



Thematic Analysis of Zimbabwe's Proposed Draft Constitution

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Executive summary

Realizing that the current constitution of Zimbabwe is flawed in many respects and has contributed to the crisis in Zimbabwe, the parties to the Global Political Agreement (GPA) agreed to embark on a process of developing a new constitution that would address some of the critical contributing factors to the Zimbabwe crisis. As prescribed under Article 6 of the GPA, a parliamentary select committee on the new constitution (COPAC) was established to drive this process. Given that COPAC has now produced a draft constitution, the question that is asked by many Zimbabweans as well as the regional and international community, is how far does this draft constitution seek to address some of the major constitutional issues that are at the center of the crisis of governance in Zimbabwe?

These constitutional issues include the absence of a legal framework that effectively promotes the observance of human rights, ineffective separation of powers, excessive and unchecked presidential authority, over centralization of power in the national government as well as absence of free and fair elections. Addressing these issues is not entirely dependent on a good constitution alone, but the political will to implement that constitution to its letter and spirit. The question of the day, however, is whether the draft produced by COPAC adequately responds to these issues. Overall, this proposed draft constitution is better than the current constitution of Zimbabwe. It is a step forward in the process of building democracy in Zimbabwe as it captures the critical aspect of separation of powers, embodies the culture of fundamental rights, constitutionalism as well as limited presidential authority.

Presidential Authority: The draft constitution introduces a new era where the president no longer enjoys any unwritten (prerogative) powers but will only exercise those powers that are given by the constitution and legislation. This creates certainty as to what exactly is the limitation of presidential powers in Zimbabwe. By getting rid of the president's powers to directly appoint individuals into the senate, the draft creates an opportunity for the legislature to make laws and exercise its oversight duties independent of the executive or the president.

Through a tremendous reduction of the president's influence over the appointment of the members of Judiciary Services Commission (JSC), this draft constitution presents an opportunity for the appointment of an impartial JSC which in turn will appoint impartial judges and members of the prosecuting authority. In a significant way, this presents an opportunity for judiciary independence and observance of rule of law in Zimbabwe. However, the fact that the president retains the authority to handpick members of the tribunal to investigate the conduct of a sitting judge threatens the security of tenure of the judiciary and can be used to undermine the independence of the judiciary. Thus, the president will continue to enjoy unchecked powers in the process of dismissing judges while the parliament will not have an effective role to play in the process of appointing judges.

Furthermore, the draft also presents an opportunity for provincial governments to develop and implement policies independent of the president or the executive since the president will no longer have power to directly appoint provincial governors. Under the current law, the president handpicks provincial governors and these governors merely function as representatives of the president in the provinces rather than being heads of provincial governments. Even though the draft leaves the

president with the authority to make primary legislation, all the legislation he or she enacts will have to be consistent with the object, spirit and purport of the constitution. This places a limit to the nature of legislation that the president can promulgate.

Democratic, Free and Fair elections: The draft constitution gives all political parties the right to receive a fair share of access to state media to disseminate their campaign information and this right can be enforced through the courts. This fundamentally addresses the challenge that opposition parties have suffered in the past where the national broadcaster has refused them access to state media while the ruling party would enjoy monopolistic access to disseminate its own campaign materials. Under this draft constitution, concerned citizens can approach the court to order the state to take certain measures (e.g. establishing more voter registration centers and simplifying voter registration procedures) to ensure that all eligible citizens are registered as voters. Currently, there are no constitutional mechanisms to force the state to take such measures, thereby leaving the state to maintain a complicated or rather restrictive voter registration process which favours the ruling party.

The draft also makes election management a sole mandate of the Zimbabwe Electoral Commission (ZEC), whose appointment provides an opportunity that it may be independent and professional in its operations. In the past, voter registration was the mandate of the Registrar general, who is directly appointed by the president and was clearly partisan in discharging his constitutional duties. Furthermore, the draft presents an opportunity that the security services personnel can no longer publicly show support for any political party. In the past, security services chiefs had made it a tradition that they would issue a joint press statement warning citizens against voting for any other party other than ZANU PF. The COPAC draft constitution also provides for mandatory speedy resolution of electoral disputes, including where there is a challenge on election results or the conduct of organisations or individuals during elections. In the past, such challenges would be finalized even five years after the election results are announced.

Fundamental Rights: The draft constitution provides for a wide, comprehensive declaration of rights that includes civil and political rights as well as socio, economic and cultural rights. The rights given can only be limited by a law of general application and to the extent that such limitation is considered reasonable and justifiable in an open and democratic society based on the fundamental values of human freedom, dignity and equality. This is a huge improvement from the current national law which does not provide for socio, economic and cultural rights and which allows human rights limitation to be justified on the basis of a vague (and often abused) concept of 'maintaining public security'. Unlike the current constitution, this draft places human rights at the center of the interpretation of the constitution and all laws as well as obliging all constitutional bodies and state institutions including the security sector to respect fundamental rights in discharging their constitutional duties. However, the absence of the right to shelter in the bill of rights is a major fundamental flaw. The fact that certain rights like the right to basic healthcare and the right to basic education are only entitled to Zimbabweans and those that have permanent residence in Zimbabwe is also a concern.

Constitutionalism and separation of powers: As a fundamental departure from the current constitution, this draft entrenches such constitutional values as fundamental rights, limited presidential authority,

rule of law, democratic principles of elections, judiciary independence and separation of powers. By way of elevating itself to the status of being the supreme law, it also means that these constitutional values become the supreme principles to guide any other kind of law and conduct in Zimbabwe. This is what was missing in the current Lancaster House constitution. Although it declared itself as the supreme law, the Lancaster House constitution did not embody democratic values and therefore Zimbabwe had what could be called 'empty' constitutionalism rather than 'substantive' constitutionalism. Under this draft, there is clear separation of powers, with guaranteed independence and relatively sufficient checks and balances amongst the three arms of government.

Devolution of powers: There has been a massive demand for devolution of powers in Zimbabwe, as a mechanism of promoting popular participation in governance. While this draft constitution entrenches the principle of devolution of powers from the national to the provincial and local governments as a fundamental value, it does not devolve the powers! Without providing for the powers to be devolved, the essence of devolution of powers is undermined. Therefore, there is likely to be a continuation of the current situation where political power is centralized within the national or rather central government

1. The question of limited presidential powers

Concerns have been raised by civil society and pro-democracy actors in Zimbabwe that one of the contributing factors to the Zimbabwe crisis has been the fact that the president enjoys excessive unchecked powers. In terms of the current constitution of Zimbabwe, the following are some of the powers that the president enjoys and exercises without effective restraint from any other arm of government.

