

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna Ndulo and Peter Slinn

Frontmatter

[More information](#)

COMPARATIVE CONSTITUTIONALISM AND GOOD GOVERNANCE IN THE COMMONWEALTH

The central role that good, effective and capable governance plays in the economic and social development of a country is now widely recognised. Using the Commonwealth countries of eastern and southern Africa (the ESA states) as the basis for discussion, this book analyses some of the key constitutional issues in the process of developing, strengthening and consolidating the capacity of states to ensure the good governance of their peoples. Utilising comparative material, the book seeks to draw lessons, both positive and negative, about the problems of constitutionalism in the region and, in doing so, critically addresses the legal issues involved in seeking to make constitutions 'work' in practice.

John Hatchard is Visiting Professor of Law at The Open University and General Secretary of the Commonwealth Legal Education Association. He is Joint Editor of the *Journal of African Law*. He has lived and worked in Africa for many years and has held senior positions on the law faculty at both the University of Zambia and University of Zimbabwe.

Muna Ndulo is Professor of Law at the Cornell Law School and Director of the Institute for African Development in the University. He was formerly Professor of Law and Dean of the School of Law, University of Zambia and Director of the Law Practice Institute of the Council of Legal Education in Zambia. He has served as Legal Officer, United Nations Commission on International Trade Law. He has worked on elections and political transformation in several countries. He was Chief Political Adviser to the Special Representative of the UN Secretary General for South Africa and Head of the United Nations Mission in South Africa, Chief Legal Adviser, United Nations Mission to East Timor and Legal Officer with United Nations Mission in Kosovo.

Peter Slinn is Director of the Diplomacy Programme at the School of Oriental and African Studies, University of London and adjunct Professor of Law, University of Notre-Dame. He is Vice-President of the Commonwealth Legal Education Association, Joint General Editor of the *Law Reports of the Commonwealth*, and a member of the Executive Committee of the Commonwealth Lawyers' Association and the Trustee Committee of the Commonwealth Human Rights Initiative.

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

COMPARATIVE
CONSTITUTIONALISM AND
GOOD GOVERNANCE IN THE
COMMONWEALTH

An Eastern and Southern African Perspective

JOHN HATCHARD

MUNA NDULO

PETER SLINN



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 0521584647 - Comparative Constitutionalism and Good Governance in the
 Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
 Ndulo and Peter Slinn
 Frontmatter
[More information](#)

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
 The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
 The Edinburgh Building, Cambridge, CB2 2RU, UK
 40 West 20th Street, New York, NY 10011-4211, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 Ruiz de Alarcón 13, 28014 Madrid, Spain
 Dock House, The Waterfront, Cape Town 8001, South Africa
<http://www.cambridge.org>

© John Hatchard, Muna Ndulo, Peter Slinn 2004

This book is in copyright. Subject to statutory exception
 and to the provisions of relevant collective licensing agreements,
 no reproduction of any part may take place without
 the written permission of Cambridge University Press.

First published 2004

Printed in the United Kingdom at the University Press, Cambridge

Typeface Minion 10.75/12.75 pt. *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication data
 Hatchard, John.

Comparative constitutionalism and good governance in the Commonwealth: an Eastern and
 Southern African perspective / John Hatchard, Muna Ndulo, Peter Slinn.

p. cm.

Includes bibliographical references and index.

ISBN 0 521 58464 7

1. Constitutional law – Africa, East. 2. Constitutional law – Africa, Southern. 3. Constitutional
 law – Commonwealth countries. 4. Africa, East – Politics and government. 5. Africa,
 Southern – Politics and government. 6. Commonwealth countries – Politics and government.

I. Ndulo, Muna. II. Slinn, Peter. III. Title.

KQC522 H68 2004

342.6802 – dc22 2003055751

ISBN 0 521 58464 7 hardback

The Publisher has used its best endeavours to ensure that URLs for external websites referred to
 in this book are correct and active at the time of going to press. However, the publisher has no
 responsibility for the websites and can make no guarantee that a site will remain live or that the
 content is or will remain appropriate.

