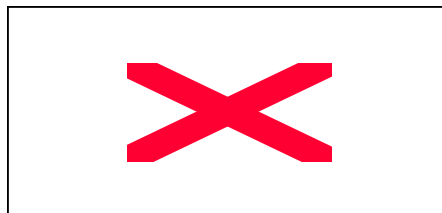


The Zimbabwe Constitutional Referendum

12 - 13 February, 2000

**The Report of the
Centre for Democracy and Development
Observer Mission**



MAP OF ZIMBABWE

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Constitution-making can be a treacherous terrain for outsiders to dabble into given the intense political emotion it generates, but the generosity of the Zimbabwean people and the support of various organisations in the country made our involvement in the constitution-making exercise a worthwhile and immensely productive one. We would particularly like to acknowledge the warmth and welcome extended to the Observer Mission by ordinary Zimbabweans everywhere we went throughout the country.

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Members of the Observer mission worked relentlessly to ensure that the assigned task was conducted with integrity, impartiality and single-mindedness. We are extremely grateful to them for their professionalism and dedication to duty.

With sincere appreciation for the financial support that enabled us to undertake this mission, we thank the Ford Foundation of New York, particularly Dr James Murombedzi of their Southern Africa office in Johannesburg and Dr Julius Ihonvbere of the New York office. It would be difficult to imagine a more supportive duo, in terms of their personal interest and encouragement of CDD's work in Zimbabwe.

Whilst also acknowledging the support of others too numerous to mention here, CDD takes responsibility for the product that has emerged out of this particular exercise.

Dr J.'Kayode Fayemi,
Director,
Centre for Democracy & Development

1. Introduction

The Referendum on Zimbabwe's draft constitution, held on February 12 & 13, 2000 was the first in the country since independence in April 1980. In May 1999, the Government of Zimbabwe appointed a 400 member Constitutional Commission to produce a new constitution for the country. The referendum was the culmination of the nine-month constitution-making exercise in the country with the unique opportunity it offered the citizens to pronounce judgement on the document that had been put together by the Constitutional Commission.

CDD and the Constitution-Making Process in Zimbabwe

The Centre for Democracy & Development (CDD) was commissioned by the Ford Foundation (Southern Africa) in October 1999 to assist in ensuring a genuine, participatory and credible Constitution-making exercise in Zimbabwe. As a major sponsor of the constitution-making programme in Zimbabwe, the Foundation was interested in supporting the Zimbabwean process with comparative knowledge from Africa and the rest of the world. It was also keen to support the Commission in achieving a high level of participation by the Zimbabwean people in such a crucial process. In inviting CDD to submit a proposal aimed at accomplishing the above goals, the implementation objectives of the work to be undertaken by CDD include:

- a) The provision of comparative experiences in constitution-making processes to the Constitutional Commission and other civil society institutions;
- b) The organisation of an independent Expert Observer Team to assist in, and raise the profile of constitutionalism within the Zimbabwean context;
- c) Identification of ways of deepening constitutionality and the rule of law through sustained civic education programmes and helping to design the mechanisms for mobilising the general populace in support of constitutional development;
- d) To draw lessons from the Zimbabwean experience that can form part of a continent wide comparative study of constitutionalism; and, finally,
- e) The production of a programme audit, general review report and case studies of specific aspects of the exercise.

In November 1999, CDD sent a team of four experts to the International Conference on Constitution-Making in Zimbabwe organised by the Constitutional Commission. The team was very prominent in emphasising key principles and mechanisms that the Constitution-making body will need to adhere to adopt to produce a process led and people driven constitution.

As a follow up to the earlier team's visit, staff from the Centre's secretariat spent time with diverse stakeholders in government and civil society with a

view to bridging the gap that had polarised interested parties in the making of the constitution.

The Observer Mission

Following the submission of the draft constitution to the President in November 1999 and the preparation for the referendum, the stage was set for the composition of an independent Observer Mission to be present at the referendum. On January 21, 2000, the Registrar-General of the Country, Mr Tobaiwa Mudede and his officials met with a two person team from CDD to discuss modalities of the Observer Mission's work having agreed in principle that the Centre could send an Observer Mission to the referendum whenever it was called.

CDD officials held preliminary discussions with officials of the Justice Ministry, the Executive and Coordinating Committees of the Constitutional Commission, the National Constitutional Assembly's Task Force and other stakeholders in the Zimbabwean society. Through these meetings, we were able to confirm that there was general support for the presence of an independent Observer Mission to the referendum.

In putting together an eminent, independent observer team of renowned African constitutional scholars and practitioners to observe the referendum exercise in February 2000, the Director of CDD stated clearly in the letter of invitation that the Expert Group Observer Mission "is one of the main aspects of the project on "Promoting Participatory Constitution-Making in Zimbabwe" supported by the Ford Foundation. According to the letter:

The objective of the Mission is to assist in ensuring the integrity of the constitution-making process and raise the profile of constitutionalism within the Zimbabwean context. The methodology by which this objective is pursued aims at deepening constitutionality through a process based approach that is inclusive and participatory.

The findings from the Observer Mission would form part of an overall evaluation of the Constitution-making exercise and will be presented in the form of a written report. The report is envisaged to be – both in content and form – a constructive policy document and an agenda setting document for stakeholders in the Zimbabwean society. At the same time, the report may serve the African as well as the international community as a lessons learned document for use in other countries undergoing constitution-making processes.

The letter of invitation to each observer described the tasks as follows:

1. As an active member of the CDD delegation, you will prepare comprehensively through familiarisation with the materials on the draft constitution and the process leading up to it, participate actively in the preparatory meetings with different stakeholders, the consultative process and the synthesis report writing providing expert input and analysis.

2. Participate in the nation-wide observation of the relevant aspects of the organisation and conduct of the National referendum on the draft constitution in accordance with the laws of Zimbabwe and comparable international standards. *The mission is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether the conditions exist for free expression of will by the voting public and if the results of the referendum reflects the wishes of the people.*
3. You will act impartially and independently. The Mission has no executive role; its function is not to supervise but to observe the process as a whole and to form judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and technical matters as would assist the holding of the referendum.
4. The Group will submit its report to the Director of the Centre for Democracy & Development who will forward it to the Government of Zimbabwe, the leadership of the political parties, civil society organisations, the Ford Foundation and thereafter, to the international community.

With these clear terms of reference, the Mission set about its work. The former President of Liberia, Professor Amos Sawyer as Chairperson, led the Observer Mission, which comprised of eight other, distinguished African nationals. A three-member CDD Secretariat team led by the Centre Director, Dr Kayode Fayemi, supported the Observers. The Mission's composition is shown in Annex 13 of this report.

Method of Work

Members of the Observer Mission arrived in Harare, Zimbabwe on February 8, 2000. The Chairperson met with members of the Mission and the Centre Director to review the work and see if any factors on the ground had necessitated any major change of plan. After the meeting, the Secretariat issued a statement announcing the arrival of members of the mission and the objectives of the exercise (see Annex II).

Since the whole effort was aimed at deepening constitutionality through a process based approach that is inclusive and participatory, the Mission held a series of meetings with various sectors of the Zimbabwean society from February 9 until deployment into provinces on February 12. Post referendum consultations were continued from February 15 to 17. In these meetings, we met with election officials led by the Registrar-General who conducted the Group on a comprehensive tour of the infrastructure, a cross section of civil society organisations, Constitutional Commissioners, members of the diplomatic community, government Ministers and officials and one other international observer group sent by the Commonwealth. The Chairperson of the Mission had a private audience with President Mugabe on February 15, 2000.

The meetings gave us the opportunity to be explain our mission and the way we planned to conduct our task. They also enabled us to be briefed about the referendum by diverse stakeholders from various perspectives. (A schedule of our engagement is at Annex 4).

On the eve of the referendum on February 11, the Mission divided into four two-person teams covering six of the ten provinces in the country. At least two teams, tasked with monitoring provinces father afield travelled overnight to Matabeleland and Masvingo. The Chairperson, a member of the mission and the Head of the Secretariat were based in Harare and also covered part of the Mashonaland East Province.

On February 12 and 13, the various teams observed the elections in the provinces and the Chairperson met with the Registrar-General and other officials of the Elections Committee at the Command Centre in Harare to get progress updates from the Registrar-General and discuss issues that had been raised in the various polling booths visited. The provincial teams also met with local election officials, members of the public and the media in the course of their observations(See details of the Deployment in Annex 9 and the provincial reports from Appendix 5 – 8). Altogether, the teams observed voting in 76 polling stations across the country and the count at 7 polling stations, consistently observing the following issues – the state and accessibility of the polling stations, security, monitoring, conduct of election officials, voting procedure and vote counting. To elicit information on these issues, we spoke to polling officials, police personnel, voters, election monitors and media representatives.

On the basis of the reports submitted by the various teams, the Chairperson issued an interim statement at 3.p.m. on February 15, 2000 and also held a press conference, which was covered by the two major daily newspapers – The Herald and Daily News. (A copy of the press statement is attached as Annex 11). That afternoon, the Chairperson of the Mission and two other members of the Group participated in a post-referendum seminar coordinated by the Southern African Regional Institute for Policy Studies in Harare.

The following day, February 16, 2000, a round of post-referendum consultations were also held with among others the President of the Movement for Democratic Change, Mr Morgan Tsvangirai and the Attorney-General, Mr Patrick Chinamasa.

The team departed Zimbabwe on February 16, 2000 after stressing the need to see the outcome of the referendum as an opportunity for re-engagement in a serious national dialogue.

2. Political Background

An Overview of the Path of Colonialism

The present-day Shona and Ndebele speaking peoples of Zimbabwe are descendants of the Bantu people who migrated to Southern Africa from Eastern Africa. The Great Zimbabwe relic is one of the indicators of a once impressive dynasty established by the Shona speaking Bantu, between 1100 A.D. and 1700 A.D. The Ndebele speaking Bantu tribes moved onto and took over the south western part of the territory, now known as Matebeleland, during the early part of the 19th Century. Not long after this, Europeans began to explore the region.

From the early 1800's through to the late 1800's, Europeans explored and hunted the territory now called Zimbabwe but few settled there. It was in 1885 that a wealthy, powerful and somewhat imperialistic patriot of the British empire, Cecil John Rhodes, acquired massive tracts of land and mining rights from the then King of the Ndebele, Lobengula, through trickery. Starting from South Africa where he was very well established as mining millionaire and politician, Rhodes formed what become known as the "Pioneer Column". This group of mainly white South Africans, with the protection of the British South Africa Police, blazed a trail from Matebeleland through to Mashonaland (1890), establishing forts and settlements. An influx of European settlers and the subsequent formal declaration of Rhodesia (so named in honour of Rhodes) followed this invasion, as a British protectorate in 1891. By 1896, much of Mashonaland and central Matebeleland were under the occupation of Europeans.

White occupation was met with resentment and rebellion culminating in several wars being fought by the indigenous black people. Examples of these clashes include:

- clashes between the Ndebele and the white administration over the 'confiscation' of cattle belonging to the Ndebele as penalty for not paying hut taxes
- the Ndebele uprising after their cattle were shot as a result of the rinderpest scourge – this following the drought and locust infestations (1896-1897)

Britain colonised present-day Zimbabwe during the period from about 1890 to 1953 when the colony (as Southern Rhodesia) together with its neighbours, Northern Rhodesia (present day Zambia) and Nyasaland (present day Malawi), formed a federation. The united government (consisting mainly of white European settlers), nonetheless remained under the firm control of Britain. The federation aimed to, and succeeded in, bringing great wealth to the member nations through the sharing of their respective resources. This prosperity was not shared with the black majority in the respective countries. Instead, the oppression of the black people continued and became entrenched in the laws. This resulted in mounting discontent among the black people, culminating in widespread violence throughout the region in the

1950s. Northern Rhodesia and Nyasaland eventually gave in, leaving the federation to become independent Zambia and Malawi respectively. Southern Rhodesia changed its name back to Rhodesia and remained a British colony. By 1964 all of Great Britain's colonies were independent – except for Rhodesia. The Rhodesian administration resisted Britain's advice to grant the black majority improved political rights, such as the right to vote, and gradually grew further away from Great Britain.

In 1965 Rhodesian whites, led by Ian Smith, broke away from Great Britain, declaring their independence in a move known as the Unilateral Declaration of Independence (UDI). This created an "independent" Rhodesia without the consent of Great Britain. At the same time, spurred on by resentment towards oppressive white rule and by the fact that most other African countries were enjoying black majority rule, black nationalism and political strength increased, resulting in the launching of the decisive war of liberation called "Chimurenga". The Chimurenga war was to last until 1979 and usher in black majority rule.

