MINISTRY OF WELFARE SERVICES FOR WAR VETERANS, WAR COLLABORATORS, FORMER POLITICAL DETAINERS AND RESTRICTEES

A DISCUSSION PAPER ON ALIGNING THE LAW ON THE RIGHTS AND WELFARE OF VETERANS OF THE LIBERATION STRUGGLE TO THE CONSTITUTION OF ZIMBABWE

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1.0 Introduction

In 2013, Zimbabwe adopted a new Constitution to repeal and supersede the Constitution of Zimbabwe that came into operation on the 18th of April, 1980. The New Constitution of 2013 is radically different from the Lancaster House Constitution in both its conceptual framework and underlying philosophy about constitutionalism and governance. Section 2 of the new Constitution, which guarantees constitutional supremacy, provides:

'(1) This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.

(2) The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.

Section 3 emphatically states that Zimbabwe is founded, _inter-alia_, on respect for the supremacy of the Constitution and recognition of and respect for the liberation struggle.¹ This brings to the fore the imperative need to align non-conforming laws with the new Constitution. More-so, section 324 compels all actors to ensure that all constitutional obligations must be performed diligently and without delay.²

At the time when the new Constitution came into effect, there existed already over 400 statutes in Zimbabwe, among them laws addressing issues relating to the welfare of veterans of the Liberation Struggle. Section 2 of the new Constitution means that the provisions of several existing statutes may be invalid and constitutionally questionable. In this context, the Legislature has an obligation to

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¹ Section 3 of the Constitution of Zimbabwe Amendment (No.20) Act, 2013.
² Section 324 of the Constitution of Zimbabwe Amendment (No.20) Act, 2013
ensure not only that all laws existing as at 13 May 2013, are brought in line with the Constitution, but also to take reasonable legislative and other measures to create a framework for the implementation and fulfilment of the provisions of the Constitution as appropriate.

‘Why Reasonable legislative and other measures’

Constitutional Court rulings in other jurisdictions have pointed to the fact that the key to the justiciability of the socio-economic rights is the standard of reasonableness. Though a considerable margin of discretion must be given to the state in deciding how it is to go about fulfilling the socio-economic rights, the reasonableness of the measures that it adopts can be evaluated by a court of competent jurisdiction. The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable”3. Moreover, given that both legislative and other measures must be taken, reasonableness can be evaluated both at the level of a legislative programme and its implementation. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well directed policies and programmes implemented by the executive.4

The process of alignment with the Constitution therefore involves;

(1) Identifying legal provisions that are contrary to the Constitution and either repealing or amending them to conform to the Constitution; and

(2) Identifying gaps and enacting new laws to fulfil provisions of the Constitution.

The constitutional alignment process provides an opportunity to address other issues in the law which may not be related to Constitutionality. In this case, the process

3 Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169
4 Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169
should also be seen as providing the opportunity to address the following issues which the government has grappled with over the years:

1. In his speech addressing the opening of the 3rd session of the 8th Parliament of Zimbabwe, the His Excellence the President acknowledged that the current state of fragmentation of the laws governing issues to do with participants in the Liberation Struggle was undesirable and that Parliament would be moving to consolidate the War Veterans Act and the Ex-political Prisoners, Detainees and Restrictees Act into one statute which deals holistically with the rights and welfare of Veterans of the Liberation Struggle.

2. The existing law seems to contain some gaps in its definition of those who participated in the Liberation Struggle. Currently, only War Veterans, Ex-political Prisoners and Detainees are defined and provided for under the law but lately there has been debate as to whether other categories such as war collaborators, nationalists and non-combatant cadres should not also be recognised and provided for. The cadres who died during and after the war should also be recognised through benefits made available to the surviving members of their families.

This paper seeks to discuss how the law relating to issues affecting veterans of the Liberation Struggle may be aligned to the Constitution. In doing so, the paper will also seek to answer the question whether there is room in the Constitution to define more broadly “veterans of the Liberation Struggle”. Thus the paper will seek to answer the following questions:

- What does the Constitution say about Veterans of the Liberation Struggle and related matters?
- Who are the veterans of the Liberation Struggle?
- What laws currently exist to deal with veterans of the Liberation Struggle and related matters?
- To what extent is the current legal framework aligned to the Constitution? Where are the gaps?
- How may those gaps be addressed through legislative action?
2.0 The Liberation War and its veterans in the Constitution of Zimbabwe

2.1 Introduction

This Chapter discusses the provisions of the Constitution of Zimbabwe in relation to the subject of the Liberation War and its veterans. It identifies key provisions and discusses their interpretation, application, and how they can be incorporated in legislation.

