

The Politics of Engagement: Women's Participation and Influence in Constitution-making Processes

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ACRONYMS

AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COPAC	Constitution Select Committee
G-20	Group of 20
GBV	Gender-based Violence
GPA	Global Political Agreement
GNU	Government of National Unity
MDC	Movement for Democratic Change
MDGs	Millennium Development Goals
MWAGCD	Ministry of Women Affairs, Gender and Community Development
NCA	National Constitutional Assembly
SADC	Southern African Development Community
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WAG	Women's Action Group
WCoZ	Women's Coalition of Zimbabwe
ZANU-PF	Zimbabwe African National Union Patriotic Front
ZDHS	Zimbabwe Demographic and Health Survey
ZLHR	Zimbabwe Lawyers for Human Rights
ZWLA	Zimbabwe Women Lawyers' Association
ZWRCN	Zimbabwe Women's Resource Centre & Network

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Introduction

Women and Constitutionalism

When Zimbabwe's Vice-President Joice Mujuru opened the National Women's Conference on the Constitution in June 2009, she commended the event as a historic moment for the women of Zimbabwe. By participating in the process and influencing the content of a new national constitution, "women", she said, "had the future in their hands".¹

Zimbabwe's recent constitution-making process (2009-2013) was the second attempt at defining national aspirations for democracy and good governance in and through a new constitution.

The first constitution-making process (1999-2000) took place almost 20 years after Zimbabwe became independent. However, this process became entangled in political controversy and issues of legitimacy. First initiated by civil society through the National Constitutional Assembly (NCA) and then taken over and led by government, the draft constitution that emerged received a 'No' vote in the national referendum.

Zimbabwe's first process illustrated one of the salient features of constitution-making in the 21st century:

*A democratic constitution is no longer simply one that establishes democratic governance. It is also a constitution that is made in a democratic process.*²

The country waited almost ten years to try again. "Luck comes with opportunities waited for",³ Vice-President Mujuru told women at the 2009 National Conference, the first gathering convened by the Ministry of Women Affairs, Gender and Community Development (MWAGCD) for women to begin their engagement in the country's second effort to develop a new constitution.

Constitutionalism became a central focus of the wave of democratization set in motion by civil society throughout Africa in the early 1990s. This push was bolstered by the emergence of more political

parties entering a space once dominated by one-party regimes.

Democratic and participatory constitution-making was seen as the route by which nations could articulate their dreams, educate the population and promote a new culture of tolerance, inclusion, participation and democratization.⁴ Constitution-making was also seen as a "powerful tool" for engaging the contentious issues of ethnicity, language, gender, accountability, social justice, difference and identity.⁵

The new constitutionalism, based on the principles of participation, openness, and ongoing conversation challenged the previous paradigm of constitution-making as a specialist process, an undertaking between elites.⁶ Participation and inclusiveness as key elements of a credible process opened the door for women's participation in the constitution-making processes that have taken place since the 1990s.⁷

Constitutionalism and Women's Participation

Citing the work of various scholars, Elizabeth Katz defines *constitutionalism* as societal acceptance of the constitutional rule of law. Katz also notes that constitutionalism refers to several benchmarks of a democratic constitution which include consent of the governed, limited and accountable government, open society, protection of individual rights, and adherence to the rule of law.⁸

Historically, women's participation in constitution-making became more visible during the final decades of the 20th century. A study of constitution-making between 1787 and 1980 in eight different nations, written by or from the perspective of the constitution makers themselves, records no involvement by women.⁹ By the latter part of the 1990s, however, women's participation and the principles of gender equality were central considerations in constitution-drafting.¹⁰

In Africa, women participated in the drafting of the constitutions in Ghana, Mali, Nigeria and Sierra Leone at the time of these countries' independence. During the 1990s, women's participation in constitution-making processes across Africa increased. Since 1990, 38 African countries' constitutions were re-written and six had major revisions.¹¹

Some of the new constitutions were adopted in the negotiations for peace after major conflicts, while others, such as Zimbabwe's, emerged in the context of shifts toward multi-partyism

1 Unpublished report on the National Women's Conference on the Constitution, 19 June, 2009. Harare: Ministry of Women Affairs, Gender and Community Development.

