



**PROPOSALS
FOR
A NEW CONSTITUTION
FOR
RHODESIA**

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INTRODUCTION

In the Constitutional Agreement signed in Salisbury on the 3rd March, 1978, it was agreed that a Constitution would be drafted providing for majority rule on the basis of universal adult suffrage on certain terms and conditions. In accordance with the provisions of that Agreement, the Transitional Government set up in terms thereof has agreed on the draft of a Constitution which will provide as follows:—

CHAPTER I: THE STATE

The name of the country will be Zimbabwe Rhodesia.

CHAPTER II: HEAD OF STATE

Appointment and tenure of office

The President will be the Head of State. He will be appointed by an electoral college consisting of the members of the Senate and the House of Assembly. His term of office will be six years but he will be eligible for re-election for one further period of six years. The President will only be able to be removed from office if at least two-thirds of the members of the Senate and the House of Assembly voting together have recommended his removal on the grounds of misconduct or inability to perform efficiently the duties of his office.

Powers and functions

The President will have such powers and duties as are conferred or imposed upon him by the Constitution or any other law. The President will be a "constitutional type" President acting on the recommendation of the Executive Council or some other person or authority. He will act in his own discretion only in certain limited instances.

CHAPTER III: THE LEGISLATURE

The Legislature

The Legislature will consist of the President and Parliament which will comprise a Senate and a House of Assembly.

The Senate

The Senate will consist of thirty Senators, of whom—

- (a) ten will be Blacks elected by the seventy-two Black members of the House of Assembly; and

(b) ten will be Whites elected by the twenty-eight White members of the House of Assembly; and

(c) ten will be African Chiefs elected by the Council of Chiefs, five of whom will be from Mashonaland and five from Matabeleland.

If, however, at any time there are not at least two members who are legally qualified for appointment to the Senate Legal Committee, the President will be empowered to appoint one or two additional Senators with those legal qualifications, as may be required for the purpose.

Senate Legal Committee

The President of the Senate will be required to appoint a Senate Legal Committee, the composition and functions of which will be the same as those relating to the present Senate Legal Committee.

House of Assembly

The House of Assembly will consist of one hundred members comprised as follows:—

(a) Seventy-two members will be Blacks elected by voters on the Common Voters Roll for seventy-two constituencies. However, for the first general election these members will be elected on a party-list system and not on a constituency basis. The existing provinces will each be allocated seats as follows—

(i) Manicalandten;
(ii) Mashonaland Centralfive;
(iii) Mashonaland Eastfifteen;
(iv) Mashonaland Westsix;
(v) Matabeleland Northten;
(vi) Matabeleland Southfive;
(vii) Midlandseleven;
(viii) Victoriaten;

and any registered political party will be entitled to submit a list of candidates for each province. If at the election in any province a party gets less than 10% of the votes actually cast, that party will be excluded from the allocation of seats.

(b) Twenty will be Whites elected on a preferential voting system by voters enrolled on the White Voters Roll for twenty White Roll constituencies on a preferential voting system. For the purposes of the Constitution, the term "Whites" will mean persons who are Europeans as defined in the present Constitution.

(c) Eight will be Whites elected by the ninety-two members referred to in paragraphs (a) and (b) above from sixteen candidates who have been nominated by the twenty-eight White members of the House of Assembly. For the purposes of the first election, the sixteen candidates will be nominated by the fifty White members of the present House of Assembly.

At the end of ten years or after the second Parliament, whichever is the later, a Commission, which is referred to in Chapter XI, will be established to review the question of retaining the twenty-eight White seats, and this Commission will report to the House of Assembly.

Electoral qualifications

All citizens who are eighteen years or over will be eligible to be enrolled on the Common Voters Roll. In addition, all Whites who have attained the age of eighteen years or more will be eligible to be enrolled on the White Voters Roll. The Electoral Act will provide for—

- the establishment of a Delimitation Commission to delimit the seventy-two Common Roll and the twenty White Roll constituencies for the second and subsequent general elections;
- the qualifications and disqualifications of candidates for election as members of the Senate or the House of Assembly;
- the establishment of an Electoral Supervisory Commission and the functions thereof in connexion with the supervision of general elections.

