

Addendum to the Review of the COPAC Draft Constitution & Assessing Independent Commissions in the COPAC Draft Constitution of Zimbabwe

Changes worth noting in the [1 February 2013 COPAC Draft Constitution](#) in comparison to the 18 July 2012 COPAC Draft Constitution

Chapter and subsection (previous number)	January 2013 Draft	February 2013 Draft	Implications
<i>Concerning the Declaration of Rights</i>			
4.56(3) (previously 4.13(3))	(3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, disability or economic or social status, or whether born in or out of wedlock.	(3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, <u>pregnancy</u> , disability or economic or social status, or whether born in or out of wedlock.	Addition of pregnancy. Strengthens rights in respect to gender bias that are mentioned in regard to section 4.13(2) of the right of women and men to equal treatment and equal opportunities.
4.78(1) (previously 4.35(1))	(a) Every person who has attained the age of eighteen years has the right to marry a person of the opposite sex who is of marriageable age, and no such person may be prevented from entering into such a marriage; (b) Every person who has attained the age of eighteen years has the right to found a family. (c) No person may be compelled to enter into marriage against their will.	(a) Every person who has attained the age of eighteen years has the right to found a family (b) No person may be compelled to enter into marriage against their will. (c) Persons of the same sex are prohibited from marrying each other.	Now speaks specifically of prohibiting marriage between same sex couples. Reinforcing cultural LGBT discrimination.

Concerning The Executive			
5.88(2) (previously 5.1(2))	Executive authority (2) The executive authority of Zimbabwe vests in the President and the Cabinet.	Executive authority (2) The executive authority of Zimbabwe vests in the President <u>who exercises it, subject to this Constitution, through the Cabinet.</u>	The added injunctions reiterate the importance of referencing the constitution in decision making, ensuring it is – in principle – less arbitrary. This is limited by the powers of the president to appoint, which remain largely unchanged.
5.90 Duties of the President (previously 5.3 Duty of the President to uphold the Constitution)	Duties of President (1) The President must— (a) uphold, defend, obey and respect this Constitution as the supreme law of the nation and must ensure that this Constitution and all the other laws are faithfully observed; (b) promote unity and peace in the nation for the benefit and well-being of all the people of Zimbabwe; (c) ensure protection of the fundamental human rights and freedoms and the rule of law; and (d) respect the diversity of the people and communities of Zimbabwe.	Duties of President (1) The President must uphold, defend, obey and respect this Constitution as the supreme law of the nation and must ensure that this Constitution and all the other laws are faithfully observed. (2) The President must— (a) promote unity and peace in the nation for the benefit and well-being of all the people of Zimbabwe; (b) <u>recognise and respect the ideals and values of the liberation struggle;</u> (c) ensure protection of the fundamental human rights and freedoms and the rule of law; and (d) respect the diversity of the people and communities of Zimbabwe.	The addition recognises the importance of the past without allowing it to dominate the present. The inclusion is really more about a compromise between the principals than anything of substance.

5.92 (previously 5.5)	Election of President and Vice-Presidents (5) The election of a President and Vice-Presidents must take place concurrently with every general election of Members of Parliament.	Election of President and Vice-Presidents (5) The election of a President and Vice-Presidents must take place concurrently with every general election of members of Parliament, <u>provincial councils and local authorities.</u>	The addition adheres to the principle of holding all elections concurrently
5.95 (previously 5.8)	Term of office of President and Vice-Presidents The term of office of the President or a Vice-President commences on the day he or she is sworn in and assumes office in terms of section 5.7(1)(a) or 5.7(3), but where there has been a challenge to the election and he or she is sworn in after the Constitutional Court has declared him or her to be the winner, the term of office is deemed to have commenced on the ninth day after polling in the election concerned.	Term of office of President and Vice-Presidents The term of office of the President or a Vice-President commences on the day he or she is sworn in and assumes office in terms of section 94(1)(a) or 94(3).	The change in phrasing adds clarity to the issue of term commencement.
5.104 (previously 5.17)	Appointment of Ministers and Deputy Ministers (1) The President appoints Ministers and assigns functions to them, including the administration of any Act of Parliament or of any Ministry or department. (2) The President may appoint Deputy Ministers to assist any Minister in the exercise of his or her functions. (3) Ministers and Deputy Ministers are appointed from among Senators or	Appointment of Ministers and Deputy Ministers (1) The President appoints Ministers and assigns functions to them, including the administration of any Act of Parliament or of any Ministry or department, <u>but the President may reserve to himself or herself the administration of an Act, Ministry or department.</u> (2) The President may appoint Deputy	As with other areas of the Executive chapter there remain issues of Presidential power around appointment and acting unilaterally. The reduction from seven is positive, the aim should always be to ensure people in positions of power derive their legitimacy from being elected by the people.

