

RATIFICATION, RHETORIC AND RARE
IMPLEMENTATION OF INTERNATIONAL AND
REGIONAL STANDARDS ON WOMEN'S RIGHT TO
PARTICIPATE IN DECISION-MAKING IN
ZIMBABWE: IF ADOPTED, WILL THE NEW
CONSTITUTION CHANGE ANYTHING?

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INTRODUCTION

Women in Zimbabwe occupy a central role within their families as child bearers, child rearers, and family care-givers. However, their voices are largely silenced and rendered invisible or irrelevant in the public domain. Notwithstanding the proliferation of legal instruments that address women's right to participate in decision-making - to which Zimbabwe is a party – Zimbabwean women have still not achieved equality in decision-making.

Under the current Lancaster House Constitution, Zimbabwe practises a dualist system where the domestication of international and regional legal norms into local legislation is concerned. Section 111B of the Constitution provides that

“(1) Except as otherwise provided by this Constitution or by or under an Act of Parliament, any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the President with one or more foreign states or governments or international organisations—(a) shall be subject to approval by Parliament; and (b) shall not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an Act of Parliament.

This means that, although Zimbabwe may ratify international and regional instruments, such instruments will only have legal force of law if the Zimbabwean parliament drafts and passes a law that incorporates the provisions of these legal instruments. Ratification alone is not enough to give these norms legal force in Zimbabwe. Hence individuals cannot approach the courts of Zimbabwe to demand the implementation of provisions in international and regional instruments despite the fact that Zimbabwe ratified these instruments and agreed to be bound by their provisions. The promulgation of laws incorporating these provisions is also fraught with its own challenges, the most basic of which is that lawmaking in Zimbabwe is a cumbersome process.¹

Women's participation in decision making takes a number of forms: it may be political decision-making where women are elected or appointed as officials; it may also be in the business and corporate sector-small to medium enterprises and household economies included, which, in today's economies, play a crucial role in the development of economies of nation states. Women also occupy decision-making positions in law and the administration of justice, participating in local adjudication and mediation processes. However, women are not equally represented at all levels, even in the judicial processes as magistrates and judges, in the administration of justice, and in national law enforcement

¹ Consisting of many stages such as the composition of the Bill, the first, second and third readings, the approval by the President and the gazetting in the Government Gazette.

bodies including customary law courts. Discriminatory political structures as well as social, economic, and cultural barriers continue to impede the equal representation as well as participation of women in decision-making.

Zimbabwe is in the process of designing a new Constitution, into which the women's movement has, at different levels, fed into, setting out basic demands for women.² Among the key issues that women have raised as a fundamental demand is the question of women's participation in decision-making, not only in politics, but also in the judiciary as well as in the economy. Recognising the value of provisions in key regional and international instruments, women also demanded a monolist approach which allows provisions in international or regional instruments to automatically become part of Zimbabwean law once these instruments are ratified. The extent to which the Draft Constitution addresses these concerns is the subject of this analysis.

THE SIGNIFICANCE OF WOMEN'S PARTICIPATION IN DECISION-MAKING

Decision-making at the national as well as local levels affects citizens, women included, through the operations of the state. The state operates through the three arms of government; namely, the executive, the legislature and the judiciary. The *executive* is made up of the President and his/her 2 deputies, the Prime Minister (and his/her two deputies), and Cabinet,³ and this executive conceptualises, develops, and implements public policy, which in turn informs laws, programmes, and the plans of government.⁴ Hence policies such as the National Health Policy, the HIV/AIDS policy, the Wealth and Minerals policy, and the Land Reform policy, among others, are creatures of the executive. Their sensitivity and responsiveness to the lived realities and needs of women are determined by these people. Currently there are 12 female Ministers in the Cabinet, representing 21% of the whole cabinet of 57. At the provincial level, the executive's power lies in the governors and of the 10 governors appointed, only 2, Thokozile Mathuthu and Angeline Masuku, are women.

