

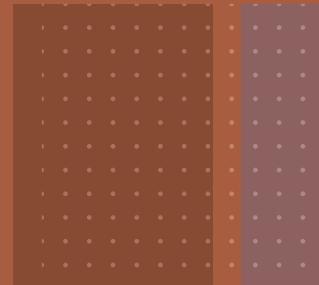


State of the Zimbabwean Constitution and constitutionalism in the Post-2017 Political Transition Era

A RESEARCH PAPER BY
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01

Abstract

Constitutionalism is not merely about the existence of a written constitution; it is about the genuine embrace of the values and principles that underpin a constitutional democracy. In Zimbabwe, while the adoption of the 2013 Constitution represented a significant milestone, the journey toward fully embedding constitutionalism remains incomplete.

This paper evaluates the practice of constitutional democracy in Zimbabwe, with a critical focus on the constitutional amendments introduced through Amendment Acts 1 and 2 and their implications for the separation of powers. It also looks at numerous threatened changes to the Constitution, most notably the question of the removal or extension of presidential term limits for the benefit of the incumbent.

It further explores concerns around the weaponization of the law against citizens, highlighting the disconnect between constitutional ideals and their practical implementation.

The analysis recognizes that these challenges, while significant, can be viewed as the growing pains of a nation striving to establish a genuine democratic framework. The paper advocates for a renewed effort to foster an understanding and acceptance of constitutionalism as a way of governance, particularly among the youth, who are key to cementing its principles in the nation's future. By promoting awareness, strengthening advocacy, and addressing the current misalignments, Zimbabwe can move closer to realizing the vision of a robust constitutional democracy.

02

Introduction

2.1. A Brief Constitutional History of Zimbabwe

Zimbabwe's constitutional development has been shaped by its colonial past, liberation struggle, and post-independence challenges. The country's first constitution, commonly referred to as the Lancaster House Constitution, was negotiated in 1979 at the Lancaster House Conference in London. This agreement ended the armed struggle against colonial rule and paved the way for Zimbabwe's independence in 1980. The Lancaster House Constitution was largely a compromise document, designed to protect minority rights, including white land ownership, and to ensure a smooth transition to majority rule. It also entrenched a bill of rights and established a parliamentary democracy with limited executive powers (Muzondidya, 2009). However, this constitution was criticized for being externally imposed and failing to address key socio-economic injustices and historical imbalances particularly land redistribution.

Over the next two decades, the document was amended numerous times, often to centralize power in the executive. By the early 2000s, Zimbabwe faced economic decline, political violence, and governance crises, which culminated in widespread calls for constitutional reform (Sachikonye, 2011).

The signing of the Global Political Agreement (GPA) in 2008, following disputed elections and a period of political instability, marked a critical juncture in Zimbabwe's constitutional history. Brokered by the Southern African Development Community (SADC), the GPA created a power-sharing government between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two factions of the Movement for Democratic Change (MDC). The GPA highlighted the urgent need for a new, people-driven constitution to restore democratic governance, uphold the rule of law, and promote human rights (Raftopoulos, 2013).

The drafting of the 2013 Constitution involved extensive public consultations, with over 1.1 million submissions from Zimbabweans. Adopted through a national referendum, the new Constitution was widely regarded as progressive and representative of the will of the people. It introduced significant reforms, including stronger checks and balances on executive power, an expanded bill

of rights, gender equality provisions, and the devolution of governmental powers to local authorities (Ncube and Okeke-Uzodike, 2015).

The 2013 Constitution represents a departure from the colonial legacy of imposed governance structures. It is a document rooted in national consensus, designed to address historical injustices and lay the foundation for democratic governance, social justice, and sustainable development. Nevertheless, its implementation has faced challenges, particularly regarding aligning existing laws and practices with constitutional principles.

2.2. Problem Statement

The adoption of Zimbabwe's 2013 Constitution was a landmark achievement, representing a collective vision for democratic governance, human rights, and the rule of law. Drafted through extensive public consultation, and voted for by a 94% majority, the Constitution was widely celebrated for its progressive provisions, including limitations on executive power, the devolution of authority, and a robust Bill of Rights. However, in the years following its adoption, the promise of constitutionalism has been undermined by political events and legislative amendments that threaten to erode the foundational principles of the 2013 Constitution.

The political transition of November 2017, which saw the resignation of President Robert Mugabe after 37 years in power, was a pivotal moment in Zimbabwe's political landscape. While it was initially framed as a restoration of democratic values and constitutional order, the subsequent governance trajectory under President Emmerson Mnangagwa raised significant

concerns about the state of constitutionalism. The consolidation of power by the executive and the growing trend of unilateral decision-making have overshadowed many of the democratic aspirations enshrined in the 2013 Constitution (Ncube and Okeke-Uzodike, 2015).

The erosion of constitutionalism is most evident in the passage of two major amendments to the 2013 Constitution:

i) *Constitution of Zimbabwe Amendment No. 1 (2017)*

This amendment altered the appointment process of the Chief Justice, Deputy Chief Justice, and Judge President of the High Court, giving the President sole discretion to make these appointments without public interviews or recommendations from the Judicial Service Commission. This undermines the separation of powers and judicial independence, key pillars of constitutional democracy.

ii) *Constitution of Zimbabwe Amendment No. 2 (2021)*

This amendment introduced several controversial changes, including:

- Extending the tenure of judges beyond the age of 70 based on presidential approval.
- Removing the running mate clause for presidential elections, effectively centralizing executive power.
- Increasing the number of non-constituency members in Parliament, raising concerns about the dilution of representative democracy.

These amendments, while framed as necessary for governance efficiency, reflect a pattern of constitutional manipulation that threatens to undermine the principles of accountability,

inclusivity, checks and balances established in 2013. They highlight a broader trend in which constitutional provisions are altered to serve political expediency rather than the national interest.

The state of constitutionalism in Zimbabwe is thus at a crossroads. While the 2013 Constitution remains a symbol of progress, its implementation and integrity are increasingly under threat. This research will examine how the amendments and governance practices post-2013 have weakened the achievements of the Constitution. It will analyse the implications of these changes for democratic governance, judicial independence, and the rule of law. Finally, it will provide recommendations for safeguarding constitutionalism and ensuring that the spirit of the 2013 Constitution is upheld in practice.

2.3. Objectives

The primary objectives of this research paper are as follows:

i) *Evaluate the 2017 Political Transition*

- Analyse the circumstances and outcomes of Zimbabwe's political transition in 2017, focusing on its impact on governance and constitutionalism.
- Assess whether the promises of restoring democracy and constitutional order were realized in practice.

ii) *Critique Amendments No. 1 and No. 2*

- Provide a detailed critique of the Constitution of Zimbabwe Amendment No. 1 (2017) and Amendment No. 2 (2021).
- Examine how these amendments affect the separation of powers, judicial independence, and representative democracy.

iii) *Assess the Alignment of Laws with the Constitution*

- Investigate the extent to which Zimbabwe's legislative framework and governance practices align with the principles and provisions of the 2013 Constitution.
- Identify gaps and inconsistencies that undermine constitutional compliance.

iv) *Examine the “Weaponization” of the Law Against Citizens*

- Explore allegations of the selective application and manipulation of the law to suppress dissent and target political opponents.
- Evaluate the implications of such practices for human rights, the rule of law, and public trust in legal institutions.

These objectives will guide the analysis and recommendations of this research, with the aim of contributing to the restoration and strengthening of constitutionalism in Zimbabwe.

