



Executive Powers of the President under the Sierra Leonean Constitution

*Report to the Sierra Leone Constitutional Review Committee concerning Executive
Appointments and Commissions*

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EXECUTIVE SUMMARY

1. The Department for International Development, in partnership with the United Nations Development Programme (UNDP), has requested that Oxford Pro Bono Publico (OPBP) provide legal research assistance to support the Constitutional Review Committee in its task of drafting the new Constitution for Sierra Leone. The draft is expected to be completed by the end of 2014.
2. This Report focuses on Presidential executive powers, and in particular the relationship between the President and constitutional Commissions.
3. The ‘Summary and Recommendations’ section first provides a summary of the provisions relating to executive powers in various jurisdictions considered, focussing on the nature and scope of powers of appointment, limitations on powers of appointment, and the independence of commissions established pursuant to the Constitution. These provisions are contrasted with the equivalent provisions under the Constitution of Sierra Leone and are considered in the light of the Tucker Report.¹ In the light of this analysis, a number of recommendations for the Constitutional Review Committee are made.
4. The Appendix to this Report considers other Constitutions in Sub-Saharan Africa – those of South Africa, Ghana, Namibia, Kenya and Zimbabwe – in greater depth, and complements the Summary and Recommendations. For each jurisdiction, the relevant constitutional provisions and Commissions are contrasted with the corresponding provision under the Sierra Leone Constitution.
5. The Constitutions of South Africa, Kenya and Zimbabwe are particularly interesting examples, as each of these countries has undergone its own constitutional reform process within the past two decades. South Africa adopted its new Constitution in 1996, after two years of public consultation and debate;² Kenya adopted its new Constitution in 2010 following a lengthy reform process (the

¹ Peter Tucker, *Report of the Commission to Review The Constitution of Sierra Leone, 1991* (January 2008) (“Tucker Report”).

² Parliament of South Africa, *Our Constitution*, available at: <http://www.parliament.gov.za/live/content.php?Category_ID=11>.

Constitution of Kenya Review Commission was first established in 2000);³ and Zimbabwe adopted its new democratic Constitution just last year, in March 2013.⁴

³ Committee of Experts on Constitutional Review, *Final Report of the Committee of Experts on Constitutional Review* (October 2010), available at: <http://www.mlgi.org.za/resources/local-government-database/by-country/kenya/commission-reports/CoE_final_report.pdf>.

⁴ *Constitution of Zimbabwe Amendment (No. 20) Act*, 2013.

SUMMARY AND RECOMMENDATIONS

I GENERAL EXECUTIVE POWERS

6. In the majority of jurisdictions considered, the powers and functions of the President are expressly enumerated in the Constitution. However, the extent to which the President must exercise his or her functions collectively with Cabinet varies.
7. In the South African Constitution, the powers and functions of the President are limited to those expressly listed in ss 84 and 85.⁵
8. As provided by s 85, the President's executive authority is to be exercised together with the other members of Cabinet. However, the Constitutional Court of South Africa has held that the Presidential powers listed in s 84 (including the power of appointment) are conferred on the President as head of state, rather than as head of the national executive.⁶ These powers are thus vested in the President alone.⁷
9. Presidential executive powers are also expressly enumerated in the Constitution of Kenya, in art 132, and in the Constitution of Zimbabwe, in s 110.
10. Under art 131(b) of the Constitution of Kenya, the President exercises the authority of the Republic '*with the assistance of the Deputy President and Cabinet Secretaries*' (emphasis added). Under s 110(6) of the Constitution of Zimbabwe, '[i]n the exercise of his or her executive functions, the President *must act on the advice of Cabinet*', except when exercising those functions listed in s 110(2) (which include, *inter alia*, making appointments) (emphasis added).
11. The functions, powers and duties of the President are similarly set out in art 32 of the Constitution of Namibia. Pursuant to art 27(3), in exercising his or her functions, the President '*shall be ... obliged to act in consultation with the Cabinet*' (emphasis added).
12. The Constitution of Ghana does not expressly enumerate the powers and functions of the President, but simply provides, in art 58(2), that the President's 'executive

⁵ *President of the Republic of South Africa v South African Rugby Football Union* [1999] ZACC 11, at [144].

⁶ *ibid.*

⁷ *ibid* at [147].

authority ... shall extend to the execution and maintenance of [the] Constitution and all laws made under or continued in force by [the] Constitution’.

13. The Constitution of Sierra Leone does not expressly enumerate the powers and functions of the President, but simply provides, in s 53(1), that ‘the executive power in Sierra Leone shall vest in the President ...’. Section 53(2) provides that in the exercise of his functions, the President ‘*may* act in accordance with the advice of the Cabinet ... except in cases where ... he is required to act with the approval of Parliament or in accordance with the advice of any person or authority other than the Cabinet’ (emphasis added).

Recommendation 1: The Constitutional Review Committee should consider expressly enumerating the functions, powers and duties of the President in the Constitution.

Recommendation 2: The Constitutional Review Committee should consider whether the President should be obliged to exercise some of his or her functions, powers and duties in consultation with Cabinet.

II OVERVIEW OF CONSTITUTIONAL COMMISSIONS IN SIERRA LEONE

14. This section will briefly outline the commissions established under the Constitution of Sierra Leone and their counterparts in the jurisdictions considered. As the Tucker Report recommended that the provisions governing the Human Rights Commission be included in the Constitution (which is consistent with the other jurisdictions considered), the Human Rights Commission of Sierra Leone will also be considered even though it is not currently governed by the Constitution. Further powers (and limitations on powers) of these Commissions will be considered in further detail in the sections that follow.
15. All commissions established under the Constitution of Sierra Leone enjoy protection from legal proceedings when it comes to whether their functions are

validly performed.⁸ With the approval of the President, they are all empowered to regulate their own procedure.⁹

a) Electoral Commission

16. The Electoral Commission of Sierra Leone (SLEC) consists of the Chairman, who is also the Chief Electoral Commissioner, and four other Commissioners.
17. The SLEC is responsible for the conduct of elections in the country,¹⁰ including Presidential elections.¹¹ The terms and conditions of service of the members are fixed by Parliament,¹² and to this end the Public Elections Act 2012 was passed.
18. Each of the jurisdictions considered contains equivalent commissions in its Constitution.

b) Political Parties Registration Commission

19. In Sierra Leone, the Political Parties Registration Commission (PPRC) is responsible for the registration of all political parties.¹³ The President appoints the four members of the PPRC, though (with the exception of the Chief Electoral Officer) these appointments must be approved by Parliament.¹⁴ The PPRC ‘shall not be subject to the direction or control of any person or authority’, suggesting that the Commission is to be independent.¹⁵ Appeals can be made from a decision of the PPRC to the Supreme Court of Sierra Leone.¹⁶
20. A specific commission devoted to the registration of political parties is not found in the other jurisdictions considered, although the regulation of political parties is often governed through other commissions, such as the Electoral Commission. In South Africa, for instance, there is no separate Political Parties Registration Commission under the South African Constitution. In South Africa, the Chief

⁸ Sierra Leone Constitution, s 164.

⁹ *ibid*, s 163.

¹⁰ *ibid*, s 33:

Subject to the provisions of the Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda; and for that purpose shall have power to make regulations by statutory instrument for the registration of voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda, and other matters connected therewith, including regulations for voting by proxy.

¹¹ Public Elections Act 2012, Part V (hereinafter PEA).

¹² Sierra Leone Constitution, s 32(5).

¹³ *ibid*, s 34(4).

¹⁴ *ibid*, s 34.

¹⁵ *ibid*, s 34(5).

¹⁶ *ibid*, s 35(7).

Electoral Officer of the South African Electoral Commission (SAEC) is responsible for the registration of political parties.¹⁷

c) Judicial and Legal Service Commission

21. In Sierra Leone, the Judicial and Legal Service Commission (JLSC) exists to advise the Chief Justice on the performance of his administrative functions.¹⁸ Each of the jurisdictions considered contains an equivalent of the JLSC in its Constitution.

d) Commissions of Inquiry

22. Under the Constitution, the President of Sierra Leone must appoint a Commission of Inquiry (CI) in the public interest where:
 - a. the Cabinet advises that it is in the public interest so to do; or
 - b. Parliament by a resolution passed in that behalf requires that a Commission be appointed to inquire into any matter specified in the resolution being a matter of public importance.¹⁹
23. The powers of the members of any CI are identical to those of a High Court Judge.²⁰ The CI is to prepare a report based on its inquiry,²¹ which the President will cause to be published along with a white paper thereon within six months of the date of submission of the report.²² If he or she chooses not to do so he or she must supply reasons for not publishing the report.²³
24. South Africa and Ghana contain provisions within their respective Constitutions relating to commissions of inquiry. In Ghana, art 278 of the Constitution contains similar a similar provision to that included in the Constitution of Sierra Leone. The provisions under the South African Constitution are not as detailed as those in Sierra Leone, but there is a general clause that empowers the President to appoint a commission of inquiry to perform his or her functions as the Head of the State and the head of the national executive.²⁴

e) Public Service Commission

25. The Public Service Commission (PSC) of Sierra Leone is established under Part I of Chapter X of the Constitution. The PSC is vested with the power to appoint

¹⁷ Electoral Commission Act 1996, Chapter 4.

¹⁸ Sierra Leone Constitution, s 140(1).