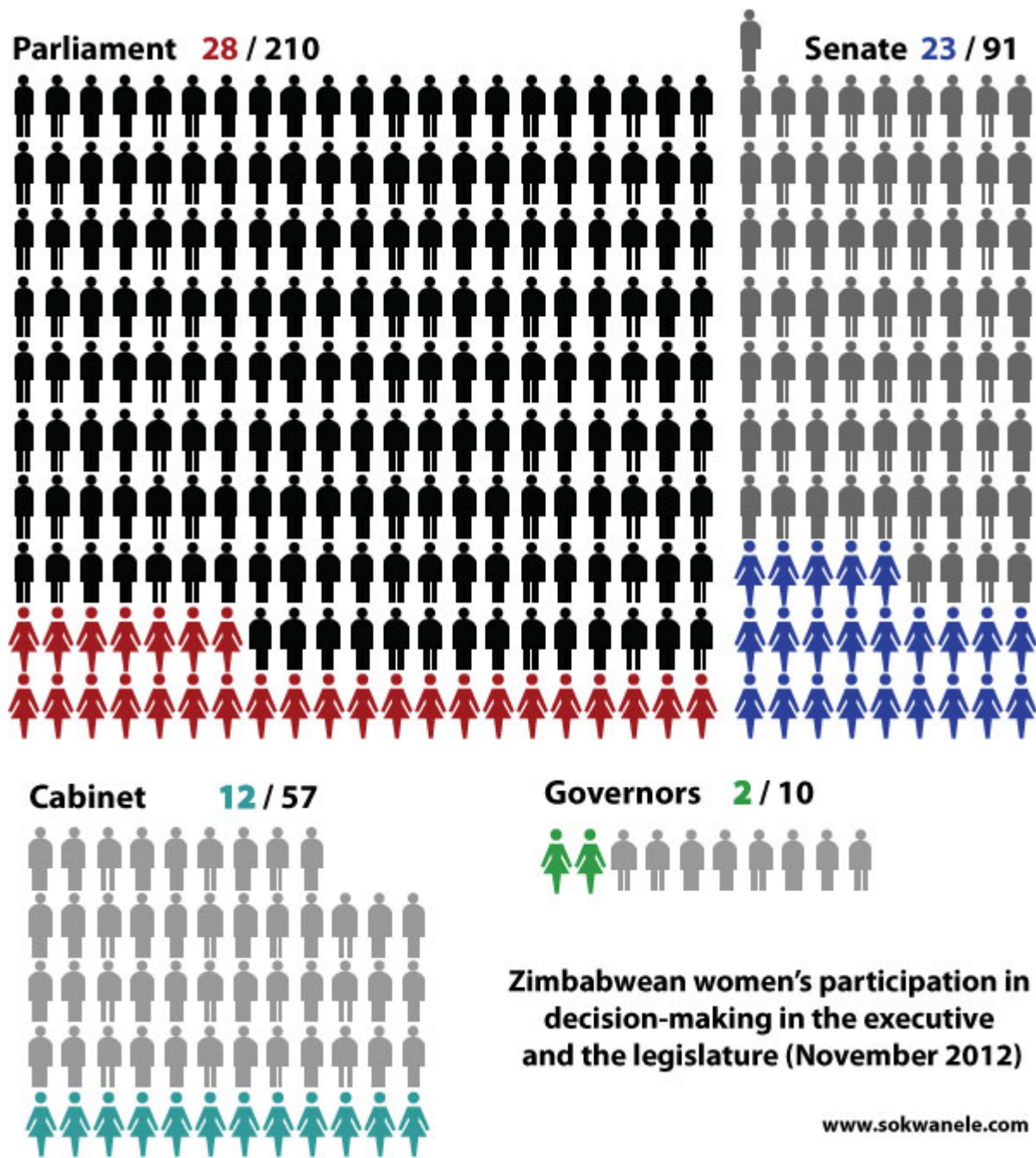
² ZWLA *What women want in the New Constitution* Zimbabwe Women Lawyers Association, 9 July 2012, Available at

http://www.crisiszimbabwe.org/index.php?option=com_content&view=article&id=1180%3Azwlawhat-women-want-in-a-new-constitution&Itemid=205 (Accessed on 23 July 2012).

³ Section 20.1.6 of Schedule 8 of the Current Constitution on Transitional Amendments and Provisions.

⁴ *The central issue is that statistically women are under-represented in the policy-making processes. This is because there are few women holding positions in cabinet or in key policy decision-making positions within the civil service. Public service recruitment and promotion policies do not ensure that women are drawn into the mainstream of these key functions.*

Ratification, rhetoric and rare implementation of international and regional standards on women's right to participate in decision-making in Zimbabwe



The *legislature*, made up of the President, Parliament, and Senate⁵, makes laws, and in so doing, it determines whether laws are gender sensitive or not. Such laws as the Domestic Violence Act,⁶ the Deceased Estates Succession Act,⁷ the Maintenance Act,⁸ the Matrimonial

⁵ Section 32 (1) of the Current Constitution.

⁶[Chapter 5:16] Act 14/2006.

⁷[Chapter 6:02].

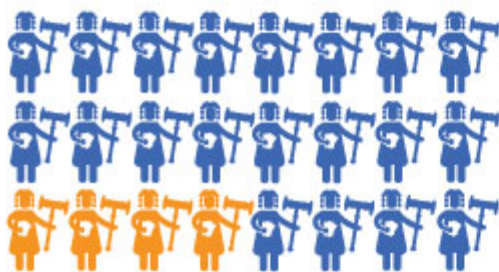
⁸ [Chapter 5:09].

Ratification, rhetoric and rare implementation of international and regional standards on women's right to participate in decision-making in Zimbabwe

Causes Act,⁹ and the Indigenisation and Economic Empowerment Act¹⁰, among others affecting different rights of women, were designed by the Parliament of Zimbabwe. Currently Zimbabwe has 28 female parliamentarians out of the total of 210 and 23 senators out of the 91, comprising 13% and 25% of these bodies respectively.



High Court 4 / 24



Supreme Court 4 / 8



Zimbabwean women's participation in decision-making in the judiciary (November 2012)

www.sokwanele.com

⁹ [Chapter 5:13].

¹⁰ [Chapter 14:33]Act 14/2007.

The *judiciary*, as the adjudicators of all legal concepts, is in charge of the development of jurisprudence through legal decisions. Whether such jurisprudence is fair or gender sensitive lies in the hands of the judges. There are 4 female judges in the High Court out of a total of 24, and 4 female judges in the Supreme Court out of a total of 8. Traditional courts are presided over by the Chiefs, of which only 6 are women, with 3 from Matebeleland, 1 from Mzingwane and 2 from Mutoko,¹¹ suggesting more acceptability of female traditional leadership among the Ndebele than the Shona.

