ANNEX A to
HGM (79) 10

AN ANALYSIS OF THE ILLEGAL REGIME'S " CONSTITUTION FOR ZIMBABWE RHODESIA "

Introduction

The Draft " Constitution " published on 2 January, 1979 by the illegal régime in Salisbury has been heralded by its proponents as ushering in both majority rule and a non-racial society. It is under this " Constitution " that " elections " are scheduled to be held on or about 20 April, 1979. The " elections " are to be staged in a country where a war is raging which presently claims more than a thousand lives a month, where martial law imposed by a minority prevails and where the present illegal régime wields absolute power of censorship so as to control and distort the flow of information and the portrayal of events even more effectively internally than it does abroad. No election held in such circumstances can possibly be either " fair " or " free ", nor can an election campaign from which major parties with large popular followings are excluded be so described.

2. Any action of sending " observers " to Zimbabwe tends to lend credibility to what is internationally accepted as being a tragic charade, but present controversy over this issue also tends to obscure the fundamentally repugnant nature of the " Constitution " under which the elections are being conducted—and which is by any standards a most extraordinarily one-sided, racist and anti-democratic document. This analytical note seeks to reveal the grim realities of the " Constitution ".

Illegality

3. The so-called " Constitution of Zimbabwe Rhodesia " will be no more legal or valid than the UDI constitution it replaces. The régime it produces will not be any less illegal than that at present in Salisbury. Nor is this a technical matter merely. The major political movements of Zimbabwe have had no hand in framing the constitutional arrangements—which were put for approval only before the white community, some 3 per cent of the population.

President

4. The Head of State provided for in the " Constitution " is a President, to be elected by a simple majority of the members of the Senate and the House of Assembly meeting as an electoral college. As the representatives of those on the " Black ", or " common " roll, outnumber those of the " White " roll, they may be said to be given an opportunity of choosing the President. He would hold office for a term of six years, and be bound to act on the advice of the Executive Council, or such other person or body as the " Constitution ", in the circumstances, stipulates.

5. He would therefore be a titular, and not an executive President. He may be Black, but he would be nothing more than a figurehead.

Parliament

6. The Parliament under the " Constitution ", would consist of:

(*a*) a Senate of 30 members, of whom 10 are " Black Senators ", 10 are " White Senators ", and 10 are " Chiefs ". An additional two Senators may be appointed on the advice of the Executive Council so that they may serve on the Senate Legal Committee. The qualifications are such that these two additional senators would almost certainly be White.

(*b*) a House of Assembly of 100 members of whom—

(i) 72 " shall be Black members " elected by voters on the common voters role;

(ii) 20 " shall be White members " elected by voters on the " White voters roll "; and

(iii) Eight " shall be White members ", chosen by an electoral college in which " Black members " form the majority but from 16 candidates nominated by an all-White electoral college.

7. The Black members would have clear majorities in both the Senate and the House of Assembly; but these majorities are illusory, as later provisions render them inadequate to effect any real change. The " Constitution " is so framed as to restrict the powers normally exercised by such a Legislature to the point where it may fairly be asked whether, in fact, the " *majority* " would be left with any power with which to " *rule.*" The ways in which the powers which might be exercised by the Legislature are circumscribed are now examined in turn.

Amendments to the " Constitution "

8. The specially-entrenched provisions of the " Constitution " could only be amended with the affirmative votes of 78 members of the House of Assembly. The requirement of the affirmative votes of *more* than three-quarters of the membership of the directly-elected House gives the " White members " a power of veto over any proposed amendment to key constitutional provisions. The active support and participation of at least six of the " White members " are required if there is to be any change.

9. The full implications of these provisions, and the extent of the power retained by the minority over virtually every facet of social and economic life, can only be fully appreciated when the number and the nature of the specially-entrenched provisions is understood. Fully 123 of the 170 Articles fall into this category. They include provisions relating to—

(i) the composition of the Legislature;

(ii) the procedure of Parliament;

(iii) the Executive Council;

(iv) the declaration of public emergencies;

(v) the Judicature and the Judicial Service Commission; and

(vi) every aspect of the Public Service.

