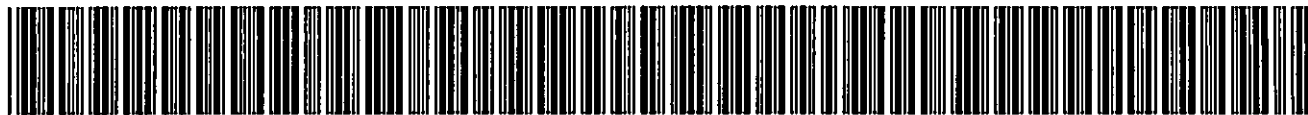


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F. GLIFTON WHITE RESOURCE CENTER
INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS



RHODESIA

ACT

To provide for a new Constitution for Zimbabwe Rhodesia; to provide for the entrenchment of certain provisions of the laws to be enacted relating to electoral matters, education or medical services; to restrict the power of the Legislature to amend the provisions of certain other laws; and to provide for matters incidental to or connected with the foregoing.

ARRANGEMENT OF SECTIONS

PRELIMINARY

Section

1. Citation.
2. Date of commencement.

CHAPTER I

THE STATE AND THE CONSTITUTION

3. The State.
4. Public seal.
5. The Constitution.

CHAPTER II

HEAD OF STATE

Section

6. The President.
7. Powers and duties of President.
8. Qualifications of President.
9. Election of President.
10. Tenure of office of President.
11. Acting President.
12. Oath of office.
13. Protection of dignity and reputation of President or Acting President.
14. Salary and allowances of President and Acting President.

CHAPTER III

THE LEGISLATURE

PART I

LEGISLATIVE AUTHORITY

15. Legislative authority.
16. Parliament.
17. Electoral Law.

PART II

THE SENATE

18. Composition of Senate.
19. Election of President of Senate.
20. Tenure of office of President of Senate.
21. Election of Deputy President of Senate.

PART III

THE HOUSE OF ASSEMBLY

22. Composition of House of Assembly.
23. Election of Speaker.
24. Tenure of office of Speaker.
25. Election of Deputy Speaker.

PART IV

SENATE AND HOUSE OF ASSEMBLY

26. Remuneration of President of Senate and Speaker.
27. Powers of Ministers and Deputy Ministers in Senate and House of Assembly.
28. Vacating of seats by members.
29. Tenure of seat of member of Senate or House of Assembly.

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PART V

J. COMMITTEE AND ITS FUNCTIONS

1 Committee.

ate Legal Committee.

ions of Senate Legal Committee.

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Collection of
Robert E. Henderson

Donated to the F. Clifton White
Resource Center of
the International Foundation
for Election Systems
June 4, 2003

PART VI

GENERAL POWERS AND PROCEDURE

Section

37. Power to make laws.
38. Standing Orders.
39. Oath of loyalty.
40. Presiding in Parliament.
41. Quorum in Parliament.
42. Voting in Parliament.
43. Parliamentary records and translation of debates.
44. Privileges of Parliament and members and officers thereof.
45. Secretary to Parliament and other staff of Parliament.
46. President and other persons may address Parliament.

PART VII

PROCEDURE IN REGARD TO BILLS AND OTHER MATTERS

47. Introduction of Bills, motions and petitions.
48. Procedure in regard to Bills.
49. Disagreement between Senate and House of Assembly.
50. Functions of Senate Legal Committee in regard to Bills.
51. Reports of Senate Legal Committee.
52. Procedure in regard to Bills where certificate of urgency is issued.
53. Money Bills.
54. Provisions relating to amendments to Bills.
55. Assent to Bills.
56. Further provisions relating to enactment of Bills.
57. Enrolment of Acts.

PART VIII

FUNCTIONS OF SENATE LEGAL COMMITTEE IN REGARD TO
STATUTORY INSTRUMENTS

58. Statutory instruments to be referred to Senate Legal Committee.
59. Senate Legal Committee to report.
60. Senate to consider report.
61. Procedure after report considered.
62. Report on draft statutory instruments.

PART IX

SUMMONING, PROROGATION AND DISSOLUTION

63. Sessions of Parliament.
64. Prorogation or dissolution.

CHAPTER IV

THE EXECUTIVE

65. Executive authority vested in President acting on advice of Executive Council.
66. Executive powers.
67. Ministers and Deputy Ministers.
68. Tenure of office of Prime Minister, Ministers and Deputy Ministers.
69. Acting Prime Minister.

Section

- 70. Executive Council.
- 71. Exercise of functions of President.
- 72. President to be kept informed.
- 73. Disposal of land.
- 74. Prerogative of mercy.
- 75. Declaration relating to public emergencies.

CHAPTER V

THE JUDICATURE

- 76. Composition of the High Court.
- 77. Chief Justice of Zimbabwe Rhodesia.
- 78. Composition and jurisdiction of Appellate Division.
- 79. Composition and jurisdiction of General Division and criminal jurisdiction of other courts.
- 80. Qualifications of judges.
- 81. Oath of office.
- 82. Appointment of judges.
- 83. Acting judges.
- 84. Tenure of office of judges.
- 85. Removal of judges from office.
- 86. Remuneration of judges.
- 87. Law to be administered.

CHAPTER VI

COMMISSIONS AND PUBLIC OFFICES

PART I

JUDICIAL SERVICE COMMISSION

- 88. Judicial Service Commission.
- 89. Functions of Judicial Service Commission.
- 90. Holders of judicial office.

PART II

THE PUBLIC SERVICE AND THE PRISON SERVICE

- 91. The Public Service and the Prison Service.
- 92. Public Service Commission.
- 93. Functions of Public Service Commission.
- 94. Powers of Public Service Commission.
- 95. Attorney-General.
- 96. Comptroller and Auditor-General.
- 97. Principal representatives of Zimbabwe Rhodesia abroad.

PART III

THE POLICE FORCE

- 98. Police Force and Commissioner of Police.
- 99. Members of Police Force.
- 100. Police Service Commission.
- 101. Functions of Police Service Commission.
- 102. Powers of Police Service Commission to make regulations.

PART IV

THE DEFENCE FORCES

- 103. Defence Forces and Commanders thereof.
- 104. Members of Defence Forces.

Section

- 105. Defence Forces Service Commission.
- 106. Functions of Defence Forces Service Commission.
- 107. Powers of Defence Forces Service Commission to make regulations.

PART V

GENERAL

- 108. Tenure of office of members of Commissions.
- 109. Performance of functions of Commissions.
- 110. Secretary and staff of Commissions.
- 111. Removal of certain officers.
- 112. Protection of pension rights of public officers.
- 113. Interpretation in Chapter VI.

CHAPTER VII

FINANCE

- 114. Consolidated Revenue Fund.
- 115. Withdrawals from Consolidated Revenue Fund or other public fund.
- 116. Authorization of expenditure from Consolidated Revenue Fund by appropriation.
- 117. Authorization of expenditure in advance of appropriation.
- 118. Public debt.
- 119. Functions of Comptroller and Auditor-General.

CHAPTER VIII

THE DECLARATION OF RIGHTS

- 120. Protection of right to life.
- 121. Protection of right to personal liberty.
- 122. Protection from slavery and forced labour.
- 123. Protection from inhuman treatment.
- 124. Protection from deprivation of property.
- 125. Protection from arbitrary search or entry.
- 126. Provisions to secure protection of law.
- 127. Protection of freedom of conscience.
- 128. Protection of freedom of expression.
- 129. Protection of freedom of assembly and association.
- 130. Protection of freedom of movement.
- 131. Protection from discrimination.
- 132. Savings for periods of public emergency.
- 133. Other special savings.
- 134. Enforcement of protective provisions of Declaration of Rights.
- 135. Validity of existing laws.
- 136. Interpretation of terms in Chapter VIII.

CHAPTER IX

CITIZENSHIP

- 137. Persons who continue as citizens of Zimbabwe Rhodesia.
- 138. Citizenship by birth.
- 139. Citizenship by descent.
- 140. Citizenship by registration.
- 141. Multiple citizenship.

Section

- 142. Powers of Parliament in relation to citizenship.
- 143. Interpretation in Chapter IX.

CHAPTER X

OMBUDSMAN

- 144. Office of Ombudsman.
- 145. Staff of Ombudsman.
- 146. Payment of salaries and allowances of Ombudsman and his staff.
- 147. Investigations by Ombudsman.
- 148. Procedure in respect of investigations.
- 149. Proceedings after investigation.
- 150. Payment of costs or expenses incurred in relation to proceedings for enforcement of Declaration of Rights.
- 151. Discharge of functions of Ombudsman.
- 152. Right of Ombudsman to obtain advice.
- 153. Supplementary and ancillary provisions.
- 154. Interpretation of term in Chapter X.

CHAPTER XI

AMENDMENT OF CONSTITUTION AND ENTRENCHED
PROVISIONS OF OTHER LAWS

- 155. Power to amend Constitution.
- 156. Constitutional Bill not to amend other laws.
- 157. Special procedure for Constitutional Bill.
- 158. Submission of Constitutional Bill for assent.
- 159. Review of certain provisions relating to composition of Parliament.
- 160. Amendment of entrenched provisions of certain other laws.

CHAPTER XII

MISCELLANEOUS PROVISIONS

PART I

GENERAL

- 161. English language.
- 162. Chiefs and Councils of Chiefs.
- 163. Regional authorities.
- 164. Statutory Corporations Commission.
- 165. Remittability of pensions.
- 166. Repeal of former Constitution.
- 167. Transitional provisions.

PART II

INTERPRETATION

- 168. Application of this Part.
- 169. Interpretation.
- 170. Supplementary provisions.

FIRST SCHEDULE: Oaths.

SECOND SCHEDULE: Specially Entrenched Provisions.

THIRD SCHEDULE: Transitional Provisions.

DEDICATION

The peoples of Zimbabwe Rhodesia humbly acclaim the supremacy and omnipotence of Almighty God and acknowledge the ultimate direction by Him of the affairs of men.

BE IT ENACTED by the President and the Parliament of Rhodesia, as follows:—

PRELIMINARY

1. This Constitution may be cited as the Constitution of Zimbabwe Rhodesia, 1979. Citation.

2. (1) Save as is otherwise provided in paragraph 1 of the Third Schedule, this Constitution shall come into operation on a date to be fixed by the President as defined in the former Constitution by proclamation in the *Gazette*. Date of commencement.

(2) The date to be fixed in terms of subsection (1) shall be not earlier than the date on which the members of the Executive Council have been appointed in accordance with the provisions of Part I of the Third Schedule.

CHAPTER I

THE STATE AND THE CONSTITUTION

3. Zimbabwe Rhodesia shall be a sovereign State. The State.

4. There shall be a public seal of Zimbabwe Rhodesia, showing the coat of arms of Zimbabwe Rhodesia with the inscription "Zimbabwe Rhodesia", which shall be kept by the President. Public seal.

5. (1) This Constitution is the supreme law of Zimbabwe Rhodesia and, subject to the provisions of subsection (2), any provision of an Act or instrument made under the authority thereof, enacted or made on or after the fixed date, which is inconsistent with any provision of this Constitution or which has the effect of doing anything referred to in paragraph (a), (b), (c) or (d) of subsection (1) of section *one hundred and sixty* shall be invalid to the extent of the inconsistency or to which it has that effect, as the case may be. The Constitution.

(2) The provisions of subsection (1) shall not apply to any provision of an Act with respect to which the requirements of sections *one hundred and fifty-seven* and *one hundred and fifty-eight* or of section *one hundred and fifty-nine*, as the case may be, were applicable and have been complied with.

CHAPTER II

HEAD OF STATE

6. There shall be a President in and over Zimbabwe Rhodesia who shall be Commander-in-Chief of the Defence Forces of Zimbabwe Rhodesia. The President.

7. The President shall have such powers and duties as are conferred or imposed upon him by or under this Constitution or by or under any law of the Legislature. Powers and duties of President.

Qualifications
of President.

8. A person shall not be qualified for election as President unless—

- (a) he is a citizen of Zimbabwe Rhodesia; and
- (b) he is qualified for election to the Senate.

Election of
President.

9. (1) If the office of President becomes vacant by reason of the termination of the period of office of the President or by reason of the death or resignation of the President or the removal of the President from office in terms of subsection (3) of section *ten*, the members of the Senate and the House of Assembly shall meet as an electoral college within sixty days of such vacancy occurring in order to elect a person qualified in terms of section *eight* to the office of President:

Provided that, if Parliament has been dissolved, the members of the Senate and the House of Assembly shall meet in terms of this subsection within sixty days of the election of the Senators referred to in paragraph (a), (b) or (c) of subsection (2) of section *eighteen*, whichever takes place last.

(2) In an election of a President in terms of this section—

- (a) each candidate shall be qualified in terms of section *eight* and shall be nominated by not less than ten members of the House of Assembly;
 - (b) if only one candidate is duly nominated, he shall be declared to be duly elected without the necessity of a ballot;
 - (c) if two or more candidates are duly nominated, a ballot shall be taken, each member of the electoral college present having one vote and no debate being allowed, and the candidate in whose favour a majority of all the votes cast is recorded shall be declared to be duly elected;
 - (d) if at the ballot in terms of paragraph (c) no candidate receives a majority of all the votes cast, the candidate or candidates who received the least number of votes shall, subject to the provisions of subsection (3), be eliminated and a further ballot shall be taken in accordance with the provisions of paragraph (c) in respect of the remaining candidates and if at such subsequent ballot no candidate receives a majority of all the votes cast at that ballot, this procedure shall be repeated as often as may be necessary until such time as one candidate does receive a majority of all the votes so cast and is declared to be duly elected;
 - (e) the votes of members of the electoral college shall be given by secret ballot.
- (3) If after any particular ballot in terms of subsection (2)—
- (a) the application of the provisions of paragraph (d) of subsection (2) would result in two or more candidates

being eliminated and only one candidate remaining, only one of the first-mentioned candidates, who shall be determined by the drawing of lots in the presence of the electoral college, shall be eliminated and the other candidate or candidates shall remain for the subsequent ballot;

(b) an equality of votes is found to exist between two candidates who were the only candidates at that ballot—

(i) the Prime Minister shall have a casting vote; or

(ii) where there is no Prime Minister or the Prime Minister or any acting Prime Minister is not present, the candidate who is entitled to be declared elected shall be determined by the drawing of lots in the presence of the electoral college.

(4) A person holding public office who is elected as President shall vacate such public office with effect from the date on which he is so elected.

(5) A person elected as President in terms of this section shall assume the office of the President on the day upon which he is declared to be elected.

(6) The Speaker or, in the absence of the Speaker, the President of the Senate shall—

(a) convene at the House of Assembly the electoral college; and

(b) preside over the electoral college; and

(c) conduct any drawing of lots in terms of subsection (3); and

(d) declare the successful candidate to be elected.

(7) The President may make regulations prescribing the procedure for the nomination of candidates for and for other matters incidental to an election in terms of this section.

10. (1) The President shall hold office for a period of six years and shall, on the termination of his period of office, be eligible for re-election: Tenure of office
of President.

Provided that a President who has held office for two terms shall not be eligible for re-election for a third term of office.

(2) The President may resign his office by lodging his resignation in writing with the Prime Minister.

(3) The President shall cease to hold office if, after a report prepared by a joint committee of the Senate and the House of Assembly appointed at the request of the Prime Minister has recommended the removal of the President on the grounds of misconduct or inability to discharge efficiently the functions of his office, the members of the Senate and the House of Assembly sitting together have resolved by the affirmative votes of not less than two-thirds of the total number of such members that the President be removed from office.

Acting President.

11. (1) If at any time—

- (a) the office of the President is vacant; or
- (b) the President is absent from Zimbabwe Rhodesia and has not authorized the President of the Senate in terms of subsection (3) to perform his functions; or
- (c) the President is for any reason unable to perform the functions of his office and is unable to authorize the President of the Senate in terms of subsection (3) to perform those functions;

the functions of the office of the President shall, during that period, be assumed and performed by the President of the Senate as Acting President.

(2) An Acting President shall cease to perform the functions of the President in terms of subsection (1) after the President has informed him that he is about to resume his functions or when a new President assumes office in terms of subsection (5) of section *nine*, as the case may be.

(3) Whenever the President—

- (a) has occasion to be absent from the seat of Government but not from Zimbabwe Rhodesia; or
- (b) has occasion to be absent from Zimbabwe Rhodesia for a period which he has reason to believe will not exceed one month; or
- (c) is suffering from an illness which he has reason to believe will be of short duration;

he may, by instrument under the Public Seal, authorize the President of the Senate to perform, on his behalf as Acting President, such of the functions of the office of the President as may be specified in that instrument.

(4) The power and authority of the President shall not be abridged, altered or in any way affected by an authority in terms of subsection (3) and an Acting President shall conform to and observe all instructions that the President may from time to time address to him:

Provided that the question whether any such instructions have been observed shall not be inquired into in any court.

(5) An Acting President shall perform the functions of the President in terms of subsection (3) for such period as may be specified in the instrument by which he is so authorized, save that the President may at any time revoke his authority.

(6) For the purposes of this section, a certificate of the Chief Justice that the President is unable to perform the functions of his office and is unable to authorize the President of the Senate in terms of subsection (3) to perform those functions shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any court:

Provided that any certificate in terms of this subsection shall cease to have effect if the President notifies the Acting President in terms of subsection (2) that he is about to resume the functions of the office of the President.

12. The President shall, before entering upon his office, take before the Chief Justice or another judge of the High Court the oaths of loyalty and for the due execution of his office in the forms set out in the First Schedule.

Oath of office.

13. Any person who commits any act which is calculated to violate the dignity or injure the reputation of the President or an Acting President shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding five years.

Protection of dignity and reputation of President or Acting President.

14. (1) There shall be charged upon and paid out of the Consolidated Revenue Fund to the President and any Acting President such salary and allowances as may from time to time be fixed by or under a law of the Legislature.

Salary and allowances of President and Acting President.

(2) The salary and allowances payable to the President or an Acting President shall not be reduced during the period he holds the office of the President or acts as holder thereof.

CHAPTER III

THE LEGISLATURE

PART I

LEGISLATIVE AUTHORITY

15. The legislative authority of Zimbabwe Rhodesia shall vest in the Legislature which shall consist of the President and Parliament.

Legislative authority.

16. The Parliament of Zimbabwe Rhodesia shall consist of a Senate and a House of Assembly.

Parliament.

17. A law of the Legislature shall, subject to the other provisions of this Constitution, make provision for the election of Senators and of members of the House of Assembly for the purposes of this Constitution.

Electoral Law.

PART II

THE SENATE

18. (1) The Senate shall consist of such persons as are qualified for election as Senators and are duly elected thereto in accordance with the Electoral Law or appointed in terms of subsection (3).

Composition of Senate.

(2) Subject to the provisions of subsection (3), there shall be thirty Senators, of whom—

(a) ten shall be Black Senators duly elected by an electoral college consisting of the Black members of the House of Assembly referred to in paragraph (a) of subsection (2) of section *twenty-two*;

(b) ten shall be White Senators duly elected by an electoral college consisting of the White members of the House of

Assembly referred to in paragraphs (b) and (c) of subsection (2) of section *twenty-two*;

(c) ten shall be Chiefs of whom—

- (i) five shall be Chiefs in Mashonaland duly elected by an electoral college consisting of those Chiefs in Mashonaland who are members of the Council of Chiefs; and
- (ii) five shall be Chiefs in Matabeleland duly elected by an electoral college consisting of those Chiefs in Matabeleland who are members of the Council of Chiefs.

(3) If—

- (a) immediately after the election of Senators referred to in subsection (2) after a general election; or
- (b) at any time when no seat of any Senator referred to in subsection (2) is vacant;

there are less than two Senators referred to in subsection (2) who have the qualifications prescribed in subsection (4) of section *thirty-four*, the President may, in order to ensure that there are at least two Senators who have those qualifications, appoint as Senators one or two persons, as may be necessary for the purpose, who have those qualifications and who are otherwise qualified in terms of the Electoral Law for election as Senators.

(4) The qualifications and disqualifications of candidates for election in terms of subsection (2) and the procedure for the nomination of such candidates and election of Senators and the filling of vacancies shall be as prescribed in the Electoral Law.

Election of
President of Senate.

19. (1) At such time on such day as may be fixed by the Secretary to Parliament, being a day not later than the day fixed in terms of section *sixty-three* for the first meeting of Parliament after a general election, and before the Senate proceeds to the dispatch of any other business, the Senate shall elect a person to be the President of the Senate and, whenever the office of the President of the Senate becomes vacant otherwise than by reason of the dissolution of Parliament, the Senate shall not transact any other business until a person to fill that office has been elected.

(2) The President of the Senate shall be elected in accordance with Standing Orders from among persons who are or have been members of the Senate or the House of Assembly or of the former Senate or House of Assembly who are neither Ministers nor Deputy Ministers:

Provided that a person who is not a member of the Senate shall not be elected as the President of the Senate unless, in terms of the Electoral Law, he possesses the qualifications and none of the disqualifications for election as a Senator.

(3) A person who has been elected as the President of the Senate shall, before he enters upon the duties of his office, unless he has already done so in accordance with the provisions of section

thirty-nine, take and subscribe before the Senate the oath of loyalty in the form set out in the First Schedule.

20. (1) The President of the Senate may at any time resign his office either by announcing his resignation in person to the Senate or by notice in writing to the Secretary to Parliament. Tenure of office of President of Senate.

(2) The President of the Senate shall vacate his office—

- (a) on the dissolution of Parliament next following his election; or
- (b) if he becomes a Minister or Deputy Minister; or
- (c) if he becomes a Senator or a member of the House of Assembly or the Speaker; or
- (d) if any circumstance arises that, if he had been a Senator—
 - (i) the provisions of paragraph (d), (e) or (h) of subsection (1) of section *twenty-nine* would apply to him and his seat as a Senator would become vacant; or
 - (ii) he would be required, by virtue of the provisions of section *thirty*, to cease to exercise his functions as a Senator.

(3) The office of the President of the Senate shall become vacant if the Senate has resolved by the affirmative votes of not less than two-thirds of its total membership that the office of the President of the Senate shall become vacant.

(4) Any function of the President of the Senate, whether authorized by law or otherwise, which is required to be performed after a dissolution of Parliament and before the President of the Senate is elected in terms of subsection (1) of section *nineteen* shall be performed by the person who was the President of the Senate immediately before such dissolution:

Provided that, if at any time after the dissolution of Parliament the person who was the President of the Senate relinquishes the functions of that office by notice in writing to the Secretary to Parliament or is for any reason unable to perform them, those functions shall be performed by the Secretary to Parliament.

21. (1) After a general election and as soon as practicable after the election of the President of the Senate in terms of section *nineteen* the Senate shall elect a Senator, not being a Minister or Deputy Minister, to be the Deputy President of the Senate and to be chairman when the Senate is in Committee and, whenever the office of the Deputy President of the Senate becomes vacant otherwise than by reason of a dissolution of Parliament, the Senate shall, as soon as convenient, elect another such Senator to that office. Election of Deputy President of Senate.

(2) The Deputy President of the Senate shall be elected in accordance with Standing Orders.

(3) The Deputy President of the Senate may at any time resign his office by notice in writing to the Secretary to Parliament and shall vacate his office if—

- (a) he ceases to be a Senator; or
- (b) he is required by virtue of the provisions of section *thirty* or *thirty-one* to cease to exercise his functions as a Senator; or
- (c) he becomes a Minister or Deputy Minister.

PART III

THE HOUSE OF ASSEMBLY

Composition of
House of Assembly.

22. (1) The House of Assembly shall consist of such persons as are qualified for election as members of the House of Assembly and are duly elected thereto in accordance with the Electoral Law.

(2) There shall be one hundred members of the House of Assembly, of whom—

- (a) seventy-two shall be Black members duly elected thereto by voters enrolled on the common voters roll for seventy-two common roll constituencies;
- (b) twenty shall be White members duly elected thereto by voters enrolled on the White voters roll for twenty White roll constituencies;
- (c) eight shall be White members duly elected thereto in accordance with the following provisions—
 - (i) sixteen candidates shall be nominated by an electoral college consisting of the White members referred to in paragraph (b) and this paragraph who are in office immediately before the dissolution of Parliament;
 - (ii) the eight White members shall be elected by an electoral college consisting of the members referred to in paragraphs (a) and (b) from sixteen candidates nominated in accordance with the provisions of subparagraph (i):

Provided that in the case of an election to fill a vacancy caused otherwise than by the dissolution of Parliament, the White member shall be elected by an electoral college referred to in subparagraph (ii) from two candidates nominated by an electoral college consisting of the White members referred to in paragraph (b) and this paragraph who are in office at the time of the vacancy.

(3) The qualifications and disqualifications of candidates for election in terms of subsection (2) and the procedure for the nomination of such candidates and election of members of the House of Assembly and the filling of vacancies shall be as prescribed in the Electoral Law.

Election of Speaker.

23. (1) At such time on such day as may be fixed by the Secretary to Parliament, being a day not later than the day fixed

in terms of section *sixty-three* for the first meeting of Parliament after a general election, and before the House of Assembly proceeds to the dispatch of any other business, the House of Assembly shall elect a person to be the Speaker and, whenever the office of the Speaker becomes vacant otherwise than by reason of the dissolution of Parliament, the House of Assembly shall not transact any other business until a person to fill that office has been elected.

(2) The Speaker shall be elected in accordance with Standing Orders from among persons who are or have been members of the Senate or the House of Assembly or of the former Senate or House of Assembly who are neither Ministers nor Deputy Ministers:

Provided that a person who is not a member of the House of Assembly shall not be elected as the Speaker unless, in terms of the Electoral Law, he possesses the qualifications and none of the disqualifications for election as a member of the House of Assembly.

(3) A person who has been elected as the Speaker shall, before he enters upon the duties of his office, unless he has already done so in accordance with the provisions of section *thirty-nine*, take and subscribe before the House of Assembly the oath of loyalty in the form set out in the First Schedule.

24. (1) The Speaker may at any time resign his office either by announcing his resignation in person to the House of Assembly or by notice in writing to the Secretary to Parliament. Tenure of office of Speaker.

(2) The Speaker shall vacate his office—

- (a) on the dissolution of Parliament next following his election; or
- (b) if he becomes a Minister or Deputy Minister; or
- (c) if he becomes a Senator or the President of the Senate or a member of the House of Assembly; or
- (d) if any circumstance arises that, if he had been a member of the House of Assembly—
 - (i) the provisions of paragraph (d), (e) or (h) of subsection (1) of section *twenty-nine* would apply to him and his seat as a member would become vacant; or
 - (ii) he would be required, by virtue of the provisions of section *thirty*, to cease to exercise any of his functions as a member.

(3) The office of the Speaker shall become vacant if the House of Assembly has resolved by the affirmative votes of not less than two-thirds of its total membership that the office of the Speaker shall become vacant.

(4) Any function of the Speaker, whether authorized by law or otherwise, which is required to be performed after a dissolution of Parliament and before the Speaker is elected in

terms of subsection (1) of section *twenty-three* shall be performed by the person who was the Speaker immediately before such dissolution:

Provided that, if at any time after the dissolution of Parliament the person who was the Speaker relinquishes the functions of that office by notice in writing to the Secretary to Parliament or is for any reason unable to perform them, those functions shall be performed by the Secretary to Parliament.

Election of
Deputy Speaker.

25. (1) After a general election and as soon as practicable after the election of the Speaker in terms of section *twenty-three* the House of Assembly shall elect a member of the House of Assembly, not being a Minister or Deputy Minister, to be the Deputy Speaker and to be chairman when the House of Assembly is in Committee and, whenever the office of the Deputy Speaker becomes vacant otherwise than by reason of a dissolution of Parliament, the House of Assembly shall, as soon as convenient, elect another such member to that office.

(2) The Deputy Speaker shall be elected in accordance with Standing Orders.

(3) The Deputy Speaker may at any time resign his office by notice in writing to the Secretary to Parliament and shall vacate his office if—

- (a) he ceases to be a member of the House of Assembly;
or
- (b) he is required, by virtue of the provisions of section *thirty* or *thirty-one*, to cease to exercise his functions as a member of the House of Assembly; or
- (c) he becomes a Minister or Deputy Minister.

PART IV

SENATE AND HOUSE OF ASSEMBLY

Remuneration of
President of Senate
and Speaker.

26. (1) There shall be charged upon and paid out of the Consolidated Revenue Fund to the President of the Senate and to the Speaker such salaries and allowances 'as may from time to time be fixed by or under a law of the Legislature:

Provided that the President of the Senate shall not be paid any salary or allowances referred to in this subsection in respect of any period during which he is entitled to be paid the salary and allowances fixed for the Acting President.

(2) Save as provided in the proviso to subsection (1), the salary payable to the President of the Senate or the Speaker shall not be reduced during the period he holds that office.

(3) A person who was the President of the Senate or the Speaker immediately before a dissolution of Parliament shall, subject to the provisions of the proviso to subsection (1), continue to receive the salary and allowances of the President of the Senate or the Speaker, as the case may be, until such time as the Senate

or the House of Assembly, respectively, first meets after the dissolution or until he ceases sooner to perform the functions of—

- (a) the President of the Senate in the circumstances referred to in subsection (4) of section *twenty*; or
- (b) the Speaker in the circumstances referred to in subsection (4) of section *twenty-four*;

as the case may be.

27. A Minister or Deputy Minister shall have the right to sit and speak both in the Senate and the House of Assembly but shall only have the right to vote in the Senate or the House of Assembly, as the case may be, if he is a member thereof.

Powers of Ministers and Deputy Ministers in Senate and House of Assembly.

28. (1) A member of the Senate who becomes a member of the House of Assembly or the President of the Senate or the Speaker shall vacate his seat as a Senator with effect from the date on which he becomes a member of the House of Assembly, the President of the Senate or the Speaker, as the case may be.

Vacating of seats by members.

(2) A member of the House of Assembly who becomes a member of the Senate or the President of the Senate or the Speaker shall vacate his seat as a member of the House of Assembly with effect from the day on which he becomes a member of the Senate, the President of the Senate or the Speaker, as the case may be.

29. (1) The seat of a member of the Senate or the House of Assembly shall become vacant—

Tenure of seat of member of Senate or House of Assembly.

- (a) on the dissolution of Parliament next following his election; or
- (b) if he resigns his seat by notice in writing to the President of the Senate or the Speaker, as the case may be, or, in the case of the death, incapacity or absence from Zimbabwe Rhodesia of the President of the Senate or the Speaker, to the Secretary to Parliament; or
- (c) if he is absent from twenty-one consecutive sittings during any session without the leave of the Senate or the House of Assembly, as the case may be, and the Senate or the House of Assembly has resolved by the affirmative votes of more than one-half of its total membership that the seat shall become vacant; or
- (d) subject to the provisions of paragraph (h), if he accepts any public office, including office as a member of a statutory body, or if he accepts employment as an employee of a statutory body; or
- (e) if he ceases to be qualified for election to the Senate or the House of Assembly, as the case may be, in terms of the Electoral Law; or
- (f) in the circumstances set out in section *thirty*; or
- (g) if he is required, by virtue of the provisions of section *twenty-eight* or *thirty-one*, to vacate his seat; or

- (h) if, being a member or employee of a statutory body at the time he becomes a member of the Senate or the House of Assembly, he fails to terminate his appointment or employment, as the case may be, as such within fourteen days of the date he became a member of the Senate or the House of Assembly, as the case may be.

(2) The resignation of a member of the Senate or the House of Assembly shall not become effective to render the seat of that member vacant under the provisions of paragraph (b) of subsection (1) in any case in which—

- (a) proceedings are pending in respect of that member's election if it is alleged that illegal or corrupt practices took place at such election; or
- (b) proceedings in the Senate or the House of Assembly, as the case may be, are contemplated or pending in respect of that member's conduct in or as a member of the Senate or the House of Assembly;

unless the Senate or the House of Assembly, as the case may be, by resolution accepts the resignation.

(3) For the purposes of paragraph (d) of subsection (1), a person shall not be deemed to have accepted a public office by reason of—

- (a) accepting appointment as a Minister or Deputy Minister; or
- (b) being an officer or member of any of the Defence Forces whose services in peace time are not wholly in the employ of the State; or
- (c) being an officer or member of the reserve forces of the Police Force whose services are not wholly in the employ of the State; or
- (d) holding any office for which no remuneration is paid other than payment by way of travelling or subsistence allowances or out-of-pocket expenses.

(4) For the purposes of this section—

- (a) any person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;

(b) "statutory body" means—

- (i) any Commission established by this Constitution; and

(ii) any body corporate—

- A. which is established directly by or under any law of the Legislature for special purposes specified in that law; and

- B. the membership of which consists wholly or mainly of persons appointed by the President or by a Minister.

30. (1) In the event of a member of the Senate or the House of Assembly being convicted—

Members sentenced to death or to imprisonment.

- (a) within Zimbabwe Rhodesia of a criminal offence; or
- (b) outside Zimbabwe Rhodesia of an offence, by whatever name called, which if committed within Zimbabwe Rhodesia would have been a criminal offence;

and being sentenced by a court to death or imprisonment, by whatever name called, for a term of six months or more, such member shall cease forthwith to exercise his functions or to be entitled to any remuneration as a member and, subject to the provisions of this section, his seat shall become vacant at the expiration of thirty days from the date of such sentence.

(2) If, during the period of thirty days referred to in subsection (1), an application for a free pardon is made or an appeal is lodged, the question whether the member is to vacate his seat shall not be determined until the abandonment or final disposal of such application or appeal, whereupon the member shall forthwith vacate his seat unless—

- (a) he is granted a free pardon; or
- (b) his conviction is set aside; or
- (c) his sentence is reduced to a term of imprisonment of less than six months; or
- (d) a punishment other than imprisonment is substituted.

(3) Where as a consequence of the final disposal of the application or appeal of the member his conviction or sentence is varied in any manner specified in paragraphs (a) to (d) of subsection (2), the member shall not vacate his seat, unless he has previously resigned, but shall be entitled to resume his functions as a member and to receive remuneration as such for the period during which he ceased to exercise his functions as a member by reason of the provisions of this section.

(4) For the purposes of this section—

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of such terms;
- (b) two or more terms of imprisonment that are required to be served concurrently shall be regarded as a single term of imprisonment for the period of the longest of such terms;
- (c) a person shall be regarded as sentenced notwithstanding that the execution of the sentence or any part thereof has been suspended;

- (d) no account shall be taken of any sentence of imprisonment imposed as an alternative to, or in default of, the payment of a fine.