- Section 31 H of the Lancaster House constitution reposes executive authority in the president alone.
- Apart from executive authority which he enjoys alone, Section 32 (1) gives the same president legislative authority. By virtue of section 32 (1), the president has full authority to enact primary legislation.
- Apart from the written functions and powers in the constitution and legislation, Section 31 H (3), gives the president prerogative powers. This effectively means that the president has some powers outside those that are given to him by the people through legislation and the constitution.
- Section 34 allows the president to directly and single handedly appoint a total of 15 senators [five in terms of section 34.1 (e) and the ten governors who are appointed into senate in terms of section 34.1 (b)]. Given that the Chief's Council has been partisan (showing signs of belonging to ZANU PF) and yet they appoint 18 chiefs into parliament, this gives the president's party 33 senatorial seats before the results of the senatorial elections are counted.
- The president single handedly appoints five of the six members of the Judiciary Services Commission (JSC) and these are the attorney general, the chairperson of the Public Services Commission and the three other persons that are appointed in terms of section 90 (1) (d). The JSC is in turn responsible for making recommendations to the president on the appointment of the chief justice, deputy chief justice, judge president and other judges of the High Court as well as the Supreme Court and the attorney general. Thus the president controls the JSC which is responsible for the appointment of key state officials.
- Section 111 A gives the president the power to appoint provincial governors without consulting anyone or being checked by anyone.
- The president has the power to appoint the attorney general (AG) in consultation with the Judiciary Services Commission, of which he single handedly appoints 5/6 members of the Judiciary Services Commission. Therefore, the president controls the JSC which he is supposed to consult in appointing the AG.
- In all the circumstances listed under section 87, where the question of investigating the suitability of a judge arises or that of the judge president or the chief justice, the president

alone appoints a tribunal whose recommendations he takes into consideration on whether to dismiss or retain the member of the judiciary concerned. His power to appoint this tribunal is not checked by anyone.

- Where concerns arise on the suitability of the attorney general, the president appoints a tribunal, whose recommendations he takes into account on whether to dismiss or retain the attorney general. Again, his power to appoint this tribunal is not checked by anyone.
- The president can deploy the army within Zimbabwe without any consultation.

The table below examines how the COPAC draft deals with the aforementioned unchecked powers of the president.

Lancaster House	COPAC draft	Remarks
Section 31 H of the Lancaster House constitution reposes executive authority in the president alone	Executive authority vests in the president and cabinet. Executive authority is derived from the people.	The COPAC draft introduces a principle that the president has to consult the cabinet as he now shares executive authority with the cabinet.
Section 32 (1) gives the president legislative authority to make primary legislation	Section 5.1 (2) gives the president legislative authority.	The president's authority to make primary legislation seems to have been retained.
Section 31 H (3) gives the president prerogative powers.	The entire draft constitution, including section 5.23 does not mention of any prerogatives but mentions that the president has powers conferred by the constitution and any Act of parliament or other law.	The COPAC draft limits the president's authority to those powers given by the constitution and legislation.
Section 34 allows the president to directly and single handedly appoint a total of 15 senators [five in terms of section 34.1 (e) and the ten governors who are appointed into Senate in	Governors are no longer appointed by the president, while the chiefs are required to refrain from partisan politics	The president's influence over the senate is tremendously reduced.

<p>terms of section 34.1 (b)]. Given that the Chief's Council has been partisan (showing signs of belonging to ZANU PF) and yet they appoint 18 chiefs into parliament, this gives the president's party 33 senatorial seats before the results of the senatorial elections are counted.</p>		
<p>The president single handedly appoints five of the six members of the Judiciary Services Commission (JSC) and these are - the attorney general, the Chairperson of the Public Services Commission and the three other persons that are appointed in terms of section 90 (1) (d). The JSC is in turn responsible for making recommendations to the president on the appointment of the chief justice, deputy chief justice, judge president and other judges of the High Court as well as the Supreme Court and the attorney general. Thus the president controls the JSC which is responsible for the appointment of key state officials.</p>	<p>The president directly and on his own appoints only two out of the 14 members of the JSC</p>	<p>The president's influence over the appointment of the JSC is greatly reduced, enhancing the chances of judicial independence.</p>
<p>Section 111 A gives the president alone the power to appoint provincial governors</p>	<p>Section 14.9 (3) requires that the president appoints a provincial governor from recommendations given by a political party with the highest number of national assembly seats in that province or the party with majority votes, where there is no party with the highest number of national assembly seats in that province</p>	<p>Provincial governors are likely to be more independent from the national executive.</p>
<p>The president has the power to appoint the attorney general in</p>	<p>Section 5.27 gives the president the authority to appoint an</p>	<p>Even though the president appoints the AG without</p>

consultation with the Judiciary Services Commission, of which he single handedly appoints 5/6 members of the Judiciary Services Commission.	attorney general without consulting anyone. However the attorney general's functions are restricted to being the chief legal adviser to the government. He or she no longer has prosecutorial authority.	consulting anyone, the AG is no longer part of or in control of public prosecutions. This reduces the risk of the AG's office being used to persecute political opponents through unnecessary prosecutions.
In all the circumstances listed under section 87, where the question of investigating the suitability of a judge arises or that of the judge president or the Chief Justice, the president on his own appoints a tribunal whose recommendations he takes into consideration on whether to fire or retain the member of the judiciary concerned.	Section 8.26 empowers the president to appoint 2 of the three members of the tribunal that will investigate the judge concerned.	Even under the COPAC draft, the president is still wielding too much control over the appointment of the tribunal, thereby undermining the independence and objectivity of the tribunal in its investigations.
Where circumstances arise on the suitability of the attorney general, the president appoints a tribunal, whose recommendations he takes into account on whether to fire or retain the attorney general.	The COPAC draft empowers the president to dismiss the AG at any time.	This is reasonable given that the AG's mandate is now limited to being the chief legal advisor to the government. Thus the government is allowed to hire and fire its own lawyer.
The president can deploy the army within Zimbabwe without consulting anyone.	Section 11.9 requires that the president promptly and sufficiently inform parliament on deployment of the soldiers within Zimbabwe, giving reasons for their deployment, where they are deployed and for how long.	This introduces the idea of transparency in the deployment of the military and allows parliament and the public to monitor such deployments to prevent undercover military operations that usually result in human rights violations.