2.4. Research questions

This study seeks to address the following key research questions:

- i) *How has Zimbabwe's constitutional democracy evolved since 2013?*
 - What progress has been made in implementing the provisions of the 2013 Constitution?
 - What challenges have emerged in preserving constitutionalism and democratic governance in the post-2013 era?
- ii) *What is the impact of Constitutional Amendments No. 1 and No. 2 on democratic governance?*
 - How do these amendments affect the balance of power among the executive, legislature, and judiciary?
 - To what extent do these amendments undermine or strengthen the principles enshrined in the 2013 Constitution?
- iii) *Are laws being used to protect or undermine citizens?*
 - How have laws and legal processes been applied in governance and accountability since 2013?
 - To what extent has the “weaponization” of the law against citizens and political opponents affected the rule of law and public trust in legal institutions?

These research questions will provide a framework for examining the state of constitutionalism in Zimbabwe, the effectiveness of its legal and governance structures, and the impact of recent constitutional and political developments.

2.5. Significance of the study

Constitutional reforms are critical to safeguarding Zimbabwe's democratic future and ensuring adherence to the principles of constitutionalism, the rule of law, and accountability. Since the adoption of the 2013 Constitution, challenges such as amendments that undermine its core provisions, weakened state institutions, and declining constitutional literacy among citizens have hindered its effective implementation.

Civil society, a vital driver of constitutional advocacy, has struggled to mount a coordinated response to these developments. This is compounded by limited public engagement, a decline in understanding of constitutional rights, and the absence of a robust citizen-centred constitutional movement. A pressing question arises: are Zimbabwe's state institutions adequately equipped to understand, respect, and defend the Constitution, or have they become instruments of its erosion?

This research is significant in its aim to inform strategies for rebuilding a citizen-centred constitutional movement that prioritizes public participation and accountability. By enhancing public awareness

and fostering constitutional literacy, this study will contribute to strengthening advocacy efforts for constitutional reform and protection. Ultimately, it seeks to provide actionable recommendations to preserve the gains of the 2013 Constitution and promote a sustainable democratic trajectory for Zimbabwe.

2.6. Scope and limitations

This study focuses on the evolution of constitutionalism in Zimbabwe from the adoption of the 2013 Constitution to the present day. It evaluates the key events and legislative amendments that have shaped the constitutional landscape, with particular emphasis on:

- i) The 2017 Political Transition: Analysing its implications for governance, constitutionalism, and democratic principles.
- ii) Constitutional Amendments No. 1 (2017) and No. 2 (2021): Critiquing their impact on the separation of powers, judicial independence, and democratic governance.
- iii) Alignment of Laws with the Constitution: Assessing how current laws and practices reflect or deviate from the principles and provisions of the 2013 Constitution.
- iv) Weaponization of the Law: Investigating the selective application of the law to suppress dissent, target political opponents, and undermine the rule of law.

The study seeks to provide insights into the state of constitutionalism in Zimbabwe, evaluate the role of state and non-state actors in upholding constitutional principles, and recommend strategies to strengthen advocacy, public participation, and constitutional literacy.

Limitations of the Study

While this study endeavours to provide a comprehensive analysis, it is subject to the following limitations:

- i) Temporal Focus: The study primarily examines developments from 2013 onwards, limiting its analysis of historical factors preceding the adoption of the 2013 Constitution.
- ii) Access to Data: The availability of reliable and up-to-date data on legislative and judicial decisions, as well as the activities of state institutions, may pose a challenge, particularly in the context of limited transparency.
- iii) Subjectivity in Interpretation: The critique of constitutional amendments and governance practices may be influenced by subjective interpretations of their impact on constitutionalism and democracy.
- iv) Geographical Focus: The study primarily addresses constitutionalism at the national level, with limited focus on regional and local dynamics of governance and citizen engagement.
- v) Time Constraints: Given the evolving nature of Zimbabwe's political and constitutional environment, the study may not capture the most recent developments or their long-term implications.

Despite these limitations, the study strives to present a balanced and evidence-based analysis that contributes to the discourse on constitutionalism and democratic governance in Zimbabwe. Recommendations will focus on addressing these challenges and fostering a sustainable democratic framework.

03

Literature Review

3.1. Overview of Constitutional Democracy

Constitutional democracy refers to a system of governance in which the authority of the government is derived from and limited by a constitution. This framework ensures that the rule of law, separation of powers, and protection of fundamental rights are upheld, forming the foundation for a democratic society (Lutz, 2006). A constitutional democracy combines the principles of democracy—such as popular sovereignty, majority rule, and periodic elections—with constitutional constraints that safeguard individual liberties and prevent the abuse of power.

The key tenets of constitutional democracy include:

1. Rule of Law: All individuals and institutions, including the government, are subject to the law, which must be fairly and consistently applied (Dicey, 1885).
2. Separation of Powers: The division of government authority into distinct branches—typically the executive, legislature, and judiciary—ensures checks and balances, preventing the concentration of power (Montesquieu, 1748).
3. Protection of Fundamental Rights: A constitutional democracy enshrines and protects civil liberties, such as freedom of speech, equality before the law, and the right to due process (Dahl, 2000).
4. Periodic and Free Elections: The government is accountable to the people through regular, free, and fair elections, allowing citizens to choose their representatives and hold them accountable (Beetham, 1994).

Constitutional democracy also emphasizes constitutionalism, which requires that the exercise of power aligns with constitutional principles and legal frameworks. According to Sartori (1987), constitutionalism not only limits governmental authority but also ensures that laws reflect the will of the people and respect human dignity.

In practice, constitutional democracies differ in their implementation and effectiveness, depending on the historical, cultural, and political contexts of

individual nations. For instance, post-colonial states such as Zimbabwe have faced unique challenges in developing constitutional democracies, particularly in balancing the principles of democracy with the legacy of authoritarian governance (Ndlovu-Gatsheni, 2009).

The importance of constitutional democracy lies in its ability to foster stability, promote accountability, and protect citizens' rights. However, deviations from these principles—such as the weakening of institutions or manipulation of constitutional frameworks—undermine its effectiveness and threaten democratic governance.

This section provides the conceptual foundation for the study of constitutionalism and democracy in Zimbabwe, setting the stage for an examination of how these principles have evolved and been applied in the country's political and legal context.

3.2 Zimbabwe's 2013 Constitution

The Constitution of Zimbabwe, adopted in 2013, marked a significant milestone in the country's democratic development. Emerging from a politically negotiated process, it sought to establish a robust framework for democratic governance grounded in constitutionalism, the rule of law, and respect for fundamental rights. The democratic intent of the Constitution is embodied in its comprehensive provisions aimed at limiting governmental power, ensuring accountability, and promoting transparency (Ncube and Okeke-Uzodike, 2015).

Separation of Powers: Framework and Democratic Significance

A critical feature of the 2013 Constitution is its adherence to the doctrine of separation of powers, which Montesquieu (1748) identified as essential for preventing the concentration of power and safeguarding liberty. Under the Zimbabwean Constitution, the separation of powers is established through the delineation of authority among the executive, legislature, and judiciary. Each branch is intended to operate independently while maintaining a system of checks and balances to ensure accountability and prevent abuse of power.