2 Hart, V., 2003.

3 Op.cit. f/n 1.

4 Keynote Lecture by Professor Julius Ihonvbere delivered at the Conference on Constitutionalism in Southern Africa, Southern Africa Research Institute for Policy Studies (SARIPS) Zimbabwe, July 24-27, 2000.

5 Ibid.

6 Irving, H., 2010.

7 Katz, E., 2009.

8 Ibid.

9 Op.cit. f/n 6.

10 Ibid.

11 Tripp, A. M. et al, 2009.

and political opening.¹²

Case studies of constitution-making processes from the 1990s onwards illustrate that women's involvement significantly influences the regulative, constitutive and transformative aspects of constitution-drafting. Women's voices influence the final contents, and raise awareness and discussion, especially on formerly taboo "private" issues. Such participation also empowers women by bringing those who may have been politically inactive into a nationwide discussion of society's goals and values; and women's participation adds to constitutional legitimacy.¹³

Women have been involved in constitution-making processes as members of the organizations that lead these processes; as members of the drafting teams; and as members of an active, organized and inclusive women's lobbying movement.

In all of Africa's new constitutions since the 1990s, for example, women's participation has influenced the inclusion of non-discrimination or equality provisions and the prohibiting of customary practices if they undermined the dignity, welfare, or status of women. In constitutions passed prior to 1990, and where women's influence was lacking, customary law was not subject to any gender-related restrictions.¹⁴

The institutionalization of an international women's movement and opportunities for networking and sharing experience through events such as the United Nations' World Conferences on Women have provided motivation and support to women to seek out the formative

moment of constitution-making in order to ensure gender fairness in any new regime.¹⁵

These processes also paved the way for women to unite across all party lines and demographic categories,¹⁶ a significant feature of women's participation in Zimbabwe's 2009-2013 constitution-making process. Zimbabwean women forged a "unity of purpose on the women's agenda"¹⁷ to demand the inclusion of strong gender equality and women's rights provisions in the country's new constitution. The draft constitution received a 'Yes' vote in the March 2013 referendum, and was adopted and signed into law by the President of the Republic of Zimbabwe on 22 May, 2013.

This study traces women's journey towards a "Politics of Engagement" in the country's second constitution-making process. This journey begins with some reflections on women's participation and experiences in the 1999-2000 process, which provided women with valuable lessons. Women played a role in the outcome of both processes, and their participation and experiences are recounted through their voices and perspectives.

The study also documents the factors that influenced the gender equality and women's human rights content in the new constitution and provides a gender-constitutional analysis of the strengths and gaps. This analysis also looks at the principles governing the drafting of the new constitution, and discusses how the provisions are aligned to the international and regional gender equality and women's rights