The Armed Struggle and the Lancaster House Settlement

The war of liberation was based on a guerilla tactic. The two most active parties were the Zimbabwe African People's Union (ZAPU) and the Zimbabwe African National Union (ZANU). Their liberation forces, the Zimbabwe African People's Revolutionary Army (ZIPRA), and the Zimbabwe African National Liberation Army (ZANLA) respectively, were trained in neighbouring countries and would return to wage guerilla style warfare against the Rhodesian Security Forces. This went on with the background of Britain continued call for the granting of political rights to the black majority. While the Smith government did make some changes such as increasing the black representation in parliament, Smith's government remained firmly in control and discriminatory laws were not eliminated. Instead, in 1977 the Smith government reached an internal settlement with a group of Zimbabwean politicians with whom it had been in collaboration; the United African National Coalition (UANC) led by Bishop Abel Muzorewa; ZANU led by Reverend Ndabaningi Sithole, the former leader of ZANU, and the Zimbabwe United People's Organisation (ZUPO), led by Chief Chirau. This led to an "independence" in which the country was renamed Zimbabwe Rhodesia.

This interim arrangement characterised by a rotating Prime Ministership between the parties participating in the settlement, was not acceptable to the popular liberation forces of two parties, ZAPU and ZANU fighting out of Zambia and Mozambique respectively and led by Joshua Nkomo and Robert Mugabe. The war intensified after the formation of the Zimbabwe Rhodesia government. This together with the long term effect of the economic sanctions that had been imposed on the Smith government at UDI resulted in the Smith government agreeing to attend settlement talks called by Britain. The Lancaster House Conference as it was called, was held towards the end of 1979. Represented at the Lancaster House Conference were the Patriotic Front (ZAPU and ZANU), the Zimbabwe Rhodesia Government and former

white rulers. The discussions were protracted, lasting nearly four months, but resulted in a ceasefire settlement acceptable to all parties.

Hence, it can be seen that in essence, the country was effectively under white colonial rule from 1890 to 1980 until 15 years of civil war brought about self rule for the Zimbabwean masses. The Lancaster House Conference resulted in a settlement, which formed the basis of the constitution for the new Zimbabwe. This new Constitution took effect on 18th April, 1980, independence day for Zimbabwe, after Robert Mugabe, his party contesting as ZANU (PF), had won the all party elections.

The Lancaster House Constitution was characterised by the tendency to protect the interests of the minority white population. Among the most significant provisions of the Lancaster House Constitution in this regard, was the provision for mandatory white representation in parliament. White representation would be given 20 of the 100 seats in parliament for a period of 10 years. Hence, whites constituting less than 3% of the population had 20% of the seats available. In effect, the Lancaster House settlement afforded the white minority a degree of political power, which was disproportionate to their numbers in relation to the black majority. The Constitution made provision for subsequent amendments or changes beyond the ten year time limit.

Another example of the way in which the Lancaster House settlement sought to protect the interests of the minority white sector was the provision for dual citizenship.

Independent Zimbabwe under the Lancaster House Constitution

The issue of the Declaration of Rights was another contentious section of the Lancaster House Settlement. Designed to protect the rights of all the citizens of Zimbabwe, the Declaration of Rights sought to find a balance between protecting the existing rights of the white minority, and catering for the black majority demands for equity. Hence, for instance, concerning land, the Lancaster Constitution was designed to strike a balance between the protection of private property and the legitimate desire of the Government to spread land ownership more widely. The new Zimbabwe Government would be able to acquire under-utilised agricultural land for settlement against the payment of adequate compensation. This allowed the government to appeal to the international community for help in funding acquisition of land for agricultural settlement at the same time being able to offer compensation for the land.

Another provision was for the protection of pensions as a Declaration of Rights. If the independent Zimbabwe was to attract public servants of high calibre and of all races it was felt that pension rights, which have traditionally been a feature of Public Service needed to be guaranteed.

Segregation in the schools was to be abolished but the right to establish private schools, which is accorded by other constitutions, or of parents to choose between State and private schools, will be preserved. There was also

a provision for the protection of pensions as a way of enabling independent Zimbabwe to attract and retain public servants of high calibre.

The Lancaster Constitution strictly limited the occasions on which the President was to act on his own discretion. Executive power was vested in the hands of a Prime Minister accountable to Parliament. The operational command of the Defence Forces was also vested in the Prime Minister and the Commanders would be subject to general policy directions from the Prime Minister or other responsible Minister. This was to ensure that the forces were responsive to democratic control.

In spite of these perceived checks and balances, the Lancaster House Constitution was criticised because it was a "cease-fire document", developed in the absence of public participation. Hence, it was seen as having retained instruments that were used to perpetuate white minority rule in the then Rhodesia. Such instruments further continued to enable the state to curtail individual freedoms. Perhaps the most topical of these was the Law and Order Maintenance Act which gave the government extensive powers to address security and political crimes that were not clearly defined. According to the Law and Order (Maintenance) Act (Chapter 65), section 44(2), it was a criminal offence to:

- "(a) write, print or cause to be printed any subversive statement;
- (b) distribute or circulate any subversive statement among the public or any section of the public or supply any written or printed subversive statement to any other person;
- (c) display any writing conveying any subversive statement in such a position that it is visible from any place to which the public has access;
- (d) utter or by means of a recording apparatus play (otherwise than during the investigation of an offence or of proceedings in a court of law) any subversive statement in the hearing of any other person;
- (e) make a subversive statement which is recorded by means of a recording apparatus."

The penalty for a contravention of this Act was imprisonment without the option of a fine.

An important example of what could be considered a compromise position in the Lancaster House Constitution relates to the Bill of Rights. The very incorporation of the Bill of Rights into the Constitution was an improvement on the previous Constitution, which did not incorporate a Bill of Rights. In spite of this, the Bill of Rights has been criticised. The relevant section of the Constitution (Section 11) provided that:

"Whereas every person in Zimbabwe 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;
- (b) freedom of conscience, of expression and of assembly and association;

- (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, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained herein, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

This section has been interpreted as conferring substantive rights on the individual thereby entrenching the privileges of whites, especially relating to the protection of property.

Yet, given the fact that the Lancaster constitution was not subject to fundamental revision in its first ten years of operation¹, a lot of the concerns around land redistribution, bill of rights, relationships between levels of government and arms of government did not dominate the debate even as they resonated in the debates throughout the 1980s, especially in light of the problems in Matabeleland.

¹ In deed, instead of ensuring more balance in the relationship between levels of government and between the arms of government, many of the amendments had the purpose of strengthening the hands of the executive arm. For example, Amendment 23 of 1987 created the Executive presidency and Amendment 31 of 1989 abolishing the Senate and reducing the Parliament to a single chamber.

3. Constitutional Issues in the 1990s & the Need for Reform

The 1990s were characterised by the call for an “all Zimbabwean” constitution. A constitution was seen as being central to national political discourse. As such it was anticipated that a good constitution would embody all rights, beliefs, expectations and values of its people. The very centrality of the constitution would demand that the process of its development would be inclusive and truly “national”. The process leading to the ‘making’ of the Lancaster House Constitution was widely perceived as weak as far as these key points were concerned. As a result, numerous amendments were effected – many of which were also perceived to have largely entrenched the executive branch of government. It is significant, that the people were never actively involved in any of the amendments since none of the fifteen amendments were the subject of official public discussion beforehand nor was there extensive debate in parliament itself.

Constitutional Amendments (1981 – 1999)

	Amendment # and Year	Date of Commencement	Brief description of Change
1.	27 of 1981	10/06/81	Reduced the qualification period for lawyers to the judiciary and the senate legal committee so as to make these various offices more accessible to black lawyers
2.	25 of 1981	31/07/81	Created a separate supreme court from the high court. Also specified qualification period for judges, again, making this more attainable by blacks
3.	1 of 1983	22/04/83 01/09/83	Afforded Parliament the power to abolish dual citizenship Created communal lands where these areas had previously been referred to as tribal lands
4.	4 of 1984	27/04/84	Introduced the office of ombudsman. Reconstituted the membership the Judicial Service Commission – (essentially gave the President more control over it)
5.	4 of 1985	05/04/85	Allowed for the appointment of Provincial Governors (who are appointed by the President)
6.	15 of 1987	21/09/87	Ended the separate roll for whites
7.	23 of 1987	31/12/87	Created the Executive Presidency and abolished the non-executive Presidency together with the office of Prime Minister
8.	4 of 1989	31/03/89	Provided for the AG becoming a member of Parliament (thus bringing the judiciary under the influence of the Executive)
9.	31 of 1989	11/05/90	Abolished the Senate reducing to one chamber Parliament
10.	15 of 1990	03/08/90	Created the second vice-presidency
11.	30 of 1990	17/04/90	Terminated the requirement for land for resettlement to be acquired under the “willing buyer willing seller” condition replacing this requirement with that of “fair compensation”.
12.	4 of 1993	Various, from 01/11/93 to 10/03/96	Re-organised the Prison Service, The Public Service and the Armed Forces, reducing the independence of each these, bringing them more under the control of the relevant ministries.
13.	9 of 1993	05/11/93	Reversed a Supreme Court judgement on the death sentence and declared that delaying execution for a person on death row did not amount to a human rights abuse
14.	14 of 1996		Reversed a Supreme court judgement of women marrying foreign men – such spouses no longer to become automatic citizens. Outlawed discrimination on grounds of gender (for the first time).
15.	10 of 1998		Changed the government financial year from a 1 st July start date to a 1 st January start date.
16.	2000	02/04/2000	Amended provision on compensation for resettlement of land and transferred responsibility for compensation from the Govt. of Zimbabwe

Issue Relating to the Office of the President

The amendments, it has been argued, entrenched, among other things, President Robert Mugabe's powers and reduced his accountability to the voting public. The post of Prime Minister was scrapped in favour of an Executive President in 1987. The upper chamber of parliament, the Senate, was also abolished thus reducing the countervailing powers of checks and balances between the executive and the legislative branch.

Issues Relating to the Bill of Rights

Some of the controls, which were amended under the Declaration of Rights, affected the declared rights to freedom of expression and freedom of airwaves. Despite an August 1995 Supreme Court ruling against the government's monopoly on telecommunications and cabinet promises to free the airwaves in 1997, radio and television remain government-owned and controlled. Unlike a number of other Southern African countries, Zimbabwe's constitution provides no explicit protection for freedom of the press, and the current legal climate for the media is one of official secrecy and inaccessibility.

Human rights groups have been concerned that unless we have a democratic supreme law, "the rights of citizens are in great danger as was witnessed during the food riots (in mid-January 1998) when the army abused people," (Mike Auret, Executive Director of the Catholic Commission for Justice and Peace in Zimbabwe).

Constitutional Reform: An Opportunity to Strengthen Human Rights Protection & Good Governance

Human Rights Abuses

- police brutality against peaceful demonstrators, assaults on union leaders responsible for organising public protests against government policy, military and police using live ammunition and excessive measures against protesters
- arbitrary restrictions and banning of public protests. For instance:
- On December 9, 1997, violence erupted in Harare during a labor demonstration attended by tens of thousands
- Of labourers. Police said to have used excessive forces in dispersing the demonstrators
- reports of the use of excessive force. Government sources reported that at least eight persons were shot and killed during the January 19-22, 1998 food riots. The demonstrations were sparked by price increases on basic commodities such as bread, maize meal, and cooking oil, against the background of a progressively declining standard of living for the average citizen
- on January 26, 1999 riot police broke up a march by lawyers and human rights activists who wanted to petition Parliament over the detention and torture of Mark Chavunduka, Ray Choto and Clive Wilson, "The Standard" newspaper journalists.

To the extent that:

- In January, 1998 the Human Rights Watch today called upon the government of Zimbabwe to refrain from using excessive force against protesters in Harare.
- In 1998 the United Nations Human Rights Committee criticised the Zimbabwe government for its failure to review its human rights record
- In February 1999 The South African Human Rights Commission has called on the SA government to play an active role in ending Zimbabwe's human rights abuses.
- At the Pacific Islands News Association (PINA) convention in 1999, Zimbabwe was named as one of the countries in which the torture, assault, attack and harassment of journalists was on the increase

Governance

The government:

- **Has failed to achieve government accountability**
- Has been unwilling to fully investigate and bring to justice officials killing death of up to 20,000 people during the Matebeleland killings
- Rather than promoting the separation of powers, has systematically concentrated power in the Executive Presidency
- Has failed to foster open political
- Has failed to establish a high quality, apolitical civil service capable of administering government policy effectively and impartially has failed to address the issue of corruption
- Has not sought to foster an open and productive debate between government and civil society. Has failed to promote and to safeguarding human rights
- Has not created an environment for a vibrant independent media, but has, instead, attacked and stifled the media, increasing cases of intimidation and victimisation of media personnel and with top government officials, including the president, attacking the independent media the Government has occasionally refused to abide by court decisions
- Has placed unnecessarily stringent restrictions on opposition party financing

To the extent that :

- At the Eighth Assembly of the World Council of Churches held in Harare in December 1998, the Ecumenical Support Services, a Christian non-governmental organisation denounced bad governance and corruption among a few other ills besetting the country.