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

CONTENTS

<i>Preface</i>	<i>page</i>	vii
<i>List of cases</i>		viii
<i>List of constitutions</i>		xiii
<i>List of statutes</i>		xxii
<i>List of other instruments</i>		xxiv
<i>Map</i>		xxv

Introduction 1

1. The democratic state in Africa: setting the scene 5
2. Constitutions and the search for a viable political order 12
3. Devising popular and durable national constitutions: the new constitutions of the 1990s 28
4. Perfecting imperfections: amending a constitution 43
5. Presidentialism and restraints upon executive power 57
6. Enhancing access to the political system 99
7. Making legislatures effective 123
8. The judiciary and the protection of constitutional rights 150
9. The devolution of power to local communities 184
10. Developing autochthonous oversight bodies: human rights commissions and offices of the ombudsman 208

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

vi

LIST OF CONTENTS

- | | | |
|-----|--|-----|
| 11. | Seeking constitutional control of the military | 240 |
| 12. | Constitutionalism and emergency powers | 276 |
| 13. | Constitutional governance: the lessons from southern
and eastern experience | 308 |
| | <i>Bibliography</i> | 325 |
| | <i>Index</i> | 343 |

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

PREFACE

This book has been some years in gestation. Conceived in an era of optimism after the almost miraculous constitutional transition in South Africa and the emergence of a new democratic dispensation in other countries of eastern and southern Africa, our offspring has emerged from the delivery room in the summer of 2002 in an atmosphere clouded by serious threats to the practice of good governance in the region. The world's press is full of pessimistic stories of the breakdown of the rule of law in Zimbabwe, once heralded as a model for African development, and of the regional prospect of disastrous famines exacerbated by evidence of governmental corruption and incompetence. We hope to throw some light, from our particular legal perspective, on Africa's continuing quest for sustainable good governance and development.

In the process of writing, we have incurred many debts of gratitude to our fellow workers in the field of law and policy in Commonwealth Africa and to the institutions which have sustained us during our collective labours. It would be invidious to identify particular individuals, other than to record our warm appreciation of the support and forbearance of Ms Finola O'Sullivan, Ms Jenny Rubio and their colleagues of the Cambridge University Press and of the patience of our respective families. In general we have been able to include materials available to us as of 1 August 2002, although we have been able to make some reference to the *Report of the Constitution of Kenya Review Commission*, which appeared in mid-September 2002.

John Hatchard, Muna Ndulo and Peter Slinn

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna Ndulo and Peter Slinn

Frontmatter

[More information](#)

CASES

- Attorney-General v Kasonde and Others [1994] 3 LRC 144 144
- Attorney-General v Alli [1989] LRC (Const) 474 176
- Attorney-General v Malawi Congress Party and Others (unreported, MSCA Civil Appeal No. 22 of 1996) 250
- Attorney-General of the Republic of Cyprus v Mustapha Ibrahim (1964) CLR 195 250
- Austin and Harper v Minister of State (Security), 1986 (2) ZLR 28 295, 296
- Austin & Harper v Chairman of the Detainees Review Tribunal [1988] LRC (Const) 532 298
- Banana v Attorney-General [1999] 1 LRC 120 86
- Barlin v Licensing Court of the Cape, 1924 AD 472 297
- Bishop v Road Services Board, 1956 R & N 23 297
- Bongopi v Chairman of the Council of State, Ciskei, 1992 (3) SA 250 177
- Bull v Minister of State (Security), HC-H-308-86 (unreported, High Court of Zimbabwe, 1986) 302
- Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General, 1993 (2) ZLR 442; 1993 (4) SA 239; [1993] 2 LRC 279 46, 176, 319
- Certification of the Constitution of the Republic of South Africa, 1996, 1996 (10) BCLR 1253 (CC) 40, 217
- Chairman of the Public Service Commission v Zimbabwe Teachers Association [1997] 1 LRC 479 45
- In re Chinamasa [2001] 3 LRC 373 169
- Chipango v Attorney-General (1970) ZR 31 (HC); (1971) ZR 1 (SC) 300
- Chokolingo v A-G of Trinidad and Tobago [1981] 1 All ER 244 (PC) 169
- Chowdury v Bangladesh 41 DLR (AD) 1989, 165 54