¹⁹ *ibid*, s 147(1).

²⁰ *ibid*, s 148.

²¹ *ibid*, s 149(1).

²² *ibid*, s 149(2).

²³ *ibid*, s 149(3).

²⁴ *ibid*, s 84(1)(f).

persons to hold or act in offices in the public service and to dismiss and exercise disciplinary control over persons holding or acting in such offices.²⁵ The President may, subject to such conditions as he or she may think fit, delegate any of his or her functions relating to the making of appointments to the Public Service Commission.²⁶

26. Each of the jurisdictions considered has an equivalent of the PSC in its Constitution.

f) Human Rights Commission

27. The Human Rights Commission of Sierra Leone is set up under the Human Rights Commission of Sierra Leone Act 2004 (HRCSLA), not the Constitution itself. The Tucker Report proposes a new Chapter X in the Constitution, to establish and regulate the Human Rights Commission.²⁷ The proposed Chapter includes a provision requiring Parliament to pass legislation setting out the composition and functions of the Human Rights Commission, immediately after the revised Constitution has come into effect.
28. As will be further explored in the sections below, all of the other jurisdictions considered contain provisions for a Human Rights Commission within the Constitution.

Recommendation 3: The Constitutional Review Committee should consider whether the composition and functions of the Human Rights Commission should be provided for directly in the Constitution, as is the case for the Electoral Commission, Political Parties Registration Commission, Judicial and Legal Service Commission and Public Service Commission.

III NATURE AND SCOPE OF POWER OF APPOINTMENT

29. The nature and scope of the Presidential power to appoint varies greatly among the countries considered. Significantly, the power to appoint can expressly or implicitly include the power to remove.
30. Section 84(2)(e) of the South African Constitution includes the power to ‘mak[e] any appointments that the Constitution or legislation requires the President to

²⁵ *ibid*, s 152(1).

²⁶ *ibid*, s 152(2).

²⁷ Tucker Report (n 1).

make, other than as head of the national executive'.²⁸ Section 84(2)(e) does not expressly refer to any power to select a person for appointment or to dismiss the person. Procedures for the removal of holders of office appointed by the President are set out in separate constitutional provisions. In particular, the procedure for the removal of a member of a commission established under Chapter 9 of the Constitution is set out in s 194, which provides that a member of a commission may be removed only on:

- the ground of misconduct, incapacity or incompetence;
- a finding to that effect by a committee of the National Assembly; and
- the adoption by the Assembly of a resolution calling for that person's removal from office.

31. Section 110(2)(d) of the Constitution of Zimbabwe adopts near-identical wording to s 84(2)(e) of the South African Constitution, empowering the President to 'mak[e] appointments which the Constitution or legislation requires the President to make'. The removal from office of members of independent commissions is dealt with under s 237 of the Constitution, which applies the same standard as for removing judges from office.²⁹

32. Clauses (3)(i) and (4) of art 32 of the Constitution of Namibia provide that the President has the power to appoint specified persons, including (in art 32(3)(i)(ee)) 'any other person or persons who are required by any other provision of [the] Constitution or any other law to be appointed by the President'. Article 32(6) also provides that:

[s]ubject to the provisions of this Constitution or any other law, any person appointed by the President pursuant to the powers vested in him or her by this Constitution or any other law may be removed by the President by the same process through which such person was appointed.

33. Article 132(2)(f) of the Constitution of Kenya expressly provides that the President 'shall nominate and ... appoint, and may dismiss – ... in accordance with [the] Constitution, any other State or public officer whom [the] Constitution requires or empowers the President to appoint or dismiss' (emphasis added). However, art 250(2)(a) provides that members of commissions are to be identified and

²⁸ *President of the Republic of South Africa v South African Rugby Football Union* [1999] ZACC 11, at [144].

²⁹ Constitution of Zimbabwe, s 187.

recommended for appointment in a manner prescribed by national legislation. The removal from office of a member of a commission is regulated by the procedure set out in art 251. The procedure contained in art 251 is similar to that contained in s 237 of the Zimbabwean Constitution, but adds the proviso that before appointing a tribunal, the President must first receive a petition from the National Assembly.³⁰

34. The scope of the Presidential power to appoint is broadest in the Constitution of Ghana. Although art 70 sets out an enumerated list of office-holders who are to be appointed by the President, art 297 adopts a very broad definition of ‘power to appoint’. Article 297 provides that the power to appoint a person to hold or to act in an office in the public service includes ‘the power to *confirm appointments*, to *exercise disciplinary control* over persons holding or acting in any such office and to *remove the persons from office*’ (emphasis added). However, art 228 sets out procedures for the removal of the Commissioners and Deputy Commissioners.
35. The Presidential power to appoint is not defined in the current Constitution of Sierra Leone. Section 70 provides that the President ‘may appoint ... the following persons’, including ‘the sole Commissioner or the Chairman and other Members of any Commission established by [the] Constitution’. Section 70 does not expressly refer to any power to nominate or dismiss. The Tucker Report, which, along with the Constitution, is the subject of the Constitutional Review Committee’s consideration, sets out a number of proposed reforms to the above sections. A significant change is proposed to s 70. The proposed change is to make s 70 appointments ‘subject to the approval of Parliament.’³¹
36. Section 70 does not expressly refer to any power to nominate or dismiss. Whilst strict procedures regulate the removal of the Solicitor-General (s 65(11)), the Director of Public Prosecutions (s 66(15)) and Superior Court Judges (s 137(7)-(10)), s 32(8) simply states that:

a member of the Electoral Commission may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.
37. Other than this section, which relates only to the removal of members of the Electoral Commission, the Constitution of Sierra Leone does not currently set out procedures for the removal of members of commissions.

³⁰ Constitution of Kenya, art 251(4).

³¹ *ibid* [77].

38. The Tucker Report recommends amending s 32(8) by deleting the words ‘or any other cause’ and adding the words ‘in consultation with the leaders of all registered political parties’. In contrast to its recommendations in respect of members of the Electoral Commission, the Tucker Report does not recommend that the removal of such office-holders be subject to parliamentary approval.
39. In addition to amending s 32(8), the Tucker Report proposes a new Chapter X in the Constitution, to establish and regulate the Human Rights Commission. The proposed Chapter provides that ‘[n]o member of the Human Rights Commission shall be removed from office without the approval of two-thirds of the votes of all the Members of Parliament in favour of the removal.’ It does not list the grounds on which a member of the Human Rights Commission may be removed, or how such grounds are to be established.

Recommendation 4: The Constitutional Review Committee should consider defining the term ‘appoint’, and making explicit whether such power includes the power to nominate and dismiss a person.

Recommendation 5: The Constitutional Review Committee should review procedures for the removal of members of all of Sierra Leone’s independent commissions in connection with the procedures for their appointment, and consider amendments to ensure that:

- (i) the grounds on which a member of a commission may be removed, and the procedures governing such removal, are provided for in the Constitution;
- (ii) findings of misconduct, incompetence or incapacity are made by an independent tribunal or committee; and
- (iii) the removal of a member of a commission is subject to Parliamentary approval.

IV LIMITATIONS ON POWER OF APPOINTMENT

40. A variety of different limitations are placed on the President’s power to appoint members of commissions in the different jurisdictions considered. These limitations can be broadly grouped into the following categories:
- consultation requirements;
 - membership requirements;
 - limitations on the term of appointment;
 - nomination and selection requirements;

- requirement for parliamentary approval;
- other limitations.

a) Consultation requirements

41. Article 70 of the Constitution of Ghana provides that the President shall, acting in consultation with the Council of State, appoint certain specified persons. Pursuant to art 91, where the President is required to make an appointment in accordance with the advice of, or in consultation with, the Council of State, the Council of State shall ‘*consider and advise the President*’ (emphasis added). This consultation requirement is only a weak limitation on the President’s power of appointment. Not only is the agreement of the Council of State not required, but members of the Council of State are appointed by the President in consultation with Parliament.

b) Membership requirements

42. All of the Constitutions considered contain provisions restricting, to some degree, who may be appointed as a member of a commission, and the number of members who may be appointed.
43. For example, art 44(1) of the Constitution of Ghana provides that ‘[a] person is not qualified to be appointed a member of the Electoral Commission unless he is qualified to be elected a member of Parliament.’
44. Section 193 of the South African Constitution provides that the members of any commission established under Chapter 9 must be men or women who ‘are South African citizens; are fit and proper persons to hold the particular office; and comply with any other requirements prescribed by national legislation.’
45. For some commissions, in particular the Judicial Services Commission,³² the South African Constitution sets out further detailed provisions governing the number of members who are to be appointed and the nature of the qualifications each member is to have. For other commissions, it stipulates that legislation must do so. For example, s 191 of the South African Constitution, which deals with the composition of the Electoral Commission, states that ‘[t]he Electoral Commission must be composed of at least three persons. The number of members ... must be prescribed by national legislation.’ Section 186 of the Constitution, which establishes the Commission for the Promotion and Protection of the Rights of

³² Constitution of South Africa, s 178.

Cultural, Religious and Linguistic Communities, also provides that '[t]he number of members of the Commission ... must be prescribed by national legislation.'