	Members of the National Assembly, but up to seven, chosen for their professional skills and competence, may be appointed from outside Parliament.	Ministers to assist any Minister in the exercise of his or her functions. (3) Ministers and Deputy Ministers are appointed from among Senators or Members of the National Assembly, but <u>up to five</u> , chosen for their professional skills and competence, may be appointed from outside Parliament.	
5.110 (previously 5.23)	Executive functions of President and Cabinet (6) In the exercise of his or her executive functions, the President must act on the advice of the Cabinet, except in respect of— (a) the appointment or removal of Ministers and Deputy Ministers; (b) the assignment or re-assignment of functions to Vice-Presidents, Ministers and Deputy Ministers, and the cancellation of any such assignment or re-assignment; (c) the appointment of persons to offices and posts in terms of this Constitution, or the removal of persons from such offices and posts, where the President is required to do so on the advice of some other person or authority.	Executive functions of President and Cabinet (6) <u>Subject to this Constitution</u> , in the exercise of his or her executive functions, the President must act on the advice of the Cabinet, except in respect of— (a) <u>the appointment of Vice-Presidents in terms of section 93 or 101;</u> (b) the appointment or removal of Ministers and Deputy Ministers; (c) the assignment or re-assignment of functions to Vice-Presidents, Ministers and Deputy Ministers, and the cancellation of any such assignment or re-assignment;	The revised draft is strengthened by the injunction reminding an office holder that they are subject to the principles and values of the Constitution first and foremost

5.111 (previously 5.24)	War and Peace (1) The President has power to declare war and make peace, but a declaration of war or peace must be revoked unless it is approved by a resolution passed within seven sitting days of the declaration by a joint sitting of the Senate and the National Assembly.	War and Peace (1) The President has power to declare war and make peace, <u>and must advise the Senate and the National Assembly within seven sitting days.</u> (2) <u>The Senate and the National Assembly, by a joint resolution passed by at least two-thirds of the total membership of Parliament, may resolve that a declaration of war should be revoked.</u> (3) <u>Where Parliament has resolved that a declaration of war should be revoked, the President must take all practical steps to disengage from the war, taking due account of the need to ensure the safety of Zimbabwean personnel and equipment.</u>	This section has been rephrased but remains problematic as the President has unchecked power to declare war or peace.
5.113 (previously 5.26)	States of public emergency (6) If by a resolution passed by a joint sitting of the Senate and the National Assembly, Parliament resolves that a declaration of a state of public emergency– (a) should be continued for a further period not exceeding three months, the President must without delay, by proclamation in the <i>Gazette</i>, extend the declaration for that further period; (b) should be revoked or that it	States of public emergency (6) If, by a resolution passed by <u>a majority of the members present at a joint sitting of the Senate and the National Assembly</u>, Parliament resolves that a declaration of a state of public emergency– (a) should be continued for a further period not exceeding three months, the President must without delay, by proclamation in the <i>Gazette</i>, extend the declaration for that further period;	The constitution is strengthened by the specification of a majority of the Legislature