The Media and the Struggle for Freedom of Expression:

The state has direct control of the country's largest media group, the Zimbabwe Mass Media Trust (ZMMT). According to amendment to the ZMMT deed, government has the authority to oversee ZMMT's operations. This has effectively given the state a monopoly over the broadcast media.

The government restricted the independent press through the use of broad anti-defamation laws and the Parliamentary Privileges and Immunities Act. The state routinely invokes colonial-era laws such as the Official Secrets Act, which criminalizes receiving official information from unauthorized government officials, to prosecute journalists.

Date	Details
May, 1995	President Mugabe criticizes the independent Press after one of the private newspapers had reported that he and the First Lady had held a secret wedding at State House. Editor Trevor Ncube is detained in connection with this story. The Publisher and two senior editors are subsequently fined in connection with the story.
August, 1995	Supreme Court rules against the government's monopoly on telecommunications and cabinet promises to free the airwaves.
17 th November, 1996	The Zimbabwean Union of Journalists demands that government transfers control over national newspapers to an independent authority, reiterates its request for constitutional amendments to protect press freedom, and calls for the repeal of a law that empowers the state to require journalists to disclose the identity of their sources. Justice Minister Emmerson Mnangagwa's indicates that the government has no plans to change Zimbabwe's media laws. He responds saying "Unrestricted freedom would lead to disorder and anarchy and would harm social and national interests".
December , 1996	President Mugabe informs the ZANU PF congress in Bulawayo that the independent press in working with the international press to malign the country's leadership. He speaks of the need to "deal with" the independent press.
January 1997	A Radio Three presenter is dismissed after she reported that a flood of mainly black listeners had called her show, disputing the fact that ongoing unrest was caused by whites who were disgruntled with government designation of white-owned farms. The presenter was informed that among the complaints about her broadcast had been one from the office of the president.
	ZANU PF's deputy information officer announces the need to counter the "unacceptable propoganda of the opposition press".
February, 1998	President Mugabe calls for a radical shake-up of the state-owned media in order to tighten his grip of the state-controlled media. This comes after the government media have recently adopted an

	<p>unusually critical tone.</p> <p>In a related incident, Radio 3 announcer, Gerry Jackson is dismissed after she announced that calls from mainly black listeners were disputing the official view that ongoing unrest was the product of whites disgruntled with land designation. One of the complaints leading to her dismissal is said to be from the office of the President.</p>
13 th July, 1998	<p>President Robert Mugabe attacks the independent press for "not respecting the privacy of individuals". He says that the privately-owned Press is "thriving on selling manufactured lies to the people in the name of freedom of the press" and poses the question of whether or not such press should be allowed to continue. The President threatens to introduce legislation to clamp down on the independent media.</p>
January, 1999	<p>Mark Chavunduka, 34, editor of the independent <i>Standard</i> newspaper, and reporter Ray Choto, 36, are detained by the military after reporting on a suspected coup plot. Pressure from the High Court eventually results in the subsequently results in the two being turned over to civilian authorities. Both are reported to have visible marks on their bodies from cigarette burns and electric shocks.</p>
	<p><i>Standard</i> Publisher Clive Wilson is arrested a day after the release of Mark Chavunduka and Ray Choto. He is charged under state security laws.</p>
1 st week of February, 1999	<p>The Department of Immigration demands that all foreign and local journalists working for the international media submit their work permits and passports in a move interpreted as intimidation of foreign correspondents.</p>
4 th February, 1999	<p>Information Minister, Chen Chimutengwende announces clamp-down on independent press. He says that the owners of private publications are funded by international fascists bent on destroying Zimbabwe. The Minister announces plans to introduce stringent measures to regulate the operations of private-sector media organizations.</p>
6 February, 1999	<p>President Robert Mugabe verbally attacks four Supreme Court justices for asking him to reaffirm commitment to the "rule of the law" following the</p>

	refusal by military officials to release journalist Mark Chavunduka from illegal military detention, in defiance of a High Court ruling for his release.
	In a state of the nation address, President Mugabe hits out at various journalists saying that, "are bent on ruining the national unity and loyalty of our people and their institutions Let them be warned therefore that unless their insidious acts of sabotage immediately cease, my government will be compelled to take very stern measures against them and those they have elected to be their puppets,"
8 th February, 1999	Dr Ibbo Mandaza, Publisher and three other journalists from an independently owned newspaper, The Zimbabwe Mirror, were detained in connection with an article deemed by the military to put Zimbabwe's intervention in the Democratic Republic of Congo (DRC), in a bad light.
March, 1999	Youths in Zanu-PF T-shirts storm the building of The Standard newspaper and threaten to torch the offices if the paper did not tone down its anti-government stance.
July, 1999	Government announces its intention to back off from its plans to open broadcasting to non-government groups. Permanent Secretary of Information, Willard Chiwewe, announces that the government has postponed the enactment of broadcasting legislation that was meant to pave the way for the opening up of the airwaves in Zimbabwe.
August, 1999	President Mugabe charges that independent newspapers were "planning to topple his government."
9 th December	The draft constitution calls for the creation of a "media commission" with broad powers. The commission would be able to take disciplinary action against news-media staffers "who are found to have breached any law or code of conduct applicable to them."

Issues Relating to the Electoral System

Another aspect of the constitution that received criticism over the years was the fact that it allowed President Robert Mugabe to annul election results at his discretion. Under section 58 the President also had the power, to appoint 20 non-constituency legislators of the 150 members of parliament, while another 10 were chosen by a college of traditional chiefs arguably faithful to the ruling party. In 1999 all but three legislators belonged to the ruling party.

Section 58 of the Constitution also gives the President power to appoint the Electoral Supervisory Commission and the Registrar General, whose main responsibilities are to compile a national voters' roll and to run local government, parliamentary and presidential elections. Under the same section, the President is also entitled to appoint members of the Delimitation Commission that decides on constituency boundaries. The Delimitation and Electoral Supervisory Commissions are the key institutions in the electoral system. The fact that appointments to these key institutions are all by the President, who is the leader of the ruling party, has been seen as a guarantee of the fact that only those who are likely to sympathise with and are likely to safeguard the interests of the ruling party and its leader, are appointed to the relevant positions.

The Lancaster House was amended no less than fifteen times between 1980 and 1999. Among the most significant changes to the Lancaster House Constitution were;

- the abolition of the post of Prime Minister and President and the creation of the Executive President.
- the abolition of the House of Senate.

The changes made (see Table below) effectively obliterated the separation of the legislature, the judiciary and the executive concentrating power in the Executive Presidency.

[An overview of Presidential Powers Following Amendments to the 1979 Constitution](#)
(This Table Needs attention. It refers to the Presidential Powers under the DRAFT Constitution!)

President's Powers	Controls
Proroguing Parliament Dissolving Parliament Appointing and removing the Vice President or any Minister or Deputy Minister Assigning and re-assigning functions of the Vice President, any Minister or deputy Minister Exercising powers of pardon and the prerogative of mercy in view of convicted criminals.	None
Deploying Defence forces outside Zimbabwe. Proclaim and terminate martial law	Doe so subject to provisions made by Parliament

Declaring war and making peace.	
Deploying troops in defence of Zimbabwe.	Consults his own appointee the Prime Minister.
Deploying troops to assist the police in the maintenance of public order.	Consults his own appointee the Prime Minister and is required only to "inform" the Parliament
Appointment of Independent Commissions.	Has to obtain Senate approval but Senate may be controlled by his own Political Party.
Appointment of the Public Protector.	Has to be advised by the Judicial Service Commissions which he appoints and must approved by a Senate which may be controlled by his own party
Appointment of the Public Service Commission (PSC).	Only approved by Senate. No requirement that the Prime Minister be consulted.
Appointment of the Defence Service Commission.	Senate Approval. Prime Minister not consulted.
Appointment of the Prison Service Commission	Senate Approval. Prime Minister not consulted
Appointment of the Attorney General	Consults his appointees in the Prime Minister and Judicial Service Commission. Also requires Senate approval but Senate may be controlled by his own party.
Appointment of Commanders of Defence Forces	Consults Defence Forces Commission, which is appointed by him.
Appointment of Commissioner of Police	Advise of Police Service Commission, which is appointed by him.
Appointments of Commissioner of Prisons.	Advice of the Public Service Commission which is appointed by him.
Operational use of the Defence Forces.	Must consult his appointee, the Prime Minister.

(Source: The National Constitutional Commission, 1999)

The Road to a New Draft Constitution

THE NEW CONSTITUTIONALISM IN AFRICA

In the tradition of the Lancaster model, constitutions have largely been viewed as a set of rules and administrative arrangements, meant not to regulate or limit excessive state power, but rather to validate the post-colonial state by using the rationale that anything legal is by definition legitimate. Constitutions that sanctioned one-party states, incorporated undemocratic clauses and racial segregation have not only been seen as legal, but also legitimate documents regulating the conduct of state affairs, often to the detriment of the population.²

For this reason, rulers of the post-colonial era have recognised the usefulness of written constitutions to legitimate their actions, while avoiding the values of constitutionalism, which would have placed limits on arbitrary, or excessive use of power. Even the most progressive post-colonial leaders have shown deep ambivalence about constitutionalism. Post-colonial governments have used the letter of the law as an instrument for control and repression, and the military regimes that overthrew them perfected the art of manipulating the law to justify their hold on power. Helped by the dominant super-power politics of the cold war era that facilitated monopolies on power by coercive rulers, the manipulation, trivialisation, and disregard of the constitution has become the defining characteristic of governance in much of post-colonial Africa.³

The collapse of the cold war exposed this soft underbelly of the African State, and over the last decade the continent has witnessed many positive changes. Even so, the gap between constitutionality and constitutionalism is enormous. Many African countries are democratising in the formal sense, and significant strides have been made in the areas of rule-based governments, whether in the form of governments that emerged out of the various national conferences or ones elected by popular vote. Keeping the examples of perhaps South Africa, Uganda and Eritrea aside, it is still premature though to speak of the existence of constitutional governments. The formal end of authoritarian rule has not yet led to an acceptance of the state as representing a broad social consensus, beyond what is made apparent during elections.

Although an essential feature of peace-building and conflict management is often the degree to which consensus can be achieved among contending parties, elections have nevertheless become the “legitimate” method of demonstrating democracy abroad while consolidating political exclusion at home. Left with little or no alternatives, disaffected parties have often resorted to violent means of challenging the status quo. The use of military force now prevalent in several parts of the African continent must be seen as the inevitable consequence of the acute nature of internal contradictions and the

² Thus, some of the technical and administrative concessions granted in the post-independence constitutions of Kenya and Zimbabwe remain key sources of neuralgia in the current struggle for constitutional change in these countries.

³ Okoth-Ogendo (1993).

almost total absence of any credible mechanisms for conflict mediation and transformation within societies. Equally, the upsurge in the campaign for process led and people driven constitutions in Africa represents another, perhaps a more innovative and less violent ridden way of resolving the crisis between the State and society that we have witnessed since the collapse of the cold war.

Since multi-partyism by itself had proved to be an inadequate conflict management tool in newly post-colonial states of Africa, advocates of the new constitutionalism have stressed that elections can at best only be one stop along the road towards bringing about democracy. They argue that elections alone do not necessarily lead to a deepening of democracy nor do they stop anti-democratic trends. This is especially true in countries where the pressing issues of identity, nationality and citizenship raised by constituent communities have been ignored by politicians in their search for electoral legitimacy.

Given the way Africa has now been caught between the forces of globalisation and localisation which has compounded the problem of insecurity, violence and militarisation through the forced policies of structural adjustment and the untoward influence of transnational corporations, at no time has the need to turn to consensual resolutions of differences been more crucial than now. The worsening of poverty by these economic factors also enhances communal conflict, which in turn poses one of the greatest threats to making democracy a reality.