46. Article 250(3) of the Constitution of Kenya, which applies to all the independent commissions established under Chapter 15, provides that '[t]o be appointed, a person shall have the specific qualifications required by this Constitution or national legislation'. Article 250(1) of the Constitution of Kenya also requires that '[e]ach commission shall consist of at least three, but not more than nine, members.'
47. Article 43(1) of the Constitution of Ghana, which establishes the Ghanaian Electoral Commission, stipulates that the Electoral Commission 'shall consist of a Chairman; two Deputy Chairmen; and four other members.'
48. Article 112 of the Constitution of Namibia, which establishes the Public Service Commission, provides that the commission 'shall consist of a Chairperson and no fewer than three (3) and no more than six (6) other persons ...'
49. Section 238 of the Zimbabwe Constitution, which establishes the Zimbabwe Electoral Commission, provides that the commission must consist of a chairperson (who must be a judge, a former judge, or a person qualified for appointment as a judge) and eight other members. It also provides that members of the Zimbabwe Electoral Commission 'must be Zimbabwean citizens and chosen for their integrity and experience and for their competence in the conduct of affairs in the public or private sector.' Similarly, s 202(2) provides that members of the Civil Service Commission 'must be chosen for their knowledge of or experience in administration, management or the provision of public services.'
50. The Constitution of Sierra Leone contains detailed provisions specifying the number of members who are to be appointed and the qualifications members must possess for each of the commissions considered by this report (other than the Human Rights Commission). For example, s 32(2) provides that the members of the Electoral Commission shall be a Chief Electoral Commissioner and four other members, and s 32(4) provides that a person shall not be qualified for appointment as a member of the Electoral Commission if he or she is not qualified to be elected as a Member of Parliament.

Recommendation 6: The Constitutional Review Committee should consider whether the Constitution should set out further requirements for membership of commissions – for example, qualifications relating to knowledge or experience.

c) Limitations on the term of appointment

51. All the Constitutions considered, with the exception of the Constitution of Ghana, contain provisions restricting the terms for which commissioners may be appointed.
52. Article 250(6) of the Constitution of Kenya provides that a member of a commission, or the holder of an independent office (unless *ex officio*) shall be appointed for a single term of six years, and shall not be eligible for re-appointment. However, the Constitution contains two exceptions to this general limitation. Under art 171(4), members of the Judicial Service Commission (apart from the Chief Justice and the Attorney-General), provided they remain qualified, hold office for a term of five years and are eligible to be nominated for one further term of five years. Likewise, the secretary of the Public Service Commission is appointed for a term of five years and is eligible for re-appointment once.³³
53. Similarly, s 320 of the Constitution of Zimbabwe states that '[e]xcept as otherwise provided in this Constitution, every member of a Commission is appointed for a term of five years which is renewable for one additional term only.'
54. Section 196(10) of the South African Constitution also restricts the term of members of the Public Services Commission to five years, which is renewable for one additional term only. Conversely, ss 191 and 221 of the South African Constitution provide that members of the Electoral Commission and the Financial and Fiscal Commission are to serve for a term prescribed by national legislation.
55. Article 112(4) of the Constitution of Namibia provides that every member of the Public Service Commission shall be entitled to serve on the Commission for a period of five years unless lawfully removed before the expiry of that period. However, art 112(4) provides that '[e]very member of the Public Service Commission shall be eligible for reappointment.'

³³ Constitution of Kenya, art 233(6)(b).

56. The Constitution of Ghana does not contain any limits on the terms of appointment of commissioners.
57. The current Constitution of Sierra Leone places limits on the term of appointment for members of the SLEC (five years),³⁴ the JLSC (three years)³⁵ and the PSC (three to five years),³⁶ but not for members of the PPRC or the Human Rights Commission. Instead, limits on the term of appointment for members of the PPRC and the Human Rights Commission are provided for in legislation.³⁷
58. However, the Constitution of Sierra Leone does not place limits on the number of times commissioners may be re-appointed. Section 160(1) states that, subject to any other provisions to the contrary, any person who has vacated an office established by the Constitution may, if qualified, again be appointed to hold that office.

Recommendation 7: The Constitutional Review Committee should consider whether limits on the term of appointment of members of the Political Parties Registration Commission and the Human Rights Commission should be provided for directly in the Constitution.

Recommendation 8: The Constitutional Review Committee should consider whether limits on the number of terms for which commissioners may be reappointed should be provided for in the Constitution.

d) Nomination and selection requirements

59. All the Constitutions considered contained at least some provisions regulating the process by which commission members may be nominated or selected for appointment.
60. Article 250(2) of the Constitution of Kenya provides that each member of a commission, and the holder of an independent office, shall be ‘identified and recommended for appointment in a manner prescribed by national legislation.’
61. In contrast, the South African Constitution provides for a range of different methods of nomination and selection. For example, s 178 of the South African

³⁴ *ibid*, s 32(7)(a).

³⁵ *ibid*, s 140(3)(a).

³⁶ *ibid*, s 151(5)(a).

³⁷ Political Parties Act 2002, s 2(3); Human Rights Commission of Sierra Leone Act 2004, s 4(1).

Constitution deals with the composition of the Judicial Service Commission. It provides that, inter alia:

- two practising advocates are to be nominated from within the advocates' profession; and
- two practising attorneys are to be nominated from within the attorneys' profession.

62. Whilst some commissioners in South Africa may be appointed by the President from a list of nominated candidates, more often, the President must appoint members in accordance with a recommendation.
63. Similarly, the South African Public Service Commission consists of 14 commissioners, five of whom are recommended by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly and are then approved by the Assembly; and one from each province who is nominated by the Premier, after being recommended by a committee of the provincial legislature that is proportionally composed of members of all parties represented in the legislature, and is then approved by the legislature.³⁸
64. The Constitution of Zimbabwe also adopts a range of different methods for nominating and selecting commissioners. For example, s 238 deals with the establishment and composition of the Zimbabwe Electoral Commission. It provides that the commission is to consist of 'a chairperson appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.'
65. As in South Africa, the Judicial Service Commission in Zimbabwe consists of members who are largely selected by outside bodies. Section 189 provides that the Commission is to consist of, inter alia, 'one judge nominated by the judges of the Constitutional Court, the Supreme Court, the High Court, the Labour Court and the Administrative Court'; 'three practising legal practitioners ... designated by the association'; and 'one professor or senior lecturer of law designated by an association representing the majority of the teachers of law at Zimbabwean universities ...'

³⁸ South African Constitution, s 196(7)-(8).

66. Similarly, art 85 of the Constitution of Namibia provides that the Namibian Judicial Service Commission shall consist of ‘the Chief Justice, a Judge appointed by the President, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organisation or organisations representing the interests of the legal profession in Namibia.’
67. Conversely, in Namibia, members of the Public Service Commission are nominated by the President. Article 112 of the Constitution of Namibia provides that the Public Service Commission shall consist of a Chairperson and between three and six other persons nominated by the President and appointed by the National Assembly.
68. Article 153 of the Constitution of Ghana deals with the composition of the Judicial Council. As is the case with the Judicial Service Commissions under the Constitutions of South Africa, Zimbabwe and Namibia, the Judicial Council largely consists of members who are selected by bodies other than the President. Article 153 provides that the Council shall comprise of, inter alia, ‘a Justice of the Supreme Court nominated by the Justices of the Supreme Court’; ‘a Justice of the Court of Appeal nominated by the Justices of the Court of Appeal’; ‘a Justice of the High Court nominated by the Justices of the High Court’; ‘a representative of the Chairmen of Regional Tribunals nominated by the Chairmen’; ‘a representative of the Judicial Service Staff Association nominated by the Association’; and ‘a chief nominated by the National House of Chiefs’.
69. However, the Constitution of Ghana does not prescribe the process by which members of the Electoral Commission, the Public Services Commission or the Commission on Human Rights and Administrative Justice are to be recommended for appointment. Instead, reference is simply made to art 70, which confers a broad power of appointment on the President of Ghana (albeit one limited by the obligation to consult with the Council of State).³⁹ Interestingly, though, the process by which commission members are to be nominated is, for the most part, set out for the National Media Commission,⁴⁰ the Police Council⁴¹ and the Lands Commission.⁴²

³⁹ Constitution of Ghana, ss 43, 194(2) and 217.

⁴⁰ *ibid*, s 166.

70. Under the current Constitution of Sierra Leone, the manner in which most members of the Judicial and Legal Service Commission are to be nominated or selected for appointment is set out in s 140. Section 140 provides that the Judicial and Legal Service Commission shall consist of ‘the Chief Justice, who shall be the Chairman; the most Senior Justice of the Court of Appeal; the Solicitor-General; one practicing Counsel ... nominated by the Sierra Leone Bar Association ...; the Chairman of the Public Service Commission; and two other persons, not being legal practitioners, to be appointed by the President ...’. However, as is the case under the Ghanaian Constitution, the process by which the ‘two other persons, not being legal practitioners’ are to be nominated and selected is unclear.
71. Similarly, the manner in which the members of the Political Parties Registration Commission are to be nominated or selected for appointment is set out in s 34. Section 34 provides that the Commission shall consist of ‘the Chairman of the Commission, who shall be a person who has held Judicial office or is qualified to be appointed a Judge of the Superior Court of Judicature nominated by the Judicial and Legal Service Commission; the Chief Electoral Commissioner; a legal practitioner nominated by the Sierra Leone Bar Association; and a member nominated by the Sierra Leone Labour Congress.’
72. The Constitution of Sierra Leone does not set out the process of identifying and nominating members of the remaining commissions established under the Constitution, namely the Electoral Commission and the Public Service Commission. Nor does the Tucker Report recommend any process for identifying and nominating members of the Human Rights Commission, which is proposed to be established under the revised Constitution. However, the procedure for nominating members of the Human Rights Commission for appointment is set out in the Schedule to the HRCSLA.