15 Op.cit. f/n 2.

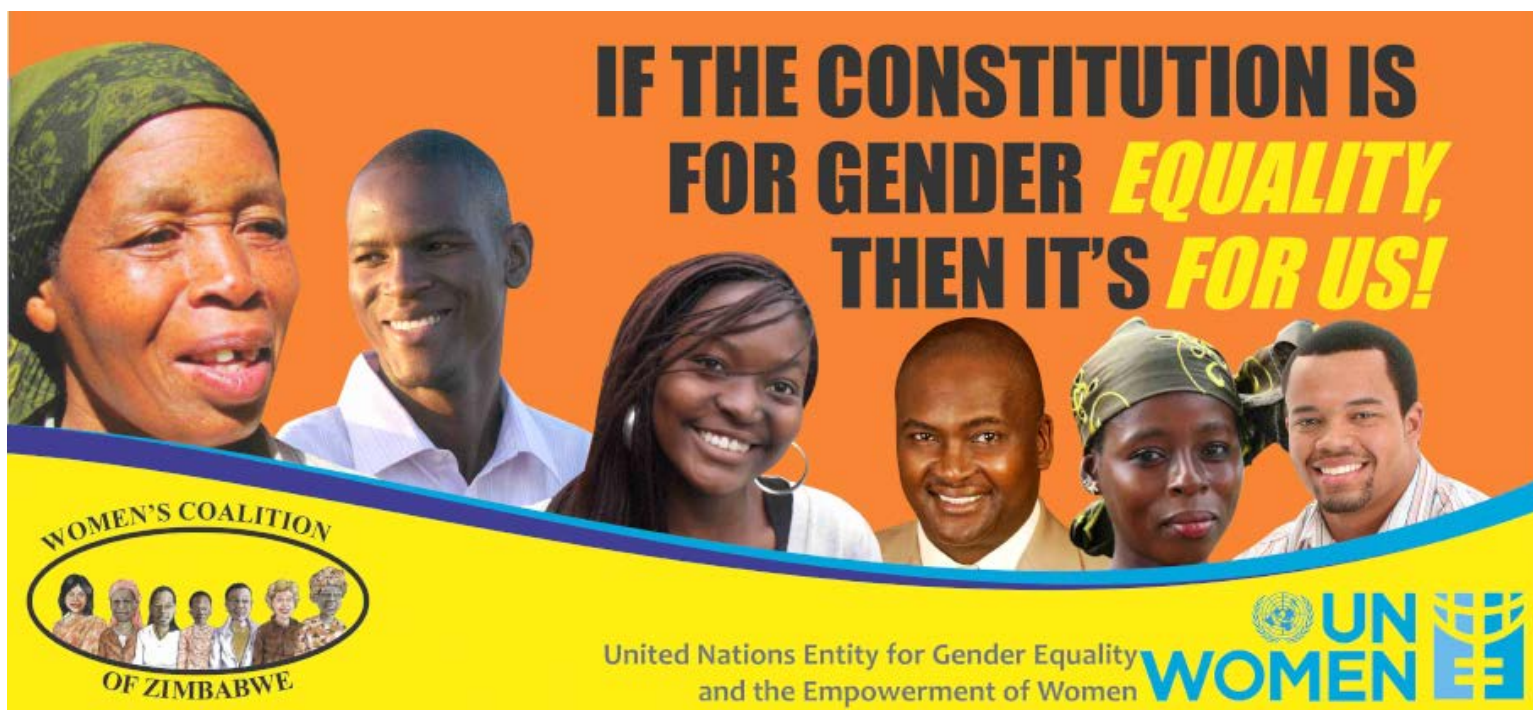
16 Ibid.

17 Quote from the Opening Speech by Zimbabwe Vice-President Joice Mujuru at the 2009 National Women's Conference on the Constitution, June 2009.

12 Ibid.

13 Op.cit. f/n 7.

14 Op.cit. f/n 11.



instruments Zimbabwe has signed and ratified.

Finally, the study highlights some of the lessons that will shape women's actions as they take steps to ensure that the new constitution makes a difference in the lived realities of Zimbabwean women.

The structure of this document is as follows:

Section One: GENDER EQUALITY, WOMEN'S RIGHTS AND WOMEN AND CONSTITUTIONALISM IN ZIMBABWE

Chapter 1: Gender Equality and Women's Rights – from Lancaster House to the Global Political Agreement provides an overview of the limitations to women's rights and gender equality in the country's Lancaster House Constitution, and of the factors that influenced the two constitution-making processes.

Chapter 2: Women's Participation in Constitution-making in Zimbabwe illustrates the different ways in which women participated in the constitution-making processes, and shows the development of the movement's engagement with governance processes. This chapter also highlights the various roles of the country's national machinery, and that of a unique lobbying group, the G-20, that emerged in the 2009-2013 constitution making process.

Section Two: GENDER EQUALITY AND WOMEN'S RIGHTS PROVISIONS IN THE NEW CONSTITUTION

Chapter 3: Equality and Non-discrimination analyses the clauses that provide for women's rights and entitlements and shows the movement from the Lancaster House Constitution towards a constitution that subjugates customary law and culture to the Bill of Rights.