Expulsion or suspension of members convicted of certain offences.

31. (1) If—

- (a) a member of the Senate or the House of Assembly is convicted of an offence described in subsection (1) of section *thirty* and is sentenced to imprisonment for a lesser period than that specified in that subsection or to a fine or other punishment not specified in that subsection; and
- (b) the Senate or the House of Assembly, as the case may be, after taking into account the nature of the offence and the sentence imposed, resolves by the affirmative votes of not less than two-thirds of its total membership that the member is unfit to continue as a member or that the member should be suspended from the service of the Senate or the House of Assembly, as the case may be, for such period, not exceeding six months, as the Senate or the House of Assembly may specify;

the member shall forthwith vacate his seat or, as the case may be, be suspended from the service of the Senate or the House of Assembly, as the case may be, for the period so specified.

(2) A member of the Senate or the House of Assembly who is suspended from the service of the Senate or the House of Assembly in terms of subsection (1) shall not exercise his functions and shall not be entitled to any remuneration as a member during the period of his suspension.

Validity of proceedings.

32. Subject to the provisions of section *forty-one*, the Senate or the House of Assembly shall not be disqualified for the transaction of business by reason of any vacancy among the members thereof or the suspension of a member in terms of section *thirty* or *thirty-one*, and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the Senate or the House of Assembly or otherwise took part in the proceedings.

General elections.

33. (1) A general election of members of the House of Assembly shall be held on such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament as the President may, by proclamation in the *Gazette*, fix.

(2) Following a general election in terms of subsection (1) the election of the members of the Senate shall be held on such day or days within a period not exceeding twenty-eight days after the day fixed in terms of subsection (1) for the election of the members of the House of Assembly referred to in paragraph (c) of subsection (2) of section *twenty-two* as the President may, by proclamation in the *Gazette*, fix.

PART V

SENATE LEGAL COMMITTEE AND ITS FUNCTIONS

34. (1) After a general election and as soon as practicable after the election of the President of the Senate in terms of section *nineteen* and of the Deputy President of the Senate in terms of section *twenty-one* the President of the Senate shall, subject to the provisions of this section, appoint a committee to be known as the Senate Legal Committee.

The Senate Legal Committee.

(2) The Senate Legal Committee shall consist of such number of Senators as the President may determine and the President may, at any time after the appointment of the Senate Legal Committee, direct that the membership thereof shall be increased, or decreased, as the case may be, by such number as he may specify:

Provided that at no time shall the Senate Legal Committee consist of less than three members.

(3) A majority of the members of the Senate Legal Committee shall consist of persons who are legally qualified in terms of subsection (4).

(4) A person shall be legally qualified for the purposes of subsection (3) if he—

- (a) is a retired judge of the High Court; or
 - (b) is, and has been for not less than ten years, whether continuously or not, qualified to practise as an advocate or attorney in Zimbabwe Rhodesia; or
 - (c) has been for not less than ten years a magistrate in Zimbabwe Rhodesia.
- (5) Standing Orders shall make provision for—
- (a) the election of a chairman, the quorum and other matters relating to the procedure of the Senate Legal Committee;
 - (b) what powers, if any, the Senate Legal Committee shall have in relation to receiving evidence in connexion with the matters which, in terms of this Constitution, it is its function to consider;
 - (c) such other matters as may be deemed fit.

35. The functions of the Senate Legal Committee shall be—

Functions of Senate Legal Committee.

- (a) to examine every Bill or draft Bill which is referred to it in terms of subsection (1) or (8) of section *fifty* and to report thereon in accordance with the provisions of that section;
- (b) to examine every statutory instrument or draft statutory instrument which is referred to it in terms of section *fifty-eight* or *sixty-two* and to report thereon in accordance with the provisions of section *fifty-nine* or *sixty-two*, as the case may be.

Additional functions
of Senate Legal
Committee.

36. A law of the Legislature may confer additional functions on the Senate Legal Committee in relation to the examination of and reporting on statutory instruments for purposes other than those specified in Part VIII and such law shall provide for the procedures subsequent to any such report of the Senate Legal Committee.

PART VI

GENERAL POWERS AND PROCEDURE

Power to make laws.

37. (1) The Legislature shall be the sovereign legislative authority in and over Zimbabwe Rhodesia.

(2) The Legislature shall have power, subject to the provisions of this Constitution, to make laws, to be entitled "Acts", for the peace, order and good government of Zimbabwe Rhodesia.

Standing Orders.

38. Subject to the provisions of this Constitution, the Senate and the House of Assembly shall, jointly or severally as may be appropriate, make Standing Orders with respect to—

(a) the passing of Bills;

(b) any matters in connexion with which Standing Orders may or are required to be made in terms of this Constitution;

and, generally, with respect to the regulation and orderly conduct of proceedings and business in and between the Senate and the House of Assembly.

Oath of loyalty.

39. Every member of the Senate or the House of Assembly shall, before taking part in any proceedings thereof, other than proceedings necessary for the purpose of this section, make and subscribe before the Senate or the House of Assembly, as the case may be, the oath of loyalty in the form set out in the First Schedule.

Presiding in
Parliament.

40. (1) The President of the Senate or, when he is unable to act, the Deputy President of the Senate or, when they are both unable to act, a Senator, not being a Minister or Deputy Minister, elected or appointed in accordance with Standing Orders, shall preside over the deliberations of the Senate:

Provided that the President of the Senate or the Deputy President of the Senate or other Senator, as the case may be, when acting for the President of the Senate shall not preside over the deliberations of the Senate in Committee.

(2) The Speaker or, when he is unable to act, the Deputy Speaker or, when they are both unable to act, a member of the House of Assembly, not being a Minister or Deputy Minister, elected or appointed in accordance with Standing Orders, shall preside over the deliberations of the House of Assembly:

Provided that the Speaker or the Deputy Speaker or other member of the House of Assembly, as the case may be, when acting for the Speaker shall not preside over the deliberations of the House of Assembly in Committee.

41. (1) If objection is taken by a member of the Senate present that there are present, besides the President of the Senate or the Senator presiding, fewer than ten Senators and, after such interval as may be prescribed in Standing Orders, the President of the Senate or Senator presiding ascertains that the number of Senators present is less than ten, the Senate shall thereupon be adjourned in accordance with Standing Orders.

Quorum in
Parliament.

(2) If objection is taken by a member of the House of Assembly present that there are present, besides the Speaker or the member presiding, fewer than twenty-five members and, after such interval as may be prescribed in Standing Orders, the Speaker or member presiding ascertains that the number of members present is less than twenty-five, the House of Assembly shall thereupon be adjourned in accordance with Standing Orders.

42. (1) Save as otherwise provided in this Constitution, all questions proposed for decision at a sitting of the Senate or the House of Assembly shall be determined by a majority of the votes of the members present and voting.

Voting in
Parliament.

(2) If, upon any question before the Senate or the House of Assembly, the votes of the members are equally divided, the motion shall be lost.

(3) The person presiding at a sitting of the Senate or of the House of Assembly, as the case may be, shall not have a deliberative or a casting vote.

43. (1) Subject to the provisions of subsection (2), all debates and proceedings in the Senate or the House of Assembly shall be conducted and all records thereof shall be kept in the English language.

Parliamentary
records and translation
of debates.

(2) The President of the Senate may, if he considers it to be necessary or desirable for the convenience of any Senators, permit debates or other proceedings in the Senate to be conducted in Chishona and Sindebele, as well as in English, in which case he shall ensure that adequate provision is made for the translation of any language so used into the two other languages.

44. (1) Subject to the other provisions of this Constitution, a law of the Legislature may make provision to determine and regulate the privileges, immunities and powers of the Senate, the House of Assembly and the members or officers thereof, including the President of the Senate and the Speaker, and to provide for penalties for a person who sits or votes in the Senate or the House of Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so.

Privileges of
Parliament and
members and officers
thereof.

(2) The law referred to in subsection (1) shall apply in relation to a Minister or Deputy Minister who is not a member of the Senate or the House of Assembly as though he were a member thereof.

45. (1) There shall be a Secretary to Parliament appointed by the Speaker after consultation with the President of the Senate and subject to the approval of the House of Assembly.

Secretary to
Parliament and
other staff of
Parliament.

(2) A person appointed as the Secretary to Parliament shall not be removed from office unless the House of Assembly resolves by the affirmative votes of more than one-half of its total membership that he be removed from office.

(3) Subject to any wishes which may be expressed from time to time by the House of Assembly, the Speaker shall, after consultation with the President of the Senate, appoint such number of other staff of Parliament as the Speaker may from time to time consider necessary.

(4) The staff of Parliament shall be appointed on terms of service approved from time to time by the House of Assembly and shall be deemed to be public officers but shall not form part of the Public Service.

President and other persons may address Parliament.

46. (1) The President may at any time—

- (a) attend and address the Senate or the House of Assembly; or
- (b) call a joint meeting of the Senate and the House of Assembly and attend and address such joint meeting.

(2) The President may send messages to the Senate or the House of Assembly and any such message shall be read by a Minister designated by the President at the first convenient sitting of the Senate or the House of Assembly, as the case may be, after it is received.

(3) When acting in terms of subsection (1) or (2) the President shall have regard to such constitutional conventions and practices referred to in subsection (3) of section *sixty-six*, if any, as are relevant and appropriate in the circumstances.

(4) The Senate and the House of Assembly may, either jointly or severally, pursuant to a resolution, invite any person to address the Senate or the House of Assembly or, as the case may be, a joint meeting of the Senate and the House of Assembly.

PART VII

PROCEDURE IN REGARD TO BILLS AND OTHER MATTERS

Introduction of Bills, motions and petitions.

47. (1) Any Bill may originate in the House of Assembly.

(2) Any Bill, other than a Money Bill, may originate in the Senate.

(3) Subject to the provisions of this Constitution and Standing Orders—

- (a) any member of the Senate may introduce any Bill into or move any motion for debate in or present any petition to the Senate and the same shall be debated and disposed of according to Standing Orders;
- (b) any member of the House of Assembly may introduce any Bill into or move any motion for debate in or present any petition to the House of Assembly and

the same shall be debated and disposed of according to Standing Orders;

- (c) any Minister or Deputy Minister may introduce any Bill into or move any motion for debate in or present any petition to either the Senate or the House of Assembly and the same shall be debated and disposed of according to Standing Orders.

(4) Except on the recommendation of the President signified by a Minister or Deputy Minister, the Senate or the House of Assembly shall not—

- (a) proceed upon any Bill, including any amendment to a Bill, which, in the opinion of the President of the Senate or the Speaker, as the case may be, makes provision for any of the following matters—

- (i) imposing or increasing any tax;
- (ii) imposing or increasing any charge on the Consolidated Revenue Fund or other public funds of Zimbabwe Rhodesia or varying any such charge otherwise than by reducing it;
- (iii) compounding or remitting any debt due to the State and condoning any failure to collect taxes;
- (iv) authorizing the making or raising of any loan by the State;

- (v) condoning unauthorized expenditure;

or

- (b) proceed upon any motion, including any amendment to a motion, the effect of which, in the opinion of the President of the Senate or the Speaker, as the case may be, is that provision should be made for any of the matters specified in paragraph (a); or
- (c) receive any petition which, in the opinion of the President of the Senate or the Speaker, as the case may be, requests that provision be made for any of the matters specified in paragraph (a).

- (5) The provisions of subsection (4) shall not apply to—

- (a) any Bill introduced, motion moved or petition presented by a Minister or Deputy Minister; or
- (b) any amendment moved by a Minister or Deputy Minister to a Bill or motion.

48. (1) Immediately after a Bill which originated in the House of Assembly has been passed by the House of Assembly, the Speaker shall cause an authenticated copy of the Bill to be transmitted to the Senate for consideration and the day on which it is transmitted to be recorded in the journal of the House of Assembly.

Procedure in regard to Bills.

(2) A Bill transmitted to the Senate in terms of subsection (1) shall be introduced forthwith into the Senate and, subject to the provisions of this Constitution, the Senate may reject the Bill or pass the Bill, with or without amendments.

(3) A Bill introduced into the Senate in terms of subsection (2) which has been passed by the Senate with amendments shall be returned forthwith to the House of Assembly with the amendments duly certified by the Secretary to Parliament and the House of Assembly may reject, agree to or amend the amendments made to the Bill by the Senate.

(4) Immediately after a Bill which originated in the Senate has been passed by the Senate, the President of the Senate shall cause an authenticated copy of the Bill to be transmitted to the House of Assembly for consideration and the day on which it is transmitted to be recorded in the journal of the Senate.

(5) A Bill transmitted to the House of Assembly in terms of subsection (4) shall be introduced into the House of Assembly as soon as may be convenient and the House of Assembly may reject the Bill or pass the Bill, with or without amendments.

(6) A Bill introduced into the House of Assembly in terms of subsection (5) which has been passed by the House of Assembly with amendments shall be returned to the Senate with the amendments duly certified by the Secretary to Parliament and the Senate may reject, agree to or amend the amendments made to the Bill by the House of Assembly.

Disagreement between
Senate and House of
Assembly.

49. (1) Subject to the provisions of subsection (3), if—

- (a) the Senate and the House of Assembly have not agreed upon the amendments to be made to a Bill which originated in the House of Assembly before the expiration of a period of one hundred and eighty days beginning on the day of the introduction of the Bill into the Senate; or
- (b) the Senate and the House of Assembly have not agreed upon the amendments to be made to a Bill which originated in the Senate before the expiration of a period of one hundred and eighty days beginning on the day of the return of the Bill to the Senate; or
- (c) a Bill which originated in the House of Assembly has been rejected or has not been passed by the Senate before the expiration of a period of one hundred and eighty days beginning on the day of the introduction of the Bill into the Senate;

the Bill may, subject to the provisions of this section, be presented to the President for assent in the form in which it was passed by the House of Assembly, except for minor changes required by the passage of time, with such amendments, if any, as the Senate and the House of Assembly may have agreed:

Provided that if, in the opinion of the Speaker, a Bill which—

- (a) originated in the House of Assembly; and
- (b) was introduced into the House of Assembly after the expiration of a period of one hundred and eighty days beginning on the day of the introduction into the Senate of a previous Bill originating in the Senate;

contains provisions identical with those contained in that previous Bill, except for minor changes required by the passage of time, the provisions of this subsection shall be construed and have effect as though any reference in paragraphs (a) and (c) of this subsection to a period of one hundred and eighty days were a reference to a period of eight sitting days.

(2) A Bill referred to in subsection (1) shall not be presented to the President for assent unless a resolution that the Bill be presented to the President for assent has been passed by the House of Assembly after the expiration of a period—

- (a) in the case of a Bill referred to in paragraph (a) or (c) of that subsection, of one hundred and eighty days beginning on the day of the introduction of the Bill into the Senate;
 - (b) in the case of a Bill referred to in paragraph (b) of that subsection, of one hundred and eighty days beginning on the day of the return of the Bill to the Senate;
 - (c) in the case of a Bill referred to in the proviso to that subsection, of eight sitting days beginning on the day of the introduction of the Bill into the Senate.
- (3) The provisions of subsections (1) and (2)—
- (a) shall not apply to a Constitutional Bill;
 - (b) shall apply to a Bill in respect of which the President of the Senate has reported in terms of subsection (4) of section *fifty-one* as though any reference in subsections (1) and (2) to a period of one hundred and eighty days were a reference to a period of three hundred and sixty days.

(4) A Bill referred to in subsection (1) shall not be presented to the President for assent unless it is accompanied by a certificate from the Speaker stating that the Bill is a Bill to which the relevant provisions of subsections (1) and (2) apply and that the Bill may lawfully be presented for assent by virtue of those provisions, as read with paragraph (b) of subsection (3), where relevant.

(5) A Bill presented to the President for assent in pursuance of a resolution of the House of Assembly referred to in subsection (2) shall be deemed to have been duly passed by Parliament in the form in which it is presented to the President.

(6) In the calculation of any period of eight days, one hundred and eighty days or three hundred and sixty days referred to in this section, no account shall be taken of any period during which Parliament is prorogued.

(7) For the purposes of this section—

- (a) a Bill originating in the House of Assembly shall be deemed to have been introduced into the Senate on the sitting day next following the day on which a copy of the Bill is transmitted to the Senate in terms of subsection (1) of section *forty-eight*;

- (b) a Bill originating in the Senate shall be deemed to have been returned to the Senate on the sitting day next following the day on which the Bill is returned for the first time to the Senate in terms of subsection (6) of section *forty-eight*.

Functions of Senate Legal Committee in regard to Bills.

50. (1) Subject to the provisions of subsection (6), every Bill shall, immediately after its introduction into the Senate, be referred to the Senate Legal Committee and if any such Bill is thereafter amended in the Senate the Bill as amended shall, before it is given its final reading, be referred to the Senate Legal Committee:

Provided that a Bill which originated in the House of Assembly and has been passed by the House of Assembly may be referred to the Senate Legal Committee before its introduction into the Senate.

(2) It shall be the duty of the Senate Legal Committee to examine every Bill referred to it in terms of subsection (1) and; subject to the provisions of subsection (3), to report to the Senate—

- (a) in the case of a Bill referred to the Committee before or immediately after its introduction into the Senate, within a period of twenty-one sitting days;
- (b) in the case of a Bill referred to the Committee by reason of its amendment in the Senate, within a period of five sitting days;

beginning on the day when the Bill is referred to the Committee, whether or not, in the opinion of the Committee, any provision of the Bill would, if enacted, be in contravention of the Declaration of Rights.

(3) On the application of the Chairman of the Senate Legal Committee, the President of the Senate may, if he considers it proper to do so on account of the length or complexity of a Bill or the number of matters for the time being under consideration by the Committee or for any other sufficient reason, extend the period referred to—

- (a) in paragraph (a) of subsection (2) for a further period not exceeding twenty-one sitting days; or
- (b) in paragraph (b) of subsection (2) for a further period not exceeding five sitting days;

and any extension of time so granted shall be recorded in the journal of the Senate.

(4) The Senate shall not proceed upon a Bill after the introduction of the Bill into the Senate or give a Bill its final reading after it has been amended in the Senate unless a report of the Senate Legal Committee on the Bill has been presented to the Senate:

Provided that if no report on a Bill has been presented to the Senate within the appropriate period specified in subsection (2) or any extension of that period which has been granted in terms

of subsection (3), it shall be presumed that the Committee is of the opinion that no provision of the Bill would, if enacted, be in contravention of the Declaration of Rights and, accordingly, the Senate may proceed upon the Bill or give the Bill its final reading, as the case may be.

(5) The provisions of this section shall, *mutatis mutandis*, apply to a provision of a Bill which is amended in the House of Assembly after the Bill has been passed by the Senate as they apply to a Bill which is introduced into the Senate.

(6) The provisions of subsection (1) shall not apply to—

- (a) a Money Bill; or
- (b) a Constitutional Bill; or
- (c) a Bill to which the proviso to subsection (1) of section *forty-nine* applies.

(7) The Chairman of the Senate Legal Committee shall transmit a copy of every report referred to in subsection (2), in which it is stated that, in the opinion of the Committee, a provision of the Bill to which the report relates would, if enacted, be in contravention of the Declaration of Rights, to the Ombudsman.

(8) A Minister may, if he sees fit, transmit to the Secretary to Parliament for examination by the Senate Legal Committee a draft of any Bill he proposes to introduce into the Senate or the House of Assembly and the Secretary to Parliament shall forthwith refer the Bill to the Senate Legal Committee and the Senate Legal Committee shall consider the Bill and cause the Minister to be informed whether or not, in the opinion of the Committee, any, and if so which, provision of the Bill would, if enacted, be in contravention of the Declaration of Rights, but nothing herein contained shall affect the provisions of this section in so far as they apply should that Bill be introduced into the Senate.

51. (1) It shall be the duty of the Senate to consider any report presented to the Senate in terms of subsection (2) of section *fifty* which states that, in the opinion of the Senate Legal Committee, a provision of a Bill would, if enacted, be in contravention of the Declaration of Rights. Reports of Senate Legal Committee.

(2) After considering any report presented to the Senate in terms of subsection (2) of section *fifty* in relation to a Bill the Senate may resolve that the Bill would, if enacted, be in contravention of the Declaration of Rights.

(3) If the Senate resolves that a Bill would, if enacted, be in contravention of the Declaration of Rights, the Senate shall not pass the Bill.

(4) If the Senate—

- (a) by virtue of the provisions of subsection (3), does not pass a Bill; or
- (b) amends a Bill so that it is no longer in contravention of the Declaration of Rights as referred to in subsection (2);

the President of the Senate shall report to the Speaker accordingly.

Procedure in regard to Bills where certificate of urgency is issued.

52. (1) The Prime Minister may, subject to the provisions of subsection (4), certify that a Bill originating in the House of Assembly which has been passed by the House of Assembly is so urgent that it is not in the national interest to delay the enactment of the Bill.

(2) If—

- (a) the Senate and the House of Assembly have not agreed upon the amendments to be made to a Bill in respect of which a certificate has been issued in terms of subsection (1) before the expiration of a period of eight sitting days beginning on the day of the introduction of the Bill into the Senate; or
- (b) a Bill in respect of which a certificate has been issued in terms of subsection (1) has not been passed by the Senate before the expiration of a period of eight sitting days beginning on the day of the introduction of the Bill into the Senate;

the Bill may, subject to the provisions of this section, be presented to the President for assent in the form in which it was passed by the House of Assembly with such amendments, if any, as the Senate and the House of Assembly may have agreed.

(3) A Bill referred to in subsection (2) shall not be presented to the President for assent unless a resolution that the Bill be presented to the President for assent has been passed by the House of Assembly after the expiration of a period of eight sitting days beginning on the day of the introduction of the Bill into the Senate.

(4) The provisions of this section shall not apply to—

- (a) a Constitutional Bill; or
- (b) a Bill referred to in section *one hundred and sixty*.

(5) A Bill referred to in subsection (2) shall not be presented to the President for assent unless it is accompanied by a certificate from the Speaker stating that the Bill is a Bill to which the provisions of subsections (2) and (3) apply and that the Bill may lawfully be presented for assent by virtue of those provisions.

(6) A Bill presented to the President for assent in pursuance of a resolution of the House of Assembly referred to in subsection (3) shall be deemed to have been duly passed by Parliament in the form in which it is presented to the President.

(7) For the purposes of this section, a Bill in respect of which a certificate has been issued in terms of subsection (1) shall be deemed to have been introduced into the Senate on the sitting day next following the day on which a copy of the Bill is transmitted to the Senate in terms of subsection (1) of section *forty-eight*.

(8) If, in the case of a Bill presented to the President for assent in pursuance of a resolution of the House of Assembly referred to in subsection (3), the Senate has not considered that Bill in the form in which it was presented to the President for

assent, a copy of that Bill certified by the Secretary to Parliament to be in the form in which it was presented to the President for assent shall be transmitted to the Senate immediately after its enactment and the provisions of sections *fifty* and *fifty-one* shall, *mutatis mutandis*, apply in relation to that Bill.

(9) The provisions of subsections (10) and (11) shall apply to a Bill to which the President has assented in pursuance of the provisions of this section if the Senate—

- (a) resolved before the day on which that Bill was enacted that a provision of that Bill, as enacted, was a provision which would, if enacted, be in contravention of the Declaration of Rights; or
- (b) resolves within a period of thirty sitting days beginning on the day on which that Bill was enacted that a provision of that Bill, as enacted, is in contravention of the Declaration of Rights.

(10) If, before the expiration of a period of eight sitting days beginning on—

- (a) the day of the resolution of the Senate referred to in subsection (9); or
- (b) the day on which the Bill is enacted;

whichever is the later day, the House of Assembly has not passed a resolution such as is referred to in subsection (11), the President shall forthwith cause to be published in the *Gazette* a notice annulling the provision to which the resolution of the Senate relates with effect from the date of the publication of that notice.

(11) If, before the expiration of the period referred to in subsection (10), the House of Assembly has resolved by the affirmative votes of more than one-half of its total membership that the provision of the Bill to which the resolution of the Senate relates shall remain in force, the provision shall, unless it is sooner repealed or has had its effect, subject to the provisions of section *one hundred and thirty-four*, continue in force for a period of two hundred and seventy days beginning on the day of the resolution or the day on which the Bill is enacted, whichever is the later day:

Provided that, if—

- (a) the resolution of the House of Assembly referred to in this subsection was passed by the affirmative votes of not less than two-thirds of the total membership of the House of Assembly; or
- (b) before the expiration of the period of two hundred and seventy days referred to in this subsection the House of Assembly has, by the affirmative votes of not less than two-thirds of the total membership of the House of Assembly, passed a further resolution that the provision shall remain in force;

the provision shall, unless it is sooner repealed or has had its effect, subject to the provisions of section *one hundred and thirty-four*,

continue in force after the expiration of the period of two hundred and seventy days.

(12) Where the Senate or the House of Assembly passes a resolution in pursuance of the provisions of subsection (9), (10) or (11), the Secretary to Parliament shall cause to be published in the *Gazette* a notice of such resolution and of the effect thereof.

Money Bills.

53. (1) The Senate shall not have power to amend a Bill which is certified by the Speaker to be a Money Bill but may recommend amendments to the House of Assembly.

(2) An amendment to a Bill referred to in subsection (1) which is recommended by the Senate shall be duly certified by the Secretary to Parliament and transmitted to the House of Assembly for its consideration.

(3) After the House of Assembly has considered amendments to a Bill referred to in subsection (1) which have been recommended by the Senate the Bill shall be presented to the President for assent in the form in which it was passed by the House of Assembly with such amendments, if any, as may have been made by the House of Assembly on the recommendation of the Senate.

(4) If a Bill referred to in subsection (1) has not been passed by the Senate before the expiration of a period of eight sitting days beginning on the day of the introduction of the Bill into the Senate, the Bill may, subject to the provisions of this section, be presented to the President for assent in the form in which it was passed by the House of Assembly.

(5) A Bill referred to in subsection (4) shall not be presented to the President for assent unless a resolution that the Bill be presented to the President for assent has been passed by the House of Assembly after the expiration of a period of eight sitting days beginning on the day of the introduction of the Bill into the Senate.

(6) A Bill referred to in subsection (4) shall not be presented to the President for assent unless it is accompanied by a certificate from the Speaker stating that the Bill is a Bill to which the provisions of subsections (4) and (5) apply and that the Bill may lawfully be presented for assent by virtue of those provisions.

(7) A Bill presented to the President for assent in pursuance of a resolution of the House of Assembly referred to in subsection (5) shall be deemed to have been duly passed by Parliament in the form in which it is presented to the President.

(8) For the purposes of this section, a Bill referred to in subsection (1) shall be deemed to have been introduced into the Senate on the sitting day next following the day on which a copy of the Bill is transmitted to the Senate in terms of subsection (1) of section *forty-eight*.

Provisions relating to amendments to Bills.

54. Subject to the provisions of this Constitution and Standing Orders, after a Bill has been returned to the House in which it originated, the Senate or the House of Assembly may,

by message to the other House pursuant to a resolution, agree to any amendment or withdraw any amendment which has been made to the Bill.

55. (1) No Bill shall become law unless the President has assented thereto and has signed it in token of such assent. **Assent to Bills.**

(2) A Bill shall be presented to the President for assent when it has been duly passed by Parliament, subject always to compliance with any other requirements of this Constitution that apply to such Bill.

(3) Subject to the provisions of subsection (5) of section *forty-nine*, subsection (6) of section *fifty-two*, subsection (7) of section *fifty-three*, subsection (3) of section *one hundred and fifty-seven* and paragraph (c) of subsection (6) of section *one hundred and fifty-nine*, a Bill shall be duly passed by Parliament if the Bill has been agreed by the Senate and the House of Assembly in the form in which it is presented to the President for assent.

(4) When a Bill is presented to the President for assent he shall declare, subject to the law and constitutional convention, that he assents or refuses assent thereto.

(5) In every Bill presented to the President for assent the words of enactment shall be—

“Be it enacted by the President and the Parliament of Zimbabwe Rhodesia”.

56. (1) Where in this Constitution there is a provision that a Bill of a specified description shall not be presented to the President for assent unless it is accompanied by a prescribed certificate, the President shall not assent to such Bill unless it is accompanied by the prescribed certificate. **Further provisions relating to enactment of Bills.**

(2) An Act, once it is assented to by the President, shall come into operation on the day of its publication in the *Gazette* or on such other day as may be specified in or under that or some other Act.

(3) Where, by virtue of the provisions of subsection (2), an Act comes into operation on a particular day, such Act shall be deemed to come into operation immediately on the expiration of the day preceding that particular day.

57. (1) As soon as may be after an Act has been assented to by the President, the Secretary to Parliament shall cause a fair copy of the Act, duly authenticated by the signature of the President and the Public Seal, to be enrolled on record in the office of the Registrar of the High Court and such copy shall be conclusive evidence of the provisions of such Act. **Enrolment of Acts.**

(2) Notwithstanding the provisions of subsection (1), an Act of the Legislature may provide that a revised edition of the laws in force on any specified day shall be compiled and published and that, upon publication, the laws therein printed shall in all courts of justice and for all purposes whatever be the sole and authentic version of such laws and be conclusive evidence thereof,

and the President shall cause a duly authenticated copy of such revised edition of the laws to be deposited in the office of the Registrar of the High Court.

(3) The validity of an Act of the Legislature or of a revised edition of the laws shall not depend upon the enrolment or deposit thereof in pursuance of the provisions of this section.

PART VIII

FUNCTIONS OF SENATE LEGAL COMMITTEE IN REGARD TO STATUTORY INSTRUMENTS

Statutory instruments
to be referred to
Senate Legal
Committee.

58. It shall be the duty of the Secretary to Parliament to refer copies of all statutory instruments published in the *Gazette* to the Senate Legal Committee in accordance with regulations made by the President.

Senate Legal
Committee to report.

59. (1) It shall be the duty of the Senate Legal Committee to examine every statutory instrument referred to the Committee in terms of section *fifty-eight* and, subject to the provisions of subsection (2), to report to the President of the Senate and to the authority which made the statutory instrument within a period of twenty-one days beginning on the day the statutory instrument is referred to the Committee whether or not, in the opinion of the Committee, any provision of the statutory instrument is in contravention of the Declaration of Rights.

(2) On the application of the Chairman of the Senate Legal Committee, the President of the Senate may, if he considers it proper to do so on account of the length or complexity of a statutory instrument or the number of matters for the time being under consideration by the Committee or for any other sufficient reason, extend the period referred to in subsection (1) for a further period not exceeding twenty-one days and any extension of time so granted shall be recorded in the journal of the Senate.

(3) The Chairman of the Senate Legal Committee shall transmit a copy of every report referred to in subsection (1) in which it is stated that, in the opinion of the Committee, a provision of the statutory instrument to which the report relates is in contravention of the Declaration of Rights, to the Ombudsman.

Senate to consider
report.

60. (1) The President of the Senate shall cause every report of the Senate Legal Committee on a statutory instrument which is received by him within the period specified in subsection (1) of section *fifty-nine* or any extension of that period which has been granted in terms of subsection (2) of that section to be laid before the Senate as soon as may be after receiving that report.

(2) Unless the report is withdrawn in terms of subsection (3), it shall be the duty of the Senate to consider any report presented to the Senate in terms of subsection (1) which states that, in the opinion of the Senate Legal Committee, a provision of a statutory instrument is in contravention of the Declaration of Rights.

(3) The Senate Legal Committee may at any time before a report referred to in subsection (2) is considered by the Senate withdraw that report if the provision of the statutory instrument referred to in that subsection is repealed or is amended in such a way as, in the opinion of the Senate Legal Committee, to remove the contravention referred to in that subsection.

61. (1) If, after considering a report in terms of subsection (2) of section *sixty*, the Senate resolves, within seven sitting days after that report was laid before the Senate in terms of subsection (1) of section *sixty*, that a provision of the statutory instrument is in contravention of the Declaration of Rights, the President of the Senate shall report to the Speaker accordingly.

Procedure after
report considered.

(2) Unless, within twenty-one sitting days beginning on the day that the Senate has passed a resolution referred to in subsection (1)—

- (a) the House of Assembly has resolved that the provision in question should not be repealed; or
- (b) the Senate Legal Committee has reported to the Speaker that the provision of the statutory instrument in question has been repealed or has been amended in such a way as, in the opinion of the Senate Legal Committee, to remove the contravention referred to in subsection (1);

the Secretary to Parliament shall report to the President and the President shall, as soon as possible, notwithstanding the provisions of any law, by notice in the *Gazette*, repeal the provision in question with effect from the date of the publication of that notice.

62. (1) An authority empowered to make a statutory instrument may, if it sees fit, transmit to the Secretary to Parliament for examination by the Senate Legal Committee a draft of any such statutory instrument it proposes to make and the Secretary to Parliament shall forthwith refer the statutory instrument to the Senate Legal Committee and the Senate Legal Committee shall consider the statutory instrument and cause that authority to be informed whether or not, in the opinion of the Committee, any, and if so which, provision of the statutory instrument would, if made, be in contravention of the Declaration of Rights.

Report on draft
statutory instruments.

(2) Nothing in subsection (1) contained shall relieve—

- (a) the Secretary to Parliament from complying with his duty in terms of section *fifty-eight* when the statutory instrument is published in the *Gazette*; or
- (b) the Senate Legal Committee from reporting on that statutory instrument in accordance with the provisions of section *fifty-nine*.

PART IX

SUMMONING, PROROGATION AND DISSOLUTION

63. (1) Subject to the provisions of subsection (2), the sessions of Parliament shall be held in such place and shall begin at such

Sessions of
Parliament.

time and on such day as the President may direct by proclamation in the *Gazette*.

(2) There shall be a session of Parliament beginning in every year commencing on the 1st January so that a period of more than one hundred and eighty days shall not intervene between the last sitting of either House in any one session and the first sitting of Parliament in the next session.

**Prorogation or
dissolution.**

64. (1) The President shall prorogue or dissolve Parliament when so advised by the Prime Minister.

(2) If a resolution of no confidence in the Government is passed by the House of Assembly and the Prime Minister does not within three days either resign from his office or advise the President to issue a proclamation in terms of subsection (7) dissolving Parliament within such period as the President, acting in his own discretion, may consider reasonable, the President, acting in his own discretion, may dissolve Parliament.

(3) If the office of Prime Minister is vacant and the President, acting in his own discretion, considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who is able to command the support of a majority of the members of the House of Assembly, the President, acting in his own discretion, may dissolve Parliament.