- i) **The Executive:** The President serves as the head of state and government, with powers defined and constrained by the Constitution. The executive branch is tasked with implementing laws, formulating public policy, and managing state affairs, while remaining accountable to Parliament and the judiciary (Constitution of Zimbabwe, 2013, Chapter 5).
- ii) **The Legislature:** Comprising the National Assembly and Senate, the legislature is responsible for enacting laws, scrutinizing the executive, and representing the will of the people (Chapter 6). Its constitutional mandate includes budget approval, policy oversight, and holding the executive accountable through mechanisms such as parliamentary inquiries.
- iii) **The Judiciary:** The judiciary plays a vital role in interpreting and applying the law, ensuring that all government actions comply with constitutional principles. Judicial independence, enshrined in Chapter 8 of the Constitution, is critical to upholding the rule of law and protecting citizens' rights. Judges are expected to discharge their duties impartially, free from external influence or political interference.

The Importance of the Separation of Powers

The doctrine of separation of powers underpins democratic governance by preventing the abuse of authority and ensuring that power is distributed among distinct branches. This system creates mutual accountability, as each branch is empowered to check the others. For instance, the judiciary can invalidate unconstitutional laws or executive actions, while the legislature, traditionally, can impeach a president who violates constitutional provisions (Barendt, 1995).

The framers of the 2013 Constitution recognized the importance of maintaining judicial independence as a cornerstone of the rule of law. Judicial independence ensures that citizens have access to impartial justice and that constitutional principles are upheld without fear or favour. It also provides a vital counterbalance to the executive and legislative branches, ensuring that power remains within constitutional limits.

Challenges to the Separation of Powers

While the 2013 Constitution established a strong framework for separation of powers, its practical implementation has faced significant challenges. Over time, there have been concerns about the erosion of judicial independence and the legislature's diminished ability to hold the executive accountable. The introduction of Constitutional Amendments No. 1 and No. 2, as well as broader concerns about political interference in the judiciary, have raised questions about the resilience of Zimbabwe's democratic framework.

This section lays the theoretical foundation for understanding the critical role of separation of

powers in a constitutional democracy. The study will later explore how amendments to the 2013 Constitution have undermined this principle, particularly in the judiciary, and assess the broader implications for constitutionalism and governance in Zimbabwe.

3.3. 2017 Political Transition

The political transition of 2017 in Zimbabwe marked a pivotal moment in the country's governance, legal framework, and political trajectory. This transition was triggered by the military's intervention in November 2017, culminating in the resignation of President Robert Mugabe after 37 years in power and the ascension of Emmerson Mnangagwa to the presidency. Although characterized as a "military-assisted transition," the events of 2017 were widely debated for their implications on constitutionalism and democratic governance (Ndlovu-Gatsheni, 2018).

The Legal Framework and Constitutional Questions

Zimbabwe's Constitution of 2013 provides clear provisions regarding presidential succession, requiring a resignation to be tendered voluntarily or a vacancy created by incapacitation or impeachment (Constitution of Zimbabwe, 2013, s. 96–97). While Mugabe resigned following mounting political pressure, the process leading up to his resignation raised legal questions about the constitutionality of the military's role in political processes. The military insisted that its actions were aimed at preventing chaos and restoring political order rather than staging a coup, which would have contravened the constitutional order (Tendi, 2020).

However, scholars have noted that the intervention blurred the line between civilian and military authority, undermining the constitutional doctrine of civilian supremacy over the armed forces (Tendi, 2020). The judiciary's subsequent endorsement of the transition, through rulings that validated the legality of Mugabe's resignation and Mnangagwa's assumption of office, further entrenched the perception that constitutional principles were subordinated to political expediency (Tendi, 2020).

Scholarly Perspectives on Democratic Implications

Scholarly analyses of the 2017 political transition highlight divergent views on its impact on Zimbabwe's democratic future. Some scholars regarded the transition as a potential turning point, offering an opportunity for institutional reform and political renewal (Raftopoulos, 2019). Others, however, criticized the process as a missed opportunity to consolidate constitutionalism, arguing that the lack of adherence to constitutional processes undermined public trust in state institutions (Mukundu, 2018).

The transition's aftermath saw a shift in rhetoric towards reforms, particularly in economic governance and international re-engagement. However, the practical outcomes have been limited, with continued concerns over executive overreach, militarization of state institutions, and restricted civic space (Ndlovu-Gatsheni, 2018). These developments illustrate a broader challenge in translating political change into substantive constitutional reform and democratic governance.

The 2017 transition underscored the fragility of Zimbabwe's separation of powers, particularly the judiciary's independence. The judiciary played a critical role in legitimizing the transition, yet its perceived alignment with political actors raised questions about its ability to act as an impartial arbiter of constitutional principles (Tendi, 2020). This dynamic reflects broader concerns about the erosion of judicial independence and the weaponization of legal processes to serve political ends.

3.4. Constitutional Amendments

The introduction of Constitutional Amendments No. 1 and No. 2 in Zimbabwe post-2013 has provoked extensive scholarly, legal, and civic debate. These amendments have not only altered the structural dynamics of the Constitution of 2013 but have also raised critical concerns about the erosion of constitutionalism and democratic governance. This section explores the content, motivations, and implications of these amendments while examining their broader impact on the principles of separation of powers, judicial independence, and the protection of civil liberties.

Constitutional Amendment No. 1 of 2017

Content and Introduction

Constitutional Amendment No. 1, passed in 2017, primarily altered the appointment process for the Chief Justice, the Deputy Chief Justice, and the Judge President of the High Court. Under the 2013 Constitution, these appointments were made following public interviews conducted by the Judicial Service Commission (JSC) and

based on merit, promoting transparency and accountability (Constitution of Zimbabwe, 2013, s. 180). However, Amendment No. 1 vested the power of these appointments in the President, effectively bypassing the JSC's recommendations.

Implications

This amendment significantly undermines the principle of judicial independence, as it places the judiciary under the potential influence of the executive branch. Critics argue that this shift disrupts the separation of powers and creates a judiciary that is beholden to the executive, thereby compromising its ability to act as a neutral arbiter of constitutional matters (Ndlovu-Gatsheni, 2018). The amendment has also been criticized for its potential to erode public trust in the judiciary, as judicial appointments are no longer perceived as impartial or free from political interference.

Scholarly assessments suggest that this amendment is indicative of a broader trend of centralizing power in the executive branch, which is contrary to the decentralization ethos embodied in the 2013 Constitution. As Raftopoulos (2019) notes, such centralization weakens institutional checks and balances, diminishing the judiciary's role as a guardian of constitutional rights.

Constitutional Amendment No. 2 of 2021

Content and Introduction

Constitutional Amendment No. 2, enacted in 2021, introduced a wide range of changes to the 2013 Constitution. These include the extension of the President's discretionary powers, particularly in judicial appointments, and the removal of the running mate clause for presidential elections, initially set to take effect in 2023 (Constitutional Amendment No. 2, 2021). The amendment also introduced provisions for the extension of judges' tenure beyond the mandatory retirement age, subject to presidential approval.

Implications

The implications of Amendment No. 2 are far-reaching. By extending the President's influence over the judiciary, the amendment further entrenches executive dominance and undermines judicial independence. The removal of the running mate clause, which was designed to enhance political stability and promote accountability within the executive, represents a retreat from democratic reforms envisaged in the 2013 Constitution (Ncube and Okeke-Uzodike, 2015).

Moreover, the provision allowing for the extension of judges' tenure has been widely criticized for creating a judiciary susceptible to political patronage. Judges may feel incentivized to issue rulings favourable to the executive in the hope of securing tenure extensions, thereby compromising their impartiality and independence (Gubbay, 2009).

Broader Impact on Constitutionalism

The cumulative effect of these amendments has been a gradual erosion of the democratic gains achieved under the 2013 Constitution. The amendments illustrate a deliberate weakening of the

separation of powers, with the executive increasingly encroaching on the functions of both the judiciary and the legislature. This trend undermines the checks and balances necessary for a functioning constitutional democracy.

