

Stop Constitutional Amendment No. 2!

Introduction

Zimbabwe is on the brink of descending back into an era of an imperial presidency where powers are concentrated in one person and checks and balances (which keep government accountable) are undermined. This is what will be achieved if Constitutional Amendment (No. 2) Bill passes in the Senate. **But there is hope!** It is not guaranteed that the Bill will pass and **there is something every one of us can do** to stop it.

On Tuesday 4th May 2021, the Senate will have its third and final reading of Constitutional Amendment (No. 2) Bill and vote on whether to pass the amendments. To pass, the Bill must get at least 54 affirmative votes which is two-thirds of a total membership of 80 seats in the Senate. The vote will be on a knife edge! The governing party **ZANU (PF) do not have two-thirds majority in the Senate** (even assuming that all 18 Chiefs will vote with ZANU (PF) - as they typically do). Therefore ZANU (PF) cannot pass the amendments without the participation of opposition Senators.

Most opposition Senators have opposed the Bill during the debate in the Senate. However, there are **a few opposition Senators who may decide to vote for the Bill**, which is what happened in the lower house (the National Assembly) where the Bill only passed because of opposition votes. On the other side, most ZANU (PF) Senators have supported the Bill during the debate in the Senate, but many ruling party Senators are privately opposed to some of the clauses in the Bill and could also be persuaded to vote “no” or abstain.

So we all urgently need to play our roll in calling on our elected representatives not to vote for the Bill. Here’s why and how.

Why is Constitutional Amendment (No. 2) Bill bad for Zimbabwe?

1. It **concentrates power in the President** and undermines the independence of key institutions which hold government accountable such as the judiciary (courts), Parliament and the Prosecutor-General.
2. It **undermines the independence of the judiciary** (courts) which is essential to the rule of law and all of us having confidence that we’ll be treated fairly in the courts. The Bill does this by:
 - a. **Allowing the President to hand-pick judges for promotion** without them having to go through a transparent interview process and be nominated by an independent body called the Judicial Services Commission as they currently do;
 - b. **Allowing the President to extend a judge’s time in office** even after they reach the retirement age of 70 years by an additional 5 years. Judges will therefore be beholden to the President in the hope that he will keep them on in their old age. This clause is also unconstitutional because the Bill says that it applies to judges currently in office even though section 328(7) of the Constitution says that is not allowed.

3. The reason that the Bill is being rushed through Parliament now is because **Chief Justice Luke Malaba is about to turn 70 years old and is set to retire on 15 May 2021** and the President wants to keep him on even after he has reached retirement age. It's generally a bad idea to amend a Constitution for the sake of one person!
4. It **weakens Parliament's oversight over Government borrowing** from foreign organisations. At present, the government has to report back to Parliament the terms of loans. But this Bill wants to stop that. Remember, when the Government borrows its you and me (the taxpayers) who go into debt and have to pay it back. So, our elected representatives deserve to know the terms!
5. It **undermines the independence of the Prosecutor-General (PG)** who will, if the Bill is passed, be hired and fired at the whim of the President, instead of being appointed and removed through an independent process. The PG decides who gets criminally prosecuted and who does not. So, it is important that he or she is independent and not beholden to the President's whims so that people are not prosecuted for political reasons, while others are allowed to go free (even when they have committed crimes) just because they are friends with the President.
6. It **removes the "running mate clause"** which means the President will be able to hire and fire whoever he wants as Vice-President, instead of the Vice-Presidents being elected by and responsible to the people of Zimbabwe. The Bill also **makes the succession question murky** which has got Zimbabwe into lots of difficulties before – we want to avoid that as a nation.

Why are some Senators considering voting for the Bill even though it is bad for Zimbabwe? And why YOU need to persuade them not to...

Amidst the many bad clauses that will destroy our democracy, Constitutional Amendment (No. 2) Bill includes a few clauses that some people (including some opposition Senators) think are "good" clauses. These are:

1. The extension of the **women's quota** in Parliament which gives women 60 seats (about 21%) out of a new total of 280 seats in National Assembly.
2. A new **youth quota** that will give youth 10 seats (about 3.5%) out of 280 seats in the National Assembly.

We all support the empowerment of women and youth. But these clauses are a **honey trap** to draw in Senators and get them to also vote in favour of all of the terrible clauses as well. You have to vote "yes" or "no" to the whole Bill – you can't pick and choose.

But more importantly, **these amendments DO NOT empower women and youth** and there are much better alternatives available for empowering women and youth which don't require amending the Constitution. Why should women settle for only 21% of the seats when the Constitution says women are entitled to 50:50 representation in Parliament? 50:50 is achievable, as explained below!

How can Parliament ensure women and youth's political advancement without amending the Constitution?

Simple. This could easily be done in one of at least two ways. Instead of amending the Constitution, Parliament could:

1. **Pass an amendment to the Electoral Act** which states that when political parties submit their nomination papers to the Zimbabwe Electoral Commission (ZEC) that they are **legally required to have 50:50 representation** of both men and women (or perhaps a margin of 10% either way could be allowed for some flexibility) and a minimum of 10% youth (which is a lot more than the 3.5% proposed in the current youth quota!) on their party ballot country wide.

...or, if political parties feel that a legal requirement is too restrictive on their internal primary processes, Parliament could simply **create a financial incentive** to encourage political parties to ensure the political advancement of women and youth within the parties by doing the following:

2. Pass an amendment to the Political Parties Finance Act which would give a **100% bonus in the financial allocation to any political party that elects 50:50 men and women** in its candidates at an election; a 50% bonus to any party that elects at least a 40:60 female-male split; and imposes a 20% penalty to be deducted from a party's allocated funds if it elects less than 30% of either gender. That way parties would be incentivized to put resources towards the development of women and youth candidates.

And **where would the money come from** for the bonuses paid to parties in the second proposal? Well, there will be **70 less Members of Parliament** if this proposal is adopted instead of the one in Constitutional Amendment (No. 2) Bill, so all the money that would have been spent on cars and allowances etc can go towards women and youth political advancement instead!

So, the women and youth quotas are NO EXCUSE to pass the Constitutional Amendment Bill!

What can we do about it?

Call your elected representatives in the Senate, and ask them not to vote for the Bill!

Please do so respectfully. Don't insult them. Just calmly explain to them why you, as a citizen, are against the Bill.

Here are the names and contact numbers for a few Senators who are probably more likely than others to vote "no" (because they already voted "no" against one of the clauses) but might need some persuasion from you to vote "no" against the whole Bill:

Hon. Sen. Chifamba, J	0773011067
Hon. Sen. Chinake V	0772816520
Hon. Sen. Chisorochengwe T	(not available)
Hon. Sen. Denga P	(not available)
Hon. Sen. Dube M. R	(not available)

Hon. Sen. Femai M	0772364271
Hon. Sen. Gweshe K	0773 839827
Hon. Sen. Komichi M	0782293149
Hon. Sen. Mavetera T.	0785 573 299
Dr, Hon. Sen. Moeketsi V	(not available)
Hon. Sen. Moyo G	(not available)
Hon. Sen. Moyo T	(not available)
Hon. Sen. Mpofu B	senatormpofu@gmail.com
Hon. Sen. Mudzuri E	0772698388
Hon. Sen. Muronzi M	(not available)
Hon. Sen. Mwonzora D. T	0774 148 461
Hon. Sen. Ndlovu D. M	(not available)
Hon. Sen. Nyathi R	(not available)
Hon. Sen. Rwambiwa E.	0777302590

The Senate votes on 5th May 2021! The time to act is NOW!