As stated earlier, the Constitution of Zimbabwe is the supreme law of the land. This means that all laws must be in full compliance with the Constitution. Laws that were in existence before the promulgation of the Constitution must be amended to bring them in alignment with the Constitution. New laws may also need to be enacted to give effect to the rights of veterans of the liberation struggle as well as ensure regulatory outcomes that are aligned to the Constitution in specific areas of activity.

2.2 Key Constitutional Provisions on the Liberation War and Its Veterans and Implications for Legislative Reform

This section discusses the various provisions in the Constitution that refer to the Liberation Struggle and to War veterans and briefly discusses what might be the implications of each of these provisions for laws reform.

2.2.1 The Preamble

The philosophy of the Zimbabwean Constitution is reflected in the Preamble. The words used in the preamble reflect the dreams and aspirations of the founding fathers of the Constitution. And our generation can be said to be the founding fathers. The first lines in the preamble to the Constitution are:

"We the people of Zimbabwe,
United in our diversity by our common desire for freedom, justice and equality, and our heroic resistance to colonialism, racism and all forms of domination and oppression,

**Exalting and extolling the brave men and women who sacrificed their lives during the Chimurenga / Umvukela and national Liberation Struggles...”**

The inclusion of a statement extolling veterans of the Liberation Struggle in the preamble of the Constitution establishes the importance and pervasive nature of the value of Liberation and freedom. It also serves as a reminder that the manner of doing things under this Constitution must reflect the exaltation of Liberation War veterans and what they symbolise.

**Implications for law reform**

*The Acts of Parliament passed to regulate the issues affecting the men and women who sacrificed their lives during the national Liberation Struggles, must reflect the importance and centrality of the Liberation Struggle and those who participated in it to bringing about freedom and independence.*

*The provisions for this group of people must be of such an extent and nature as to be commensurate with the sacrifice taking all relevant factors into account.*

*It should also be noted that the preamble does not make reference to “War veterans” but to the brave and men and women who sacrificed their lives. This shows that the Constitution envisages a definition of this group which is wider than what is currently understood as comprising the term “War veterans”. It implicitly acknowledges that the attainment of Liberation required the efforts of cadres who may have acted in*
different but complimentary capacities but whose common denominator was the desire for a liberated Zimbabwe. The statutory definition of participants in the Liberation Struggle must reflect this inclusivity.

It is recommended that

The Act of Parliament addressing the group of people who sacrificed their lives during the Liberation Struggles should have the following features:

1. There should be preamble in the Act which reflects and builds on the portion of the Constitution which refers to the Liberation Struggle
2. The Act should contain an inclusive definition of the categories of people who participated in the Liberation Struggle and provide benefits for each category.

2.2.2 Section 3: Founding Values and Principles

Section 3 of the Constitution is a statement of the values and principles on which Zimbabwe is founded. These values and principles must pervade every policy, law and public conduct. Subsection (1) lists 9 (nine) values, including “recognition of and respect for the Liberation Struggle” thus the government must make a deliberate effort to ensure that its policies laws and conduct reflects this value. Likewise, all laws and policies must be interpreted in such a manner as to promote recognition of and respect for the Liberation Struggle.

Section 3(2) sets out the principles of good governance, which bind the State. Recognition of the rights of veterans of the Liberation Struggle is one such principle.

Implications for law reform

Currently, Zimbabwe has legislation and policies which recognise and respect the Liberation Struggle. These include

- A national Anthem that extols the Liberation Struggle and
Liberation War heroes
- A national holiday dedicated to commemorating the Liberation Struggle (Heroes day)
- Burial shrines for Liberation War heroes venerated as national monuments
- Streets and public buildings named after Liberation War heroes
- Legislation which defines for War veterans and prisoners etc.

While all this is commendable, more still needs to be done in order to accord the Liberation Struggle the level of respect envisaged in section 3.