Life of Parliament

Ordinarily, the life of any Parliament will be five years.

Parliamentary procedures

The procedures to be followed in the Senate and the House of Assembly and the powers of the two Houses will be much the same as those applicable to the present Senate and House of Assembly. The Senate will not be able to amend Money Bills, though it may recommend amendments. In relation to other Bills, if the Senate

has not passed such a Bill within one hundred and eighty days, the House of Assembly may resolve that it be presented to the President for his assent. However, since the Declaration of Rights will be justiciable, the Senate, if it considers any provision of a Bill to be in contravention of the Declaration of Rights, will have to refuse to pass the Bill, whether or not the provision might be in the national interest, and in that event the House of Assembly will only be able to resolve that the Bill be presented to the President for his assent after a delay of three hundred and sixty days.

CHAPTER IV: THE EXECUTIVE

Executive powers

The executive government will vest in the President who will act on the advice of the Executive Council except where he is specifically required to act on the advice of the Prime Minister or some other authority.

Prime Minister

The President will appoint a Prime Minister and, in doing so, will appoint the person who, in his discretion, he considers to be best able to command the support of the majority of the members of the House of Assembly.

Appointment of Ministers and the Executive Council

The President, acting on the advice of the Prime Minister, will appoint Ministers and Deputy Ministers who will hold office during the pleasure of the President. A Minister or Deputy Minister who is not a member of the Senate or the House of Assembly may not hold office as such for longer than four months unless he becomes a member of either House. The President, acting on the advice of the Prime Minister, will appoint Ministers to the Executive Council.

During the first five years or the life of the first Parliament, whichever is the longer, the President, acting on the advice of the Prime Minister, will be required to appoint Ministers from each political party which is represented in the House of Assembly by five or more members in the proportion of seats held by each such party. Each Minister appointed will be a member of the Executive Council. In recommending the appointment of Ministers from members of another political party, the Prime Minister will be required to act on the advice of the leader of that political party.

State of emergency

The President may at any time declare that a state of public

emergency exists. Unless such a declaration is approved by a resolution passed by the House of Assembly it will cease to have effect at the expiration of fourteen days after the declaration or, if Parliament is dissolved within that period of fourteen days, at the expiration of thirty days after the declaration.

A declaration, if so approved, will continue in force for not longer than six months and may be renewed from time to time by resolution of the House of Assembly. The House of Assembly may approve or renew a declaration for a period shorter than six months and may at any time resolve that a declaration should be revoked.

CHAPTER V: THE JUDICATURE

High Court

Judicial authority will be vested in the High Court which will consist of an Appellate Division and a General Division as at present. The Chief Justice and other judges of the High Court will be appointed by the President on the advice of the Judicial Service Commission. There will be a Senior Puisne Judge who, subject to the directions of the Chief Justice, will be in charge of the General Division.

Qualifications of judges

A person will not be qualified for appointment as a judge unless he is or has been a judge in a country in which the common law is Roman-Dutch and English is an official language or he has been qualified to practise as an advocate for not less than ten years in Rhodesia or in a country in which the common law is Roman-Dutch and English is an official language.

Removal of judges

A judge will be subject to removal from office by the President only on the grounds of inability to discharge the functions of his office or misbehaviour and if an independent tribunal has recommended that he be removed on one of these grounds. In considering whether a tribunal should be appointed to inquire into such inability or misbehaviour of a judge, the President will act, in the case of the Chief Justice, on the advice of the Prime Minister and, in the case of any other judge, on the advice of the Chief Justice.

The tribunal will consist of not less than three members selected by the President from the following—

- (a) retired judges of the High Court;
- (b) judges or retired judges of a superior court of a foreign country in which the common law is Roman-Dutch and English is an official language;

- (c) an advocate of not less than ten years' standing from a panel nominated by the association representing advocates;
- (d) an attorney of not less than ten years' standing from a panel nominated by the association representing attorneys.

Judicial Service Commission

The Judicial Service Commission will consist of the Chief Justice, who will be chairman, the Chairman of the Public Service Commission and one other member appointed by the President on the advice of the Chief Justice. The third member must be a person who is or has been a judge of the High Court or who is an advocate or attorney of not less than ten years' standing.