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna Ndulo and Peter Slinn

Frontmatter

[More information](#)

LIST OF CASES

ix

- Commercial Farmers' Union v Commissioner of Police (Unreported, High Court of Zimbabwe, 2000) 59
- Commercial Farmers' Union v Minister of Lands, Agriculture and Resettlement (Unreported, Supreme Court of Zimbabwe, 2000) 59
- Commercial Farmers' Union v Minister of Lands, Agriculture and Resettlement [2001] 2 LRC 521 74
- Commissioner of Police v Commercial Farmers' Union [2001] 2 LRC 85 60
- Crow v Detained Mental Patients Special Board, 1985 (4) SA 83 297
- Dabengwa v Minister of Home Affairs, 1984 (2) SA 345; [1985] LRC (Const) 581 301
- Dale (1881) 6 QBD 376 300
- Denmark, Norway, Sweden and Netherlands v Greece (3321-3/67; 3344/67) Report: November 5 1969 (ECHR) 277
- De Vilheis v Municipaliiteit, Beaufort-Wes en Andere, 1998(9) BCLR 1060 (C) 143
- Dow v Attorney-General [1992] LRC (Const) 623 159, 176, 179, 180
- Dow v Johnson (1879) 100 U.S. 158 240
- Duncan v Kahanamoku 327 US 304 257
- DVB Behuising (Pty) Limited v North Western Provincial Government and Another, 2000 (4) BCLR 347 195
- Ephrahim v Pastory [1990] LRC (Const) 757 319
- Evans and Hartlebury v Chairman of the Review Tribunal (unreported, High Court of Zimbabwe, 1986) 297
- Ex parte Attorney-General Namibia in re Corporal Punishment by Organs of State, 1991 (3) SA 76 159, 179, 319
- Ex parte Grossman 267 US 87 264, 266
- Federal Convention of Namibia v Speaker, National Assembly, 1994 (1) SA 177 143
- Ferreira v Levin, 1996 (1) BCLR 1 (CC) 176
- Gachiengo and Kahura v Republic (unreported High Court of Kenya, 2000) 237, 238
- Goldberg v Minister of Prisons 1979 (1) SA 14 302
- Granger v Minister of State Security, 1984 (2) ZLR 92 264
- Greene v Home Secretary [1941] 3 All ER 388 301
- Gupta v President of India AIR, 1982 SC 149 173
- Hdhibandhu Das v District Magistrate of Cuttack, 1969 AIR SC 63 301
- Hickman and McDonald v Minister of Home Affairs, 1983 (2) ZLR 180 298

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna Ndulo and Peter Slinn

Frontmatter

[More information](#)

