



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 203
COURSE TITLE : Constitutional Law
SPECIAL REQUIREMENTS : Relevant pieces of legislation
DURATION : 3 Hours
LEVEL : 2.1
DATE : 23 AUG 2021

ZIMBABWE EZEKIEL GUTI UNIVERSITY
ADMISSIONS & STUDENT RECORDS
2.1
23 AUG 2021
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INSTRUCTIONS TO CANDIDATES:

1. Answer FOUR questions. Question ONE in section A is compulsory. Answer any THREE questions from section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are NOT allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things.
4. Write legibly.
5. Number your answers accordingly.

Section A: Compulsory question

Question 1

The Zimbabwe Government recently attended a Southern Africa Development Community (SADC) meeting of Heads of States and Governments, and Commanders in Chiefs held in Lilongwe, Malawi, where leaders from Southern African nations met to figure out how to address a rise in violent extremist attacks in Mozambique's volatile north, including a sophisticated attacks that threatened the nation's gas reserves. The delegates and government representatives present at the meeting are clearly disturbed by this development and its implication on African security.

On Thursday, after two days of meetings between regional military and security officials and heads of state, the Southern African Development Community's top six leaders called for "an immediate technical deployment" to Mozambique ahead of another high-level meeting.

Immediately after the meeting, the Zimbabwean Minister of Defence proposes an increased budget for the defence in the forthcoming supplementary budget statement to be tabled by the Ministry of Finance. Consequently, the Minister of Finance makes provision for the highest budgetary allocation to defence. The defence allocation was almost half the total supplementary budgetary allocation. Interestingly this supplementary allocation was in addition to the defence allocation made in the national budget statement six months ago where the defence was allocated the highest provision.

The Ministry of Finance proceeds to introduce an Appropriation Bill in the National Assembly in terms of the Constitution. The National Assembly has 'mixed feelings' over the defence allocation, arguing that the nation is not at war, and there is no sufficient justification for the budgetary allocation. Their proposal is for the allocation to be trimmed, and that the money be saved and be used to import electricity from South Africa and pay the restive civil servants as well as procuring the COVID 19 vaccines. In the meantime, the national newspaper The Herald reports that Cabinet members are 'irritated' at the actions of the National Assembly, on the basis that such actions are endangering national security and advancing the aggressive actions of regime change agents. After two weeks impasse, the Presidential spokesperson convenes a press conference, informing the nation that the President is considering proceeding in terms of section 143(3) and also section 113 of the Constitution.

After the press conference, the Minister of Finance announces that the President had invoked his legislative powers under the Presidential Powers (Temporary Measures) Act to pass regulations incorporating virtually all the provisions of the contested Appropriation Bill, five weeks after it was first debated by the National Assembly. The Minister makes it clear the Bill is now law.

Meanwhile, following the recent military siege on the Mozambican northern town of Palma by Islamic State-linked insurgents who have killed dozens of people, including a

Zimbabwean and a South African, Zimbabwean President is said to have deployed Special Forces to the gas-rich Cabo Delgado province.

It was reported in the local daily, the Eagle Eye that Zimbabwe government sent a Special Forces team into Cabo Delgado in the aftermath of the siege on Palma by Islamist insurgents to help clear out the militant. The Special Forces were deployed under the Mozambican army to help drive out the militants who are reportedly increased their surprise attack, which marked a serious escalation [and] subsequent bloodbath. Also, there are Zimbabweans who are in there; one of them was actually killed, the Eagle Eye reported.

The Defence minister is reported to have said that with regards to the deployment in question, there was no situation of war in the country or threat of war and the purpose was not to engage in combat operation, but merely to ensure a safe and peaceful environment and safety for Zimbabwean in Mozambique. In light of the nature of business for which the Defence Forces were deployed, the government did not consider it necessary for His Excellency to cause parliament to be informed because there was no military action, which would have involved direct loss of life to soldiers through military action, neither did it involve expenditure of fiscal resources, which parliament directly controls as all resources were provided by the host nation. Furthermore the defence Minister said the deployment or movement of troops within the Zimbabwe Defence Forces is a daily routine. For instance he said, troops are always moving to various friendly countries for purposes of military training and co-operation, diplomatic assignments, business trips and peace support operations. If these movements were to be reported to parliament, the Minister reasoned, this would mean coming to parliament on a daily basis.