Additionally, these amendments have fuelled concerns about the “weaponization” of the law, whereby constitutional and legal provisions are manipulated to consolidate political power and suppress dissent. As Tendi (2020) observes, this approach reflects a broader strategy of authoritarian consolidation, in which democratic institutions are hollowed out while maintaining a veneer of constitutional legitimacy.

The introduction of Constitutional Amendments No. 1 and No. 2 marks a critical juncture in Zimbabwe's constitutional history. While ostensibly framed as reforms to enhance governance, these amendments have significantly undermined judicial independence, disrupted the separation of powers, and weakened democratic accountability. Their implications highlight the need for a reinvigorated commitment to constitutionalism and institutional reform to safeguard Zimbabwe's democratic future.

3.5. Extension of Presidential Term Limits

In recent months starting sometime in 2024, Zimbabwe has been abuzz with discussions surrounding potential amendments to the nation's presidential term limits. The ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) has proposed extending President Emmerson Mnangagwa's tenure by two years, allowing him to remain in office until 2030, despite the constitutional stipulation of a maximum of two five-year terms (Chingono, 2025). This proposal has ignited significant debate regarding its implications for constitutionalism in Zimbabwe.

The Significance of Presidential Term Limits

Presidential term limits are a cornerstone of democratic governance, designed to prevent the consolidation of power and promote regular leadership renewal. They serve as a safeguard against authoritarianism, ensuring that no single individual can dominate the political landscape indefinitely. In Zimbabwe, the 2013 Constitution enshrines these limits to foster democratic principles and accountability.

Public Sentiment on Term Limit Extensions

The Zimbabwean populace has expressed strong support for maintaining existing term limits. A 2024 Afrobarometer survey revealed that 79% of Zimbabweans favor retaining the two-term presidential limit. This sentiment transcends demographics, with notable support among urban residents (85%) and individuals with tertiary education (87%). Such overwhelming public consensus underscores the populace's commitment to democratic norms and resistance to potential power entrenchment.

Legal and Ethical Considerations

Legal Considerations

Legally, any attempt to amend presidential term limits must adhere to section 328 of the Constitution of Zimbabwe, which governs constitutional amendments. Section 328(5) explicitly prohibits any amendments that benefit an incumbent by extending their tenure. It states that “an amendment to a term limit provision does not apply to anyone holding the office when the amendment is enacted” (Veritas Zimbabwe, 2024). This means that even if Parliament were to pass an amendment extending term limits, such a provision could not legally apply to the current president unless additional changes were made to override this safeguard.

Moreover, under section 328(6), any amendment to a term limit provision must be submitted to a national referendum. This provision ensures that fundamental constitutional changes cannot be unilaterally imposed by the executive or the legislature but must receive direct public approval. Given Zimbabwe's political history and concerns over electoral integrity, the prospect of a referendum raises additional questions about whether such a process would be free and fair or subject to political manipulation.

The separation of powers, a foundational principle enshrined in section 3(2)(e) of the Constitution, also comes into play. The executive branch cannot unilaterally alter fundamental constitutional provisions without adherence to due process, including meaningful parliamentary debate and public participation. Section 2(1) of the Constitution affirms that Zimbabwe's Constitution is the supreme law of the land, meaning any attempt to bypass or undermine these procedural requirements would constitute a serious violation of constitutional supremacy.

Ethical Considerations

Beyond the legal framework, ethical concerns arise when constitutional amendments are pursued not for democratic strengthening, but for political self-preservation. Altering presidential term limits to benefit an incumbent is widely viewed as a manipulation of the constitutional order for personal or partisan gain. This undermines the principle of democratic accountability, which is a key feature of constitutionalism and good governance (Veritas Zimbabwe, 2024).

Historically, countries that have removed term limits often experience a decline in public trust, increased political tensions, and the erosion of independent institutions (Escribà-Folch, 2020). The Zimbabwean Constitution, through its entrenchment of term limits, was designed to prevent a return to the era of indefinite presidencies, ensuring that no single individual dominates the political landscape indefinitely. Amending these provisions for the sake of extending an incumbent's rule would therefore contradict the very spirit of constitutional democracy.

3.6. Weaponization of Law

The "weaponization of law" refers to the deliberate misuse of legal frameworks to target political opponents, suppress dissent, or curtail freedoms. In the Zimbabwean context, this practice has often been employed to reinforce political dominance, with significant consequences for constitutionalism and democratic governance. The misuse of legal instruments has been noted as a growing concern in academic and legal scholarship, particularly in the post-2013 era.

Politicization of Prosecution

Scholars such as Mavedzenge (2020) emphasize the alarming trend of politically motivated prosecutions in Zimbabwe. Laws such as the Criminal Law (Codification and Reform) Act [Chapter 9:23] have been used to charge individuals for crimes such as inciting public violence, often targeting opposition members and civil society actors. The use of pre-trial detention as a punitive measure, rather than a procedural necessity, further underscores this trend (Mavedzenge, 2020).

Targeting Civil Society and Opposition

Zimbabwe has witnessed a marked increase in the legal suppression of civil society organizations and opposition parties. Legislation such as the Maintenance of Peace and Order Act (MOPA) has replaced older colonial-era laws like the Public Order and Security Act (POSA), yet the fundamental ethos of repression remains. Analysts like (Mavedzenge, 2020) argue that such laws are selectively applied to restrict freedoms of assembly and expression, particularly during election periods.

Restrictive Laws on Media and Expression

The enactment of the Cyber and Data Protection Act in 2021 exemplifies the weaponization of law against free expression. Critics, such as Mutiro and Saki (2024), argue that this law has been instrumentalized to silence journalists, activists, and ordinary citizens who are critical of the government. The broad and vague provisions within the Act allow for arbitrary interpretation, enabling authorities to monitor and penalize perceived dissent.

Judiciary and Executive Overreach

The judiciary, intended as a bulwark of constitutionalism, has faced accusations of complicity in the misuse of legal instruments. Scholars such as Tembo & Singh (2023) observe that selective judicial decisions, particularly in politically sensitive cases, indicate executive influence. This erosion of judicial independence creates an environment where laws are weaponized with impunity, undermining the constitutional framework established in 2013.

The weaponization of law undermines the rule of law and erodes trust in democratic institutions. The selective enforcement of laws not only infringes on fundamental rights but also delegitimizes the Constitution's democratic intent. The normalization of legal repression fosters a culture of fear, stifling public participation in governance and perpetuating authoritarian tendencies.

04

Methodology

4.1. Documentary Analysis

This research employs a documentary analysis methodology, focusing on primary legal documents to critically evaluate the constitutional developments in Zimbabwe. Key documents include the 2013 Constitution of Zimbabwe, Constitutional Amendment No. 1 of 2017, and Constitutional Amendment No. 2 of 2021. These texts are examined to assess their provisions, intentions, and implications for the country's democratic governance and adherence to constitutionalism.

The analysis extends to subsidiary legislation and relevant judicial interpretations to understand how these constitutional amendments interact with the broader legal framework. Particular attention is paid to the alignment—or lack thereof—between enacted laws and constitutional principles, especially those regarding the separation of powers, judicial independence, and the protection of civil liberties.

The documentary review also integrates secondary sources, such as parliamentary debates, legal commentaries, and reports from civil society organizations, to provide context and depth to the study. This approach ensures a comprehensive understanding of both the textual and practical impacts of the constitutional amendments.