x

LIST OF CASES

- Holland v Commissioner of the Zimbabwe Republic Police, 1982 (2)
ZLR 29 300
- Hornal v Neuberger Products Ltd [1957] 1 QB 247 87
- Hugo v President of South Africa [1998] 1 LRC 662 58
- Ichhu Devi Choraria v Union of India (1981) 1 SCR 640 297
- Jilani v Government of the Punjab PLD SC, 1972 268
- Kapwepwe and Kaenga v Attorney General (1972) ZR 248 296
- Kausa v Minister of Home Affairs 1996(4) SA 965 [1995] 3
LRC 528 175
- Kelshall v Munroe (1971) 19 WIR 136 301
- Kesavananda v State of Kerala AIR, 1973, SC 1461 44, 54
- Khudram Das v State of West Bengal (1975) 2 SCR 832
(Supreme Court of India) 298
- Kuruma v R [1955] AC 197 276
- Law Society of Lesotho v Minister of Defence [1988] LRC
(Const) 226 280, 282
- Leghari v Federation of Pakistan PLD, 1999 SC 57 282
- Lewanika v Chiluba [1999] 1 LRC 138 65
- Madzimbamuto v Lardner-Burke, 1966 RLR 756 (GD); 1968 (2)
SA 284 (AD); [1968] 3 All ER 561 (PC) 249, 250
- Magaya v Magaya [1999] 3 LRC 35 200
- Makenete v Lekhanya [1993] LRC 13 249
- Matovu [1966] EA 514 248, 301
- Maxwell v Department of Trade and Industry [1974] QB 523 297
- Minerva Mills Ltd v Union of India AIR, 1980 SC 1789. 282
- Minister of Health and Others v Treatment Action Campaign and
Others [2002] 5 LRC 216 71, 319
- Minister of Home Affairs v Fisher [1980] AC 319 179
- Minister of Home Affairs v Austin and Harper, 1986 (1) ZLR 240; 1986
(4) SA 281; [1986] LRC (Const) 567 297
- M'membe and Mwape v Speaker of the National Assembly [1996] 1
LRC 584 147
- Mokotso and Others v HM King Moshoeshoe II and Others [1989]
LRC (Const) 24 93, 248
- Movement for Democratic Change and Mushonga v Chinamasa [2001]
3 LRC 673 121
- Mtikila v Attorney General, (unreported, High Court of Tanzania
1994) 176
- In re Munhemeso, 1994 (1) ZLR 49 179
- Musakanya v Attorney General (unreported, Supreme Court of Zambia,
1980) 298

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna Ndulo and Peter Slinn

Frontmatter

[More information](#)

LIST OF CASES

xi

- Mushayakarara v Chidyausiku NO, 2000 (1) ZLR 248 34
- Mutasa v Makombe [1997] 2 LRC 314 (Zimbabwe) 24 147
- National Coalition for Gay and Lesbian Equality v Minister of Justice 1998
(12) BCLR 1517 (CC) [1998] 3 LRC 648 178
- Nhari v Public Service Commission (unreported, Supreme Court of
Zimbabwe, SC 71/99) 85
- In re O’Laighleis [1969] IR 93 301
- Paweni v Minister of State (Security) [1985] LRC (Const)
612 296
- P. V. Narasimha Rao v State, 1998 SC 626 148
- People’s Union for Democratic Rights v Union of India AIR, 1982
SC 1473 177
- Pratt and Morgan v Attorney-General for Jamaica [1993] 4 All
ER 769 46
- Premier, Kwazulu-Natal and Others v President of the Republic of
South Africa and Others, 1996 (1) SA 769 (CC) 55
- President of the Republic of South Africa and Others v South African
Rugby Union Football Union, 1999 (4) SA 147; 1999 (7) BCLR
725 (CC) 72n
- Prinsloo v van der Linde, 1997 (6) BCLR 759 (CC) 178
- Putu v Attorney General (unreported, Supreme Court of Zambia,
1983) 298
- R v Acres International (2002, High Court of Lesotho, unreported,
2002) 238
- R v Attorney-General and Brigadier Green, ex parte Olivia Grange and
Eric Brown (1976) 23 WIR 136 301
- R v Big M Drug Mart Ltd (1985) 18 DLR (4th) 321 179
- R v Boston (1923) 33 CLR 386 148
- R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet
Ugarte (Amnesty International and others intervening) (No. 2)
[1999] 1 All ER 577 161
- R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet
Ugarte (Amnesty International and others intervening) (No.3)
[1999] 2 All ER 97 [1999] 1 LRC 482 269
- R v Gaming Board ex parte Benaim and Khaida [1970] 2 All
ER 528 297
- R v Genereux [1992] 1 SCR 259 257
- R v National Insurance Commissioner, ex parte Viscusi [1974] 1
WLR 646 85
- R v Secretary of State for the Home Department ex parte Hosenball
[1977] 3 All ER 452 297

