



ANALYSIS OF GENDER COMMISSION BILL HB 8 of 2014
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Chapter 12 of the new Constitution of Zimbabwe is headed "Independent Commissions Supporting Democracy". One of these Independent Commissions is the Zimbabwe Gender Commission (hereafter referred to as "the ZGC" or "the Commission"). The establishment of the Commission will be a welcome and long overdue development as it has the potential to significantly and positively impact the lives of the people in this country, in particular women and girls. However, Zimbabwe Lawyers for Human Rights (ZLHR) is very disappointed with the gazetted draft Zimbabwe Gender Commission Bill, and earnestly hopes that it will be extensively revised and improved upon before it is enacted into law.

Section 2 of the new Constitution speaks to the supremacy of the Constitution. It is essential that the Zimbabwe Gender Commission Bill fully complies and is in accordance with the provisions of the Constitution in every respect. Very regrettably, in several important respects, this is not the case with the Zimbabwe Gender Commission Bill; it in fact falls far short of the standards set in the Constitution.

At the outset it should be stressed that the Commission is required in terms of the Constitution to be independent. This is made abundantly clear from the first word of the heading to Chapter 12: "Independent Commissions Supporting Democracy". Section 235 of that Chapter elaborates on that. It of concern that the drafters of the Bill have paid scant regard to this crucial provision and the result is that the Commission will become, in many respects, akin to a department of the Ministry of Women's Affairs, Gender and Community Development.

The proposed Zimbabwe Gender Commission Bill must also be guided by international standards set out in the United Nations (UN) *Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights* ("the Paris Principles"). There are six criteria, which the Paris Principles expect a national human rights institution (NHRI) such as the ZGC to meet. These are:

1. Independence guaranteed by statute or constitution;
2. Autonomy from government;
3. Pluralism, including in its membership;
4. A broad mandate based on universal human rights standards;
5. Adequate powers of investigation; and
6. Adequate resources.

International recognition of NHRIs takes place through their accreditation status, based on its compliance with the above criteria. It should be the ambition of any NHRI that it achieves an 'A' accreditation status which would allow it to participate fully in the UN Human Rights system. This should also be the ambition of the state, which establishes the NHRI. The proposed Zimbabwe Gender Commission Bill falls far short of the essential criteria set out in the Paris Principals; as a result, unless it is extensively revised and improved before it is enacted into law, the Commission will receive little if any UN recognition. This will reflect on the standing of the Commission in international law. It will also mean that it will be extremely difficult to attract suitable financial and moral support to make it fully operational and effective.

Zimbabwe Lawyers for Human Rights (ZLHR) therefore urges stakeholders to constructively debate the provisions of this Bill and ensure that this law will fully comply with the Constitution, and with the human rights obligations which the government has signed up so as to create a foundation for the smooth implementation and respect of the principles of gender equality and non-discrimination.

The ZGC should be protected from challenges that continue to affect the performance of other constitutional commissions, including lack of independence, lack of adequate resources, skewed accountability mechanisms, a weak mandate and lack of public support and confidence in their effectiveness. In the creation of the Commission, ZLHR therefore urges the government to ensure that the Commission is equipped with a wide mandate that is sufficiently broad to allow it to overcome these obstacles and perform effectively.

CONSTITUTIONAL PROVISION	SECTION IN THE BILL	SUMMARY OF PROVISION	COMMENTS
Section 245 Establishment and composition of the Zimbabwe Gender Commission	Preamble	Stipulates provisions of the Constitution establishing the Zimbabwe Gender Commission (ZGC), constitution of the commission, its functions and reports to be made by the Commission.	<ul style="list-style-type: none"> In addition to restating the provisions that establish the Commission, sections giving reference to gender equality should also be restated in the Preamble particularly section 17 [gender balance], section 3(1) (g) [gender equality], section 56 [equality and non-discrimination], section 80 (1) and (3) [the rights of women]
	Interpretation	The Bill defines for the purpose of the Act the following terms, annual report, commission, chief executive officer and systemic barriers prejudicial to gender equality.	<ul style="list-style-type: none"> There is need to define the difference between gender and sex and also define equality, discrimination, marginalisation and persons with disabilities. The term hearing should be defined for the purposes of this Act.
Section 234 Staff of independent	Section 3	Provides that the ZGC is a body with the capacity to sue and be sued at law. Members of the Commission shall hold office for up to 5 years	<ul style="list-style-type: none"> Terms and conditions of service should be determined by members of the Commission together with parliament as the