In light of these challenges, reconstituting the African State along equitable and just lines is being pursued with extraordinary fervour. At every level on the continent, the idea has taken root that the Leviathans of Africa must no longer function as “virtual democracies” (Joseph, 1997) but must be refashioned to reflect the realities of their multifaceted societies. This has been reflected in the constitutional conferences in Benin, Togo, Niger, the Democratic Republic of the Congo, and Cameroon in the early 1990s, in the successful constitutional arrangement of South Africa, and in the process-based Constitutional commissions in Uganda and Eritrea.

From the experience of these countries, the last decade in Africa has witnessed an upsurge in the demand for constitution-based governance that broadly reflects, in terms of *process and outcome*, the will of the people. Today, the struggle for constitutional reform in Kenya, Tanzania, Zimbabwe and Nigeria⁴ typify the second liberation/independence struggle in the continent. This struggle has been led predominantly by civil society in Africa, since the political parties have proved either incapable or unwilling to push for constitutions that will promote just and equitable societies, being instead distracted by a chance to exercise power.⁵

⁴ In the four African states, civil society coalitions have emerged to promote many ideas of political constitutionalism in the quest to change the nature of the state itself.

⁵ See Julius Ihonvbere, *The New Constitutionalism in Africa*, (London: Centre for Democracy & Development, 2000) for an elaboration of the role of civil society in the constitutional reform campaign in Africa.

The change in focus from constitutionality to constitutionalism, where constitutions are now seen as a tool for bridge-building among members of civil society, has become part of the rhetoric of African states and their governments. Activities in this field, however, continue to focus mainly on treating constitutions as events, rather than process, giving less importance to consensus building between the State and civil society and between the ordinary citizen and the state. Yet in order to formulate African political cultures grounded in human rights and social justice, an organic link is needed between the constitution as a rule of law instrument primarily concerned with restraining government excesses and protecting ordinary citizens, and the constitution as a legitimation of power structures and relations based on a broad social consensus in diverse societies. The task at hand is to move away from the old constitutionality which overemphasised law and state power towards a new political and socio-economic *constitutionalism* that will have much more relevance to the needs of African citizens.

The Zimbabwean Context: Civil Society, Government and the International Community

The process of constitution making in Zimbabwe was initiated by civil society. Through successive legislative acts passed by a single-party dominated parliament, the presidency had grown excessively powerful while the capacity of other governmental institutions to ensure accountability diminished. Fearing the consequences of this development, efficacious civil society organizations initiated broad-based discussions that took institutional form and culminated in the founding of the National Constitutional Assembly in 1997.

The National Constitutional Assembly and the Beginning of the Constitution-Making Process

As an effective pro-democracy network, the NCA strives to keep democratization as a priority issue on the national agenda and to consistently advocate for good governance. Its membership comprises both institutional and individual members. Institutional members include scores of civil society organizations including women's groups such as the Women's Coalition; human rights advocacy groups such as Zimrights and the Catholic Justice and Peace Commission; and religious organizations such as the Zimbabwe Council of Churches. Zimbabwe Union of Democrats and the recently formed Movement for Democratic Change are among the political parties that are members of the NCA. Many eminent jurists, prominent academics and other accomplished individuals of Zimbabwean society hold membership in NCA either as individuals or through their membership in other organizations. Led by the NCA, the debate about governance evolved a consensus that the reconstitution of political order is the most critical challenge in the democratization process.

Government's Leadership of a Process-driven Approach to Constitution-Making

By early 1999, the Government of Zimbabwe took leadership of the debate and sought to organize a framework for the construction of a new constitution. On April 26, 1999, the government by Statutory Instrument 138A of 1999 appointed the Constitutional Commission and charged it with the responsibility to set in motion a process the outcome of which should be a new constitution to be presented to the President of Zimbabwe on or before November 30, 1999. The Commission consisted of 400 members. The Zimbabwean Parliament of 150 members constituted the core of the Commission's membership. Other members were drawn from the private sector and a cross section of civil society entities. An impressive leadership bureau was appointed. The respected Judge President of the High Court was appointed Chairman of the Commission. A renowned academic, and an Anglican bishop and a prominent female statesperson were appointed as vice chairpersons of the Commission.

In arriving at a draft constitution, the Commission was directed by the President in its terms of reference to review the existing constitution and to "afford the people of Zimbabwe the opportunity to author and found their constitution enshrining freedom, democracy, transparency and good governance." To fulfill this goal, the Commission was instructed to gather evidence through its own organizational structures which it was free to create, hold public hearings throughout Zimbabwe to receive oral and written submissions and to ensure that the new draft constitution would be informed by the views of the Zimbabwean people. The President further informed the Commission that after its submission on or before November 30, 1999, the draft constitution will be put to the people in a referendum and if accepted, will be brought into force through appropriate legislative act.

In ascertaining the views of the public, the Commission organized plenary and committee sessions and took oral and written depositions, sometimes accepting full drafts of proposed constitutions. To gather views from around the country the Commission organized an extensive outreach programme, which included town hall meetings and other forms of discussions at local and community levels. An expansive media outreach programme employed local radio and television to assist in information dissemination as well as gathering evidence in all languages spoken in Zimbabwe. Additionally, the Commission undertook a scientific survey to further strengthen its findings on specific issues. To learn from experiences of others, the Commission organized an international conference bringing together constitutional scholars and related experts from around the world. By its own count, the Commission received about 7000 written submissions, held more than 4000 meetings nation-wide and interacted directly in public meetings with more than half a million people.

On November 29, 1999, the Commission submitted its report in the form of a draft constitution to the President of Zimbabwe.

The International Community and the Constitution-Making Process

The international community has been very supportive of initiatives to improve governance and promote democratization in Zimbabwe. Through multilateral and bilateral cooperation, international support for investigation into land reform issues, resolution of disputes and promotion of dialogue with organized labor, strengthening of human rights education and advocacy, gender equality and civic education are among the areas of ongoing cooperation between civil society and the international community in Zimbabwe. International support for NCA-led dialogue about constitutional review was a logical development within the framework of the international community's ongoing involvement with civil society in Zimbabwe. Coordinated by UNDP, support for NCA came from the governments of the Scandinavian countries of Sweden, Norway, and Denmark and from other European countries such as the Netherlands and from international non-governmental organizations based in Europe.

A major concern of international partners was to ensure that the dialogue proceeded with transparency and inclusiveness. International support continued for the constitution-making process after the government assumed leadership of the process. Both the Constitutional Commission and NCA received considerable international support. With government leadership of the process, concerns about its transparency and inclusiveness were heightened. Coordinated by UNDP, international partners sought to facilitate the process and ensure its consensual character, integrity and credibility. Unfortunately, relations between the Constitutional Commission and NCA became increasingly polarized and dialogue about the constitutional process became more bitterly partisan. International partners strove to elevate the level of discussion between the Commission and NCA and to encourage transparency and an accountability system.

To bring comparative knowledge to bear on the constitution-making process, the Constitutional Commission held a major international conference in November 1999 which attracted leading constitutional experts from Africa and around the world and there is evidence to suggest that the Commission reflected many of the conference' recommendations in the final draft of the constitution.

The Appointment of the Constitutional Commission and Polarization of the Constitution-Making Process

Relations between the NCA and the Constitutional Commission began to go sour from the moment the Commission was formally established. Differences emerged between the leaderships of the Constitutional Commission and the NCA over both the process of constitution making as well as the handling of contentious issues during the course of the work of the Commission.

Differences about Process:

Method of Establishing Commission: The first area of difference about the process has to do with the method used by the government in establishing the Commission. Members of the NCA maintained that the Constitutional Commission was established under the Inquiries Act, a legal framework that leaves enforcement solely to the discretion of the President. Many argue that the President's record of enforcing recommendations from previous commissions established under the Inquiries Act is poor; therefore there is no guarantee that the President would put to the Zimbabwean people a document of their liking or ultimate enforce once that contains their genuine wishes. That the President was not duty bound under the Inquiries Act to enforce the report provided an immediate cause for suspicion by the NCA of the motives of the government. NCA leaders maintained that under the circumstances and in view of a prevailing climate of suspicion, the government would do well to strengthen the National Constitutional Assembly by the appointment of more members and empower that body to set in motion processes that would produce a new constitution for Zimbabwe.

In responding to this criticism, the leadership of the Constitutional Commission and other supporters of the process argue that the government has a constitutional responsibility to lead the process of constitution-making and should not be called upon to relinquish that responsibility. They further argued that the President would have been within his legal rights had he simply appointed a parliamentary committee or any other drafting committee to complete a draft constitution and submit the draft to the Parliament without reference to anybody. Operating under the principle of inclusion, the President opted for the production of a draft constitution through an inclusive consultative process. Spokespersons for the Commission claimed that the NCA wanted the government to virtually dissolve itself into a national sovereign conference, a transitional entity as such that would produce a new constitution and establish a caretaker government.

Appointment of Members of the Constitutional Commission: A second area of difference concerned the appointment of members of the Commission. Two types of issues were raised by NCA and other opponents of the draft constitution in this respect. The first has to do with what was considered the lack of adequate consultation in the appointment of members of the Commission. In this regard, leaders of the NCA argued that the government adopted an ad hoc approach those targeted prospective members in a rather individualistic and personalized manner. While admitting that the NCA was requested to participate, NCA leaders contend that the government moved swiftly to announce the establishment of the Commission and the names of its members before having heard from the NCA. Secondly, some NCA members maintained that the inclusion of the entire membership of Parliament provided an enormous imbalance in favor of the views of the government since virtually all MPs on the Commission came from the ruling party.

Responding to these assertions, spokespersons for the Commission argued that it was the NCA that opted not to participate on the Commission once the government was not prepared to relinquish its leadership role of the process.

They further argued that although members of parliament from ZANU-PF are in the majority in the Parliament, neither the party nor the Parliament is a monolith. By including members of Parliament, the Commission would be able to put their constituency machinery to work in gathering information about the wishes of the people. Furthermore, the draft constitution would already have a constituency of support by the time it was submitted to that body.

Lack of Transparency: The Commission was accused initially of making up the rules as it went along. It was accused of failing to outline its plan of action in clear terms for the public. Those making the accusation asserted that, for example, not much was said about holding a referendum until very late in the drafting process and even at that, details about the referendum were not released until a day before the actual voting. They also asserted that although public hearings took place to obtain views of the people as inputs into the draft, the Commission failed to reflect the views of the people in the draft constitution as they were meant to be reflected. Leaders of the Commission asserted that not all proposals received from the public could have been written willy nilly into constitutional law. They also argued that many proposals that were of a quality relevant to the constitution required amendments or adaptations to ensure consistency or for one reason or another.

Lack of Adequate Civic Education: The details of the draft were not widely publicized; as a result the people of Zimbabwe did not know much about the content of the constitution. This criticism was heard from a larger sector of the population. It was stressed, for example, that the draft constitution was only published in the Ndebele language two weeks before the referendum. Others stated that the English language draft was sold at a price not affordable by many. Leaders of the Commission retorted that its critics were the ones that failed to promote opportunities for civic education because they showed more interest in suspecting motives behind the provisions of the draft rather than ensuring that the people understood the contents of the draft.

A Rushed Process: Across the society, people complained that the process was being rushed unnecessarily. As a prominent opposition activist put it, “the referendum is rushed; the entire constitution-making process is rushed—all for no democratic reason.” The entire constitution-making process that began with the appointment of the Constitutional Commission in April 1999 was provided only 10 months to run its course and produce results from a referendum. Clearly, this was too short a time frame for such an elaborate participatory process. Government officials and spokespersons for the Commission argued that the referendum had to take place before parliamentary elections that are fixed by statutes and cannot be changed. Parliamentary elections must take place in April but could be delayed only for a few months.

Undertaking Voters Registration Instead of Preparing for Referendum: While Zimbabwean awaited information from the office of the Registrar General about the modalities for the referendum, that office seemed preoccupied with a campaign of voters registration that was of little relevance to the

referendum. The high priority placed on perfecting the voters roll at that time was a source of suspicion. Skeptics were convinced that in revising the voters roll at that time, the government was preparing the basis to rig the referendum. The Registrar General explained that the updating of the voters roll is an ongoing exercise which is intensified as elections draw near. He explained that the voters roll would be helpful during the referendum to identify resident aliens who may not have other forms of identification.

The Question of Credibility: Underlying all the points of differences is the question of credibility. Distrust runs very deep. The opposition perceives the government as being untrustworthy. The Executive and the Registrar-General are the main focus of suspicion and distrust. As a creation of the Executive, the Constitutional Commission seemed to have inherited the lack of credibility with which the government is perceived by both the political opposition and others who opposed the draft constitution. In a similar manner, supporters of the draft constitution maintained that the NCA and others who opposed the adoption of the new constitution were opposition people who want to use the referendum as a subterfuge as their real intention is to topple the elected government.