(4) On the expiration of a period of five years beginning on the day when Parliament first met after the holding of the last preceding general election the President shall dissolve Parliament:

Provided that, where the period referred to in this subsection is extended in terms of subsection (5) or (6), the President shall dissolve Parliament on the expiration of that extended period unless Parliament has sooner been dissolved.

(5) At any time when Zimbabwe Rhodesia is at war, Parliament may from time to time extend the period specified in subsection (4) by not more than one year at a time:

Provided that such period shall not be extended in terms of this subsection for more than five years.

(6) At any time during a state of emergency, Parliament may from time to time extend the period specified in subsection (4) by not more than six months at a time:

Provided that such period shall not be extended in terms of this subsection for more than one year.

(7) Any prorogation or dissolution of Parliament in terms of this section shall be by proclamation in the *Gazette* and, in the case of a dissolution, shall take effect from the day preceding the day or first day, as the case may be, fixed in that proclamation in terms of subsection (1) of section *thirty-three* for the holding of a general election.

(8) On the dissolution of Parliament all proceedings pending at the time shall be terminated and accordingly every Bill, motion, petition or other business shall lapse.

(9) In this section—

“state of emergency” means any period during which there is in force a declaration in terms of section *seventy-five*.

CHAPTER IV

THE EXECUTIVE

65. The executive authority of Zimbabwe Rhodesia in regard to all aspects of its internal and external affairs shall vest in the President acting, subject to the provisions of this Chapter, on the advice of the Executive Council.

Executive authority vested in President acting on advice of Executive Council.

66. (1) In addition to the powers conferred by this Constitution or by or under any law of the Legislature, the President shall, as the Head of State, have such powers and functions as were, immediately before the fixed date, possessed by way of prerogative by the President as defined in the former Constitution.

Executive powers.

(2) Without derogation from the generality of the powers conferred by subsection (1), the President shall, subject to the provisions of this Constitution, have power—

- (a) to appoint and to accredit, to receive and to recognize ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers; and
- (b) to enter into and to ratify international conventions, treaties and agreements; and
- (c) to proclaim and to terminate martial law; and
- (d) to declare war and to make peace; and
- (e) to confer honours and precedence.

(3) Subject to the provisions of this Constitution and any law of the Legislature by which powers or duties are conferred or imposed, the President shall do and execute all things that belong to his office according to such constitutional conventions and practices as were applicable in Rhodesia immediately before the fixed date.

67. (1) Subject to the provisions of subsection (2), the President—

Ministers and Deputy Ministers.

- (a) shall appoint a Prime Minister; and
- (b) shall appoint other Ministers of the Government and may assign functions to such Ministers, including the administration of any Act or of any Ministry or department of the Government; and
- (c) may appoint Deputy Ministers of any specified Ministry or department of the Government or of such other description as the President may determine and may authorize any Deputy Minister to exercise or perform

on behalf of a Minister any of the powers, functions and duties entrusted to such Minister under any law or otherwise.

(2) In exercising his functions in terms of—

- (a) paragraph (a) of subsection (1), the President shall act in his own discretion in the manner prescribed in paragraph (b) of subsection (3) of section *seventy-one*;
- (b) paragraph (b) or (c) of subsection (1), the President shall act on the advice of the Prime Minister.

(3) A person who holds office as a Minister or Deputy Minister and who is at no time while holding that office also a member of the Senate or the House of Assembly shall be ineligible for reappointment as a Minister or Deputy Minister before Parliament is next dissolved after he ceases to hold that office, unless in the meantime he has become a member of the Senate or the House of Assembly.

(4) A Minister or Deputy Minister may at any time by notice in writing addressed to the President and delivered to the Prime Minister resign his office.

(5) Any person appointed under this section shall, before entering upon his office, take before the President or some person authorized by the President in that behalf oaths of loyalty and for the due execution of his office in the forms set out in the First Schedule.

Tenure of office of
Prime Minister,
Ministers and
Deputy Ministers.

68. (1) If a resolution of no confidence in the Government is passed by the House of Assembly and the Prime Minister does not, within three days of the passing thereof, resign from his office, the President shall remove the Prime Minister from office unless, in pursuance of the provisions of subsection (1) or (2) of section *sixty-four*, Parliament is to be dissolved in consequence of such resolution.

(2) If at any time between the holding of a general election and the first sitting of the House of Assembly thereafter the President, acting in his own discretion, considers that, in consequence of changes in the membership of the House of Assembly resulting from that general election, the Prime Minister will not be able to command the support of a majority of the members of the House of Assembly, the President, acting in his own discretion, may remove the Prime Minister from office:

Provided that the President shall not remove the Prime Minister from office within the period of ten days immediately following the last day fixed for polling at that general election unless he is satisfied that a party or party alliance in opposition to the Government has at that general election gained a majority of all the seats in the House of Assembly.

(3) The office of a Minister, other than the Prime Minister, or a Deputy Minister shall become vacant—

- (a) if the President, acting on the advice of the Prime Minister, so directs; or
- (b) if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government is passed by the House of Assembly or is removed from office in terms of subsection (1) or (2); or
- (c) upon the appointment of any person to the office of Prime Minister.

(4) A person who holds office as a Minister or Deputy Minister for any period of four consecutive months without also being a member of the Senate or the House of Assembly shall cease to be a Minister or Deputy Minister, as the case may be, at the end of that period:

Provided that, if that period expires after the publication of a proclamation in terms of subsection (7) of section *sixty-four* dissolving Parliament, he shall cease to be a Minister or Deputy Minister, as the case may be, on the day when Parliament first meets after the dissolution, unless he is elected—

- (a) as a member of the Senate immediately following the general election following such dissolution; or
- (b) as a member of the House of Assembly at that general election.

(5) If the Prime Minister or any other Minister or Deputy Minister is required by virtue of the provisions of section *thirty* or *thirty-one* to cease to exercise for any period his functions as a member of the Senate or the House of Assembly or would, if he were a member of the Senate or the House of Assembly, be required by virtue of the provisions of section *thirty* to cease to exercise for any period his functions as such, he shall not, during that period, perform any of his functions as Prime Minister, Minister or Deputy Minister, as the case may be.

69. (1) Whenever the Prime Minister is absent from Zimbabwe Rhodesia or is, by reason of illness or of the provisions of subsection (5) of section *sixty-eight*, unable to perform his functions, the President may in writing authorize some other Minister to perform those functions, other than the functions conferred by subsection (2), and that Minister may perform those functions until his authority is revoked by the President.

Acting Prime Minister.

(2) The powers of the President in terms of subsection (1) shall be exercised by him on the advice of the Prime Minister:

Provided that, if—

- (a) the President, acting in his own discretion, considers that it is impracticable to obtain the advice of the Prime Minister owing to the absence or illness of the Prime Minister; or
- (b) the Prime Minister is unable to tender advice by reason of the provisions of subsection (5) of section *sixty-eight*;

the President may exercise those powers acting in his own discretion.

Executive Council.

70. (1) To advise the President in the government of Zimbabwe Rhodesia there shall be an Executive Council consisting of the Prime Minister and such other persons, being Ministers, as the President, on the advice of the Prime Minister, may from time to time appoint.

(2) A member of the Executive Council shall hold office during the pleasure of the President and may be removed from office by the President, acting on the advice of the Prime Minister:

Provided that—

- (i) he shall cease to hold office if he ceases to be a Minister;
- (ii) he may at any time by notice in writing addressed to the President and delivered to the Prime Minister resign his office.

(3) Any person appointed under this section shall, before entering upon his office, take before the President or some person authorized by the President in that behalf the oath of a member of the Executive Council in the form set out in the First Schedule.

Exercise of functions
of President.

71. (1) Subject to the provisions of this section, in the exercise of his functions the President shall act on the advice of the Executive Council or of the Prime Minister or a Minister acting under the authority of the Executive Council.

(2) Where by or under this Constitution or any law of the Legislature the President is, in the exercise of his functions, required to act on the advice of any authority or person other than the Executive Council, he shall act on the advice of that authority or person.

(3) In exercising his powers in terms of—

- (a) section *forty-six*, the President shall, subject to the provisions of subsection (3) of that section, act in his own discretion;
- (b) paragraph (a) of subsection (1) of section *sixty-seven*, the President shall appoint as Prime Minister the person who, in his opinion, is best able to command the support of a majority of the members of the House of Assembly;
- (c) subsection (2) of section *sixty-eight*, the President shall, subject to the provisions of that subsection, act in his own discretion;
- (d) section *sixty-nine* in the circumstances specified in the proviso to subsection (2) of that section, the President shall act in his own discretion.

(4) The provisions of paragraph (b) of subsection (3) shall apply in relation to any period between a dissolution of Parliament

and the determination of the results of the next general election as if Parliament had not been dissolved.

(5) Where in any matter the President has received the advice of the Executive Council or a Minister, other than the Prime Minister, for the purposes of subsection (1), he may, within the specified period, by writing under his own hand request that, for reasons which he shall specify, the Prime Minister cause such advice to be reconsidered or, as the case may be, considered at a meeting of the Executive Council, and thereupon the following provisions shall apply—

- (a) during the specified period no act in furtherance of that advice shall be done by any other person pending reconsideration or consideration thereof unless the Prime Minister, by writing under his own hand, has certified that on grounds of urgency such act should be done; and
- (b) a meeting of the Executive Council shall be held within seven days after the receipt by the Prime Minister of the request made by the President that the advice be reconsidered or considered, as the case may be; and
- (c) if the Executive Council, having reconsidered or, as the case may be, considered the original advice tendered to the President, resubmits the same advice to him, the President shall forthwith act in accordance with that advice.

(6) Where the President is required to act in his own discretion or on the advice of any specified person or authority, a court shall not, in any case, inquire into any of the following questions or matters—

- (a) on whose advice the President acted;
- (b) whether any advice was tendered or acted on;
- (c) the nature of any advice tendered;
- (d) the manner in which the President has exercised his discretion as referred to in subsection (3).

(7) Save where expressly provided that the President shall act in his own discretion, the provisions of this Constitution or any law of the Legislature or instrument made thereunder referring to the President shall be construed as referring to the President acting on the advice of the Executive Council, unless it is specifically provided in such provision that he shall act on the advice of any other authority or person, and where he acts on the advice of such other authority or person by or under this Constitution or any law of the Legislature, that fact may be stated in the relevant instrument, but no act of the President, acting within the powers conferred upon him by or under this Constitution or any law of the Legislature, shall be invalid by reason of the omission to state on whose advice he has acted.

(8) In subsection (5)—

“specified period” means the period of seven days com-

mening with the day upon which the President has received the advice in question or, if the President, by writing under his hand, so directs in any case before the expiration of the said period of seven days, the period of fourteen days commencing as aforesaid.

President to be kept informed.

72. The Prime Minister shall keep the President fully informed concerning the general conduct of the government of Zimbabwe Rhodesia and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of Zimbabwe Rhodesia.

Disposal of land.

73. (1) Subject to the provisions of any law of the Legislature relating to land, including Tribal Trust Land, any land or other immovable property which is vested in the President may be granted, sold, leased or otherwise disposed of—

- (a) in terms of any enactment relating to the grant, sale, lease or other disposition of such land; or
- (b) if there is no enactment relating to the grant, sale, lease or other disposition of such land, by the President or by such Minister or other authority as the President may authorize to make such grants, sales, leases or other dispositions on his behalf.

(2) In granting any authorization in terms of paragraph (b) of subsection (1), the President may fix the terms and conditions subject to which any particular immovable property or class of immovable property may be granted, sold, leased or otherwise disposed of by the authority concerned.

Prerogative of mercy.

74. (1) The President may, subject to such lawful conditions as he may deem fit—

- (a) grant to any person concerned in or convicted of an offence against any law a pardon; or
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence; or
- (c) substitute a less severe punishment for that imposed by any sentence for such an offence; or
- (d) suspend for a specified period or remit the whole or part of any sentence passed for such an offence or any penalty or forfeiture otherwise imposed on account of such an offence.

(2) Where a person resident in Zimbabwe Rhodesia has been convicted in a foreign country of an offence against a law in force in that foreign country, the President may declare that that conviction shall not be regarded as a conviction for the purposes of this Constitution or any other law in force in Zimbabwe Rhodesia.

Declaration relating to public emergencies.

75. (1) The President may at any time, by proclamation in the *Gazette*, declare in relation to the whole of Zimbabwe Rhodesia or any part thereof that—

- (a) a state of public emergency exists; or
- (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

(2) Subject to the provisions of subsection (5), a declaration in terms of subsection (1), if not sooner revoked, shall cease to have effect at the expiration of a period of fourteen days beginning with the day of the publication of the proclamation in the *Gazette* unless, before the expiration of that period, the declaration is approved by a resolution passed by the House of Assembly:

Provided that, if Parliament is dissolved during the period of fourteen days referred to in this subsection, the declaration, unless sooner revoked, shall cease to have effect at the expiration of a period of thirty days beginning with the day of the publication of the proclamation in the *Gazette* unless, before the expiration of that period, the declaration is approved by a resolution passed by the House of Assembly.

(3) Where a declaration in terms of subsection (1)—

- (a) is not approved by a resolution passed by the House of Assembly in pursuance of the provisions of subsection (2), the President shall forthwith after the House of Assembly has considered the resolution and failed to approve it or, if the House of Assembly has not considered the resolution, on the expiration of the appropriate period specified in subsection (2), by proclamation in the *Gazette*, revoke such declaration;
- (b) is approved by a resolution passed by the House of Assembly in pursuance of the provisions of subsection (2), such declaration shall, subject to the provisions of subsection (4), continue in force for a period of six months beginning with the day of the publication of the proclamation in the *Gazette*:

Provided that, where the House of Assembly has in the resolution in pursuance of the provisions of subsection (2) specified that such declaration shall continue in force for a period of less than six months, the President shall, by proclamation in the *Gazette*, declare that the declaration shall, subject to the provisions of subsection (4), be revoked on the expiration of the period specified in the resolution.

(4) Subject to the provisions of subsection (5), if the House of Assembly resolves that it considers it expedient that a declaration in force in terms of this section should be continued in force for a further period not exceeding six months, the President shall forthwith, by proclamation in the *Gazette*, declare that such declaration is extended for such further period as may be so resolved.

(5) No resolution for the purposes of subsection (2) or (4) shall be deemed to have been duly passed unless it receives the affirmative votes of more than one-half of the total membership of the House of Assembly.

(6) Notwithstanding any of the provisions of this section, the House of Assembly may at any time—

- (a) resolve that a declaration in force under this section should be revoked;
- (b) whether in passing a resolution for the purposes of subsection (2) or (4) or subsequently, resolve that a declaration in force under this section should relate to such lesser area as the House of Assembly may specify;

and the President shall forthwith, by proclamation in the *Gazette*, revoke the declaration or declare that the declaration shall relate to such lesser area, as the case may be.

(7) A declaration in terms of this section may be continued in force in terms of this section notwithstanding that such declaration has previously been continued in force in terms of this section.

(8) The expiry or revocation of any declaration in terms of this section shall not affect the validity of anything done in pursuance of such declaration.

CHAPTER V

THE JUDICATURE

Composition of the High Court.

76. There shall be a High Court of Zimbabwe Rhodesia which shall consist of—

- (a) the Appellate Division of the High Court; and
- (b) the General Division of the High Court.

Chief Justice of Zimbabwe Rhodesia.

77. There shall be a Chief Justice of Zimbabwe Rhodesia who shall be the Head of the judiciary of Zimbabwe Rhodesia.

Composition and jurisdiction of Appellate Division.

78. (1) The Appellate Division shall be a superior court of record and shall have such jurisdiction and powers as may be conferred upon it by or under this Constitution and any law of the Legislature.

(2) The Appellate Division shall consist of—

- (a) the Chief Justice; and
- (b) such number of other judges of appeal, being not less than two, as the President may deem necessary; and
- (c) such judges of the Appellate Division as have been designated under the provisions of subsection (3).

(3) If the services of an additional judge of appeal are required for a limited period, the Chief Justice may designate a person holding the office of puisne judge or who has held office as a judge of the High Court or the former High Court of Rhodesia to be a judge of the Appellate Division for such period as may be specified by the Chief Justice.

Composition and jurisdiction of General Division and criminal jurisdiction of other courts.

79. (1) The General Division shall be a superior court of record and shall have such jurisdiction and powers as may be conferred upon it by or under this Constitution and any law of the Legislature.

(2) The General Division shall have power, jurisdiction and authority to review all proceedings of all inferior courts of justice and tribunals established by law.

(3) There shall be a Senior Puisne Judge who shall, subject to the directions of the Chief Justice, be in charge of the General Division.

(4) The General Division shall consist of the Senior Puisne Judge and such other puisne judges as may from time to time be appointed.

(5) No law, other than a disciplinary law, shall confer jurisdiction in criminal matters upon a court or other adjudicating authority which did not have such jurisdiction before the fixed date.

80. (1) A person shall not be qualified for appointment as a judge of the High Court unless— Qualifications of judges.

(a) he is or has been a judge of a superior court in a country in which the common law is Roman-Dutch and English is an official language; or

(b) he is and has been for not less than ten years, whether continuously or not, qualified to practise as an advocate in Zimbabwe Rhodesia or in a country in which the common law is Roman-Dutch and English is an official language.

(2) In computing, for the purposes of paragraph (b) of subsection (1), the period during which any person has been qualified to practise as an advocate, any period during which he has held judicial office after having so qualified shall be included.

81. A judge of the High Court, including an acting judge, shall, before entering upon his office, take before the President or some person authorized by the President in that behalf the oath of allegiance and the judicial oath in the forms set out in the First Schedule. Oath of office.

82. (1) Subject to the provisions of this section, the Chief Justice and the other judges of the High Court shall be appointed by the President, acting on the advice of the Judicial Service Commission, by instrument under the Public Seal. Appointment of judges.

(2) The Chief Justice shall be appointed from the persons who hold the office of judge of appeal or Senior Puisne Judge.

(3) The judges of appeal shall be appointed from the persons who hold the office of puisne judge.

(4) The Senior Puisne Judge shall be appointed from the persons who hold the office of judge of appeal or puisne judge.

83. (1) If—

Acting judges.

(a) the office of Chief Justice is vacant; or

- (b) the Chief Justice is for any reason unable to perform the functions of his office;

the President may, acting on the advice of the Judicial Service Commission, appoint some person holding the office of judge of appeal or Senior Puisne Judge to act as Chief Justice.

- (2) If—

- (a) the office of a judge of appeal is vacant; or

- (b) a judge of appeal is—

- (i) appointed to act as Chief Justice or Senior Puisne Judge; or

- (ii) for any reason unable to perform the functions of his office;

the President may, acting on the advice of the Judicial Service Commission, appoint a person holding the office of puisne judge or who has held office as a judge of the High Court or the former High Court of Rhodesia to act as a judge of appeal.

- (3) If—

- (a) the office of Senior Puisne Judge is vacant; or

- (b) the Senior Puisne Judge is—

- (i) appointed to act as Chief Justice or judge of appeal or is designated as a judge of the Appellate Division in terms of subsection (3) of section *seventy-eight*; or

- (ii) for any reason unable to perform the functions of his office;

the President may, acting on the advice of the Judicial Service Commission, appoint a person holding the office of judge of appeal or puisne judge to act as Senior Puisne Judge.

- (4) If—

- (a) the office of a puisne judge, other than the Senior Puisne Judge, is vacant; or

- (b) a puisne judge, other than the Senior Puisne Judge, is—

- (i) appointed to act as judge of appeal or Senior Puisne Judge or is designated as a judge of the Appellate Division in terms of subsection (3) of section *seventy-eight*; or

- (ii) for any reason unable to perform the functions of his office;

or

- (c) the services of an additional puisne judge are required for a limited period;

the President may, acting on the advice of the Judicial Service Commission, appoint a person qualified in terms of section *eighty* for appointment as a judge to act as a puisne judge.

- (5) A person who is appointed to act as a puisne judge in terms of subsection (4)—

- (a) shall, subject to the provisions of section *eighty-five*, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President acting on the advice of the Judicial Service Commission:

Provided that an acting puisne judge may resign his acting office at any time by writing under his hand addressed to the President; and

- (b) may, notwithstanding that the period of his appointment has expired or that his appointment has been revoked, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced before or heard by him while he was so acting.

84. (1) Subject to the provisions of section *eighty-five*, a judge of the High Court shall retire when he attains the age of sixty-five years unless, before he attains that age, he has elected to retire on attaining the age of seventy years:

Tenure of office of judges.

Provided that—

- (i) an election in terms of this subsection shall be subject to the submission to, and acceptability by, the President, acting on the advice of the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office;
- (ii) the provisions of this subsection shall not apply to any person who has been appointed to act as a judge for a specified or unspecified period.

(2) A judge of the High Court may at any time resign his office by notice in writing to the President.

(3) The office of a judge of the High Court shall not, without his consent, be abolished during his tenure of office.

(4) A judge of the High Court may, notwithstanding that he has attained the age at which he is required by subsection (1) to retire, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced before or heard by him while he was in office.

85. (1) A judge of the High Court may be removed from office only for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

Removal of judges from office.

(2) If the President, acting on the advice of the Prime Minister, considers that the question of the removal from office of the Chief Justice for inability as referred to in subsection (1) or misbehaviour ought to be investigated, the President shall appoint a tribunal in accordance with the provisions of subsection (4) to inquire into the matter.

(3) If, in the case of a judge of the High Court other than the Chief Justice, the Chief Justice advises the President that the

question of removal from office of the judge concerned for inability as referred to in subsection (1) or misbehaviour ought to be investigated, the President shall appoint a tribunal in accordance with the provisions of subsection (4) to inquire into the matter.

(4) A tribunal appointed in terms of subsection (2) or (3) shall consist of not less than three members selected by the President from the following—

- (a) persons who have held office as a judge of the High Court or of the former High Court of Rhodesia;
- (b) persons who hold or have held office as a judge of a superior court of a foreign country in which the common law is Roman-Dutch and English is an official language;
- (c) an advocate of not less than ten years' standing who has been nominated in terms of subsection (5) by the association representing advocates or the majority of advocates practising in Zimbabwe Rhodesia;
- (d) an attorney of not less than ten years' standing who has been nominated in terms of subsection (5) by the association representing attorneys or the majority of attorneys practising in Zimbabwe Rhodesia;

one of whom shall be designated by the President as chairman.

(5) It shall be the duty of the association referred to in paragraph (c) or (d) of subsection (4) to nominate a panel containing the names of not less than three duly qualified advocates or attorneys, as the case may be, for the purposes of the said paragraph when so required by the President.

(6) A tribunal appointed in terms of subsection (2) or (3) shall inquire into the matter and report on the facts thereof to the President and recommend to the President whether or not he should refer the question of the removal of the judge from office to the Judicial Service Commission.

(7) The provisions of the Commissions of Inquiry Act [Chapter 83] as in force at the time or any other law substituted for the same shall, *mutatis mutandis*, apply in relation to a tribunal appointed in terms of subsection (2) or (3) as they apply to commissioners appointed under that Act.

(8) If the question of removing a judge of the High Court from office has been referred to a tribunal under subsection (2) or (3), the judge shall be suspended from performing the functions of his office until the President, on the recommendation of the tribunal or the Judicial Service Commission, revokes the suspension or the judge is removed from office in terms of subsection (9), as the case may be.

(9) If the tribunal has, in terms of subsection (6), recommended to the President that the question of the removal of a judge should be referred to the Judicial Service Commission and the Judicial Service Commission recommends that the judge be

removed from office, the President shall, by order under the Public Seal, remove that judge from office.

86. (1) There shall be charged upon and paid out of the Consolidated Revenue Fund to a person who is holding the office of or acting as Chief Justice, a judge of appeal, Senior Puisne Judge or a puisne judge, as the case may be, such salary and allowances as may from time to time be fixed by or under a law of the Legislature for the person holding such office or persons holding offices of such class, as the case may be. Remuneration of judges.

(2) The salary and allowances payable to a person in terms of subsection (1) shall not be reduced during the period he holds the office concerned or acts as holder thereof.

87. Subject to the provisions of any law for the time being in force in Zimbabwe Rhodesia relating to the application of African customary law, the law to be administered by the High Court and by any courts in Zimbabwe Rhodesia subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on the 10th June, 1891, as modified by subsequent legislation having in Zimbabwe Rhodesia the force of law. Law to be administered.

CHAPTER VI

COMMISSIONS AND PUBLIC OFFICES

PART I

JUDICIAL SERVICE COMMISSION

88. (1) There shall be a Judicial Service Commission which shall consist of— Judicial Service Commission.

- (a) the Chief Justice or, if there is no Chief Justice or acting Chief Justice or the Chief Justice or acting Chief Justice is not available, the most senior judge of appeal who is available; and
- (b) the Chairman of the Public Service Commission; and
- (c) one other member appointed, subject to the provisions of this section, by the President acting on the advice of the Chief Justice or other judge referred to in paragraph (a).

(2) A person shall not be qualified for appointment in terms of paragraph (c) of subsection (1)—

- (a) unless—
 - (i) he is or has been a judge of the High Court; or
 - (ii) he is and has been for not less than ten years, whether continuously or not, qualified to practise as an advocate or attorney in Zimbabwe Rhodesia;
 or
- (b) if he is a member or has, within the period of three years of the date of the proposed appointment, been a member or been nominated for election as a

member of the Senate or the House of Assembly or any local authority.

(3) If at any time the member appointed in terms of paragraph (c) of subsection (1) is for any reason unable to perform the functions of his office, the President, acting on the advice of the Chief Justice, may appoint a person qualified in terms of subsection (2) to act as a member of the Judicial Service Commission and any person so appointed shall continue to act until the period for which he was appointed has expired or his appointment is revoked by the President acting on the advice of the Chief Justice.

Functions of Judicial Service Commission.

89. The functions of the Judicial Service Commission shall be to make recommendations to the President and to do such other things as may be required in terms of Chapter V, Chapter X or this Chapter.

Holders of judicial office.

90. (1) The appointment of any person as a judge of the Water Court or to preside over a Special Court shall be made by the President on the recommendation of the Judicial Service Commission.

(2) During the term of office of a person appointed as a judge of the Water Court or to preside over a Special Court his conditions of service shall not be amended and his office shall not be abolished without his consent.

(3) In this section—

“Special Court” means—

- (a) the Compensation Court established by section 3 of the Land Acquisition Act, 1979;
- (b) the Fiscal Appeal Court established by section 3 of the Fiscal Appeal Court Act [*Chapter 180*];
- (c) the Special Court established by section 3 of the Income Tax Act [*Chapter 181*];
- (d) any court or other adjudicating authority established by law to exercise any functions previously exercised by a court referred to in paragraph (a), (b) or (c);
- (e) any court or other adjudicating authority established by law, other than a local court or a court established by or under a disciplinary law, if there is no right of appeal from a decision of that court or other adjudicating authority to the High Court;
- (f) any court or other adjudicating authority established by law which is declared by that law to be a Special Court for the purposes of this section.

PART II

THE PUBLIC SERVICE AND THE PRISON SERVICE

The Public Service and the Prison Service.

91. (1) There shall be a Public Service for the administration of the country.

(2) There shall be a Prison Service for the administration of the prisons and that service shall be under the command of the Director of Prisons who shall be appointed by the President on the recommendation of the Public Service Commission:

Provided that before making any recommendation for the purposes of this subsection the Commission shall consult with the Minister for the time being responsible for prisons.

92. (1) There shall be a Public Service Commission which shall consist of a chairman and not less than two and not more than four other members appointed, subject to the provisions of subsection (2), by the President. Public Service Commission.

(2) The persons to be appointed as members in terms of subsection (1) shall be chosen for their ability and experience in administration or their professional qualifications and their suitability otherwise for appointment as members, and the following provisions shall apply in relation thereto—

- (a) the chairman and at least one other member or, if there are more than three members, at least two other members shall be persons who have held the post of Secretary of, or Deputy Secretary or Under Secretary in, a Ministry in the Public Service or a post in the Public Service of a grade equivalent to or higher than that of Under Secretary for periods which in the aggregate amount to at least five years;
- (b) a person shall not be eligible for appointment if he is a member or has, within the period of three years of the date of the proposed appointment, been a member or been nominated for election as a member of the Senate or the House of Assembly or any local authority;
- (c) if a person, immediately prior to his appointment, is employed in the Public Service or Prison Service or as a regular or full-time member of the Defence Forces or the Police Force, he shall cease to be so employed with effect from the date of his appointment;
- (d) during the period of his service as a member and for a period of three years thereafter he shall not be eligible for appointment to any post in the Public Service or Prison Service:

Provided that a member other than the chairman may be appointed to a post in the Public Service or Prison Service if the Commission considers that the appointment is in the best interests of that Service and the President has consented thereto.

(3) Whenever the office of chairman of the Public Service Commission is vacant or the chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such other specially qualified member of the Commission as the President may appoint.

(4) If at any time a member of the Public Service Commission, other than the chairman, is acting as chairman or is for

any reason unable to perform the functions of his office, the President may appoint a person qualified in terms of subsection (2) to act as the member and any person so appointed shall continue to act until the period for which he was appointed has expired or his appointment is revoked by the President:

Provided that a person appointed to act for a specially qualified member shall also be qualified in terms of paragraph (a) of subsection (2).

(5) The chairman may delegate to a specially qualified member of the Public Service Commission his functions as chairman of the Police Service Commission or Defence Forces Service Commission.

(6) The salary of a specially qualified member of the Public Service Commission shall not be less than the salary payable to any Secretary of a Ministry in the Public Service.

**Functions of Public
Service Commission.**

93. (1) Subject to the provisions of this Chapter, the functions of the Public Service Commission shall be—

- (a) to regulate and control the general organization of the Public Service and the Prison Service;
- (b) to appoint persons to hold or act in a post or grade in the Public Service, whether as officers or employees or on special contract, and to fix and regulate their conditions of service;
- (c) to appoint persons to hold or act in a post or rank in the Prison Service and to fix and regulate their conditions of service;
- (d) to exercise disciplinary powers in relation to persons employed in the Public Service or Prison Service and to remove such persons from office;
- (e) to ensure the general well-being and good administration of the Public Service and the Prison Service and the maintenance thereof in a high state of efficiency;
- (f) to make regulations in terms of section *ninety-four*;
- (g) to do such other things not inconsistent with the provisions of this Chapter as may be required by or under a law of the Legislature or regulations made in terms of section *ninety-four*.

(2) Where two or more persons are candidates for a vacant post in the Public Service or Prison Service, the Public Service Commission shall give preference to that person who, in its opinion, is the most efficient and suitable for appointment to the post and, in considering the candidates, the Commission shall have consideration for and give due weight to the following factors—

- (a) the character and responsibilities of the work attaching to the vacant post; and
- (b) the practical and academic qualifications of the candidates for the appointment and their aptitude for the discharge of the duties attaching to the vacant post, together with merit, diligence and good conduct.

(3) The Public Service Commission, before appointing any person—

- (a) as Secretary or other head of a Ministry, shall consult with the appropriate Minister to whom the administration of that Ministry is assigned; or
- (b) to any post of magistrate or to any post in the office of the Attorney-General which is required to be held by a legally qualified person, shall consult with the Judicial Service Commission.

(4) The Public Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its functions in terms of—

- (a) paragraph (b) or (d) of subsection (1) in relation to the Public Service to any of its members or to any officer in the Public Service; or
- (b) paragraph (c) or (d) of subsection (1) in relation to the Prison Service to any of its members or to the Director of Prisons;

as it thinks fit:

Provided that the person to whom such functions are delegated shall comply with the requirements of subsections (2) and (3), if they are applicable.

(5) The Director of Prisons may, with the agreement of the Public Service Commission, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of the functions delegated to him in terms of subsection (4) to any other member of the Prison Service.

94. (1) For the performance of its functions the Public Service Commission may— Powers of Public Service Commission.

- (a) inspect offices of a Ministry or other division of the Public Service or of the Prison Service;
- (b) examine official documents, books or other records held by, and obtain information and advice from, any person employed in the Public Service or Prison Service;
- (c) do all such things, including the taking of evidence on oath and the administration of oaths, as are incidental or conducive to the exercise of its functions.

(2) Subject to the provisions of subsections (4) and (5), the Public Service Commission may make such regulations as it considers to be necessary or expedient—

- (a) for the general well-being and good administration of the Public Service and the Prison Service and the maintenance thereof in a high state of efficiency;
- (b) providing for the conditions of service of members of the Public Service or Prison Service.
- (3) Regulations may provide for—
 - (a) the classification of members of the Public Service, the classification of members and rank structures in

the Prison Service and the organization and management of the Public Service or Prison Service;

- (b) the appointment, qualifications, salaries, allowances and other remuneration, promotion, transfer, secondment, powers and duties, hours of work, leave of absence, resignation and retirement of members of the Public Service or Prison Service;
- (c) the circumstances in which members of the Public Service or Prison Service may be removed from office or have their salaries withheld or suspended;
- (d) the payment of pensions, gratuities and other benefits to or in respect of members of the Public Service or Prison Service on their death, injury, illness or termination of service, including the payment of pension contributions and the commutation of pensions;
- (e) the functions, powers and duties of boards established in relation to the payment of compensation in respect of death, injury or illness arising out of or in the course of official duties or established for any other purpose;
- (f) the holding of inquiries by the Commission or any board or person appointed by the Commission or in terms of the regulations and the powers, rights, privileges and duties of and the procedure to be followed by the Commission or such board or person in such inquiries;
- (g) the punishment, including the imposition of fines, of members of the Public Service found guilty of misconduct;
- (h) the punishment, including imprisonment or the imposition of fines, of members of the Prison Service found guilty of offences against discipline;
- (i) appeals to or review by the High Court or any other court or adjudicating authority in relation to any proceedings in connexion with offences against discipline;
- (j) the recognition of any association as representing members of the Public Service or Prison Service;
- (k) offences and penalties therefor.

(4) Notwithstanding anything to the contrary contained in this Part, the Public Service Commission may not, whether by way of regulations made in terms of this section or otherwise—

- (a) increase or authorize an increase in—
 - (i) the fixed salary or salary scale applicable to any post, grade or rank in the Public Service or Prison Service; or
 - (ii) the bonuses or allowances payable to, or the other privileges or benefits that may be granted to,

members of the Public Service or Prison Service;
or

- (iii) the rate of pensions, gratuities or other benefits referred to in paragraph (d) of subsection (3); or
- (iv) the rate of leave that may be granted to or accrued by members of the Public Service or Prison Service; or
- (v) the number or level of posts fixed for any Ministry or other division of the Public Service or Prison Service;

or

- (b) provide for a general decrease or permit a general decrease in the hours of work to be performed by members of the Public Service or Prison Service;

unless the Minister for the time being responsible for finance, having regard to the financial implications, whether direct or indirect, has agreed thereto.