Law to be administered

The law to be administered by the courts will be the law in force in the Colony of the Cape of Good Hope on the 10th June, 1891, as modified by subsequent legislation having in Rhodesia the force of law.

CHAPTER VI: COMMISSIONS AND PUBLIC OFFICES

Public Service and Prison Service

There will be a Public Service Commission which will be responsible for regulating and controlling the organization of the Public Service and the Prison Service. The Commission will consist of a chairman and not less than two and not more than four other members appointed by the President. The Chairman and at least one other member or, if there are more than three members of the Commission, at least two other members shall be persons who have held the post of Secretary of or Deputy Secretary or Under Secretary in a Ministry of the Public Service or a post in the Public Service of a grade equivalent to or higher than that of Under Secretary for periods which in the aggregate amount to at least five years. When considering candidates for appointment to a vacant post in the Public Service or Prison Service, the Commission will be required to give preference to the person who, in its opinion, is the most efficient and suitable for appointment.

Police Force

The Police Force is established for preserving internal security and maintaining law and order and will be under the command of the Commissioner of Police who will be appointed by the President on the recommendation of the Judicial Service Commission. A

person may not be appointed as Commissioner of Police unless he has held the rank of Assistant Commissioner in the Police Force or any more senior rank for periods which in aggregate amount to at least five years.

There will be a Police Service Commission which will consist of a chairman (who will be the Chairman of the Public Service Commission) and not less than two and not more than four other members appointed by the President. Of the members appointed by the President, at least two must be persons who have held the rank of Assistant Commissioner in the Police Force or any more senior rank for periods which in the aggregate amount to at least five years. The functions of the Police Service Commission will be to consider grievances by members of the Police Force, to consider and, if it deems fit, to confirm any proposal to dismiss a member who has had more than two years' service and to make regulations for the general well-being and good administration of the Police Force and the maintenance thereof in a high state of efficiency.

Defence Forces

The Defence Forces will consist of the Army, the Air Force and any other branch established by law. There will be a Commander of each branch who will be responsible for the administration of and determining the use and controlling the operations of the branch concerned. Each Commander will be appointed by the President, acting on the recommendation of a board appointed for the purpose which will consist of the retiring Commander or, if he is not available, the Chairman of the Defence Forces Service Commission, one of the other Commanders and a third member appointed by the President who is a Secretary of a Ministry in the Public Service. There will be provision for the Prime Minister, if he considers it to be necessary, to appoint a person recommended by the Commanders of the Army and Air Force to be Commander of Combined Operations.

There will be a Defence Forces Service Commission which will consist of a chairman (who will be the Chairman of the Public Service Commission) and not less than two and not more than four other members appointed by the President. Of the members appointed by the President, at least two must be persons who have held the rank of Colonel in the Army or Group Captain in the Air Force or any more senior rank for periods which in the aggregate amount to at least five years. The functions of the Defence Forces Service Commission will be to consider grievances by members of the Defence Forces, to consider and, if it deems fit, to confirm any proposal to dismiss a member who has had more than two years' service and to make regulations for the

general well-being and good administration of the Defence Forces and the maintenance thereof in a high state of efficiency.

CHAPTER VII: FINANCE

There will be one Consolidated Revenue Fund into which all revenues shall be paid unless a law provides for the payment of any such revenues into another fund or that they be retained for the defraying of expenses. All withdrawals from the Consolidated Revenue Fund will have to be authorized by or under an Act of Parliament. There will be a Comptroller and Auditor-General who will be appointed by the President on the recommendation of the Public Service Commission. His functions will be to audit and report on the accounts of the State and his reports will be laid before the House of Assembly.

Pension rights of public officers

The pension rights of public officers and former public officers and of their dependants will be protected. In addition, a scheme will be introduced to encourage officers of the Public Service and members of the Police Force, Army, Air Force or Prison Service who were in office prior to the 1st October, 1978, to continue to serve on and after the 30th April, 1979. The basis of the scheme will be that if such an officer or member continues to serve for at least one complete year, he will be eligible to receive a pension and for each complete year of service thereafter the factor on which the pension is calculated will be improved. After five complete years have been served, the factor will be the same as that applicable under his present conditions of service if he were to retire on reaching pensionable age.