All in all, the NCA and its supporters declared the constitution-making process seriously flawed and concluded that a flawed process could only produce a flawed product.

The Drafting of the New Constitution and Polarizing Issues

As to be expected, there were many provisions in the draft constitution on which Zimbabweans disagreed among themselves. Even within the Constitutional Commission there was no unanimity on all issues. For example, there were differences among members of the Commission as well as within the opposition on such issues as the nature and extent of decentralization desired and the adoption of an electoral system under the principle of Proportional Representation or First Past the Post. On most such issues, political and civic leaders of Zimbabwe seemed to have found ways to work out their differences and to accept compromises. Nevertheless, two issues seemed to have created considerable heat and polarized Zimbabwe, especially its political and civic leadership. The first issue has to do with the powers of the president and the second has to do with land reform.

Presidential Powers: Over twenty years of independence, the constitutional order of Zimbabwe has evolved a strong executive presidency. At independence, a parliamentary system of government with an executive prime minister chosen from and responsible to the parliament was put in place. Some years later, a presidential system with a strong executive president was introduced. Since then, Zimbabwe's constitutional order has seen the progressive strengthening of presidential powers through successive parliamentary acts. Couched in the historical-cultural context of a war of liberation out of which a virtual single-party system emerged, Zimbabwe's constitutional order was rife for the over-centralization of powers in a towering presidency. In the current wave of democratization, Zimbabweans find this

constitutional arrangement no longer acceptable or conducive to the enhancement of their democratic aspirations. Lately, even within the ZANU-PF ruling party there have been rising voices in favor of reducing the powers of the president. The desire to limit or curtail the powers of the president has been the single most important factor-giving rise to and subsequently driving the initiative for constitutional reform. As one opponent of the draft constitution put it, “the main reason why a constitution review was needed was because this over-powerful presidency needs to be tamed.” Under the circumstances, for most Zimbabweans a new constitution that does not reduce the powers of the president is considered wholly unacceptable no matter what other acceptable features it contains.

When asked in its national scientific survey conducted by the Constitutional Commission, 55% of respondents expressed their preference for an arrangement in which executive powers were exercised by an executive that included an elected ceremonial president and a prime minister. Baffled by the inconsistency, the Commission decided to provide its own interpretation of the inconsistency. In defense of this decision, some members of the Commission argued that it was not scientifically possible to return to the same respondents in the sample for clarification of the inconsistency—as if this is the only scientific method available to handle such survey research problems. The Commission addressed the inconsistency in the draft constitution by providing a power-sharing arrangement in the executive. Chapter V of the draft constitution spells out a power-sharing arrangement between an elected president and a prime minister appointed by the president from the parliament. However, the preponderance of power rests with the president, including the power to remove the prime minister, dissolve parliament, appoint ministers of government with the advice of the prime minister, and preside over the cabinet. Only day-to-day operational matters are left to the prime minister. It would appear that to the majority of Zimbabweans, Chapter V of the draft constitution did not “tame” the presidency. Hence, the vigorous campaign against the draft and its eventual defeat.

Leaders of the Constitutional Commission and other supporters of the draft constitution argued that Chapter V was a reasonable approximation of the wishes of the people. The desire to have an elected president and a prime minister required the creation of an arrangement in which an elected president will perform executive duties with the assistance of an appointed prime minister. The Commission opted for an emphasis on the fact that the president was to be **elected** and not on the desire that the president should be a **titular** leader. The Commission’s leadership accused the opponents of the draft of hinging the fate of a balanced document on a single issue and linking that issue to their dislike for the incumbent president. Clearly, reducing a constitutional issue to dislike of the incumbent president at a time of economic hardships was a strategy that robbed the nation of an opportunity to objectively review a proposed arrangement that would hold for periods far beyond the current economic crisis and the incumbency of the current leader.

Land Reform: No issue invokes emotions as the issue of land. At present, 4000 white farmers are said to own 75 percent of all arable land in Zimbabwe. Although the ratio was wider before independence and has been narrowed a bit, for Zimbabweans generally, it still remains unacceptably wide. For the leadership of ZANU-PF and others who participated or identified with the liberation struggle, the question of land was at the heart of the conflict; therefore it is only by addressing the land question that the agenda of the liberation struggle can truly be brought to a close. To address the land question requires the transfer of some arable land from white farmers to black rural inhabitants. The challenge that has faced the government of Zimbabwe over the past twenty years is to find a formula to effect such arable land transfers without undue prejudice to the white landholders.

Put in the context of the constitution-making process and juxtaposed against the issue of presidential powers, the land issue has become a source of greater polarization. At the core of one side of the issue is the leadership of ZANU-PF and the government whose policy on land transfers has relied upon Britain, the former colonial power, to bear the cost of such transfers. Britain has refused to accept such responsibility and in doing so rendered the policy unenforceable. At the core of the other side is the group of white farmers and others who argue that a land reform policy that imposes an obligation on another country on grounds of historical responsibility is unreasonable.

Ordinarily, many Zimbabweans support the government's land reform policy; however, support for this policy pales when considered within the context of the current constitution-making process, where the government's motives are suspect and the need to curtail presidential powers seemed to be an overwhelming priority. In other words, in rejecting the constitution, the majority of voters seem to be reacting to a more compelling provision having to do with presidential authority triggered by the persisting perception that the regime seeks to manipulate the land issue for its own purposes at a time when the people want a change of regime. Consequently, opponents of the constitution who would normally support the government's land reform policy are now rather inarticulate in stating a position on the land question in the context of the debate about the new constitution. This has in turn triggered emotional responses from leaders of the Constitutional Commission and other supporters of the new constitution and has further widened the divide between supporters of the new constitution and those who opposed its adoption.

Consequences of Polarization:

Debate about the constitution making process and a few critical issues assumed a character out of the ordinary. Central to the debate were the powers, person, and tenure of the president. Because the president was at the center of the debate, it quickly became narrowly partisan. Because the character and tenure of the president came under critical review as part of the debate, it became strident and acrimonious.

Narrow Partisanship: The first evidence of partisanship is about ownership of the constitution-making process. The Constitutional Commission claims

ownership and so does the NCA. The NCA seems to feel that it has been robbed of its brainchild. The leadership of the Commission felt a need to defend its product against what it perceived as the onslaught of the opposition. The fact that some members of the leadership of the NCA were high officials of the Movement for Democratic Change (MDC) political party strengthened the Commission's perception that the opposition was out not only to reject the new constitution but to get the president. The NCA, the major organized opposition to the new constitution perceived the ZANU-PF party as using the constitution making process in a partisan way to further entrench itself in the face of popular opposition. Once the partisan mind-set set in, the debate deteriorated in quality, generating more heat than throwing light on the issues and process. The strident tone of the debate and the acrimony that developed toward the latter days of the process, posed a threat to efforts to find the way forward after the referendum results was announced. Opponents of the new constitution were called sellouts and allies of reactionary forces by those who spoke for the Commission while opposition leaders referred to leaders of the Commission as opportunists and oppressors.

The Spectre of Violence: Intense partisanship in a strident and acrimonious debate had the effect of raising the specter of violence. For example, instead of encouraging an atmosphere of peace and calmness, a high official of government threatened to use "big muscles" against the opposition if violence broke out. Similarly, when asked, "what happens if the NO vote wins?" a leading functionary of the NCA responded with effervescent expectancy: "I think I will be arrested and be put in jail!" Thus, there seems to have been a desire on both sides to lure or bait the other side into taking extreme actions.

Inadequate Civic Education: Two other consequences of the deep polarization which led to a partisan, strident and acrimonious debate were the failure to adequately undertake civic education and to reach a political settlement on the process and the critical issues. Bitterness stood in the way of enlightenment and, as a result, the people of Zimbabwe voted down a document they hardly saw, let alone read and understood. This is unfortunate when considered against the outpouring of international support for programs of civic education available during the constitution-making process.

Unsettled Fundamental Politics: With respect to reaching a political settlement, the debate about the constitution could have provided an opportunity for Zimbabweans to have taken a deeper look more calmly and soberly into key questions that define their body politic and shape their political configuration: issues that have to do with national unity, power-sharing, etc. This was a missed opportunity to reach historic settlements that would constitute the basis upon which the way forward would be charted. Unfortunately, up to the day of voting, the debate degenerated into an un-refereed shouting match.

6. The Referendum

As stated above, some of those who opposed the adoption of the new constitution in the referendum argued that the idea of a referendum was an afterthought that was only included in the constitution-making process as a result of massive criticism of the process. Written evidence does not support this view, since the holding of a referendum was one of the stages of the process announced by the president in April 1999 in his speech establishing the Constitutional Commission. Although the holding of a referendum had been included as part of the final stages of the process, very little preparation seemed to have been made in advance and virtually nothing was done to keep the public informed. One can, therefore, understand how some people may have seen the referendum as an afterthought.

The lack of transparency about the referendum was one of the major shortcomings of the constitution-making process. As late as four days before the voting, when the Observer Team arrived, very little was heard about the details of the referendum. Guidelines governing the holding of the referendum and the list of polling places were only released two days before the voting. There has not been a satisfactory reason given for the failure to prepare adequately and provide information in advance. The Registrar-General maintained that although decisions about the modalities of the referendum were taken in good time, materials relevant for the referendum could not be produced much earlier because of technical problems. Whatever the reason, the lack of transparency reinforced the credibility problem which the office of the Registrar-General suffers and cast further suspicion that the government was planning to rig the vote.

Technical Infrastructure

The Registrar-General was responsible for setting up the technical infrastructure for the referendum. An impressive computerized social data collection and elections infrastructure was set up in Zimbabwe in 1996. The task of the Registrar-General's office was to deploy this infrastructure to hold the referendum. The voting machinery consists of 120 constituencies containing 3600 polling stations. Each polling station was equipped with an average of 3200 ballot papers. Adjustments were to be made where necessary. As far as political jurisdictions are concerned, Zimbabwe consists of 60 districts within 10 provinces. Registered voters are estimated to 5 million. Voting was done manually—by marking a ballot paper. For purposes of the referendum, proof of citizenship or permanent residency status determined eligibility to vote. Possession of a citizen's or permanent resident's national identification card was sufficient proof of eligibility.

OBSERVING THE VOTING

Voting in the referendum took place on Saturday and Sunday February 12th and 13th. The Observer Team of 9 was deployed in 6 of the 9 provinces and

visited 75 polling stations. Although the team covered an insignificant fraction of polling station, it is confident that its findings are applicable generally.

The Setting:

There were generally three types of venues for voting: school auditoriums, assembly halls of community centres and mobile tents. They were all adequately spacious, lighted and ventilated. All except mobile tents had toilet facilities visibly marked.

Security:

A minimum of three police officers could be seen at all times at each polling place. Both male and female officers were on duty. Rarely were they openly carrying weapons. Since balloting took place over two days, police officers kept watch over the boxes during the night and later after the counting, provided escort in transporting the counted ballots to the provincial registry. The Observer Team was informed that as an additional measure to ensure impartial performance, police officers posted at the polling places were selected from areas other than the communities of their normal assignments. No police officer was assigned to a polling station in a locality of his normal assignment. There were no significant reports of unusual police behavior that negatively affected the voting environment or the voting process. On a whole, security coverage was professional, unobtrusive and effective.

Voting Procedure:

The stages of the process of voting were the same at all polling stations: They began with a check of identity card or other required document to establish eligibility to vote and continued with the inspection of hands to ensure that the person had not already voted, then the inking of the hand to prevent subsequent voting, the collection of the ballot paper and retirement to the privacy of the vote marking counter, and finally the depositing of the marked ballot paper into a publicly displayed ballot box and the exit of the voter. All of these stages constituted a voting procedure that was uniform, open and transparent. There were no reports of excessive confusion, sustained undue delay or any abnormalities that could have significantly affected the result.

Polling Officers:

At each polling station there was a team of polling officers headed by a presiding officer. Most of these officers had acquired experience in conducting elections by serving in previous elections. Many of them were civil servants or school teachers. In some places, the headmaster and teachers of a particular school constituted the team of polling officers. While there could have been instances of poor performance by a few polling officers, there was no evidence that poor performance on the part of any polling team marred the voting process or impacted the results. What was readily visible and of concern was the constant conversations that were taking place between the

polling officers who provided the voters with the ballot and voters. There seems to have been a need to teach some voters how to vote—how to mark the ballot paper. Considered against the fact that party symbols have been the defining feature in all elections thus far, voters did need to be taught how to handle a different electoral experience presented by the referendum. In the absence of adequate voter's education, there was clearly a need for voting instructions at the polling station. Perhaps it is in this light that the constant conversations that were going on between the polling officers who gave out the ballot paper and several voters can be explained.