	should apply within a smaller area, the President must without delay, by proclamation in the <i>Gazette</i> , revoke the declaration or provide that the declaration relates to that smaller area.	(b) should be revoked or that it should apply within a smaller area, the President must without delay, by proclamation in the <i>Gazette</i> , revoke the declaration or provide that the declaration relates to that smaller area.	
Concerning the Judiciary			
8.169 (previously 8.8)	Jurisdiction of Supreme Court (1) The Supreme Court is the final court of appeal for Zimbabwe, except in matters over which the Constitutional Court has jurisdiction. (2) The Supreme Court shall not have any jurisdiction over constitutional matters, either as a court of first instance or as a court of appeal. (3) Subject to subsection (1), an Act of Parliament may confer additional jurisdiction and powers on the Supreme Court. (4) An Act of Parliament may provide for the exercise of jurisdiction by the Supreme Court and for that purpose may confer the power to make rules of court. (5) Rules of court may confer on a registrar of the Supreme Court any of the Court's jurisdiction and powers in civil cases— (a) to make orders in uncontested cases, other than orders	Jurisdiction of Supreme Court (1) The Supreme Court is the final court of appeal for Zimbabwe, except in matters over which the Constitutional Court has jurisdiction. (2) <u>Subject to subsection (1), an Act of Parliament may confer additional jurisdiction and powers on the Supreme Court.</u> (3) An Act of Parliament may provide for the exercise of jurisdiction by the Supreme Court and for that purpose may confer the power to make rules of court. (4) Rules of court may confer on a registrar of the Supreme Court any of the Court's jurisdiction and powers in civil cases— (a) to make orders in uncontested cases, other than orders affecting status or the custody or guardianship of children;	The removal of the original subsection 2 allows for the Supreme Court to consider constitutional matters.

	affecting status or the custody or guardianship of children; (b) to decide preliminary or interlocutory matters, including applications for directions, but not matters affecting the liberty of any person; but the rules must give any person affected by the registrar's order or decision a right to have it reviewed by a judge of the Supreme Court, who may confirm it, amend it or set it aside or give any other order or decision he or she thinks fit.	(b) to decide preliminary or interlocutory matters, including applications for directions, but not matters affecting the liberty of any person; but the rules must give any person affected by the registrar's order or decision a right to have it reviewed by a judge of the Supreme Court, who may confirm it, amend it or set it aside or give any other order or decision he or she thinks fit.	
8.191 (previously 8.30)	Transparency of proceedings of Judicial Service Commission The Judicial Service Commission must conduct its business in a transparent manner and, in particular, must ensure that all interviews of candidates for judicial office are conducted in public.	Fairness and transparency of proceedings of Judicial Service Commission The Judicial Service Commission must conduct its business in a just, fair and transparent manner.	The rephrasing of this section places greater emphasis on just and fair processes. It however removes the injunction for all judicial officers to be publicly interviewed.
Concerning Property and Agricultural Land			
4.72 (previously 4.29)	Where agricultural land is required for a public purpose, including – (a) settlement for agricultural or other purposes (b) land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources (c) the relocation of persons dispossessed as a result of the	Where agricultural land, <u>or any right or interest in such land</u>, is required for a public purpose, including – (a) settlement for agricultural or other purposes (b) land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources (c) the relocation of persons	The scope of <i>who</i> and <i>how</i> land can be expropriated and compulsory acquisition has been expanded to include those with rights or interests. It may not include land that is currently being used for agriculture, but has in the past or has the potential to be.