Recommendation 9: The Constitutional Review Committee should consider specifying in the Constitution the process by which the ‘two other persons, not legal practitioners’ are to be recommended and selected for appointment to the Judicial and Legal Service Commission.

⁴¹ *ibid*, s 201.

⁴² *ibid*, s 259.

Recommendation 10: The Constitutional Review Committee should consider specifying in the Constitution the process by which members of the Electoral Commission, Public Service Commission and Human Rights Commission are to be recommended and selected for appointment, or including in the Constitution a provision which requires legislation to prescribe this process.

e) Requirement for parliamentary approval

73. A number of the Constitutions considered require parliamentary approval for the appointment of members of commissions.
74. Under the South African Constitution, the President must appoint members of the South African Human Rights Commission, the Commission for Gender Equality, and the Electoral Commission, on the recommendation of the National Assembly.⁴³ The National Assembly must only recommend persons who are nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly, and who are approved by a resolution adopted with a supporting vote of a majority of the members of the Assembly. This threshold is lower than that required for the appointment of the Public Protector or the Auditor-General under the South African Constitution, which requires a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly.
75. In South Africa, parliamentary approval is also required for the appointment of members of the Public Service Commission. Five commissioners must be approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly. The remaining nine commissioners, one for each of South Africa's provinces, must be approved by the respective provincial legislature by a resolution adopted with a supporting vote of a majority of its members.⁴⁴ However, parliamentary approval is not required for the appointment of members of the South African Judicial Service Commission, many of whom are appointed by the legal profession. However, six members of the Commission must be designated by the National Assembly from among its members.⁴⁵

⁴³ South African Constitution, s 193(4).

⁴⁴ South African Constitution, s 193(4).

⁴⁵ South African Constitution, s 178(1)(h).

76. In Kenya, the chairperson and each member of a commission must be approved by the National Assembly before being appointed by the President.⁴⁶
77. Parliamentary approval, in a sense, is required for the appointment of members of the Namibian Public Service Commission. Under art 112(3) of the Constitution of Namibia, members of the Public Service Commission are nominated by the President and appointed by the National Assembly by resolution. However, parliamentary approval is not required for the appointment of members of the Judicial Service Commission or the Electoral Commission.
78. Similarly, parliamentary approval is not required for the appointment of any commission members under the Constitution of Zimbabwe or the Constitution of Ghana.
79. Under the current Constitution of Sierra Leone, parliamentary approval is already required for the appointment of members of the Electoral Commission, pursuant to s 32(3); the Political Parties Registration Commission, pursuant to s 34(2); and the Public Service Commission, pursuant to s 151(2). Whilst parliamentary approval is not required under the Constitution for the appointment of all members of the Sierra Leone Judicial and Legal Service Commission, it is required for the ‘two other persons, not being legal practitioners, to be appointed by the President’ under s 140(1)(f)’. The remaining members of the Commission are either nominated for appointment by the Sierra Leone Bar Association or are appointed by virtue of an already-held position (i.e. Chief Justice, most Senior Justice of the Court of Appeal, Solicitor-General or Chairmen of the Public Service Commission).⁴⁷
80. Whilst the appointment process for members of the Sierra Leone Human Rights Commission is not set out under the Constitution, parliamentary approval is required under the Schedule to the HRCSLA.
81. Thus, the proposed amendment to s 70 in the Tucker Report – namely, to subject the President’s power of appointment to parliamentary approval – will make little substantive change to the manner in which members of commissions are already appointed. It will ensure that the President’s appointment of a practising Counsel (once nominated by the Bar Association) to the Judicial and Legal Service

⁴⁶ Constitution of Kenya, art 250(1).

⁴⁷ Sierra Leone Constitution, s 140(1).

Commission is subject to parliamentary approval.⁴⁸ It will also ensure that parliamentary approval for the appointment of members of a commission is a constitutional, and not merely a legislative, requirement for any new commissions established under the Constitution. Examples include the Human Rights Commission, the Extractive Industries Transparency Commission and the Independent Forces Commission, all of which the Tucker Report recommends establishing under the new Constitution.⁴⁹

82. It is also worth noting that although the proposed amendment to s 70 would require parliamentary approval for any Presidential appointment of a member of a commission established under the Constitution, the Tucker Report proposes that this approval be required ‘only for first appointments’ to these offices.⁵⁰ That is, parliamentary approval is not required for re-appointments.

Recommendation 11: The Constitutional Review Committee should consider specifying in the Constitution the definition of ‘parliamentary approval’, and whether this should require a supporting vote of a majority of the members of the Parliament of Sierra Leone or a greater majority.

Recommendation 12: The Constitutional Review Committee should consider whether parliamentary approval should also be required for re-appointments.

f) Other limitations

83. Another kind of limitation on the President’s power of appointment is included in the Constitutions of South Africa and Kenya. Both Constitutions contain provisions which require appointments to commissions to take into account diversity values.
84. Article 250 of the Constitution of Kenya provides as follows:

Appointments to commissions and independent offices shall take into account the national values mentioned in Article 10, and the principles that the composition of the commissions

⁴⁸ Sierra Leone Constitution, s 140(1)(d).

⁴⁹ See s 70 of the Sierra Leone, which refers to ‘[m]embers of any Commission established by [the] Constitution.’ See also the proposed new Chapters X, XVI and XVII of the Constitution in the Tucker Report, at [129], [138] and [139].

⁵⁰ Tucker Report (n 1), [77].

and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.

85. The values referred to in art 10 include:
- (a) patriotism, national security, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
 - (c) good governance, integrity, transparency and accountability; and
 - (d) sustainable development.
86. Similarly, s 193(2) of the South African Constitution provides that ‘the need for a Commission established [under Chapter 9 of the Constitution] to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.’

Recommendation 13: The Constitutional Review Committee should consider adopting a provision which requires appointments to commissions and independent offices to reflect diversity characteristics, such as regional, ethnic, cultural, linguistic, race or gender diversity.

V INDEPENDENCE PROVISIONS

87. Whilst all the Constitutions considered contain independence provisions of some kind, only the Constitutions of South Africa and Zimbabwe impose positive obligations on State organs to ensure the independence of commissions.
88. Subsections 181(2), (3) and (4) of the South African Constitution, which apply to commissions established under Chapter 9 (including the Electoral Commission, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Gender Commission), provide that:

These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

No person or organ of state may interfere with the functioning of these institutions.
(emphasis added).

89. Subsections (2) and (3) of s 196 adopt the same wording in relation to the Public Service Commission.
90. Chapter 12 of the Constitution of Zimbabwe is titled ‘Independent Commissions Supporting Democracy’, and expressly provides, in s 232, that the Zimbabwe Electoral Commission and the Human Rights Commission are independent commissions.
91. Section 235 of the Constitution of Zimbabwe, which applies to independent commissions, adopts near-identical wording to subsections 181(2), (3) and (4) of the South African Constitution discussed above. It provides:
 - (1) The independent Commissions –
 - (a) are independent and are not subject to the direction or control of anyone;
 - (b) must act in accordance with this Constitution; and
 - (c) must exercise their functions without fear, favour or prejudice; although they are accountable to Parliament for the efficient performance of their functions.
 - (2) *The State and all institutions and agencies of government at every level, through legislative and other measures, must assist the independent Commissions and must protect their independence, impartiality, integrity and effectiveness.*
 - (3) No person may interfere with the functioning of the independent Commissions.
(emphasis added).
92. Article 149(2) of the Constitution of Kenya applies to the Kenya National Human Rights and Equality Commission, the Independent Electoral and Boundaries Commission and the Judicial Service Commission, and provides simply that these commissions are ‘subject only to [the] Constitution and the law’ and ‘are independent and not subject to direction or control by any person or authority.’
93. Article 46 of the Constitution of Ghana, which applies to the Electoral Commission, provides that:

Except as provided by this Constitution or by any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission shall not be subject to the direction or control of any person or authority.
94. Article 225 adopts the same wording in relation to the Commission on Human Rights and Administrative Justice; art 172 in relation to the National Media Commission; art 234 in relation to the National Commission for Civic Education; and art 265 in relation to the Lands Commission.

95. The Constitution of Namibia does not contain a general provision relating to the independence of commissions. Article 112(2) provides that ‘[t]he Public Service Commission shall be independent and act impartially’, but no similar provision is adopted in relation to any other commission.
96. The current Constitution of Sierra Leone contains just two provisions relating to the independence of commissions. Section 32(11), which applies to the Electoral Commission, provides that:
- In the exercise of any functions vested in it by this Constitution, the Electoral Commission shall not be subject to the direction or control of any person or authority.
97. Section 34(5) adopts the same wording in relation to the PPRC. However, no similar provision is adopted in relation to the JLSC, the PSC or Commissions of Inquiry. The Tucker Report does not propose that independence provisions be adopted in relation to these commissions, or in relation to the new commissions it proposes be established under the Constitution (namely, the Human Rights Commission, the Extractive Industries Transparency Commission and the Independent Forces Commission).