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna Ndulo and Peter Slinn

Frontmatter

[More information](#)

xii

LIST OF CASES

- R v Sole (2002, High Court of Lesotho, unreported, CRI/T/111/99) 238
- Re Lawless 1 EHRR 15 278
- Reform Party of Canada v A-G of Canada (1995) 117 DLR (4th) 366 102, 104
- Republic v Mbushuu [1994] 2 LRC 335 180
- Republic of Fiji Islands v Prasad [2001] 1 LRC 665 (HC), [2002] 2 LRC 743 (CA) 249
- Retrofit (Private) Ltd v PTC 1998 (2) ZLR 422 179
- Rwanyarara v S (unreported, Court of Appeal of Uganda, 1998) 176
- Sasthi v State of WBA 1974 SCR 525 297
- Silva and Freitas [1969] ZR 121 170
- State v Acheson 1991 (2) SA 805 (Nm) 12
- S v Dosso PLD, 1958 SC 533 248
- S v Makwanyane [1995] 1 LRC 269; 1995 (6) BCLR 665 178n, 181, 319
- S v van Niekerk 1972 (3) SA 711 (A) 168
- S v Slatter [1986] LRC (Crim) 66 (HC); 292 (unreported, Supreme Court of Zimbabwe, SC-49-84) 293
- S v Vries, 1996 (12) BCLR 1666 180
- S v Zuma 1995 (4) BCLR 401 179
- State of Bombay v Atma Ram, 1951 SCR 167 297
- State of Punjab v Talwandi [1985] LRC (Const) 600 297
- Stubbs v Minister of Home Affairs, (unreported, Supreme Court of Zimbabwe, 1981) 283
- Supreme Court Advocates-On-Record v India AIR 1994 SC 268 157
- Syed Zafar Sali Shah v General Pervaiz Musharraf, Chief Executive of Pakistan PLD, 2000 SC 869 244, 249, 250
- Terrell v Secretary of State for the Colonies [1953] 1 WLR 331 151
- Tinyefuza v Attorney General (unreported, Ugandan Constitutional Court, 1997) 180
- Uganda v Commissioner of Prisons ex parte Matovu [1966] EA 514 248, 301
- United Parties v Minister of Justice, Legal and Parliamentary Affairs 1997 (2) ZLR 254; [1998] 1 LRC 614 103, 105, 106, 177
- Unity Dow v Attorney-General [1992] LRC (Const) 623 159, 176, 179, 180
- US v Brewster 33 L.Ed 2d 507 148
- Valabhathi v Controller of Taxes (1981) CLB 1249 1968 (2) SA 249
- York v Minister of Home Affairs (HC-H-218-82, unreported, High Court of Zimbabwe, 1982) 299, 300, 301

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

CONSTITUTIONS

Constitution of Botswana 1966

s.32	61
s.34(1)	75
s.85	127

Constitution of Ghana 1969, s26 278**Constitution of Ghana 1992**

art. 3(4)–3(6)	259
art. 3(7)	259
art. 69(8)	87
art. 220	223

Constitution of Kenya (Revised edn, 1992)

s.5(3)(f)	61, 62
s.12(4)	91
s.48	135
s.61(1)	157
s.62(6)	172
s.83(2)	295

Constitution of Lesotho 1993

s.21(2)	295
s.23(3)	281
s.85(2)	50
s.85(3)	52
s.91	94
s.92	93, 94
s.95	281
s.101	266
s.102	266
s.102(1)	266

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

xiv

LIST OF CONSTITUTIONS

s.118(3)	164
s.132	267
s.146(3)	253

Constitution of Malawi 1994

s.11	179
s.40(2)	106
s.45(6)	292, 299
s.51,	292, 299
s.51(1)(b)	124
s.56(7)	213
s.65(1)	146
s.68(1)	126
s.79	66
s.80(4)	66
s.86	84, 88
s.86(1)	66
s.86(2)	82
s.86(2)(e)	90
s.87	92
s.89(2)	266
s.96(e)	68
s.103(1)	150
s.103(2)	151
s.111(1)	157
s.111(3)	162
s.114(2)	166
s.117	152
s.119(3)	171
s.119(7)	171
s.121	211
s.122(1)	213
s.122(2)	214
s.126	227
s.131	213
s.133(a)	213
s.135	44
s.146	196
s.146(3)	196
s.149(d)	196