By systematically reviewing these documents, the study identifies patterns of constitutional erosion, instances of potential overreach by the executive, and the broader implications for Zimbabwe's democratic future. The findings from this analysis will inform subsequent discussions and recommendations aimed at strengthening constitutionalism and fostering a more robust legal and political framework.

4.2. Case Studies

This research employs a case study approach to provide an in-depth analysis of critical events and legal instances that illustrate the challenges to

constitutionalism in Zimbabwe. The selected case studies include the 2017 political transition and specific legal cases exemplifying the “weaponization” of laws against citizens.

The 2017 political transition, which saw the removal of President Robert Mugabe and the subsequent rise of Emmerson Mnangagwa to power, serves as a pivotal case study. This event is analysed to understand its constitutional and political implications, with emphasis on whether the processes adhered to the principles of constitutional democracy. Key considerations include the role of state institutions, the judiciary’s involvement, and the transition’s impact on the separation of powers and governance structures.

Additionally, specific legal cases are examined to illustrate the “weaponization” of laws, where legal frameworks have been used as tools for repression rather than protection. These cases are analysed to highlight how the judiciary, executive, and legislative branches interact and the implications for civil liberties and democratic governance. Reports from civil society organizations, legal judgments, and media coverage are integrated to provide context and assess the broader ramifications of such practices.

By focusing on these case studies, the research aims to identify patterns and mechanisms through which constitutional principles are undermined. This analysis will also inform strategies to strengthen the rule of law and restore constitutionalism in Zimbabwe.

4.3. Comparative Analysis

To place Zimbabwe’s constitutional amendments within a broader context, this study employs a comparative analysis. The aim is to examine how similar reforms have been implemented in other constitutional democracies and to evaluate their outcomes in relation to democratic governance and the rule of law. This approach allows for an understanding of best practices and pitfalls in constitutional reform processes.

Key points of comparison include amendments affecting the judiciary, executive powers, and parliamentary roles. For example, reforms in South Africa, Kenya, and Ghana—countries with comparable legal and political systems—are analyzed to highlight parallels and divergences. Particular attention is given to mechanisms safeguarding judicial independence, ensuring executive accountability, and fostering public participation in constitutional reform processes.

This comparative framework also examines the extent to which international norms and principles, such as those articulated in the African Charter on Democracy, Elections, and Governance, are reflected in these reforms. The analysis further considers how these principles are upheld or undermined in practice.

By situating Zimbabwe’s amendments within this comparative lens, the study seeks to assess their alignment with global democratic standards and to identify lessons that can inform advocacy for constitutionalism and the rule of law in Zimbabwe.

4.4. Limitations

While this study aims to provide a comprehensive analysis of Zimbabwe's constitutional amendments and their implications, several limitations must be acknowledged.

Firstly, the study is constrained by time. The scope of research required for thorough comparative and case-based analysis necessitated prioritization of certain aspects, which may have limited the depth of exploration in some areas. For example, while an extensive review of Zimbabwean constitutional amendments was undertaken, the comparative analysis with other jurisdictions is selective, focusing on countries with accessible data and established constitutional democracies.

Secondly, access to data posed a challenge. Some primary sources, such as court records or internal government documents that could provide further insight into the judicial application

of constitutional amendments, were either restricted or unavailable. Similarly, accessing comprehensive, updated statistics on the impact of legal weaponization required reliance on secondary sources, which may carry inherent biases or gaps.

Lastly, the dynamic political and legal environment in Zimbabwe means that developments continue to unfold. This study captures a snapshot of the current state of constitutionalism and democratic governance but cannot account for recent or unforeseen shifts that may impact its findings.

Despite these limitations, the methodology employed—combining documentary analysis, case studies, and comparative analysis—provides a robust framework for addressing the research questions. These constraints are noted to ensure transparency and to guide future research that may expand upon this foundation.

05

Results

5.1. Findings from Documentary Analysis

The analysis of Zimbabwe's Constitution of 2013, alongside Constitutional Amendments No. 1 and No. 2, reveals significant alterations to the foundational constitutional framework. These amendments have far-reaching implications for the separation of powers, judicial independence, and democratic governance.

Amendment No. 1 introduced changes to the process of appointing the Chief Justice, the Deputy Chief Justice, and the Judge President of the High Court. Prior to the amendment, the Constitution mandated a public, competitive selection process conducted by the Judicial Service Commission (JSC). Amendment No. 1 shifted this responsibility to the President, granting him unilateral authority to make these appointments. This change marked a departure from the democratic intent of the 2013 Constitution, which sought to depoliticize the judiciary and ensure transparency in judicial appointments. The centralization of this power under the executive has raised concerns about potential executive overreach and the erosion of judicial independence.

Amendment No. 2 further consolidated executive authority, introducing changes that extended the tenure of judges beyond the mandatory retirement age of 70, subject to presidential approval. This provision effectively allows the President to influence the composition and tenure of the judiciary, undermining the principle of judicial impartiality. Additionally, Amendment No. 2 expanded the President's powers to appoint up to seven non-constituency Members of Parliament, altering the legislative framework by increasing executive influence over the legislature.

These amendments collectively dilute the separation of powers, a cornerstone of constitutional democracy. The 2013 Constitution explicitly sought to establish checks and balances by distributing power among the executive, legislative, and judicial branches. Amendments No. 1 and No. 2 disrupt this equilibrium by disproportionately empowering the executive at the expense of the judiciary and legislature.

5.2. Insights from Case Studies

The case study analysis highlights key events and legal cases that illustrate the implications of Zimbabwe's constitutional amendments and the broader misuse of legal frameworks, particularly during and after the 2017 political transition. These cases provide concrete examples of how constitutional changes have been leveraged to consolidate power and undermine judicial independence.

5.2.1. The 2017 Political Transition

The 2017 political transition, marked by the ousting of President Robert Mugabe and the rise of President Emmerson Mnangagwa, is often cited as a turning point in Zimbabwe's political and constitutional trajectory. Despite initial promises of reform and a return to constitutionalism, the transition saw significant deviations from constitutional principles. For instance, the removal of Mugabe was facilitated through a process that blended military intervention with parliamentary action, raising questions about the adherence to constitutional procedures. Legal scholars have debated whether the impeachment process truly adhered to the Constitution or was a veneer for military influence.

This event underscored the fragility of constitutional safeguards in the face of political expediency, revealing how the legal framework could be manipulated to justify outcomes that deviated from democratic norms. The transition also set the stage for the subsequent constitutional amendments, as the new administration sought to entrench its authority.

5.2.2. The Threat to Constitutionalism: The Debate on Extending Presidential Term Limits in Zimbabwe

One of the cornerstones of modern constitutionalism is the principle of presidential term limits, designed to prevent the entrenchment of power and ensure democratic accountability. In recent months, speculation has emerged regarding potential amendments to Zimbabwe's Constitution to extend presidential term limits. If such an amendment were to be enacted, it would represent a significant regression for constitutionalism in Zimbabwe, undermining both democratic principles and the rule of law.

The Rationale for Term Limits

Presidential term limits serve a critical function in preventing the monopolization of political power. As Ginsburg, Melton, and Elkins (2011) argue, term limits are designed to curb the risks of authoritarian consolidation by ensuring regular political turnover. They also create a safeguard against the personalization of political institutions, where leaders manipulate state structures to serve their interests rather than those of the public (Ginsburg, Melton & Elkins, 2011). In the Zimbabwean context, where the executive has historically wielded extensive power, any attempt to alter term limits raises concerns about democratic backsliding.