The building and sustenance of strong democracies requires linkages between the state and all its citizens. Sisk¹² argues that participation is 'intrinsic to the core meaning of democracy'. Hence for governance to be fully democratic, and for governments and decision-making institutions to be fully legitimate, the interests of all interested parties need to be represented and accounted for, including those of women.¹³ The inability of women to participate in decision-making results in what some scholars define as a "democratic 'deficit'¹⁴; namely, the absence of transparency, accountability, and representativeness linking all citizens to the institutions and processes of the state.

Karam¹⁵ posits six arguments aptly summing up why women should be well represented in decision-making. They are as follows:

1. the *justice* argument - that women have a right to be represented because they constitute half the population;
2. the *democracy* argument - that democracy is only truly attainable where there is equal representation of the two sexes;
3. the *critical mass* argument - that to create a conscious population of a critical mass there must be equal representation of views by all interests groups (hence the best articulation of women's interests with unity of purpose is possible when women are well represented);

¹¹ www.sundaynews.co.zw (Accessed on 20 October 2012)

¹² T Sisk, J Demichelis & J Ballington, *Expanding Participatory Democracy, Democracy and the Local Level: The international IDEA Handbook on participation, representation, Conflict Management and Governance*, (2001) 147 T Sisk (Ed) Stockholm, International Institute for Democracy and Electoral Assistance.

¹³ C G Bowman & A Kuenyehia *Women and Law in Sub-Saharan Africa (2003) 581*.

¹⁴ J Pretorius *African Politics: Beyond the Third Wave of Democratisation*, (2008) 151 Juta and Company Ltd.

¹⁵ MA Karam, *Beijing +5: Women's Political Participation: Review of Strategies and Trends* (1998) at the *Meeting on Women's Political Participation: 21st Century Challenges New Delhi: UNDP*.

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4. the *differential experiences* argument - that women's experiences are different from men's experiences, and hence these different experiences need to be equally represented in 'doing' politics, business, and other decision-making areas;
5. the *interest* argument - that women and men have different interests and priorities which more often than not are at conflict with each other, and thus the articulation of these interests is best done by members of the interest group on behalf of their peers;
6. and the *symbolic* argument - that the existence of female role models in key decision-making positions provides an impetus for other women to want to occupy the same spaces.

Indeed women's participation in decision-making is important not only because it serves their interests, but also as a positive step in fostering good governance, democracy, and development. Failure to ensure the participation of women and inclusion of women's voices in decision-making processes defeats the goals of 'equality, development, and peace,'- as it is necessary to take women's and girls' interests into account in order to strengthen democracy and promote its proper functioning.¹⁶ The participation of women is also central to the development of states where women and men engage in development processes on an equal footing. The interests and concerns of women must be taken into account and it is vital that women take part in development processes as active participants rather than passive recipients. Arguably, the presence of women in decision-making is likely to improve the social welfare of the state as women in leadership positions are more likely to represent the needs and interests of other women and other vulnerable groups such as children and the handicapped than do men,¹⁷ but this is not necessarily so¹⁸.

The participation of women in decision-making is also crucial because it is a human right. Human rights by their nature are universal, and, hence, because of their universality of which has been acknowledged in several instruments starting with the Universal Declaration of Human Rights (1993), the right of women to participate in decision-making is not just a concession of a benevolent state, it is an entitlement due to women for the simple

¹⁶ *Conclusions of the Commission on the Status of Women on "the equal participation of women and men in decision-making processes", adopted at the 55th Session Para 1.*

¹⁷ *Inter-Parliamentary Union (2000). Politics: Women's Insight. New York: Liaison Office with the United Nations; J Lovenduski and A Karam (2007) Women Parliamentarians Making a Difference in Politics. New York: UNIFEM and Heinrich Boll Foundation.*

¹⁸ K Chitsike *PHD Syndrome-How women can be their worst enemies* Research and Advocacy Unit (RAU), 2012 where grassroots women claimed that women do not support other women to rise into decision-making positions because the election of female representatives does not necessarily guarantee the representation of women's interests.

fact that they are human beings.¹⁹ The absence of women or poor representation of women in economic decision-making, for processes such as the formulation of fiscal, commercial, and other economic policies, defeats efforts to alleviate poverty. As the Beijing +10 outcome documents indicated, the collection of gender-disaggregated data and the mainstreaming of gender into macro-economic policies would help accelerate poverty reduction.²⁰

Women's involvement in environmental protection and management programmes is crucial in preserving the environment. Policies and activities related to pollution, energy, sanitation, agriculture, and land must therefore take cognisance of women's views. In the current dispensation, where issues of climate change are prominent, it is trite that women should participate in decision making processes that may affect them and the wellbeing of their families. The African Commission on Human and Peoples Rights (the African Commission) has also laid down the principle that states should formulate and implement national water and sanitation strategies and plans of action that should respect, *inter alia*, the principles of non-discrimination, and ensure the right of everyone to participate in decision-making affecting their right to water and sanitation.²¹

The United Nations, in its Resolution 1325, recognises that the exclusion of women in deciding the nature, scope, and impact of peace processes renders such processes ineffective.²² Women are also victims of violent conflict and should therefore be given room to input-post conflict- into the creation of durable, as well as effective, solutions. Also, by virtue of their parenting roles, most women are peacemakers: they play a crucial role as teachers of peace in society, in family, political, national, and international life. Their contribution begins within the family where they instil in their children principles such as understanding, caring, respect and love for one another.²³ Hence, through this practical experience as mediators and in resolving conflict within the family, women's voices would be an invaluable asset in developing peace-building initiatives.