There is clearly a substantial realignment of the presidential powers, a constitutional scenario that is likely to open space for the independent and professional exercise of state authority by the other three arms of government.

2. The question of democratic, regular, free and fair elections

The question of democratic elections in Zimbabwe is a pertinent one. Elections in Zimbabwe have been characterized by political violence, intimidation and vote rigging. The following have been the key challenges regarding elections in Zimbabwe;

- The ruling party enjoys exclusive access to state media while the opposition does not have such access.
- Ruling party supporters intimidate and execute violence upon members of the opposition while the police and the attorney general fail to arrest and prosecute such perpetrators of violence and intimidation.
- The process of voter registration is generally complicated.
- Voter registration is managed by the Registrar General’s Office, of which the registrar general is a presidential appointee, thereby casting doubt on his independence and impartiality.
- The Ministry of Foreign Affairs is responsible for accrediting election observers and there has been a tendency of inviting observers only from those countries and organisations that are sympathetic to the ruling party. The observers accredited are usually biased and therefore lack objectivity.
- There are delays in the resolution of electoral disputes.
- The leadership of the military utter partisan political statements, warning the electorate against voting for any party other than ZANU PF.
- Military personnel are often deployed to mobilise votes for ZANU PF.
- Members of the opposition are often incarcerated or threatened with trumped up criminal charges prior or just after the elections.

The table below examines whether and how the COPAC draft constitution seeks to address the above mentioned challenges

Electoral challenge	How the COPAC draft seeks to address the challenge	Remarks
The ruling party enjoys exclusive access to state media while the opposition does not have such access	<ul style="list-style-type: none"> • Section 4.16 (4) of the draft’s bill of rights requires state media to be impartial and afford fair opportunity for the presentation of 	The COPAC draft provides mechanisms which the opposition parties can rely on to legally claim the right to disseminate information through

	<p>divergent views and dissenting opinions.</p> <ul style="list-style-type: none"> Section 7.1 (2) (d) requires the state to ensure that all political parties have access to electronic and print media, both public and private. 	state media during elections.
Ruling party supporters intimidate and execute violence upon members of the opposition while the police and the attorney general fail to arrest and prosecute such perpetrators of violence and intimidation.	Draft constitution provides for a strong bill of rights, a relatively independent prosecuting authority, mechanisms of a professional police service, and mechanisms for an independent judiciary.	Strong provision of political rights, an independent prosecuting authority and judiciary provide an opportunity for victims of political violence and intimidation to seek and actually get protection.
Complicated process of voter registration	Section 7.1 (2) (a) obliges the state to take all appropriate measures including legislative ones, to ensure that all eligible citizens are registered as voters.	Citizens can legally demand that the state take certain measures to ensure that unnecessary restrictions be removed from the process of voter registration.
Voter registration is managed by the Registrar General's Office, of which the registrar general is a presidential appointee, thereby casting doubt on his independence and impartiality.	ZEC is given the mandate to register voters	Management of the voter's roll by ZEC is likely to bring objectivity and impartiality to the process. It is also likely to bring some level of efficiency since the staff of ZEC is expected to possess technical expertise in election management.
The Ministry of Foreign Affairs is responsible for accrediting election observers and there has been a tendency of inviting observers only from those	ZEC is responsible for accrediting observers	This is likely to bring objectivity and impartiality to the selection of election observers and their work.

countries and organisations that are sympathetic to the ruling party. The observers accredited are usually biased and therefore lack objectivity.		
Delays in the resolution of electoral disputes.	Draft recognizes timely resolution of election disputes as part of the principles of the electoral system	This provides citizens with legal ground to compel the courts to resolve electoral disputes in time.
The leadership of the military utter partisan political statements, warning the electorate against voting for any other party other than the ruling party.	Section 11.3 requires the members of the security services (including the military) to refrain from acting in a partisan manner, furthering the interests of any political party.	This criminalizes the public utterance of partisan political statements by the security service chiefs as well as the meddling in electoral issues by the security services members.
Military personnel are often deployed to mobilise votes for the ruling party.	<ul style="list-style-type: none"> • Section 11.3 requires the members of the security services (including the military) to refrain from acting in a partisan manner, furthering the interests of any political party. • Section 11.3 (4) bars serving members of the security services to meddle in civilian affairs. • Section 11.8 requires the president to inform parliament whenever members of the defence forces are deployed in Zimbabwe. 	This criminalizes the meddling of soldiers in electoral affairs as well as brings transparency to the deployment of service men and women.
Members of the opposition are often incarcerated on or threatened with trumped up criminal charges prior or just	Draft provides for a strong bill of rights, mechanism for professional police service, national prosecuting authority	Such mechanisms provide protection to all Zimbabweans against malicious arrests and prosecution.

after the elections.	and an independent judiciary	
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Essentially the draft constitution presents an opportunity for substantial electoral reforms, including public media reform, institutional reform for ZEC and the Registrar General's office as well as the judiciary. It also offers opportunities for the state to be held accountable by the citizens on election management.

3. Fundamental Rights

The crisis of governance in Zimbabwe has largely been about lack of respect for human rights. This is why it has often been described as a human rights crisis. Although the human rights crisis in Zimbabwe cannot be blamed entirely on a bad constitution, the current constitution has significantly contributed to the crisis by virtue of failing to provide for a comprehensive bill of rights with strong mechanisms to ensure the enforcement of the rights enshrined. For instance, the current constitution provides for a very narrow declaration of rights under chapter 3. It does not provide for economic, social and cultural rights. Even though it provides for some civil and political rights, the same bill of rights allows a vague criterion to determine the lawfulness of limitation of rights. Section 3.11 allows fundamental rights to be limited on the basis of protecting public interest. Public interest is a wide and vague concept, leaving all the fundamental rights enshrined under chapter 3 difficult to enforce especially against the state, as the state can always justify its actions on the basis of protecting public interests. For instance, the Public Order and Security Act violates the right to freedom of assembly and peaceful demonstration but the state has defended its constitutionality on the basis that it protects public order and security, itself a fundamental public interest issue.

During the constitution making process, there has been an insistence, particularly by civil society, that the new constitution must provide for a comprehensive bill of rights with strong mechanisms to ensure that the rights enshrined are not only justiciable but in effect materialize in the lives of ordinary citizens.