Recommendation 14: The Constitutional Review Committee should consider adopting independence provisions which apply to the Judicial and Legal Service Commission, the Public Service Commission, Commissions of Inquiry, the Human Rights Commission, the Extractive Industries Transparency Commission and the Independent Forces Commission, as well as the Electoral Commission and Political Parties Registration Commission.

Recommendation 15: The Constitutional Review Committee should consider adopting a provision which imposes positive obligations on State organs to assist and protect commissions so as to ensure their independence.

APPENDIX:

CONSTITUTIONS IN SUB-SAHARAN AFRICA

I SOUTH AFRICA

a) General Executive Powers

98. Section 85 of the Constitution of the Republic of South Africa 1996 (South African Constitution) vests all executive authority in the President, and sets out a list of ways in which this authority is exercised:

(2) The President exercises the executive authority, together with the other members of the Cabinet by:

- (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise.
- (b) developing and implementing national policy;
- (c) co-ordinating the functions of state departments and administrations;
- (d) preparing and initiating legislation; and
- (e) performing any other executive function provided for in the Constitution or in national legislation.

99. One of the executive functions of the President listed in s 84 is the making of any appointments as may be necessary under powers conferred upon him or her by the Constitution or any other law. The specific powers to appoint and participate in the running of commissions in South Africa are as follows.

b) Electoral Commission

100. In South Africa, the Electoral Commission (SAEC) is recognised as a State institution supporting constitutional democracy,⁵¹ and is responsible for the conduct of free and fair elections.⁵² The SAEC is established under s 180 of the Constitution but its operations are further discussed under the Electoral Commission Act 1996 (ECA).⁵³ The appointment of the Commission's members is carried out by the President⁵⁴ in accordance with s 6 of the ECA. The President must designate a chairperson and vice-chairperson from among the members of the SAEC.⁵⁵

⁵¹ South African Constitution s 181(1)(f); ECA ss 4 and 5.

⁵² South African Constitution (s 190(1)).

⁵³ In accordance with the South African Constitution s 191.

⁵⁴ *ibid*, s 193(4)(a).

⁵⁵ ECA, s 8(1).

However, where both the chairperson and vice-chairperson are absent, the remaining members must elect an acting chairperson from among themselves.⁵⁶

101. Both the SAEC in South Africa and the SLEC in Sierra Leone are independent institutions,⁵⁷ and the President has a very limited relationship with them. The South African Constitution contains extensive provisions asserting the independence of the Electoral Commission. Although the SAEC is accountable to the National Assembly, under s 181, it is required to operate without any interference from State organs. Moreover, under s 181, State organs are required to take positive steps to ensure the independence and impartiality of the SAEC.
102. Under the South African Constitution, the SAEC must report on its activities and the performance of its functions to the National Assembly each year. There are no equivalent reporting requirements for the SLEC under the Constitution of Sierra Leone.

c) Registration of Political Parties

103. In contrast to the Constitution of Sierra Leone, there is no separate Political Parties Registration Commission under the South African Constitution. In South Africa, the Chief Electoral Officer of the SAEC is responsible for the registration of political parties.⁵⁸ Any appeals against this decision can be made to the SAEC.⁵⁹ The SAEC is also empowered to cancel the registration of a political party.⁶⁰

d) Judicial Services Commission

104. In South Africa, the Judicial Services Commission (JSC) assists the President to make judicial appointments (the Chief Justice and Deputy Chief Justice of the Constitutional Court, as well as the President and Deputy President of the Supreme Court of Appeal).⁶¹ The JSC also prepares a list of nominees for the appointment of other judges to the Constitutional Court, though the President may advise, with reasons, if any of the nominees are unacceptable.⁶² The appointment must be made from either the main or the supplemented list.⁶³ Additionally, the JSC advises the

⁵⁶ *ibid*, s 8(2).

⁵⁷ South African Constitution, s 181(2) read with ECA ss 3(2), 9 and 10; Sierra Leone Constitution, s 32(11) read with PEA s 3.

⁵⁸ ECA, Chapter 4.

⁵⁹ *ibid*, s 16(2)

⁶⁰ *ibid*, s 17.

⁶¹ South African Constitution s 174(3).

⁶² *ibid*, s 174(4)(b).

⁶³ *ibid*, s 174(4)(b).

national government on any matter relating to the judiciary or the administration of justice.⁶⁴

105. The President appoints two practising advocates and two practising attorneys to the JSC, although all four must be nominated from within the profession.⁶⁵ Alternates for these members may be appointed (in the same manner as the normal appointment procedure) where the member concerned is temporarily unable to serve on the Commission.⁶⁶

e) Public Service Commission

106. In South Africa, the Public Service Commission (PSC) is set up under s 196 of the Constitution to promote the basic values and principles of open governance.⁶⁷ It is accountable to the National Assembly,⁶⁸ though it must at all times remain independent and impartial.⁶⁹ The President appoints its fourteen members. The National Assembly approves five of these and the Premier of that province nominates one commissioner for each province.⁷⁰ Further regulations surrounding the Commission can be found in Public Service Commission Act 1997 (PSCA). Under the PSCA, the President must also designate the chairperson and the deputy chairperson of the Commission.⁷¹ When it comes to the removal of commissioners, although this is officially done by the President, he or she must do so upon:

- (a) the adoption by the Assembly of a resolution calling for that commissioner's removal; or
- (b) written notification by the Premier that the provincial legislature has adopted a resolution calling for that commissioner's removal.⁷²

f) Commissions of Inquiry

107. There is no counterpart in the South African Constitution to the provision contained in the Constitution of Sierra Leone concerning Commissions of Inquiry, but there is a general clause that empowers the President to appoint a commission of inquiry to perform his or her functions as the Head of the State and the head of the national executive.⁷³ The provincial Premiers are similarly empowered.⁷⁴ A

⁶⁴ *ibid*, s 178(5).

⁶⁵ *ibid*, s 178(1).

⁶⁶ *ibid*, s 178(8).

⁶⁷ *ibid*, s 195.

⁶⁸ *ibid*, s 196 (5).

⁶⁹ *ibid*, s 196(2).

⁷⁰ *ibid*, s 196(6).

⁷¹ Public Service Commission Act 1997 s 5.

⁷² South African Constitution, s 196(12). However, modifications to the procedure followed by the PSC have been proposed by way of the Public Service Commission Bill 2013.

⁷³ *ibid*, s 84(1)(f).

province may also set up a commission of inquiry to examine complaints against the police or a breakdown in relations between the police and the community.⁷⁵

g) Human Rights Commission

108. The South African Human Rights Commission (SAHRC) was established to promote and protect human rights⁷⁶ and has all the powers that are necessary to perform its functions.⁷⁷ Unlike in Sierra Leone, the SAHRC is established under the South African Constitution, rather than a separate Act of Parliament. It must annually require relevant State organs to provide the Commission with information on the measures they have taken towards the realisation of the rights contained in the Bill of Rights concerning housing, healthcare, food, water, social security, education and environment.⁷⁸ Currently, the SAHRC is governed by the South African Human Rights Commission Act 2013, which has elaborate provisions for maintaining the independence and impartiality of the SAHRC.⁷⁹ The President appoints its members.⁸⁰ Members can be either part-time or full-time, but the President may appoint a part-time commissioner as a full-time commissioner if a vacancy arises.⁸¹
109. Further, the President must, on the recommendation of the National Assembly, appoint a Chairperson and a Deputy Chairperson.⁸² The President in consultation with the Cabinet and the Minister of Finance determines the remuneration, allowances, terms and conditions of office and benefits of the commissioners.⁸³ The Commission must carry out such human rights studies as are referred to it by the President and must submit its reports and recommendations based on such study.⁸⁴

h) Other Commissions

110. There are two Commissions that are established under the South African Constitution that are not present in the Constitution of Sierra Leone.

⁷⁴ *ibid*, s 127(1)(e).

⁷⁵ *ibid*, s 206(5)(a).

⁷⁶ *ibid*, s 184(1).

⁷⁷ *ibid*, s 184(2).

⁷⁸ *ibid*, s 184(3).

⁷⁹ South African Human Rights Commission Act 2013 s 4.

⁸⁰ South African Constitution s 193(4)(a); *ibid*, s 5(1)(iv).

⁸¹ South African Human Rights Commission Act 2013 s 5(4).

⁸² *ibid*, s 6.

⁸³ *ibid*, s 9(1).

⁸⁴ *ibid*, s 13(1)(b)(viii).

111. The South African Constitution establishes the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities to promote respect for the rights of cultural, religious and linguistic communities, to promote peace and unity among them, and to recommend the establishment of councils for communities in South Africa.⁸⁵ Its functioning is governed by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities Act 2002. The composition of the Commission, including the number of members (though this must range between 11 and 17), is decided by the President.⁸⁶ However, the President is obliged to appoint those members whose names are submitted to him by a Selection Panel set up for the purpose.⁸⁷ The President must appoint a member as the Chairperson of the Commission and may also appoint a Deputy Chairperson.⁸⁸ The President may fill any vacancy in the office of the Chairperson by following the ordinary procedure for the appointment of a Chairperson.⁸⁹
112. The Constitution also establishes the Commission for Gender Equality (CGE) exists to promote respect for gender equality.⁹⁰ It operates on the terms of the Commission on Gender Equality Act 1996 (CGEA). The seat of the CGE is determined by the President,⁹¹ and the President must appoint as a member of the CGE persons who are proposed by interested parties, nominated by a joint committee and approved by the National Assembly and the Senate.⁹² Members may be appointed as full-time or part-time members, as determined by the President in consultation with the Commission.⁹³ The Commission is to submit a report at least once a year to the President, which report shall be tabled by the President before Parliament.⁹⁴

⁸⁵ South African Constitution, s 185(1).