Gender-power dynamics also influence the outcome of reparation processes where the allocation of financial reparations may as well be determined by the one who has the power

¹⁹ J NAVARRO-VALLS, DIRECTOR OF THE HOLY SEE'S PRESS OFFICE, BRIEFING REGARDING THE FOURTH WORLD CONFERENCE ON WOMEN. *L'Osservatore Romano*, n. 36 - 6 (September 1995) 2-4 Para 3.

²⁰ Beijing +10 : 49th session of the Commission on the Status of Women, Roundup, United Nations Non-Governmental Liaison Service, 122 of 2005 p.3.

²¹ *African Commission on Human and Peoples' Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2009)* 52.

²² *Resolution 1325 of 2000, Adopted by the Security Council at its 4213th meeting.*

²³ J NAVARRO-VALLS, DIRECTOR OF THE HOLY SEE'S PRESS OFFICE, BRIEFING REGARDING THE FOURTH WORLD CONFERENCE ON WOMEN. *L'Osservatore Romano*, n. 36 - 6 (September 1995) 2-4 Para 9.

in any household.²⁴ Hence reparation procedures must be designed with women's participation in order to understand the priority options for women such as access to health-care, education, and other services. In post war societies, where the views of women have been taken seriously, it has resulted in phenomenal changes in the structuring of societies. The example of Rwanda, where post genocide elections to the national assembly in 2003 resulted in 49 per cent of the seats being occupied by women, is one such striking circumstance.²⁵

INTERNATIONAL STANDARDS

Significant commitments have been made at the international level to foster women's right to participate in decision-making. This right was first recognised as a political right in the 1948 Universal Declaration of Human Rights (UDHR) in Articles 2 and 21 that provide for the equal enjoyment of political rights without discrimination on the basis of one's sex or any other ground. The International Covenant on Civil and Political Rights (ICCPR)²⁶ reaffirmed the principle of non-discrimination in the exercise of the right to participate in public and political life. It also provides for the right of every citizen to participate in public affairs, to vote and to be elected, and to have access to public service.²⁷ The Convention on the Political Rights of Women²⁸ raised issues such as voting, eligibility to stand for elections, holding public office, and exercising public functions as core elements, reflective of women's participation in decision-making.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)²⁹ is by far the most comprehensive instrument advocating the participation of women in decision-making. It defines discrimination as any '*distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*'. The inability of women to participate in politics on an equal footing is symptomatic of the discrimination inherent in society which CEDAW seeks to address.

²⁴ *V Nesiah Truth Commissions and Gender: Principles, Policies and Procedures International Centre for Transitional Justice (July 2006) 37.*

²⁵ *D Parkhurst Gender Issues in Post-War Contexts: Review of Analysis and Experience, and Implications for Policies United Nations Research Institute for Social Development. Working Paper 9 4th Series (April 2007) 27.*

²⁶ Which came into force in 1966 and which Zimbabwe acceded to on 13 May 1991.

²⁷ *International Covenant on Civil and Political Rights Article 25, GA Resolution 2200(XXXI) of 16 December 1966, entered into force 23 March 1976.*

²⁸ *Convention on the Political Rights of Women Article 1, 2 and 3, GA Resolution 640(VII) of 20 December 1952, entered into force 7 July 1954 and which Zimbabwe ratified on the 5th of June 1995.*

²⁹ *CEDAW Article 1, GA Resolution 34/180 of 18 December 1979, entered into force 3 September 1981 and Zimbabwe acceded to it on the 13th of May 1991.*

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Under CEDAW, the state has obligations to implement the provisions therein, including the enshrinement in the Constitution of the principle of equality between men and women³⁰, and the adoption of national legislation protecting the equal rights of men and women. The state also has the obligation to refrain from engaging in any act or practice which discriminates against women.³¹ CEDAW describes women's right to participate in decision making on an equal footing with men in relation to aspects such as voting, policy formulation, holding public office, and involvement in work that concerns the public and political life of their countries.³²

The state also has the obligation to remove laws, customs, and practices which discriminate against women.³³ In Zimbabwe, factors such as violence against women, in the form of intimidation, political threats, death threats, physical assault, and sexual assault (among others) in the political arena dissuade women from getting involved in politics and occupying influential positions. Hence, as a signatory to CEDAW, it is the duty of the state to eliminate such violence, and, where it occurs, to deal with it effectively.

The Beijing Platform for Action called on governments to take measures to ensure women's equal access to and full participation in power structures and decision-making. States, Zimbabwe included, committed themselves to make gender balance a goal in governmental bodies and committees, public administrative entities, and in the judiciary; to ensure gender balance in lists of candidates nominated for election to international and regional bodies; and to integrate gender perspectives into conflict resolution.³⁴

A number of Resolutions by the United Nations also reiterate the need for women's increased participation in decision making. In 2000, the UN General Assembly addressed this need³⁵, while the Security Council, in Resolution 1325 on Women, Peace and Security, reaffirmed the importance of the equal participation and representation of women in processes that define their roles in the prevention and resolution of conflicts, in peacebuilding, and also in the maintenance and promotion of peace and security.³⁶ In 2003, UN Resolution 58/142 on Women and Political Participation³⁷ also spoke to the need for increased political will and serious commitment by governments to promote the advancement of women and achievement of gender equality through the development of comprehensive policies and programmes that increase women's participation in decision-

³⁰ CEDAW Article 2(a).