2.2.3 Section 23: National objectives on Veterans of the Liberation Struggle

Section 23 must be understood in the context of the part of the Constitution in which it appears. Section 23 is part of Chapter 2 of the Constitution which provides for National Objectives. Section 8 of the Constitution explains the importance and meaning of the national values as follows:

(1) The objectives set out in this Chapter guide the State and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives.

(2) Regard must be had to the objectives set out in in this Chapter when interpreting the State’s obligations under this Constitution and any other law.

It is often said that the provisions of Chapter 2 of the Constitution are not justiciable. That is to say, they do not create rights for the individual and obligations for the state which individuals can enforce in a court of law, like the provisions of Chapter 4. Rather Chapter 2 directs the State and all its organs to take into account the specified national objectives when crafting the law and formulating policies. In other
words, these national objectives must always be at the back of the mind of the State in the conduct of public business. The quality of any law and policy should be tested according to the extent to which it facilitates the fulfilment of the national objectives.

Section 23 of the Constitution provides as follows:

(1) The State and all institutions and agencies of government at every level must accord due respect, honour and recognition to veterans of the Liberation Struggle, that is to say—
(a) those who fought in the War of Liberation;
(b) those who assisted the fighters in the War of Liberation; and
(c) those who were imprisoned, detained or restricted for political reasons during the Liberation Struggle.

(2) The State must take reasonable measures, including legislative measures, for the welfare and economic empowerment of veterans of the Liberation Struggle.

Implications for legislative reform

The identification of the need to accord due respect, honour and recognition to veterans of the Liberation Struggle as a national objective has negative as well positive obligations for the state:

- Laws and policies should never be formulated or interpreted in a way that denigrates or dishonours the War of Liberation or its veterans.

- Veterans of the War of Liberation are defined. The categories identified in the definition should be carried forward into any legislation providing for the welfare of Liberation War veterans.

- The law should provide a clear framework for veterans of the Liberation Struggle to benefit from social welfare and economic
2.2.4 Section 84: Rights of veterans of the Liberation Struggle

Section 84 of the Constitution provides:

(1) Veterans of the Liberation Struggle, that is to say—
(a) those who fought in the War of Liberation;
(b) those who assisted the fighters in the War of Liberation; and
(c) those who were imprisoned, detained or restricted for political reasons during the Liberation Struggle;
are entitled to due recognition for their contribution to the Liberation of Zimbabwe, and to suitable welfare such as pensions and access to basic health care.

(2) An Act of Parliament must confer on veterans of the Liberation Struggle the entitlements due to them under subsection (1).

Section 84 appears in Chapter 4 of the Constitution, also called the Declaration of Rights (DR). In order to fully understand what kinds of measures are required to fully translate the provisions of enabling legislation, it is important first of all to understand the DR as a unique feature of the Constitution and also to understand in general terms the nature of the rights and obligations provided for under that Chapter.

The Declaration of Rights – Chapter 4 of the Constitution

The Declaration of Rights (DR) consists of sections 44 to 87 of the Constitution. It sets out the fundamental human rights and freedoms which every person in Zimbabwe is entitled to as well as the corresponding obligations of the state and in appropriate circumstances, the obligations of private individuals.

The Duty Bearer
A discussion of Veterans of the Liberation Struggle as rights holders under the Constitution requires identification of the duty bearers because the law must necessarily place obligations on someone, who will be accountable for obeying the law. The duty bearers identified under the Constitution should be the same duty bearers provided for in legislation.

Traditionally, the duty bearer of fundamental human rights and freedoms was and still remains, primarily, the State. But it is important to note that under the current Constitution, private individuals are also recognised as possible duty bearers under appropriate circumstances [section 45(2)]. This is known as the horizontal, as opposed to vertical application of rights.

The Nature of the Obligations owed to Veterans of the Liberation Struggle

Legislative reform should be informed by a correct understanding of the nature of the obligations of the duty bearer under the DR. Any law that is passed to give effect to the rights of Veterans of the Liberation Struggle as provided for under the Constitution, must fully incorporate each aspect of the obligations of the duty bearer. Section 44 of the Constitution provides that the duty bearer must respect, protect, promote and fulfil the rights and freedoms set out in the DR. What exactly do these words mean and how should they shape the content of the law?