LIST OF CONSTITUTIONS

XV

s.150	196, 203
s.154(2)	253
s.160(1)	252
s.161	253
s.162	253, 256, 281
s.195	51
s.196	51
s.197	51

Constitution of Namibia 1990

art. 6	54
art. 24(2)(a)	295
art. 26(1)	279
art. 27(2)	69
art. 27(3)	69
art. 28(3)	69
art. 29(1)(b)	75
art. 29(2)	82, 83, 84, 89
art. 34(1)	66
art. 36	66
art. 39	75
art. 46(1)(b)	125
art. 47	126
art. 48(1)	143
art. 48(2)	143
art. 57(1)	75
art. 62(1)(b)	77, 131
art. 66(1)	200
art. 78(3)	182
art. 82(4)	158
art. 84(5)	172
art. 85	152
art. 89(4)	233
art. 91(a)	233
art. 91(e)(cc)	227
art. 91(e)(dd)	226
art. 91(e)(ee)	227
art. 108	201
art. 114	253
art. 118	196, 252

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

xvi

LIST OF CONSTITUTIONS

art. 131 53, 54

art. 132(3)(a) 50

Constitution of Nigeria 1999

s.162(2) 205

Constitution of the Seychelles

art. 118 106

Constitution of the Republic of South Africa 1961 58**Constitution of the Republic of South Africa 1993**

Preamble 38

s.34(6) 294

s.71(2) 38

s.115(2) 212

Constitutional Principle XXIX 216

Constitution of the Republic of South Africa 1996

s.32(1) 80

s.37(1) 279

s.37(2) 281

s.37(6)(b) 294

s.37(6)(d) 292, 294

s.37(6)(e) 298

s.37(6)(h) 299

s.37(7) 299

s.39(1)(a) 179

s.39(1)(b)(c) 179

s.41(3) 207

s.47 126

s.51(1) 77

s.51(2) 77

s.55(2) 78

s.74 49

s.74(1)–(3) 50

s.74(6) 52

s.74(7) 52

s.79 76, 77

s.80 137

s.84(2) 58

s.85(2) 70

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

LIST OF CONSTITUTIONS

xvii

s.86(1)	63
s.87	63
s.89(1)	89
s.89(2)	90
s.91	66
s.92(2)	75
s.101(1)	70
s.101(2)	71
s.102(1)	75
s.102(2)	75
s.104(3)	206
s.146(4)	206
s.151	195
s.165(1)	151
s.165(4)	182
s.174(4)	156
s.176(1)	160
s.178	154
s.178(5)	154
s.181(1)	322
s.181(2)	211
s.193	212
s.198(d)	254
s.199(1)	241
s.199(5)	261, 322
s.199(8)	322
s.201(2)	254
s.201(3)	255
s.202(1)	252
s.202(2)	253
s.204	253
s.211(1)–(3)	198, 200
s.212(1)–(2)	198
s.213	195
s.214	195
s.214(1)	205
s.214(2)	205
s.228	197, 204
s.229	197
s.231(2)	255

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

xviii

LIST OF CONSTITUTIONS

s.236	106
ch. 6	197
ch. 7	197
ch. 9	209
schedule 4	202
schedule 5	202

Constitution of the Soviet Union 1936 308**Constitution of the United Republic of Tanzania 1965**

art. 32(2)	279
art. 96(1)	132
art. 110(3)	158
art. 145	196
art. 145(1)	196
art. 146(1)	196