Through chapter 4, the COPAC draft constitution provides for a declaration of rights. For any bill of rights to be considered strong, the constitution must provide for it in a manner that captures the following pre-requisites;

- Constitution must provide for civil and political rights as well as economic, social and cultural rights.
- The bill of rights must apply vertically (binding the state and all its organs) and horizontally, binding all private persons including juristic persons.
- All the rights must be justiciable i.e., the court must be able to enforce them.
- There must be a flexible, wide criterion of determining the locus standi/one's eligibility to stand before the court claiming the enforcement of the right(s).
- There must be an objective and well balanced approach to determine the legality of limitation of rights.
- The bill of rights must enable one to timeously seek the enforcement of his/her rights.
- The court must be given the flexibility to determine the appropriate remedy or relief.
- There must be constitutionally entrenched independent institutions that promote the observance of human rights.

- The interpretation of the constitution and any other law must put observance of human rights at the center.

To establish the strength of the COPAC draft constitution as an effective response to the human rights crisis in Zimbabwe, an analysis of the bill of rights as provided in the COPAC draft's chapter four is conducted against the above stated standard requirements.

Analysis in terms of content

Unlike the current constitutional dispensation, this draft provides for a very wide/expansive declaration of rights which will be very useful for Zimbabweans or persons in Zimbabwe as they seek to enforce different types of rights against any of the tiers of government or private persons. Thus, one can claim not only civic and political rights but also the socio-economic and cultural rights which include right to education and access to basic health care. It however does not provide for the right to shelter. The current (Lancaster House) constitution does not provide for socio-economic rights and environmental rights. The COPAC draft provides for environmental rights. This can be useful for Zimbabweans as they seek redress for and protection from hazardous environmental activities by anyone. Environmental rights will also contribute to sustainable development, protecting the right of future generations to benefit from natural resources. Given the discovery of mineral resources, leading to the rise of mining activities in local communities, the provision of environment rights under the COPAC draft could be a very timely constitutional intervention.

Justiciability of the rights enshrined

Section 4.1 binds the court (as an institution of the state) to respect, protect and promote and fulfill all the rights set out in Chapter 4. This guarantees the justiciability of all the rights in this draft. This means, all the rights enshrined under Chapter 4 can be enforced by a court of law. This augurs very well with regional and international human rights law best practices as seen in the constitutions of South Africa, Kenya and Canada.

Application of the bill

The declaration of rights can be enforced both vertically and horizontally. Vertically, one can claim any of the given rights against the state or organs of state. Horizontally, one can claim the enforcement of his/her rights against any other private person whether that person is a natural person or a juristic person like a corporate company. This is very much in line with the human rights law standard practice in sound constitutional democracies that include Canada, South Africa and USA.

Locus standi (who can claim the enforcement of the rights)

Section 4.40 provides for wide and flexible criteria of deciding one's eligibility/locus standi to claim the enforcement of the given rights. Any of the following persons have such locus standi;

- Any individual whose rights are violated or threatened can approach the court for redress or protection
- Any person can approach the court on behalf of another person whose rights are violated/threatened; where such a person cannot act on his/her own.
- Any person who is a member of a class/group can approach a court for redress or protection on behalf of a group/class of people (such as a residents association, the elderly etc.) to enforce the concerned rights.
- Anyone acting in the interest of the public can approach the court to enforce rights.
- An association can act in the interests of its members.

However, there are certain rights where the draft constitution requires certain qualifications for one to be entitled and claim enforcement of those rights. Such rights include the following;

- The right to access basic healthcare is available to Zimbabweans and those that have permanent residence in Zimbabwe only.
- The right to access basic state funded education is available to citizens and those who have permanent residence in Zimbabwe only.

This means that those who do not have citizenship will not be entitled to the above stated rights. Such a provision is likely to have a major negative impact on a sizeable population of people currently without Zimbabwean citizenship, especially those working in commercial farms.

Enforcement (When can one claim the enforcement of his/her rights)

Section 4.40 (1) provides for enforcement of rights where the right has been violated or where the violation is underway or where the violation is imminent/likely. This means people do not have to wait for their rights to be violated for them to claim the enforcement of those rights. They can approach the court for enforcement of their rights even in cases where it is likely that their rights are threatened. The COPAC draft constitution's bill of rights therefore provides a timely intervention to protect human rights.

Limitation

Human rights cannot exist without limitation. There are various reasons why rights cannot be unlimited. For instance, one must not violate other people's rights while exercising his/her own rights. A balance is also required between exercising human rights and the need to promote/protect public interest as well as state security.

In keeping with regional and international best practices, as in South Africa and Canada, the draft provides for an objective and well balanced criteria of limiting human rights. This criterion requires that limitation of human rights should only be done through a law of general application and not arbitrarily

and in deciding the legality of the limitation, the court must take into account the nature of the right, the manner in which the limitation has been/intend to be effected, and the objective for limiting the right, whether or not there is no other less harmful manner in which the same objective can be achieved without limiting the rights concerned. This is a fundamental departure from the current status where rights are justifiably limited for public interest and public interest remains a vague concept. Such a rigorous process of justifying the limitation of rights as demanded by the COPAC draft will serve as a strong mechanism of ensuring that human rights cannot be limited so easily. It protects and gives effect to the sacredness of human rights yet ensuring that the exercise of the same rights does not undermine democracy.

Remedies

In terms of this draft constitution, where the court finds that the applicant's human rights have been violated or are threatened, the court can order the following remedies;

- Compensation
- Declaration of rights

But in terms of section 4.40 (a), the court is not necessarily limited to granting the above as remedies. The court can grant any appropriate relief to the applicant. This gives the court the discretion to determine the appropriate remedy as dictated by the particular circumstances.

Interpretation

The COPAC draft constitution puts human rights at the center of the interpretation of the provisions of this constitution. This gives prominence to the enjoyment and protection of human rights in Zimbabwe. The draft also directs that such interpretation must take into account international law. This is helpful as it creates an opportunity to accommodate certain aspects of democratic and good governance that are provided by international law, which may have been omitted by this constitution. This will allow the court to develop law to match international best practices.

Independent commissions/state institutions supporting democracy

The draft provides for the establishment of the Zimbabwe Human Rights Commission (ZHRC) and gives it a mandate that is wide enough to effectively promote the observance of human rights in Zimbabwe. Of significance is section 12.12 which amongst other things mandates the ZHRC to protect the public against abuse of power and maladministration by the state. The same section gives the commission the power to direct the Commissioner-General of police to investigate suspected cases of criminal violation of human rights as well as recommend cases of human rights violations for prosecution by the national prosecuting authority.