To respect means to refrain from doing anything or taking any action that would violate or diminish the rights of Veterans of the Liberation Struggle. Legislation should therefore not contain any provisions whose direct or indirect effect would be to impair the rights of Veterans of the Liberation Struggle.

To protect means to defend Veterans of the Liberation Struggle from harm that may be caused by the actions of third parties. In this regard, the obligation of the duty bearer would consist of enacting laws to discourage or punish other people from violating or impairing the rights of Veterans of the Liberation Struggle.

To fulfil means that the duty bearer must take positive action to create the conditions for the practical enjoyment of the rights of Veterans of the Liberation Struggle.
To **promote** means that the duty bearer must take deliberate action to publicise the right of Veterans of the Liberation Struggle.

### The implications for legislative reform

*All 4 aspects of the obligations of the duty bearer must be reflected in the law*

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*Content of the rights of Veterans of the Liberation Struggle*

Section 84 contains obligations for the duty bearer (primarily the state) and entitlements for the rights holder (the veteran of the Liberation Struggle) which are enforceable in a court of law. It is therefore important to define as much as possible the content of the rights under protection.

To begin with, it is important to note that the rights of Veterans of the Liberation Struggle are not limited to those enumerated under section 84. Section 79 is clear in this regard and provides: *This Part elaborates certain rights and freedoms to ensure greater certainty as to the application of those rights and freedoms to particular classes of people. This Part must not be construed as limiting any right or freedom set out in Part 2.*

Thus, veterans of the Liberation Struggle are entitled to all the rights of a general application that are provided for in part 2 of Chapter 4. Section 84 however isolates a few key rights which are especially applicable to them. These are the rights to:

- due recognition for their contribution to the Liberation of Zimbabwe,
- suitable welfare such as pensions and
- access to basic health care.

It should be noted the use of the term "such as" denotes that the rights enumerated are not exhaustive, but are given as examples. What this means is that veterans of the Liberation Struggle are especially entitled to rights which are of the same kind to pensions and basic health care.
The point to note is that Liberation War veterans are entitled to a pension in express terms. The right to a pension is not guaranteed under the provisions of the DR of a general application. No other group of the population has this right.

The right to access basic health care is also protected. What does this mean? Unfortunately, the World Health Organisation (WHO) does not have a definition of “basic health care” or what a basic health care package consists of. Obviously the definition would differ from context to context depending on such factors as availability and cost of services relative to the economic status of the general population.

**Implications for law reform**

- **The law should provide unequivocally for a right to a pension by veterans of the Liberation Struggle.** The language should make it clear that that the provision of pension is a right and not a welfare issue. While the quantum of the pension should be subject to considerations of affordability and sustainability, the existence of the right itself is inalienable and should be clearly established in law. A good example of how the language may be couched to create justiciable rights and obligations to a pensions may be found in the South African Special Pensions Act of 1996, Act No. 69 of 1996.

- **The law should also provide for and clearly enumerate the elements of a right to basic health care which defines a right to state assisted access to the services recognised as being part of a basic health care service package.**

2.2.5 Gender Equality
Gender equality is a cross cutting issue in the Constitution. All Constitutional provisions must be implemented cognisant of the underlying value of gender equality. The preamble of the Constitution expressly acknowledges the contribution made by women in the Liberation Struggle. Section 3 includes respect for gender equality as one of the values and principles underlying the state.

Section 17 provides that one of the national objectives of the state is gender equality and provides as follows:

(1) The State must promote full gender balance in Zimbabwean society, and in particular—

(a) the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;
(b) the State must take all measures, including legislative measures, needed to ensure

that—

(i) both genders are equally represented in all institutions and agencies of government at every level; and
(ii) women constitute at least half the membership of all Commissions and other elective and appointed governmental bodies established by or under this Constitution or any Act of Parliament;
(c) the State and all institutions and agencies of government at every level must take

practical measures to ensure that women have access to resources, including land, on

the basis of equality with men.

(3) The State must take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies.