Chapter 4: Sharing Power – Zimbabwe's First Constitutional Measure for increasing women's representation in decision-making provides an overview of the provisions and principles for achieving gender equality in decision-making, and gives insights into the negotiations for an electoral gender quota.

Chapter 5: Women's Constitutional Gains in Freedom from Violence, Sexual and Reproductive Health Rights, and Socio-economic Rights looks at how the new constitution addresses issues that affect the day-to-day lives of Zimbabwean women.

Chapter 6: Conclusion – Vigilance and Monitoring highlights the women's movement's areas of focus as they push for the implementation of the gender equality and women's rights provisions in the new constitution.

Gender Equality, Women's Rights and Women and Constitutionalism in Zimbabwe

CHAPTER 1: Gender Equality and Women's Human Rights – from Lancaster House to the Global Political Agreement

Zimbabwe's first constitution, the Lancaster House Constitution, ushered in freedom and independence for Zimbabwe, but did little to guarantee and protect women's rights and entitlements as citizens. Gender equality and women's rights did not feature at all in the constitutional negotiations between the liberation movements and the British.¹

Adopted in 1979, the Lancaster House Constitution was to serve as a temporary place-holder until a considered constitution-making process could take place. However, it remained in force for 34 years and was amended 19 times.

The Lancaster House Constitution contained no acknowledgement of substantive equality between men and women, no mandate for affirmative measures to remedy and address past gender discrimination, no guarantee of socio-economic rights to promote women's equality, no commitment to addressing domestic violence and no guarantee of reproductive rights.

It took 27 years before gender and sex were listed as grounds for non-discrimination under Section 23, which prohibited discrimination based on a list of protected attributes. And, even after sex and gender were added as grounds for non-discrimination, constitutional protection was limited to those areas that did not touch on personal

law or customary practices.²

This narrow prohibition on discrimination significantly curtailed women's constitutional rights. The two exclusions of customary practices and personal law summarily placed outside of constitutional review many areas most relevant to women's equality, including marriage, divorce, adoption, custody, burial, inheritance and land acquisition.

Without constitutional protection, women struggled to bring the practices that caused their inequality within the purview of legal frameworks. Women's legal equality was advanced in a piecemeal manner, law by law and practice by practice. Some legislation was passed that advanced women's rights,³ while other laws further entrenched gender discrimination.

The Guardianship of Minors Act in 1961,⁴ for example, conferred preferential guardianship of minors to fathers, and the Citizenship of Zimbabwe Act of 1984⁵ distinguished between men and women in the parents' rights to pass on citizenship to their children.

Cultural practices that infringed on women's rights such as *lobola* (where a groom's family pays a dowry to the bride's family)⁶ and *kuri-pa ngozi* (where a young girl is offered to an individual to appease a spirit),⁷ though recognized as often being practiced in a manner that discriminated against women and girls, were considered outside constitutional regulation.

State legal frameworks accommodating customary law developed in parallel with constitutional law which caused a continued erosion of women's rights, especially in rural communities where a large ma-

1 Interview with Dr Ibbo Mandaza, head of the Southern African Political Economy Series (SAPES) Trust, who attended the Lancaster House talks.

2 See Section 23(3), Lancaster House Constitution of Zimbabwe (1979-2013).

3 See Legal Age of Majority Act, Matrimonial Causes Act, Sexual Offences Act, Administration of Estates Act, and Prevention of Discrimination Act.

4 Act No. 34 of 1961 as amended through Act No. 9 of 1997 (Chap. 5:08).

5 Act No. 23 of 1984 as amended by Act No. 7 of 1990 (Chap. 4:01).

6 CEDAW Committee Concluding Observations 2003, para 141.

7 <http://www.ipsnews.net/2009/09/zimbabwe-virgins-forced-into-marriage-to-appease-evil-spirits/>

jority of women reside.⁸ Traditional leaders, most of whom are men, were the custodians of customary law and they entrenched cultural norms, values and practices that strengthened the unequal gender-power relations between women and men.

