



Investing In People for Social and Economic Justice

# WEEKEND READER

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## The blind side of the Constitutional Amendment Number 20



At a time when the government is already aligning laws and policies to the Constitution of Zimbabwe, the same government is already pushing for the amendment of the constitution itself. ZIMCODD is concerned that the proposal to amend the 2013 Constitution is a rushed and premature decision. People of Zimbabwe already have higher expectations of the constitution itself as a tool for fostering good governance. The amendment of the constitution also jeopardises the founding values of the Constitution especially on the observance of the principle of separation of powers provided for in Section 3(2e) of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013. The decision to amend the constitution is therefore a disrespect of the supremacy of the constitution itself. It is thus demotivating and frustrating the rights of citizens to participate in national development processes.

### The Proposed Constitutional Amendment

- Section 327(2) of the Constitution states that international treaties do not bind Zimbabwe until they have been approved by Parliament. The effect of this section is that any treaty concluded with any country will not bind Zimbabwe until Parliament has approved it.
- Section 327(3) states that agreements which are concluded with "foreign organisations or entities" and which impose fiscal obligations on Zimbabwe do not bind Zimbabwe until they have been approved by Parliament. Parliament therefore has a right to veto the agreements.
- Clause 23 of the Constitutional Amendment Bill proposes to alter Section 327(3) of the Constitution so that it will apply only to agreements entered into with "international organisations", i.e. organisations

such as the International Monetary Fund (IMF) and the World Bank whose members include foreign states.

- Therefore, Section 327(3) will no longer apply to agreements with foreign banks or similar non-state institutions even if the agreements impose fiscal obligations on Zimbabwe. Hence; Parliament will no longer have the constitutional power to approve loan agreements with such non-state institutions.
- The proposal therefore undermines constitutional mechanisms and frameworks which ensure that borrowing of that nature is safeguarded by the Parliament as it were.

### Implications of the bill on public finance management?

- With the increasing dominance of emerging lenders on the debt market (Brazil, Russia, India, China & South Africa) the BRICS, the amendment therefore implies that the bulk of Zimbabwe's debt will not be subjected to

parliamentary scrutiny.

- The bill violates basic governance principle that all government decisions which impose fiscal obligations on Zimbabwe must be subjected to Parliament.
- The principle of separation of powers is infringed, further crippling parliament's oversight on public finance management as the Executive can make sole decisions on loan contractions.
- Lack of transparency and accountability in public finance management cultivates a breeding ground for corruption and abuse of public funds.
- Contradiction of other progressive constitutional provisions on citizen participation in decisions that affect them particularly 264 (2a).
- Lack of citizen participation risks the adoption of conventions, treaties and agreements that do not serve public interests.
- This is in violation of Section 298 (1f) which provides that public borrowing and all transactions involving the national debt must be carried out transparently and in the best interest of Zimbabwe.
- External debt balloons threatening the country's credit worthiness, further eroding investor confidence and worsen the



Participants at the Mutare PFM Reform Indaba Mutare

country's risk profile.

- Huge debt burden has intergenerational consequences as future generations will still have responsibilities over decisions made today.

### Reactions from some Members of Parliament

- Hon. Brian Dube of Gweru Urban says "the Government must first of all align all existing laws to the constitution before even thinking of amending the constitution. The constitution is a sacrosanct document that must not just be tinkered with to service the authoritarian ambitions of the incumbent"
- Hon Madzimore says, "This proposed provision weakens the system of checks and balances and restricts transparency in the contraction of debt. At present, in addition to providing oversight, the process of submitting agreements to National Assembly allows public scrutiny through Parliament's consultative meetings with stakeholders. The proposed amendments would therefore mean agreements are secret and confidential and not subjected to public scrutiny."

This implies that the National Assembly will have no oversight over debt contraction particularly foreign debt."

These views came out of the

Public Finance Reform Indabas held in Harare, Gweru, Bulawayo and Mutare. The Indabas were conducted focusing on interrogating clause 23 of the Constitutional Amendment Bill which proposes to alter section 327(3) of the Constitution so that it will apply only to agreements entered into with "international organisations", i.e. organisations such as the IMF and the World Bank whose

members include foreign States.

### Way Forward

- The government must respect the supremacy of the constitution and provide a clear roadmap on how the process of amending the constitution should be undertaken including conducting wide consultation with citizens.
- There is need for civil society to conduct aware-

ness raising and information dissemination for citizens to have a clear understanding of Clause (23) and many other clauses in the Bill so that they comprehend their full impact on the entire economic governance process.

- Civil society organisations need to mobilise citizens to attend consultation meetings for them to air their views against the amendment of the National Constitution.



Participants at the Public Finance Management (PFM) Reform Indaba in Gweru



Dr Chakunda speaking on the Parliamentary Power Index at a ZIMCODD PFM Reform Indaba in Gweru