⁸⁶ Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Minorities Act 2002, s 9.

⁸⁷ *ibid*, s 11(4).

⁸⁸ *ibid*, s 12.

⁸⁹ *ibid*, s 18(1)(a).

⁹⁰ South African Constitution s 187(1).

⁹¹ Commission on Gender Equality Act 1996 (hereinafter CGA) s 2(1).

⁹² *ibid*, s 3(2).

⁹³ *ibid*, s 3(4).

⁹⁴ *ibid*, s 15(2).

II GHANA

a) General Executive Powers

113. In Ghana, as in Sierra Leone, the President is the head of the State and the Government, as established in art 57(1) of the Constitution of the Republic of Ghana 1992 (Constitution of Ghana). Article 70 provides the main legal basis for general powers of presidential appointments, along with art 74 (appointment of representatives of Ghana abroad).

114. This power to appoint is defined in art 297:

In this Constitution and in any other law -

- (a) the power to appoint a person to hold or to act in an office in the public service shall include the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove the persons from office. [...]

115. A particular feature of the Constitution of Ghana, differing from the procedure in Sierra Leone, is the involvement of the Council of State in the appointment procedures. This institution, established by art 89 of the Constitution of Ghana, is required to assist the President in performing his or her functions. Its members are appointed by the President in consultation with Parliament.⁹⁵ Moreover, according to art 91, the Council of State shall consider and advise the President or any other authority in respect of any appointment which is required by the Constitution or any other law to be made in accordance with the advice of, or in consultation with, the Council of State.

116. This appointment procedure shows that the President's powers of appointment are not significantly limited by the involvement of the Council of State and of Parliament. The Council of State is largely composed of members appointed by the President (or appointed by the President with the consultation of Parliament)..

117. The President is also responsible for setting the salaries and privileges of officials belonging to the Judiciary, Special Commissions or other authorities as provided in art 71 of the Constitution. The only exception to the rule is that the salaries of the President, members of the Government (including the Vice-President and Ministers) and the Council of State are determined by Parliament based on the

⁹⁵ Constitution of Ghana, art 89(2)(a).

recommendation of a Special Committee set up by the President acting in accordance with the advice of the Council of State.⁹⁶

b) Electoral Commission

118. An Electoral Commission is established under art 43 of the Constitution of Ghana. The members of the Commission (a Chairman, two Deputy Chairmen and four other members) are appointed by the President pursuant to the general power of appointment in art 70.⁹⁷ Like the SLEC, the Electoral Commission of Ghana is independent.⁹⁸ The functions of the Electoral Commission are similar to that of the SLEC, including the conduct and supervision of elections, and compilation of a register of voters.⁹⁹
119. Registration of political parties is coordinated through the Electoral Commission,¹⁰⁰ and as such there is no separate commission for the registration of political parties like in Sierra Leone.

c) Judiciary

120. The Constitution of Ghana sets out procedures for the appointment of judges in art 144. The Chief Justice and other Justices of the Supreme Court of Ghana are appointed by the President, but this power is subject to consultation requirements and parliamentary approval.
121. Justices of the Court of Appeal and of the High Court are appointed by the President acting on the advice of the Judicial Council.¹⁰¹ The Judicial Council comprises the Chief Justice, the Attorney-General, a Justice of the Supreme Court (nominated by the other Justices), a Justice of the Court of Appeal (nominated by the other Justices), a Justice of the High Court (nominated by the other Justices), two representatives of the Bar Association, a representative of the Chairmen of Regional Tribunals, a representative of lower courts, the Judge Advocate-General, the Head of the Legal Directorate of the Police Force, the Editor of the Ghana Law Reports, a representative of the Judicial Service Staff Association, a chief nominated by the National House of Chiefs, and four other persons who are not

⁹⁶ Constitution of Ghana, art 71(1)(d)(v).

⁹⁷ *ibid*, art 43(2).

⁹⁸ *ibid*, art 46.

⁹⁹ *ibid*, art 45.

¹⁰⁰ *ibid*, art 55(7).

¹⁰¹ *ibid*, art 144(3).

lawyers.¹⁰² It is only the four other persons who are not lawyers who are appointed by the President.¹⁰³ The functions of the Judicial Council are broader than those of the JLSC in Sierra Leone and include proposing judicial reforms to improve the level of administration of justice and efficiency in the Judiciary.¹⁰⁴

d) Commissions of Inquiry

122. The Commission of Inquiry provided for in art 278 of the Constitution of Ghana is similar to that provided for in s 14 of the Constitution of Sierra Leone. Article 278 provides that the President must appoint a commission of inquiry into any matter of public interest where:

- (a) the President is satisfied that a commission of inquiry should be appointed; or
- (b) the Council of State advises that it is in the public interest to do so; or
- (c) Parliament, by a resolution requests that a commission of inquiry be appointed to inquire into any matter, specified in the resolution as being a matter of public importance.

123. Like the CI in Sierra Leone, the Commissioners in a Commission of Inquiry in Ghana have the same powers as a Justice of the High Court,¹⁰⁵ and must also prepare a report that the President must publish (or give reasons for not doing so).¹⁰⁶

e) Public Service Commission

124. The Civil Service is part of the Public Service in Ghana as established in art 190 of the Constitution of Ghana. The power to appoint persons to hold office in the public services vests in the President. However, the President must act in accordance with the advice of the governing council of the service concerned given in consultation with the Public Service Commission.¹⁰⁷

125. Similarly, in appointing a public officer as the Head of the Civil Service, the President must act in accordance with the advice of the Public Service Commission.¹⁰⁸

126. The Public Service Commission is established by art 194 of the Constitution of Ghana. The Commissioners are appointed by the President in consultation with

¹⁰² Constitution of Ghana, art 153.

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*, art 154(1).

¹⁰⁵ *ibid.*, s 279.

¹⁰⁶ *ibid.*, s 280(3)-(4).

¹⁰⁷ *ibid.*, art 195(1).

¹⁰⁸ Constitution of Ghana, art 195.

the Council of State.¹⁰⁹ The Public Service Commission is independent,¹¹⁰ and acts as the supervisor and regulator of the public service.

III KENYA

a) General Executive Powers

127. Article 130 of the Constitution of Kenya 2010 provides that the national executive is comprised of the President, the Deputy President and the rest of Cabinet.¹¹¹ Chapter Nine of the Constitution sets out the composition and authority of executive power in Kenya. Article 29 stresses that executive power derives from the people of Kenya and must be exercised in accordance with the Constitution:

129. (1) Executive authority derives from the people of Kenya and shall be exercised in accordance with this Constitution.

(2) Executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya, and for their wellbeing and benefit.

128. The authority of the President, subject to the Constitution, is addressed in art 131 and the functions of the President are enumerated in art 132.

b) Powers of Appointment

129. The Presidential powers of appointment under the Constitution of Kenya 2010 are more limited than the corresponding provisions of the Constitution of Sierra Leone. The President has the power to nominate, appoint and dismiss certain officers, subject to the approval of the National Assembly. Article 132(2) provides:

(2) The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss—

(a) the Cabinet Secretaries, in accordance with Article 152;

(b) the Attorney-General, in accordance with Article 156;

(c) the Secretary to the Cabinet in accordance with Article 154;

(d) Principal Secretaries in accordance with Article 155;

(e) high commissioners, ambassadors and diplomatic and consular representatives;
and

¹⁰⁹ Public Services Commission Act 1994, s 1.

¹¹⁰ Constitution of Ghana, s198.

¹¹¹ Constitution of Kenya, art 130(1).

(f) in accordance with this Constitution, any other State or public officer

130. The President also has the power to nominate and, with the approval of the National Assembly, to appoint the Director of Public Prosecutions, subject to certain qualification requirements.¹¹² Likewise, the President is responsible for appointing the Chief Justice and the Deputy Chief Justice in accordance with the recommendations of the Judicial Service Commission (JSC), and subject to the approval of the National Assembly.¹¹³ The President must appoint all other judges in accordance with the recommendations of the JSC.¹¹⁴

c) Overview of Constitutional Commissions

131. Chapter 15 of the Constitution of Kenya 2010 concerns certain commissions and independent offices. Article 248(1) enumerates ten independent commissions and two independent offices to which Chapter 15 applies. These commissions are uncoupled from the other branches of government, both administratively and financially. The Constitution explicitly addresses the relationship of the President to the commissions and emphasises their independence. The commissions are endowed with powers that under the former Constitution came within the ambit of Presidential authority.¹¹⁵

132. Article 250 provides that the President is responsible for appointing members of each commission, in cooperation with the National Assembly.

d) Independent Electoral and Boundaries Commission

133. This commission broadly corresponds to both the SLEC and the Sierra Leone PPRC, which are established in the Constitution of Sierra Leone.

134. The Independent and Electoral Boundary Commission of Kenya (IEBC) was established under Article 88 of the Constitution of Kenya 2010 and the Independent and Electoral Boundary Commission Act 2011 (IEBC Act).