³¹ CEDAW Article 2(d).

³² CEDAW Article 7.

³³ CEDAW Article 2(g).

³⁴ Beijing Platform for Action (1995) Para 190(a), 190(j) and 142(b).

³⁵ Outcome document of the twenty-third special session of the General Assembly (2000)

³⁶ United Nations S/RES/1325 (2000) Resolution 1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000.

³⁷ Adopted by the UN General Assembly at its fifty-eighth session in 2003.

making. In 2006, the 50th Session of the Commission on the Status of Women adopted agreed conclusions on the equal participation of women and men in decision-making processes.

REGIONAL STANDARDS

Zimbabwe has also been consistent in its acceptance of regional standards contributing towards the improved participation of women in decision-making. Among these is the commitment made by African states in Article 4 (I) of the Constitutive Act of the African Union to ensure gender equality. The Dakar Platform for Action (1994) and the Solemn Declaration on Gender Equality in Africa reiterate the promotion of gender parity in all organs of the African Union³⁸, and the effective participation and representation of women in peace processes.³⁹ The African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999) set out norms which African states (Zimbabwe included) are supposed to implement to improve women's participation in decision-making.

Central to the advancement of the right of women to participate in decision-making is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)⁴⁰ that calls on states to take positive action to promote 'participative governance and the equal participation of women in the political life of their countries', as well as to ensure the 'increased and effective representation and participation of women at all levels of decision-making.'⁴¹ The Maputo Protocol also urges states to ensure that women have a say in conflict prevention and resolution processes to ensure a peaceful environment for all.⁴²

The Maputo Protocol built significantly on the same normative values set out in CEDAW, but it went a step further to address the peculiar nuances of African Women. It also built on the non-discrimination clause in the African Charter on Human and Peoples' Rights (the Charter)⁴³, which, in Article 2, prohibits discrimination on a number of grounds, including sex, and guarantees the enjoyment of rights enshrined in the Charter to everyone⁴⁴,

³⁸ *Solemn Declaration on Gender Equality in Africa Adopted by the AU Assembly OF Heads of State in Addis Ababa, Ethiopia, July 2004 Para 5.*

³⁹ *Solemn Declaration on Gender Equality in Africa Para 2.*

⁴⁰ *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Women's Protocol) Adopted by the 2nd Ordinary Session of the Assembly of Heads of States of the Union in Maputo, Mozambique on 11 July 2003.*

⁴¹ *Women's Protocol Article 9.*

⁴² *Women's Protocol Article 10(2).*

⁴³ Which Zimbabwe ratified on

⁴⁴ *Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.*

including the right to participate in the governance of one's country as enshrined in Article 13 of the Charter.

Zimbabwe is yet to ratify the African Charter on Democracy, Elections and Governance, (ACDEG) that calls upon states to implement the principle of “*effective participation of citizens in democratic and development processes and in the governance of public affairs*”.⁴⁵ At the level of the Southern African Development Community (SADC), Zimbabwe made commitments under the SADC Gender and Development Protocol to effect legislative and affirmative action measures to encourage participation of women.⁴⁶ Zimbabwe's performance in ensuring women's participation in decision-making falls short when compared to other regional actors. At the moment, Rwanda is the top achiever in its compliance with AU gender parity benchmarks scoring 56% against the AU goal of 50%. Following this, are South Africa (45%), Angola (37.3%), Mozambique (34.8%), Uganda (30.7%), Burundi (30.5%) and Tanzania (30.4%). Eritrea, Ethiopia, Lesotho, Mauritania, Namibia, Seychelles, Senegal, and Tunisia have over 20% representation. Zimbabwe trails behind with a measly 16.9%, scoring the lowest in Southern Africa.

IMPLEMENTATION MECHANISMS MEASURED AGAINST THE COPAC DRAFT?

Women's challenges in exercising their right to participate in decision-making directly correspond with the policy, legislative, and other gaps within the government's strategies to ensure the realisation of this right. As noted in the introductory remarks, the requirement for regional and international standards to be domesticated first, before they can assume legal force in Zimbabwe, has been a limiting factor in the implementation of these norms. The Constitutional Parliamentary Select Committee (COPAC) Draft Constitution (the Draft Constitution)⁴⁷ more or less maintains this standard. However, clause 2.26 of the Draft Constitution requires the state to take measures to domesticate international instruments which address gender issues. This means that the responsibility will remain vested in the House of Assembly and the Senate to ensure that there is domestication of these instruments. Such domestication will still largely depend on political will; however, there is hope that the interpretation of the Draft Constitution shall be guided by the National Objective 2.7.3 which tasks the state to ensure that all international instruments addressing gender issues are incorporated into domestic law. This gives women the opportunity to follow-up government efforts to domesticate international and regional norms and increase pressure on them where such domestication is not done.

⁴⁵ Article 3 (7) of ACDEG.

⁴⁶ Articles 5, 12 and 13 of the 2008 Protocol.

⁴⁷ Of 17 July 2012, Distributed by VERITAS.