The security sector and human rights

The COPAC draft, through section 11.3 (2) (d) requires that the conduct of the members of the security services sector (military, police, correctional services, intelligence services) must not violate fundamental rights and freedoms of any person.

4. Doctrine of constitutionalism

Constitutionalism is the idea that government power is limited by the constitution. It dictates that government can and should be legally limited in its powers, and that its authority or legitimacy depends on it observing these limitations. In terms of constitutionalism, the government exercises only those powers given to it by the constitution and such authority is exercised in a manner that is prescribed by the constitution. Thus, constitutionalism restricts “what” governments can do and “how” they should go about what they are authorized to do¹. Although the relationship between constitutionalism and democracy is not always a simple one, constitutionalism is a necessary mechanism of protecting the ideals of democracy. Greg Linington (2012) rightly points out that it is necessary to limit governmental power as politicians can be immature and emotional and can change the country’s fundamental values to suite their partisan interests. Constitutionalism elevates the constitution to the level of being the supreme law of the country and any other law or conduct inconsistent with that constitution is deemed null and void. Where constitutionalism is observed, everyone is subject to the constitution and for instance, the party with simple majority in parliament or the ruling party of the day cannot easily alter fundamental values of the nation such as the commitment to observing human rights, rule of law, sovereignty or citizenship. Governments come and go but the values of the nation must be able to outlive governments. Constitutionalism protects those values and also requires that those fundamental values be pro-democratic. The Lancaster House constitution of Zimbabwe declares itself as the supreme law of Zimbabwe (section 3) and requires all other laws to be consistent with it or else will be deemed void to the extent of their inconsistency. However, the same constitution entrenches democratically weak values and therefore fails to promote democracy in Zimbabwe. For instance, the Lancaster House constitution’s bill of rights is fundamentally narrow and leaves the enshrined rights vulnerable to wanton limitations.

To establish whether and how far the COPAC draft constitution embodies the doctrine of constitutionalism, the same draft is examined against the key elements of constitutionalism which are as follows;

- The constitution must declare itself to be the supreme law of the land unto which every other law and conduct must be consistent.
- The constitution must entrench the democratic fundamental values of the nation to protect them from malicious amendments by the government of the day.
- Respect for fundamental rights
- Observance of rule of law
- Observance of separation of powers
- Judicial independence

¹ See Greg Linington (2012) “Reflections on the significance of constitutions and constitutionalism for Zimbabwe”, page 63 in Zimbabwe Mired in Transition, Weaver Press.

- Judicial review
- Provision of independent institutions that support democracy.

The table below tracks where and how far the above stated elements of constitutionalism are captured in the COPAC draft constitution.

Element of Constitutionalism	Where the element is captured in the draft constitution	Remarks
The constitution must declare itself to be the supreme law of the land unto which every other law and conduct must be consistent.	Section 2 declares the supremacy of the constitution as well as imposing an obligation on all persons and state institutions to respect and fulfill the constitutional obligations	This satisfies the cardinal requirement of constitutionalism that every person is below the constitution and all other laws and conduct must be consistent with the constitution.
The constitution must entrench the democratic fundamental values of the nation to protect them from malicious amendments by the government of the day.	Section 18.11 sets out a complex procedure which must be followed when amending the constitution and even stricter procedures when amending the bill of rights.	This offers adequate protection to the fundamental values enshrined in this constitution and it is in keeping with regional and international best practices.
Respect for fundamental rights	<ul style="list-style-type: none"> • Chapter 4 of the constitution provides for civil and political rights as well as social and economic rights that are justiciable, constitutionally entrenched (through section 18.11 (6). <i>See the section on Fundamental rights to get an in-depth analysis of the bill of rights.</i> • Section 3.1 (c) recognizes fundamental human rights and freedoms as part of the founding values and principles of Zimbabwe. 	Comprehensive fundamental rights are therefore introduced and entrenched as part of the national values of Zimbabwe; which the court must give prominence to when interpreting the constitution.
Observance of rule of law	<ul style="list-style-type: none"> • Section 3.1 (b) recognizes rule of law as part of the 	This lays a good foundation for the promotion of rule of law. The

	<p>nation’s founding values and principles.</p> <ul style="list-style-type: none"> • Section 18.14 (1) (b) requires that the interpretation of this constitution must give effect to the founding values in section 3, which include rule of law. 	<p>fact that the interpretation of this constitution must take into account international law provides an opportunity for the court to consider other positive things about rule of law which this constitution may have not captured well or adequately.</p>
Observance of separation of powers	<p><i>See section (below) on analysis of how the draft constitution deals with separation of powers.</i></p>	<p>The COPAC draft constitution fairly captures the doctrine of separation of powers.</p>
Judicial independence	<p>Section 8.3 directs that the courts must operate independently and subject to the law only.</p>	<p>This is a good starting point in terms of guaranteeing the freedom of judges to decide individual cases according to their view of the law</p>
	<p>Section 8.19 provides for an appointment process whereby the president appoints judges from a list of nominees submitted to him by the Judiciary Services Commission (JSC) after the JSC would have publicly advertised the vacant posts and conducted public interviews.</p>	<p>Such an appointment process reduces the chances of the president appointing his loyalists onto the bench and the idea of public advertisement of vacant posts and public interviews introduces transparency in the process of appointing judges.</p>
	<p>Section 8.21 requires that magistrates be appointed by the JSC and “all the appointments must be made transparently and without favour or prejudice”</p>	<p>Where the JSC is independent, then this process of appointing the magistrates reduces the risk of having party loyalists seating in court as magistrates.</p>

	<p>Section 8.26 provides for the process of removing a judge from the bench, whereby the president will make that decision based on the recommendations of a tribunal which the president chooses alone.</p>	<p>There is need for further checks and balances to ensure that the members of the tribunal are not the president’s loyalists, who will be used to get rid of judges who are objective. Therefore this procedure is still weak and can be used to undermine judiciary independence.</p>
<p>Judicial review</p>	<ul style="list-style-type: none"> • Section 8.6 (3) empowers the constitutional court to make a final decision whether an Act of parliament or conduct of the president or parliament is constitutional. • Section 8.10 (1) (c) mandates the High court to decide on constitutional matters except those that exclusively fall under the jurisdiction of the constitutional court. 	<p>In keeping with regional and international best practices, the COPAC draft gives effect through these provisions to the principle of constitutionalism which requires that the judiciary must have the power to review legislation and conduct against the constitution; invalidate such conduct or legislation that is found inconsistent with the constitution.</p>
<p>Provision of independent institutions that support democracy (There must be constitutionally provided independent institutions that support democracy</p>	<ul style="list-style-type: none"> • Through chapter 12, the draft provides for the establishment independent commissions with very wide objectives that are focused on supporting democracy and constitutionalism and securing the observance of democratic values by state 	<p>The COPAC draft provides for these institutions in a manner that guarantees their independence, impartiality, adequate funding and they have been given a constitutional mandate that is wide enough for them to achieve their purpose of supporting democracy. However</p>