	utilisation of land for a purpose referred to in subparagraph (a) or (b); the land may be acquired by the State by notice published in <i>Gazette</i> by the acquiring authority and identifying the land, whereupon the land vests in the State with full title with effect from the date of publication of the notice.	dispossessed as a result of the utilisation of land for a purpose referred to in subparagraph (a) or (b); the land, <u>right or interest may be compulsory acquired by the State by the notice published in the <i>Gazette</i> identifying the land, right or interest,</u> whereupon the land, <u>right or interest</u> vests in the State with full title with effect from the date of publication of the notice.	
4.72(5) (previously 4.29(5))	As soon as practicable after agricultural land is acquired in accordance with subsection (3), the officer responsible for the registration of title over land must, without further notice, effect the necessary endorsements upon any title deed and entries in any register for the purpose of formally cancelling the title deed and registering the State's title over land.	As soon as practicable after agricultural land is <u>compulsory</u> acquired in accordance with subsection <u>(2)</u>, the officer responsible for the registration of title over land must, without further notice, effect the necessary endorsements upon any title deed and entries in any register for the purpose of formally cancelling the title deed and registering the State's title over land.	The July draft erroneously stated subsection 3 instead of subsection 2. It has reaffirmed that compulsory acquired agricultural land must only take place for (a) settlement for agricultural purposes (b) land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources or (c) the relocation of persons dispossessed as a result of the utilisation of land for a purpose referred to in subparagraph (a) or (b).
4.72(6), (previously 4.29(6))	An Act of Parliament may make it a criminal offense for any person, without lawful authority, to possess or occupy agricultural land referred to in this section or other State land.	An Act of Parliament may make it an offense for any person, without lawful authority, to possess or occupy agricultural land referred to in this section or other State land.	An Act of Parliament cannot make the possession or occupation of agricultural land a <i>criminal</i> offense.

16.296 (previously 16.9)	(1) There is a commission to be known as Zimbabwe Land Commission consisting of – (a) a chairperson appointed by the President after consultation with the Committee on Standing Rules and Orders; and (b) eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee of Standing Rules and Orders. (2) Two members of the Zimbabwe Land Commission must be nominated by the Council of Chiefs. (3) Members of the Zimbabwe Land Commission must – (a) be chosen for their integrity and competence in, and knowledge and understanding of, the best practices in land management and administration; and (b) reflect the diversity of Zimbabwe’s population, in particular it regional interests and gender balance.	(1) There is commission to be known as Zimbabwe Land Commission consisting of – (a) a chairperson and deputy chairperson; and (b) a minimum of two and a maximum of seven other members; appointed by the President (2) Members of the Zimbabwe Land Commission must – (a) be chosen for their integrity and competence in, and knowledge and understanding of, the best practices in land management and administration; and (b) reflect the diversity of Zimbabwe’s population, in particular it regional interests and gender balance. (3) Section 237 applies in relation to the removal from office of members of the Zimbabwe Land Commission as if it were an independent Commission established by Chapter 12.	The new reference to Section 237 ensures Parliamentary oversight in appointments of committee members. The size of the Committee is now flexible, whereas the July draft stated it must comprise of 9 members, the current draft allows flexibility between 4 and 9 members. The role of traditional leaders in the appointment process has been removed, possibly in a move to further depoliticise the Committee.
16.297 (previously 16.10)		Two new subsections were added: 297(2): The Zimbabwe Land Commission, with the approval of the Minister	There are no constitutional checks on intervention by the Minister. Ultimately, these two subsections increase executive interference of the Zimbabwe Land Commission.

		responsible for land, may make regulations for any of the purposes set out in subsection 1 (formerly 16.10(1)) 297(3): The Zimbabwe Land Commission must exercise its functions in accordance with any general written policy directives which the Minister responsible for land may give it.	
Concerning Provincial and Local Government			
Preamble	No Preamble	Whereas it is desirable to ensure: (a) the preservation of national unity in Zimbabwe and the prevention of all forms of disunity and secessionism (b) the democratic participation in government by all citizens and communities of Zimbabwe; and (c) the equitable allocation of natural resources and the participation of local communities in the determination of development priorities within their areas; there must be devolution of power and responsibilities of lower tiers of government in Zimbabwe.	The Preamble stresses the importance of national unity, the prevention of secession, and the equitable allocation of natural resources as a foundation for greater socio-economic development.
14.266(4)	Text missing.	(4) An Act of Parliament must make a	An Act of Parliament could assist with