<p>Commissions</p> <p>Section 237 Appointment and removal of members of Independent Commissions</p>		<p>and only eligible for one more term. Terms and conditions set by Minister of Women Affairs, Gender and Community Development (herein after referred to as the Minister).</p> <p>The President shall appoint the chairperson and the vice from the members of the Commission after consultation with the Committee on Standing Rules and Orders (CSRO). The chairperson and vice shall be of different genders.</p> <p>The President shall appoint 7 members to the ZGC from a list of at least 12 nominees submitted by the CSRO.</p> <p>One member to be nominated from the National Council of Chiefs.</p>	<p>Constitution authorises the Commission to regulate its own conditions of service whilst reporting to parliament.</p> <ul style="list-style-type: none"> • Procedure for appointing members of the Commission should be set out in the Act as expressed in the Constitution section 237(1) • In terms of the Constitution section 320 (1) Commissioners are to serve for five year terms and are eligible to one more term. Section 3(1) of the Bill, terms and conditions set by the Minister of Gender and Women Affairs; purport to re-appoint Commissioners for more than one term. However sections 237 and 245 of the Constitution already set out how the ZGC Commissioners are to be appointed. Section 3(1) of the Bill is therefore unconstitutional. • Paragraph 3 of the First schedule of the Bill provides that Commissioners are to remain in office for 6 months after expiry of their terms of office pending the appointment of successors. The Constitution makes no provision for such extension and therefore this provision is ultra vires the Constitution. • Section 245(2) of the Constitution sets out the selection criteria for Commissioners. The qualifications to be appointed a Commissioner are not clearly spelt out. This should be done and in addition, Commissioners should also be required to have the following characteristics: <ul style="list-style-type: none"> i. Must be of the highest moral standing; ii. Must be able and willing to act impartially and independently, without fear, favour or prejudice, in the conduct of their duties;
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		<p><u>Inclusion of a section on guiding principles</u> <u>This a new section to be inserted</u></p>	<p>Recommendation: There is need to consider the following guiding principles a) impartiality, gender equality and gender equity; b) inclusiveness, non-discrimination and protection of marginalised groups</p>
		<p><u>Independence of the Commission in terms of Section 235</u></p>	<ul style="list-style-type: none"> • Restate Section 235 in this Section. • It should be explicitly stated that the Commission must be independent • Members of the Commission should perform their duties without fear or favour • Commissioners should not take part in an investigation of a matter where they have a pecuniary or other interest which might preclude them from acting in an a fair, unbiased and proper manner • Section 16 of the ZGC Bill which states that the Minister can give policy direction to the commission in relation to issues of national interests is unconstitutional • The Bill in Paragraph 4 of the First Schedule provides that Commissioners are permitted to resign by giving notice to the Minister. The Constitution provides that Commissioners are independent and there is therefore no basis for them to resign to the Minister

Section 246 Functions of the ZGC	Section 4 as read with second schedule	<u>Functions of the Commission</u> Provides that, in addition to the functions in the Constitution, the ZGC shall conduct investigations, host the Gender Forum and perform any other act permitted at law.	<ul style="list-style-type: none"> • Functions of the ZGC should be listed as broadly as stated in the Constitution in Section 246 and not just to make reference to provisions of the Constitution. • The Bill should also include other additional functions to allow for a wider mandate and more effectiveness
	Section 5	Provides that the ZGC will place a notice in the government gazette informing the public of its intention to investigate systematic barriers prejudicial to gender equality.	<ul style="list-style-type: none"> • Placing such a public notice may prejudice the intended investigations in certain circumstances. However in other circumstances it may not be possible for one to rectify some of the systemic barriers of gender inequality before the investigation begins. The notice period can be seen as a way in which the Commission shows transparency in its work. Publishing a notice will alert the relevant institution to avail relevant documents to facilitate thorough research which will form the basis for informed recommendations. However other non- formal ways of investigation should be considered where notice does not have to be given. • The ZGC should also publish its rules and procedures of investigating to the general public, and its report after the investigations. The rules should be published under a statutory instrument
	Section 6	<u>Manner of conducting investigations</u> ZGC shall conduct investigations in the form of public or closed hearings with powers to summon any person, ask any questions, require answers for questions put and seek assistance from the police in investigations. ZGC not bound by the rules of evidence. Person appearing at the ZGC may be represented	<ul style="list-style-type: none"> • The section omits to lay out procedure for obtaining search warrants, entering and searching premises and removing articles that may be used in investigations. • The Act should provide for the procedure of receiving complaints from the public which will lead to investigations. There is also need to have clear-cut admissibility