(5) Regulations may not provide for or permit a reduction in the fixed salary or salary scale applicable to any member of the Public Service or Prison Service except where such member has been found guilty of misconduct or an offence against discipline or has consented to such reduction.

(6) Regulations may provide for the application to the Public Service or Prison Service, as the case may be, of regulations made by the Police Service Commission in terms of section *one hundred and two* or the Defence Forces Service Commission in terms of section *one hundred and seven*, with such modifications as the Public Service Commission considers to be necessary or expedient.

95. (1) There shall be an Attorney-General whose office shall be a public office and part of the Public Service and who shall be appointed by the President on the recommendation of the Judicial Service Commission. Attorney-General.

(2) A person shall not be qualified to hold or act in the office of Attorney-General unless—

- (a) he is qualified for appointment as a judge of the High Court; and
- (b) he has served in the office of the Attorney-General for at least ten years.

(3) The Attorney-General shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings before any court, not being a court established by a disciplinary law, and to prosecute or defend an appeal from any determination in such proceedings; and
- (b) to take over and continue any criminal proceedings that have been instituted by any other person or authority before any court, not being a court established by a disciplinary law, and to prosecute or defend

any appeal from any determination in proceedings so taken over by him; and

- (c) to discontinue at any stage before judgment is delivered any criminal proceedings he has instituted in terms of paragraph (a) or taken over in terms of paragraph (b) or any appeal prosecuted or defended by him from any determination in such proceedings.

(4) The powers of the Attorney-General in terms of subsection (3) may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(5) The powers of the Attorney-General in terms of paragraphs (b) and (c) of subsection (3) shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been arraigned before the court.

(6) In the exercise of his powers in terms of subsection (3), the Attorney-General shall not be subject to the direction or control of any person or authority.

(7) For the purposes of this section, the provisions of subsection (3) shall apply in relation to any case stated or question of law reserved for the purposes of any criminal proceedings to any other court as they apply in relation to an appeal from any determination in criminal proceedings.

Comptroller and
Auditor-General.

96. (1) There shall be a Comptroller and Auditor-General whose office shall be a public office, but shall not form part of the Public Service.

(2) A person shall not be qualified to hold or act in the office of Comptroller and Auditor-General unless he has held the post of Secretary of, or Deputy Secretary or Under Secretary in, a Ministry in the Public Service or a post in the Public Service of a grade equivalent to or higher than that of Under Secretary for periods which in the aggregate amount to at least five years.

(3) The Comptroller and Auditor-General shall, subject to the provisions of section *one hundred and eleven*, be appointed and hold office on such terms and conditions as are fixed by the President on the recommendation of the Public Service Commission.

Principal representa-
tives of Zimbabwe
Rhodesia abroad.

97. The power to appoint persons to hold the offices of ambassador, high commissioner or other principal representative of Zimbabwe Rhodesia in any other country or accredited to any international organization and to remove such persons from any such office shall vest in the President acting on the advice of the Prime Minister:

Provided that before advising the President to appoint to any such office a person who holds or is acting in some other public office, the Prime Minister shall consult the Public Service Commission or, if that person is holding an appointment in the Police Force or Defence Forces, the Police Service Commission or Defence Forces Service Commission, as the case may be.

PART III

THE POLICE FORCE

98. (1) For the purpose of preserving the internal security of and maintaining law and order in Zimbabwe Rhodesia, there shall be a Police Force and every member of that Force is charged with the general duty of maintaining law and order, of taking all steps which on reasonable grounds appear to him to be necessary for preserving the peace, for preventing crime, for protecting property from malicious injury, for the detection of crime, for apprehending offenders and for suppressing all forms of civil commotion or disturbance that may occur in any part of Zimbabwe Rhodesia:

Police Force and
Commissioner of
Police.

Provided that nothing contained in this subsection shall be considered as authorizing any member of the Police Force to disobey the lawful order or direction of a superior officer or person placed in authority over him by the Commissioner of Police.

(2) The Police Force shall be under the command of the Commissioner of Police who shall be appointed by the President on the recommendation of the Judicial Service Commission:

Provided that—

- (i) a person shall not be qualified to hold or act in the office of Commissioner of Police unless he has held the rank of Assistant Commissioner in the Police Force or any more senior rank in the Police Force for periods which in the aggregate amount to at least five years;
- (ii) before making any recommendation for the purposes of this subsection, the Judicial Service Commission shall consult with the Prime Minister and the retiring Commissioner of Police if he is available.

(3) The Prime Minister or such other Minister as may be authorized in that behalf by the Prime Minister may give to the Commissioner of Police such general directions of policy with respect to the maintenance of law and order as he may consider necessary and the Commissioner of Police shall comply with such directions or cause them to be complied with.

(4) The Commissioner of Police shall, subject to regulations made in terms of section *one hundred and two*, be responsible for the administration of, and determining the use and controlling the operations of, the Police Force and, except as provided in subsection (3), he shall not, in his command of the Police Force and in the exercise of his responsibilities and powers in relation thereto, be subject to the direction or control of any person or authority:

Provided that the Commissioner of Police shall not increase the number or level of posts fixed for the Police Force unless the Minister for the time being responsible for finance, having regard to the financial implications, has agreed thereto.

**Members of
Police Force.**

99. (1) Subject to the provisions of this section and section *one hundred and one* and any regulations made in terms of section *one hundred and two*, the power to make appointments to any office or rank in the Police Force and the power to remove persons holding or acting in such offices or ranks from the office or reduce them in rank shall vest—

- (a) in relation to the rank of Inspector or any more senior rank, in the President acting on the recommendation of the Commissioner of Police;
- (b) in relation to any rank below that of Inspector, in the Commissioner of Police.

(2) Except as otherwise provided in regulations made in terms of section *one hundred and two*, a person who has served in the Police Force for more than two years shall not be removed from office or reduced in rank except with the confirmation of the Police Service Commission.

(3) Advisory boards consisting of members of the Police Force shall be established by the Commissioner of Police to consider the suitability of members for promotion within the Police Force and no member shall be promoted to a higher rank, other than that of Commissioner of Police, unless his case has been considered by such a board.

(4) The Commissioner of Police may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under paragraph (b) of subsection (1) to any member of the Police Force.

(5) If regulations made in terms of section *one hundred and two* alter the ranks into which the Police Force is divided or which ranks shall be commissioned ranks, the Police Service Commission may, by order in the *Gazette*, specify some other rank in the Police Force as being equivalent to the rank of Inspector as it existed before the first alteration as the lowest commissioned rank, and the references in subsection (1) to the rank of Inspector shall thereafter be construed as if they were references to the rank for the time being so specified.

**Police Service
Commission.**

100. (1) There shall be a Police Service Commission which shall consist of—

- (a) a chairman who, subject to the provisions of subsection (5) of section *ninety-two*, shall be the person holding the office of chairman of the Public Service Commission; and
- (b) not less than two and not more than four other members appointed, subject to the provisions of subsection (2), by the President.

(2) The persons to be appointed as members in terms of paragraph (b) of subsection (1) shall be chosen for their ability and experience in administration and their suitability otherwise for appointment as members, and the following provisions shall apply in relation thereto—

- (a) at least two of the members shall be persons who have held the rank of Assistant Commissioner in the Police Force or any more senior rank in the Police Force for periods which in the aggregate amount to at least five years;
- (b) a person shall not be eligible for appointment if he is a member or has, within the period of three years of the date of the proposed appointment, been a member or been nominated for election as a member of the Senate or the House of Assembly or any local authority;
- (c) if a person, immediately prior to his appointment, is employed in the Public Service or Prison Service or as a regular or full-time member of the Defence Forces or the Police Force, he shall cease to be so employed with effect from the date of his appointment;
- (d) during the period of his service as a member and for a period of three years thereafter he shall not be eligible for appointment to any post in the Police Force.

(3) If at any time a member of the Police Service Commission, other than the chairman, is for any reason unable to perform the functions of his office, the President may appoint a person who is qualified in terms of subsection (2) to act as the member and any person so appointed shall continue to act until the period for which he was appointed has expired or his appointment is revoked by the President:

Provided that a person appointed to act for a specially qualified member shall also be qualified in terms of paragraph (a) of subsection (2).

101. (1) The functions of the Police Service Commission shall be— Functions of Police Service Commission.

- (a) to consider any grievance by a member of the Police Force in regard to any administrative action, decision or order which has been made within the time and the manner prescribed in regulations made in terms of section *one hundred and two* and thereafter to make such recommendations as it thinks fit to the Commissioner of Police; and
- (b) to consider any proposal submitted to it in accordance with the requirements of subsection (2) of section *ninety-nine* that a member who has served in the Police Force for more than two years should be removed from office or reduced in rank and to confirm such proposal if deemed fit;

- (c) to make regulations in terms of section *one hundred and two*;
- (d) to make recommendations to the Commissioner of Police concerning the recruitment and promotion policy for, examinations for entry to and advancement in and the grading of posts in, the Police Force;
- (e) to do such other things not inconsistent with the provisions of paragraphs (a), (b), (c) and (d) as may be required by or under a law of the Legislature or regulations made in terms of section *one hundred and two*.

(2) The Commissioner of Police shall comply with any recommendation made by the Police Service Commission in terms of paragraph (a) of subsection (1).

Powers of Police
Service Commission
to make
regulations.

102. (1) Subject to the provisions of this section, the Police Service Commission may make such regulations as it considers to be necessary or expedient—

- (a) for the general well-being and good administration of the Police Force and the maintenance thereof in a high state of efficiency;
- (b) providing for the conditions of service of members of the Police Force.

(2) Regulations may provide for—

- (a) the rank structure in the Police Force and the organization and management of the Police Force;
- (b) the appointment, qualifications, salaries, allowances and other remuneration, promotion, transfer, secondment, powers and duties, hours of work, leave of absence, resignation and retirement of members of the Police Force;
- (c) the circumstances in which members of the Police Force may be removed from office or have their salaries withheld or suspended;
- (d) the payment of pensions, gratuities and other benefits to or in respect of members of the Police Force on their death, injury, illness or termination of service, including the payment of pension contributions and the commutation of pensions;
- (e) the functions, powers and duties of boards established in relation to the payment of compensation in respect of death, injury or illness arising out of or in the course of official duties or established for any other purpose;
- (f) the holding of inquiries by any board or other authority established by or in terms of the regulations and the powers, rights, privileges and duties of and the procedure to be followed by the authority in such inquiries;

- (g) the punishment, including imprisonment or the imposition of fines, of members of the Police Force found guilty of offences against discipline;
- (h) appeals to or review by the High Court or any other court or adjudicating authority in relation to any proceedings in connexion with offences against discipline;
- (i) the recognition of any association as representing the members of the Police Force.

(3) Regulations may not—

(a) increase or authorize an increase in—

- (i) the fixed salary or salary scale applicable to any post or rank in the Police Force; or
- (ii) the bonuses or allowances payable to, or the other privileges or benefits that may be granted to, members of the Police Force; or
- (iii) the rate of pensions, gratuities or other benefits referred to in paragraph (d) of subsection (2); or
- (iv) the rate of leave that may be granted to or accrued by members of the Police Force; or
- (v) the number of posts fixed for the Police Force;

or

- (b) provide for a general decrease or permit a general decrease in the hours of work to be performed by members of the Police Force;

unless the Minister for the time being responsible for finance, having regard to the financial implications, whether direct or indirect, has agreed thereto.

(4) Regulations may not provide for or permit a reduction in the salary or salary scale applicable to any member of the Police Force except where such member has been found guilty of an offence against discipline or has consented to such reduction.

(5) Regulations shall not be published in the *Gazette* until they have been approved by the Commissioner of Police.

(6) Regulations may provide for the application to the Police Force of regulations made by the Public Service Commission in terms of section *ninety-four* or the Defence Forces Service Commission in terms of section *one hundred and seven*, with such modifications as the Police Service Commission considers to be necessary or expedient.

PART IV

THE DEFENCE FORCES

103. (1) For the purposes of defending Zimbabwe Rhodesia, there shall be an Army, an Air Force and such other branches, if any, of the Defence Forces as may be provided for by or under a law of the Legislature, and—

Defence Forces and
Commanders thereof.

- (a) the Army shall be under the command of the Commander of the Army;
- (b) the Air Force shall be under the command of the Commander of the Air Force;
- (c) any other branch shall be under the command of such Commander as is provided for in the law concerned.

(2) A Commander referred to in subsection (1) shall be appointed by the President on the recommendation of the board established in terms of subsection (6):

Provided that—

- (i) a person shall not be qualified to hold or act in the office of Commander of the Army unless he has held the rank of Colonel in the Army or any more senior rank in the Army for periods which in the aggregate amount to at least five years;
- (ii) a person shall not be qualified to hold or act in the office of Commander of the Air Force unless he has held the rank of Group Captain in the Air Force or any more senior rank in the Air Force for periods which in the aggregate amount to at least five years;
- (iii) before making any recommendation for the purposes of this subsection, the board shall consult with the Prime Minister.

(3) The Prime Minister or such other Minister as may be authorized in that behalf by the Prime Minister may give to a Commander referred to in subsection (1) such general directions of policy with respect to the defence of Zimbabwe Rhodesia as he may consider necessary and that Commander shall comply with such directions or cause them to be complied with.

(4) The Commander concerned shall, subject to regulations made in terms of section *one hundred and seven*, be responsible for the administration of, and determining the use and controlling the operations of, the Army, Air Force or other branch of the Defence Forces, as the case may be, and, except as provided in subsections (3) and (5), he shall not, in his command of the branch concerned and in the exercise of his responsibilities and powers in relation thereto, be subject to the direction or control of any person or authority:

Provided that the Commander shall not increase the number or level of posts fixed for the branch concerned unless the Minister for the time being responsible for finance, having regard to the financial implications, has agreed thereto.

(5) If the Prime Minister, after consultation with the Commanders of the Army and of the Air Force, considers that some authority should be established to co-ordinate the operations of the various branches of the Defence Forces, he may appoint a person recommended by the said Commanders, who shall be a member of the Army or the Air Force or a former commander of the Army or the Air Force, to be Commander of Combined Opera-

tions or Deputy Commander of Combined Operations for such period and on such conditions and with such functions relating to the command and control of operations as the Prime Minister may specify.

(6) The board for the purposes of subsection (2) shall consist of—

- (a) a chairman who shall be the retiring Commander of the Army, Air Force or other branch concerned or, if he is not available, the chairman of the Defence Forces Service Commission; and
- (b) if the board is considering the appointment of a Commander of—
 - (i) the Army, the Commander of the Air Force;
 - (ii) the Air Force, the Commander of the Army;
 - (iii) any other branch of the Defence Forces, the Commander of the Army or of the Air Force, as the President may appoint;
 or, if that Commander is not available, the holder or one of the holders of the next most senior rank in that branch appointed by the President; and
- (c) one other member appointed by the President who is the Secretary of a Ministry in the Public Service.

(7) Any decision of the Board established in terms of subsection (6) shall require the concurrence of a majority of all the members thereof.

104. (1) Subject to the provisions of this section and section *one hundred and six* and any regulations made in terms of section *one hundred and seven*, the power to make appointments to any office or rank in a branch of the Defence Forces and the power to remove persons holding or acting in such offices or ranks from office or reduce them in rank shall vest—

Members of Defence Forces.

- (a) in relation to the rank of—
 - (i) Second Lieutenant or any more senior rank in the Army; or
 - (ii) Air Sub-lieutenant or any more senior rank in the Air Force; or
 - (iii) any rank in any other branch of the Defence Forces which is a commissioned rank;
 in the President acting on the recommendation of the Commander of the branch concerned;
- (b) in relation to any rank below that referred to in subparagraph (i), (ii) or (iii) of paragraph (a), in the Commander of the branch concerned.

(2) Except as otherwise provided in regulations made in terms of section *one hundred and seven*, a person serving in the Defence Forces shall not be removed from office or reduced in rank except with the confirmation of the Defence Forces Service Commission.

(3) Advisory boards consisting of members of the branch concerned shall be established by the Commander to consider the suitability of commissioned members for promotion within that branch and no commissioned member shall be promoted to a higher rank, other than that of Commander, unless his case has been considered by such a board.

(4) The Commander referred to in subsection (1) may, by directions given in such manner as he thinks fit and subject to such conditions as he thinks fit, delegate any of his powers under paragraph (b) of subsection (1) to any member of the branch concerned.

(5) If regulations made in terms of section *one hundred and seven* alter the ranks into which the Army or, Air Force is divided or which ranks shall be commissioned ranks in the Army or Air Force, the Defence Forces Service Commission may, by order in the *Gazette*, specify some other rank in the Army or Air Force as being equivalent to the rank referred to in subparagraph (i) or (ii) of paragraph (a) of subsection (1) as it existed before the first alteration as the lowest commissioned rank, and the references in that subparagraph to that rank shall thereafter be construed as if they were references to the rank for the time being so specified.

**Defence Forces
Service Commission.**

105. (1) There shall be a Defence Forces Service Commission which shall consist of—

- (a) a chairman who, subject to the provisions of subsection (5) of section *ninety-two*, shall be the person holding the office of chairman of the Public Service Commission; and
- (b) not less than two and not more than four other members appointed, subject to the provisions of subsection (2), by the President.

(2) The persons to be appointed as members in terms of paragraph (b) of subsection (1) shall be chosen for their ability and experience in administration and their suitability otherwise for appointment as members, and the following provisions shall apply in relation thereto—

- (a) at least two of the members shall be persons who have held the rank of Colonel in the Army or Group Captain in the Air Force or any more senior rank in the Defence Forces for periods which in the aggregate amount to at least five years;
- (b) a person shall not be eligible for appointment if he is a member or has, within the period of three years of the date of the proposed appointment, been a member or been nominated for election as a member of the Senate or the House of Assembly or any local authority;
- (c) if a person, immediately prior to his appointment, is employed in the Public Service or Prison Service or as a regular or full-time member of the Defence Forces or the Police Force, he shall cease to be so employed with effect from the date of his appointment;

- (d) during the period of his service as a member and for a period of three years thereafter he shall not be eligible for appointment to any post in the Defence Forces.

(3) If at any time a member of the Defence Forces Service Commission, other than the chairman, is for any reason unable to perform the functions of his office, the President may appoint a person who is qualified in terms of subsection (2) to act as the member and any person so appointed shall continue to act until the period for which he was appointed has expired or his appointment is revoked by the President:

Provided that a person appointed to act for a specially qualified member shall also be qualified in terms of paragraph (a) of subsection (2).

106. (1) The functions of the Defence Forces Service Commission shall be—

Functions of Defence Forces Service Commission.

- (a) to consider any grievance by a member of the Defence Forces in regard to any administrative action, decision or order which has been made within the time and in the manner prescribed in regulations made in terms of section *one hundred and seven* and thereafter to make such recommendation as it thinks fit to the appropriate Commander;
- (b) to consider any proposal submitted to it in accordance with the requirements of subsection (2) of section *one hundred and four* that a person serving in the Defence Forces should be removed from office or reduced in rank and to confirm such proposal if deemed fit;
- (c) to make regulations in terms of section *one hundred and seven*;
- (d) to make recommendations to the appropriate Commander concerning the recruitment and promotion policy for, examinations for entry to and advancement in and the grading of posts in, the Army, Air Force or other branch of the Defence Forces;
- (e) to do such other things not inconsistent with the provisions of paragraphs (a), (b), (c) and (d) as may be required by or under a law of the Legislature or regulations made in terms of section *one hundred and seven*.

(2) The appropriate Commander shall comply with any recommendation made by the Defence Forces Service Commission in terms of paragraph (a) of subsection (1).

107. (1) Subject to the provisions of this section, the Defence Forces Service Commission may make such regulations as it considers to be necessary or expedient—

Powers of Defence Forces Service Commission to make regulations.

- (a) for the general well-being and good administration of the Defence Forces and the maintenance thereof in a high state of efficiency;
- (b) providing for the conditions of service of members of the Defence Forces.

(2) Regulations may provide for—

- (a) the rank structures in the Defence Forces and the organization and management of the Defence Forces;
- (b) the appointment, qualifications, salaries, allowances and other remuneration, promotion, transfer, secondment, powers and duties, hours of work, leave of absence, resignation and retirement of members of the Defence Forces;
- (c) the circumstances in which members of the Defence Forces may be removed from office or have their salaries withheld or suspended;
- (d) the payment of pensions, gratuities and other benefits to or in respect of members of the Defence Forces on their death, injury, illness or termination of service, including the payment of pension contributions and the commutation of pensions;
- (e) the functions, powers and duties of boards established in relation to the payment of compensation in respect of death, injury or illness arising out of or in the course of official duties or established for any other purpose;
- (f) the holding of inquiries by any board or other authority established by or in terms of the regulations and the powers, rights, privileges and duties of and the procedure to be followed by the authority in such inquiries;
- (g) the punishment, including death, imprisonment or the imposition of fines, of members of the Defence Forces found guilty of offences against discipline;
- (h) appeals to or review by the High Court or any other court or adjudicating authority in relation to any proceedings in connexion with offences against discipline.

(3) Regulations may not—

(a) increase or authorize an increase in—

- (i) the fixed salary or salary scale applicable to any post or rank in the Defence Forces; or
 - (ii) the bonuses or allowances payable to, or the other privileges or benefits that may be granted to, members of the Defence Forces; or
 - (iii) the rate of pensions, gratuities or other benefits referred to in paragraph (d) of subsection (2); or
 - (iv) the rate of leave that may be granted to or accrued by members of the Defence Forces; or
 - (v) the number of posts fixed for the Defence Forces;
- or

- (b) provide for a general decrease or permit a general decrease in the hours of work to be performed by members of the Defence Forces;

unless the Minister for the time being responsible for finance,

having regard to the financial implications, whether direct or indirect, has agreed thereto.

(4) Regulations may not provide for or permit a reduction in the salary or salary scale applicable to any member of the Defence Forces except where such member has been found guilty of an offence against discipline or has consented to such reduction.

(5) Regulations shall not be published in the *Gazette* until they have been approved by the Commanders of the Army and the Air Force.

(6) Regulations may provide for the application to the Defence Forces of regulations made by the Public Service Commission in terms of section *ninety-four* or the Police Service Commission in terms of section *one hundred and two*, with such modifications as the Defence Forces Service Commission considers to be necessary or expedient.

PART V

GENERAL

108. (1) The provisions of this section shall apply to any of the following— Tenure of office of members of Commissions.

- (a) the member of the Judicial Service Commission appointed in terms of paragraph (c) of subsection (1) of section *eighty-eight*; and
- (b) the members of the Public Service Commission, Police Service Commission or Defence Forces Service Commission;

(hereinafter in this section referred to as a commissioner).

(2) Subject to the provisions of this section, a commissioner shall be appointed and hold office on such terms and conditions as are fixed by the President and shall vacate his office—

- (a) at the expiration of such period, being not less than three years from the date of his appointment, as may be fixed at the time of his appointment:

Provided that the period of office of a commissioner may be extended, from time to time, for such period as the President thinks fit; or

- (b) if any circumstances arise that, if he were not the holder of that office, would cause him to be disqualified for appointment thereto.

(3) There shall be charged upon and paid out of the Consolidated Revenue Fund such salaries and allowances as may from time to time be fixed in terms of subsection (2).

(4) The salary payable to a commissioner shall not be reduced during his continuance in office.

(5) A commissioner may be removed from office only for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(6) A commissioner shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed in terms of subsection (7) and that tribunal has advised the President that the commissioner ought to be removed from office for inability as mentioned in subsection (5) or for misbehaviour.

(7) If the President, on the recommendation of the Prime Minister, considers that the question of removing a commissioner ought to be investigated, then—

- (a) the President shall appoint a tribunal in accordance with the provisions of subsection (10); and
- (b) that tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the member ought to be removed:

Provided that in exercising his powers in terms of this subsection in relation to the commissioner referred to in paragraph (a) of subsection (1), the President shall act on the recommendation of the Chief Justice.

(8) The provisions of the Commissions of Inquiry Act [Chapter 80] as in force at the time or any other law substituted for the same shall, *mutatis mutandis*, apply in relation to a tribunal appointed in terms of subsection (7) as they apply to commissioners appointed in terms of that Act.

(9) If the question of removing a commissioner has been referred to a tribunal in terms of this section, the President, on the recommendation of the Prime Minister, may suspend that member from performing the functions of his office and any such suspension—

- (a) may at any time be revoked by the President;
- (b) shall cease to have effect if the tribunal advises the President that the member should not be removed.

(10) A tribunal appointed in terms of subsection (7) shall consist of a chairman and two other members appointed by the President on the recommendation of the Prime Minister, and—

- (a) the chairman shall be a person who is or has been a judge of the High Court; and
- (b) at least one of the other members shall be a person who is and has been for not less than ten years, whether continuously or not, qualified to practise as an advocate or attorney in Zimbabwe Rhodesia.

**Performance of
functions of
Commissions.**

109. (1) Any Commission may by regulation make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of a Commission shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided, the chairman shall have and shall exercise a casting vote.

(3) Subject to the provisions of this section, a Commission may regulate its own procedure.

(4) In the exercise of its functions under this Constitution, a Commission shall not be subject to the direction or control of any person or authority.

(5) The validity of the transaction of business of a Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) In this section—

“Commission” means a Commission established by this Chapter.

110. (1) The Public Service Commission shall appoint a person to be secretary to the Commissions established by this Chapter and such other staff as may be necessary for the proper performance and functions, responsibilities, powers and duties of such Commissions.

Secretary and staff
of Commissions.

(2) The control and supervision of the staff of the Commissions referred to in subsection (1) shall, subject to the provisions of regulations made in terms of section *ninety-four*, be exercised by the secretary appointed in terms of subsection (1).

(3) The secretary appointed in terms of subsection (1) shall act in accordance with the decisions of the appropriate Commission.

111. (1) The provisions of this section shall apply to the offices referred to in section *ninety* and to the offices of Attorney-General, Comptroller and Auditor-General, Commissioner of Police, Commander of the Army, Commander of the Air Force, Commander of any other branch of the Defence Forces and Director of Prisons (hereinafter in this section referred to as a designated office).

Removal of certain
officers.

(2) Subject to the provisions of this section, a person holding a designated office shall vacate that office on attaining the retiring age or completing such period in that designated office as is specified by or under this Constitution.

(3) The holder of a designated office may be removed from office only for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4) The holder of—

(a) a designated office, other than that of Comptroller and Auditor-General, shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed on the recommendation of the appropriate Commission in terms of subsection (5) and that tribunal has advised the President that the person concerned ought to be removed from office;

- (b) the office of Comptroller and Auditor-General shall be removed from office by the President if the House of Assembly has resolved by the affirmative votes of more than one-half of its total membership that he be removed from office;

for inability as mentioned in subsection (3) or for misbehaviour.

(5) If the appropriate Commission considers that the question of removing from office the holder of a designated office, other than that of Comptroller and Auditor-General, ought to be investigated, then—

- (a) the President shall appoint a tribunal in accordance with the provisions of subsection (8); and
- (b) that tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the holder of the designated office should be removed.

(6) The provisions of the Commissions of Inquiry Act [Chapter 80] as in force at the time or any other law substituted for the same shall, *mutatis mutandis*, apply in relation to a tribunal appointed in terms of subsection (5) as they apply to commissioners appointed in terms of that Act.

(7) If the question of removing from office the holder of a designated office has been referred to a tribunal in terms of this section, the President, on the recommendation of the Prime Minister, may—

- (a) suspend that person from performing the functions of his office and any such suspension—
 - (i) may at any time be revoked by the President;
 - (ii) shall cease to have effect if the tribunal advises the President that that person should not be removed;
- (b) direct that that person shall not be entitled to receive any salary but may be paid such allowance as the President may fix.

(8) A tribunal appointed in terms of subsection (5) shall consist of a chairman and two other members appointed by the President on the recommendation of the Prime Minister, and—

- (a) the chairman shall be a person who is or has been a judge of the High Court; and
- (b) at least one of the other members shall be a person who is and has been for not less than ten years, whether continuously or not, qualified to practise as an advocate or attorney in Zimbabwe Rhodesia.

(9) The retiring age for the holder of a designated office shall be such age as may be specified in relation to the designated office concerned by or under this Constitution:

Provided that any provision made by or under this Constitution, to the extent that it alters the age referred to in this subsection, shall not have effect in relation to the holder of a designated office after his appointment unless he consents to it having such effect.

(10) Any provision made by or under this Constitution, to the extent that it alters the period of service referred to in subsection (2), shall not have effect in relation to any holder of a designated office after his appointment unless he consents to its having such effect.

(11) In this section—

“appropriate Commission”, in relation to—

- (a) an office referred to in section *ninety* or that of Attorney-General or Commissioner of Police, means the Judicial Service Commission;
- (b) the office of Commander of the Army or the Air Force or any other branch of the Defence Forces, means the Defence Forces Service Commission.

112. (1) The law to be applied with respect to any pensions benefits that were granted to any person before the fixed date shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

Protection of
pension rights
of public officers.

(2) The law to be applied with respect to any pensions benefits not referred to in subsection (1) in relation to a public officer or former public officer in respect of a period of service as a public officer, or any ill-health or injury arising out of and in the course of his official duties during a period of service as a public officer, that—

- (a) commenced before the fixed date shall be the law that was in force immediately before that date which, for the purposes of this paragraph, shall include any right conferred by section 85 of the former Constitution; or
- (b) commenced on or after the fixed date shall be the law in force on the date on which that period of service commenced;

or any law in force at a later date that is not less favourable to the person entitled to such pensions benefits.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall be charged upon and paid out of the Consolidated Revenue Fund.

(5) Any law which alters the age at which a person holding public office shall retire or otherwise vacate his office shall not have effect in relation to any public officer who was appointed before that law takes effect unless he consents thereto.

(6) In this section—

“pensions benefits” means any pensions, commutation of pensions, gratuities or other like allowances or refund of pension contributions, including any interest payable thereon, for persons in respect of their service as public

officers or any ill-health or injury arising out of and in the course of their official duties or for the spouses, children, dependants or personal representatives of such persons in respect of such service, ill-health or injury.

(7) References in this section to the law with respect to pensions benefits include, without derogation from their generality, references to the law regulating—

- (a) the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused; or
- (b) the circumstances in which any such benefits that have been granted may be increased, withheld, reduced in amount or suspended; or
- (c) the amount of any such benefits.

Interpretation in Chapter VI.

113. (1) In this Chapter—

“Defence Forces” means the Army, Air Force and any other branch of the Defence Forces referred to in subsection (1) of section *one hundred and three*;

“Police Force” means the Police Force established by the Police Act [*Chapter 98*] and includes any other police force established by or under a law of the Legislature to succeed to or to supplement the functions of that Force but does not include any police force forming part of the Defence Forces;

“Public Service” means the service of the State in the government of Zimbabwe Rhodesia but does not include—

- (a) the Prison Service, Police Force or Defence Forces;
- (b) service as a judge of the High Court or in an office referred to in section *ninety*;
- (c) service as a member of any Commission established by this Constitution or any body corporate which is established directly by or under any law of the Legislature for special purposes specified in that law;

“specially qualified”, in relation to a member of—

- (a) the Public Service Commission, means qualified in terms of paragraph (a) of subsection (2) of section *ninety-two*;
- (b) the Police Service Commission, means qualified in terms of paragraph (a) of subsection (2) of section *one hundred*;
- (c) the Defence Forces Service Commission, means qualified in terms of paragraph (a) of subsection (2) of section *one hundred and five*.

(2) Any reference in this Chapter to appointments to any public office or rank shall be construed as including a reference to appointments on promotion to that office or rank or transfer to that office or the upgrading of an incumbent of that office.

(3) The delegation by any Commission or person of any function or power under any provision of this Chapter shall not divest the Commission or person of such function or power and the Commission or person concerned may at any time withdraw such function or power in the same manner as it was delegated.

(4) If regulations made in terms of section *ninety-four*, *one hundred and two* or *one hundred and seven* alter the posts or grades into which the Public Service or the ranks into which the Police, Army or Air Force, as the case may be, is divided, the appropriate Commission may, by order in the *Gazette*, specify some other post, grade or rank in the Public Service, Police, Army or Air Force, as the case may be, as being equivalent to the post, grade or rank, as the case may be, referred to in paragraph (a) of subsection (2) of section *ninety-two*, subsection (2) of section *ninety-six*, proviso (i) to subsection (2) of section *ninety-eight*, paragraph (a) of subsection (2) of section *one hundred*, proviso (i) or (ii) to subsection (2) of section *one hundred and three* or paragraph (a) of subsection (2) of section *one hundred and five*, and the reference in any of those provisions to that post, grade or rank, as the case may be, shall thereafter be construed as including a reference to the post, grade or rank, as the case may be, for the time being so specified.

CHAPTER VII

FINANCE

114. All fees, taxes and other revenues of the State of Zimbabwe Rhodesia from whatever source arising, not being moneys that—

Consolidated Revenue Fund.

- (a) are payable by or under a law of the Legislature into some other fund established for a specific purpose; or
- (b) may, by or under a law of the Legislature, be retained by the authority that received them for the purpose of defraying the expenses of that authority;

shall be paid into and form one Consolidated Revenue Fund.

115. (1) No moneys shall be withdrawn from the Consolidated Revenue Fund except—

Withdrawals from Consolidated Revenue Fund or other public fund.

- (a) to meet expenditure that is charged upon that Fund by this Constitution or by a law of the Legislature; or
- (b) where the issue of those moneys has been authorized by an Appropriation Act or an Act made in pursuance of the provisions of section *one hundred and sixteen* or *one hundred and seventeen*.

(2) Where any moneys are charged by this Constitution or a law of the Legislature upon the Consolidated Revenue Fund or any other public fund, they shall be paid out of that fund by the Government to the person or authority to whom payment is due.

(3) No moneys shall be withdrawn from any public fund, other than the Consolidated Revenue Fund, unless the issue of those moneys has been authorized by or under a law of the Legislature.

(4) A law of the Legislature may prescribe the manner in which withdrawals may be made from the Consolidated Revenue Fund or any other public fund.

(5) The investment of moneys forming part of the Consolidated Revenue Fund shall be made in such manner as may be prescribed by or under a law of the Legislature.

(6) Notwithstanding the provisions of subsection (1), provision may be made by or under a law of the Legislature authorizing withdrawals to be made from the Consolidated Revenue Fund, in such circumstances and to such extent as may be prescribed by or under such law, for the purpose of making repayable advances.