Retention and perpetuation of existing establishment

10. Further, among the miscellaneous " transitional provisions " are those which would automatically preserve in office the present (White) incumbents of such key posts as judges of the High Court, Chairman and members of the present Public Services Board, and commissioned ranks in the Defence and the Police Forces. In the context of Rhodesia, this provision effectively ensures perpetuation of the *status quo*; and, as the posts to which these officers succeed are given special constitutional protection, this state of affairs is guaranteed to continue until such time as at least six of the " White members " and all of the " Black members " are united in demanding to change it. Meanwhile the hand-picked appointees of the Smith régime are preserved in office.

11. Allied to this are the qualifications required for appointment to each of the key posts established by the " Constitution ", and given special entrenchment. These offices and institutions are carefully designed to interlock, to inter-react, and to perpetuate themselves. They hold enormous power over the day-to-day life of the country, yet the qualification requirements, in the context

of Rhodesia, are drawn in such a way as effectively to exclude people drawn from over 96 per cent of the population from participating in their processes for at least a generation. The posts include:

(*a*) appointees as **judges of the High Court** (both of the Appellate and of the General Division), who must have been a judge of a superior court "in a country in which the common law is Roman-Dutch and English is an official language" *or* have been qualified for not less than 10 years to practise as an advocate either in Zimbabwe or in a country where the common law is Roman-Dutch and English is an official language. The effect is to virtually rule out appointments to the bench of Zimbabwean and other African lawyers, and to facilitate the appointment of South African judges. The retention of the existing all-White judiciary, of course, preserves in office the judicial overseers of the illegal régime, who have so debased and discredited the country's judicial system.

(*b*) members of the **Judicial Service Commission** (whose major function is to make recommendations to the President for appointments to the High Court) who comprise the Chief Justice, the Chairman of the Public Service Commission, and one other member (appointed by the President acting on the advice of the Chief Justice) who has *either* been a judge of the High Court, *or* qualified to practise as a lawyer for at least 10 years in Zimbabwe, *or* has stood for election to either House of Parliament or to a local authority.

(*c*) the **Attorney-General** (who controls prosecutions in the independent exercise of his discretion), who is appointed by the President on the recommendation of the Judicial Service Commission, and must *both* be qualified for appointment as a judge of the High Court, *and* have served in the Attorney-General's Department for at least 10 years.

(*d*) members of the **Public Service Commission**, who are to be chosen for "their ability and experience in administration or their professional qualifications", and the majority (including the Chairman) who must be persons who have held designated senior posts in the Public Service for at least five years.

(*e*) the **Commissioner of Police**, who is appointed by the President on the recommendation of the Judicial Service Commission with not even the Prime Minister having any effective say in the matter, and must have held no lesser rank than Assistant Commissioner of Police for at least five years; and in turn, the Commissioner of Police advises the President on all appointments to and above the rank of Inspector.

(*f*) appointees to the **Police Service Commission**, which has as its Chairman, the Chairman of the *Public* Service Commission, and at least half of whose other members must have held the rank of Assistant Commissioner of Police or above, for not less than five years.

(*g*) the **Commanders of the Army, the Air Force and any other branch of the Defence Forces**, who must have held the rank of Colonel or Group Captain or above (as the case may be) in the existing defence forces for at least five years. And each is appointed by the President on the recommendation of a Board which comprises two of the Commanders (including the retiring Commander as Chairman), and a third member, who is a Secretary of a Ministry in the Public Service. In these appointments, as elsewhere, not even the Prime Minister has any real role. The "majority rulers" again exercise no authority: as in the other instances cited, the appointments are effectively *of* Whites, and made *by* Whites.

(*h*) appointees to the **Defence Forces Service Commission** (which has overall responsibility for the day-to-day administration of the defence forces) which consists of the Chairman of the Public Service Commission, at

least two members who have held the rank of Colonel or Group Captain or above for not less than five years, and no more than two other members chosen for " their ability and experience in administration ".

(*i*) the **Ombudsman**, who requires no special qualifications but is appointed by the President on the advice of the Judicial Service Commission.