	<p>institutions</p> <ul style="list-style-type: none"> • Appointment of the chairpersons and members of the independent commissions is done from recommendations given by the Judiciary Services Commission and the Committee on Standing Rules and Orders. • Section 12.4 (1) (a) guarantees the independence and impartiality of these commissions. • Section 12.4 (2) puts an obligation on all state institutions to cooperate with the commissions. • Section 12.5 requires the members of the commissions to be non-partisan and not to belong to any political party. • Section 12.6 (2) secures the tenure of the members of the commissions by requiring an elaborate process of removal. However the same concerns raised around the process of removing the judges also apply in this case. • Through section 18.5, the draft empowers parliament to ensure that the executive 	<p>the following should be noted;</p> <ul style="list-style-type: none"> • The draft could have required that the members of the commission be removed from office after a finding to that effect by a resolution of a committee of the National Assembly, rather than a tribunal that the president sets up. This is a better way of securing the tenure of the members of the commission, something very critical for the independence of the commission. • A provision on the involvement of civil society in the appointment process could have been inserted as the case with South Africa.
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	provides adequate funding for the commissions.	
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Clearly, constitutionalism is guaranteed through this draft. However, what is more interesting is that the draft embodies very important constitutional values such as fundamental rights, limited presidential authority, rule of law, democratic principles of elections, judiciary independence and separation of powers. These values will constitute the fabric of the supreme law of the country with which any other laws that the government of the day introduces must be consistent.

5. The doctrine of separation of powers

The doctrine of separation of powers has evolved since the writings of Locke and Montesquieu as various definitions have been coined. The concept of separation of powers divides the institutions of government into three branches: legislative, executive and judiciary where the legislature makes the laws; the executive put the laws into operation; while the judiciary interprets the laws. Separation of powers promotes democratic and good governance by ensuring that power is not concentrated in one state institution or one individual. Through mechanisms of checks and balances, the doctrine counters abuse of authority and promotes public accountability and transparency in the exercise of authority by each of the three branches of government. The doctrine of separation powers ought to be built into the fabric of all good modern constitutions². Separation of powers is both substantive and formal in nature. Substantively, it requires separation of mandate, personnel and the independence of each of these branches in the discharge of their authority. Formally, separation of powers requires the institutional division of governmental authority into the three branches. It is therefore necessary that a constitution capture both the formal and substantive features in order to effectively promote separation of powers.

Institutional division of state governance into the three branches-executive, judiciary and legislature

Separation of power (also known as *trias politica principle*) is a model of state governance where the state is divided into three branches namely the executive, the judiciary and the legislature. The executive comprises of the presidency and the cabinet, mandated with the authority to implement legislation. The legislature comprises of the parliament, mandated to enact laws while the judiciary comprises of the courts, mandated to administer the law. In order to capture and promote the idea of separation of powers, a constitution must clearly show this institutional division of governmental authority into these three branches.

Guaranteed independence of each of the braches from the influence of each other

The doctrine of separation of powers requires that these three branches be independent of each other and that they provide oversight of each other. In order to ensure the independence of each of these branches of government, the doctrine of separation of powers requires that no same person(s) should function as a member of more than one branch. Although for purposes of coordination of government functions, it becomes necessary that certain individuals operate in more than one branch of government. For instance, a cabinet minister (who is a member of the executive) can double up as a member of the legislature with the mandate to make regulations (known as subordinate legislation) that give flesh to principal legislation enacted by parliament. However, there ought to be mechanisms to ensure that such mandate is not abused.

Checks and balances

The doctrine of separation of powers also requires that the three branches of government must check against each other, to avoid abuse of authority. Therefore, the constitution must create mechanisms

² Greg Linington; 2012, "Reflections on the significance of constitutions and constitutionalism for Zimbabwe", page 63 in "Zimbabwe Mired in Transition"

that promote a system of checks and balances. In that regard, the judiciary must check against the legislature and the executive to ensure that those branches are exercising their authority appropriately. Likewise, the executive must do the same with respect to the judiciary. For instance, in South Africa, Canada and the United States of America, the judiciary has the authority to review the constitutionality of legislation passed by parliament or regulations made by cabinet ministers; as well as the constitutionality of the decisions made by the president or the legislature. In the same countries, the legislature is constitutionally empowered to provide oversight of the executive, demanding accountability concerning the decisions made by the executive and the judiciary.

Independent, access to adequate resources

Separation of power requires that each of the three branches of government have independent access to adequate resources. This is meant to avoid a scenario where the branch that controls resources uses such power to undermine the independence of the other branches. The constitution must therefore guarantee access to adequate funding by each of the branches

To establish whether and how far the COPAC draft constitution captures and promotes the doctrine of separation of powers, an analysis is provided in the table below on how each of the above mentioned basic tenets of the doctrine are provided for in this draft constitution.

Tenet	Where the tenet is captured in the COPAC draft	Remarks
Institutional division of state governance into the three branches-executive, judiciary and legislature	Observance of the principle of separation of powers is captured as a principle of good governance which binds all organs of the state at all levels	Recognition of the doctrine of separation of powers as part of the founding values gives adequate and proper weight and constitutional protection of this concept.
	<ul style="list-style-type: none"> • Section 5.1 (2) reposes executive authority in the president and the cabinet (the executive). • Section 6.2 (1) reposes legislative authority in the parliament (consisting of the national assembly and the senate), while section 8.1 gives judiciary authority to the courts outlined from 8.1 (a-h). 	<p>This clearly shows the division of state governance into the three branches.</p> <ul style="list-style-type: none"> • Giving the president, legislative authority (to make primary legislation) may undermine separation of powers.