135. The IEBC is comprised of a chairperson and eight other members.¹¹⁶ Appointments take place in accordance with the specifications set out in Chapter 15 of the

¹¹² *ibid*,art 157(2) and (3).

¹¹³ *ibid*,art 166(1)(c).

¹¹⁴ *ibid*,art 166(1)(b).

¹¹⁵ Ben Sihanya, “Constitutional Commissions in Kenya: Experience, Challenge and Lessons”, presented at the Conference on State Implementation of the Constitution since 2010, Laico Regency, Nairobi, November 20, 2013.

¹¹⁶ Independent and Electoral Boundary Commission Act, 2011, section 5(1):

Constitution and the provisions of the Independent and Electoral Boundary Commission Act 2011.

e) Judicial Service Commission

136. The scope of the JLSC in Sierra Leone has similarities with the Kenyan Judicial Service Commission, however its scope is limited by comparison.
137. The Judicial Service Commission (JSC) is established by art 171 of the Constitution¹¹⁷ and the Judicial Service Act 2011. It plays a central role in the appointment, removal and discipline of judicial officers.¹¹⁸
138. Article 171(2)(a) of the Constitution provides that the Chief Justice shall be the chairperson of the JSC. The Constitution also directs how the remaining ten members should be selected.¹¹⁹ Subject to the approval of the National Assembly, the President is empowered to appoint one man and one woman to represent the public on the JSC.¹²⁰ The detailed procedure of appointment is set out in s 15 of the Judicial Service Act.¹²¹ The Chief Registrar of the Judiciary automatically fills the position of Secretary to the JSC.¹²² Aside from the Chief Justice and the Attorney-General, commissioners who maintain their qualifications serve a five-year term which may be renewed for one further term of five years.¹²³

f) Commissions of Inquiry

139. In contrast to the provisions in the Constitution of Sierra Leone, there is no provision in the Constitution of Kenya 2010 for the President to establish a Commission of Inquiry beyond the commissions specified in the Constitution.

g) Public Service Commission

140. The Kenyan Public Service Commission is an independent commission under Chapter Fifteen of the Constitution of Kenya 2010. It was created under arts 233 and 234 of the Constitution together with the Public Service Commission Act 2012 (PSC Act).

The Commission shall consist of a chairperson and eight other members appointed in accordance with Article 250(4) of the Constitution and the provisions of this Act.

¹¹⁷ *ibid*, art 171.

¹¹⁸ *ibid*. The functions of the JSC are set out in Article 172.

¹¹⁹ *ibid*.

¹²⁰ *ibid*, art 171(2)(h).

¹²¹ Judicial Service Act 2011, s 15.

¹²² Constitution of Kenya, art 171(3).

¹²³ *ibid*, art 171(4).

141. The nine members of the PSC, including the chairperson and vice-chairperson, are appointed by the President, with the approval of the National Assembly¹²⁴ for a single non-renewable term of six years.¹²⁵ Certain qualifications are necessary for appointment,¹²⁶ and persons holding particular political offices are ineligible for appointment.¹²⁷

h) Human Rights Commission

142. The Kenya National Human Rights and Equality Commission (KNHREC) was established as an independent commission under art 59(1) of the Constitution. Parliament then passed a series of statutes that restructured the KNHREC, as provided for in art 59(4).¹²⁸ Three separate successor commissions were created: the Kenya National Commission on Human Rights; the National Gender and Equality Commission; and the Commission on Administrative Justice. The successor commissions were assigned equivalent powers to those given to the KNHREC, as provided for in art 59(5)(a).¹²⁹ Each successor commission also falls within the meaning of a commission under Chapter 15, in accordance with art 59(5)(c).¹³⁰

143. The Kenya National Commission on Human Rights (KNCHR) is similar to the Human Rights Commission of Sierra Leone, and was established by the Kenya National Commission on Human Rights Act 2011,¹³¹ (KNCHR Act) as a successor commission to the KNHREC according to art 59(4) of the Constitution.¹³² Section four explicitly provides, pursuant to art 59(5) of the Constitution, that the KNCHR falls within the meaning of a commission under Chapter 15 and the relevant status and powers of a commission under Chapter 15 therefore apply.¹³³

144. The KNCHR is made up of a chairperson and four other members,¹³⁴ who must possess certain qualifications for appointment.¹³⁵ The President is responsible for

¹²⁴ Constitution of Kenya, art 233(2); Public Service Commission Act 2012, s 6.

¹²⁵ Public Service Commission Act 2012, s 10(2).

¹²⁶ *ibid*, s 7.

¹²⁷ Constitution of Kenya, art 233.

¹²⁸ *ibid*, art 59(4).

¹²⁹ *ibid*, art 59(5).

¹³⁰ *ibid*, art 59(5).

¹³¹ Kenya National Commission on Human Rights Act, s 3(1).

¹³² *ibid*, s 3(2).

¹³³ *ibid*, s 4.

¹³⁴ *ibid*, s 9.

¹³⁵ *ibid*, s 10.

convening a selection panel for the purpose of selecting suitable candidates for appointment as Chairperson and members.¹³⁶ According to the legislation, the panel comprises (or ‘is to comprise’) representatives nominated by a list of specified bodies. The Office of the President nominates one person to membership of the panel.¹³⁷ The panel follows the process specified in legislation, compiling a shortlist and forwarding these names to the President.¹³⁸ The President then nominates a Chairperson and four commission members from the shortlist. Pending approval by the National Assembly,¹³⁹ the President must appoint the Chairperson and members of the commission by notice in the Gazette.¹⁴⁰

i) Other Commissions

145. The other Constitutional Commissions that do not have a counterpart in Sierra Leone are:

- the National Land Commission;¹⁴¹
- the Parliamentary Service Commission;¹⁴²
- the Commission on Revenue Allocation;¹⁴³
- the Salaries and Remuneration Commission;¹⁴⁴
- the Teachers Service Commission;¹⁴⁵ and
- the National Police Service Commission¹⁴⁶

IV NAMIBIA

a) General Executive Powers

146. Under the Constitution of the Republic of Namibia, the President is both Head of State and Head of the Executive. He or she enjoys wide powers, most of which are

¹³⁶ *ibid*,s 11.

¹³⁷ *ibid*,s 11(2)(a)(i).

¹³⁸ *ibid*.

¹³⁹ *ibid*.

¹⁴⁰ *ibid*.

¹⁴¹ Constitution of Kenya 2010, art 67. See also: National Land Commission Act 2012.

¹⁴² Constitution of Kenya 2010, art 127.

¹⁴³ *ibid*, art215. See also: Revenue Allocation Act 2011.

¹⁴⁴ *ibid*, art 230. See also: Salaries and Remuneration Commission Act 2011.

¹⁴⁵ *ibid*, art 237. See also: Teachers Service Commission Act 2012.

¹⁴⁶ *ibid*, art 246. See also: National Police Service Commission Act 2011.

to be exercised formally in consultation with Cabinet and checked by Parliament, which has the power to ‘review, reverse or correct’ presidential actions (art 32(9)).

b) Powers of Appointment

147. Article 35 specifies that the Cabinet shall consist of the President, the Prime Minister and other Ministers as appointed by the President from the National Assembly (art 35(1)). A Deputy Prime Minister may also be appointed (art 35(2)).

c) Electoral Commission

148. There is no provision for an Electoral Commission (ECN) under the Constitution of Namibia. However, an Electoral Commission is established pursuant to the Electoral Act of 1992, which was designed to take ‘significant steps to secure the independence of the ECN from the Executive’.¹⁴⁷ The Electoral Commission consists of a Chairperson and four Commissioners, who are appointed by the President from a shortlist compiled by a selection committee.¹⁴⁸

149. Like the SLEC, the ECN is responsible for directing, controlling and supervising elections in Namibia.¹⁴⁹ The registration of voters and of political parties also falls under the responsibility of the ECN.¹⁵⁰

d) Judicial Service Commission

150. Article 82(1) provides that the President is also responsible for appointing Judges to the Supreme Court and the High Court on the recommendation of the Judicial Service Commission.

151. Under art 85, the Judicial Service Commission consists of the Chief Justice, a Judge appointed by the President, the Attorney-General, and two members of the legal profession nominated by the legal profession in Namibia. Whereas the powers of the JLSC in Sierra Leone are quite narrow (assisting the Chief Justice with his or her administrative functions), in Namibia the Judicial Service Commission ‘shall perform such functions as are prescribed for it by this Constitution or any other law’.¹⁵¹

¹⁴⁷ Electoral Commission of Namibia, ‘Overview’

<<http://www.ecn.na/overview;jsessionid=c6c9a06967c5c95d51c2cf4c7829>> accessed 31 July 2014.

¹⁴⁸ Electoral Act 1992, s 5.

¹⁴⁹ Electoral Act 1992 (Namibia), s 4(2).

¹⁵⁰ *ibid*, s 4(2).

¹⁵¹ Constitution of Namibia, art 85.

e) Public Service Commission

152. The Public Service Commission in Namibia advises the President on a range of matters identified in art 113 of the Constitution of Namibia, including the appointment of persons to specified categories of employment in the public service and the identity, availability and suitability of persons to be appointed by the President to offices in terms of the Constitution.¹⁵² The Commission must be independent and act impartially, and consists of a Chairperson and between three and six other persons. Whereas in Sierra Leone the members of the Public Service Commission are appointed by the President, in Namibia the members are nominated by the President and appointed by the National Assembly by resolution.¹⁵³

f) Other Commissions

153. There does not appear to be an equivalent of the Political Parties Registration Commission under the Constitution of Namibia although, as noted above, the registration of political parties in Namibia is facilitated by the Electoral Commission.