ENGENDERING HUMAN RIGHTS

It has been suggested that entrenching gendered human rights within a constitution could be one way of ensuring the participation of women in decision-making, and hence achieving gender equality in the economy, polity, and society in general.⁴⁸ Such provisions are missing in the Current Constitution. In fact, the Current Constitution has fed gender stereotypes and the discrimination of women by allowing them to be treated differently in the application of customary law.⁴⁹ The patriarchal nature of Zimbabwean-African society is embodied in its cultural norms and beliefs and social processes and institutions contribute to women's marginalisation, perpetuating inequalities between men and women to the disadvantage of women. Women are socialised to be submissive and passive, and hence to refrain from perceived controversial fields such as politics; instead, they are encouraged to conform to societal expectations where their place is in the home, and to limit their participation to voting for others rather than being voted for as candidates. This is compounded by the building of the misconception that women need to be aggressive, ruthless, and engage in cutthroat politics to occupy leadership positions. This excuse has been used to keep women out of politics, hence perpetuating their marginalisation.

Nzomo⁵⁰ suggests that structural difficulties inherent in the patriarchal nature of society create barriers for women to participate in politics. She cites the multiplicity of roles that women have to fill as consuming women's time and energy, thus leaving very little to sustain them in the event that they choose to participate in politics. Indisputably women play a huge role as child bearers and rearers, household keepers, and care givers of the sick and the old.

Beyond the legal barriers standing in the way of implementation of norms encouraging the participation of women in decision-making are the socio-anthropological reasons; gender stereotyping is one of them, and is probably one of the main reasons why women are still noticeably absent in decision-making positions. It requires a change of mindsets on the ground, and such changes can only be effected through education. The Draft Constitution now creates a Gender Commission, tasked to do everything necessary to promote gender equality amongst its various mandates.⁵¹

The non discrimination clause in the Draft Constitution now gives women unequivocal and equal status with men before the law in all aspects of their lives be they economic, social,

⁴⁸ *Zimbabwe Human Rights (NGO) Forum 'Gender and Constitutional Issues' (March 2001) 19.*

⁴⁹ Section 23 (3) of the Lancaster House Constitution.

⁵⁰ *M Nzomo Kenyan women in politics and public decision making in African Feminism: The Politics of Survival in Sub-Saharan Africa (1997) 234-238.*

⁵¹ Clause 13.9 (f) of the Draft Constitution.

cultural and political.⁵² The practise of cultural norms and traditions is made consistent with the Declaration of Rights,⁵³ meaning that any discrimination or segregation of women on the basis that it is culture will not be allowed if it goes against the right to equality as enshrined in the Draft Constitution. Gender equality is made one of the founding principles in the Draft Constitution⁵⁴ while gender balance including the full participation of women in all spheres of Zimbabwean society on the basis of equality with men is enshrined in the national objectives.⁵⁵ The Draft Constitution also mentions the possibility of affirmative action in areas where women are under-represented.

The Draft Constitution also provides for the creation of reserved sixty (60) seats for women in the House of Assembly for the first two (2) terms of Parliament's five (5) year lifespan.⁵⁶ The creation of 60 seats could both be a positive and negative development. Given that it is temporary, one hopes that in its duration it will create room for the recognition of the importance of women's presence in decision-making as they contribute. However, the danger with this provision is that representation may be misinterpreted and misconstrued to mean the creation of additional space. This only serves to entrench the status quo as these women will not be taken seriously and they will be viewed as decorative ornaments representing no constituency and seating in parliament on no merit. A more effective solution would have been to create quotas for women, guaranteed on the existing seats.

CULTIVATING POLITICAL WILL

The lack of political will by key governmental leaders and institutions to support the involvement of women in decision-making has been another reason impairing women's participation in decision-making. The government has had the option to create an enabling environment in which women feel safe and confident to participate in processes that affect their lives, but such efforts have not been made. In Zimbabwe, the political field has been volatile: elections have been marred by violence; both intra-party and interparty. There are many risks attached to participating in politics including loss of life, physical injury, destruction or damage of personal property, abduction, torture, enforced disappearance, and, particularly relevant to women, rape or other forms of sexual abuse. As a direct consequence, women are reluctant to be part of the political sphere because doing so

⁵² Clause 4.13 (2) of the Draft Constitution.

⁵³ Clause 4.20 (b) of the Draft Constitution.

⁵⁴ Clause 3 (1) (g) of the Draft Constitution.

⁵⁵ Clause 2 (9) (1) (a) of the Draft Constitution.

⁵⁶ Clause 6.9 (1) (b) of the Draft Constitution.

means placing themselves and their families in the line of fire. Evidence shows that the risks and dangers become starker, the higher and the more influential the contested position is for the decision-making in the country, hence the increased levels of violence in the June Presidential election than in the local government and Parliamentary elections.⁵⁷ Women were targeted because they are physically weaker and are unlikely to report the matter to members of their community or the authorities.⁵⁸ Similarly in Guinea, women were instrumental in ousting the former military leader, Captain Moussa Dadis Camara in September 2009. For their 'audacity' the women were exposed to numerous violations: some were raped and others were sexually assaulted by soldiers with sticks and guns.⁵⁹ These crimes both in Zimbabwe and Guinea were committed with impunity as there has been no political will to hold the perpetrators accountable; having witnessed such atrocities, women will not come forward, fearing for their lives.