In 1991, Zimbabwe acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), without reservations.

As a signatory to CEDAW, Zimbabwe committed to the belief that women and men would be equal before the law and that discrimination against women would be eliminated. All state parties agreed to “condemn discrimination against women in all its forms, and agreed to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women.”⁹ State parties agreed also specifically to “embody the principle of the equality of men and women in their national constitutions or other appropriate legislation... and to ensure... the practical realization of this principle.”¹⁰

On the issue of customary practices, Zimbabwe also undertook obligations to take all appropriate measures to “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”¹¹

Even after CEDAW was ratified by Zimbabwe, women struggled to seek recognition of gender equality. Women leaders recognized that without a constitutional mandate of non-discrimination, substantive gender equality would remain an elusive dream.¹²

Zimbabwe has reported twice to the CEDAW Committee, and each time the Committee has recognized the crippling effect of Section 23 on women’s rights. In 2003, the Committee expressed concern at the lack of protection women enjoyed in the areas of customary law.¹³

In 2012, the Committee called on Zimbabwe “to urgently repeal section 23.3 of the Constitution that allows discrimination based on sex/gender in matters that fall within the provisions of personal and customary law”; and to “[i]nclude in its Constitution . . . a Bill of Rights for women that guarantees the human rights of women under the Convention and the prohibition of discrimination against women, which

encompasses both direct and indirect discrimination in the public and private spheres.”¹⁴

Magaya v. Magaya – A Landmark Case

In 1999, the Zimbabwe Supreme Court issued a decision in a case, *Magaya v. Magaya*,¹⁵ that starkly highlighted the consequences of Section 23(3) on women’s equality. In *Magaya*, a 58-year-old seamstress brought suit against her half-brother for ownership of her deceased father’s land after her brother evicted her from their home. Ms. Magaya was the oldest sibling and therefore, but for her sex, would have been entitled to inherit the land. She claimed that the customary law exclusion of her as a potential inheritor violated the Zimbabwean Constitution, citing specifically the *Administration of Estates Act, Amendment Act No 6 of 1997*.¹⁶

The Zimbabwe Supreme Court ruled unanimously that women were not able to inherit land, because of, amongst other factors, the consideration in African society that women were not able to look after their original family (of birth) because of their commitment to the new family (through marriage). The court based its decision on Section 23(3). This decision maintained the minority status of women in inheritance matters opening the door to discrimination against them.

The *Magaya* decision caused widespread concern both domestically and internationally in the women’s rights community.¹⁷ The Zimbabwe women’s movement campaigned against the decision, drafting letters and holding protests before the Supreme Court.¹⁸

In the meantime, Zimbabwe continued to signal a commitment to gender equality and women’s rights through the ratification of the Protocol to the African Union Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) in 2008 and the Southern African Development Community Protocol on Gender and Development (SADC Gender Protocol) in 2009. The country has not ratified the Optional Protocol to CEDAW.

The SADC Gender Protocol was developed to reflect member states’ commitment to eliminating discrimination on the basis of gender under CEDAW and under Article 6(2) of the SADC Treaty.¹⁹

8 Zimbabwe’s 2011 Labour Force Survey shows that 68.6 percent of Zimbabwe’s population lives in the rural areas and women comprise 52 percent of the population living in the rural areas.

9 CEDAW Article 2 available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>.

10 CEDAW Article 2 (a).

11 CEDAW Article 2 (f).

12 <http://www.ipsnews.net/1997/03/zimbabwe-human-rights-the-struggle-is-far-from-over/>

13 CEDAW Committee Concluding Observations Dec 2003, para 139, available at http://www.bayefsky.com/html/zimbabwe_t4_cedaw.php

14 CEDAW Committee Concluding Observations, Feb 2012, 51st session. Para. 14 available at http://www.bayefsky.com/pdf/zimbabwe_t4_cedaw_51_2012.pdf

15 1999 (1) ZLR 100.