CHAPTER VIII: DECLARATION OF RIGHTS

The Declaration of Rights will be justiciable and the High Court will have the power to declare any law which is in contravention of the Declaration of Rights to be *ultra vires*. The new Declaration of Rights will follow the general pattern of previous Declarations in the country. The following rights will be protected, with the more important changes being mentioned:—

Protection of right to life

Protection of right to personal liberty

The Legislature will be able to introduce a law providing for preventive detention but such law will have to provide for the establishment of a tribunal to review cases within thirty days of the person concerned having been detained and thereafter at intervals of not more than one hundred and eighty days. The Government will be obliged forthwith to release a detained person

on the recommendation of any such tribunal, which will consist of a chairman (who shall be a person who is a judge of the High Court or qualified to be appointed as such) and two other persons, one of whom is a judge or has been a magistrate for ten years or is an advocate or attorney of not less than ten years' standing. A detained person will be entitled to appear before the tribunal in person or by his legal representative.

Protection from slavery and forced labour

Protection from inhuman treatment

Protection from deprivation of property

No person's property may be compulsorily acquired unless the High Court or another court established for the purpose is satisfied that the acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, the utilization of that or any other property for a purpose beneficial to the public generally or to any section thereof or the settlement of land for agricultural purposes. In the case of the settlement of land for agricultural purposes, the land may only be acquired if it has not been substantially put to use for agricultural purposes for a continuous period of at least five years unless the failure to use the property was by reason of public disorder, in which case any period during which the property was not used will be disregarded. Where property is compulsorily acquired, the owner will be entitled to receive adequate compensation promptly and, if he is a citizen or permanently resident in the country, he will be entitled to remit the compensation outside the country within a reasonable period of having received it. Any law which extinguishes or diminishes any right to pension benefits will be regarded as a law providing for the acquisition of a right in property.

Protection from arbitrary search or entry

This protection will extend to the entry of any premises, whether dwelling-houses or not.

Protection of the law

Protection of freedom of conscience

Persons will be guaranteed the right of freedom of conscience, which will extend to freedom of thought and of religion.

Protection of freedom of expression

Freedom of expression will be guaranteed and no religious denomination or person may be prevented from establishing and maintaining schools.

Protection of freedom of assembly and association

Persons will be guaranteed freedom of assembly and association and to form or belong to political parties or trade unions or other associations for the protection of their interests. The freedom will include the right not to be compelled to belong to an association.

Protection of freedom of movement

Freedom of movement, including the right to reside in any part of the country and to enter or leave the country, will be guaranteed.

Protection from discrimination

Discrimination in written laws or by persons acting under a written law in the capacity of a public officer or officer of a public authority will be prohibited.

Savings

Existing laws will be saved from the provisions of the Declaration of Rights for a period of ten years, i.e. during that period a court will not be able to declare any such law *ultra vires* because of any contravention of the Declaration of Rights. This saving will not, of course, preclude the amendment or repeal of any such law. However, the provisions of the Land Acquisition Act [Chapter 141] will not be saved and, therefore, that Act will have to be amended in order to bring its provisions into conformity with the provisions of the Declaration of Rights relating to the protection from deprivation of property. (The National Service Act, 1976, will be saved but it has recently been amended so as to provide that it expires on the 31st December, 1979, and any new Act providing for National Service will have to be in conformity with the Declaration of Rights.)

CHAPTER IX: CITIZENSHIP

Persons who are at present citizens of Rhodesia will continue to be citizens of Zimbabwe Rhodesia. In addition, persons who at the fixed date possess or are entitled to dual citizenship will be able to retain such dual citizenship or their right thereto. A person who holds a foreign passport will not be required to surrender that foreign passport, nor will he be denied a passport of Zimbabwe Rhodesia because he is the holder of a foreign passport.