Authorization of expenditure from Consolidated Revenue Fund by appropriation.

116. (1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the House of Assembly before or not later than thirty days after the start of each financial year estimates of the revenue and expenditure of Zimbabwe Rhodesia for that financial year:

Provided that if, by reason of the dissolution of Parliament, the provisions of this subsection cannot be complied with, the estimates of the revenue and expenditure shall be laid before the House of Assembly within thirty days of the date on which the House of Assembly first meets after that dissolution.

(2) When the estimates of expenditure, other than expenditure charged upon the Consolidated Revenue Fund by this Constitution or a law of the Legislature, have been approved by the House of Assembly, a Bill, to be known as an Appropriation Bill, shall be introduced in the House of Assembly providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several heads of expenditure approved, to the purposes specified therein.

(3) If in respect of any financial year it is found that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act, a supplementary estimate showing the sums required shall be laid before the House of Assembly and, when such estimates have been approved by the House of Assembly, a supplementary Appropriation Bill shall be introduced in the House of Assembly providing for the issue of such sums from the Consolidated Revenue Fund and the appropriation thereof, under separate votes for the several heads of expenditure approved, to the purposes specified therein.

(4) A law of the Legislature may make provision for the President, where he is satisfied that there is an urgent need for expenditure which was unforeseen or the extent of which was unforeseen and for which no other provision exists, to authorize the withdrawal from the Consolidated Revenue Fund of moneys for the purpose of meeting that expenditure and any moneys so withdrawn shall be included in supplementary or additional estimates which shall be laid before the House of Assembly on one of the fourteen days on which the House of Assembly sits next

after the authorization of such withdrawal and, when such estimates have been approved by the House of Assembly, a supplementary or additional Appropriation Bill shall be introduced in the House of Assembly providing that the sums so withdrawn shall be charged upon the Consolidated Revenue Fund and that they shall be appropriated, under separate votes for the several heads of expenditure approved, to the purposes specified therein:

Provided that the aggregate of all moneys so authorized to be withdrawn shall not at any one time prior to the consequential estimates having been approved by the House of Assembly exceed one and one-half *per centum* of the total amount appropriated in the last main Appropriation Act.

(5) If in respect of any financial year it is found that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose under this Chapter or for a purpose to which no amount has been appropriated under this Chapter, the Minister for the time being responsible for finance shall cause to be introduced in the House of Assembly on one of the fourteen days on which the House of Assembly sits next after the extent of the unauthorized expenditure has been established a Bill providing for the condonation of such unauthorized expenditure.

117. (1) A law of the Legislature may make provision under which, if the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the President may authorize the withdrawal of moneys from the Consolidated Revenue Fund for the purpose of meeting expenditure necessary to carry on the services of the Government during the period commencing with the beginning of that financial year and expiring four months thereafter or on the coming into operation of the Act, whichever is the earlier:

Authorization of expenditure in advance of appropriation.

Provided that—

- (i) the aggregate of all moneys so authorized to be withdrawn shall not exceed one-third of the sums included in the estimates of expenditure for the preceding financial year that have been laid before the House of Assembly;
- (ii) any moneys so withdrawn shall be included in the Appropriation Act under separate votes and shall be accounted for in accordance with the provisions thereof.

(2) A law of the Legislature may make provision under which, where at any time Parliament has been dissolved before any provision or sufficient provision is made under this Chapter for the carrying on of the government of the country, the President may authorize the withdrawal of moneys from the Consolidated Revenue Fund for the purpose of meeting expenditure necessary to carry on the services of the Government during the period beginning on the dissolution of Parliament and expiring three months after the day on which the House of Assembly first meets after that dissolution and any moneys so withdrawn shall

be included in an Appropriation Act under separate votes and shall be accounted for in accordance with the provisions thereof.

Public debt.

118. (1) All debt charges for which the Government of Zimbabwe Rhodesia is liable shall be charged upon the Consolidated Revenue Fund.

(2) The costs and charges and expenses incurred incidental to the collection and management of the Consolidated Revenue Fund shall form the first charge thereon.

(3) For the purposes of this section, debt charges include interest, sinking fund charges, the repayment or amortization of debt and all expenditure in connexion with the raising of loans on the security of the Consolidated Revenue Fund and the service and redemption of debt created thereby.

Functions of
Comptroller and
Auditor-General.

119. (1) The public accounts of Zimbabwe Rhodesia and of all accounting officers, receivers of revenue and other persons entrusted with public moneys or property of the State shall at least once in every financial year be examined, audited and reported on by the Comptroller and Auditor-General on behalf of the House of Assembly:

Provided that if the Comptroller and Auditor-General is of the opinion that it would not be appropriate or expedient for him to examine and audit any particular account or fund or any particular class of documents, he may, by notice in writing, inform the Speaker and the Minister for the time being responsible for finance of his opinion and, unless otherwise directed by the House of Assembly, he shall not make any examination, audit or report in relation thereto.

(2) It shall be the duty of the Comptroller and Auditor-General to satisfy himself that—

(a) all moneys that have been appropriated by the Legislature and disbursed have been applied to the purposes for which they were so appropriated and that the expenditure conforms to the authority that governs it; and

(b) all reasonable precautions have been taken to safeguard the collection of all fees, taxes and other revenues of the State and to safeguard and control property of the State.

(3) The Comptroller and Auditor-General and any officer authorized by him shall have access to all books, records, returns, reports and other documents that, in his opinion, relate to any of the accounts referred to in subsection (2) and to all cash, stamps, securities, stores and other property of whatever kind that he considers it necessary to inspect in connexion with any of those accounts and that is in the possession of any employee, agent or authority of the State.

(4) The Comptroller and Auditor-General shall submit every report made by him in terms of subsection (1) to the Minister for the time being responsible for finance who shall, on one of the seven days on which the House of Assembly sits next after he has received the report, lay it before the House of Assembly.

(5) The Comptroller and Auditor-General shall exercise in relation to the accounts of the State or the accounts of any authority, body or fund established directly by or under any law of the Legislature for special purposes specified in that law such other functions as may be prescribed by or under a law of the Legislature.

(6) In the exercise of his functions under subsections (1), (2), (3) and (4), the Comptroller and Auditor-General shall not be subject to the direction or control of any person or authority other than the House of Assembly.

CHAPTER VIII

THE DECLARATION OF RIGHTS

WHEREAS every person in Zimbabwe Rhodesia is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person and the protection of the law; and
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from the compulsory acquisition of property without compensation;

AND WHEREAS it is the duty of every person to respect and abide by the Constitution and the laws of Zimbabwe Rhodesia:

NOW THEREFORE, the following provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to the limitations of that protection contained in those provisions.

120. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted. Protection of right to life.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable in the circumstances of the case—

- (a) for the defence of any person from violence or for the defence of property; or
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or
- (d) in order to prevent the commission by that person of a criminal offence;

or if he dies as the result of a lawful act of war.

(3) It shall be sufficient justification for the purposes of subsection (2) in any case to which that subsection applies if it is

shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the fixed date.

Protection of right
to personal
liberty.

121. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say—

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Zimbabwe Rhodesia or elsewhere, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in the execution of the order of the Senate or the House of Assembly punishing him for a contempt;
- (c) in execution of the order of a court made in order to secure the fulfilment of an obligation imposed on him by law, including any African customary law;
- (d) for the purpose of bringing him before a court in execution of the order of a court or an officer of a court or before the Senate or the House of Assembly in execution of the order of the Senate or that House;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (f) under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare during a period beginning before he attains the age of twenty-one years and ending not later than the date when he attains the age of twenty-three years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) if he is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care, treatment or rehabilitation or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zimbabwe Rhodesia or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zimbabwe Rhodesia or the taking of proceedings relating thereto;
- (j) subject to the provisions of subsections (4) to (9), for the purposes of his preventive detention in the interests of defence, public safety or public order.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable in a language that he understands of the cause of his arrest or detention and shall be permitted at his own expense to obtain and instruct without delay a legal representative of his own choice and to hold communication with him.

(3) Any person who is arrested or detained—

- (a) for the purpose of bringing him before a court in execution of the order of a court or an officer of a court; or

- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

and who is not released shall be brought without undue delay before a court, and if any person arrested or detained as mentioned in paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) No law providing for preventive detention shall authorize the detention of a person for a period longer than fourteen days, unless the Minister designated for the purpose has issued an order providing for the preventive detention of that person.

(5) Where a person has been detained by virtue of the provisions of a law providing for preventive detention—

- (a) his case shall be reviewed by a tribunal established for the purposes of this section not later than thirty days after the commencement of the detention and thereafter at intervals of not more than one hundred and eighty days from the date on which his case was last reviewed by that tribunal; and

- (b) at the hearing of his case by that tribunal he shall be permitted to appear in person or at his own expense by a legal representative of his own choice; and

- (c) if that tribunal—

- (i) orders, either because that person satisfies the tribunal that new circumstances have arisen or because the tribunal considers it to be desirable, that the case of that person should be submitted to the tribunal for review before the expiration of one hundred and eighty days from the previous review of his case, the case of that person shall be submitted for review when so ordered by the tribunal; or

- (ii) reports that, in its opinion, there is not sufficient cause for the continued detention of that person, he shall forthwith be released.

(6) A person who has been detained by virtue of the provisions of any law providing for preventive detention and who has been released from detention in consequence of a report of a tribunal established for the purposes of this section that there is, in its opinion, insufficient cause for his detention shall not again be detained by virtue of such provisions within the period of one hundred and eighty days from his release on the same grounds as those on which he was originally detained.

(7) A tribunal established for the purposes of this section shall be established by law and shall consist of—

- (a) a chairman, who shall be a person who is or has been a judge of the High Court or is qualified in terms of section *eighty* to be appointed as such; and

- (b) two other persons, one of whom—

- (i) is or has been a judge of the High Court or is qualified in terms of section *eighty* to be appointed as such; or
- (ii) has been a magistrate in Zimbabwe Rhodesia for not less than ten years; or
- (iii) is, and has been for not less than ten years, whether continuously or not, qualified to practise as an attorney in Zimbabwe Rhodesia.

(8) The reference in paragraph (a) of subsection (5) to a period of thirty days includes a reference to any lesser periods that amount in the aggregate to thirty days:

Provided that no two such lesser periods shall be aggregated for this purpose if the period between the expiration of the first and the commencement of the second is more than thirty days.

(9) For the purposes of subsection (6), a person shall be deemed to have been detained on the same grounds as those on which he was originally detained unless a tribunal established for the purposes of this section has reported that, in its opinion, there appear *prima facie* to be new and reasonable grounds for the detention, but the giving of any such report shall be without prejudice to the provisions of subsections (4) and (5).

(10) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any person or authority on whose behalf or in the course of whose employment that other person was acting:

Provided that—

- (a) any judicial officer acting in his judicial capacity reasonably and in good faith; or
- (b) any public officer, or person assisting a public officer, acting reasonably and in good faith and without culpable ignorance or negligence;

may be protected by law from liability for such compensation.

Protection from
slavery and forced
labour.

122. (1) No person shall be held in slavery or servitude or required to perform forced labour.

(2) For the purposes of subsection (1)—

“forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court; or
- (b) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court—
 - (i) is reasonably necessary in the interests of hygiene or for the maintenance or management of the place at which he is detained; or
 - (ii) is reasonably required for the purposes referred to in paragraph (f) or (h) of subsection (1) of section *one hundred and twenty-one*;

or

- (c) any labour required of a person who is a member of any naval, military or air force or who is otherwise subject to any disciplinary law in pursuance of his duties as a member of that force or under that law or any labour required of any person by virtue of a written law in lieu of service as a member of such a force; or
- (d) any labour required by way of parental discipline; or
- (e) any labour required by virtue of a written law during a period of public emergency or in the event of any other emergency or disaster which threatens the life or well-being of any section of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or disaster, for the purpose of dealing with that situation.

123. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment. Protection from inhuman treatment.

(2) No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of subsection (1) on the ground that it is degrading.

(3) Nothing contained in or done under the authority of any written law shall be held to be in contravention of subsection (1) to the extent that the law in question authorizes the doing of anything by way of punishment or other treatment which might lawfully have been so done in Zimbabwe Rhodesia immediately before the fixed date.

124. (1) No property of any description or interest or right therein shall be compulsorily acquired, except under the authority of a law that— Protection from deprivation of property.

- (a) requires the acquiring authority to give reasonable notice of the intention to acquire the property, interest or right, as the case may be, to any person owning the property or having any other interest or right therein that would be affected by such acquisition; and
- (b) requires the acquiring authority before or not later than thirty days after the acquisition to apply to the General Division or some other court for an order authorizing such acquisition; and
- (c) requires the General Division or other court not to grant such an order unless it is satisfied that—
 - (i) the acquisition is reasonably necessary in the interests of defence, public safety, public order, public morality, public health, town and country

planning, the utilization of that or any other property for a purpose beneficial to the public generally or to any section thereof or, subject to the provisions of subsection (2), the settlement of land for agricultural purposes; and

- (ii) where the acquisition relates to only part of a piece of land, such acquisition will not render the remainder of that piece of land unsuitable for the purpose for which it was being used or was *bona fide* intended to be used immediately before such acquisition;

and

- (d) requires the acquiring authority—

- (i) where such an order is refused, to return the property and pay promptly such damages in respect of any acquisition as the General Division or other court may think fit;

- (ii) where such an order is granted, to pay promptly adequate compensation for the acquisition;

and

- (e) enables any claimant for compensation, if no agreement as to the amount and manner of payment of compensation has been concluded within thirty days of the grant of the order referred to in paragraph (b), to apply to the General Division or some other court for the determination of those matters, including, where necessary, any question as to his entitlement to compensation, and for the purpose of obtaining prompt payment of the compensation; and
- (f) enables any person who is aggrieved by any decision of the General Division or other court on any matter referred to in this subsection, unless he has agreed in writing to accept that decision as final, to appeal to the Appellate Division; and
- (g) requires the acquiring authority to pay the costs reasonably incurred by any other party in connexion with the proceedings before the General Division or other court for any of the aforesaid purposes, including any appeal from any decision of that court given for those purposes:

Provided that the law may authorize the General Division or other court, if it is satisfied that any opposition to an application for an order referred to in paragraph (b) or any appeal is frivolous or unreasonable, to make such order as to costs as it thinks fit.

- (2) A law referred to in subsection (1) shall require the court not to grant an order referred to in paragraph (b) of subsection (1) authorizing the acquisition of a piece of land or part thereof or an interest or right therein for the purposes of the

settlement thereof for agricultural purposes unless it is satisfied, having regard to its area and suitability for those purposes, that the piece of land in question has not been substantially put to use for those purposes for a continuous period of at least five years immediately prior to the date of application for the order :

Provided that such law shall provide that any period during which a piece of land is not put to use for agricultural purposes by reason of any public disorder or any disaster shall—

- (a) be disregarded for the purpose of computing the period of five years referred to in this subsection; and
- (b) not be regarded as interrupting such period.

(3) A law referred to in subsection (1) shall require the court, in the case of the acquisition of land or an interest or right therein, to fix as adequate compensation an amount which shall not be less than the highest amount which the land, together with any improvements thereon at the date of the acquisition, or the interest or right therein, as the case may be, would have realized if sold on the open market by a willing seller to a willing buyer at any time during the period of five years immediately prior to the date of the acquisition :

Provided that the law may require that—

- (a) where part only of a piece of land has been acquired, adequate compensation for that part shall be fixed as an amount not less than the difference between the value determined in terms of this subsection of the whole piece of land and the value so determined of the remainder of that piece of land;
- (b) if the land was, immediately prior to the date of acquisition, used for a purpose and adapted for such purpose in such a way that there is no general demand or market for the land so used and adapted and if the justice of the case so requires, adequate compensation shall be fixed on the basis of the reasonable cost of adapting other land in such a way that the claimant is restored as closely as may be possible to the position in which he was immediately prior to that date or on any other basis which the court thinks just;
- (c) in fixing adequate compensation the court shall disregard—
 - (i) anything done after the giving of the notice referred to in paragraph (a) of subsection (1);
 - (ii) any change in the value of the land, interest or right, as the case may be, resulting from any action taken or to be taken by the acquiring authority connected with the acquisition of the land, interest or right or resulting from the purpose for which or in connexion with which the land, interest or right is being acquired or taken or is to be used;

(iii) any increase in the value of any land that is due to the use of the land in a manner which is illegal, detrimental to the land or restrainable;

(iv) any improvement effected *mala fide* on any land in order to increase any compensation payable;

(d) in fixing adequate compensation the court shall take into account any increase in the value of any other property or rights of the claimant or any benefit which the claimant will receive due to any works undertaken by the acquiring authority which are connected with the acquisition of the land, interest or right, as the case may be.

(4) Where any person, by virtue of a law, contract or scheme relating to the payment of pensions benefits, has a right, whether vested or contingent, to the payment of pensions benefits or any commutation thereof or a refund of contributions, with or without interest, payable in terms of such law, contract or scheme, any law which thereafter provides for the extinction of or a diminution in such a right shall be regarded for the purposes of subsection (1) as a law providing for the acquisition of a right in property.

(5) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question authorizes the taking of possession of property compulsorily during a period of public emergency or in the event of any riot, disorder or other emergency or any disaster that threatens the life or well-being of the community or where there is a situation which may lead to such emergency or disaster and makes provision that—

(a) requires the acquiring authority promptly to give reasonable notice to any person owning or possessing the property of the taking of possession; and

(b) enables any such person to notify the acquiring authority in writing that he objects to the compulsory taking of possession of the property by that authority; and

(c) requires the acquiring authority, in the case of any such notification, to apply within thirty days thereafter to the General Division or other court for a determination of the authority's entitlement to take possession of the property compulsorily; and

(d) requires the General Division or other court to order the acquiring authority to return the property unless it is satisfied that the taking of possession thereof by that authority is reasonably justifiable, in the circumstances of the situation existing, for the purpose of dealing with that situation; and

(e) requires—

(i) the prompt return, wherever possible, of the property in the condition in which it was at the time of the taking of possession thereof when the

possession thereof is no longer reasonably justifiable as referred to in paragraph (d); and

- (ii) the prompt payment of adequate compensation for the taking of possession and, where appropriate, for the failure to return the property as referred to in subparagraph (i) or for any damage to the property;

and

- (f) enables any claimant for compensation to apply to the General Division or some other court for the prompt return of the property and for the determination of the amount and manner of payment of compensation, including, where necessary, any question as to his entitlement to compensation, and for the purpose of obtaining prompt payment of that compensation; and
- (g) enables any person who is aggrieved by any decision of the General Division or other court on any matter referred to in this subsection to appeal to the Appellate Division.

(6) In the case of compensation payable under subsection (1) in respect of the loss of ownership or enjoyment of a piece of land or a substantial portion thereof to—

- (a) an individual who is a citizen of or ordinarily resident in Zimbabwe Rhodesia, such individual shall not be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount;
- (b) a company all or the majority by value of the shareholders in which, not being nominee shareholders, are at the date of such loss individuals who are citizens of or ordinarily resident in Zimbabwe Rhodesia, any such shareholder who is a citizen of or ordinarily resident in Zimbabwe Rhodesia shall not be prevented from remitting, within a reasonable time after the company has received any amount of that compensation, such portion of that amount as is paid to him by virtue of his shareholding in that company;

to any country of his choice outside Zimbabwe Rhodesia free from any deduction, tax or charge, other than ordinary bank charges, made or levied in respect of its remission.

(7) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (6) to the extent that the law in question authorizes the attachment, by order of a court, of any amount of compensation to which a person is entitled to secure the jurisdiction of the court for the purpose of any civil proceedings or in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party.

(8) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1)—

- (a) to the extent that the law in question makes provision for the acquisition of any property or any interest or right therein in any of the following cases—
- (i) in satisfaction of any tax or rate;
 - (ii) by way of penalty for breach of any law, including any African customary law, whether under civil process or after conviction of an offence, or forfeiture in consequence of a breach of the law or in pursuance of any order referred to in paragraph (b) of subsection (1) of section *one hundred and twenty-one*;
 - (iii) upon the removal or attempted removal of the property in question out of or into Zimbabwe Rhodesia in contravention of any law;
 - (iv) as an incident of a contract, including a lease or mortgage, which has been agreed between the parties to the contract, or of a title deed to land fixed at the time of the grant or transfer thereof or at any other time with the consent of the owner of the land;
 - (v) in the execution of a judgment or order of a court in proceedings for the determination of civil rights or obligations;
 - (vi) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human, animal or vegetable life or having been constructed or grown on any land in contravention of any law relating to the occupation or use of that land;
 - (vii) in consequence of any law with respect to the limitation of actions, acquisitive prescription or derelict land;
 - (viii) as a condition in connexion with the granting of permission for the utilization of that or other property in any particular manner;
 - (ix) by way of the taking of a sample for the purposes of a law;
 - (x) where the property consists of an animal, upon its being found trespassing or straying;
 - (xi) for so long only as may be necessary for the purpose of any examination, investigation, trial or inquiry;
 - (xii) in the case of land, for so long only as may be necessary for the purpose of the carrying out thereon of—
 - A. work for the purpose of the conservation of natural resources of any description; or
 - B. agricultural development or improvement which the owner or occupier of the land has

been required, and has without reasonable or lawful excuse refused or failed, to carry out;

- (xiii) in consequence of any law requiring copies of any book or other publication published in Zimbabwe Rhodesia to be lodged with the National Archives or a public library;
- (xiv) for the purposes of, or in connexion with, the prospecting for or exploitation of minerals, mineral oils, natural gases, precious metals or precious stones which are vested in the President on terms which provide for the respective interests of the persons affected;
- (xv) for the purpose of, or in connexion with, the exploitation of underground water or public water which is vested in the President on terms which provide for the respective interests of the persons affected;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

- (b) to the extent that the law in question makes provision for the acquisition of any property or any interest or right therein in any of the following cases—
 - (i) for the purpose of the administration, care or custody of any property of a deceased person or a person who is unable, by reason of any incapacity, to administer it himself, on behalf and for the benefit of the person entitled to the beneficial interest therein;
 - (ii) by way of the vesting or administration of any property belonging to or used by or on behalf of an enemy or an organization which is proscribed or declared by or in terms of a written law to be an unlawful organization;
 - (iii) by way of the administration of moneys payable or owing to a person outside Zimbabwe Rhodesia or to the government of a foreign country where restrictions have been placed by law on the transfer of such moneys outside Zimbabwe Rhodesia;
 - (iv) as an incident of—
 - A. a composition in insolvency accepted or agreed to by a majority in number of creditors who have proved claims and by a number of creditors whose proved claims represent in value more than fifty *per centum* of the total value of proved claims; or
 - B. a deed of assignment entered into by a debtor with his creditors;

- (v) by way of the acquisition of the shares, or a class of shares, in a body corporate in terms agreed to by the holders of not less than nine-tenths in value of those shares or that class thereof.

(9) Nothing in this section shall affect the making or operation of any law in so far as it provides for—

- (a) the orderly marketing of any agricultural produce or mineral or any article or thing prepared for market or manufactured therefor in the common interests of the various persons otherwise entitled to dispose of that property or for the reasonable restriction of the use of any property in the interests of safeguarding the interests of others or the protection of lessees or other persons having rights in or over such property; or
- (b) the compulsory acquisition in the public interest of any property or any interest or right therein where that property, interest or right, as the case may be, is held by a body corporate established directly by law for public purposes in which no moneys are invested other than moneys provided from public funds.

(10) If in any proceedings it is alleged that anything contained in or done under the authority of any law is in contravention of subsection (1) and the court decides that, as a result of hearing the parties, the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in paragraph (a) of subsection (8) as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be in contravention of subsection (1).

(11) For the purposes of this section—

“acquiring authority” means the person or authority intending compulsorily to take possession of or acquire the property or the interest or right therein or who has taken possession of or acquired the property or the interest or right therein, as the context may require;

“agricultural purposes” includes forestry, fruit-growing and animal husbandry, including the keeping of poultry, bees or fish;

“pensions benefits” means any pension, annuity, gratuity or other like allowance—

- (a) which is payable from the Consolidated Revenue Fund to any person; or
- (b) for any person in respect of his service with an employer or for any spouse, child or dependant of such person in respect of such service; or
- (c) for any person in respect of his ill-health or injury arising out of and in the course of his employment or for any spouse, child or dependant of such

person upon the death of such person from such ill-health or injury; or

- (d) for any person upon his retirement on account of age or ill-health or other termination of service;

“piece of land” means a piece of land registered as a separate entity in the Deeds Registry.

125. (1) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or his property or the entry by others on his premises. Protection from arbitrary search or entry.

(2) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality, public health or town and country planning; or
- (b) without derogation from the generality of the provisions of paragraph (a), for the enforcement of the law in circumstances where there are reasonable grounds for believing that the search or entry is necessary for the prevention, investigation or detection of a criminal offence, for the seizure of any property which is the subject-matter of a criminal offence or evidence relating to a criminal offence, for the lawful arrest of a person or for the enforcement of any tax, rate, duty or due; or
- (c) for the purposes of a law which provides for the taking of possession of any property or the acquisition of any property or interest or right therein and which is not in contravention of the provisions of section *one hundred and twenty-four*; or
- (d) for the purpose of protecting the rights or freedoms of other persons; or
- (e) that authorizes any local authority or any body corporate established directly by or under any law of the Legislature for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate, duty or due or in order to carry out work connected with any property of that authority or body which is lawfully on those premises; or
- (f) that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order;

except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) A law referred to in subsection (2) which makes provision for the searching or examination of the body of any woman

shall require that such search or examination, unless made by a medical practitioner, shall only be made by a woman and shall be conducted with strict regard to decency.

(4) If in any proceedings it is alleged that anything contained in or done under the authority of any law is in contravention of subsection (1) and the court decides, as a result of hearing the parties, that the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in subsection (2) as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be in contravention of subsection (1).

Provisions to secure
protection of law.

126. (1) Every person is entitled to the protection of the law.

(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(3) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language which he understands and in detail, of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself in person or, save in proceedings before a local court, at his own expense by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or, save in proceedings before a local court, by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution;
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(4) When a person is tried for any criminal offence the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time

after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(5) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is more severe in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(6) Subject to the provisions of paragraph (d) of subsection (13), no person who shows that he has been tried by a competent court for a criminal offence upon a good indictment, summons or charge upon which a valid judgment could be entered, and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save—

(a) where a conviction and sentence of the General Division or of a court subordinate to the General Division are set aside on appeal or review on the ground that evidence was admitted which should not have been admitted or that evidence was rejected which should have been admitted or on the ground of any other irregularity or defect in the procedure; or

(b) otherwise upon the order of the High Court in the course of appeal or review proceedings relating to the conviction or acquittal.

(7) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(8) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(9) Every person is entitled to be afforded a fair hearing within a reasonable time by an independent and impartial court or other adjudicating authority established by law in the determination of the existence or extent of his civil rights or obligations.

(10) Except in the case of a trial such as is referred to in subsection (14) or with the agreement of all the parties thereto and subject to the provisions of subsection (11), all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent—

(a) the court or other adjudicating authority from excluding from the proceedings, except the announcement of the decision of the court or other authority, persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(i) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of

justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings; or

- (ii) may by law be empowered or required so to do in the interests of defence, public safety, public order or the economic interests of the State;

or

- (b) the court from excluding from proceedings preliminary to trial in respect of a criminal offence persons other than the accused person and his legal representative when so required by law, unless the accused person otherwise requests.

(12) Notwithstanding anything contained in subsection (4), (10) or (11), if in any proceedings before a court or other adjudicating authority such as is referred to in subsection (2) or (9), including any proceedings by virtue of section *one hundred and thirty-four*, a certificate in writing is produced to the court or other authority signed by a Minister that it would not be in the public interest for any matter to be publicly disclosed, the court or other authority shall make arrangements for evidence relating to that matter to be heard *in camera* and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

(13) Nothing contained in any law shall be held to be in contravention of—

- (a) subsection (2), paragraph (e) of subsection (3) or subsection (9), to the extent that the law in question makes reasonable provision relating to the grounds of privilege or public policy on which evidence shall not be disclosed or witnesses are not competent or cannot be compelled to give evidence in any proceedings; or
- (b) paragraph (a) of subsection (3), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts; or
- (c) paragraph (e) of subsection (3), to the extent that the law in question imposes reasonable conditions which must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (d) subsection (6), to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence, notwithstanding any trial and conviction or acquittal of that member under the appropriate disciplinary law, so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law; or

- (e) subsection (8), to the extent that the law in question authorizes a court, where the person who is being tried refuses without just cause to answer any question put to him, to draw such inferences from that refusal as are proper and to treat that refusal, on the basis of such inferences, as evidence corroborating any other evidence given against that person.

(14) In the case of any person who is held in lawful detention, the provisions of subsection (2) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention, save that the case of such person shall be afforded a fair hearing within a reasonable time, and the person or authority conducting the trial shall be regarded as a court for the purposes of this section.

(15) For the purposes of this section, a local court shall not be regarded as not being an independent and impartial court by reason of—

- (a) the fact that a member of the court has an interest in the proceedings because of his position in the tribal society; or
- (b) the traditional or customary tribal practices and procedures.

127. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of conscience, that is to say, freedom of thought and of religion, freedom to change his religion or belief, and freedom, whether alone or in community with others, and whether in public or in private, to manifest and propagate his religion or belief through worship, teaching, practice and observance.

Protection of
freedom of
conscience.

(2) Except with his own consent or, if he is a minor, the consent of his guardian, no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community shall be prevented from making provision for the giving by persons lawfully in Zimbabwe Rhodesia of religious instruction to persons of that community in the course of any education provided by that community, whether or not that community is in receipt of any government subsidy, grant or other form of financial assistance from the State.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) or (3) to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality or public health; or

- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief; or
- (c) with respect to standards or qualifications to be required in relation to places of education, including any instruction, not being religious instruction, given at such places;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) If in any proceedings it is alleged that anything contained in or done under the authority of any law is in contravention of this section and the court decides, as a result of hearing the parties, that the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in subsection (5) as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be in contravention of this section.

(7) References in this section to a religion shall be construed as including references to a religious denomination and cognate expressions shall be construed accordingly.

Protection of
freedom of
expression.

128. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or
- (b) for the purpose of—
 - (i) protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings; or
 - (ii) preventing the disclosure of information received in confidence; or
 - (iii) maintaining the authority and independence of the courts or tribunals, the Senate or the House of Assembly; or
 - (iv) regulating the technical administration, technical operation or general efficiency of telephony, telegraphy, posts, wireless broadcasting or television or creating or regulating any monopoly in these fields; or

(v) in the case of correspondence, preventing the unlawful dispatch therewith of other matter;

or

(c) for the imposition of restrictions upon public officers;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) No religious denomination and no person or group of persons shall be prevented from establishing and maintaining schools, whether or not that denomination, person or group is in receipt of any subsidy, grant or other form of financial assistance from the State.

(4) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (3) to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality, public health or town and country planning; or

(b) for regulating such schools in the interests of persons receiving instruction therein;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(5) No person shall be prevented from sending to any school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the State.

(6) If in any proceedings it is alleged that anything contained in or done under the authority of any law is in contravention of subsection (1) or (3) and the court decides, as a result of hearing the parties, that the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in subsection (2) or (4), as the case may be, as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be in contravention of subsection (1) or (3), as the case may be.

(7) The provisions of subsection (1) shall not be held to confer on a person a right to exercise his freedom of expression in or on any road, street, lane, path, pavement, side-walk, thoroughfare or similar place which exists for the free passage of persons or vehicles.

(8) In subsection (5)—

“child” includes a stepchild and a lawfully adopted child and “parent” shall be construed accordingly.

Protection of
freedom of assembly
and association.

129. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and, in particular, to form or belong to political parties or trade unions or other associations for the protection of his interests.

(2) The freedom referred to in subsection (1) shall include the right not to be compelled to belong to an association.

(3) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights or freedoms of other persons; or

(c) for the imposition of restrictions upon public officers;

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) Without prejudice to the generality of subsection (3), nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision for the registration of companies, partnerships, societies or other associations of persons, other than political parties, trade unions or employers' organizations, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(5) If in any proceedings it is alleged that anything contained in or done under the authority of any law is in contravention of subsection (1) and the court decides, as a result of hearing the parties, that the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in subsection (3) or (4) as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be in contravention of subsection (1).

(6) The provisions of subsection (1) shall not be held to confer on any person a right to exercise his freedom of assembly or association in or on any road, street, lane, path, pavement, sidewalk, thoroughfare or similar place which exists for the free passage of persons or vehicles.

Protection of
freedom of
movement.

130. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Zimbabwe Rhodesia, the right to reside in any part of Zimbabwe

Rhodesia, the right to enter Zimbabwe Rhodesia, the right to leave Zimbabwe Rhodesia and immunity from expulsion from Zimbabwe Rhodesia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be in contravention of subsection (1).

(3) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the freedom of movement of persons generally or any class of persons that are required in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the imposition of restrictions on the acquisition or use of land or other property in Zimbabwe Rhodesia; or
- (c) for the imposition of restrictions, by order of a court, on the movement or residence within Zimbabwe Rhodesia of any person or on any person's right to leave Zimbabwe Rhodesia—
 - (i) in consequence of his having been found guilty of a criminal offence under the law of Zimbabwe Rhodesia or for the purpose of ensuring that he appears before a court for trial for such a criminal offence or for proceedings preliminary to trial; or
 - (ii) for proceedings relating to his extradition or lawful removal from Zimbabwe Rhodesia; or
 - (iii) for the purpose of ensuring that he appears before a court as a witness for the purposes of any criminal proceedings;or
- (d) for the imposition of restrictions on the movement or residence within Rhodesia of persons who are neither citizens of Zimbabwe Rhodesia nor regarded by virtue of a written law as permanently resident in Zimbabwe Rhodesia or for excluding or expelling from Zimbabwe Rhodesia any person who is not a citizen of Zimbabwe Rhodesia; or
- (e) for the imposition of restrictions by order of a court on the right of any person to leave Zimbabwe Rhodesia that are required for the purpose of ensuring that he appears before a court or other adjudicating authority as a party or a witness or to secure the jurisdiction of the court or other adjudicating authority for the purpose of any civil proceedings; or
- (f) for the imposition of restrictions on the residence within Tribal Trust Land of persons who are not tribespeople.

to the extent that such restrictions are reasonably required for the protection of the interests of tribes-people or their well-being;

except, in the case of any provision referred to in paragraphs (a) to (e), in so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) The provisions of paragraph (a) of subsection (3) shall not be construed as authorizing a law to make provision for preventing any person from leaving Zimbabwe Rhodesia or excluding or expelling from Zimbabwe Rhodesia any person who is a citizen of Zimbabwe Rhodesia.