		<p>by a legal practitioner. Information obtained in investigations cannot be disclosed to any person, except if the identity of the person is not disclosed or for purposes of investigation, and reporting. The Minister may issue a certificate stipulating that the disclosure of any information is prejudicial to the state, and thereafter the hearing may proceed in camera. Any member of the Commission who discloses information obtained during investigations shall be guilty of an offense punishable by a fine of up to level 12 or imprisonment of up to 2years. The law of evidence relating to competence and compellability of witnesses shall apply</p>	<p>procedures which will help in determining which cases will be taken up and the appropriate procedure</p> <ul style="list-style-type: none"> • The ZGC must formulate its own Rules of procedure to apply; it is not clear what the investigation limitations of the commission are. How will the Commission work in relation to Section 85 of the Constitution • How will the ZGC relate to the ZHRC what kind of collaboration will the ZGC have with the gender desk in the ZHRC? • The procedural aspects are problematic; there is need to clarify Section 6(8) (a) which provides that a person sworn as a witness must answer fully and satisfactorily a question put before him as it is not clear what constitutes a full and satisfactory answer. • It is not clear when the assistance of the police be sought • There is need for a clear referral system. • The section creates interference by the executive in the work of the ZGC through the Minister. • The ZGC should also employ Alternative Dispute Resolution Mechanisms (ADRM) such as arbitration and mediation for purposes of resolving issues arising from violations of gender equality before pursuing other means
<p>Section 247 of the Constitution Reports by ZGC</p> <p>Section 323 Commissions to report annually to</p>	<p>Section 7</p>	<p><u>Reports and recommendations to Minister after investigations</u> Provides that after investigations, ZGC should report its finding and recommendations to the Minister</p>	<ul style="list-style-type: none"> • The report should be tabled to parliament through the Minister, and not to the Minister. The role of the Minister should be limited to receiving reports and tabling them in parliament. A provision should be added directing the minister to table the commission's report in parliament in a

<p>Parliament</p> <p>Section 247 Reports by ZGC</p> <p>Section 235 Independence of the Commissions</p>			<p>prescribed time</p> <ul style="list-style-type: none"> • Findings and Recommendations can be made to any institution, public body or organ of the state which can address the issue that was being investigated. • Referral system should be clear when should the ZHRC take over certain issues and under what circumstances to avoid duplication of efforts. • There should be follow up process if the recommendations by the Commission are not addressed and responsible institutions or person held to account.
	<p>Section 8</p>	<p><u>Gender Forum</u> Sets out the parameters within which the ZGC will hold an annual Gender Forum</p>	<ul style="list-style-type: none"> • It is not provided for in the Constitution however it will create space for the Commission to interact with stakeholders who will enable it to adequately fulfil its mandate. • It could also be useful to make provision for public consultations and education in all regions by the commissions instead of having one annual gender forum. • The Sections could be renamed to reflect this role
<p>Section 234 Staff of the Independent Commissions</p>	<p>Section 9</p>	<p><u>Conduct of Gender Forum</u> The ZGC shall constitute an <i>ad hoc</i> committee for purposes of the Gender Forum. Conclusions of the Gender Forum shall be presented in writing to the Minister.</p>	<ul style="list-style-type: none"> • The ZGC is independent and reports to Parliament; therefore there is no basis of submitting reports to the Minister. • It is not clear what becomes of this report after submission ,no action or follow up
	<p>Section 10 and paragraph 4 of the First Schedule</p>	<p><u>Appointment and functions of Chief Executive Officer (CEO) of ZGC</u> The ZGC shall appoint, in consultation with the Minister on terms and conditions of employment of the CEO of the ZGC. The Minister may, in consultation with the Civil Service Commission (CSC) appoint a person in his employ to the CEO.</p>	<ul style="list-style-type: none"> • The CEO reports to the commission in order to maintain independence of the commission, as such should be appointed by members of the commission in consultation with parliament. • The CEO should tender resignation to the chairperson of the Commission and not to