CHAPTER X: OMBUDSMAN

There will be an Ombudsman who will be appointed by the President on the advice of the Judicial Service Commission. His duty will be to investigate complaints against actions taken by employees of the Government or of a local authority

or, if a law so requires, of any other authority. If, after investigating a complaint, he decides that the action complained of was contrary to law or otherwise unjust or manifestly unreasonable, he will be able to report to the appropriate authority and suggest remedial action. If his recommendations are not followed, he may report to Parliament. The Ombudsman may also, if he considers it appropriate for the purpose of a test case, authorize the payment of the costs of legal proceedings relating to a contravention of the Declaration of Rights.

CHAPTER XI: ENTRENCHMENT OF PROVISIONS OF CONSTITUTION AND OTHER LAWS

Certain provisions of the Constitution such as those relating to the Head of State, the Executive, the Legislature, the Judiciary, the Service Commissions and the Services and Forces, Finance, the Declaration of Rights and the amendment of the Constitution and the transitional provisions will be specially entrenched. The effect of this special entrenchment will be that such provisions will not be capable of amendment unless the amending Bill receives the affirmative votes of at least seventy-eight members of the House of Assembly. The amendment of any other provision of the Constitution will require the affirmative votes of two-thirds of the total membership of the House of Assembly. In addition, any Bill to amend the Constitution will require the affirmative votes of two-thirds of the total membership of the Senate, but if this cannot be obtained, the Bill may, after a period of one hundred and eighty days, be sent to the President for his assent despite the failure of the Senate to approve it.

At the end of ten years or after the second Parliament, whichever is the later, a Commission will be established to review the question of retaining the twenty-eight White seats. The Chairman of the Commission will be the Chief Justice or a judge of the High Court nominated by him and four other members, two of whom will be elected by the twenty-eight White members of the House of Assembly and two will be appointed by the President. If that Commission recommends that the White seats should be abolished or reduced, a Bill to give effect to the recommendation may be passed by fifty-one members of the House of Assembly and the Bill will not be submitted to the Senate. If the White seats are abolished or reduced, the existing seventy-two Black seats will not be reserved exclusively for Blacks and the twenty members of the Senate who are not Chiefs will be elected by all the members of the House of Assembly and not the two groups of members referred to earlier.

Various provisions of the Electoral Act, the Education Act, the Medical Services Act and the Housing Standards Control Act

will be declared in the Act concerned to be specially entrenched provisions and consequently will not be capable of amendment unless approved by seventy-eight members of the House of Assembly. Similarly, there will be provision that an Act which has the effect of—

- (a) reducing the area of Parks and Wild Life Land or Forest Land by more than one *per centum* of the extent of the area thereof as at the fixed date; or
- (b) amending the law relating to the establishment or abolition of municipalities, towns, rural councils or local boards, the fixing of the areas or boundaries thereof, the composition thereof or the qualifications of voters at or candidates for election to such councils; or
- (c) reducing the powers, functions and duties of a municipality, town, rural council or local board conferred by the Urban Councils Act [Chapter 214], the Rural Councils Act [Chapter 211] or the Regional, Town and Country Planning Act, 1976;

will be subject to the same procedure.

CHAPTER XII: GENERAL

English language

English will be the official language of the country.

Chiefs and Councils of Chiefs

The system of appointing Chiefs will be retained, as will the establishment of a Council or Councils of Chiefs.

Remittability of pensions

The remittability of pensions payable to persons who cease to be ordinarily resident in Rhodesia will be guaranteed, as will be the remittability of any commutation of a pension which is received—

- (a) after the 30th April, 1979, on the recipient reaching normal retiring age or on his discharge on the grounds of ill-health; or
- (b) on or after the 30th April, 1984;

but the guarantee will not apply in relation to private pension schemes entered into after the 3rd March, 1978. In the case of a commutation not referred to in paragraph (a) above which is received during the period from the 30th April, 1979, to the 30th April, 1984, the amount that is guaranteed remittable will depend on the period that has elapsed since the 30th April, 1979, on the basis of one-fifth being guaranteed remittable if only one year has elapsed, two-fifths if two years have elapsed and so on. The balance of the amount received would be guaranteed remittable over a specified period after the 30th April, 1984.