(previously 14.3)		provision to ensure the political neutrality of employees of provincial and metropolitan councils and local authorities.	the depoliticisation of the sub-national government.
14.272 Chairpersons of provincial and metropolitan councils (previously 14.9 Provincial Governors)	(1) For each province, other than a metropolitan province, there is a Provincial Governor appointed by the President in accordance with the section. (2) A person is qualified for appointment as a Provincial Governor if he or she is qualified for elections as a member of the Senate. (3) As soon as possible after every election, the President must call upon – (a) the political party which gained the highest number of National Assembly seats in the province concerned (b) if there is no political party such as is referred to in paragraph (a), the political party which received the highest number of votes cast in the province in that general election for the members of the National Assembly; to submit the names of two qualified persons for appointment as Provincial Governor of the province concerned, and the President must appoint one of those persons as Provincial Governor. (4) The office of Provincial Governor is a	(1) At its first sitting after every general election, a provincial council must elect a chairperson from a list of at least two qualified persons submitted by- (a) the political party which gained the highest number of National Assembly seats in the province concerned; or (b) if there is no political party such as is referred to in paragraph (a), the political party which received the highest number of votes cast in the province in that general election for the members of the National Assembly. (2) A person is qualified for election as <u>chairperson of a provincial council</u> if he or she is qualified for election as a Member of the Senate. (3) The office of <u>chairperson of a provincial council</u> is a public office but does not form part of the civil service. (4) Before commencing his or her duties, the <u>chairperson of a provincial council</u> must take before <u>the clerk of the provincial council</u> the oaths of	The office of Provincial Governor has been removed and the role of the executive diminished. However, the draft fails to provide a framework of how the provincial councils will work as they have limited legislative and executive powers, particularly around issues concerning local budgeting and oversight of natural resources.

	public office but does not form part of the civil service. (5) Before taking office, a person appointed as Provincial Governor must take before the President the oath in form set out in the Third Schedule. (6) A person ceases to be a Provincial Governor if – (a) he or she ceases to be a Senator for any of the reasons set out in 6.14; or (b) he or she is removed from office by the President - (i) after consultation with the political party which nominated the Provincial Governor, on the grounds of gross misconduct; or (ii) after the political party which nominated the Provincial Governor requests the President to remove him or her from office. (7) An Act of Parliament must provide for the election of mayors from the metropolitan offices and may assign to those mayors and of the functions of a Provincial Governor.	loyalty and office in the forms set out in the Third Schedule. (5) <u>the chairperson of a provincial council may resign by announcing his or her resignation in person to the provincial council.</u> (6) <u>the chairperson of a provincial council must vacate his or her office –</u> <u>(a) on the day on which the provincial council first meets after the general election</u> <u>(b) if he or she becomes disqualified to be a member of the provincial council</u> <u>(c) if a resolution for his or her removal from office is passed by at least two-thirds total membership of the provincial council;</u> <u>(d) if he or she is removed from office by the tribunal referred to in subsection (7)</u> (7) <u>An Act of Parliament must provide for the establishment of an independent tribunal to exercise the function of removing chairpersons of provincial councils from office, but any such removal must only be on the grounds of –</u> <u>(a) inability to perform the functions of their office due to mental or physical incapacity;</u>	
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		(b) <u>gross incompetence;</u> (c) <u>gross misconduct;</u> (d) <u>conviction for an offense involving dishonesty, corruption, abuse of office except in accordance with this subsection;</u> (e) <u>wilful violation of the law, including a local authority by-law.</u> (8) <u>A chairperson of a provincial council does not vacate his or her office except in accordance with this subsection.</u> (9) <u>An Act of Parliament must provide for the election of mayors for the metropolitan provinces.</u>	
14.273 (previously 14.10)	An Act of Parliament must make provision, consistent with this Chapter, for the establishment and functions of provincial and metropolitan councils; (a) the procedures of provincial and metropolitan councils; (b) the conditions of service of members of provincial and metropolitan councils; and (c) the appointment, conditions of service and removal of employees or provincial and metropolitan councils.	(1) An Act of Parliament must make provision, consistent with this Chapter, for the establishment and functions of provincial and metropolitan councils, <u>and in particular, for –</u> (a) the procedures of provincial and metropolitan councils; (b) <u>the functions of chairpersons of provincial and metropolitan councils;</u> (c) the conditions of service of members of provincial and metropolitan councils; and (d) the appointment, conditions	The office of Provincial Governor has been removed and the role of the executive diminished. However, the draft fails to provide a framework of how the provincial councils will work as they have limited legislative and executive powers, particularly around issues concerning local budgeting and oversight of natural resources.