(5) If in any proceedings it is alleged that anything contained in or done under the authority of any law is in contravention of subsection (1) and the court decides, as a result of hearing the parties, that the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in subsection (3) as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be in contravention of subsection (1).

**Protection from
discrimination.**

131. (1) Subject to the provisions of this section—

- (a) no written law shall contain any provision that is discriminatory;
- (b) no person acting by virtue of any written law in the capacity of a public officer or officer of any public authority shall perform any executive or administrative act in a discriminatory manner.

(2) For the purposes of subsection (1), a provision of a written law shall be regarded as discriminatory and an executive or administrative act shall be regarded as having been performed in a discriminatory manner only if by or as an inevitable consequence of that provision or that act, as the case may be, persons of a particular description by race, tribe, place of origin, political opinions, colour or creed are prejudiced—

- (a) by being subjected to a condition, restriction or disability to which persons of another such description are not made subject; or
- (b) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description;

and the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, place of origin, political opinions, colour or creed of the persons concerned.

(3) Nothing contained in any written law shall be held to be in contravention of paragraph (a) of subsection (1) to the extent that the law in question relates to any of the following matters—

- (a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case;
- (c) restrictions on entry into or employment in Zimbabwe Rhodesia or on the enjoyment of services provided out of public funds in the case of persons who are neither citizens of Zimbabwe Rhodesia nor regarded, by virtue of a written law, as permanently resident in Zimbabwe Rhodesia;
- (d) qualifications, not being qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed, for service as a public officer or as a member of a disciplined force or for service with any public authority or any body corporate established directly by or under a law of the Legislature for a public purpose;
- (e) the appropriation of public revenues or other public funds;
- (f) the according to tribespeople to the exclusion of other persons of rights or privileges relating to Tribal Trust Land.

(4) The provisions of paragraph (b) of subsection (1) shall not apply to—

- (a) anything that is expressly or by necessary implication authorized to be done by any provision of a law that is referred to in subsection (3); or
- (b) the exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court vested in any person by or under this Constitution or any other law.

132. (1) Nothing contained in any law shall be held to be in contravention of any of the following provisions of the Declaration of Rights, that is to say, section *one hundred and twenty-one* or *one hundred and twenty-five*, subsection (2) of section *one hundred and twenty-six*, save in so far as that subsection requires that a person charged with a criminal offence shall be afforded a fair hearing within a reasonable time, or section *one hundred and twenty-seven*, *one hundred and twenty-eight*, *one hundred and twenty-nine*, *one hundred and thirty* or *one hundred and thirty-one* to the extent that the law in question makes provision with respect to the taking, during any period of public emergency, of action

Savings for periods of public emergency.

for the purpose of dealing with any situation arising during that period, and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the action taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in question.

(2) Where a person is lawfully detained by virtue of a provision such as is referred to in subsection (1)—

- (a) he shall be informed as soon as reasonably practicable in a language that he understands of the cause of his detention and shall be permitted at his own expense to obtain and instruct without delay a legal representative of his own choice and to hold communication with him; and
- (b) his case shall be reviewed by a tribunal established in accordance with the provisions of subsection (7) of section *one hundred and twenty-one* not later than thirty days after the commencement of the detention and thereafter at intervals of not more than one hundred and eighty days from the date on which his case was last reviewed by that tribunal; and
- (c) at the hearing of his case by the tribunal he shall be permitted to appear in person or at his own expense by a legal representative of his own choice.

(3) On any review by a tribunal in pursuance of the provisions of subsection (2) of the case of any person, the tribunal may make recommendations concerning the necessity or expedience of continuing the detention to the authority by whom it was ordered and that authority shall be obliged to act in accordance with any recommendation of that tribunal unless the President otherwise directs.

(4) Where the President has directed that the authority referred to in subsection (3) shall not act in accordance with any recommendation of the tribunal referred to in that subsection, that authority shall cause to be published in the *Gazette* a notice that the President has so directed.

(5) The reference in paragraph (b) of subsection (2) to a period of thirty days includes a reference to any lesser periods that amount in the aggregate to thirty days:

Provided that no two such lesser periods shall be aggregated for this purpose if the period between the expiration of the first and the commencement of the second is more than thirty days.

Other special savings.

133. (1) Subject to the provisions of subsection (2), nothing contained in or done under the authority of any written law shall be held to be in contravention of the Declaration of Rights to the extent that the law in question—

- (a) is a law with respect to which the requirements of sections *one hundred and fifty-seven* and *one hundred and fifty-eight* were applicable and were complied with; or
 - (b) is a law (hereinafter in this section referred to as an existing law) that has had effect as part of the law of Rhodesia before the fixed date and has continued to have effect as part of the law of Zimbabwe Rhodesia since that date; or
 - (c) repeals and re-enacts an existing law without alteration; or
 - (d) alters an existing law and does not thereby render that law in contravention of any provision of the Declaration of Rights in a manner in which or to an extent to which it did not previously contravene the Declaration of Rights.
- (2) The provisions of paragraphs (b), (c) and (d) of subsection (1)—
- (a) shall not apply in respect of any law relating to the compulsory acquisition of property of any description or of any interest or right therein; and
 - (b) shall cease to apply after the expiration of a period of ten years beginning on the fixed date
- (3) For the purposes of this section, the reference—
- (a) in paragraph (d) of subsection (1) to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof and to modifying it;
 - (b) in subsection (1) to a written law includes any instrument having the force of law;

and the reference to re-enacting an existing law shall be construed accordingly.

(4) In relation to any person who is a member of a disciplined force of Zimbabwe Rhodesia or who is otherwise subject to a disciplinary law, nothing contained in or done under the authority of the appropriate disciplinary law shall be held to be in contravention of the Declaration of Rights, other than sections *one hundred and twenty-two* and *one hundred and twenty-three*.

(5) In relation to any person who is a member of a disciplined force that is not a disciplined force of Zimbabwe Rhodesia and who is present in Zimbabwe Rhodesia in pursuance of arrangements made between the Government and a foreign government or an international organization, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be in contravention of the Declaration of Rights.

Enforcement of
protective
provisions of
Declaration of
Rights.

(6) No measures taken in relation to a person who is a member of a disciplined force of a country with which Zimbabwe Rhodesia is at war or with which a state of hostilities exists and no law, to the extent that it authorizes the taking of any such measures, shall be held to be in contravention of the Declaration of Rights.

134. (1) Subject to the provisions of subsection (8), if any person alleges that the Declaration of Rights has been or is being contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may, subject to the provisions of subsection (3), apply to the Appellate Division for redress.

(2) If in any proceedings in the General Division or in any court subordinate to the General Division any question arises as to the contravention of the Declaration of Rights, the person presiding in that court may, and if so requested by any party to the proceedings shall, refer the question to the Appellate Division so, however, that he shall not be required to comply with any such request which, in his opinion, is merely frivolous or vexatious.

(3) Where in any proceedings such as are mentioned in subsection (2) any such question as is therein mentioned is not referred to the Appellate Division, then, without prejudice to the right to raise that question on any appeal from the determination of the court in those proceedings, no application for the determination of that question shall lie to the Appellate Division under subsection (1).

(4) The Appellate Division shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of the provisions of subsection (1) or to determine without a hearing any such application which, in its opinion, is merely frivolous or vexatious;
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of the provisions of subsection (2);

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Declaration of Rights:

Provided that the Appellate Division shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(5) If in any proceedings in any court it falls to be determined whether any law is in contravention of the Declaration of Rights, the Attorney-General shall be entitled to be heard by the court on that question and if in any such proceedings any law is determined by the court to be in contravention of the Declaration of Rights, then, whether or not he has exercised his right to be heard in those proceedings, the Attorney-General shall have the like right with respect to an appeal from that determination as if he had been a party to the proceedings.

(6) Where any provision of any law is held by a competent court to be in contravention of the Declaration of Rights, any person detained in custody under that provision shall be entitled as of right to make an application to the Appellate Division for the purpose of questioning the validity of his further detention, notwithstanding that he may have previously appealed against his conviction or sentence or that any time prescribed for the lodging of such an appeal may have expired.

(7) A written law may confer upon the Appellate Division such powers, in addition to those conferred by this section, as may appear to be necessary or desirable for the purpose of enabling the Appellate Division more effectively to exercise the jurisdiction conferred upon it by this section.

(8) A written law may make provision with respect to the practice and procedure—

- (a) of the Appellate Division in relation to the jurisdiction and powers conferred upon it by or under this section;
- (b) of subordinate courts in relation to references to the Appellate Division under subsection (2);

including provision with respect to the time within which any application or reference shall or may be made or brought.

135. No court shall declare any provision of an Act enacted or statutory instrument made before the fixed date to be *ultra vires* on the grounds that that provision is inconsistent with or in contravention of the provisions of the Declaration of Rights set out in Chapter VI of the Constitution of Southern Rhodesia, 1961, or Chapter VII of the Constitution of Rhodesia, 1965, as the case may be.

Validity of existing laws.

136. In this Chapter—

Interpretation of terms in Chapter VIII.

“court” means any court of law in Zimbabwe Rhodesia, including a tribal court but not including a court established under a disciplinary law;

“democratic society” means a society which has a proper respect for the rights and freedoms of the individual;

“law” means—

- (a) any provision of an Act of the Legislature or of a former legislature and any statute included in the Revised Edition of the Laws prepared under the authority of the Revised Edition of the Laws Act, 1973, which is in force in Zimbabwe Rhodesia;
- (b) any provision of an instrument having the force of law made in terms of an Act or statute referred to in paragraph (a);

(c) any unwritten law in force in Zimbabwe Rhodesia other than African customary law;

and "lawful" and "lawfully" shall be construed accordingly;

"legal representative", in relation to—

(a) proceedings before a court, means a person entitled to practise as an advocate or, except in relation to proceedings before a court in which an attorney has no right of audience, as an attorney;

(b) any matter not referred to in paragraph (a), means a person entitled to practise as an advocate or attorney;

and who is lawfully in Zimbabwe Rhodesia;

"local court" means any court constituted by or under a written law for the purposes of applying African customary law;

"parental discipline" includes school or other quasi-parental discipline;

"period of public emergency" means—

(a) any period during which Zimbabwe Rhodesia is engaged in any war and the period immediately following thereon until such date as may be declared by the President by proclamation in the *Gazette* as the end of the period of public emergency caused by that war; or

(b) any period during which there is in force a declaration in terms of section *seventy-five*.

CHAPTER IX

CITIZENSHIP

Persons who
continue as citizens
of Zimbabwe Rhodesia.

137. A person who, immediately before the fixed date, was or was deemed to be a citizen of Rhodesia by birth, descent or registration shall, on and after that date, continue to be a citizen of Zimbabwe Rhodesia by birth, descent or registration, as the case may be.

Citizenship by birth.

138. (1) A person born in Zimbabwe Rhodesia on or after the fixed date shall be a citizen of Zimbabwe Rhodesia by birth unless—

(a) at the time of his birth, his father—

(i) possesses such immunity from suit and legal proceedings as is accorded to an envoy of a foreign country accredited to Zimbabwe Rhodesia; and

(ii) is not a citizen of Zimbabwe Rhodesia;

or

(b) at the time of his birth—

(i) his father is an enemy alien; and

(ii) his mother is interned in a place set aside for the internment of enemy aliens or the place of the birth of the person is under occupation by the enemy;

or

(c) at the time of his birth, his father or, in the case of an illegitimate child, his mother is residing in Zimbabwe Rhodesia in contravention of the provisions of any law:

Provided that, if subsequent to his birth his father or mother, as the case may be, is accepted for permanent residence in Zimbabwe Rhodesia under any law in force in Zimbabwe Rhodesia, he shall be a citizen of Zimbabwe Rhodesia by birth; or

(d) at the time of his birth, his father or, in the case of an illegitimate child, his mother is—

(i) not a citizen of Zimbabwe Rhodesia; and

(ii) not ordinarily resident in Zimbabwe Rhodesia.

(2) A person born outside Zimbabwe Rhodesia on or after the fixed date shall be a citizen of Zimbabwe Rhodesia by birth if—

(a) his father or, in the case of an illegitimate child, his mother is at the time of his birth—

(i) a citizen of Zimbabwe Rhodesia and resident outside Zimbabwe Rhodesia by reason of the service of his father or his mother, as the case may be, under the Government; or

(ii) lawfully ordinarily resident in Zimbabwe Rhodesia;

and

(b) his birth is registered in terms of the law relating to the registration of births.

139. Save as is otherwise provided by subsection (2) of Citizenship by descent. section *one hundred and thirty-eight*, a person born outside Zimbabwe Rhodesia on or after the fixed date shall be a citizen of Zimbabwe Rhodesia by descent if—

(a) his father or, in the case of an illegitimate child, his mother is at the time of his birth a citizen of Zimbabwe Rhodesia otherwise than by descent; and

- (b) his birth is registered in terms of the law relating to the registration of births.

Citizenship by
registration.

140. (1) Any person who, immediately before the fixed date, possessed such qualifications prescribed by the law then in force relating to citizenship as would have entitled the Minister as defined in that law, upon application duly made and subject to the applicant satisfying the Minister as to certain matters, to authorize his registration as a citizen of Rhodesia shall be entitled—

- (a) upon making application at any time during the period of five years from the fixed date in such manner as may be prescribed by or under a law of the Legislature; and
- (b) after satisfying the appropriate Minister as to those matters;

to be registered as a citizen of Zimbabwe Rhodesia.

- (2) Any woman who—

- (a) is, on the fixed date, married to a person who—

- (i) is, on the fixed date, a citizen of Zimbabwe Rhodesia by virtue of the provisions of section *one hundred and thirty-seven*; or

- (ii) after the fixed date, becomes a citizen of Zimbabwe Rhodesia while the marriage still subsists;

or

- (b) prior to the fixed date, was married to a person who—

- (i) is, on the fixed date, a citizen of Zimbabwe Rhodesia by virtue of the provisions of section *one hundred and thirty-seven*; or

- (ii) having died before the fixed date, would, but for his death, have been a citizen of Zimbabwe Rhodesia by virtue of the provisions of section *one hundred and thirty-seven*;

or

- (c) on or after the fixed date, marries a person who is a citizen of Zimbabwe Rhodesia or who becomes a citizen of Zimbabwe Rhodesia while the marriage still subsists;

shall be entitled, upon making application in such manner as may be prescribed by or under a law of the Legislature, to be registered as a citizen of Zimbabwe Rhodesia.

(3) Any person, one of whose parents is a citizen of Zimbabwe Rhodesia at the date of his application, shall be entitled, upon making application in such manner as may be prescribed by or under a law of the Legislature, to be registered as a citizen of Zimbabwe Rhodesia:

Provided that, if the person is not of full age and capacity, the application shall be made on his behalf by his responsible parent or by his guardian or other lawful representative.

(4) A person adopted on or after the fixed date by order made in terms of the law relating to the adoption of children who was not, at the date of the order, a citizen of Zimbabwe Rhodesia shall become a citizen of Zimbabwe Rhodesia on the date of the order if the adopter or, in the case of a joint adoption, the male adopter was, at the date of the order, a citizen of Zimbabwe Rhodesia, and such adopted person shall be regarded as a citizen of Zimbabwe Rhodesia by registration.

(5) The registration as a citizen of Zimbabwe Rhodesia of a person referred to in subsection (1), (2) or (3) who is of full age shall not be authorized unless and until the person has taken the oath of loyalty in the form specified in the First Schedule, and such person shall be registered and become a citizen of Zimbabwe Rhodesia by registration on the date he takes the oath of loyalty.

(6) A person referred to in subsection (1) who has not been registered as a citizen of Zimbabwe Rhodesia shall, for the period referred to in that subsection, enjoy the same rights and privileges, other than those which relate to the acquisition of citizenship or which relate to qualifications for a vote or for election or appointment to the Senate or the House of Assembly, as a citizen of Zimbabwe Rhodesia.

(7) In subsection (3)—

“responsible parent”, in relation to a child, means—

- (a) if the father is dead or the mother has been given custody of the child by order of a court or has custody of the child by virtue of the provisions of a law relating to the guardianship of children or the child is illegitimate, the mother of the child; and
- (b) in any other case, the father of the child.

141. (1) A person who, on the fixed date, is a citizen of Zimbabwe Rhodesia or entitled to be registered as such and also a citizen of a foreign country or entitled to be registered as such shall not, on and after that date, solely on the ground that he is or becomes a citizen of that foreign country, be—

- (a) deprived of his citizenship of Zimbabwe Rhodesia; or
- (b) refused registration as a citizen of Zimbabwe Rhodesia; or
- (c) required to renounce his citizenship of that foreign country;

by or in terms of any law:

Provided that a person referred to in this subsection may be required to take the oath of loyalty in the form specified in the First Schedule.

- (2) A person referred to in subsection (1) shall not—
 - (a) be refused a passport of Zimbabwe Rhodesia or have such a passport withdrawn, cancelled or impounded solely on the ground that he is in possession of a passport issued by a foreign country of which he is a citizen; or
 - (b) be required to surrender or be prohibited from acquiring a passport issued by a foreign country of which he is a citizen before being issued with a passport of Zimbabwe Rhodesia or as a condition of retaining such a passport.

Powers of
Parliament in relation
to citizenship.

142. A law may make provision for—

- (a) the acquisition of citizenship of Zimbabwe Rhodesia by persons who are not eligible or who are no longer eligible to become citizens of Zimbabwe Rhodesia under the provisions of this Chapter;
- (b) subject to the provisions of section *one hundred and forty-one*—
 - (i) the circumstances in which a person who is a citizen of Zimbabwe Rhodesia, other than a citizen by birth, and who becomes a citizen of a foreign country or a person who is a citizen of a foreign country and who becomes a citizen of Zimbabwe Rhodesia shall cease to be a citizen of Zimbabwe Rhodesia;
 - (ii) depriving any person, other than a person referred to in section *one hundred and thirty-seven, one hundred and thirty-eight or one hundred and thirty-nine*, of his citizenship of Zimbabwe Rhodesia;
- (c) the renunciation by any person of his citizenship of Zimbabwe Rhodesia;

Interpretation in
Chapter IX.

143. (1) In this Chapter—

“appropriate Minister” means the Minister for the time being responsible for citizenship;

“child” means a legitimate child and “father” shall be construed accordingly.

(2) For the purposes of this Chapter—

- (a) a person born aboard a registered ship or aircraft shall be deemed to have been born in the place at which the ship or aircraft was registered;
- (b) a person born aboard an unregistered ship or aircraft of the government of any country shall be deemed to have been born in the country to which the ship or aircraft belonged at the date of his birth;
- (c) a person shall be regarded as—

- (i) of full age if he has attained the age of majority or if, being under that age, he is or has been married; and
- (ii) of full capacity if he is not of unsound mind;
- (d) a person shall be deemed not to have attained a specified age until the commencement of the relevant anniversary of the date of his birth.

CHAPTER X

OMBUDSMAN

144. (1) There is hereby established the office of Ombudsman which shall be a public office but shall not form part of the Public Service. Office of Ombudsman.

(2) The President, acting on the advice of the Judicial Service Commission, shall, subject to the provisions of subsection (3), appoint the Ombudsman on such terms as the President, on the advice of the Judicial Service Commission, may fix.

(3) A person shall not be qualified to be appointed as Ombudsman if he is a member or has, within the period of five years of the date of the proposed appointment, been a member or been nominated for election as a member of the Senate or the House of Assembly or any local authority.

(4) The Ombudsman shall not—

- (a) perform the functions of any other public office; or
- (b) without the approval of the Prime Minister in each particular case, hold any other paid office or engage in any occupation for reward outside the duties of his office.

(5) The Ombudsman shall vacate his office—

- (a) at the expiration of four years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not the holder of that office, would cause him to be disqualified for appointment thereto.

(6) The provisions of subsections (5) to (10) of section *one hundred and eight* shall apply in respect of the removal from office of the Ombudsman as they apply in respect of the removal from office of a commissioner as defined in that section.

145. (1) The Ombudsman may from time to time appoint such other staff as he, on the advice of the Public Service Commission, considers to be necessary for the proper performance of his functions. Staff of Ombudsman.

(2) The staff of the Ombudsman shall be appointed on terms of service fixed by the Ombudsman on the advice of the Public Service Commission and shall be deemed to be public officers but shall not form part of the Public Service.

Payment of salaries and allowances of Ombudsman and his staff.

146. (1) There shall be charged upon and paid out of the Consolidated Revenue Fund such salaries and allowances as may from time to time be fixed in terms of section *one hundred and forty-four* for the Ombudsman and section *one hundred and forty-five* for his staff.

(2) The salary payable to the Ombudsman shall not be reduced during his continuance in office.

Investigations by Ombudsman.

147. (1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority referred to in subsection (2) in the exercise of the administrative functions of that officer or authority in any case where—

- (a) a complaint is made to him alleging that a person has suffered injustice in consequence of that action; or
- (b) he is invited by any Minister or Deputy Minister or any member of the Senate or the House of Assembly to investigate a complaint such as is referred to in paragraph (a); or
- (c) of his own motion, he considers it desirable to do so.

(2) The provisions of subsection (1) shall apply in respect of any action of the following officers and authorities—

- (a) any Ministry or department of the State or any member of such Ministry or department;
- (b) the Prison Service or any member thereof;
- (c) any other force or service maintained and controlled by the State, other than the Defence Forces or Police Force as defined in subsection (1) of section *one hundred and thirteen*, or any member of such force or service;
- (d) any local authority or any officer or employee thereof;
- (e) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the State or by or on behalf of any person or authority referred to in paragraph (a), (b), (c) or (d);
- (f) such other persons or authorities as may be prescribed for the purposes of this paragraph by or under a law of the Legislature.

(3) The Ombudsman shall not investigate the activities of the following—

- (a) the President or his personal staff;
- (b) any commission established by or under this Constitution or the staff of any such commission;
- (c) the Attorney-General in connexion with his functions in relation to prosecutions or any officer acting in that regard in accordance with his instructions;

(d) any person or authority in so far as they relate to the exercise by that officer or authority of a power—

(i) to make appointments in a Ministry, department, force or service referred to in paragraphs (a) to (d) of subsection (2); or

(ii) to exercise disciplinary control over persons in or to remove persons from a Ministry, department, force or service referred to in paragraphs (a) to (d) of subsection (2).

(4) The Ombudsman shall not investigate any complaint—

(a) if the person aggrieved has or had—

(i) a right of appeal, reference or review to or before a tribunal or other adjudicating authority; or

(ii) any remedy by way of proceedings in a court of law;

unless the Ombudsman is satisfied that the person aggrieved cannot reasonably be expected to have availed himself of his right or remedy:

Provided that nothing in this paragraph shall preclude the Ombudsman from conducting any investigation as to whether the action in respect of which the complaint is made is in contravention of the Declaration of Rights; or

(b) if—

(i) the person aggrieved is not resident in Zimbabwe Rhodesia or, where he has died, was not so resident at the time of his death; and

(ii) the complaint does not relate to any action taken in relation to the person aggrieved while he was present in Zimbabwe Rhodesia or in relation to the rights or obligation of the person aggrieved which accrued or arose in Zimbabwe Rhodesia;

or

(c) if it is not made by the aggrieved person himself:

Provided that where any person by whom a complaint might have been made has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual whom the Ombudsman considers to be competent to represent him; or

(d) which is frivolous, vexatious or trivial or where the person aggrieved has no sufficient interest in the subject-matter of the complaint or where the complaint has been delayed without reasonable cause for more than twelve months; or

(e) if the Ombudsman is given notice in writing by the Prime Minister that—

- (i) the action complained of was lawfully taken by a Minister or Deputy Minister in person in the exercise of his own discretion; or
 - (ii) the investigation of the complaint would not be in the interests of the security of the State;
- or
- (f) which is made by—
 - (i) a Ministry, department or authority of the State or any local authority; or
 - (ii) any other authority or body whose members or the majority of whose members are appointed by the President or by a Minister or the revenues of which consist wholly or mainly of moneys provided from public funds.

Procedure in respect
of investigations.

148. (1) Where an investigation referred to in subsection (1) of section *one hundred and forty-seven* is held—

- (a) the proceedings shall be conducted in private;
- (b) subject to the provisions of this section or any provisions referred to in section *one hundred and fifty-three*, the procedure shall be such as the Ombudsman considers appropriate in the circumstances;
- (c) the principal officer of any authority or body concerned and any other person who is alleged to have taken or authorized the action in question shall be afforded an opportunity to comment on any allegations made to the Ombudsman in respect thereof;
- (d) the Ombudsman may permit any person involved in the proceedings to be represented by an advocate or attorney or otherwise;
- (e) the Ombudsman may obtain information from such persons in such manner, and may make such inquiries, as he thinks fit;
- (f) the Ombudsman may require any Minister or Deputy Minister or member of any authority or body concerned or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document;
- (g) the Ombudsman shall, subject to the provisions of paragraph (h), have the same powers as the General Division in respect of the summoning and examination of witnesses, including the administration of oaths and the examination of witnesses outside Zimbabwe Rhodesia, and in respect of the production of documents;
- (h) no obligation to maintain secrecy and no other restriction upon the disclosure of information obtained by or furnished to persons employed by the State which is

imposed by any law shall apply to the disclosure of information for the purposes of the investigation, and the State shall not be entitled, in relation to any such investigation, to any such privilege in respect of the production of documents or the giving of evidence as is allowed in law in legal proceedings:

Provided that no person shall be required or authorized by virtue of this paragraph to furnish any information or answer any question or produce any document relating to the proceedings of the Executive Council or any committee thereof comprised wholly or partly of Ministers of the Government, and, for the purposes of this proviso, a certificate issued by the Secretary to the Executive Council, with the approval of the Prime Minister, and certifying that any information, question or document so relates shall be conclusive.

(2) If the Attorney-General gives notice to the Ombudsman with respect to any document or information or class of documents or information specified in the notice that, in his opinion, the disclosure of that document or information or of documents or information of that class would be contrary to the public interest in relation to defence, external relations or internal security, or to the economic interests of the State, the Ombudsman or any member of his staff shall not communicate any such document or information to any person outside the office of the Ombudsman for any purpose otherwise than with the authority of the Attorney-General and subject to such conditions as he may fix.

(3) The Ombudsman or any member of his staff to whom is disclosed any information obtained by or furnished to any person employed by the State subject to an obligation referred to in paragraph (h) of subsection (1) shall not communicate any such information to any other person outside the office of the Ombudsman for any purpose.

(4) Any person who—

- (a) contravenes the provisions of subsection (2) or (3) shall be guilty of an offence and liable to imprisonment for a period not exceeding two years;
- (b) has been subpoenaed to give evidence or to produce any book or document under the provisions of paragraph (g) of subsection (1) for the purposes of an investigation and who fails to attend or to remain in attendance until duly excused by the Ombudsman from further attendance or refuses without sufficient cause, the onus of proof whereof shall rest upon him, to be sworn as a witness, to answer fully and satisfactorily a question lawfully put to him or to produce such book or document shall be guilty of an offence and liable to a fine not exceeding fifty dollars or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

Proceedings after investigation.

149. (1) If, after conducting an investigation, the Ombudsman is of the opinion—

- (a) that the action which was the subject-matter of the investigation was contrary to law, based wholly or partly on a mistake of law or fact, unreasonably delayed or otherwise unjust or manifestly unreasonable; and
- (b) that—
 - (i) the matter should be given further consideration; or
 - (ii) an omission should be rectified; or
 - (iii) a decision should be cancelled, reversed or varied; or
 - (iv) any practice on which the act, omission, decision or recommendation was based should be altered; or
 - (v) any law on which the act, omission, decision or recommendation was based should be reconsidered; or
 - (vi) reasons should have been given for the decision; or
 - (vii) any other steps should be taken;

the Ombudsman shall, subject to the provisions of subsections (2) and (3) of section *one hundred and forty-eight*, report his opinion, together with his reasons therefor, to the secretary or principal officer of any Ministry, authority or body concerned and may make such recommendations as he thinks fit and shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(2) The Ombudsman may request the secretary or principal officer referred to in subsection (1) to notify him, within a specified time, of the steps, if any, that it is proposed to take to give effect to his recommendations.

(3) If, within a reasonable time after a report is made in terms of subsection (1), no action is taken which, in the opinion of the Ombudsman, is adequate and appropriate, he may, if he thinks fit after considering the comments, if any, made by or on behalf of any Ministry, authority or body affected, thereafter, subject to the provisions of subsections (2) and (3) of section *one hundred and forty-eight*, make such further report on the matter as he thinks fit to the Senate and the House of Assembly.

Payment of costs or expenses incurred in relation to proceedings for enforcement of Declaration of Rights.

150. (1) Where any person—

- (a) has made or intends to make application to the Appellate Division under subsection (1) of section *one hundred and thirty-four* in relation to a provision contained in a written law; or
- (b) has raised or intends to raise any question in relation to a provision contained in a written law which is referred or to be referred to the Appellate Division in pursuance of subsection (2) of that section;

he may apply to the Ombudsman for the payment of any costs which he has incurred or will incur in relation thereto.

(2) If, after receiving an application in terms of subsection (1), the Ombudsman considers that the application to the Appellate Division or the raising of the question, as the case may be, constitutes a proper and suitable test case for determining the validity of the provision in question, he may—

- (a) if the applicant has already incurred costs in relation to any matter referred to in subsection (1), reimburse the applicant for any costs or part thereof which, after consultation with the Registrar of the Appellate Division, the Ombudsman considers have reasonably been incurred by the applicant;
- (b) if the applicant has not incurred costs in relation to any matter referred to in subsection (1), pay to the legal representative of the applicant such amounts as the legal representative certifies the applicant will incur and which, after consultation with the Registrar of the Appellate Division, the Ombudsman considers will reasonably be incurred:

Provided that any amount paid in terms of this paragraph which is not required for the purpose for which it was paid shall be refunded to the Ombudsman.

(3) Where the Chairman of the Senate Legal Committee has, in terms of subsection (7) of section *fifty* or subsection (3) of section *fifty-nine*, transmitted to the Ombudsman a copy of a report referred to in that section in relation to a provision contained in a written law and thereafter any person makes an application in terms of subsection (1) in relation to that provision, the Ombudsman, unless he has acted on a similar application in relation to that provision, shall act in terms of paragraph (a) or (b) of subsection (2), as the case may require.

151. (1) The Ombudsman, in deciding whether to initiate, continue or discontinue an investigation referred to in subsection (1) of section *one hundred and forty-seven*, shall not be subject to the direction or control of any person or authority, and any question whether a complaint is duly made in terms of that section shall be determined by him. Discharge of functions of Ombudsman.

(2) No proceedings of the Ombudsman shall be called in question in any court of law.

(3) The Ombudsman shall, subject to the provisions of subsections (2) and (3) of section *one hundred and forty-eight*, make an annual report to the President concerning the discharge of his functions which shall be laid before the Senate and the House of Assembly by the Prime Minister.

152. If, in relation to the discharge of his functions, the Ombudsman requires advice on any matter, he may— Right of Ombudsman to obtain advice.

- (a) obtain such advice from any person whom he considers to be qualified to give it; or

- (b) in relation to a matter on which legal advice is required, if he thinks fit, lay before the Attorney-General a case in writing as to the matter and the Attorney-General shall furnish the Ombudsman with a legal opinion thereon.

Supplementary and ancillary provisions.

153. An Act of the Legislature may make or provide for the making of provisions for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter including, without derogation from the generality of the foregoing, provision for—

- (a) the procedure to be observed by the Ombudsman in performing his functions;
- (b) the manner in which complaints in terms of section *one hundred and forty-seven* may be made;
- (c) the powers, protection and privileges of the Ombudsman and his staff or of other persons, authorities or bodies with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff;
- (d) offences connected with the functions of the Ombudsman and his staff and the fixing of penalties for such offences.

Interpretation of term in Chapter X.

154. In this Chapter—
“action” includes a failure to act.

CHAPTER XI

AMENDMENT OF CONSTITUTION AND ENTRENCHED PROVISIONS OF OTHER LAWS

Power to amend Constitution.

155. Subject to compliance with the other provisions of this Constitution, an Act of the Legislature may amend, add to or repeal any of the provisions of this Constitution:

Provided that no Act of the Legislature shall be deemed to amend, add to or repeal any provision of this Constitution unless it does so in express terms.

Constitutional Bill not to amend other laws.

156. A Constitutional Bill shall not in express terms purport to amend, add to or repeal any law other than this Constitution.

Special procedure for Constitutional Bill.

157. (1) A Constitutional Bill shall not be introduced into the House of Assembly unless the text of the Bill has been published in the *Gazette* not less than thirty days before it is so introduced.

(2) Subject to the provisions of subsection (6) of section *one hundred and fifty-nine*, a Constitutional Bill shall not be deemed to have been duly passed by Parliament unless—

- (a) subject to the provisions of subsection (3), at the final vote thereon in the Senate it received the affirmative

votes of not less than two-thirds of the total membership of the Senate; and

(b) at the final vote thereon in the House of Assembly it received the affirmative votes of—

(i) in the case of a Constitutional Bill which amends, otherwise than by merely altering the name of the country, any of the provisions of this Constitution enumerated in the Second Schedule as being specially entrenched provisions of this Constitution or any other provision which may hereafter be declared by an amendment of this Constitution to be a specially entrenched provision of this Constitution, not less than seventy-eight members of the House of Assembly; or

(ii) in the case of any Constitutional Bill other than one specified in subparagraph (i), not less than two-thirds of the total membership of the House of Assembly.

(3) If, in the case of a Constitutional Bill which has been passed by the House of Assembly in accordance with the provisions of paragraph (b) of subsection (2) and has not been passed by the Senate in accordance with the provisions of paragraph (a) of subsection (2) within a period of one hundred and eighty days beginning on the day on which the Bill was first introduced into the Senate, the House of Assembly after the expiration of that period resolves by the affirmative votes of not less than two-thirds of its total membership that the Bill be presented to the President for assent in the form in which it was passed by the House of Assembly, except for minor changes required by the passage of time, and with such amendments, if any, as the Senate and the House of Assembly may have agreed, the Bill shall be deemed to have been duly passed by Parliament in the form in which it is presented to the President.