16 The Administration of Estates Act, Amendment Act No 6 of 1997 provides for the surviving spouse(s) and the children of a deceased person as major beneficiaries.

17 Bigge, D. M. and A. von Briesen, 2000.

18 <http://www.ipsnews.net/1999/06/rights-zimbabwe-denying-women-the-right-to-inherit-sparks-debate/>, June 12, 1999, IPS.

19 See SADC Protocol on Gender and Development available at http://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf

The signatories to the regional gender equality and women's rights instrument made specific commitments to engage in affirmative action to promote gender equality²⁰ and to harmonize all legislation with international human rights standards for women's equality.²¹

Signatories also agreed to adhere to the SADC Gender Protocol's 28 progressive targets for combating discrimination including, among others, enshrining gender equality in their constitutions;²² ensuring women occupy 50 percent of decision-making positions in the private and public sector using affirmative action measures;²³ the revision, amendment and repeal of all sex or gender discriminatory laws;²⁴ ensuring equal participation of women and men in economic policy formulation and implementation;²⁵ and adopting integrated approaches to reduce gender-based violence (GBV) by half.²⁶ All of these targets are to be achieved by 2015.

Zimbabwe's signing and ratification of these instruments was, however, limited by Section 111(b) of the Lancaster House Constitution, which required an Act of Parliament to domesticate international law.²⁷ Zimbabwe therefore never fully aligned its supreme law to the international and regional normative frameworks for achieving gen-

der equality and women's rights.

The impact of limited constitutional protection for women

Strengthening the constitutional provisions for gender equality and women's human rights is essential for putting in place the foundation for accountability to gender equality and women's rights in the public and private spheres.

Constitutional law shapes the understanding of the public and private, and elaborates the principles that apply to this distinction; the way the public-private distinction applies in other spheres is the product of constitutional foundations.²⁸

More than 30 years after independence, the political, social and economic status of women in Zimbabwe remains low and in some areas is declining. The 2012 Census shows that women comprise 52 percent of Zimbabwe's 12,973,808 people.

Gender inequalities are evident in the decline in educational enrolments at secondary and tertiary levels for girls, rising maternal mortality rates, high incidences of gender-based violence and the low percentage of women in formal employment. The under-representation of women in leadership positions in the public sphere also illustrates the continued unequal gender power relations that are reinforced by gender and socio-cultural biases.

As of June 2012, women were only 14 percent of the members of the National Assembly and 24 percent of the members of the Senate in the country's Parliament; 19 percent of the local government councillors and 20 percent of the members of Cabinet.²⁹ Following the

20 SADC Protocol, Article 5.

21 SADC Protocol on Gender and Development, Article 2 – General Principles.

22 SADC Protocol on Gender and Development, Article 4 – Constitutional Rights.

23 SADC Protocol Article 12.

24 SADC Protocol, Article 6.

25 SADC Protocol, Article 15.

26 <http://www.ngopulse.org/article/sadc-gender-protocol-are-2015-objectives-achievable>

27 Lancaster House Constitution, §111(b).

28 Baines, B. et al, 2012.

29 SADC Gender Protocol 2012 Barometer, Zimbabwe, Gender Links and



July 2013 general elections, women's representation in Parliament increased to 35 percent,³⁰ thanks to a special constitutional measure (see Chapter 4). But women are now only 11.5 percent of the members of Cabinet and women's representation in the local government urban and rural councils decreased to 16 percent.

The findings of Zimbabwe's 2010-2011 Demographic and Health Survey (ZDHS) and the 2011 Labour Force Survey (LFS) which provide some of the most recent sex-disaggregated data on the status of women in Zimbabwe further illustrate the disparities in women's socio-economic rights. The LFS shows that in 2011, 31 percent of the economically active men were in paid employment compared to 14 percent of women. Fifty-four percent of the unskilled employed population are women, while 59 percent of the professionals are men.³¹ A large majority of the country's female population resides in the rural areas and is employed in the agricultural sector, where 59 percent of the women are involved in communal farming.³²