Election Monitors:

There were two groups of election monitors representing the Constitutional Commission and the National Constitutional Assembly respectively. At least one representative from each side was present at every polling station observed. Most frequently found representing the NCA were monitors from Zimrights and the Zimbabwe Council of Churches. Election monitors were allowed to sit and monitor the voting from distances approximately 10 to 15 feet away from where voters were processed by polling officers. Although the conversations between polling officers and voters were not audible to be monitored at such distance, the Observer Team is not aware of any objection raised by election monitors or any indication that they saw anything impartial or disruptive in such low-voiced conversations.

Canvassing for Votes:

As stated above, the constitution-making process broke down into a partisan affair shortly after the appointment of the Constitutional Commission in April 1999; consequently, a long period of partisan agitation ensued. These were the beginnings of the campaign for and against the adoption of the new constitution. The Observer Team was only able to observe, on sight and at close range, the final days of the campaign when it began work four days before the vote. At that point the atmosphere was charged, the society polarized and the debate acrimonious. It is clear that several violations of fair campaign practices and of law were committed by both sides, but mostly by those campaigning in favor of the adoption of the draft constitution. Some of the infractions allegedly committed by those campaigning for the adoption of the draft constitution and reported to the Observer Team include the following:

The hurling of personal insults and threats by high officials of government against the person of journalists whose newspapers opposed the adoption of the new constitution.

The publishing of campaign tracts by the Constitutional Commission referring to opponents to the draft constitution as "sellouts" and implying that such persons are unpatriotic. The Observer Team saw copies of such tracts.

Physically assaulting NCA campaign workers and systematically destroying NCA campaign materials. NCA functionaries showed

the Observer Team torn bloodstained campaign shirts and accused government security agents of physical assaults against NCA campaign workers and systematic destruction of NCA campaign posters.

Deliberately barring NCA from using state-owned media despite court orders to the contrary. Despite court ruling in favor of NCA, ZBC-TV refused to provide adequate air time—even at commercial cost—to NCA as it provided to the Constitutional Commission.

Forcible expulsion of NCA election monitors from polling stations by government security agents while brandishing pistols.

Illegal arrest and detention of eight leaders of the NCA on charges of violating regulations on campaigning by using a voice hailer within prohibited areas on the day of the referendum.

The Constitutional Commission, in turn, accused the opposition, especially the NCA and the independent media of engaging in such unfair campaigning practices as mudslinging and slander; deliberate and malicious distortion of issues and of complicity with those who want to impose a new form of colonial control over Zimbabwe.

In addition to these, some opponents to the draft constitution accused the constitutional commission of deliberately engaging in strident campaigning and acrimonious debate because they were opportunist-seeking jobs in the ZANU-PF government. Constitutional Commission officials accused their opponents of trying to use the referendum in a cowardly manner to bring down the government having failed to do so through the normal electoral process at elections time.

OBSERVING THE COUNTING OF THE BALLOTS

The Observer Team visited several constituency counting posts where counting of the ballots took place and observed as follows:

Ballot Counting Procedure:

Securing and Transporting the Ballot Boxes

Ballot boxes were kept for two nights (12th and 13th February) at polling stations or other designated places. At the end of the voting on the second day of voting, the boxes were sealed; elections officers and monitors witnessed the sealing and initialed the seals. Police officers had the main task to ensure the protection of the boxes over night. Election monitors were free to stay the two nights with the security officers watching the boxes;

Ballot boxes were brought to constituency counting posts during the morning hours of 14th February by police officers accompanied by election monitors;

The ballot counting team assembled at each constituency counting post was headed by a constituency registrar and included the presiding officers and polling officers of all polling stations within the constituency and the election monitors assigned to those stations;

Counting the Ballots

First, the verification process:

The constituency registrar called upon the polling stations to report one at a time;

The polling station team (presiding and polling officers and election monitors) came forward, inspected the box from their polling station and announced the state of the box—that they were satisfied that the box had not been tampered with.

Before counting, the presiding officer of the polling station presenting, announced the number of ballot papers allotted to the polling station, number of ballots cast and number of papers unused;

This was verified by the full team of polling officers under the leadership of the constituency registrar—all being watched by monitors and international observers;

The ballots counted. The most prevalent practice was to count the ballot cast in batches of ten, and then further combine batches of ten in larger batches of one hundred;

Announcement was then made at the end of the verification so that all within the hall would know the tallies.

Second, the removal of spoilt ballots:

This was done by sorting the ballot cast into categories of YES and NO votes and in the process, determining spoilt ballots; Spoilt ballots were agreed upon by the polling officers under the watch of the monitors and removed from the ballots to be counted.

Third, the counting of the ballots:

YES votes were counted by one group of polling officers and NO by another group of polling officers; Each group verified the count of the other;

The total vote count was recorded on the official record sheet, which was then signed by the constituency registrar;

Submission of Results to the Provincial Registrar

Constituency registrar guarded by police officers took the counted ballot papers and the official tally report to the office of the Provincial Registrar.

Submission of Results to and Announcement of Results by the Registrar-General

Provincial Registrar transmitted results (in most places by fax) to the office of the Registrar-General; Announcement of constituency results by Registrar-General

Final announcement of overall results of voting in referendum.

Some Concerns

Overall, the Observer Team is pleased that the referendum was held in an atmosphere that was free and fair and in a manner that was by and large open and transparent. Although the election machinery was slow to start, once geared up, it operated with a minimum of hitches and produced results that can be internationally accepted. Nonetheless, the Observer Team would like to draw attention to a few hiccups which when corrected can improve the quality of performance of the electoral machinery in Zimbabwe.

Delays in Starting the Process: The first area of concern has to do with the delay in starting the preparation for the referendum and the failure to provide adequate and timely information to the voter. This has already been mentioned. Perhaps under different circumstance, if the results had been otherwise, this problem would have generated serious controversy.

Voting results recorded in number/figures and not in words: The official reporting/returns form given to the constituency registrars for recording and reporting the vote tallies from the constituencies provide for the recording of the results in numbers/figures and not in words. If the results are also recorded in words, an added measure against tampering would obtain.

Need for Counter-signature of constituency registrar's report: Although the vote counting was done openly for all to see, the constituency registrar's report was not counter-signed or witnessed by anyone. A counter-signature would enhance confidence in the authenticity of the report.

Need to extend monitoring into offices of Provincial Registrar and Registrar-General: Opportunities for monitoring the referendum ends with the counting of the ballots at the constituency counting center with the constituency presiding officer in charge. While there is no cause for suspicion, the credibility of the process would be enhanced if opportunities for monitoring were extended beyond the counting of the ballots at the constituency counting center into the offices of the Provincial Registrar and the Registrar General. This would provide more confidence in the communications process among the offices of the constituency registrar, provincial registrar and the registrar-general—especially in closely contested elections.

CONCLUSION

The referendum on the draft constitution for Zimbabwe was held successfully. Although there were a number of technical and logistical problems, the electoral system performed well and its officials should be congratulated. The draft constitution was rejected and the results were accepted by all. Unfortunately, given the stridency, personal attacks and massive acrimony that characterized the debate and the deep suspicion and distrust that cast a cloud over the process, one wonders what would have been the reaction had the results gone differently.

The political order of Zimbabwe is going through a change of fundamental magnitude that poses enormous challenges to all Zimbabweans. At the national level, the political order fashioned at Lancaster under the leadership of ZANU-PF has run its course. The pressure for greater democratization is overwhelming despite what is perceived by current ZANU-PF leaders as an unfinished liberation agenda. This pressure for greater democratization is not only driving the process of reconstituting the national political order but also the political orders within ZANU-PF and other political parties and related institutions as well. It is important that all Zimbabwean leaders, by their actions and words, assist in these transition processes.

Momentous change hardly comes with a whimper. The challenge facing all Zimbabweans is to ensure that it does not come with a bang. The closeness of the vote in the referendum signifies that Zimbabweans want their leaders to re-engage and build a national consensus. For the victors in the referendum, the challenge is to ensure continued engagement with the government and ruling party in an effort to find, by consensus, the way forward to a new political order. The greatest challenge, however, is posed to the President and leadership of the ruling party who unleashed a people-driven constitution-making process that is ushering in a new era of greater democratization that must be sustained. Return to the past should not be considered an option. The referendum process imposes a tremendous responsibility on the President and the leadership of ruling party to begin anew to midwife the change, to build upon their acceptance of the results of the referendum by initiating all-inclusive dialogue and consultations. This requires acts of magnanimity and statesmanship, which Zimbabwe rightly deserves.

The Way Ahead

Understandably, the intervening period between the outcome of the referendum and the forthcoming parliamentary elections in June has shifted attention away from the campaign for constitutional reform. Yet while the concentration on partisan politics is predictable and expected. The challenge however remains how to overcome this partisanship in the immediate aftermath of the elections regardless of its outcome.

Luckily, the major stakeholders see a return to an agenda of constitutional reform as the way ahead. In its Election 2000 manifesto, the ZANU-PF

maintains that it “remains the intention of our party to do away with the Lancaster House Constitution and to replace it with a democratic homegrown constitution.” (p.28). In the same vein, the National Constitutional Assembly, under whose umbrella civic organisations worked for the rejection of the draft constitution also maintained that the “NO” vote meant, ‘by and large, NO vote to the present Lancaster House Constitution and all its amendments. The rejection does not represent a wish to permanently abide by the Lancaster Constitution” (NCA Statement issued after the referendum results).

Given the unanimity of views on all sides on the need to abandon the old constitution for a new, democratic document, it behoves on all stakeholders to also agree on a statement of intent which guarantees agreed principles and carefully worked out process and mechanisms by all stakeholders.

Specific Recommendations

- a) A return to the principles of constitution-making
- b) Harmonisation of views and positions
- c) Establishment of an independent commission
- d) A comprehensive civic education programme
- e) A mutually agreed deadlock breaking mechanism

Specific Recommendations

To Government

To Political Parties

To the Broad Civil society Coalition

To the International Community

Appendix 1: Composition of the Observer Mission

Amos Sawyer, (Chairperson of the Observer Mission) is a distinguished political science professor. Professor Sawyer lectured widely in Africa and the United States where he taught at the University of Liberia and the University of Maryland. He was invited to head the first interim government of national unity that emerged from the Liberian National Conference in 1990. He headed the Liberia's national unity government from 1990 to 1994 and has always played prominent role in the search for lasting peace in Liberia and all over Africa. He is currently Chairperson, Board of Directors, Centre for Democratic Empowerment, Liberia and an adviser to the United Nations.

Tajudeen Abdul-Raheem trained at Bayero and Oxford Universities as a Political scientist. He received his D.Phil in Politics from Oxford University where he was a Rhodes Scholar and President of the African Students' Union. Dr Abdul-Raheem was the founding Co-ordinator of the Africa Research and Information Bureau in London from where he was appointed as the pioneer General Secretary of the Global Pan African Movement Secretariat in Kampala, Uganda, the position he currently holds. He has written and lectured extensively on African politics, Pan-africanism and Globalisation. He was at different times visiting lecturer at the School of African & Oriental Studies, University of London and the University of Trier in Germany. He is the editor of *Pan Africanism in the Twenty First Century* (Pluto, 1998) and serves on the Board of the Centre for Democracy & Development and Justice Africa – two leading institutions working in the areas of democratisation, development, peace and security in Africa.

Margaret K.Y. Agama trained as a Medical Doctor at the Kwame Nkrumah University of Science & Technology in Ghana where she received her Bachelors of Medicine and Surgery degrees. She later obtained an MPhil in Clinical Psychology from the University of Ghana and received post-graduate training at the University of Connecticut, United States. Since completing her medical training, Dr Agama has worked with the medical services of the Ghanaian Armed Forces in various capacities and also served on peacekeeping missions in Lebanon and Liberia. She is a Research Associate at the Centre for Conflict Resolution in Accra, Ghana and has developed a keen interest in conflict management and transformation issues especially as they relate to War Affected Children.

Abeba T. Baatai is the Coordinator of the Citizens Referendum Monitoring Group in Eritrea and a former member of the Eritrean Constitutional Commission.

Hassen Ebrahim obtained his BA, LL.B from the Universities of Botswana and Edinburgh. He practised Law in Botswana until 1991 when he returned to South Africa after the unbanning of the ANC. In 1992, he became the national co-ordinator of the ANC's Negotiations Commission. He later became the Executive Director of the Constitutional Assembly, a position he held till

1996 when the Assembly completed its work on the Constitution. In 1997, he became the Deputy Director-General of Corporate Services at the South Africa's Department of Justice. He is an adviser to numerous governments and civil society institutions on the constitution making process and serves on the Advisory Council of the Commonwealth Human Rights Initiative. He is the author of *Soul of the Nation: The Making of South Africa's Constitution* (Oxford University Press, 1998) which received a distinguished mention in the Noma 1999 awards.