(4) For the purposes of subsection (3), a Constitutional Bill shall be deemed to be introduced into the Senate on the sitting day next following the day on which a copy of the Bill is transmitted to the Senate in terms of subsection (1) of section *forty-eight*.

158. A Constitutional Bill shall not be submitted to the President for assent unless—

Submission of
Constitutional Bill
for assent.

(a) it is accompanied by—

(i) a certificate from the President of the Senate that at the final vote thereon in the Senate the Bill received the affirmative votes of not less than two-thirds of the total membership of the Senate; and

(ii) a certificate from the Speaker that at the final vote thereon in the House of Assembly the Bill received the affirmative votes of—

- A. in the case of a Constitutional Bill referred to in subparagraph (i) of paragraph (b) of subsection (2) of section *one hundred and fifty-seven*, not less than seventy-eight members of the House of Assembly; or
 - B. in the case of a Constitutional Bill referred to in subparagraph (ii) of paragraph (b) of subsection (2) of section *one hundred and fifty-seven*, not less than two-thirds of the total membership of the House of Assembly;
- or
- (b) it is accompanied by the appropriate certificate referred to in subparagraph (ii) of paragraph (a) and a further certificate from the Speaker stating that the Bill is a Bill to which the relevant provisions of subsection (3) of section *one hundred and fifty-seven* apply and that the Bill may lawfully be presented for assent by virtue of those provisions.

Review of certain provisions relating to composition of Parliament.

159. (1) On the date Parliament is dissolved in terms of section *sixty-four* for the second time after the fixed date or after the expiration of a period of ten years beginning on the fixed date, whichever is the later, a commission shall be established in accordance with the provisions of subsection (2) to review the provisions of paragraphs (b) and (c) of subsection (2) of section *twenty-two*.

(2) The Commission established in terms of subsection (1) shall comprise—

- (a) the Chief Justice or a judge of the High Court, other than an acting judge, nominated by the Chief Justice, who shall be chairman; and
- (b) four other members, who shall not be persons who are members of the Senate or the House of Assembly or, where Parliament has been dissolved, who were such members immediately before such dissolution, of whom—
 - (i) two shall be elected in terms of subsection (3) by the members of the House of Assembly referred to in paragraphs (b) and (c) of subsection (2) of section *twenty-two* or, where Parliament has been dissolved, those persons who were such members immediately before such dissolution; and
 - (ii) two shall be appointed by the President.

(3) In the election of the members referred to in subparagraph (i) of paragraph (b) of subsection (2)—

- (a) the members or former members, as the case may be, of the House of Assembly referred to in that subparagraph shall sit as an electoral college;

- (b) each candidate shall be nominated by not less than five members or former members, as the case may be, of the House of Assembly referred to in that subparagraph;
- (c) if only two persons are nominated for election, they shall be declared elected without the necessity of a ballot;
- (d) each member of the electoral college shall have two votes to be cast for separate candidates and the votes of the members of the electoral college shall be given by secret ballot;
- (e) the two candidates who receive, respectively, the highest and the next highest number of votes shall be declared elected:

Provided that—

- (i) if two candidates have received an equal number of votes which is in excess of the number of votes received by any other candidate, those two candidates shall be declared elected;
- (ii) if more than two candidates have received an equal number of votes which is in excess of the number of votes received by any other candidate, the two candidates who shall be declared elected shall be determined from such candidates by the drawing of lots by the Secretary to Parliament;
- (iii) if two or more candidates have received the next highest number of votes as referred to in this paragraph, the candidate who shall be declared elected shall be determined from such candidates by the drawing of lots by the Secretary to Parliament.

(4) The Commission shall, by a majority of the members thereof, recommend whether any or all of the members of the House of Assembly referred to in paragraphs (b) and (c) of subsection (2) of section *twenty-two* shall cease to be required to be White persons elected in the manner specified in those paragraphs and shall be persons duly elected thereto by voters registered on the common voters roll for common roll constituencies.

(5) If the Commission recommends that any or all of the members of the House of Assembly referred to in subsection (4) shall cease to be required to be White persons elected in the manner referred to therein, it shall further recommend—

- (a) that the members of the House of Assembly referred to in paragraph (a) of subsection (2) of section *twenty-two* shall not be required to be Black persons; and
- (b) where it recommends that the number of members of the House of Assembly referred to in subsection (4)

which are required to be White persons elected in the manner referred to in that subsection shall be reduced to less than twenty, that all the members of the Senate referred to in paragraphs (a) and (b) of subsection (2) of section *eighteen* shall be elected by an electoral college consisting of all the members of the House of Assembly.

(6) A Bill which provides only for giving effect to recommendations of the Commission in terms of subsections (4) and (5) shall—

- (a) not be introduced into the House of Assembly until the expiration of a period of three months after a copy of the report of the Commission containing such recommendations has been laid before that House; and
- (b) be deemed to have been duly passed by Parliament if at the final vote thereon in the House of Assembly it received the affirmative votes of not less than fifty-one members of the House of Assembly; and
- (c) notwithstanding the provisions of section *forty-eight*, not be transmitted to the Senate for consideration.

(7) A Bill referred to in subsection (6) shall not be presented to the President for assent unless it is accompanied by a certificate from the Speaker stating that the Bill is a Bill to which the relevant provisions of subsection (6) apply and that the Bill may lawfully be presented for assent by virtue of those provisions.

Amendment of
entrenched provisions
of certain other laws.

160. (1) Any Bill containing a provision which, if enacted, would have the effect of—

- (a) amending, adding to or repealing any provision of—
 - (i) the Electoral Law; or
 - (ii) any law of the Legislature relating to primary or secondary school education or medical services; or
 - (iii) the Housing Standards Control Act [*Chapter 208*]; which is specified in that law to be a specially entrenched provision; or
- (b) reducing or permitting the reduction of the area of parks and wild life land or forest land by an amount in excess of one *per centum* of the extent of such area immediately before the fixed date; or
- (c) amending, adding to or repealing in any law of the Legislature any provision relating to—
 - (i) the establishment and abolition of municipalities, towns, rural councils or local boards and the fixing and alteration of the boundaries of the areas thereof or under the jurisdiction thereof, as the case may be, and the division of such areas into wards and the abolition of such wards; or
 - (ii) the constitution of municipal councils, town councils, rural councils and local boards, the

qualifications of voters at elections for and of candidates for election as members of such councils or boards and the fixing of the number of such members to be elected or appointed to represent or the assigning of such members to represent each ward referred to in subparagraph (i); or

(iii) the powers of any municipality, town, rural council or local board to combine with other local authorities and to delegate their functions and the restrictions on such powers;

or

(d) reducing or derogating from the powers, functions, responsibilities and duties of municipalities, towns, rural councils or local boards provided for directly and without reference to any other law by the law of the Legislature providing for the establishment of such corporate bodies or by the law of the Legislature relating to town and country planning;

shall, subject to the provisions of subsection (3) and subsection (6) of section *one hundred and fifty-nine*, be subject to the same procedure in all respects as if it were a Constitutional Bill specified in subparagraph (i) of paragraph (b) of subsection (2) of section *one hundred and fifty-seven*.

(2) A Bill enacted after the fixed date which declares any provision of the Electoral Law or of any other law referred to in paragraph (a) of subsection (1) to be an entrenched provision for the purposes of this section shall, subject to the provisions of subsection (3), be subject to the procedure specified in subsection (1).

(3) A Bill referred to in subsection (1) or (2) shall, immediately after its introduction into the Senate, be referred to the Senate Legal Committee and the provisions of subsections (2), (3), (4), (5) and (7) of section *fifty* shall, *mutatis mutandis*, apply in relation to that Bill:

Provided that a Bill which originated in the House of Assembly and has been passed by the House of Assembly may be referred to the Senate Legal Committee before its introduction into the Senate.

(4) No Bill to which the provisions of subsection (1) or (2) refer shall be presented to the President for assent unless the Bill is accompanied by the appropriate certificates referred to in section *one hundred and fifty-eight*.

(5) No Act of the Legislature shall be deemed to amend, add to or repeal any provision referred to in subsection (1) of a law referred to in that subsection unless it does so in express terms.

(6) In paragraph (b) of subsection (1)—

“forest land” means land set aside as such by the Forest Act [Chapter 125];

“parks and wild life land” means land set aside as such by the Parks and Wild Life Act, 1975 (No. 14 of 1975).

CHAPTER XII

MISCELLANEOUS PROVISIONS

PART I

GENERAL

English language.

161. The English language shall be the only official language of Zimbabwe Rhodesia.

Chiefs and Councils of Chiefs.

162. (1) There shall be Chiefs to preside over the tribespeople in Zimbabwe Rhodesia who shall, subject to the provisions of subsection (2), be appointed by the President in terms of a law of the Legislature.

(2) A law of the Legislature referred to in subsection (1) shall provide that in appointing a Chief the President shall give due consideration to the customary principles of succession of the tribespeople over which the Chief shall preside and may provide for the appointment of deputy Chiefs and acting Chiefs.

(3) There shall be a Council of Chiefs which shall consist of such number of Chiefs elected by the Chiefs from each of the various areas of Tribal Trust Land in such manner as may be prescribed by or under a law of the Legislature, so, however, as to secure as far as is practicable equitable representation for the various areas of Tribal Trust Land with due regard to the total number of tribespeople in each such area:

Provided that a law of the Legislature may provide for the establishment of two or more Councils of Chiefs for separate areas of Tribal Trust Land.

(4) The qualifications and disqualifications of candidates for election to any Council of Chiefs and the tenure of office of members thereof shall be as prescribed by or under the law referred to in subsection (3).

Regional authorities.

163. (1) Subject to the provisions of section *one hundred and sixty* and subsection (2), it shall be the duty of the Government to establish by or under a law of the Legislature regional authorities for specified areas for the purpose of administering functions relating to health and education and other functions affecting the daily lives of the inhabitants of such area in so far as those functions are at the time being administered by the Government.

(2) In the specifying of areas of regional authorities regard shall be had to any community of interests of the people in such areas and the law referred to in subsection (1) shall—

- (a) provide that the members of each regional authority shall be elected, directly or indirectly, by the inhabitants of the area of the authority; and
- (b) confer on each regional authority such powers as may be necessary to regulate the conduct and affairs of the inhabitants of the area of the authority in relation to the functions referred to in subsection (1).

164. (1) There is hereby established a Statutory Corporations Commission which shall consist of a chairman and not less than two and not more than four other members who shall be appointed, subject to the provisions of subsection (2), by the President.

Statutory Corporations
Commission.

(2) The persons to be appointed as members in terms of subsection (1) shall be chosen for their ability and experience in administration or their professional qualifications and their suitability otherwise for appointment as members, and the following provisions shall apply in relation thereto—

- (a) the chairman and at least two other members shall be persons who have held the post of Secretary of, or Deputy Secretary or Under Secretary in, a Ministry in the Public Service or a post in the Public Service of a grade equivalent to or higher than that of Under Secretary or the most senior or second most senior post in the service of any statutory corporation for periods which, in the aggregate, amount to at least five years;
- (b) a person shall not be eligible for appointment if he is a member or has, within the period of three years of the date of the proposed appointment, been a member or been nominated for election as a member of the Senate or the House of Assembly or any local authority;
- (c) if a person immediately prior to his appointment is employed by a statutory corporation, he shall cease to be so employed with effect from the date of his appointment;
- (d) during the period of his service as a member and for a period of three years thereafter, he shall not be eligible for appointment to any post in the service of any statutory corporation.

(3) Whenever the office of chairman of the Commission is vacant or the chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such other member of the Commission who is qualified in terms of paragraph (a) of subsection (2) as the President may appoint.

(4) If at any time a member of the Commission, other than the chairman, is acting as chairman or is for any reason unable to perform the functions of his office, the President may appoint a person qualified in terms of subsection (2) to act as the member and any person so appointed shall continue to act until the period for which he was appointed has expired or his appointment is revoked by the President:

Provided that a person appointed to act for a member who is qualified in terms of paragraph (a) of subsection (2) shall also be so qualified.

(5) The functions of the Commission shall be—

- (a) to approve any appointment or acting appointment or promotion to a designated post for the purposes of subsection (6); and
- (b) to hear any appeal by the holder of a designated post whose service is terminated by a statutory corporation which has been made within the time and in the manner prescribed in regulations made in terms of subsection (9) and thereafter to make such recommendations to the statutory corporation concerned in relation to the reinstatement of the aggrieved person, including the conditions thereof, or such other matters as it thinks fit.

(6) No statutory corporation shall appoint or promote any person to a designated post or to act in a designated post unless the Commission has approved such appointment or promotion.

(7) The Commission may only withhold its approval in terms of paragraph (a) of subsection (5) if it is not satisfied in relation to the proposed appointment or promotion of any person to the designated post that the person concerned has the appropriate practical and academic qualifications or is otherwise suitable for the post.

(8) A statutory corporation shall comply with any recommendation made by the Commission in terms of paragraph (b) of subsection (5).

(9) The Commission may make regulations for the purposes of paragraph (b) of subsection (5) and for otherwise regulating and facilitating the performance by the Commission of its functions in terms of this section.

(10) The provisions of—

- (a) section *one hundred and eight* shall, *mutatis mutandis*, apply in relation to the tenure of office of members of the Commission;
- (b) subsections (2) to (5) of section *one hundred and nine* and section *one hundred and ten* shall, *mutatis mutandis*, apply in relation the performance of the functions of the Commission.

(11) In this section—

“Commission” means the Statutory Corporations Commission established by subsection (1);

“designated post” means a post in the service of any statutory corporation designated by the Commission for the purposes of this section;

“statutory corporation” means any body corporate, other than a local authority, established directly by or under any law of the Legislature for special purposes specified in that law.

Remittability of
pensions.

165. (1) Any person who is entitled to receive a pension and who is not ordinarily resident in Zimbabwe Rhodesia shall

not be prevented from having remitted to him outside Zimbabwe Rhodesia, free from any deduction, tax or charge, other than ordinary bank charges, made or levied in respect of its remission—

- (a) any payment of a pension to which he is entitled; and
- (b) subject to the provisions of subsections (2), (3) and (4), the amount of any commutation—
 - (i) of a pension to which he first became entitled on or after the effective date; and
 - (ii) which has been made in accordance with the rules of the pension fund or the conditions under which the pension was granted; and
 - (iii) which relates to an amount of pension not exceeding two hundred and fifty dollars per annum or one-third of the pension, whichever is the greater.

(2) The provisions of paragraph (b) of subsection (1) shall not apply in relation to a pension or part thereof which is payable from a private pension fund where the contributions paid in respect of that pension or part thereof commenced in terms of an agreement entered into after the 3rd March, 1978, unless the contributions have been made for a continuous period of not less than ten years.

(3) A law of the Legislature may provide for the imposition of restrictions not greater than those specified in subsection (4) in respect of the remission in terms of subsection (1) of any commutation referred to in paragraph (b) of that subsection which is received by any person—

- (a) within the period of five years from the effective date; and
- (b) before he attains the age of sixty years;

unless the commutation relates to a pension received by a person who—

- (i) was employed subject to conditions of service which have been in force since prior to the 3rd March, 1978, and which required or permitted him to retire on or after attaining the age of fifty years or required him to retire after serving in a particular post for a specified period and has retired on or after attaining such age or after serving in such post for such period or has been discharged after attaining an age at which he could have been permitted to retire in terms of such conditions of service; or
- (ii) has been discharged on the grounds of ill-health, physical or mental unfitness or incapacity or personal injury; or
- (iii) was a male member referred to in subparagraph (1) or (2) of paragraph 35 of the Third Schedule who has retired in terms of paragraph 37 of the Third Schedule;

and who became entitled to such pension on such retirement or discharge, as the case may be.

(4) Restrictions in terms of subsection (3) may provide that, in the case of any commutation referred to in paragraph (b) of subsection (1) which becomes payable with effect from a day—

- (a) before the first anniversary of the effective date, the amount of the commutation may be remitted in five annual instalments commencing on the fifth anniversary of the effective date;
- (b) on or after the first anniversary and before the second anniversary of the effective date, one-fifth of the amount of the commutation may be remitted at any time after the receipt thereof and the remaining four-fifths may be remitted in four annual instalments commencing on the fifth anniversary of the effective date;
- (c) on or after the second anniversary and before the third anniversary of the effective date, two-fifths of the amount of the commutation may be remitted at any time after the receipt thereof and the remaining three-fifths may be remitted in three annual instalments commencing on the fifth anniversary of the effective date;
- (d) on or after the third anniversary and before the fourth anniversary of the effective date, three-fifths of the amount of the commutation may be remitted at any time after the receipt thereof and the remaining two-fifths may be remitted in two annual instalments commencing on the fifth anniversary of the effective date;
- (e) on or after the fourth anniversary and before the fifth anniversary of the effective date, four-fifths of the amount of the commutation may be remitted at any time after the receipt thereof and the remaining one-fifth may be remitted after the fifth anniversary of the effective date.

(5) Any amount which a person is entitled to have remitted in terms of this section shall not be deducted from the amount of money that he may be entitled to have remitted outside Zimbabwe Rhodesia by or under this Constitution or any law of the Legislature.

(6) In this section—

“effective date” means the 30th April, 1979;

“pension” means any pension or annuity which is payable—

- (a) from the Consolidated Revenue Fund to any public officer or former public officer or other person by or under this Constitution or any law of the Legislature; or
- (b) in accordance with the rules of any pension fund to—
 - (i) a person who was a member of that fund upon his retirement on account of age or ill-health or other termination of service or on his attaining a specified age; or
 - (ii) the spouse, children or dependants of a person who was a member of that fund upon or after the death of such former member;

and which is payable for the lifetime of the recipient or for a specified period or until the happening of a specified event;

"pension fund" means any scheme or arrangement established or operating in Zimbabwe Rhodesia the principal object of which is to provide benefits for persons who are or have been members of the scheme or arrangement upon their retirement on account of age or ill-health or other termination of service or on attaining a specified age, whether or not such scheme or arrangement also provides for the payment of benefits in other circumstances, or for dependants or nominees of deceased members;

"private pension fund" means any pension fund the rules of which provide for the payment of contributions by—
 (a) the member of the fund with no contributions being paid by an employer of the member; or
 (b) an employer in respect of the member of the fund with no contributions being paid by that member.

166. With effect from immediately before the fixed date the Constitution of Rhodesia, 1969, shall be repealed and revoked by this Constitution and, subject to the provisions of section *one hundred and sixty-seven*, no longer operative. Repeal of former Constitution.

167. Notwithstanding anything to the contrary contained in the foregoing Chapters, the provisions set out in the Third Schedule shall apply in order to enable this Constitution to have effect on and after the fixed date and to provide for matters contained therein. Transitional provisions.

PART II

INTERPRETATION

168. The provisions of this Part shall apply to the provisions of this Constitution unless the context otherwise requires. Application of this Part.

169. (1) In this Constitution— Interpretation.

"African customary law" means the tribal law and custom of Africans of a particular tribe;

"amend" includes vary, alter, modify or adapt;

"Appellate Division" means the Appellate Division of the High Court referred to in paragraph (a) of section *seventy-six*;

"Chief" means a Chief referred to in subsection (1) of section *one hundred and sixty-two*;

"Constitutional Bill" means a Bill which, when enacted, would have the effect of amending, adding to or repealing any of the provisions of this Constitution;

"Council of Chiefs" means any Council of Chiefs referred to in subsection (3) of section *one hundred and sixty-two*;

"Declaration of Rights" means the provisions of sections *one hundred and twenty* to *one hundred and thirty-one*;

"Deputy Minister" means a Deputy Minister appointed in terms of subsection (1) of section *sixty-seven*;

"disciplinary law" means any law of the Legislature or statutory instrument in so far as it provides for the regulation of the discipline of—

- (a) regular or full-time members of any disciplined force or any other members of a disciplined force while they are rendering service as such members or in respect of their failure to render such service; or
- (b) persons in prison awaiting trial or serving prison sentences; or
- (c) persons whose detention has been authorized in terms of any law of the Legislature or statutory instrument;

"disciplined force" means—

- (a) a naval, military or air force; or
- (b) a police force; or
- (c) a prison service; or
- (d) any other body established for public purposes by or under a law of the Legislature providing for the regulation of the discipline of that body and declared by that law to be a disciplined force for the purposes of this definition;

"Electoral Law" means the law referred to in section *seventeen* which is for the time being in force;

"Executive Council" means the Executive Council established by section *seventy*;

"financial year" means the period of twelve months ending on the 30th June in any year;

"fixed date" means the date fixed in the proclamation in terms of section *two*;

"former Constitution" means the Constitution of Rhodesia, 1969;

"*Gazette*" means the official *Gazette* of the Government of Zimbabwe Rhodesia;

"general election" means a general election of the members of the House of Assembly;

"General Division" means the General Division of the High Court referred to in paragraph (b) of section *seventy-six*;

"local authority" means any council or other such body established by or in terms of any law to regulate the affairs of any local community and to make statutory instruments for that purpose;

"Mashonaland" means the area in Zimbabwe Rhodesia which is defined in the Electoral Law to constitute Mashonaland for the purposes of this Constitution;

"Matabeleland" means the area in Zimbabwe Rhodesia which is defined in the Electoral Law to constitute Matabeleland for the purposes of this Constitution;

"member", in relation to a disciplined force, includes any person who, in terms of any disciplinary law relating to that force, is subject to that discipline;

"Minister" means a Minister, including the Prime Minister, appointed in terms of subsection (1) of section *sixty-seven*;

"Money Bill" means a public Bill which contains only provisions dealing with all or any of the following matters—

- (a) the imposition, repeal, remission, alteration, administration or regulation of taxation or any exemption therefrom;
- (b) the imposition, for the payment of debt or other financial purposes, including expenses of administration, of charges on the Consolidated Revenue Fund or any other public funds or on moneys provided by the Legislature or the variation or repeal of any such charges;
- (c) the grant of money for the services of the Government, including expenses of administration, or the grant of money to any authority or person or the variation or revocation of any such grant;
- (d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
- (e) the making or raising of any loan by the Government or the repayment thereof or the establishment, alteration, administration or abolition of any sinking fund provided in connexion with any such loan;
- (f) the guarantee given by or on behalf of the Government in respect of any loan raised by any person and any conditions which are attached to such guarantee;
- (g) the compounding or remitting of any debt and the condoning of any failure to collect taxes;
- (h) the condoning of unauthorized expenditure;
- (i) subordinate matters which are ancillary or incidental to any of the foregoing matters;

and, for the purposes of this definition, any reference in paragraphs (a) to (i) to taxation, public funds, public money, debt, taxes or expenditure shall not be construed as including a reference to any taxation by, or the funds, moneys, debt, taxes or expenditure of, a local authority or statutory body;

"Ombudsman" means the Ombudsman appointed in terms of subsection (2) of section *one hundred and forty-four*;

"person" means any individual or any body of persons, whether corporate or unincorporated;

"President" means the President referred to in section *six*;

"President of the Senate" means the President of the Senate referred to in subsection (1) of section *nineteen*;

"public moneys" means any fees, taxes or other revenues payable to the State and any other moneys received and held by an employee of the State in his official capacity;

"public office" means, save as may otherwise be expressly provided by law, any paid office in the service of the Government;

"public officer" means the holder of any public office;

"Secretary to Parliament" means the person appointed in terms of subsection (1) of section *forty-five* as the Secretary to Parliament;

"Senate Legal Committee" means the Senate Legal Committee established by section *thirty-four*;

"session" means the sittings of Parliament commencing when Parliament first meets after a prorogation or dissolution at any time and terminating when Parliament is next prorogued, or dissolved without being prorogued;

"sitting" means a period during which the Senate or the House of Assembly, as the case may be, is sitting continuously without adjournment, including any period during which the Senate or the House of Assembly is in Committee;

"sitting day" means any weekday which is prescribed in the Standing Orders of the House of Assembly to be a sitting day, whether or not the House of Assembly or the Senate, as the case may be, meets on that sitting day;

"Speaker" means the Speaker referred to in subsection (1) of section *twenty-three*;

"Standing Orders" means the Standing Orders made in terms of section *thirty-eight* which are for the time being in force;

"statutory instrument" means any proclamation, rule, regulation, by-law, order, notice or other instrument having the force of law made by the President, a Minister or any other person or body under the authority of this Constitution or any law of the Legislature;

"tax" includes duty or due;

"Tribal Trust Land" means land set aside as such by the Tribal Trust Land Act, 1979, or any other law substituted for the same.

(2) Any reference in this Constitution, without qualification, to—

(a) a section, Chapter or Schedule shall be read and construed as a reference to a section or Chapter or Schedule to, as the case may be, this Constitution;

- (b) a Part shall be read and construed as a reference to a Part of the Chapter in which the reference is made;
 - (c) a subsection shall be read and construed as a reference to a subsection of the section in which the reference is made;
 - (d) a paragraph shall be read and construed as a reference to a paragraph of the Schedule, section, subsection, definition or proviso, as the case may be, in which the reference is made;
 - (e) a subparagraph shall be read and construed as a reference to a subparagraph of the paragraph in which the reference is made.
- (3) In this Constitution—
- (a) words importing the masculine gender include females;
 - (b) words in the singular include the plural and words in the plural include the singular;
 - (c) where a period of time is expressed—
 - (i) to begin on or to be reckoned from a particular day, that day shall not be included in the period;
 - (ii) to end on or to be reckoned to a particular day, that day shall be included in the period;
 - (d) where the time limited for the doing of any thing expires or falls upon a Saturday, Sunday or public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, Sunday or public holiday;
 - (e) a reference to a month shall be construed as a reference to a calendar month;
 - (f) a reference without qualification to a year shall be construed as a reference to a period of twelve months.
- (4) This Constitution shall be construed as always speaking and where any thing is expressed in the present tense it shall be applied to the circumstances as they occur so that effect may be given to each provision according to its true spirit, intent and meaning.
- (5) Any power, jurisdiction or right conferred by this Constitution may be exercised and any duty imposed by this Constitution shall be performed from time to time as occasion requires.
- (6) Any reference in this Constitution to an Act or a law of the Legislature shall be read and construed as including a reference to—
- (a) any law included in the Revised Edition of the Statute Law of Rhodesia prepared under the authority of the Revised Edition of the Laws Act, 1973, or which, though omitted from that Edition, continued to have force or effect notwithstanding the omission; and
 - (b) any Act of the former Legislature of Rhodesia or Southern Rhodesia;

which was in force in Rhodesia immediately before the fixed date.

(7) Any reference in this Constitution to—

(a) a Black person shall be read and construed as a reference to a person who—

(i) is a member of the aboriginal tribes or races of Africa and the islands adjacent thereto, including Madagascar and Zanzibar; or

(ii) has the blood of such tribes or races and lives as a member of an aboriginal native community;

(b) a White person shall be read and construed as a reference to a person who is not a person referred to in paragraph (a).

Supplementary provisions.

170. (1) Where any person is required by this Constitution to take an oath, he shall be permitted, if he so wishes, to comply with that requirement by making an affirmation and, in any such case, the form of oath set out in the First Schedule shall be varied by—

(a) the substitution for the word “swear” of the expression “solemnly and sincerely affirm and declare”; and

(b) the deletion of the words “So help me God”.

(2) Any reference in this Constitution to the holder of any office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(3) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(4) For the purposes of this Constitution, no person shall be deemed to be holding a public office by reason only of the fact that he is in receipt of a pension, half-pay, retired pay or any other like allowance in respect of service in an office that was at the relevant time a public office.

(5) If it is provided by any law of the Legislature that any office shall or shall not be a public office for the purposes of this Constitution or any specified provision thereof, this Constitution or that provision shall have effect as if that law were enacted herein:

Provided that such law or any amendment of any such law shall not be deemed to be an amendment of any of the provisions of this Constitution for the purposes of Chapter XI.

(6) Any reference in this Constitution to the passage of a motion or the final vote on any Bill by the affirmative votes of not less than two-thirds of the total membership of the Senate or the House of Assembly, as the case may be, shall, when the total membership of that House is not an integral multiple of three, be interpreted to mean that the number of votes in favour of the motion or Bill in question shall be not less than two-thirds of the number next above that of such total membership which is an integral multiple of three.

(7) The Interpretation Act for the time being in force shall apply in the interpretation of any regulations made by the President in the exercise of a power to make regulations conferred by this Constitution and in the interpretation of any such power.

**FIRST SCHEDULE (Sections 12, 19 (3), 23 (3), 39, 67 (5),
70 (3), 81, 140, 141 and 170 (1))**

OATHS

1. *Oath of loyalty*

I,
do swear that I will be faithful and bear true allegiance to Zimbabwe Rhodesia and observe the laws of Zimbabwe Rhodesia. So Help Me God.

2. *Oath for the due execution of office*

I,
do swear that I will well and truly serve Zimbabwe Rhodesia in the office of
So Help Me God.

3. *Oath of a member of the Executive Council*

I,
being chosen and admitted to the Executive Council of Zimbabwe Rhodesia, do swear that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the President of Zimbabwe Rhodesia for the good management of the public affairs of Zimbabwe Rhodesia, that I will not, directly or indirectly, reveal such matters as may be debated in the Executive Council and committed to my secret, but that I will in all things be a true and faithful member thereof. So Help Me God.

4. *Judicial Oath*

I,
do swear that I will well and truly serve Zimbabwe Rhodesia in the office of
and that I will do right to all manner of people after the laws and usages of Zimbabwe Rhodesia, without fear or favour, affection or ill will. So Help Me God.

SECOND SCHEDULE (Section 157 (2) (b) (i))

SPECIALLY ENTRENCHED PROVISIONS

<i>Chapter or Schedule</i>	<i>Provision</i>
Chapter I	The whole.
Chapter II	Sections 6, 7, 9 and 10.
Chapter III	Sections 15, 16, 17, 18, 22, 29, 30, 31 and 37, Part VII and section 64.
Chapter IV	Sections 65, 66, 67, 68, 70, 71 and 75.
Chapter V	The whole.
Chapter VI	The whole.
Chapter VII	The whole.
Chapter VIII	The whole.
Chapter IX	The whole.

<i>Chapter or Schedule</i>	<i>Provision</i>
Chapter X	The whole.
Chapter XI	The whole.
Chapter XII	Sections 161, 162, 165 and 167 and, in so far as they relate to any provision specified in this Schedule, sections 169 and 170.
Second Schedule	The whole.
Third Schedule	The whole.

THIRD SCHEDULE (Section 167)

TRANSITIONAL PROVISIONS

PART I

PROVISIONS TO MAKE CONSTITUTION EFFECTIVE ON AND AFTER FIXED DATE

Special provisions relating to first elections.

1. (1) This Part and such of the other provisions of this Constitution as are necessary for or ancillary or incidental to—

- (a) the first election, in terms of Chapter II, of the President; or
- (b) the first election, in terms of Chapter III, of the President of the Senate, the Deputy President of the Senate, the Speaker and the Deputy Speaker; or
- (c) the holding of the first election of Senators and members of the House of Assembly for the purposes of Chapter III;

shall come into operation on the date of the publication of this Constitution in the *Gazette*.

(2) Notwithstanding anything to the contrary contained in this Constitution, for the purposes of the elections referred to in subparagraph (1)—

- (a) the regulations referred to in subsection (7) of section *nine* shall be made by the President as defined in the former Constitution;
- (b) section *nine* shall have effect as if provision were made in that section for the holding of the election referred to in subparagraph (a) of subparagraph (1) as soon as possible after the holding of the last of the elections of Senators referred to in subparagraph (c) of subparagraph (1);
- (c) the Standing Orders made in terms of the former Constitution which were in force immediately before the date referred to in subparagraph (1) shall have effect, *mutatis mutandis*, as if they had been made in terms of this Constitution and references to Standing Orders in the provisions of this Constitution referred to in that subparagraph shall be construed accordingly;
- (d) the references to the Secretary to Parliament and the Chief Justice in the provisions of this Constitution referred to in subparagraph (1) shall be construed as

references to the holders of those offices constituted by the former Constitution;

(e) the references to—

- (i) the Council of Chiefs shall be construed as references to the Council of Chiefs established by section 6 of the Council of Chiefs and Provincial Assemblies Act [*Chapter 243*]; and
- (ii) Chiefs shall be construed as references to the holders of such office immediately before the date referred to in subparagraph (1);

(f) section *twenty-two* shall have effect as if that section provided for the nomination of candidates for election as and the election of members of the House of Assembly in the manner prescribed by Chapter XI of the Electoral Act, 1979.

2. (1) Notwithstanding anything to the contrary contained in this Constitution, such of the provisions of this Constitution as are necessary for or ancillary or incidental to giving effect to the provisions of subparagraphs (3), (4) and (5) shall come into operation immediately after the date of the publication of this Constitution in the *Gazette*.

Date of assumption of office and appointment of first Government.

(2) Notwithstanding anything to the contrary contained in this Constitution or the Electoral Act, 1979, the persons elected to office in the elections referred to in subparagraph (1) of paragraph 1 or appointed to office in terms of this paragraph shall, subject to the provisions of this paragraph, assume office with effect from the fixed date.

(3) The President shall, before the fixed date—

- (a) appoint a Prime Minister in terms of paragraph (a) of subsection (1) of section *sixty-seven*; and
- (b) appoint and assign functions to other Ministers of the Government in terms of paragraph (b) of subsection (1) of section *sixty-seven* and the provisions of paragraph 9; and
- (c) appoint the members of the Executive Council in terms of subsection (1) of section *seventy*.

(4) The Prime Minister and the Executive Council shall, before the fixed date, exercise such functions as may be necessary for the exercise by the President of the functions to be exercised by the President in terms of this Part.

(5) The persons referred to in subparagraph (2) shall, before exercising any functions referred to in this Part or other functions necessary to give effect to the provisions of this Part, take the requisite oaths of office.

3. Notwithstanding anything contained in the former Constitution or the Electoral Act [*Chapter 5*]—

Dissolution of Parliament established by former Constitution.

- (a) when the President as defined in the former Constitution next after the date referred to in subparagraph (1) of paragraph 1 dissolves the Parliament constituted by

the former Constitution by proclamation in terms of section 52 as read with section 29 of the former Constitution, that Parliament shall be dissolved in pursuance of that proclamation with effect from such date as is specified in that proclamation;

- (b) the proclamation referred to in subparagraph (a) shall not fix a day or days for the general election of members of the House of Assembly constituted by the former Constitution.

PART II

TRANSITIONAL PROVISIONS AND SAVINGS

Appointment of
first Commissions.