One of the most striking signs of women's declining socio-economic status is the rising maternal mortality rates in the country since the 1990s. Maternal mortality, one of the targets of the Millennium Development Goals (MDGs) and an indicator of women's access to basic services and rights, now stands at 960/100,000. Maternal deaths represented 12 percent of all deaths among women aged 15-49 during the seven-year period preceding the 2010-2011 ZDHS, whereas ma-

ternal deaths were only 7 percent of all deaths among women in the 2005-2006 ZDHS.³³

Early marriage of girls is on the rise, with estimates indicating that 21 percent of girls are married before the age of 18.³⁴ Statistics show that early marriages are more prevalent in the rural areas and that marriage before the age of 15 years decreases with education and household wealth.³⁵ Violence against women also is a manifestation of gender inequality and discrimination. Women from all socio-economic and cultural backgrounds are vulnerable to physical and sexual violence. The country's first dedicated study on violence against women, "Peace begins @Home, Violence against Women (VAW) Baseline Study Zimbabwe" (2013), found high levels of violence perpetrated against women.

Over two-thirds (68 percent) of the 3,326 women interviewed had experienced some form of VAW at least once in their lifetime, and

33 Zimbabwe 2010-2011 Demographic and Health Survey.

34 "Married Too Soon: Child Marriage in Zimbabwe", Research and Advocacy Unit, October 2011

35 Data from the 2009 Zimbabwe Multiple Indicator Monitoring Survey report for example shows that 32% of married women or women in a union aged 20-49 years were married before 18 years and of these 39% are in the rural areas compared to 21% in urban centres. The issue of a minimum marriage age law in Zimbabwe, and the harmonisation of the marriage laws, were central issues in women's lobbying for stronger constitutional provisions on marriage and equality in marriages. Section 26 on Marriage of the new constitution obligates the State to ensure that children are not pledged in marriage and Section 78(1) on Marriage Rights states that: *Every person who has attained the age of eighteen years has the right to found a family;* and 78(2) says: *No person may be compelled to enter into marriage against their will.* The government is currently drafting amendments to the law to remove the difference in the minimum age for marriage for girls (16) and boys (18) in order to align them to 18 years for both sexes as stated in the new constitution.

UN Women Zimbabwe; Cabinet is the highest government decision-making body which is comprised of all government ministers. There are 26 members in the Cabinet announced after the 2013 elections and only three of these are women.

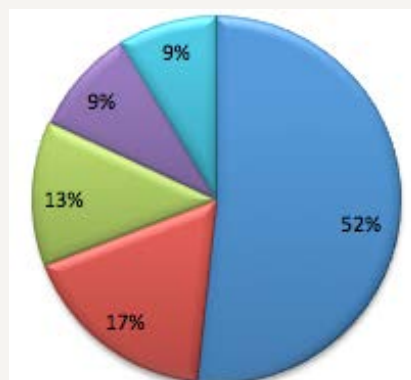
30 Based on ZEC data provided in the *Government Gazette*, August 9, 2013.

31 Zimbabwe 2011 Labour Force Survey, Zimbabwe National Statistics Agency, ZimStat.

32 Ibid.

FIGURE 1 : WHAT ARE THE FIRST FIVE MAIN BARRIERS TO GENDER EQUALITY AND WOMEN'S RIGHTS IN ZIMBABWE?

Culture 52%	■
Education 17%	■
Patriarchy 13%	■
Religion 9%	■
Women lack interest to participate 9%	■



Source: UN Women Zimbabwe 2012 Survey

69 percent of the women reported lifetime experience of Intimate Partner Violence (IPV), the most common form of VAW.³⁶

Prior to the baseline study, data in the 2010-2011 ZDHS showed that 30 percent of women between the ages of 15 and 49 reported an experience of violence since the age of 15 and 27 percent of women in the same group had experienced sexual violence. Forty-three per-