154. There also is no provision for Commissions of Inquiry under the Constitution of Namibia.

155. Article 114 establishes a Security Commission which functions to make recommendations to the President on the appointment of the Chief of the Defence Force, the Inspector-General of Police and the Commissioner of Prisons, and other functions as may be assigned to it by Parliament.¹⁵⁴ In contrast to the Namibian Public Service Commission, the members of the Commission are appointed by the President on the recommendation of the National Assembly.¹⁵⁵

156. Article 129 establishes in the office of the President a National Planning Commission, whose task is to ‘plan the priorities and direction of national development’. The Director General of Planning (who heads the Commission) is appointed by the President and is the principal advisor to the President in regards

¹⁵² *ibid*, arts 112 and 113.

¹⁵³ *ibid*, art 112.

¹⁵⁴ Constitution of Namibia, art 114.

¹⁵⁵ *ibid*.

to ‘all matters pertaining to economic planning’, and must attend Cabinet meetings if requested to do so by the President.¹⁵⁶

V ZIMBABWE

a) General Provisions as to Commissions

157. The Constitution of Zimbabwe includes some general provisions that apply to all Commissions established under the Constitution. This includes identification of those Commissions whose members hold office at the pleasure of the President, and those whose appointment is for a term of five years (renewable for one additional term).¹⁵⁷ These provisions affirm the general independence of the Commissions, as well as imposing annual reporting requirements to Parliament.¹⁵⁸

b) Electoral Commission

158. Under the Constitution of Zimbabwe, members of the Electoral Commission are appointed by the President from a list of nominees submitted by the Parliamentary Committee on Standing Rules and Orders.¹⁵⁹ The Chairperson of this Commission must be a judge or former judge, or a person qualified for appointment as a judge.¹⁶⁰ Unlike under the Constitution of Sierra Leone, there is no direct participation by political parties in the appointment process.

c) Civil Service Commission

159. Under the Constitution of Sierra Leone, the President appoints members of the Public Service Commission but these appointments are subject to parliamentary approval. However, under the Constitution of Zimbabwe, the President does not require approval from Parliament to appoint members of the Civil Service Commission. Section 202 of the Constitution of Zimbabwe provides that the President must choose members of the Civil Service Commission ‘for their knowledge or expertise in administration, management or the provision of public services’.

¹⁵⁶ Constitution of Namibia, art 129.

¹⁵⁷ *ibid*, s 320

¹⁵⁸ *ibid*, ss 321-323.

¹⁵⁹ Constitution of Zimbabwe, s 238.

¹⁶⁰ *ibid*, s 238.

d) Judicial Service Commission

160. Part 3 of the Constitution of Zimbabwe provides for the establishment of the Judicial Service Commission. The membership of this Commission is larger than its equivalent (the JLSC) in Sierra Leone, with membership consisting of: the Chief Justice; the Deputy Chief Justice; the Judge President of the High Court; a judge nominated by the judges of the Constitutional Court, Supreme Court, High Court, Labour Court and Administrative Court; the Attorney-General; the Chief Magistrate; the Chairperson of the Civil Service Commission; three practising legal practitioners; one law professor or senior lecturer of law appointed by the President; one accountant or auditor; and one human rights resources management person appointed by the President.¹⁶¹ The only two members of this Commission that the President appoints are the law professor and the human resources management professional.
161. The functions of the Judicial Service Commission in Zimbabwe also appear to be broader than those of the JLSC in Sierra Leone, as the Commission ‘may tender advice to the Government on any matter relating to the judiciary or the administration of justice’ (to which the Government must pay due regard) and must ‘promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice in Zimbabwe’.¹⁶²

e) Human Rights Commission

162. Unlike the Constitution of Sierra Leone, the Constitution of Zimbabwe establishes a Human Rights Commission, which is one of five ‘Independent Commissions Supporting Democracy’ pursuant to s 233.¹⁶³ Like in Sierra Leone, the members of the Zimbabwean Human Rights Commission are appointed by the President; in the case of the Chairperson this appointment must be made in consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders, and for the remaining eight members the appointment must be made from a list of not fewer than 12 nominees submitted by the Committee on Standing Rules and Orders.¹⁶⁴ If the appointed chairperson differs from that recommended by the Judicial Service Commission, the President must inform the Committee on Standing

¹⁶¹ *ibid*, s 189.

¹⁶² Constitution of Zimbabwe, s 190.

¹⁶³ The other Independent Commissions are the Electoral Commission, the Gender Commission, the Media Commission and the National Peace and Reconciliation Commission.

¹⁶⁴ Constitution of Zimbabwe, s 242.

Rules and Orders as soon as possible.¹⁶⁵ Members of the Commission must be chosen for their ‘integrity and their knowledge and understanding of, and experience in, the promotion of human rights’.¹⁶⁶ Whereas the HRCSL must report to the Sierra Leonean Parliament annually, the Zimbabwean Human Rights Commission ‘may’ submit reports to Parliament on particular matters relating to human rights which, in its opinion, should be brought to the Parliament’s attention.¹⁶⁷

f) Other Commissions

163. There does not appear to be any equivalent of the Political Parties Registration Commission in Zimbabwe.

164. The Constitution of Zimbabwe identifies numerous other commissions that are not provided for in the Constitution of Sierra Leone. These include several ‘Independent Commissions to Support Democracy’, including (in addition to the Electoral Commission and the Human Rights Commission):

- the Zimbabwe Gender Commission;¹⁶⁸
- the Zimbabwe Media Commission;¹⁶⁹ and
- the National Peace and Reconciliation Commission.¹⁷⁰

165. The appointment provisions relating to these Commissions are broadly similar to those relating to the Human Rights Commission, wherein the chairperson and members are appointed by the President in consultation with the Committee on Standing Rules and Orders.

166. As noted in the discussion of the Zimbabwean Human Rights Commission, there are give ‘Independent Commissions to Support Democracy’ established under the Constitution. The objectives of these independent commissions (in addition to the specific objectives given to them) are:

- to support and entrench human rights and democracy;
- to protect the sovereignty and interests of the people;

¹⁶⁵ *ibid*, s 242(3).

¹⁶⁶ *ibid*, s 242(4).

¹⁶⁷ *ibid*, s 244(2).

¹⁶⁸ Constitution of Zimbabwe, ss 245 – 247.

¹⁶⁹ *ibid*, ss 248 – 250.

¹⁷⁰ *ibid*, ss 251 – 253.

- to promote constitutionalism;
- to promote transparency and accountability in public institutions;
- to secure the observance of democratic values and principles by the State and all institutions and agencies of government, and government-controlled entities; and
- to ensure that injustices are remedied.¹⁷¹

167. These commissions must be independent and ‘are not subject to the direction of control or anyone’, although they must act in accordance with the Constitution and are accountable to Parliament for the efficient performance of their functions.¹⁷²

168. Chapter 13 of the Constitution of Zimbabwe establishes the Zimbabwe Anti-Corruption Commission. The chairperson and members of the Anti-Corruption Commission are appointed by the President in the same manner as the chairperson and members of the Human Rights Commission.¹⁷³ Like the Human Rights Commission, the Anti-Corruption Commission is not obliged to report to Parliament, but may do so if, in the Commission’s opinion, there are particular matters relating to improper conduct in the public and private sectors which should be brought to the attention of Parliament.¹⁷⁴

169. The Constitution of Zimbabwe also establishes a Land Commission, whose members are appointed by the President.¹⁷⁵ The functions of the Land Commission include, among other things, making recommendations to the government on the acquisition of private land for public purposes.¹⁷⁶ The Land Commission must exercise its function in light of the ‘principles guiding policy on agricultural land’, which are set out in s 289 and aim to ‘redress the unjust and unfair pattern of land ownership that was brought about by colonialism’.¹⁷⁷ This policy is has been subjected to scrutiny in media reports¹⁷⁸ and in scholarship.¹⁷⁹ The Land

¹⁷¹ *ibid*, s 233.

¹⁷² *ibid*, s 235.

¹⁷³ *ibid*, s 254.

¹⁷⁴ *Ibid*, s 257.

¹⁷⁵ *ibid*, s 296.

¹⁷⁶ *ibid*, s297.

¹⁷⁷ *ibid*, s289.

¹⁷⁸ ‘New Draft Constitution Entrenches Land Seizures’ (The Zimbabwe Independent) <<http://www.theindependent.co.zw/2013/03/28/new-draft-constitution-entrenches-land-seizures/>> accessed 31 July 2014.

¹⁷⁹ For a summary, see Norma Kriger, ‘Review Essay: Human Rights and the Zimbabwe Land Debate’ (2013) 72 *African Studies* 176

Commission is not one of those specifically identified as ‘independent’ under the Constitution, although s 297 requires the Government to ‘make adequate and suitable provision’ to ensure that the Land Commission is ‘able to exercise its functions efficiently and independently’.¹⁸⁰

¹⁸⁰ Constitution of Zimbabwe, s 297(6)(a).