4. The members of the Judicial Service Commission established by section *eighty-eight*, the Police Service Commission established by section *one hundred*, the Defence Forces Service Commission established by section *one hundred and five* and the Statutory Corporations Commission established by section *one hundred and sixty-four* shall be appointed before the expiration of a period of fourteen days beginning on the fixed date.

Adaptation of
existing laws.

5. (1) The President may, within six months after the fixed date, by order in the *Gazette*, provide that any law in force immediately before the fixed date shall be read and construed with such modifications and adaptations as may appear to the President to be necessary for bringing the provisions of that law into conformity with the provisions of this Constitution or otherwise for giving effect or enabling effect to be given to those provisions, and that law shall have effect accordingly from such date as may be specified in the order, not being a date earlier than the fixed date.

(2) An order made in terms of subparagraph (1) may be repealed or amended by a further order made in terms of that subparagraph or, in relation to any law or instrument affected thereby, by the authority who has power to repeal, revoke or amend that law or instrument.

Convening of new
Parliament.

6. In pursuance of the provisions of subsection (1) of section *sixty-three* the President shall direct that the first session of Parliament shall begin within a period of three months beginning on the fixed date.

Temporary modification
of section 22.

7. Notwithstanding anything to the contrary contained in this Constitution, the provisions of subparagraph (f) of subparagraph (2) of paragraph 1 shall, *mutatis mutandis*, apply for the purposes of—

- (a) any general election which is held after the fixed date and before the publication of a proclamation by the President in terms of section 8 of the Electoral Act, 1979; and
- (b) the filling, after the fixed date, of any vacancy in the membership of the House of Assembly which occurs during the life of a Parliament where the members of the House of Assembly were elected in accordance with the provisions of paragraph 1 or of subparagraph (a).

8. (1) Notwithstanding any of the provisions of this Constitution, during the period before the establishment of the Commission referred to in subsection (1) of section *one hundred and fifty-nine*, any party which is represented in the House of Assembly by a majority of the members referred to in paragraphs (b) and (c) of subsection (2) of section *twenty-two* shall not, for the purpose of forming a government, form a coalition with any single party other than the Black majority party.

Prohibition of coalition government in certain circumstances.

(2) In subparagraph (1)—

“Black majority party” means the party represented in the House of Assembly by a greater number of members referred to in paragraph (a) of subsection (2) of section *twenty-two* than the number of such members representing any other single party or, if there are two parties so represented by an equal number of such members, either such party.

9. (1) Notwithstanding any of the provisions of this Constitution, during the period prior to the dissolution of the first Parliament or the period of five years, whichever is longer, the following provisions shall apply—

Interim National Government.

- (a) there shall be not less than fifteen Ministers all of whom shall be members of the Executive Council;
 - (b) each party which is represented in the House of Assembly by five or more members thereof shall be entitled to be represented in the Executive Council in terms of subparagraph (c);
 - (c) a party referred to in subparagraph (b) shall be represented by such number of Ministers as bears the same proportion to the total membership of the Executive Council as the number of members of that party who are members of the House of Assembly bears to the total number of members of all the parties referred to in subparagraph (b) who are members of the House of Assembly;
 - (d) in recommending to the President the persons to be appointed as Ministers in terms of subparagraph (c), the Prime Minister shall act on the advice of the leader of the party concerned;
 - (e) the Prime Minister shall not recommend the removal from office of a Minister appointed in terms of subparagraph (d) unless the leader of the party concerned has advised him so to recommend;
 - (f) before recommending to the President the functions to be allocated to the various Ministers, the Prime Minister shall consult with the leaders of all the parties referred to in subparagraph (b);
 - (g) if the Prime Minister wishes to recommend the appointment of Deputy Ministers, the provisions of subparagraphs (b) to (f) shall, *mutatis mutandis*, apply.
- (2) If the application of the provisions of subparagraph (c) of subparagraph (1) results in a fraction of—
- (a) less than one-half, the fraction shall be disregarded;

- (b) one-half or more, the party concerned shall be represented by one additional member in respect of that fraction.

Saving for existing laws.

10. (1) Save as otherwise provided in this Constitution, all laws in force immediately before the fixed date shall, to the extent that they are not inconsistent with this Constitution, remain of full force and effect on and after that date subject to the exercise of any power to amend or repeal the same as is vested in the Legislature or any other authority, and any reference in any such law to Rhodesia shall, unless the context otherwise requires, be read and construed as a reference to Zimbabwe Rhodesia.

(2) Any person who, immediately before the fixed date, was the holder of a firearm certificate in terms of the Firearms Act [Chapter 308] shall not, on or after that date, by or under any law of the Legislature, be deprived of such certificate or of the rights which such certificate confers in respect of the purchase, acquisition or possession of a firearm and ammunition therefor:

Provided that the provisions of this subparagraph shall not prevent—

- (a) a court which convicts any person of a criminal offence from ordering, in terms of any provision of a law that has had effect as part of the law of Zimbabwe Rhodesia since the fixed date, any firearm or ammunition to be forfeited to the State as the result of such conviction; or
- (b) the person referred to in subsection (7) of section 6 of the Firearms Act [Chapter 308] from revoking a firearm certificate on such grounds as were referred to in that subsection immediately before the fixed date, subject to such right of appeal to a judge of the General Division as was referred to in section 49 of that Act immediately before the fixed date.

(3) Any law of the Legislature or statutory instrument made thereunder which provided for any of the matters for which, in terms of section *ninety-four, one hundred and two* or *one hundred and seven*, the Public Service Commission, the Police Service Commission or the Defence Forces Service Commission, as the case may be, may make regulations and which was in force immediately before the fixed date shall, subject to the provisions of paragraph 5, on and after that date, continue in force as though it were and shall be deemed to be regulations made by the Public Service Commission, the Police Service Commission or the Defence Forces Service Commission, as the case may be, and may be amended or repealed as though it had been so made.

(4) Any thing done or commenced before the fixed date under the Constitution of Southern Rhodesia, 1961, or by or under the Constitution of Rhodesia, 1965, the former Constitution or any other law which was of full force and effect or capable of acquiring full force and effect shall, on and after that date, continue to have or to acquire full force and effect, as the case may be, and no law after that date shall have the effect of rendering anything so made, done or commenced unlawful.

(5) The Indemnity and Compensation Act, 1975 (No. 45 of 1975) shall, on and after the fixed date, continue to apply in respect of any act, matter or thing whatsoever advised, commanded, ordered, directed or done or omitted to be done before, on or after that date to which, in terms of section 3 of the Act, the provisions of that Act apply, and no law after that date shall have the effect of rendering the indemnity conferred by section 4 of that Act in respect of any such act, matter or thing invalid:

Provided that a law of the Legislature may withdraw the indemnity conferred by section 4 of that Act in respect of any such act, matter or thing advised, commanded, ordered, directed or done or omitted to be done on or after the date of promulgation of such law.

11. (1) Any person who, immediately before the fixed date, held the office of judge of the High Court constituted by the former Constitution shall, on and after that date, continue to hold the like office as if he had been appointed thereto under the corresponding provisions of this Constitution:

Holders of public office or commission to continue.

Provided that—

(i) the person who, immediately before the fixed date, held the office of Judge President shall, on and after that date—

(a) continue to retain that title and the salary and allowances which were payable to him immediately before that date; and

(b) be in charge of the Appellate Division and preside over it in the absence of the Chief Justice;

and the provisions of Chapter V shall otherwise apply in relation to him as though he were a judge of appeal;

(ii) the person who, immediately before the fixed date, held the office of puisne judge longer than any other such person shall, on and after that date, be deemed to have been appointed Senior Puisne Judge, and the provisions of Chapter V shall apply in relation to him accordingly.

(2) The person who, immediately before the fixed date, held the office of Secretary to Parliament constituted by the former Constitution shall, on and after that date, be deemed to have been duly appointed as Secretary to Parliament in terms of subsection (1) of section *forty-five* and his conditions of service shall, *mutatis mutandis*, continue to apply subject to any amendment.

(3) A person who, immediately before the fixed date, was a member of the staff of Parliament in terms of the former Constitution shall, on and after that date, continue as a member of the staff of Parliament and shall be regarded as if he had been appointed thereto in terms of subsection (3) of section *forty-five* and his conditions of service shall be deemed to have been approved in terms of that section.

(4) The persons who, immediately before the fixed date, held the offices of chairman and members of the Public Services Board established by section 3 of the Public Services Act [Chapter 271] shall, on and after that date, be deemed to have been appointed chairman and members, respectively, of the Public Service Commission and their conditions of service shall be deemed to have been fixed by the President in terms of section *one hundred and eight*.

(5) Any person who, immediately before the fixed date, held any public office which public office continues on and after that date to be a public office shall, subject to the provisions of this Constitution and any other law, continue to hold that office.

(6) Any person who, immediately before the fixed date, held the office of Chief or member of the Council of Chiefs shall, subject to the provisions of this Constitution and any other law, continue to hold that office.

(7) Any person who, immediately before the fixed date, held the office of Commander or Deputy Commander of Combined Operations, Commander of the Army, Commander of the Air Force, Commander of the Guard Force or Commissioner of Police or any other commissioned rank in the Defence Forces or the Police Force shall, subject to the provisions of this Constitution or any other law, on and after that date, continue to hold such rank and be deemed to have been commissioned under this Constitution.

(8) Any person who, under the provisions of this paragraph, holds a public office or commissioned rank on and after the fixed date by virtue of having been the holder of that office or rank immediately before that date shall be deemed to have complied with the requirements of this Constitution or any other law relating to the taking of oaths on appointment to such office or rank.

High Court.

12. The High Court referred to in section 62 of the former Constitution shall be deemed to have been duly constituted as the High Court under Chapter V.

Statutory instruments
to be referred to
Senate Legal
Committee.

13. (1) Any statutory instrument which has been published in the *Gazette* before the fixed date and—

- (a) had not been referred to the Senate Legal Committee in terms of the former Constitution; or
- (b) had been referred to the Senate Legal Committee in terms of the former Constitution but in respect of which that Senate Legal Committee has not reported in terms of that Constitution; or
- (c) in respect of which the Senate Legal Committee had reported in terms of the former Constitution but the report had not been laid before the Senate in terms of that Constitution or, where the report is to the effect that, in the opinion of that Senate Legal Committee, a provision of the statutory instrument is inconsistent with or in contravention of the Declaration of Rights of that Constitution, the report had not been considered by the Senate in terms of that Constitution;

shall, within seven days of the appointment of the Senate Legal Committee in terms of section *thirty-four*, be referred to that Committee by the Secretary to Parliament and the provisions of Part VIII of Chapter III shall apply as if that statutory instrument had been published in the *Gazette* on or after the fixed date.

(2) The President of the Senate shall make interim Standing Orders providing for the matters referred to in subsection (5) of section *thirty-four* which shall be deemed to be Standing Orders made in terms of section *thirty-eight* until such time as the Senate makes Standing Orders providing for those matters.

14. The moneys which, immediately before the fixed date, were standing to the credit of the Consolidated Revenue Fund established by the former Constitution shall be transferred to and become the Consolidated Revenue Fund established by section *one hundred and fourteen*.

Transfer of moneys
in old Consolidated
Revenue Fund.

15. All stocks, cash, bankers balances and securities for money, State land and public works and all property, movable or immovable, and all rights of whatever description, including all rights in or to water, other than private water, and all rights in or to mines, minerals, mineral oils, natural gases, precious metals and precious stones and all rights in connexion with the searching for, working for or disposing of minerals, mineral oils, natural gases, precious metals or precious stones which, immediately before the fixed date, belonged to or vested in the President as defined in the former Constitution shall belong to or vest in the President.

Assets of former
Government.

16. (1) Subject to the provisions of subparagraph (3), as from the fixed date the Government established under this Constitution shall assume all debts and liabilities of the Government established by the former Constitution subject to any conditions applicable thereto immediately before the fixed date and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund and other charges conferred on creditors of the said former Government.

Liabilities of former
Government.

(2) Subject to the provisions of subparagraph (3), the rights of stockholders to undertakings given by the Government of Southern Rhodesia at the time of the issue of any Rhodesian Government stock registered under the Colonial Stock Act, 1877, of the United Kingdom or any Act amending or replacing the same shall be maintained and there shall be no departure from the original contract in respect of such stock.

(3) Notwithstanding the provisions of the Declaration of Rights or of subparagraphs (1) and (2), a law of the Legislature may provide that, while circumstances preventing the repayment of obligations to the Government of the United Kingdom or of stock referred to in subparagraph (2) remain—

(a) no repayment shall be made by the Government in relation to—

(i) any loan made by the Government of the United Kingdom or any agency or authority of that Government or which has been guaranteed by that Government; or

- (ii) any stocks issued in London by the Government of Southern Rhodesia or of the former Federation of Rhodesia and Nyasaland;

whether in respect of interest payments or redemption of capital; and

- (b) the Government shall not be obliged to pay any moneys into a sinking fund established for the purpose of redeeming a loan raised by means of stocks issued in London;

and such law shall not be regarded for the purposes of this Constitution as being in contravention of the Declaration of Rights.

- (4) For the purposes of subparagraph (2)—

“Rhodesian Government stock” means stock which in terms of subparagraph (1) forms part of the public debt.

Existing conventions and agreements.

17. All rights and obligations of the Government established by the former Constitution existing under any convention or agreement immediately before the fixed date shall devolve upon the Government of Zimbabwe Rhodesia.

Legal proceedings to continue.

18. (1) All criminal proceedings which, immediately before the fixed date, were required to be instituted in the name of Rhodesia shall be instituted in the name of Zimbabwe Rhodesia.

(2) All civil or criminal proceedings pending or commenced in any court in Rhodesia immediately before the fixed date shall continue in that or the corresponding court as from the fixed date.

(3) Any civil proceedings instituted before the fixed date by or against a Minister as representing the Government of Rhodesia which have not been disposed of before the fixed date or, having been disposed of, are thereafter reopened may be proceeded with without interruption by or against the appropriate Minister as representing the Government of Zimbabwe Rhodesia.

(4) All judgments or orders of any court given or made prior to the fixed date shall have the same force and effect as if they had been given or made by that or the corresponding court existing on or after the fixed date.

Oaths of loyalty.

19. Any provision of any law in terms of which a person is required to take an oath or solemn declaration of allegiance to Rhodesia shall be construed as a provision requiring such person to take an oath or solemn declaration in the form of the oath of loyalty set out in the First Schedule.

Declaration of emergency and proclamation of martial law.

20. (1) If, immediately before the fixed date, a proclamation by the President under section 61 of the former Constitution is in force, there shall be deemed to be in force from the fixed date a declaration in terms of subsection (1) of section seventy-five that has been approved by the House of Assembly at the fixed date and that declaration shall, unless it is sooner revoked or unless it is extended in terms of subsection (4) of that section, continue in force until the expiration of a period of thirty

days beginning with the day that the first session of Parliament is convened in accordance with the provisions of paragraph 6.

(2) Any regulations, orders or directions made under the provisions of the Emergency Powers Act [*Chapter 83*] which were in force immediately before the fixed date shall, unless sooner revoked, continue in force so long as the declaration continues in force in terms of subparagraph (1).

(3) Any proclamation of martial law in force immediately before the fixed date shall continue to have force and effect as though it had been proclaimed in terms of section *sixty-six* until such time as it is terminated in terms of that section.

21. (1) Standing orders made in terms of section 31 of the former Constitution shall be deemed to have been made in terms of section *thirty-eight* and may be amended or replaced accordingly.

Standing orders and rules and regulations relating to conditions of service of officers of Parliament.

(2) Regulations and rules governing the terms of service of officers of Parliament made in pursuance of the provisions of section 38 of the former Constitution shall be deemed to have been made in pursuance of the provisions of section *forty-five* and may be amended or replaced accordingly.

22. A law of the Legislature may, notwithstanding any of the provisions of the Declaration of Rights, provide for an indemnity for any person against any action, indictment or proceedings in any court for or on account of or in respect of any act, matter or thing whatsoever advised, commanded, ordered, directed or done or omitted to be done before the fixed date, and such law shall not be regarded for the purposes of this Constitution as being in contravention of the Declaration of Rights.

Law of Legislature may provide for indemnity.

PART III

BENEFITS FOR MEMBERS OF PUBLIC SERVICE AND OTHERS

23. (1) In this Part—

Interpretation.

“contributor” means a person who contributes to the Consolidated Revenue Fund by virtue of the provisions of the Pensions Regulations;

“effective date” means the 30th April, 1979;

“officer” means a person who is an officer for the purposes of the Public Services Act;

“officer of Parliament” means a member of the staff of Parliament who contributes to the Consolidated Revenue Fund for the purpose of securing benefits for himself and his dependants on his retirement from, or other termination of service with, Parliament;

“Parliamentary terms of service” means the regulations and rules governing the terms of service of officers of Parliament made in pursuance of the provisions of section *forty-five*;

“Pensions Act” means the State Service (Pensions) Act [*Chapter 275*];

“Pensions Regulations” means the State Service (Pensions) (Public Service) Regulations, 1976;

“Public Services Act” means the Public Services Act [Chapter 271].

(2) The calculation for the purposes of this Part of the pensionable service and the average pensionable emoluments or retiring pensionable emoluments of—

- (a) an officer or other contributor shall be made in accordance with the provisions of the Pensions Act and Pensions Regulations;
- (b) a person referred to in paragraph 32 shall be made in accordance with the provisions of the conditions of his appointment to the office concerned;
- (c) an officer of Parliament shall be made in accordance with the provisions of the Parliamentary terms of service with the reference to average pensionable emoluments or retiring pensionable emoluments being construed as a reference to actual emoluments rate or terminal emoluments rate, as the case may be.

Replacement or loss of office.

24. (1) Subject to the provisions of paragraph 28, if a contributor who was appointed to the Public Service before the 1st October, 1978, and has had continuous service as a contributor since that date is discharged on grounds not provided for in the Public Services Act immediately before the effective date, he shall be entitled, with effect from the date of his discharge, to a pension at the rate of 1/550th of his retiring pensionable emoluments for each complete month of his qualifying service.

(2) For the purposes of subparagraph (1)—

“qualifying service”, in relation to a contributor, means the pensionable service of that contributor increased by one-third calculated to the nearest complete month:

Provided that the number of complete months by which the period of pensionable service is to be increased shall not exceed the number of complete months by which the age of the contributor in months is less than 780.

Early retirement.

25. (1) Subject to the provisions of paragraph 28, an established officer who was appointed to the Public Service as an officer before the 1st October, 1978, and has had continuous service as an officer since that date may, at any time after he has completed a period of service of not less than one year after the effective date, retire from the Public Service:

Provided that an officer who wishes to retire in terms of this paragraph shall give not less than three calendar months' notice of his intention to retire, which shall expire not earlier than the 30th April, 1980.

(2) Notwithstanding the provisions of the proviso to subparagraph (1), a head of Ministry may accept a period of notice to retire in terms of subparagraph (1) which amounts to less than three calendar months but does not expire before the 30th April, 1980.

Benefits on retirement.

26. (1) An officer who retires in terms of paragraph 25 and who, at the date on which he retires, has not attained the age of fifty-five years shall be entitled, with effect from the date of his retirement, to a pension calculated, if he retires—

- (a) on or after the first anniversary and before the second anniversary of the effective date, at the rate of $1/880$ th;
- (b) on or after the second anniversary and before the third anniversary of the effective date, at the rate of $1/836$ th;
- (c) on or after the third anniversary and before the fourth anniversary of the effective date, at the rate of $1/792$ nd;
- (d) on or after the fourth anniversary and before the fifth anniversary of the effective date, at the rate of $1/748$ th;
- (e) on or after the fifth anniversary and before the sixth anniversary of the effective date, at the rate of $1/704$ th;
- (f) on or after the sixth anniversary of the effective date, at the rate of $1/660$ th;

of his average pensionable emoluments for each complete month of his pensionable service.

(2) Save as otherwise provided in subparagraph (3), an officer who retires in terms of paragraph 25 and who, at the date on which he retires, has attained the age of fifty-five years or more shall be entitled, with effect from the date of his retirement, to a pension calculated—

- (a) if he has not attained the age of fifty-six years, at the rate of $1/792$ nd;
- (b) if he has attained the age of fifty-six years but has not attained the age of fifty-seven years, at the rate of $1/748$ th;
- (c) if he has attained the age of fifty-seven years but has not attained the age of fifty-eight years, at the rate of $1/704$ th;
- (d) if he has attained the age of fifty-eight years but has not attained the age of fifty-nine years, at the rate of $1/660$ th;
- (e) if he has attained the age of fifty-nine years but has not attained the age of sixty years, at the rate of $1/638$ th;
- (f) if he has attained the age of sixty years but has not attained the age of sixty-one years, at the rate of $1/616$ th;
- (g) if he has attained the age of sixty-one years but has not attained the age of sixty-two years, at the rate of $1/594$ th;
- (h) if he has attained the age of sixty-two years but has not attained the age of sixty-three years, at the rate of $1/572$ nd;
- (i) if he has attained the age of sixty-three years or more, at the rate of $1/550$ th;

of his average pensionable emoluments for each complete month of his pensionable service:

Provided that if such an officer had, at the date of his retirement, served for four years or more after the effective date, his pension shall be calculated at the appropriate rate specified in subparagraph (d), (e) or (f) of subparagraph (1) or the appropriate rate specified in this subparagraph, whichever is the more favourable to him.

(3) A female officer who had been appointed as an officer prior to the 1st January, 1965, and has had continuous service as an officer since that date and who retires in terms of paragraph 25 and at the date on which she retires has attained the age of fifty-five years or more shall be entitled, with effect from the date of her retirement, to a pension calculated—

- (a) if she has not attained the age of fifty-eight years, at the rate of 1/638th;
- (b) if she has attained the age of fifty-eight years but has not attained the age of sixty-one years, at the rate of 1/616th;
- (c) if she has attained the age of sixty-one years but has not attained the age of sixty-two years, at the rate of 1/594th;
- (d) if she has attained the age of sixty-two years but has not attained the age of sixty-three years, at the rate of 1/572nd;
- (e) if she has attained the age of sixty-three years or more, at the rate of 1/550th;

of her average pensionable emoluments for each complete month of her pensionable service.

Ill-health or death of officer.

27. (1) An officer referred to in paragraph 25 who is discharged on or after the 30th April, 1980, on the grounds of ill-health or mental or physical deficiency or infirmity shall be entitled to receive the benefits provided in the Pensions Regulations or, if he so elects by notice in writing, a pension calculated in terms of paragraph 26.

(2) If on the death of an officer referred to in paragraph 25 on or after the 30th April, 1980, his spouse or any child or dependant is entitled to receive a pension in terms of the Pensions Regulations, the pension payable to that person shall be calculated in accordance with the provisions of the Pensions Regulations or in terms of paragraph 26, whichever is the more favourable to the recipient of the pension.

Officers not eligible for benefits.

28. (1) The provisions of paragraphs 24 and 25 shall not apply to an officer who was transferred to the Public Service from pensionable employment in the former Federal Public Service consequent on the dissolution of the former Federation of Rhodesia and Nyasaland and who, at the effective date, is occupying a post which is classified in terms of the Public Services Act as a Group I or Group II employee post.

- (2) An officer may not retire in terms of paragraph 25 if—
- (a) he retires or resigns to avoid discharge on the grounds of misconduct; or
 - (b) the notice of intention to retire in terms of paragraph 25 is given or would expire whilst he is under suspension or prohibition from duty in terms of the law relating to the Public Service; or
 - (c) having been granted special leave for training or study purposes subject to the condition that he serves Government for a specified period after the expiration of such leave, the notice of intention to retire in terms of paragraph 25 is given or would expire before he has completed his service for that specified period.

29. On and after the death of a former contributor who is in receipt of a pension in terms of this Part the provisions of the Pensions Regulations shall, *mutatis mutandis*, apply in relation to the determination of whether any pension is payable to or in respect of his spouse or any child or dependant and, if so, the amount thereof, as though the pension being paid to that former contributor were paid in terms of the Pensions Regulations.

Pensions for spouses and dependants.

30. The provisions of the Pensions Act and the relevant regulations made thereunder shall, *mutatis mutandis*, apply in relation to the commutation of a pension payable in terms of this Part as though the pension were payable in terms of the Pensions Regulations.

Commutation of pensions.

31. A contributor who is paid any pension or commutation thereof in terms of this Part shall not be entitled to receive any pension in terms of the Pensions Regulations.

Prohibition of dual benefits.

32. (1) The provisions of paragraphs 25 to 31 shall, *mutatis mutandis*, apply to—

Application of provisions to certain former officers.

- (a) a member of the Public Service Commission who, immediately before his appointment as such, was—
 - (i) a service member of the former Public Services Board; or
 - (ii) an established officer who was appointed to the Public Service as an officer before the 1st October, 1978, and has had continuous service as an officer since that date;
 and
- (b) the person holding the office of Comptroller and Auditor-General if, immediately before his appointment as such, he—
 - (i) held the office of Comptroller and Auditor-General under the former Constitution; or
 - (ii) was an established officer referred to in subparagraph (ii) of paragraph (a).

(2) The application of the provisions of paragraph 31 in relation to a person referred to in subparagraph (a) or (b) of subparagraph (1) shall not preclude the payment in terms of his conditions of service of any pension or other benefits in respect of any ill-health of or injury to, or the death of, that person arising out of and in the course of his official duties.

Application of provisions to officers of Parliament.

33. (1) The provisions of paragraph 24 shall, *mutatis mutandis*, apply in relation to an officer of Parliament who is removed from office on grounds of expediency or necessity not otherwise specified in the Parliamentary terms of service as in force immediately before the effective date.

(2) The provisions of paragraphs 25 to 31 shall, *mutatis mutandis*, apply in relation to an officer of Parliament who is not an officer under contract as defined in the Parliamentary terms of service in force immediately before the effective date.

(3) The application of the provisions of paragraph 31 in relation to an officer of Parliament referred to in subparagraph (2) shall not preclude the payment in terms of the Parliamentary terms of service of any pension or other benefits in respect of any ill-health of or injury to, or the death of, that officer arising out of and in the course of his official duties.

PART IV

BENEFITS FOR MEMBERS OF UNIFORMED FORCES

Interpretation of terms in Part IV.

34. (1) In this Part—

“Commanding Officer”, in relation to a member referred to in—

(a) subparagraph (1) of paragraph 35, means the Commissioner of Police;

(b) subparagraph (2) of paragraph 35, means the Commander of the Army or the Air Force, as the case may be;

(c) subparagraph (3) of paragraph 35, means the Director of Prisons;

“contributor” means a member who is paying contributions to the Consolidated Revenue Fund in terms of the Pensions Regulations;

“effective date” means the 30th April, 1979;

“member” means a person to whom, in terms of paragraph 35, the provisions of this Part apply;

“Pensions Act” means the State Service (Pensions) Act [Chapter 275];

“Pensions Regulations” means the State Service (Pensions) (Uniformed Forces) Regulations, 1976;

“Uniformed Force” means the Police Force, the Army, the Air Force or the Prison Service, as the case may be.

(2) The calculation, for the purposes of this Part, of the pensionable service and the retiring pension emoluments of a member or other contributor shall be made in accordance with the provisions of the Pensions Act and Pensions Regulations.

35. (1) The provisions of this Part shall apply to any member of the Regular Force of the Police Force, other than an auxiliary member, who has had continuous service as a contributor since before the 1st October, 1978, and who— Application of Part IV.

- (a) at that date was of the rank of patrol officer or above; or
- (b) was appointed to that Regular Force in terms of subparagraph (i) of paragraph (d) of subsection (1) of section 3 of the Police (Cadet) Regulations, 1965, before the 1st October, 1978, and has since attained the rank of patrol officer in that Regular Force; or
- (c) was last appointed to that Regular Force before the 1st October, 1978, and has since attained the rank of patrol officer before the 30th April, 1979; or
- (d) was a National Service member of the Police Force undergoing Phase I service immediately before the 1st October, 1978, and has, during the currency of his Phase I service and before the 30th April, 1979, attained the rank of patrol officer.

(2) The provisions of this Part shall apply to any member of the Regular Force of the Army or Air Force who has had continuous service as a contributor since before the 1st October, 1978, and who—

- (a) at that date was an officer as defined in the Defence (Regular Force) (Officers) Regulations, 1976, or a member as defined in the Defence (Regular Force) (European Members) Regulations, 1976, or the Defence (Regular Force) (Rhodesia Women's Services) Regulations, 1978; or
- (b) was a member as defined in the Defence (Regular Force) (African Members) Regulations, 1976, before the 1st October, 1978, and has since been promoted to commissioned rank in terms of the Defence (Regular Force) (Officers) Regulations, 1976, before the 30th April, 1979; or
- (c) was a National Service member of the Army or Air Force undergoing Phase I service immediately before the 1st October, 1978, and has, during the currency of his Phase I service and before the 30th April, 1979, become a member of the Regular Force of the Army or Air Force.

(3) The provisions of this Part shall apply to any member of the Prison Service, other than the Auxiliary Branch or National

Service Branch thereof, who has had continuous service as a contributor since before the 1st October, 1978, and who—

- (a) at that date was of the rank of prison officer or above;
or
- (b) was appointed as a member of the Prison Service, other than the Auxiliary Branch or National Service Branch thereof, before the 1st October, 1978, and has since attained the rank of prison officer before the 30th April, 1979.

Replacement or loss of office.

36. (1) If a contributor who was appointed to a Uniformed Force before the 1st October, 1978, and has had continuous service as a contributor since that date is discharged on grounds not provided for in the conditions of service applicable to him immediately before the effective date, he shall be entitled, with effect from the date of his discharge, to a pension at the rate of 1/490th of his retiring pensionable emoluments for each complete month of his qualifying service.

(2) For the purposes of subparagraph (1)—

“qualifying service”, in relation to a contributor, means the pensionable service of that contributor increased by one-third calculated to the nearest complete month:

Provided that the number of complete months by which the period of pensionable service is to be increased shall not exceed—

- (a) in the case of a contributor who, on the date of his discharge, has not attained the age of fifty-five years, the number of complete months by which his age in months is less than 660;
- (b) in the case of a contributor not referred to in paragraph (a), the number of complete months by which his age in months at his next birthday is more than his age in months.

Early retirement.

37. (1) A member who, at the date of his retirement, will have completed not less than two years' service as a contributor since his last appointment as such may, at any time after he has completed a period of service of not less than one year after the effective date, retire from the Uniformed Force of which he is a member:

Provided that a member who wishes to retire in terms of this paragraph shall give not less than three calendar months' notice of his intention to retire, which shall expire not earlier than the 30th April, 1980.

(2) Notwithstanding the provisions of the proviso to subparagraph (1), the Commanding Officer may accept a period of notice to retire in terms of subparagraph (1) which amounts to less than three calendar months but does not expire before the 30th April, 1980.

38. (1) A member who retires in terms of paragraph 37 and who, at the date on which he retires, would not, in terms of the Pensions Regulations, be entitled to a pension shall be entitled, with effect from the date of his retirement, to a pension calculated, if he retires—

Benefits on retirement.

- (a) on or after the first anniversary and before the second anniversary of the effective date, at the rate of 1/820th;
- (b) on or after the second anniversary and before the third anniversary of the effective date, at the rate of 1/776th;
- (c) on or after the third anniversary and before the fourth anniversary of the effective date, at the rate of 1/732nd;
- (d) on or after the fourth anniversary and before the fifth anniversary of the effective date, at the rate of 1/688th;
- (e) on or after the fifth anniversary and before the sixth anniversary of the effective date, at the rate of 1/644th;
- (f) on or after the sixth anniversary of the effective date, at the rate of 1/600th;

of his retiring pensionable emoluments for each complete month of his pensionable service.

(2) A member who was eligible in terms of the Pensions Regulations to retire on pension at any time before the first anniversary of the effective date and who retires in terms of paragraph 37 on or after the first anniversary of the effective date shall be entitled, with effect from the date of his retirement, to a pension calculated, if he retires—

- (a) on or after the first anniversary and before the second anniversary of the effective date, at the rate of 1/556th;
- (b) on or after the second anniversary and before the third anniversary of the effective date, at the rate of 1/534th;
- (c) on or after the third anniversary and before the fourth anniversary of the effective date, at the rate of 1/512th;
- (d) on or after the fourth anniversary of the effective date, at the rate of 1/490th;

of his retiring pensionable emoluments for each complete month of his pensionable service.

(3) A member who at any time after the first anniversary of the effective date first becomes eligible in terms of the Pensions Regulations to retire on pension and who retires in terms of paragraph 37 on or after the first anniversary of the effective date shall be entitled, with effect from the date of his retirement, to a pension calculated, if he retires—

- (a) on or after the date he first becomes eligible to retire on pension in terms of the Pensions Regulations and before the first anniversary of that date, at the rate of 1/556th;

- (b) on or after the first anniversary and before the second anniversary of the date referred to in subparagraph (a), at the rate of 1/534th;
- (c) on or after the second anniversary and before the third anniversary of the date referred to in subparagraph (a), at the rate of 1/512th;
- (d) on or after the third anniversary of the date referred to in subparagraph (a) at the rate of 1/490th;

of his retiring pensionable emoluments for each complete month of his pensionable service.

Ill-health or death
of member.

39. (1) A member referred to in paragraph 37 who is discharged on or after the 30th April, 1980, on the grounds of ill-health, physical or mental unfitness or incapacity or personal injury shall be entitled to receive the benefits provided in the Pensions Regulations or, if he so elects by notice in writing, a pension calculated in terms of paragraph 38.

(2) If on the death of a member referred to in paragraph 37 on or after the 30th April, 1980, his spouse or any child or dependant is entitled to receive a pension in terms of the Pensions Regulations, the pension payable to that person shall be calculated in accordance with the provisions of the Pensions Regulations or in terms of paragraph 38, whichever is the more favourable to the recipient of the pension.

Pensions for spouses
and dependants.

40. On and after the death of a former member who is in receipt of a pension in terms of this Part the provisions of the Pensions Regulations shall, *mutatis mutandis*, apply in relation to the determination of whether any pension is payable to or in respect of his spouse or any child or dependant and, if so, the amount thereof, as though the pension being paid to that former member were paid in terms of the Pensions Regulations.

Commutation of
pensions.

41. The provisions of the Pensions Act and the relevant regulations made thereunder shall, *mutatis mutandis*, apply in relation to the commutation of a pension payable in terms of this Part as though the pension were payable in terms of the Pensions Regulations.

Prohibition of dual
benefits.

42. A member who is paid any pension or commutation thereof in terms of this Part shall not be entitled to receive any pension in terms of the Pensions Regulations.