Constitution of Uganda 1995

Preamble	12, 28
art. 3(2)	268
art. 3(3)	247
art. 3(4)	259
art. 4(b)	261
art. 47(a)	295
art. 47(b)	292
art. 47(c)	294
art. 49(1)	294
art. 51(2)	215
art. 51(3)(4)	215
art. 52(1)(a)	220
art. 52(1)(h)	139, 230
art. 53(2)	227
art. 53(4)(a)	228
art. 54	211
art. 58	219
art. 70	107
art. 71(a)	101
art. 71(b)	101
art. 78	125
art. 78(1)(b)	129
art. 79(2)	73

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

LIST OF CONSTITUTIONS

xix

art. 80(1)(c)	124
art. 80(3)	124
art. 83(g)(h)	146
art. 84(3)–(5)	140
art. 91(4)–(5)	76
art. 94(4)(c)(d)	139
art. 95(2)	131
art. 95(5)	77, 131
art. 107(1)(b)(2)	83
art. 107(7)–(14)	91
art. 108(3)	67
art. 111(1)	78
art. 113(2)	78
art. 118(1)	75
art. 118(2)	75
art. 118(3)	75
art. 128(1)	150
art. 128(4)	168
art. 142(1)	157
art. 144	170
art. 144(5)	172
art. 165(2)	73
art. 165(8)	73
arts. 167	73
art. 167(9)	73
art. 169	73
art. 169(9)	73
art. 172(1)(a)	73
art. 176(3)	195
art. 191	197
art. 193(4)	188
art. 208(2)	275
art. 209(d)	251
art. 210	254
art. 221	261
art. 223(5)(c)	214
art. 229	217
art. 246(1)	199
ch. 11	195
ch. 18	52

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

xx

LIST OF CONSTITUTIONS

Constitution of Zambia 1964

art. 44(1) 78

Constitution of Zambia 1973

art. 4(2) 67

art. 47 67

art. 50(2) 68

Constitution of Zambia 1991

Preamble 25

art. 34 62

art. 71(2)(c) 144

art. 79(2) 52

art. 79(3) 52

art. 93(2) 156

Constitution of Zambia (as amended 1996)

art. 23 145

art. 26 295

art. 33(1) 252

art. 34(3) 65

art. 37 85

art. 37(4) 86, 87

art. 43 81

art. 59 266

art. 60 266

art. 64(c) 124

art. 65 126

art. 71(2)(c) 144, 146

art. 78(4) 76

art. 78(5) 76

art. 87 130

art. 88 77

art. 101(d) 251

art. 117(5) 251

Constitution of Zimbabwe 1979

s.15(1) 46, 55

s.15(4) 46

s.16(1)(e) 45

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

LIST OF CONSTITUTIONS

xxi

s.18(9)	122
s.23(3)	200
s.24	45
s.31H(3)	58
s.31H(5)	70, 265
s.31I	265
s.40B(1)	137
s.52	52
s.84(2)	155
s.87(1)	171
s.103(5)	136
s.111B	255

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

STATUTES

Act 3 of 2000 (Tanzania), s.11	125, 129
Bill of Rights 1689 (UK), art. 9	130
Civil Disturbances (Special Tribunal) Decree (Nigeria)	256
Commission for Human Rights and Administrative Justice Act, s.18(2) (Ghana)	228
Constitution Act 1867, ss.91 and 92 (Canada)	201
Constitution of Kenya (Amendment) Act 1988	153
Constitution of Kenya (Amendment) Act 1990	158
Constitution of Zambia Amendment Act 1996	43, 62, 216
Constitution of Zimbabwe Amendment (No. 12) Act 1993, s.2	45
Constitution of Zimbabwe Amendment (No. 13) Act 1993	46
Constitution and the Privileges, Immunities and Powers of Parliament Act, s.6(1) (Zimbabwe)	143
Detention Order 1987 (Swaziland)	291
Election Act (Modification) (No. 3) Notice, SI 318 of 2000 (Zimbabwe)	120
Emergency Powers (Security Forces Indemnity) Regulations 1982 SI 487/82 (Zimbabwe)	264
Emergency Powers Act (Zimbabwe)	264, 283, 284, 285
Emergency Powers Act 1982 (Lesotho)	282
Emergency Powers (Maintenance of Essential Services) Regulations 1989 (Zimbabwe)	284
Emergency Powers (Family Planning) Regulations 1981 (Zimbabwe)	285
Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order No 1 of 1983 (Pakistan) art. 33	221
Executive Members Ethics Act 1998 (South Africa)	146
Human Rights Act 1996, s.7(1) (Zambia)	216
Judges (Protection) Act 1985 (India)	168
Judicial Studies College Act 1998 (Zimbabwe)	173
Inquiries Act, Cap. 41 (see SI No. 94 of 1998)	226