Femi Falana is the President of the Committee for the Defence of Human Rights in Nigeria. A distinguished lawyer and human rights activist, Mr Falana was formerly a Students Union leader in Nigeria and president of the National Association of Democratic Lawyers. He was a leading figure in the campaign against military rule in Nigeria and was at various times detained by the military without charge. He recently became the Secretary-General of the African Bar Association.

Willy Mutunga is the Executive Director of the Kenyan Human Rights Commission. An advocate of the High Court of Kenya, Dr Mutunga studied Law at the University of Dar es Salaam, Tanzania and the Osgood Law School in Toronto, Canada. He was at various times Lecturer in Law at the University of Nairobi, Secretary-General of the Nairobi University Academic Staff Association, co-convenor of the National Convention Assembly and Co-Chair of the Citizens Coalition for Constitutional Change (4Cs) in Kenya. He is the author of *Constitutional Making from the Middle* (Mwengo, 1998), an account of the struggle for constitutional reform in Kenya and currently serves on the Board of the International Centre for Human Rights and Democratic Development in Montreal, Canada.

Florence Nkurukenda has been a member and later Deputy Chairperson of Uganda's Electoral Commission since 1991. A Lawyer by training, Mrs Nkurukenda has been involved in the planning and supervision of all the Presidential, Parliamentary, Local and Regional Elections which have taken place in Uganda since joining the Commission

Eze Anaba is a distinguished journalist in Nigeria. He is the Assistant Editor of The Vanguard Newspaper, a national daily with its base in Lagos, Nigeria.

Secretariat

J. 'Kayode Fayemi, Director, Centre for Democracy & Development

Susan Mbaya, Local Coordinator of the Observer Mission.

APPENDIX 2

The Centre for Democracy and Development Observer Mission to the Zimbabwe National Referendum on the Draft Constitution

Observer Mission's Terms of Reference

Introduction

The Expert Group Observer Mission is one of the main aspects of the project on "Promoting Participatory Constitution-Making in Zimbabwe. The objective of the Mission is to assist in ensuring the integrity of the constitution-making process and raise the profile of constitutionalism within the Zimbabwean context. The methodology by which this objective is pursued aims at deepening constitutionality through a process based approach that is inclusive and participatory.

The findings from the Observer Mission would form part of an overall evaluation of the Constitution-making exercise and will be presented in the form of a written report. The report is envisaged to be both in content and form a constructive policy document and an agenda setting document for stakeholders in the Zimbabwean society. At the same time, the report may serve the African as well as the international community as a lessons learned document for use in other countries undergoing constitution-making processes.

Tasks

- As an active member of the CDD delegation, you will prepare comprehensively through familiarisation with the materials on the draft constitution and the process leading up to it, participate actively in the preparatory meetings with different stakeholders, the consultative process and the synthesis report writing providing expert input and analysis.
- Participate in the nation-wide observation of the relevant aspects of the organisation and conduct of the National referendum on the draft constitution in accordance with the laws of Zimbabwe and comparable international standards. The mission is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether the conditions exist for free expression of will by the voting public and if the results of the referendum reflects the wishes of the people.
- You will act impartially and independently. The Mission has no executive role; its function is not to supervise but to observe the process as a whole and to form judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of the referendum.
- The Group is to submit its report to the Director of the Centre for Democracy & Development who will forward it to the Government of Zimbabwe, the leadership of the political parties, civil society organisations, the Ford Foundation and thereafter, to the international community.

APPENDIX 3

The Centre for Democracy and Development Observer Mission to the Zimbabwe National Referendum on the Draft Constitution

Arrival Statement by the Observer Mission

The Centre for Democracy & Development (CDD) is pleased to announce the arrival in Zimbabwe of its eight member Expert Group Observer Mission to the National Referendum on the Draft Constitution, led by former Liberian President, Dr Amos Sawyer. CDD has been actively involved in constitution making exercise in Zimbabwe since the establishment of the Constitutional Commission. The Expert Group Observer Mission is a major aspect of the Centre's work on monitoring and evaluating the Zimbabwean constitution – making exercise. The objective of the Mission is to assist in ensuring the integrity of the constitution making process and raise the profile of constitutionalism as a conflict prevention tool within the Zimbabwean context.

Whilst in the country, the Mission will hold preparatory and post-mortem meetings with different stakeholders and participate in the nation-wide observation of the relevant aspects of the organisation and conduct of the National Referendum. The Mission has no executive role, its function is not to supervise nor to impose views on the electoral authorities but to observe the process as a whole and to form judgement accordingly

The findings from the Observer Mission would form part of an overall evaluation of the Constitution –making exercise and will be presented in the form of a written report. The report is envisaged to be both in content and form- a constructive policy document and an agenda setting document for stakeholders in the Zimbabwean society. At the same time, the report is expected to serve the African as well as the international community as a lessons learned document for use in other countries undergoing constitution-making processes.

ANNEX 4

The Centre for Democracy and Development Observer Mission to the Zimbabwe National Referendum on the Draft Constitution

Consultations Schedule

Time	Meeting
Wednesday 9 February	
1245hrs	Mr. Carlos Lopez United Nations Development Programme
1600hrs	Mr. T Mudede Registrar General
1830hrs	Itayi Musengeyi The Herald
1930hrs	Professor Moyo Southern Africa Regional Institute For Policy Studies
Thursday 10 February	
0800hrs	Ann Wenstrom Swedish Embassy
1130hrs	Rindai Chipfunde Zimbabwe Human Rights Association, also Electoral Support Network
1400hrs	Mr. Thomas Deve The Daily News paper
1500hrs	Mr Isaac Maphosa National Constitutional Assembly
1630hrs	Ms Thoko Matshe Chair of NCA and Coordinator, Women's Coalition

1730hrs Dr. Masiphula Sithole
Institute of Public Opinion

1900hrs Selby Hwacha
Lawyers for Human Rights

Friday 11 February

0830hrs Judge Chidyausiku
Chair, Zimbabwean Constitutional Commission (ZCC)

1000hrs Miss Margaret Dongo
Zimbabwe Union of
Democrats

1130hrs Trevor Ncube
The Independent

1245hrs Dr Ibbo Mandaza
Southern Africa
Political Economy Series

1400hrs Lupi Mushayakarara
Institute for the
Advancement of Freedom

1513hrs Professors Walter Kamba & Jonathan Moyo
Constitutional Commission

1600hrs Depart Harare for Provinces

Saturday 12 February

Referendum

Sunday 13 February

Referendum

2030hrs Mr Bekhithemba Sibindi
Imbovhune Yamahlabezulu

Monday 14 February

Morning Counting Stations

1500hrs Depart Provinces for Harare

2000hrs Group Dinner

Tuesday 15 February

0800hrs Christopher Mushonga
Foundation for Democracy in Zimbabwe

0900hrs	Thomas Erickson Norwegian Embassy
1000hrs	Mr. Peta, Editor Financial Gazette
1100hrs	Juliana Manjengwa Hivos Foundation
1400hrs	Adrienne De Bourbon Lawyers for Human Rights
1600hrs	Press Conference
1730hrs	Seminar Southern Africa Regional Institute for Policy Studies
2000hrs	Dinner Southern Africa Regional Institute for Policy Studies

Wednesday 16 February

0830hrs	Mr Morgan Tsvangirai Movement for Democratic Change
1030	The Honorable P.A. Chinamasa Attorney General

ANNEX 5**The Centre for Democracy and Development
Observer Mission to the Zimbabwe National Referendum on the Draft
Constitution****Provincial Deployment of Mission Members**

Province	Members
Harare	Dr Amos Sawyer (Head of Mission) Dr Margaret Agama Dr 'Kayode Fayemi
Mashonaland West (Chinhoyi) and Mashonaland Central (Bindura)	Mr. Eze Anaba Mrs. Baatai
Masvingo	Mr. Hassen Ebrahim Dr. Tajudeen Abdul –Raheem
Matebeleland (Bulawayo)	Mrs. Florence Nkurukenda Dr. Willy Mutunga

ANNEX 6

Declaration of Referendum Results by the Registrar General

I **TOBAIWA MUDEDE**, Registrar General of Central Elections, have in terms of Section 8 (4) of the Referendum Act (Chapter 2:10) No, 24/99 ascertained the results of the Zimbabwe Constitutional Referendum held on the 12 and 13th February 2000.

The results of the Referendum Poll countrywide are as follows: -

1.	Total "YES" votes cast	= 578 210
2.	Total "NO" votes cast	= 697 754
3.	SPOILT ballot papers	= 36 774
4.	TOTAL VOTES CAST	= 1 312 738

I, therefore, in terms of the said Provisions of the Referendums Act declare that the "NO" vote received the highest number of votes.

The "NO" vote have it.

T.T. MUDEDE
REGISTRAR GENERAL OF ELECTIONS

15 February 2000

ANNEX 7: FULL RESULT OF THE REFERENDUM AS PUBLISHED IN THE HERALD NEWSPAPER

Province	Constituency	Yes	No	Spoilt	Total	Yes % Valid	No % Valid
Mashonaland West	Hurungwe West	5073	2207	980	8260	70	30
	Hurrungwe East	5555	3635	413	9603	60	40
	Chegutu West	5192	4775	197	10164	52	48
	Chegutu East	4167	5276	264	9707	44	56
	Chinhoyi	5831	7683	264	13778	43	57
	Kadoma Central	4410	5881	521	10812	43	57
	Makonde	6243	3204	250	9697	66	34
	Mhondoro	3793	2962	175	6930	56	44
	Zvimba South	12558	3402	599	16559	79	21
	Zvimba North	7147	5327	366	12840	57	43
	Kadoma East	4673	1688	123	6484	73	27
	Kadoma West	5442	2953	240	8635	65	35
	Kariba	5167	4335	161	9663	54	46
Total		75251	53328	4553	133132	59	41
Mashonaland East	Marondera East	6869	7827	247	14947	47	53
	Hwedza	4552	2784	195	7531	62	38
	Chikomba	4201	3127	807	8135	57	43
	Goromonzi	3904	5331	1803	11038	42	58
	Murehwa South	4007	3037	149	7193	57	43
	Murehwa North	3925	2161	107	6193	64	36
	Mutoko North	5041	2245	172	7458	69	31
	Mutoko South	7035	1525	62	8622	82	18
	Mudzi	9392	2705	293	12390	78	22
	UMP	7733	2470	192	10395	76	24
	Seke	3695	6718	208	10621	35	65
Total		60354	39930	4235	104523	60	40

Mashonaland Central	Bindura	5438	6141	287	11866	47	53
	Rushinga	115933	3146	559	15298	79	21
	Shamva	10525	3696	333	14554	74	26
	Guruve North	5438	6141	287	11866	47	53
	Guruve South	9824	2690	247	12761	79	21
	Mazowe West	5390	4830	273	10493	53	47
	Mazowe East	8119	5147	253	1359	734	465
	Mt Darwin	10458	2536	377	13371	80	20
	Muzarabani	7758	2216	246	10220	78	22
	Rushinga	11593	3146	559	15298	79	21
	Shamva	10525	3696	333	14554	74	26
Total		96661	43385	3754	131640	76	34
Midlands	Chirumanzi	4921	2894	276	8091	63	37
	Mberengwa East	8400	1906	738	11044	82	18
	Mberengwa West	8149	2616	313	11078	76	24
	Mkoba	4191	8842	153	13186	32	68
	Zvishavane	7904	6079	288	14271	57	43
	Vungu	3492	3890	190	7572	47	53
	Gokwe Central	9133	4296	556	13985	68	32
	Gokwe East	5074	2731	186	7991	65	35
	Gokwe North	6466	3298	437	10201	66	34
	Gokwe South	6110	2660	936	9706	70	30
	Gweru	4250	7945	167	12362	35	65
	Kwekwe Central	4778	8702	172	13652	35	65
	Kwekwe North	7718	4528	306	12552	63	37
	Kwekwe West	4221	6994	1148	12963	36	59
	Shurugwi	6780	3191	215	10186	68	32
Total		91587	70572	6081	168840	56	43