The Draft Constitution specifically addresses this issue, making it an active duty of the Zimbabwe Electoral Commission to ensure that appropriate systems and mechanisms are put in place to eliminate electoral violence and other electoral malpractices.⁶⁰

INTRODUCING CONSTITUTIONAL QUOTAS

There is a need for setting up good structures to provide support to women in decision-making. In Burkina Faso, the parliament set up a gender caucus in 2005 to support women parliamentarians. They also set up a 30% quota minimum for government and parliamentary positions. Ghana also introduced a 40% quota for women at district level to address the social and historical injustices and biases against women.⁶¹ The COPAC Draft Constitution does not create such quotas within the judiciary, cabinet or other key decision-making bodies created such as the Human Rights Commission and the Anti-corruption Commission. Although the constitution recommends gender balance in the carrying out of such appointments⁶² and sets out in its national objectives the need for gender parity in the membership of all Commissions and other elective and appointed governmental bodies, these are not binding provisions whose exercise will be exercised through the discretion of those who make the appointments.⁶³ The Draft Constitution does create the possibility of

⁵⁷ RAU *Politically Motivated Violence against Women in Zimbabwe 2000-2010: A Review of the Public Domain Literature* Research and Advocacy Unit, August 2011.

⁵⁸ *Monitoring and Investigating Sexual Violence, Amnesty International and CODESRIA.*

⁵⁹ *S Samb GUINEA Women Also-Runs in Presidential Elections Inter Press Service News August 2010.*

⁶⁰ Clause 7.2 (c) (i) of the Draft Constitution.

⁶¹ *ECA Synthesis Report (2009) 14 Para 76.*

⁶² As seen in Clause 5.17(4) on the appointments of Ministers

⁶³ Clause 2.9 (1) (b) (ii) of the Draft Constitution

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affirmative action to achieve gender equality in all aspects of life through recommendations by the Gender Commission,⁶⁴ an avenue that women could pursue to seek support for their inclusion and equal participation in decision-making processes.

PERIODIC STATE REPORTING

One of the ways in which Zimbabwe could ensure continuous adherence to the provisions in the various instruments that it ratified is through periodic state reporting. The African Charter requires submission of state reports every two years, while CEDAW requires reporting every four years. Zimbabwe's reporting record has been less than satisfactory having recently submitted its second, third, fourth, and fifth reports to the CEDAW Committee of Experts combined.⁶⁵ The COPAC Draft Constitution does not create an obligation on the state to meet its reporting commitments, it only encourages it to do so, and thus the decision will depend largely on political will.

MONITORING LEGISLATION

Poor monitoring of the implications of certain types of legislation on women's ability to participate in simple decision-making is also one of the major problems hindering the implementation of regional and international instruments. For example, the perpetuation of women's inferior status by denying them guardianship rights over their children feeds the perception that they are incapable of making life decisions for others. The current citizenship laws are structured in such a way that Zimbabwean women cannot pass citizenship to their children by a foreign spouse or to their spouse, consequently, their children are denied basic citizenship rights such as the right to vote. The COPAC Draft Constitution now makes lawmaking susceptible to the Bill of Rights.⁶⁶ This is a marked improvement which women's rights advocates can capitalise on to demand the repeal of all discriminatory legislation. The Draft Constitution also allows women to pass on citizenship to their children and foreign spouses, under the same conditions, thereby giving women equal citizenship status with their male counterparts.

EDUCATION AND INFORMATION DISSEMINATION

The CEDAW Committee, in its General Comment 23/97 on article 7 relating to political and public life (Para. 20), observed that women have less access to information about conditions on the political platform. This ignorance is perpetuated by illiteracy, lack of knowledge and

⁶⁴ Clause 12.15 (f) of the Draft Constitution.

⁶⁵ Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/414/13/PDF/G1241413.pdf?OpenElement> (Accessed on 4 July 2012).

⁶⁶ Clause 4.38 of the Draft Constitution.

understanding, women's double burden of work, financial constraints, and cultural stereotypes. This hinders women's participation in decision-making processes because they are not aware of the processes, or they do not understand the value of such participation. For instance, public consultations in constitution-making processes are crucial to gather women's views and input towards the guaranteeing of their ideals within the supreme law of the land as the recent constitution-making process proved; however, if the women are not informed about the importance of such a process, their input is flawed and their contributions do not make any significant change towards the things that need changing. The Draft Constitution has created a Human Rights Commission⁶⁷ and a Gender Commission,⁶⁸ bodies whose mandates will work together to assist in addressing challenges to gender equality. This will be achieved through research, engaging the public to raise awareness through public education, and sensitising societies to choose and support women leaders given that women are equally equipped to hold positions of power as men.⁶⁹

RESOURCE ALLOCATION

The implementation of international and regional instruments guaranteeing the participation of women in decision-making requires money enabled by a budget line within the National Budget. Nzomo⁷⁰ suggests that women cannot participate in politics even if they want to because they do not have the material resources to do so. A lot of money goes into organising campaigns and very few women are financially independent to sponsor their own campaigns. Those with the means to sponsor them are unwilling to do so because they think women are not capable of delivering what a male candidate would deliver. Also, because property ownership has traditionally been organised in a patriarchal fashion (in which title to the land and any other property is given to the male member of the family be it the husband, the father, the son or uncle), women therefore do not have the material means to engage in politics. Under the COPAC Draft, government is obliged to be accountable and transparent in the manner it allocates resources, as well as to take into consideration special resource provision for traditionally marginalised groups, of which women are the most obviously disadvantaged.⁷¹ The Draft Constitution also sets out as one of the national objectives- the need for the state to put into place practical measures to

⁶⁷ Clause 12.11 of the Draft Constitution.