Empirical studies show that the removal or weakening of term limits often correlates with increasing authoritarianism. Bature and Elgie (2019) note that leaders who successfully extend their rule beyond constitutional limits often do so through legal but illegitimate means, such as co-

opting judicial institutions, suppressing dissent, and restructuring electoral laws to maintain power. This has been observed in several African states where constitutional amendments have been used as tools for power entrenchment rather than democratic reform (Escribà-Folch, 2020).

Zimbabwe's Constitutional Framework and the Dangers of Amendment

Zimbabwe's 2013 Constitution, which introduced a two-term limit for the presidency, was a key milestone in advancing constitutional democracy. Article 91(2) of the Constitution explicitly states that no person shall serve as President for more than two terms. The adoption of these limits was seen as an effort to break from Zimbabwe's past, where long-serving leaders dominated the political landscape with little accountability.

However, recent reports suggest that discussions within ruling party circles are exploring mechanisms to extend the incumbent president's tenure beyond the constitutionally mandated two terms. While such amendments could be framed as a matter of "continuity" and "stability", history demonstrates that the removal of term limits often signals an erosion of democratic institutions rather than their strengthening (Ginsburg, Melton & Elkins, 2011). In many cases, what begins as an extension justified by political stability leads to an indefinite presidency, as seen in states like Uganda and Russia.

Zimbabwe in the Regional and Global Context

Zimbabwe is not alone in facing challenges to its constitutional term limits. Across Africa, several leaders have sought to extend their rule by amending constitutions, often under the guise of national security, development continuity, or popular demand (Bature & Elgie, 2019). The case of Burundi, where constitutional amendments facilitated President Pierre Nkurunziza's extended rule, and Guinea, where Alpha Condé successfully scrapped term limits, illustrate how such changes frequently lead to political instability, contested elections, and democratic deterioration.

Furthermore, international legal scholars warn that eroding term limits contributes to declining public trust in democratic institutions. Beermann (2017) argues that constitutional amendments removing term limits tend to be self-serving rather than grounded in genuine legal necessity. They frequently result in executive overreach, undermining the system of checks and balances necessary for a functioning democracy.

Conclusion

The debate on extending presidential term limits in Zimbabwe is not merely a political issue—it is a fundamental test of constitutionalism. If Zimbabwe were to amend its Constitution to allow an incumbent to extend their stay in office, it would set a dangerous precedent that could irreversibly weaken constitutional governance. Term limits were introduced precisely to prevent lifetime presidencies and ensure that power remains accountable to the people. Any attempt to remove them would mark a return to a system where leaders govern indefinitely, institutions are hollowed out, and the democratic process is undermined.

For Zimbabwe to consolidate its democracy, it must resist regressive constitutional changes and uphold the principles of regular leadership renewal, legal certainty, and the rule of law. As history has shown, countries that disregard term limits often face long-term political instability, loss of democratic legitimacy, and weakened public trust in governance. The commitment to constitutional democracy requires that term limits be protected rather than eroded.

5.2.2. Weaponization of Law in Select Cases

Several legal cases illustrate the misuse of constitutional and legal frameworks to suppress dissent and consolidate executive power:

Case 1: Hopewell Chin'ono v. State

The repeated arrests of journalist Hopewell Chin'ono exemplify the use of legal frameworks to stifle freedom of expression and intimidate critics of the government. Chin'ono's arrests, ostensibly on charges of incitement and other offenses, have been criticized as politically motivated, with procedural irregularities highlighting the erosion of judicial independence. These cases reveal a pattern of using the judiciary as a tool to legitimize repression, contrary to the democratic intent of the Constitution (Nyoka and Tembo, 2022).

Case 2: Jacob Ngarivhume v. State

Jacob Ngarivhume, a political activist, faced charges of incitement to public violence following his calls for anti-corruption protests. His prolonged pre-trial detention and the handling of his case have drawn criticism for undermining his constitutional rights to freedom of assembly and fair trial (Nyoka and Tembo, 2022). The case highlights how amendments to judicial processes, such as those introduced in Constitutional Amendment No. 2, enable executive influence over legal proceedings.

Case 3: The Judiciary and the Extension of Judicial Tenure

The extension of Chief Justice Malaba's tenure under Constitutional Amendment No. 2 represents a critical moment in Zimbabwe's judicial history. The decision to extend Malaba's tenure, facilitated by executive intervention, was met with widespread criticism and legal challenges (Rickard, 2021). The judiciary's handling of this matter raised concerns about its independence and reinforced perceptions of executive overreach.

5.2.3. Broader Implications

These cases underscore a troubling trend: the weaponization of legal frameworks to suppress dissent, consolidate executive authority, and erode judicial independence. They also demonstrate how constitutional amendments have altered the balance of power, enabling the executive to wield disproportionate influence over the judiciary and legislature.

By analysing these events and cases, this study highlights the disconnect between the democratic intent of Zimbabwe's 2013 Constitution and its subsequent amendments. The findings suggest a systematic effort to undermine constitutional safeguards, raising urgent questions about the future of constitutional democracy in Zimbabwe.

06

Discussion

6.1. Effectiveness of Constitutional Democracy in Zimbabwe

The adoption of the 2013 Constitution marked a pivotal moment in Zimbabwe's history, offering a renewed framework for democratic governance and constitutional supremacy. However, the effectiveness of this constitutional democracy in achieving its intended goals has been uneven, reflecting both successes and significant failures.

Successes of the 2013 Constitution

One of the most notable achievements of the 2013 Constitution was its comprehensive and forward-looking design. The inclusion of a justiciable Bill of Rights expanded the legal protections available to citizens, providing a strong foundation for safeguarding civil liberties. The introduction of devolved governance also promised to bring decision-making closer to local communities, promoting accountability and inclusivity.

Additionally, the separation of powers enshrined in the Constitution established a theoretical framework for checks and balances among the executive, legislature, and judiciary. This principle sought to prevent the concentration of power in any one branch of government, aligning Zimbabwe's governance model with global democratic norms. In practice, there have been moments where the judiciary and civil society have leveraged constitutional provisions to challenge abuses of power. For example, legal challenges to electoral malpractices and executive overreach have occasionally demonstrated the Constitution's potential to act as a bulwark against authoritarian tendencies.

Failures and Shortcomings

Despite these successes, the implementation of constitutional democracy in Zimbabwe has faced numerous challenges. The introduction of Constitutional

Amendments No. 1 and No. 2 illustrates how the framework of constitutional democracy can be eroded through deliberate political manoeuvres. These amendments altered key provisions of the 2013 Constitution, undermining judicial independence and consolidating executive power. The extension of the Chief Justice's tenure, facilitated by these amendments, epitomizes how constitutional reforms have been weaponized to serve political ends rather than democratic ideals.

Another critical failure has been the lack of political will to uphold the Constitution in its entirety. The executive branch has frequently bypassed constitutional constraints, undermining the principle of separation of powers. For instance, Parliament has often acted as a rubber stamp for executive decisions, failing to exercise meaningful oversight. The judiciary, while occasionally asserting its independence, has been increasingly compromised through political interference, as evidenced by cases such as the extension of judicial tenure and the handling of politically sensitive cases.

Moreover, the envisioned devolution of power has not been fully realized, with central government authorities retaining significant control over local governance structures. This undermines the democratic promise of empowering local communities and promoting participatory governance.

Broader Implications for Democratic Governance

The successes and failures of Zimbabwe's constitutional democracy reveal a critical tension between the formal adoption of democratic principles and their practical implementation. While the 2013 Constitution provided a robust framework for democracy, its erosion through amendments and political interference highlights the fragility of constitutionalism in the absence of a strong culture of accountability and respect for the rule of law.