The gender equality provisions in the Constitution have implications for the formulation and interpretation of all laws in Zimbabwe, including the law dealing with issues pertaining to the Liberation Struggle and its veterans. Gender considerations come into consideration in the following respects:
- There should be adequate representation of both sexes in all the structures that are set up to lead and administer the benefits of War veterans. That is to say, women must be represented quantitatively and qualitatively on the various Board that may be set up under the relevant Act(s) of Parliament
- The procedure for accessing benefits should take gender considerations into account and must be designed to facilitate equal access by both men and women

### 3.0 The Current Legislative Framework

#### 3.1 Introduction

This section discusses the current laws that deal with issues relating to the Liberation Struggle and those who participated in it. The discussion first of all describes each law and summarise its provisions. It then attempts to analyse the regulatory framework from a perspective of assessing the extent to which the body of laws conform to the current Constitution, and suggests legislative action to address any gaps and anomalies identified.

#### 3.2 The War Veterans Act [Chapter 11:15]

The War veterans Act was enacted in 1992 but has undergone several amendments over the years. The stated objective of the Act is to provide for the establishment of schemes for the provision of assistance to War veterans and their dependants; to provide for the establishment of a fund to finance such assistance; to provide for the Constitution and functions of the War Veterans Board; and to provide for matters incidental to or connected with the foregoing.

**Definition of War veteran:** The Act defines a War veteran as any person who underwent military training and participated, consistently and persistently, in the Liberation Struggle which occurred in Zimbabwe and in neighbouring countries between the 1st January, 1962, and the 29th February, 1980, in connection with the bringing about of Zimbabwe’s independence on the 18th April, 1980.
War Veterans Fund: The Act establishes a special fund to finance the assistance rendered in terms of the Act.

The War Veterans Board: The War Veteran’s Board is established with functions to ensure that a register of War veterans and their dependants is kept and maintained; and
(b) to advise the Minister on the establishment of any scheme in terms of this Act or on any matter relating to any scheme; and
(c) to examine, hear and determine any representations by any person claiming entitlement to be registered as a War veteran or dependant of a War veteran where such registration has been refused; and
(d) to hear and determine any representations or complaints made by any War veteran or dependant of a War veteran relating to the grant, payment or delivery of any assistance to him; and
(e) to supervise the preparation of the budget of the Fund and the control of any assets of the Fund; and
(f) to perform any other function which the Minister may confer on the Board for the purposes of this Act.

The Board has powers to summon witnesses to give evidence before it or to produce any document;
(b) to administer oaths and take evidence on oath and make such investigation as the Board considers necessary;
(c) to examine or cause to be examined by such person as the Board may authorize in that behalf, any records or documents kept by any person making any claim in terms of this Act;
(d) to do or cause to be done all other things that are necessary or expedient for the exercise of its functions.

Benefits
The Benefits of War veterans are not spelt out in the Act itself but the Act empowers the minister to, by way of statutory instrument, establish one or more schemes for the provision of benefits or assistance to or in respect of any War veterans and their dependants or any classes of War veterans and their dependants, and may in like manner amend or abolish any such scheme.

Current schemes under the Act are provided for under the War Veterans (Benefits Scheme) Regulations, 1997 Statutory Instrument 281 of 1997. These benefits are: Gratuities, Settlement benefit, Loan Benefit, Education Benefit, Medical benefit and funeral benefit.

Pensions for War veterans are provided for under the War Veterans Pensions regulations.

**Inalienability of assistance**

Section 21 of the Act provides that the assistance rendered to War Veterans under the Act shall be for the personal benefit of the registered War Veteran or dependant concerned and shall be inalienable and not be subject to attachment by any legal process whatever. This is subject to any claims that may be made on behalf of a child in terms of the Children’s Act.

**Prohibition of double dipping**

War Veterans are not allowed to receive similar benefits from any other source and are required to declare sources of additional benefits to the Board. Failure to do so is a punishable offence.\(^5\)

**3.3 Ex-Political Prisoners, Detainees, and Restrictees Act [Chapter 17:10]**

The Ex-political Prisoners, Detainees and Restrictees Act was enacted in 2004.

\(^5\) Section 23
The Act defines an Ex-political Prisoner, Detainee and Restrictee as any person who after the 1st January, 1959, was imprisoned, detained, or restricted in Zimbabwe for a period of at least six months, or for two or more periods amounting to not less than six months, for political activity in connection with the bringing about of Zimbabwe’s independence on the 18th April, 1980;

In all material respects this Act is a mirror image of the War Veterans Act. The provisions with regard to the functions and powers of the Board, the benefits, inalienability of benefits and prohibition of double dipping are a replica of corresponding provisions in the War Veterans Act.

