



# THE Weekend Reader

"Your Weekly Read on Debt, Development & Social & Economic Justice"

## WHAT THE PUBLIC SHOULD KNOW ABOUT CLAUSE 23 OF THE CONSTITUTIONAL AMENDMENT BILL (NUMBER 2). 2021

Attention on the Constitutional Amendment Act (Number 2) 2021 has recently been sparked by the historic judgment in which the High Court declared that the Chief Justice Malaba ceased to hold office by operation of law notwithstanding attempts to extend his term of office.

Although this was an epic ruling, it is far from over as the government has indicated that it will make an appeal to the judgement. As that unfolds, it is also important for Zimbabweans to pay attention to implications of Constitutional Amendment Act No. 2 on public finance management in Zimbabwe.

### What is Clause 23 of the Constitutional Amendment Bill Number 2?

The Constitutional Amendment Number 2 was signed into law by the President of Zimbabwe on May 7 2021. One of the issues in the Bill was Clause 23 which sought to undermine the oversight role of parliament on loans advanced by non-state institutions by changing the term 'foreign organization' with 'international organisation and in so doing limiting Parliamentary oversight of agreements concluded between the Government to cover only those agreements entered into with other national states and international organisations. Section 327(3) of the Constitution provides that all agreements concluded with foreign organisations and entities must be approved by Parliament if they impose fiscal obligations on Zimbabwe. Clause 23 of the Bill proposed to amend section 327(3) so that it would apply only to agreements between the Government and foreign States or international organisations such as the IMF; hence agreements between the Government and non-State institutions such as foreign banks would not require parliamentary approval.

### Why was ZIMCODD concerned about the Bill?

ZIMCODD vehemently raised concerns that the removal of Parliamentary oversight to allow the government to enter into agreements without public scrutiny was against the broader public interest in that it leaves the country

susceptible to the acquisition of odious foreign debts. It would also make it easier for unscrupulous public officials to mortgage the country's natural resources as collateral for loan contraction.

### **Did Clause 23 of the Constitutional Amendment Bill sail through and effected into law?**

A clear reading of the law shows that the oversight role of parliament on State borrowing was neither weakened or taken away. Instead, Parliament still has a powerful role of approving not only state revenue and expenditure in the national budget but also all loans and agreements done outside the budget.

### **What does the law governing national public debt, state borrowings and state guarantees say?**

National public debt, state borrowings and state guarantees is regulated through the Constitution in four (4) sections namely: sections 298 (*Principles of Public Financial Management*), 299 (*Parliamentary oversight of State Revenues and Expenditure*), 300 (*Limits of State Borrowings, Public Debt and State Guarantees*) and 327 (*International Conventions, Treaties and Agreements*). In principle, these sections must always be read together.

The Constitution, makes it mandatory for the Executive to seek Parliamentary approval on all financial transactions made on behalf of the people of Zimbabwe. Clause 23 of Constitutional Amendment Number 2 Bill which sought to oust parliament oversight role on loan contraction Bill was amended by repeal and substitution with Clause 21 and now reads: "Save for loans and guarantees referred to in section 300 (3) and (4), *an agreement which is not an international treaty but which – has been concluded or executed by the President or under his authority with one or more foreign organisations or entities, and imposes fiscal obligations on Zimbabwe does not bind Zimbabwe until it has been approved by Parliament*" Simply put all agreements entered with foreign entities or organisations that impose fiscal obligations require parliament approval.

### **What happens with loans already approved?**

The agreements mentioned under section 300(3) and (4) of the Constitution are those already approved in an Act of Parliament such as the National Budget. The Minister of Finance may indicate in the national budget on sources of funds or borrowing, which Parliament may then approve. Within 60 days, the Minister must cause the terms of that concluded loan agreement or guarantee to be published in the Gazette in terms of section 300(3) of the Constitution. This confirms the importance of transparency and accountability. The Minister of

Finance must then report at least twice a year in Parliament on the loans and guarantees raised by the state. In so doing, the Minister lays the estimated revenue and expenditure before the National Assembly together with the comprehensive statement of the public debt of Zimbabwe in terms of Section 300(4) of the Constitution.

### **What is Parliament's role?**

**Parliament must know, scrutinize and interrogate the financial activities in the public sector.** Parliament has a powerful role to play in approving the budget as well as all loans and agreements done outside the budget through firstly the budget process section 300 (4) and secondly through direct approvals section 300 (3). Parliament oversight role is now at two levels being oversight on Finance Bills which are the annual budgets and on obligations imposed by section 327 of the Constitution.

It remains incumbent upon Parliament to effectively exercise its oversight role on the Executive in order to safeguard the principle of separation of powers, public accountability and good governance bearing in mind that independent and democratic Parliamentary oversight is a key tenet of a representative democratic system and constitutional order and parliament must now be more invested in Finance Bills.

### **What can you do about Debt in Zimbabwe?**

ZIMCODD calls upon all Zimbabwean organizations and individuals to join ZIMCODD and participate in meaningful learning events, multi-stakeholder dialogues, engagements with public officials, public interest campaigns and exciting networking events along with a growing community of people committed to transparency and accountability in the management of public finance with an ultimate goal of achieving social and economic justice.

### **ZIMCODD 2021 Midterm Budget Review and 2022 Budget Strategy Paper Survey**

ZIMCODD and AFRODAD invites your participation in the 2021 Midterm National Budget and Economic Review Survey. The Survey seeks to capture citizens' and key stakeholder views and perspectives on the 2021 National Budget implementation process and the 2022 Budget Strategy Paper. The information, conclusions and recommendations gathered from this survey and from stakeholder consultative processes will feed into ZIMCODD's submissions to the Ministry of Finance and Economic Development's midterm Budget Review and 2022 Budget Strategy processes.

**Please click the link below to complete the survey:**

<https://forms.gle/QPcbdFAMHgui4Ckx7>

We request you to answer to answer all the first five questions and then provide feedback on any or all of the following questions. Also feel free to provide any comments at the end of the questionnaire. Your inputs will be treated with utmost confidentiality. The Questionnaire will take less than 3 minutes to complete.