Some members of the National Assembly who are from the opposition political party wishes to challenge the legality of the action of the President, proposed or currently being implemented.

(Names, characters, places and incidents used here are fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.)

- a) Making specific reference to applicable and relevant provisions of the constitution , and applying these to the facts given above , address the jurisdictional competence of the applicable court and its proximity to the exercise of political power in relation to;
 - i. The proclamation of dissolution of Parliament
 - ii. The proclamation of the state of public emergency; and
 - iii. The legislative authority of the President vis-a-vis. Appropriation Bills. (9 marks)
- b) On the basis of given facts, outline and analyse the substantive constitutional arguments that can be used to challenge the manner in which the President exercised or proposes to exercise power in the given paragraphs above. (9 marks)

- c) Analyse and comment, on the basis of the above facts, the constitutional remedies and measures available to the legislature to counteract purportedly illegal exercise of Executive powers by the President in the manner prescribed in the paragraphs above. (7 marks)

[25 marks]

Section B Answer THREE Questions

Question 2

“Mr Speaker, Sir, this is a proud moment for me. Just over two months ago, I came before this house to present the bill which led to the removal of racial representation in Parliament and rid our constitution of the taint of racialism. Now I come before a House with the privilege of introducing another Bill, one which will fundamentally change, indeed revolutionise, the political structure of this country...This bill, Mr Speaker, will introduce what is generally known as an Executive Presidency into our political system.” See Hansard Vol.14, No.131 at 15554.

Analyse the past and present use of constitutional amendments as a tangled political machinations to give more discretionary powers to the President. In the course of your answer, also explore and examine the manner in which certain provisions of the Constitution are entrenched and the extent the nature of the constitutional entrenchment of the 2013 Constitution guarantee against capricious amendment of fundamental provisions by political elites.

[25 marks]

Question 3

The Judicial Service Commission (JSC) is positioned at the fulcrum of the justice administration system in Zimbabwe. Its mandate is both regulatory and administrative, and is expected to promote constitutionalism by being independent, impartial, accountable, and efficient as well as through its capability to instil public confidence. These mandates are critical in view of the greatest danger faced by contemporary African democracies, being the subsuming of judicial service commissions as arms or extensions of the executive. This consequently translates to a reality where justice equates to the wishes and whims of the executive, with for instance, the appointment of judges being based not on merit but on political grounds of loyalty.

Discuss how the JSC could effectively discharge its justice delivery and administration mandate without political interference.

[25 marks]

Question 4

In the case of *Madzimbamuto v. Lardner-Burke* (1968) 2 S.A.L.R. 284. Lewis, J. said, “*The (rebel) Government is . . . the only effective government of the country and therefore on the*

basis of necessity and in order to avoid chaos and a vacuum in the law, this Court should give effect to such measures of the effective government, both legislative and administrative, as could lawfully have been taken by the lawful government under the 1961 Constitution for the preservation of peace and good government and the maintenance of law and order."

Discuss the constitutional issues and the political connotations that arise from the case.

[25 marks]

Question 5

In light of the recent former President of South Africa Jacob Gedleyihlekisa Zuma debacle with that country's Judiciary, examine and discuss this assertion that, "...judicial supremacy is inadequate to the preservation of the constitution since the judiciary department also may exercise or sanction dangerous powers beyond the grant of the constitution...". (James Madison. The Writings of James Madison Ed. Gallard Hunt Vol 6 351) [25 marks]

Question 6

"An analysis of the nature and scope of the Executive power, particularly its exercise not only suggests that Executive power is always subject to Legislative oversight and approval, but also that the constitution created a Legislature strong enough to counteract the Executive if need be." Discuss.

[25 marks]

Question 7

Justify the inclusion of women legislators, and the system used for their inclusion into the National Assembly. In your view, does the manner of their inclusion contribute to, or enhance female representation in Parliament? In your answer, also identify and explain other parliamentary alternatives or mechanisms to enhance gender equality in parliamentary representation?

[25 marks]

Question 8

Examine and discuss the implication of the Constitutional Court's presence in the law making platform in relation to;

- a) Separation of powers
- b) Judiciary independence
- c) The system of checks and balance
- d) The exercise of legislative power.

[25 marks]

End of Examination