**Benefits**

The benefits for ex-political prisoners, detainees and restrictees are provided for under the Ex-political Prisoners, Detainees and Restrictees (Benefits Scheme) Regulations, Statutory Instrument 194 of 2005. Except for the settlement benefit which is reserved for War Veterans only, the benefits are exactly the same as those provided for War Veterans.

**3.4 The War Victims Compensation Act [Chapter 11:16]**

The War victims Compensation Act was enacted in 1980 and amended several times thereafter. The stated objective of the Act is to provide for the payment of compensation in respect of injuries to or the death of persons caused by the War; and to provide for matters incidental to or connected with the foregoing.

A victim of War is defined as a victim of the armed conflict which occurred in Zimbabwe and in neighbouring countries between the 1st January, 1962, and the 29th February, 1980, in connection with the bringing about of, or resistance to, political and social change in Zimbabwe.

It should be noted that the beneficiaries under the Act are not limited to War veterans or ex-political prisoners, detainees and restrictees. Any person can receive
compensation provided they can prove that they are a victim of the War and a citizen of Zimbabwe. Non-citizens may also benefit under special circumstances.

3.5 The National Heroes Act [Chapter 10:16]

The National Heroes Act was enacted in 1985. The Act provides the legal framework for the designation by the President of deceased citizens as national, provincial or district Heroes. Such a designation is based on the person’s outstanding, distinctive and distinguished service to Zimbabwe,

The relevance of the Act to the discourse on Veterans of the Liberations Struggle is that Veterans of the Liberation Struggle of all categories may qualify for designation as heroes on account of their service during the struggle.6

Similar to the War veterans Acts and the Ex-Political Prisoners, Detainees and Restrictees Act, the Act provides for special rights and benefits payable to the heroes’ surviving dependants. In the event that the hero is also a registered War Veteran or ex political prisoner, detainee or restrictee, that the dependants of the hero would already have been beneficiaries under those two Acts.

Other similarities with the War veterans Act and the Ex-Political Prisoners, Detainees and Restrictees Act are the establishment and functions of a governing board and a special fund.

4.0 Issues Arising From the Current Legislative Framework

4.1 Introduction

As stated earlier in the paper, the new Constitution is a standard against which all legislation must be tested. The purpose of this discussion is to assess current

6 It should be noted however that the criteria for designation as a hero is not limited to services or contributions of a military nature.
legislation against the Constitution in order to identify gaps and anomalies and recommend appropriate remedial legislative action. This section will attempt to do this.

4.2 Issue 1: Fragmentation of the Law

As shown above, the normative framework for dealing with issues of the rights and welfare of those who participated in the War of Liberation is contained in four statutes, namely the War Veterans’ Act, the Ex-Political Prisoners, Detainees and Restrictees Act, the War Victims Compensation Act and the National Heroes Act. This in itself is not unconstitutional but it is good practice to reduce the fragmentation by consolidating some of these Acts into one comprehensive statute as this will reduce the administrative burden thereby saving costs and time. The tone for the amalgamation of the Acts was set by His Excellency the President in His Address to mark the Official Opening of the Third Session of the Eighth Parliament wherein he stated that “A Bill to combine the War Veterans Act and the Ex-Political Prisoners, Detainees and Restrictees Act into one Act, now incorporating the War Collaborators, will be tabled before Parliament during this Session.”

**Recommendation**

The War Veterans’ Act, the Ex-Political Prisoners, Detainees and Restrictees Act, should be repealed and replaced with a consolidated omnibus statute which deals holistically and comprehensively with the rights and benefits of all categories of veterans of the Liberation Struggle. The War Victims Compensation Act and the National Heroes Act can remain as stand-alone statutes because their subject matters are distinguishable from those of the two earlier Acts.

4.3 Issue 2: Definition of Veterans of the Liberation Struggle

The Constitution consistently defines veterans of the Liberation Struggle as those who

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7 Speech by His Excellency the President, Cde R.G. Mugabe on the occasion of the Official Opening of the Third Session of the Eighth Parliament.
a) those who fought in the War of Liberation;
b) those who assisted the fighters in the War of Liberation; and
c) those who were imprisoned, detained or restricted for political reasons during the Liberation Struggle⁸.