(*j*) appointees to the **Senate Legal Committee** (whose main function is to scrutinise proposed legislation to ensure that it would not contravene the Declaration of Rights set out in the " Constitution ") who must be *either* a retired judge of the High Court, *or* have been qualified for not less than 10 years to practise as an advocate or attorney in Zimbabwe, *or* have been a magistrate in Zimbabwe for at least 10 years.

(*k*) the **Comptroller and Auditor-General**, who is appointed by the Public Service Commission and must have held a designated high office in the Public Service for at least five years.

(*l*) the principal **diplomatic representatives** of Zimbabwe abroad, who can only be appointed by the President acting on the advice of the Prime Minister, after the Prime Minister has consulted with the Public Service or other appropriate Commission.

12. It will be noted that the qualifications are pitched so high that it would be decades rather than years before the vast majority could be said to have been afforded a real opportunity to participate in the decision-making processes of government and in the public life of the country. Nor is there any chance of accelerating Black participation in the Public Service by reversing the historical legacy of deliberate exclusion of Africans, however well educated, from responsible positions. White domination is further guaranteed by the Public Service Commission being compelled to appoint the candidates who are " the most efficient and suitable ".

Ministries

13. Under the " Constitution ", for at least the first five years the number of Ministries would be divided among the various parties in proportion to the number of seats they hold in the House of Assembly. As the " White members " number 28, a minority block of only 3 per cent of the population would control between one-quarter and one-third of the Ministries. This would seem to ensure that, politically speaking, the " White " block will hold the balance of power. The opportunity is thereby created for the minority to select and perhaps even to provide the Prime Minister.

14. Further, despite the designation of their office, the Ministers would have no effective say in the appointment of their principal advisers (to whom they would look to supervise the execution of their policies). In the fields of the police, and of defence and security, the Ministers are rendered virtually irrelevant, with all effective power being in the hands of the (necessarily-White) Force Commanders and the Police Commissioner, who are not answerable to their Ministers. Only the Prime Minister or such other Minister as he may authorise may give any directions at all to any of them, and then they may only be " general directions of policy with regard to the [maintenance of law and order] [defence of Zimbabwe Rhodesia] ". Each of them is, in specific terms, " not . . . in the exercise of his responsibilities and powers . . . subject to the direction or control of *any* person or authority ". Should all or any of them choose flagrantly to disregard any " general direction ", such are the semantics of the " Constitution " that no Minister, nor even the President, would have power to dismiss them. This could only be done by the (unquestionably all-white) Defence Forces Service Commission or Judicial Services Commission—and then only if it " deemed " such action " fit ".

Review Commission

15. The " Constitution " provides for a review of the composition of Parliament after a defined period, when a Commission would decide what changes, if any, should be made. It might be thought that this review assures eventual transition to " majority rule " in the true sense of the expression. However, if and when such a review were to be carried out (and it would not be for at least ten years at the earliest), the Commission conducting the review would comprise—

(*a*) the Chief Justice or his nominee (as Chairman);

(*b*) two members elected by the " White members " of the House of Assembly; and

(*c*) two appointed by the President on the advice of the Prime Minister.

16. The realities of life in Rhodesia and the appointment procedures are such that the minority group is certain to provide the Chief Justice. Thus the majority of the membership of the Commission, whose role ought properly to be to usher in a real democracy, would unquestionably be White. Even at so late a stage—when the scene is supposedly set for abolition of the separate Black and White electoral rolls and for the elimination of the separate Black and White seats other than those of the Chiefs—the White minority would still hold the power of veto.

Health, education, housing and electoral law

17. Health services, education and housing are the areas of critical need for the vast majority of the population today. They are also the areas in which White minority domination has been at its most repressive. One would normally look to the provisions of a Constitution as seeking to redress inequities and to guarantee basic rights in these fundamental areas of human need. Yet this " Constitution ", far from expressing resolution to redress the inequalities of the past and present, goes so far as to specially entrench key provisions in existing legislation.

18. Thus, for all the " Constitution's " apparent concern with the quality of life in all its aspects, it actually goes so far as to guarantee and perpetuate White domination and White privilege wherever it now exists—and until such time, if ever, as the Whites voluntarily surrender it.