	<p>However, Section 6.2 (1) also considers the president to be part of the legislature.</p>	
<p>Guaranteed independence of each of the branches from the influence/control of the other</p>	<p>Section 8.3 directs that the courts must operate independently and subject to the law only.</p>	<p>This protects the judiciary from interference by any of the other two branches.</p>
	<p>Section 8.19 provides that the president appoints judges from a list of nominees submitted to him by the Judiciary Services Commission after the JSC would have conducted public interviews.</p>	<p>This reduces the chances of the president appointing his loyalists onto the bench and the aspect of public interviews introduces transparency in the process of appointing judges.</p>
	<p>Section 8.21 requires that magistrates be appointed by the JSC and “all the appointments must be made transparently and without favour or prejudice”</p>	<p>Where the JSC is deemed to be independent, then this reduces the risk of having party loyalists seated in court as magistrates.</p>
	<p>There is no provision that indicates how the Judiciary Services Commission will be appointed. Section 8.19 is vague and at worst gives the president the power to appoint the JSC on his own.</p>	<p>This creates a risk of having the current JSC continuing being in office after this constitution and the question is how much confidence do Zimbabweans have in the current JSC</p> <p>Furthermore, it creates the risk of the president appointing his loyalists into the JSC.</p>
	<p>Section 8.26 provides for the removal of a judge from the bench by the president following recommendations by a tribunal which the president chooses.</p>	<p>This procedure remains vulnerable to political manipulation and does not guarantee security of tenure for the members of the judiciary.</p>

<p>Separation of human resource, where no similar individuals should function in more than one of the three branches</p>	<ul style="list-style-type: none"> • In terms of the draft constitution no member of the judiciary can be a member of either the executive or the legislature • Even though members of the executive can also be members of the legislature, this is seen as a mechanism to promote coordination between the two. It is unlikely to compromise the independence of the legislature. 	
<p>Each branch must be financially independent of each other.</p>	<p>Remuneration for the members of each branch is constitutionally provided for</p>	<p>This reduces the risk of one arm of government using its control over resources to influence other arms of government.</p>
<p>Each branch must be able to provide oversight of the other</p>	<ul style="list-style-type: none"> • Section 6.4 gives parliament the power to ensure that all the provisions of this constitution are upheld. • Section 6.4 (3) obliges all state institutions to account to parliament. 	<p>This gives the parliament the crucial mandate and right to demand accountability from the other two branches and institutions that operate within those branches.</p>
	<p>Section 8.6 (3) gives the constitutional court the right to test the legality of legislation and conduct of the parliament and the president.</p>	<p>This gives the crucial mandate to the judiciary to review all legislation and conduct. This gives the judiciary the right and platform to check the executive and parliament against any unconstitutional/unlawful conduct.</p>
	<p>Section 8.26 provides for grounds and procedure for the removal of the judges and magistrates from office.</p>	<p>Although the procedure is still vulnerable to political manipulation, this gives the executive, the mandate to check on the judiciary and ensure that they are administering the law constitutionally.</p>
	<p>Section 5.20 (2) requires the</p>	<p>This creates a mechanism for</p>

	cabinet to attend parliament and parliamentary committees to respond to questions.	legislature to check on the executive.
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To a greater extent, this draft constitution guarantees the principle of separation of powers and therefore presents a chance that power will not be concentrated in one arm of government and there are opportunities for checks and balances between the three arms of government. Depending on the distribution of seats in the legislature, amongst the political parties, the legislature has sufficient opportunities to demand accountability and exercise oversight of the executive, while the judiciary and the national prosecuting authorities have the opportunity to discharge their duties objectively and impartially.

6. Devolution of powers

State governance in Zimbabwe is overly centralized and this has led to the marginalization of certain provinces. During the outreach meetings, there were numerous calls for devolution of power as a means of ensuring that governance is brought closer to the people and all provinces receive a fair and equal share of support for development initiatives. Devolution of power refers to the transference of executive, legislative and related powers and responsibilities from the central sphere of government of one sovereign state to the other tiers/spheres of government that exist at a subnational level, such as a province or local. Devolution of power is one of the modern mechanisms used to bring government closer to the people and allow people to actively participate in governance processes including policy formulation and evaluation. Mavedzenge, J (2011) in a paper titled “Fundamentals of an effective devolution of power model” and published by the Daily News of Zimbabwe, lists the following as prerequisites for a constitutionally and democratically sound devolution of power model:

- Devolution of power must be recognized as part of the nation’s founding values and principles.
- Government must be constituted by spheres/tiers of government. Usually, they are three tiers namely the national sphere, the provincial sphere and the local sphere.
- The spheres of government must be clearly defined as distinctive, interdependent, interrelated and cooperative of each other.
- There must be devolution of substantive legislative and executive powers to the provinces and local spheres.
- There must be clear principles that regulate intergovernmental relations. Amongst other things, this will guarantee the functional and geographical integrity of each sphere.
- There must be clear demarcation of the functional areas of concurrent and exclusive legislative competence.
- The constitution must set out clear procedure and grounds on which the national parliament may intervene to legislate on functional areas of exclusive provincial legislative competence.
- The constitution must also set out a criteria of resolving conflicts between national and provincial legislation as well as those conflicts that involve municipality by laws.
- The constitution must also provide for adequate access to resources by all the spheres of government.
- To avoid marginalization of any population group, there must be constitutional provisions that require gender balance as well as representation of minority groups such as the disabled in all spheres of government.

The table below evaluates how far the COPAC draft constitution captures the above mentioned tenets of a strong and effective devolution of power model;

Tenet	Where it is captured in the COPAC draft	Remarks
Devolution of power must be	Section 3 (1) (L) declares that	Recognition of devolution of

<p>recognized as part of the nation's founding values and principles.</p>	<p>devolution of governmental powers must be recognized as one of the founding values and principles</p>	<p>power under "Founding values and principles" gives adequate weight and constitutional protection/entrenchment to the idea as the courts put more weight on founding values and principles, in their interpretation of the constitution.</p>
<p>Government must be constituted by spheres/tiers of government. Usually, there are three tiers namely the national sphere, the provincial sphere and the local sphere</p>	<p>Section 5, defines the 3 tiers as the national government, provincial and metropolitan councils; and local authorities</p>	<p>In many instances, the draft does not refer to the provinces and local authorities as governments but as councils. This may have a negative constitutional interpretation if that interpretation is to be done by a judge who is averse to devolution of power. In South Africa and Kenya, provinces and local authorities are constitutionally referred to as spheres of government or county governments, with full legislative and executive powers. The draft constitution of Zimbabwe must do the same.</p>
<p>The constitution must define the nature of the spheres of government as distinct of each other but interrelated.</p>	<p>The constitution does not define the nature of the spheres.</p>	<p>This leaves the subnational level of government vulnerable to interference by the national government. In other constitutional democracies, including South Africa and Kenya, the spheres are clearly defined as distinct, interrelated and interdependent. Therefore, the draft constitution ought to clearly define the nature of the tiers of government.</p>