When compared to the Constitutional definition of veteran of the Liberation Struggle, the current statutory definitions present a few challenges as discussed below:

The current legislative framework identifies and provides for only those who fought in the War of Liberation (War veterans) and those who were imprisoned, detained or restricted for political reasons during the Liberation Struggle (ex-political prisoners, detainees and restrictees) but does not define or provide for those who assisted the fighters in the War of Liberation. The law must now include this group of those who assisted the fighters. This much is clear. What may not be so clear is what the term “assisted” means. This group could include War collaborators, commonly referred to as ana mujibha and ana chimbwido. It could also include the group of people commonly referred to as “non-combative cadres”. These are people who, during the Liberation War, crossed the border for purposes of participating in the Liberation War but were never formally recruited into the Liberation Army for various reasons, including ill health and other circumstances beyond their control. As a result they remained in the refugee camps. They were called upon to render assistance to the fighters from time to time and were subjected to attacks by the opposing armies. They also provided moral support to the fighters. They endured all the ravages of the war including impairment of their mental and physical health. Many lost their lives and limbs and also had to forgo the opportunity to obtain an education.

The current legal framework does not seem to recognise the category of cadres commonly referred to as nationalists. This group consists of people normally occupying the highest positions of political (as opposed to military) leadership during the Liberation Struggle. They may not fit under the statutory definitions of war.

⁸ Sections 23 and 84 of the Constitution.
veteran or ex-political Prisoner, Detainee and Restrictee, but nevertheless no one can deny that they played a key role in ensuring the outcome of the War of Liberation.

**Recommendation**

The law should provide a definition of veteran of the Liberation Struggle which is fully compliant with the definition in the Constitution. The statutory definition should include a definition of those who assisted the fighters in the War of Liberation, including War collaborators and possibly non-combatant cadres.

The law should also recognise and provide for the political leaders of the Liberation Struggle referred to as Nationalists.

**4.4 Issue 3: Rights Based Approach to Provision of Benefits**

The current legislative framework does not expressly provide that the benefits of War veterans and ex-political prisoners, detainees and restrictees, are provided as a Constitutional right. This statement is important because it establishes the role of the state as a duty bearer and makes it clear that these rights are protected by the Constitution and therefore inalienable.

**Recommendation**

The laws should contain a clear and unequivocal statement on the rights of veterans of the Liberation Struggle. This statement should, at a minimum, identify the duty bearers and establish the rights to a pension and to basic health care as stated in the Constitution.

The law should then go on to provide for the attainment of these rights in the principal legislation and not in regulations to ensure that they remain firmly under the control of Parliament.
4.5 Issue 4: Gender Equality

The language of the current law is gender neutral. The provisions on the composition of the War Veterans and the Ex-political Prisoners, Detainee and Restrictees Board makes no reference to the need to ensure gender balance. Similarly, the provisions of access to benefits are gender neutral, they assume, wrongly, that men and women have equal opportunities to access the benefits yet numerous studies have shown that women face gender related barriers which prevent them from accessing any public benefit to the same extent as their male counterparts.

The failure to provide deliberately for gender considerations in the law as described above is in violation of section 17 and section 80 of the Constitution.

Recommendation

Any Boards and leadership structures established under the law to address issues relating to the rights and welfare of Veterans of the Liberation Struggle should include women. Similarly, the provisions regulating access to benefits should ensure that procedures are gender sensitive and designed to address the barriers typically faced by women applicants.

4.6 Issue 5: Ouster of Jurisdiction of the Courts

The War Veterans Act, the Ex-political Prisoners, Detainees and Restrictees Act and the National Heroes Act empowers the respective Boards to make decisions determining who to register as a War veteran or dependant in terms of this Act; and to make determinations of any assistance to be granted to beneficiaries in terms of any scheme; and further provides that any person who is aggrieved by the decision of the board may appeal to the Minister. The Minister may, on an appeal in terms of subsection (1), either confirm the decision of the Board or remit the matter to the Board for further consideration subject to such recommendations regarding the
appeal as the Minister may consider appropriate, and the decision of the Board after reconsideration of the matter in terms of this subsection shall be final.9

The issue arising from these provisions is that by providing that the decision of the Board shall be final, there is a suggestion that the jurisdiction of the courts to further adjudicate on the matter has been ousted. Ordinarily, any person aggrieved by a decision made by an administrative authority should be able to seek review of the decision under the Administrative Justice Act [Chapter 10:28] (AJA), but the application of the Act is, in terms of section 3 of AJA, made “subject to any other law”. This means that the application of the AJA can be excluded by the provisions of any other law. The question arising is whether, by providing that the decision of the board shall be final, the application of the AJA is thereby excluded.