This analysis suggests that constitutional democracy in Zimbabwe remains more aspirational than realized. The lack of adherence to constitutional principles has allowed the executive to dominate the political landscape, weakening institutional checks and balances. As a result, the Constitution's potential to foster genuine democratic governance has been severely compromised.

Moving Forward

For Zimbabwe to realize the promise of its 2013 Constitution, significant reforms are necessary. Strengthening the independence of state institutions, particularly the judiciary, and promoting a culture of constitutionalism are critical steps. Civil society and citizens also have a crucial role to play in holding leaders accountable and advocating for the full implementation of the Constitution. Without such efforts, the effectiveness of constitutional democracy in Zimbabwe will remain limited, perpetuating a cycle of political instability and weakened governance structures.

6.2. Impact of Amendments 1 & 2

Constitutional Amendments No. 1 and No. 2 have fundamentally reshaped Zimbabwe's governance framework, raising significant concerns about their impact on democratic principles. While proponents argue these reforms streamline governance, critics highlight their adverse effects on judicial independence, legislative oversight, public participation, and the separation of powers. Collectively, these changes challenge the foundations of constitutional democracy in Zimbabwe.

6.2.1. Capture of the Judiciary

The judiciary's independence, enshrined in Section 164 of the Constitution, has been significantly undermined by Amendments 1 and 2. Section 164(2) emphasizes that "the independence and effectiveness of the courts are central to the rule of law and governance." However, Amendment No. 1 granted the President the unilateral power to appoint the Chief Justice, Deputy Chief Justice, and Judge President of the High Court, bypassing the Judicial Service Commission (JSC). This change not only concentrates power in the executive but also undermines public confidence in the judiciary's impartiality.

Furthermore, Amendment No. 2 allows the President to extend the tenure of senior judges beyond the retirement age of 70, a move widely perceived as a tool for rewarding loyalty rather than safeguarding judicial expertise. As Alex Magaisa observed, "The concept of judicial capture can be understood as the antithesis of judicial independence. It describes a situation where the institution of the judiciary has lost its independence." By altering the mechanisms of judicial appointments and tenure, these amendments risk eroding the judiciary's role as a guardian of constitutionalism and the rule of law.

6.2.2. Centralization of Executive Power

Beyond the judiciary, Amendments 1 and 2 have significantly expanded executive power. The President's enhanced authority to make key appointments without meaningful checks from other branches of government reduces accountability. For instance, the amendments minimize the legislature's role in appointing the Public Protector and Deputy Public Protector, consolidating decision-making within the executive branch.

This concentration of power disrupts the system of checks and balances, increasing the likelihood of unilateral decision-making. Such centralization not only weakens other branches of government but also creates a political environment vulnerable to authoritarian tendencies.

6.2.3. Weakening of Legislative Oversight

The legislature's role as a check on executive power has been significantly curtailed. Parliamentary approval, once required for critical appointments and reforms, has been sidelined, reducing the space for democratic debate and deliberation. This diminished oversight undermines the legislature's constitutional mandate to hold the executive accountable, further eroding democratic principles.

This trend contributes to a governance structure where the executive operates with minimal transparency, increasing the risk of policy decisions that prioritize political interests over public welfare.

6.2.4. Marginalization of Public Participation

Public participation, a cornerstone of constitutional democracy, has been notably absent in the processes leading to Amendments 1 and 2. Critics argue that these reforms were driven by political expediency rather than a genuine commitment to enhancing governance. The lack of consultation and transparency has deepened public disillusionment with Zimbabwe's democratic institutions.

This erosion of trust not only undermines the legitimacy of constitutional reforms but also fosters civic apathy, reducing public engagement in governance and accountability mechanisms.

6.2.5. Threats to Separation of Powers

The amendments have disrupted the constitutional principle of separation of powers, which is essential for maintaining checks and balances within governance. The executive's encroachment into judicial and legislative domains blurs institutional boundaries, weakening the independence of these branches.

Section 3 of the Constitution explicitly outlines the separation of powers as a foundational principle. By undermining this framework, Amendments 1 and 2 create a governance model that centralizes authority, jeopardizing the democratic integrity of Zimbabwe's political system.

6.2.6. Broader Democratic Implications

The cumulative effects of these amendments extend beyond governance structures to Zimbabwe's broader democratic trajectory. The weakening of institutional independence and accountability mechanisms diminishes public confidence in the rule of law, deterring both domestic and international trust in Zimbabwe's governance.

Domestically, the amendments exacerbate public frustration with governance structures, fuelling social and political tensions. Internationally, they portray Zimbabwe as a country retreating from democratic principles, potentially impacting foreign investment and international relations.

6.2.7. Toward Restoring Constitutional Balance

Addressing the challenges posed by Amendments

1 and 2 requires comprehensive reforms aimed at restoring constitutional balance. Key steps include revisiting mechanisms for judicial appointments, enhancing legislative oversight, and fostering genuine public consultation in governance processes. Civil society, legal practitioners, and international stakeholders must advocate for these reforms to ensure that Zimbabwe's constitutional democracy remains resilient.

In conclusion, while Amendments 1 and 2 were introduced under the pretext of improving governance, their practical implications suggest a significant weakening of democratic principles. The centralization of executive power, erosion of judicial independence, diminished legislative oversight, and marginalization of public participation collectively represent a retreat from constitutional democracy. These developments underscore the urgency of reform to safeguard Zimbabwe's democratic future and restore the principles of accountability, transparency, and public trust.

6.3. Weaponization of Laws

The weaponization of legal frameworks, as demonstrated by the research and findings in this paper, underscores a troubling trend in Zimbabwe's governance landscape. Rather than serving as neutral instruments to uphold justice and protect citizens' rights, laws are increasingly being manipulated to serve the interests of those in power. This practice erodes democratic principles, undermines constitutionalism, and compromises the rights of citizens.

6.3.1. Evidence from Amendments 1 and 2

Amendments 1 and 2 exemplify how the legal system can be weaponized to consolidate power.

By altering judicial appointment processes and extending the presidential authority to appoint key officials, these amendments weaken the principle of separation of powers. The findings from the documentary analysis reveal how these changes shift power dynamics within the constitutional framework, undermining checks and balances and centralizing authority in the executive.

This centralization is not merely a technical adjustment—it has tangible effects on the rule of law. Judicial independence, a cornerstone of constitutional democracy, is compromised when appointment processes are politicized. As Alex Magaisa aptly noted, judicial capture occurs when judges or courts lose independence and come under the control of political or private interests. This phenomenon, already apparent in Zimbabwe's legal landscape, creates a judiciary that cannot act as an impartial arbiter in cases involving state overreach or citizen grievances.

6.3.2. Broader Governance Implications

Beyond the judiciary, weaponizing laws affects broader governance structures. The case studies highlighted in the research demonstrate how legal frameworks have been selectively applied to suppress dissent, limit opposition participation, and silence critics. For instance, repressive laws targeting civic activists and opposition leaders reveal a pattern of using the legal system to delegitimize alternative voices in governance. This approach not only stifles democratic pluralism but also alienates citizens from governance processes.

Furthermore, this selective application of the law fosters a climate of fear and distrust. Citizens perceive the law not as a tool for protection but as an instrument of coercion. This perception erodes public confidence in legal and governance institutions, deepening societal divisions and fostering a culture of disengagement.

6.3.3. The Prospect of Further Amendments

Vice-President Mnangagwa's remarks in the Senate - *"this is not the only thing we intend to amend in the Constitution"* -signal the likelihood of additional constitutional changes. While framed as a democratic prerogative of the ruling party, this declaration raises alarms about the potential for further erosion of constitutional safeguards.