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

LIST OF STATUTES

xxiii

Indemnity and Compensation Act 1975 (Rhodesia)	263	
Independent Media Commission Act (South Africa)	113	
Land Acquisition Act 1992, s.5 (Zimbabwe)	53	
Law and Order (Maintenance) Act (LOMA) (Zimbabwe)	287	
Law of the Fifth Amendment of the State Constitution of 1984, s. 32(2) (Tanzania)	150	
Local Government: Municipal Structures Act 1998	195	
National Resistance Army Statute 1992 (Uganda)	257	
National Security Act 1986 (Botswana)	288	
Ombudsman Act (Vanuatu)	211	
Political Parties (Finance) Act 1992 (Zimbabwe)	104, 105	
Political Parties (Finance) (Amendment) Act 1998 (Zimbabwe)		105
Preservation of Public Security Act (Cap. 57) (Kenya)	291	
Presidential Powers (Temporary Measures) Act 1986 (Zimbabwe)	74,	
	288	
Prevention of Corruption Act (Kenya)	237	
Preventive Detention Act 1962 (Tanzania)	287, 291	
Privileges, Immunities and Powers of Parliament Act (Zimbabwe)	143	
Promotion of National Unity and Reconciliation Act 34 of 1995 (South Africa)	273	
Public Order and Security Act 2002 (Zimbabwe)	79, 288	
Public Order and Security Bill 1999 (Zimbabwe)	76, 287	
Uganda Human Rights Commission Act, s.8(4)	227	
War Victims Compensation Act (Zimbabwe)	263	
Zambian Independence Order, 1964, s.18	58	

Cambridge University Press

0521584647 - Comparative Constitutionalism and Good Governance in the
Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
Ndulo and Peter Slinn

Frontmatter

[More information](#)

OTHER INSTRUMENTS

- African Charter of Human and Peoples' Rights, 1981 99, 107, 150,
139
- American Convention on Human Rights, 1969 283
- Declaration of Commonwealth Principles 3
- European Charter of Local Self Government, 1985 186
- European Convention for the Protection of Human Rights and
Fundamental Freedoms, 1950 283
- European Social Charter, 1961 283
- Harare Commonwealth Declaration 3, 10, 11, 22, 24, 42, 149, 164,
208, 308, 323
- International Covenant on Civil and Political Rights (ICCPR),
1966 99, 102, 107, 150, 276, 279, 282, 287
- Latimer House Guidelines for the Commonwealth 129, 130, 154, 163,
164, 167, 169, 318
- Millbrook Commonwealth Action Programme on the Harare
Declaration 3, 11
- Southern African Development Community Protocol against
Corruption, 2001 236
- United Nations Convention against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment, 1984 139, 302
- United Nations Declaration on the Protection of All Persons from Being
Subjected to Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment, 1975 302
- Universal Declaration of Human Rights, 1948 107, 116, 150

Cambridge University Press
 0521584647 - Comparative Constitutionalism and Good Governance in the
 Commonwealth: An Eastern and Southern African Perspective - John Hatchard, Muna
 Ndulo and Peter Slinn
 Frontmatter
[More information](#)

LIST OF OTHER INSTRUMENTS