A more fundamental issue arising from sections Section 19(2) of the War Veterans Act, section 16(2) of the Ex-political Prisoners, Detainees and Restrictees Act and section 16(2) of the National Heroes Act is the appearance of ouster of the jurisdiction of the courts in general from further adjudication on a grievance raised by an applicant against a decision of the Board. It could be that the word “final” denotes the exhaustion of internal or administrative remedies and not an ouster of judicial processes. This would seem to be the correct interpretation given the presumption of legislative intent against ouster of the jurisdiction of the courts and also given the provisions of section 68 of the Constitution which protects the right to administrative justice.

The problem with the provisions is that they create a wrong impression of ouster of the jurisdiction of the courts which an uninformed and unrepresented applicant may take at face value to his or her prejudice. Veterans of the Liberation struggle have a right to be informed that they are entitled to seek redress from the courts.

**Recommendation**

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9 Section 19(2) of the War Veterans Act, section 16(2) of the Ex-political Prisoners, Detainees and Restrictees Act and section 16(2) of the National Heroes Act
Section 19(2) of the War Veterans Act, section 16(2) of the Ex-political Prisoners, Detainees and Restrictees Act and section 16(2) of the National Heroes Act should be repealed and replaced with a provision which makes it clear that while the decision of the Board is final, as far as administrative processes go, an aggrieved applicant has the right to seek relief in terms of the Administrative Justice Act.

4.7 Consequential Amendments (Governing Structure)

Both the War Veterans Act and the Ex-political Prisoners, Detainees and Restrictees Act provide for the appointment of a Director for the purposes of administering the Act. Section 22 of the War Veterans Act and section 19 of the Ex-political Prisoners, Detainees and Restrictees Act provides that the Director shall be responsible for administering any scheme established in terms of this Act and shall perform such other duties in relation to this Act as may be directed by the Minister and that subject to the Act, the Director shall have power to do or cause to be done all things that are necessary or expedient for the exercise of his functions under this Act.

The office of the Director was well suited to the dispensation when both Acts were administered under a department in the Ministry of Labour and Social Welfare. In this arrangement, the Director was head of department.

Under the new dispensation, His Excellency the President has determined that issues pertaining to the rights and welfare of Veterans of the Liberation Struggle should be administered by a dedicated ministry and created the Ministry of Welfare Services for War Veterans, War Collaborators, Former Political Detainees and Restrictees. The administration of the two Acts was consequently transferred to this new ministry. The transformation of the governing body from a department to a Ministry rendered the office of the Director obsolete as his functions should now be performed by the Permanent Secretary under the political leadership of the Minister.
**Recommendation**

The position of Director under the War Veterans Act and the Ex-political Prisoners, Detainees and Restrictees Act should be removed and substituted with the Permanent Secretary who is also the accounting officer in terms of the Public Finance and Management Act [Chapter 22:19]

**5.0 Conclusion**

As discussed above, the Constitution of Zimbabwe provides a framework for a rights based approach to regulating the welfare and benefits of Veterans of the Liberation Struggle. While parliament and the Attorney general’s office can work together to produce statutes that fully incorporate the provisions and spirit of the Constitution, in the long run, the effectiveness of the laws in delivering on the vision of the Constitution depends on factors that go beyond the four corners of the statute. Factors such as political will and availability of resources will play a defining role in making the vision a reality. Governance issues will also have a part to play in ensuring efficiency and equity in the distribution of limited resources. Lack of transparency, corruption, patronage and lack of diligence are all factors that could hinder the effectiveness of the Act, to the detriment of the very people that the Constitution wants to benefit.
References

Statutes

1. Constitution of Zimbabwe Amendment (No.20) Act 2013
2. War Veterans Act [chapter 11:15]
3. Ex-Political Prisons, Detainees and Restricted Act [chapter 17:10]
4. War Victims Compensation Act [chapter 11:16]
5. National Housing Act [chapter 10:16]

Case law