Section 247 and 323 Reports of Commission		<p>CEO should be Zimbabwean citizen and ordinarily resident in Zimbabwe except with authority from the Minister.</p> <p>The CEO or any member of staff shall vacate their office by giving notice to the Minister.</p> <p>The section sets out the functions of the CEO</p>	<p>the Minister. The CEO should report to the Commission only.</p> <ul style="list-style-type: none"> • There is a potential challenge in the recruitment of a CEO from the Ministry as there is possibility that a senior person who may not necessarily be well qualified could be appointed to the Commission. The Minister should not participate in the process of employing staff at the ZGC. The Commission possibly with the Civil Service Commission and not the Minister should appoint the CEO
	Section 11 Other Staff of the Commission	<p><u>Other staff of Commission</u></p> <p>The Commission shall in consultation with the Minister and the Minister of Finance appoint staff of the ZGC</p>	<ul style="list-style-type: none"> • The Minister should not be involved in employing staff of the ZGC as the commission has authority to employ staff and regulate their conditions of service. Parliament, The Public Service Commission and the Minister of finance may be consulted for purposes of ensuring that there in as adequate budget for the staff employed.
	Section 12	<p><u>Reports of the Commission</u></p> <p>The ZGC shall submit its financial year report to the Minister in a format determined by the Minister. The Minister shall submit the report to parliament.</p> <p>The ZGC will submit to the Minister any other report and information required by the Minister.</p>	<ul style="list-style-type: none"> • According to the Constitution, the ZGC sends its reports to Parliament through the Minister. As such, the Minister's role is limited to accepting the report and tabling it in Parliament. To allow for better accountability after tabling in parliament the report should also be submitted to the President • The ZGC reports to parliament and not to the Minister, therefore additional reports and information cannot be requested by the Minister, this will adversely hamper on independence of the Commission. • The reports of the Commission should also be made public

<p>Section 322 and 325 of the Constitution</p> <p>Section 235 Independence of Commissions</p>	<p>Section 13</p>	<p><u>Funds of the Commission</u> Funds for the ZGC will be from money appropriated for the Commission by an Act of Parliament, registration fees charged for attending the Gender Forum, any funds donated from any place. Money not immediately required will be invested in a manner approved by the Minister and the Minister of Finance.</p>	<ul style="list-style-type: none"> • If funds for the ZGC are obtained through parliament, then approval for investments must be made by parliament and not by any Minister. • Section 325 calls upon government to ensure that adequate funds are provided to the commissions and other institutions established by this constitution to ensure that they perform their functions effectively • The commission should be afforded a reasonable opportunity to make representations to a parliamentary committee as to the funds to be allocated to them in each financial year sec 325(2) • There is need to specify the kinds of investments that the commission can enter into to create checks and balances.
	<p>Section 14</p>	<p><u>Accounts of Commission and Appointment of internal Auditor</u> The ZGC shall keep proper accounts and records of all activities, funds and property including any other records that the Minister will direct. A financial report will be submitted on a yearly basis to the Minister. Section 80 of the Public Finance Management Act shall apply to the Commission</p>	<ul style="list-style-type: none"> • The ZGC is accountable to parliament, therefore any reports on financial accounts and records should be sent to Parliament and not to the Minister.
	<p>Section 15</p>	<p><u>Audit of Accounts</u> Accounts shall be audited by the auditor general. Any person who refuses to give, or gives inadequate information shall be guilty of offence punishable by a fine up to level 12 or imprisonment up to 2 years.</p>	<ul style="list-style-type: none"> • Audit of accounts is commendable to allow for transparency and accountability
	<p>Section 16</p>	<p><u>Minister may give Commission directions in national interest.</u></p>	<ul style="list-style-type: none"> • This section is contrary to the constitution which provides that Commissioners are