		of service and removal of employees or provincial and metropolitan councils. (2) <u>The Electoral Law must make provision, consistent with this Chapter, for the filling of vacancies in the seats of members of provincial councils referred to in section 268(1)(f) and in the offices of chairpersons of provincial councils, which vacancies must be filled-</u> (a) <u>by persons belonging to the same political parties as those who previously held the seats or offices; and</u> (b) <u>except on the case of chairpersons, by a person of the same gender as the persons who previously held the seats.</u>	
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<i>Independent Commissions Supporting Democracy</i>			
12.237 (previously 12.6)	(1) A member of an independent Commission may be removed from office only on the ground that the member concerned- (a) is unable to perform the functions of his or her office because of physical or mental incapacity; (b) is or was grossly incompetent; (c) was guilty of gross misconduct; or (d) has become ineligible for appointment to the Commission concerned. (2) The procedure for the removal of judges from office applies to the removal from office of a member of an independent Commission.	<u>(1) For the purpose of nominating persons for appointment to any independent Commission, the Committee on Standing Rules and Orders must-</u> (a) <u>advertise the position;</u> (b) <u>invite the public to make nominations;</u> (c) <u>conduct public interviews of prospective candidates;</u> (d) <u>prepare a list of the appropriate number of nominees for appointment; and</u> (e) <u>submit the list to the President.</u> (2) A member of an independent Commission may be removed from office only on the ground that the member concerned- (a) is unable to perform the functions of his or her office because of physical or mental incapacity; (b) is or was grossly incompetent; (c) was guilty of gross misconduct; or (d) has become ineligible for appointment to the Commission concerned. (3) The procedure for the removal of judges from office applies to the removal from office of a member of an independent Commission.	The new draft enshrines a participatory framework to recruit and appoint members of independent Commissions. Both parliamentary and public oversight are enhanced by the addition to the July draft.

The Judicial Service Commission 8.191 (previously 8.30)	The Judicial Service Commission must conduct its business in a transparent manner and, in particular, must ensure that all interviews of candidates for judicial office are conducted in public.	The Judicial Service Commission must conduct its business in a just, fair, and transparent manner.	While public interviews could be held as part of a “just, fair and transparent manner,” the explicit removal of public interviews could weaken the ability of stakeholders and the public at large to apply scrutiny on judicial candidates.
Zimbabwe Media Commission 12.249(2) and (3) (previously 12.18(2) and (3))	An Act of Parliament may confer power on the Zimbabwe Media Commission to – (a) conduct investigations and inquiries into – i. any conduct or circumstance that appears to threaten the freedom of the press; and ii. the conduct of the press, print and electronic media, and broadcasting; and (b) take or recommend disciplinary action against journalists and other persons employed in the press and other media and communication who are found to have breached any law or code of conduct applicable to them. (3) An Act of Parliament may provide for the regulation of the press and other media of communication.	An Act of Parliament may confer power on the Zimbabwe Media Commission to – (a) conduct investigations and inquiries into – i. any conduct or circumstance that appears to threaten the freedom of the media; and ii. the conduct of the media; and (b) take or recommend disciplinary action against media practitioners who are found to have breached any law or code of conduct applicable to them. (3) An Act of Parliament may provide for the regulation of the media.	This Commission moves against the regional practice of self-regulation and its ambiguity could engender restrictions on the freedom of expression.



National Peace and Reconciliation Commission 12.251(1) (previously 12.20(1))	(1) There is a commission to be known as the National Peace and Reconciliation Commission consisting of –	(1) <u>For a period of ten years after the effective date</u> , there is a commission to be known as the National Peace and Reconciliation Commission consisting of-	The National Peace and Reconciliation Commission now has a limited mandate of ten years.
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