The statement suggests that the ruling party views constitutional amendments as a routine political strategy rather than an exceptional measure. This undermines the Constitution's role as a stabilizing framework and creates a precedent for frequent and potentially arbitrary changes. Future amendments could further entrench executive power, limit citizen rights, and weaken governance institutions, exacerbating the concerns already highlighted by this research.

6.3.4. Implications for Citizen Rights

The weaponization of laws has direct consequences for citizen rights, particularly freedoms of speech, association, and participation in governance. The research demonstrates how legal tools have been used to restrict civil liberties, often under the guise of maintaining public order or national security. Such actions contravene the spirit of the Constitution, which guarantees these fundamental rights.

Moreover, the weaponization of laws perpetuates inequality, as marginalized groups and opposition voices bear the brunt of legal suppression. This dynamic not only weakens democratic accountability but also entrenches social and political exclusion, hindering the development of an inclusive governance system.

6.3.5. Restoring Constitutional Integrity

Addressing the weaponization of laws requires a multifaceted approach. First, there must be a commitment to constitutionalism—ensuring that the Constitution serves as a higher law that transcends political agendas. Strengthening judicial independence, as well as ensuring transparency and inclusivity in legislative processes, are critical steps toward this goal.

Civil society also plays a pivotal role in resisting the weaponization of laws. By educating citizens on their constitutional rights and advocating for accountability, civil society organizations can create pressure for reforms that uphold democratic principles. International actors, too, can support these efforts by monitoring governance practices, providing technical assistance, and advocating for adherence to international human rights standards.

6.3.6. Conclusion

The weaponization of laws represents a significant threat to Zimbabwe's democratic future. The findings of this paper highlight how constitutional amendments, selective application of legal frameworks, and judicial capture have undermined governance structures and citizen rights. President Mnangagwa's remarks, while illustrative of the ruling party's approach, further emphasize the urgency of safeguarding the Constitution against political manipulation.

To move forward, Zimbabwe must reclaim its constitutional framework as a tool for justice and accountability, rather than a weapon of control. Only through collective action and adherence to democratic principles can the nation rebuild public trust and create a governance system that truly serves its people.

6.4. Recommendations

Considering the findings and discussions presented in this study, it is evident that addressing the erosion of constitutionalism in Zimbabwe requires a multifaceted approach. The following recommendations are proposed to foster a culture of constitutionalism, empower citizens, and safeguard democratic principles.

6.4.1. Public Awareness Campaigns on Constitutional Rights

A fundamental barrier to constitutionalism in Zimbabwe is the lack of widespread understanding of the Constitution and its implications for governance and citizen rights. To address this, a national public awareness campaign should be launched, with particular emphasis on reaching grassroots communities.

The campaign should target marginalized groups and rural populations, ensuring that the message of constitutional literacy is inclusive and accessible. Youth empowerment should be central to this initiative. By educating young Zimbabweans about their constitutional rights, governance principles, and the role of democratic institutions, the country can cultivate a generation that is informed, engaged, and ready to shape a democratic future.

Community-based workshops, interactive programs in schools and universities, and the use of digital platforms to disseminate educational content can help bridge the gap in constitutional literacy. Collaboration with civil society organizations, local leaders, and educators will be crucial to the success of this campaign.

6.4.2. *Strengthening Advocacy for Constitutional Protection*

Civil society organizations must play a leading role in advocating for the protection of the Constitution. This includes holding the government accountable for upholding constitutional provisions and resisting any amendments that weaken democratic principles.

Advocacy efforts should focus on mobilizing citizens, engaging in strategic litigation to challenge unconstitutional practices, and fostering dialogue with policymakers. Partnerships with international human rights organizations can provide additional support and amplify local voices on global platforms.

Furthermore, creating forums for citizen participation in governance, such as town hall meetings or digital platforms for civic engagement, can help bridge the gap between citizens and policymakers. These platforms should prioritize inclusivity and ensure that the concerns of diverse communities are represented.

6.4.3. *Proposals for Legal Reforms*

To restore the integrity of Zimbabwe's constitutional framework, targeted legal reforms are necessary. These reforms should prioritize the following:

- i) **Enhancing Judicial Independence:** Amend the judicial appointment process to ensure transparency and meritocracy, thereby insulating the judiciary from political interference. This will reinforce the separation of powers and restore public confidence in the judiciary.
- ii) **Establishing Safeguards Against Constitutional Manipulation:** Introduce legal mechanisms that make constitutional amendments more stringent, requiring broader consensus across political and civil society actors. For example, a higher parliamentary threshold for constitutional changes could act as a safeguard against arbitrary amendments.
- iii) **Strengthening Accountability Mechanisms:** Implement robust oversight frameworks to monitor the application of laws and ensure that they are not used as tools for political repression. Institutions such as the Zimbabwe Human Rights Commission should be empowered to investigate and address abuses of power effectively.

6.4.4. *Entrenching Constitutionalism in Zimbabwe's Culture*

Ultimately, the success of constitutionalism in Zimbabwe depends on embedding it in the nation's cultural fabric. This requires a long-term commitment to civic education, institutional reform, and fostering a national dialogue on governance and democracy.

Youth-led initiatives can play a transformative role in this process. Programs that encourage active citizenship, leadership development, and political participation among young people can help create a sustainable foundation for democratic governance. Platforms for intergenerational dialogue can also bridge the gap between traditional and modern governance perspectives, fostering a collective commitment to constitutional principles.

By prioritizing education, advocacy, and reform, Zimbabwe can build a culture where the Constitution is not merely a document but a lived reality—respected, defended, and celebrated by all citizens. Such efforts will contribute to a governance system that upholds justice, equality, and accountability, ensuring a democratic future for the nation.

07

Conclusion

This paper has explored the evolution of Zimbabwe's constitutional democracy, with particular emphasis on the 2013 Constitution, the 2017 political transition, and the implications of Constitutional Amendments No. 1 and No. 2. At its core, the 2013 Constitution sought to establish a framework of governance grounded in democratic principles, the separation of powers, and the protection of fundamental rights. However, subsequent developments have raised serious concerns about the erosion of these principles, undermining the democratic intent of the Constitution.

The findings revealed that Amendments No. 1 and No. 2 have altered the constitutional framework in ways that centralize power within the executive and threaten judicial independence. It considers the threats to further amend the Constitution to increase presidential term limits. Furthermore, the weaponization of the law to suppress dissent and curtail civil liberties has exposed the fragility of constitutionalism in Zimbabwe. The 2017 political transition, initially heralded as an opportunity for reform, has instead highlighted the persistent challenges of consolidating democratic governance in the country.

Despite these challenges, this paper underscores the importance of a citizen-centered approach to restoring constitutionalism in Zimbabwe. Public awareness, youth empowerment, and legal reforms are essential to fostering a culture of constitutional respect and ensuring that the Constitution serves as a living document that protects the rights and aspirations of all Zimbabweans.

In addressing the gaps in governance and constitutional practice, this research contributes to ongoing efforts to strengthen Zimbabwe's democracy. It calls for vigilance against further amendments that undermine the democratic gains of the 2013 Constitution and emphasizes the need for collective action among citizens, civil society, and state institutions to uphold constitutional principles.

Ultimately, the path to a democratic Zimbabwe lies in embedding constitutionalism into the national culture. By empowering citizens to understand, defend, and live by the Constitution, Zimbabwe can reclaim its democratic trajectory and build a governance system that is just, inclusive and accountable.

08

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