<p>Section 235 Independence Commissions</p> <p>Section 234 Staff independent Commissions</p> <p>Section 237 (3) Appointment and removal from office of members of independent Commissions</p>		The Minister may give ZGC policy directives consistent with national interests. The ZGC shall comply with any directions so given, and shall set out the directions in their annual report.	independent and are not subject to the direction of any one, they must act according to the constitution, without fear, favor or prejudice although they are only accountable to parliament. The ZGC should therefore set its own policies without any involvement of the Minister.
	Section 17	<p><u>Regulations</u></p> <p>The Minister may make regulations in consultation with the Commission which are necessary to give effect to this Act. The Regulations may provide for the terms of Office of the CEO and other staff. They will also provide for penalties which may be imposed for contravening the regulations.</p>	<ul style="list-style-type: none"> Commission staff has the authority to regulate their own conditions of service; as such there is no legal basis for Ministerial regulation of such terms and conditions.
	First Schedule Section 2	<p><u>Disqualification for appointment as member</u></p> <p>A person shall be disqualified to be a member at the ZGC if they are not Zimbabwean citizen or ordinarily resident in Zimbabwe, have been declared insolvent, have been sentenced to imprisonment without the option of a fine, a member of parliament and if they hold office in two or more statutory bodies.</p>	<ul style="list-style-type: none"> It is recommended that a list of the qualifications to be member should also be set out, such as age, level of education, experience etc.
	First Schedule Section 3	<p><u>Expiry of membership and re-appointment of members</u></p> <p>At the expiry of a term of office for members of the ZGC, members remain in office until they have been re-appointed or their successors have been appointed. They shall not continue to hold office beyond 6 months. A person who ceases to be a member shall be eligible for re appointment.</p>	<ul style="list-style-type: none"> The section needs to be specific on how long a term of office is and how many terms a person is eligible for. Terms of office are clearly stated as 5 years in the constitution and there is no provision for the extension of terms by 6 months this provision is unconstitutional
	First Schedule Section 4	<p><u>Vacation of office by members</u></p> <p>Members may vacate office: after giving and serving one months' notice to the Minister and/ when they start to serve a sentence of imprisonment.</p> <p>The Minister may require a member to vacate</p>	<ul style="list-style-type: none"> The procedure for removal of members of the commission is the same as removal of judges; therefore this section cannot stand as it is. A tribunal ought to be enacted to investigate if a member ought to be removed from the commission and then

Section 187 of Removal of Judges Section 320(1) Membership of Commissions and conditions of service of members		office if he/ she has been found guilty of conduct which renders him unsuitable to continue in office, is mentally or physically incapable of performing duties, and if a member has failed to attend three consecutive meetings without just cause.	recommend removal of member to the President. The Minister plays no role in removal of a member of the Commission.
	First Schedule Section 5	<u>Suspension of members</u> The Minister may suspend without pay from office any member whom criminal proceedings are instituted against involving dishonesty.	<ul style="list-style-type: none"> • Suspension based on pending criminal charges goes against the right to be presumed innocent until proven guilty. • Criminal proceedings and labour proceedings are separate proceedings. As such where criminal charges arise, and they have a bearing on the work of a member, labour proceedings should be initiated, which include investigations and a hearing, the outcome will then substantiate a decision to suspend someone, which decision cannot be made merely based on an allegation that someone committed a criminal offence. • Further the decision to suspend a person cannot come from the Minister as the Commission has the authority to regulate its own conditions of service.
	First Schedule Section 6	A vacant office shall be filled within 3 months.	<ul style="list-style-type: none"> • This creates certainty. • Filling of the vacancy should comply with the requirements of appointing members in the Commission
	First Schedule Section 7	The Commission shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall regulate its meetings. The Commission shall meet at least once every three months. The chairperson shall convene a meeting at any time, and may also do so at the direction of the Minister	<ul style="list-style-type: none"> • There is no basis for the Minister to direct the Commission to hold a meeting as the Commission has authority to regulate its own affairs and is independent and only reports to parliament. • It needs to be specified how many members are the majority

		A majority of members shall form a quorum	
	First Schedule Section 8	<u>Committees of Commission</u> The commission may appoint a committee for the better exercise of its functions. The commission retains ultimate responsibility for its functions	<ul style="list-style-type: none"> • Delegation of some functions to the committees will help the commission to be more effective. • However the Commission remains responsible for the conduct of the Committee and cannot be absolved from any responsibility for the performance of their functions entrusted to it.
	First Schedule Section 9	<u>Minutes of proceedings of commissions and committees</u> Minutes shall be recorded at all meetings and kept in books, and these shall be accepted as <i>prima facie</i> evidence of the proceedings. The commission shall send all copies of meetings to the Minister	<ul style="list-style-type: none"> • Keeping of minutes will enable the commission to have records of all important decisions made. • However, the commission is independent and reports to parliament, there is therefore no legal basis to send reports to the Minister.
	First Schedule Section 10	<u>Validity of decisions and acts of commission and committees</u> All decisions made at a meeting by the Commission remain valid even if made when there was a vacancy in the commission or when one of the members had been disqualified on one ground or the other.	<ul style="list-style-type: none"> • This provides the binding effect of decisions with certainty.
	Second Schedule	<u>Ancillary Powers of Commission</u> The schedule gives diverse powers to the commission which include acquiring property, opening bank accounts, mortgaging assets etc with the approval of the Minister	<ul style="list-style-type: none"> • These powers are necessary for the effective running of the Commission; however, the Commission need not obtain consent or approval from the Minister. • There should be some parameters for corporate governance and percentages should be provided for salaries benefits and loans to commissioners and staff versus programmes

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