<p>There must be devolution of substantive legislative and executive powers to the provinces and local spheres.</p>	<p>Section 14.7 provides for functions of provincial and metropolitan councils.</p>	<p>The constitution gives functions to the provincial and metropolitan councils but there is no mention of what powers they have. There are no legislative and executive powers mentioned and devolved to the provinces and metropolitan councils. In South Africa and Kenya, these tiers are given full legislative and executive powers and such powers are constitutionally entrenched to protect them from malicious amendments. Therefore, the draft constitution must include provisions that give legislative and executive powers to the provinces and the local authorities.</p>
<p>There must be clear principles that regulate intergovernmental relations. Amongst other things, this will guarantee the functional and geographical integrity of each sphere</p>	<p>Section 14.1 provides for objects of devolution of governmental powers and responsibility.</p>	<p>Generally section 14.1 can be used to seek the protection of the independence of the provincial, metropolitan and local authorities where such independence is necessary for the fulfillment of the objects of devolution of power or where interference undermines these objects of devolution.</p>
	<p>Section 14.2 (1) (b) and (c) provides for general principles that regulate the relationship between the provincial and local government.</p>	<p>By insisting that the provinces and local government must exercise only those powers given by the constitution and must respect the functional and geographic integrity of each other, the constitution has guaranteed the protection of the independence of local authorities from interference by</p>

		the provinces. However, a fundamental error has been made in that these provisions do not bind the national government and therefore, the local and provincial governments remain vulnerable to interference by the national government under the proposed constitutional dispensation.
There must be clear demarcation of the functional areas of concurrent and exclusive legislative competence.	This is not provided for.	Absence of such provisions create room for intrusion by the spheres into each other's space in so far as law making is concerned and in the process undermining devolution of legislative authority. Therefore, the draft must provide for schedules of concurrent and exclusive legislative competence areas.
The constitution must set out clear procedure and grounds on which the national parliament may intervene to legislate on functional areas of exclusive provincial legislative competence.	This is not provided for.	This again leaves the sub national governments vulnerable to interference by national government under the guise of public and national interest. The draft must provide for these procedures and grounds as do other constitutions, such as that of Kenya.
The constitution must set out a criteria of resolving conflicts between national and provincial legislation as well as those conflicts that involve municipality by laws.	This is not provided for.	Absence of this criterion may lead to several instances of constitutional crisis in the event of clash of legislations promulgated by different spheres. Inevitably it will lead to cases where the national government overrides all the other spheres. This criterion must be provided for as do other

		constitutions, such as that of South Africa.
The constitution must provide for adequate access to resources by all the spheres of government.	Section 17.4 (3) directs that a minimum of 5% of the annual national revenue must be given to the provinces and local authorities as their share for that financial year.	This may not be enough but it is an improvement from the current status quo.
	<ul style="list-style-type: none"> • Through section 9.1 (1) (b) and (d), the draft compels the state and all public institutions including provincial and local authorities to ensure that resources are effectively and efficiently used while services are provided equitably, impartially, fairly and with no bias. • Through section 17.1 (1) (d), the state can be compelled to be transparent and accountable on how they expend public resources. • National government can be compelled to make fair resource allocation on the basis of section 17.1 (b) (ii). • National government may also be directed to make special provision in resource allocation for traditionally marginalized groups and areas. See section 17.1 (b) (iii). 	<p>Cumulatively these provisions create important opportunities for demanding transparency and accountability from the national government on national revenue allocation. Such opportunities for demanding transparency and accountability do not exist in the current constitutional/legislative dispensation.</p> <ul style="list-style-type: none"> • Where residents are not happy with revenue distribution, they can also use these provisions, especially 17.1 (b) (iii), to compel government to take corrective measures.
To avoid marginalization of any population group, there must be constitutional provisions that require gender balance as well as representation of minority	Section 2.7 (1) (b) (i) and (ii) places a duty on the state to ensure gender balance in all levels of government. However, this will be	Through these provisions, this draft offers vast opportunities for advocacy for gender equality at the various levels of

<p>groups such as the disabled in all spheres of government.</p>	<p>progressively realized.</p> <ul style="list-style-type: none"> • Gender equality is recognized as one of the nation’s founding values. • Provisions have also been incorporated under composition of provincial, metropolitan and local councils to ensure women’s representation. 	<p>government.</p>
	<p>Section 6.5 (1) (e) makes a provision for representation of the disabled in the senate.</p>	<p>The draft does not make clear and extensive provisions to provide for representation of the disabled in the critical layers of government including the national assembly, provinces and local authorities.</p>

Given what is depicted in the table above, the fundamental change is likely to be that devolution of powers will be a constitutional principle, but in practice it will be undermined by the very fact that the same constitution does not provide for the powers to be devolved, and fails to spell out the provincial government structures. There is however a chance that the legislature can enact a law to provide for these, but it will mean that devolution of powers will be vulnerable to partisan manipulation by the government of the day.

Conclusion

The COPAC draft constitution introduces a fundamental departure from the Lancaster House constitution by way of providing for a wider bill of rights with mechanisms to ensure the enforcement of these rights. It also introduces constitutional interpretation that puts human rights at the center of any such interpretation. There are additional limits to presidential authority while the legislature and the judiciary are empowered to check and review the decisions made by the president. To a greater degree, the draft captures the principle of constitutionalism and separation of powers, and it lays down a good legal framework for democratic elections.

Overall, the COPAC draft constitution substantially attempts to address the pertinent constitutional issues that have been contributing to the crisis in Zimbabwe. Through judicial review, the courts have a mandate to contribute towards the further improvement of the constitution and development of law in Zimbabwe. The legislature has the authority to amend the constitution subject to the provisions regulating how the constitution can be amended. Therefore, there are opportunities for improvement. In any case, constitution building is a process, and this draft provides a fairly good starting point in comparison to the Lancaster House constitution.

If it becomes law and is adequately implemented, this draft constitution will positively influence the quality of political governance in Zimbabwe. It will provide quite a number of opportunities for reform, particularly around the contentious issues of media, security sector, judiciary, human rights reform in Zimbabwe. Several existing pieces of legislation are likely to become inconsistent with the new constitution and therefore will need to be repealed or amended. Institutional reform is also likely to become necessary as several state institutions will need to realign themselves to discharge the mandate given by the new constitution.