mr Chamisa. As we have pointed out in this Bulletin, the post already exists and it is not for the President or his party to offer it to anyone: it is held by the person who in fact leads the main opposition party in Parliament.

One can only speculate at this stage what the President plans, and the public is unlikely to be told unless Mr Chamisa agrees to it. If however the plan entails giving Mr Chamisa a seat in the National Assembly then the Constitution will have to be amended. This would be regrettable. The Constitution is the country’s foundational document and should not be amended to resolve every political problem that arises.

Political problems should be resolved politically – by negotiation – and not by tinkering with the Constitution. If the envisaged amendment would result in Mr Chamisa becoming a member of Parliament, it would allow an unelected person to sit and vote in the Legislature – hardly a step towards representative democracy.

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