⁶⁸ Clause 12.15 of the Draft Constitution.

⁶⁹ *ECA Synthesis Report (2009) 14 Para 77.*

⁷⁰ M Nzomo *Kenyan women in politics and public decision making in African Feminism: The Politics of Survival in Sub-Saharan Africa* (1997) 234-238.

⁷¹ Clause 17 of the Draft Constitution.

ensure that women have access to resources, including land, on the basis of equality with men.⁷²

MEDIA GENDER SENSITIVITY

The media is a powerful tool in creating perceptions including perceptions of women and the role they can play in decision-making. If the media feeds the perception that men cannot be led by women, it breeds resentful attitudes and behavior by men towards female leaders. The media in Zimbabwe has been guilty of this attitude, picking on female leadership; for instance, accusing the Deputy Prime Minister of being pregnant, a factor that is irrelevant to her leadership role.⁷³ The Draft Constitution gives the Media Commission the power to regulate broadcasting and ensure that there is fair representation and diversity of the views of all Zimbabweans including those from women.⁷⁴ Hopefully this will go a long way in improving women's image as well as women's presence in the media.

SECURITY SECTOR REFORM

A more concerted effort towards creating a safe space for women to be able to participate freely in politics would be for the state to develop a framework or plan of action. This framework should be designed in such a way that it fits in with the national strategy on combating violence against women. The framework must censure political violence against women and must relate to national legislation, criminalising violence against women both in the private and public domain. Such legislation must be strongly and consistently enforced through the meting out of the appropriate sanctions proportional to the severity of the crime. This means that there must be an end to impunity for political violence crimes and no amnesties must be granted to individuals responsible for such. Women must be given redress and protection when they need it. State officials, especially security forces, must not be exempt from responsibility to be punished for perpetrating violence against women which is politically motivated. Currently the police are partisan, and women cannot influence decision-making processes through civic disobedience because they are treated as criminals, beaten, arrested and detained for doing so.⁷⁵ The police escape with impunity, thus creating a sense of insecurity for women and dissuading them from participating in

⁷² Clause 2.9 (1) (c) of the Draft Constitution.

⁷³ 'Deputy Prime Minister Khupe pregnant at 47'. The Standard, 25 October 2010, http://www.zimdiaspora.com/index.php?option=com_content&view=article&id=4301:deputy-prime-minister-khupe-pregnant-at-47&catid=38:travel-tips&Itemid=18.

⁷⁴ Clause 12.18 (c) of the Draft Constitution.

⁷⁵ *International Bar Association "Partisan policing: An obstacle to human rights and democracy in Zimbabwe" (October 2007) 27.*

processes that influence decision-making.⁷⁶ The Draft Constitution provides for the framework within which security forces can exercise their powers and this framework now largely complies with international standards.⁷⁷

CONCLUSION

As mentioned earlier, the participation of women in decision-making and governance is a critical issue at the political, civic and community levels which means it must be a priority issue within the Constitution. Consequently, the national budget should reflect a gendered approach providing adequate funds to promote the participation of women in decision-making directed towards awareness raising activities, civic education, gender mainstreaming, public interest litigation for victims of violence, and other challenges related to participation of women in politics. Foreign ministers must ensure that gender balance in lists of national card nominated for elected or appointment to UN bodies, and other specialised agencies.⁷⁸ The appointment of boards and chief executive officers and senior management must seek to create a critical mass of women leaders, executives, and managers in strategic decision-making in private sector.⁷⁹ The State and other public institutions should review the criteria for recruitment and appointment to advisory and decision-making bodies, such as the Judicial Services Commission, keeping a consistent database of women and their qualification for use in appointing women to senior decision-making and advisory positions. Government should create a special scholarship programme to enhance the capacity and eligibility of women to participate in decision-making processes.⁸⁰ Extensive gender sensitive training must be facilitated. Supporting structures for women in decision-making must be made available, and gender should be mainstreamed into all aspects of governance, with discriminatory attitudes and norms being changed.

This can be achieved through constructive engagement with societies, particularly those in rural areas where stereotypes are rife and enhancing the capacity of women to hold

⁷⁶ *International Bar Association "Partisan policing: An obstacle to human rights and democracy in Zimbabwe" (October 2007) 49.*

⁷⁷ Clause 11.19 (2) of the Draft Constitution.

⁷⁸ Article 8 of CEDAW says states should take appropriate measures to ensure the opportunity of women to represent their governments at the international level and to participate in the work of international organisations.

⁷⁹ *CEDAW Comm. General Comments 23/97, par. 27* sounds a caution to states against token appointments and encourage states as a matter of course to consult and incorporate the advice of groups which broadly represent women's views and interest when considering appointments of women to senior decision-making positions.

⁸⁰ The *CEDAW Committee in its Concluding Observations on the state report of Cameroon (43^d session)*, suggested that the scholarship programme should be broadened in order to benefit a greater number of women.

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positions of influence is most needed. This must also be done in collaboration with civil society in line with Recommendations of the Beijing Platform for Action, which encourages governments to support NGO research on women participation in and impact on decision-making.⁸¹

If fully implemented, the Draft Constitution does seem to create a platform that will enable, to a large extent, the participation of women in decision-making. Maybe this can begin to change the fortunes of the women in Zimbabwe and, maybe then, gender parity will be an automatic and systemic component of all sectors of Zimbabwean society.

⁸¹ Annex 1, Strategic Objective G1 par. 190.