Land reform and compensation

19. At present, fully half of Rhodesia's disposable land is held by the minority group. Any attempt to redress the institutionalised inequalities of the past must inevitably involve a substantial programme of land reform.

20. The " Constitution ", however, places considerable, perhaps even insuperable, barriers in the path of any such action. The Legislature and Executive are denied any power to compulsorily acquire land other than under the authority of a law which—

(*a*) requires the High Court to determine whether the acquisition is necessary in the public interest; *and*

(*b*) requires the High Court to refuse any application to compulsorily acquire land unless " it is satisfied that, having regard to its area and suitability for those purposes, that the piece of land in question has not been substantially put to use for [agricultural] purposes for a continuous period of at least five years immediately prior to the date of application . . ." periods of non-use for reasons of " any public disorder " are to be disregarded; *and*

(*c*) requires the High Court, should it approve the acquisition, to fix as adequate compensation an amount which would not be " *less* than the *highest* amount which the land . . . would have realised if sold on

the open market by a willing seller to a willing buyer *at any time during the period of five years immediately prior to the date of the acquisition* " (emphasis added).

[And the owner of land so acquired (if a citizen of if ordinarily resident) is given the absolute right to remit the compensation anywhere abroad, free from any " deduction, tax or charge ", other than ordinary bank transfer charges.]

21. In the context of Rhodesia today, a combination of an economy ruined by war; a novel method to maximise the minimum compensation payable; an absolute right to remit proceeds abroad taken with a chronic balance-of-payments situation; vast imbalances of wealth between the two sections of the community; and the very broad discretion given to a judiciary (whose composition is, at best, unrepresentative): all only serve to frustrate essential land reform and to perpetuate a denial of the legitimate aspirations of the majority of the people. In such a setting, this clear-cut conflict between public need and private interest calls to be resolved on the side of humanity. However, it is difficult to conceive of any way in which a progressive government's task could have been made more onerous. In matters of land, as well as those of education, health and housing, the domination of the minority has been constitutionally secured.

Discrimination

22. As has been noted, in all of the major facets of life, the special, privileged status of a racially-defined minority is perpetuated. Nor is any attempt made even to outlaw discrimination in places of public resort, shops, hotels and entertainment.

23. Although, and as one would expect, the " Constitution " outlaws discrimination in all its forms in the customary resounding terminology, some of its own major provisions offend against this principle. Not only are specified statutes especially entrenched, but the validity of *all* existing laws is preserved. Such a preservation is, in other contexts, a common provision; however, in the prevailing situation it preserves and protects the entire Statute Book of a racially-discriminatory régime. Nor is this done merely to provide a breathing space in which to phase out objectionable legislation—except for existing legislation relating to the compulsory acquisition of property, which alone is singled out as requiring immediate attention if it is not to be struck down by the courts. All else remains.

24. Indeed, not content with merely fortifying the minority's stranglehold, the " Constitution " would render it impossible for a government to remedy the imbalance. Any programme, legislative or otherwise, designed to redress the legacy of more than a century of sustained deprivation, would most assuredly founder on the very provisions which are expressed in terms that prohibit discrimination—but ones which are carefully circumvented and rendered inapplicable where Whites are the beneficiaries.

25. As in all constitutional matters, the decision as to whether or not a specific proposal infringed against the " Constitution " (in this instance as being discriminatory by being designed to assist the deprived majority) would fall to be determined by the (unrepresentative) High Court.

Conclusions

26. As this brief analysis shows, virtually every lever of institutional power has been retained in White hands: those few surrendered have been effectively emasculated. Only the election of the President could be said to meet the claim of being democratic, and it is significant that his role is simply that of a figurehead. Rather, the people at large are bequeathed a government bereft of the power to

govern effectively, and a Legislature denuded of all means either to change the *status quo*, or to advance the legitimate aspirations of the nation as a whole. Taken as a whole, and judged by the democratic standards claimed for it by its proponents, it is revealed as a carefully woven, carefully contrived subterfuge for sustaining a wholly anti-democratic régime.

Commonwealth Secretariat
Marlborough House
London SW1
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