Matabeleland South	Insiza	3112	4176	401	7689	43	57
	Beitbridge	7337	3766	813	11916	66	31
	Bulilimamangwe N	5259	2865	229	8353	65	35
	Bulilimamangwe S	4520	4261	220	9001	51	49
	Umzingwane	3712	5814	175	9701	39	61
	Gwanda	5861	6747	334	12942	46	54
	Matobo	3805	4130	286	8221	48	52
Total		33606	31759	2458	67823	51	49
Matabeleland North	Bubi Umguza	6136	4957	341	11434	55	45
	Hwange East	3302	5046	234	8582	40	60
	Hwange West	2213	6770	168	9151	25	75
	Lupane	3344	2408	154	6406	53	39
	Nkayi	3750	3291	260	7301	53	47
	Tsholotsho	5066	3456	179	8701	59	41
	Binga	2602	5296	591	8489	33	67
Total		26413	31224	1927	60064	45	54
Manicaland	Chimanimani	2366	3803	229	6390	38	62
	Nyanga	2733	4384	197	7314	38	62
	Mutasa	1867	3389	114	5370	36	64
	Mutare North	3121	10594	854	14569	23	77
	Mutare South	2452	4120	133	6705	37	63
	Mutare West	1771	2347	109	4227	43	57
	Chipinge North	1828	5104	190	7122	26	74
	Makoni East	2915	3778	123	6816	44	56
	Makoni North	3297	1847	170	5314	64	36
	Makoni West	3031	3268	148	6447	48	52

	Buhera North	4018	3494	142	7654	53	47
	Buhera South	4609	3721	167	8497	55	45
	Chipinge South	1859	4117	157	6133	31	69
	Mutare Central	3126	13821	165	17122	18	82
Total		38993	67787	2898	109680	37	63
Harare	Harare East	4548	17728	395	22671	20	80
	Harare South	3703	10302	143	14148	26	74
	Dzivarasekwa	4574	11016	228	15818	29	71
	Kambuzuma	2907	10121	154	13182	22	78
	Chitungwiza East	3382	7953	488	11823	30	70
	Kuwadzana	3977	9997	124	14098	28	72
	Glen Norah	4151	14175	186	18512	23	77
	Glen View	2894	10920	115	13929	21	79
	Highfield	3940	11429	158	15527	26	74
	Mbare East	3787	9693	187	13667	28	72
	Mbare West	3022	9405	307	12734	24	76
	Mufakose	4680	13252	244	18176	26	74
	Zengeza	4232	9192	135	13559	32	68
	St Mary's	2429	6678	155	9267	27	73
	Harare Central	4821	16882	191	21894	22	78
	Harare North	4942	15038	394	20374	25	75
	Mabvuku	4271	12616	385	17272	25	75
	Budiriro	3467	12908	248	16615	21	79
	Chitungwiza West	3683	8993	413	13089	29	71
Total		73410	218298	4650	296355	25	75
Bulawayo	Pelandaba	2721	7861	187	10769	26	74
	Nkulumane	4807	13619	214	18640	26	74
	Mpopoma	2619	9056	115	11790	22	78

	Luveve	2022	6860	398	9280	23	77
	Bulawayo North	3981	12099	194	16274	25	75
	Bulawayo South	4291	17961	347	22599	19	81
	Lobengula	2181	7150	99	9430	23	77
	Makokoba	2433	7680	182	10295	24	76
	Pumula Magwegwe	2682	8136	159	10977	25	75
Total		27737	90422	1895	120054	23	77
Masvingo	Bikita	3979	3497	600	8076	53	47
	Bikita Gutu	3162	2940	171	6273	52	48
	Chiredzi South	3953	2649	150	6752	60	40
	Chiredzi North	5149	6369	282	11800	45	55
	Chivi North	3402	1748	156	5306	66	34
	Chivi South	3939	2465	157	6561	62	38
	Gutu North	5062	3790	254	9106	57	43
	Gutu South	3963	2631	139	6733	60	40
	Mwenezi	7017	2704	496	10217	72	28
	Masvingo Central	4682	7773	209	12664	38	62
	Masvingo North	3248	3593	690	7531	47	53
	Masvingo South	5947	2491	189	8627	70	30
	Zaka East	3381	2963	179	6523	53	47
	Zaka West	5043	4045	1285	10373	55	45
Total		61927	49658	4957	116542	55	45
National Total		585939	696363	37408	1308653	46	55

ANNEX 8

The Centre for Democracy and Development Observer Mission to the Zimbabwe National Referendum on the Draft Constitution

Interim Statement by the Chairperson of the Observer Mission

The CDD Observer Group congratulates Zimbabweans on the completion of the national referendum on the draft constitution. The CDD has been involved in evaluating the constitutional reform process in Zimbabwe since September 1999.

We observed the national referendum over the two-day period, February 12 & 13, 2000. Our mission, consisting of 9 observers from Liberia, Ghana, Kenya, South Africa, Uganda, Eritrea, and Nigeria was deployed to six of the nine provinces. Prior to this, the teams had held consultative meetings with various stakeholders since arriving in the country on February 8, 2000. The teams visited a total of 75 polling stations across the country.

We commend the efforts of the electoral officials, security teams and local monitors who worked tirelessly to ensure that the referendum was conducted in an atmosphere that was generally free, fair and peaceful. The CDD Observer Group observed in all the provinces visited, a number of technical and logistical problems. In the first category was the delay in releasing the designation of the polling stations across the country; the confusion surrounding the alien voters' list which caused severe delay and, in some cases, inability of eligible permanent residents to vote; and the confusion surrounding the use of the drivers' license.

We are of the view that whilst the counting procedure at the various counting centres was open and transparent, there is room for improvement in the transmission of results between the centres and the Registrar General's office.

With the Referendum now over, we are of the view that now is the time to revisit the constitution making process to which all sides in the debate have made substantial contributions thus far. Through their vote, the People of Zimbabwe have challenged their leaders to build a national consensus and to establish an appropriate mechanism for constructive dialogue as to the way forward. We urge all stakeholders, regardless of the outcome of the Referendum, not to adopt the attitude of "winner takes all". This should be an opportunity for a very positive re-engagement, which is critical not only for Zimbabwe, but for Africa as a whole and the wider international community.

Finally, we wish to record our thanks to all those Zimbabweans who made our delegation welcome and assisted us in fulfilling our mission. In particular, we thank the Registrar-General and his officials, the Government of Zimbabwe,

the Constitutional Commission of Zimbabwe, National Constitution Assembly, the Ford Foundation (Southern Africa) and the Southern African Regional Institute for Policy Studies of the SAPES Trust for their support.

The CDD Observer Group will release its full report as part of the overall evaluation of the constitution-making process in Zimbabwe in due course. That Report will be submitted to the Government of Zimbabwe, the Registrar General's office, political parties, civil society institutions, local and international media and subsequently to all that may have an interest in the document.

Professor Amos Sawyer
Chairperson, CDD Observer Mission

15th February, 2000

ANNEX 9 - THE REFERENDUM ACT

Cap. 2:10

REFERENDUMS

No.24199

REFERENDUMS ACT [*CHAPTER 2:10*]

ARRANGEMENT OF SECTIONS

A

Section

1. Short title.
2. Interpretation.
3. Referendum proclamation.
4. Referendum to be held on appointed day.
5. Question or issue to be stated on ballot papers.
6. Persona entitled to vote at referendum.
7. Majority of Voters to decide question at referendum.
8. Declaration of result of referendum.
9. Appeals.
10. Application of Cap. 2:01.
11. Regulations.

ZIMBABWE

ACT

To provide for the holding of referendums to ascertain the views of citizens on any questions or issues.

ENACTED by the President and the Parliament of Zimbabwe.

1. Short title

This Act may be cited as the Referendums Act [Chapter 2:10].

2. Interpretation

(1) In this Act-

"Electoral Act" means the Electoral Act [Chapter 2:01];

"Minister" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister' to whom the President may, from time to time, assign the administration of this Act;

"referendum" means a referendum held in terms of section for;

"voter" means a person who is entitled to vote in a referendum in terms of section six.

(2) Any expression that is not specifically defined in subsection (1) and to which meaning has been assigned in the Electoral Act has the same meaning when used in this Act.

3 Referendum proclamation

Whenever the President considers it desirable to ascertain the view of voters on any question or issue, he may by proclamation in the Gazette-

- (a) declare that a referendum is to be held in order to ascertain the view of voters on that question or issue; and
- (b) appoint a day or days for the holding of the referendum; and
- (c) state the hours at which voting for the purposes of the referendum will commence and will close; and
- (d) appoint officials to be returning officers at the voting.

4 Referendum to be held on appointed day

A referendum of voters shall be held on the day or days appointed in terms of paragraph (b) of section *three* for the purpose of determining whether the voters are in favour of or against the question or issue to be decided at the referendum.

5 Question or Issue to be stated on ballot paper.

All ballot papers used for voting in a referendum shall state the question or issue to be determined at the referendum.

6 Persons entitled to vote at referendum

Any person who satisfies the presiding officer of a polling station that he or she is eighteen years or above and is eligible to be registered as a voter on the voter's roll shall be entitled to vote at a referendum.

7 Majority of voters to decide question at referendum

The majority of votes given in a referendum shall determine the opinion of the voters on the question or issue to be decided at the referendum.

8 Declaration of result of referendum

- (1) As soon as practicable after the close of the voting in a referendum, the returning officer shall count the votes recorded in favour of and the votes recorded against the question or issue to be decided at the referendum.
- (2) The returning officer shall reject and not count any ballot paper which-
 - (a) does not bear the official mark of a presiding officer or of the returning officer; or
 - (b) bears any writing or mark by which the voter can be identified otherwise than as is prescribed in the Electoral Act; or
 - (c) is not marked with a cross in the appropriate rectangle; or
 - (d) is marked with a cross which does not indicate with certainty in the appropriate rectangle whether the voter intended to record a vote in favour of or against the question or issue to be decided at the referendum.
- (3) Immediately after he has counted the votes, the returning officer shall send the Registrar-General a statement of-
 - (a) the total number of votes recorded; and

- (b) the number of votes recorded in favour of the question or issue to be decided at the referendum; and
- (c) the number of votes recorded against the question or issue to be decided at the referendum; and
- (d) the number of spoilt ballot papers.

(4) As soon as the Registrar-General has received the statement of every returning officer in terms of subsection (3), he shall ascertain and declare-

- (a) the total number of votes in favour of the question or issue to be decided at the referendum; and
- (b) the total number of votes against the question or issue to be decided at the referendum; and
- (c) the total number of spoilt papers; recorded at the voting throughout Zimbabwe.

(5) The Minister shall notify in the *Gazette* the numbers of the votes as finally ascertained by the Registrar-General and the results of the referendum as determined thereby:

Provided that, if the outcome of the referendum is affected by the result of any appeal brought in terms of section *nine*, any notification in terms of this section shall be amended accordingly.

9 Appeals

- (1) An appeal shall lie to the High Court as to the correctness of any decision of a returning officer in admitting or rejecting any vote in regard to which there has been a dispute between the returning officer and an aggrieved party.
- (2) An appeal under subsection (1) shall be lodged with the registrar of the High Court within thirty days after the declaration by the Registrar-General in terms of subsection (4) of section *eight*.
- (3) Part XXIII of the Electoral Act shall apply, *mutans mutandis*, to any appeal under subsection (1) as if it were an election petition.

10 Application of Cap. 2:01

Subject to this Act, the Electoral Act and the regulations made thereunder shall apply to any referendum, in so far as they can appropriately be applied to it, as if the referendum were a general election held following a dissolution of Parliament, and for that purpose-

- (a) any reference in the Electoral Act to an election shall be construed as a reference to a referendum;
- (b) any reference in the Electoral Act to candidates and to candidates' election agents or polling agents shall be disregarded;
- (c) any forms used for the purposes of the Electoral Act may be used for the purposes of a referendum, with or without modification.

11 Regulations

- (1) The Minister may by regulation prescribe anything which, in his opinion, is required or permitted to be prescribed or which, in his opinion is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations made in terms of subsection (1) may provide for-
 - (a) the form of ballot papers;
 - (b) the establishment of polling stations outside the constituencies for which they are established, where voters who are not physically present in the constituencies in which they are registered or entitled to be registered, as the case may be, may cast their votes;
 - (c) the establishment of multi-constituency polling stations, that is to say, polling stations where voters may vote if they are registered or entitled to be registered in any of two or more constituencies;
 - (d) such modifications or adaptations of the Electoral Act or the regulations made thereunder as the Minister considers necessary or expedient to give effect to this Act and for its proper administration.

**ANNEX 10:
THE ORGANISATIONAL CHART OF THE CONSTITUTIONAL
COMMISSION (ZCC)**

**ANNEX 11:
THE ORGANISATIONAL CHART OF THE NATIONAL CONSTITUTION
ASSEMBLY (NCA)**