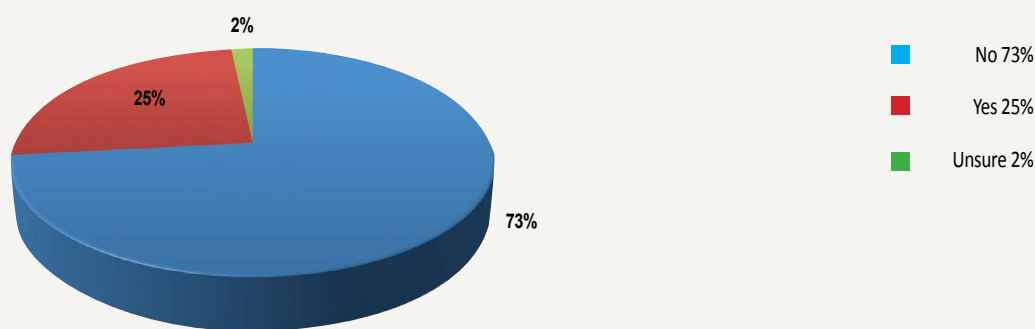
cent of women had experienced physical or sexual violence or both.³⁷

The high prevalence of violence against women and girls in the country points to the limited protection of women's fundamental human rights in Zimbabwe's constitution and legal frameworks prior to the adoption of a new Constitution in 2013. The 57th session of the Commission on the Status of Women (CSW) stressed that the realization of gender equality and the empowerment of women, including women's economic empowerment, and their full integra-

36 "“Peace begins @ Home, Violence against Women Baseline Study.””. Harare: Ministry of Women Affairs, Gender and Community Development and Gender Links, 2013.

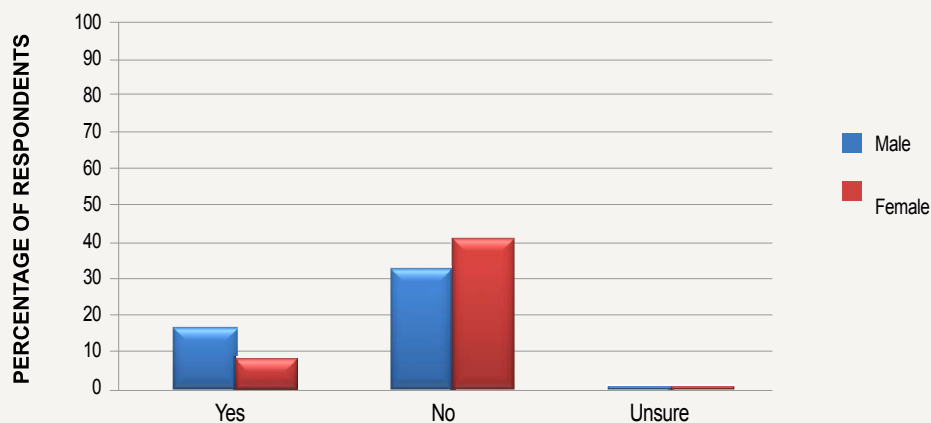
37 Zimbabwe 2011 Labour Force Survey, Zimbabwe National Statistics Agency, ZimStat.

FIGURE 2: ARE YOU AWARE OF CEDAW?



Source: UN Women Zimbabwe 2012 Survey

FIGURE 3: ARE YOU AWARE OF CEDAW BY SEX?



Source: UN Women Zimbabwe 2012 Survey

tion into the formal economy, in particular economic decision-making, as well as their full and equal participation in public and political life, are essential for addressing the structural and underlying causes of violence against women and girls.³⁸

Discrimination against women and the violation of their rights hinder the country's efforts to achieve the targets of the MDGs and the SADC

38 Commission on the Status of Women, Report on the Fifty-Seventh Session (4-15 March 2013), Economic and Social Council Official Records, 2013 Supplement No. 7.

Gender Protocol. Cultural norms, customary practices, and the unequal control, ownership of and access to resources have remained sites of discrimination against women.³⁹

In a small survey conducted by UN Women Zimbabwe at the end of 2012, culture, which was protected as a ground for discrimination against women in the Lancaster House Constitution, is identified by Zimbabwean women and men as the main barrier

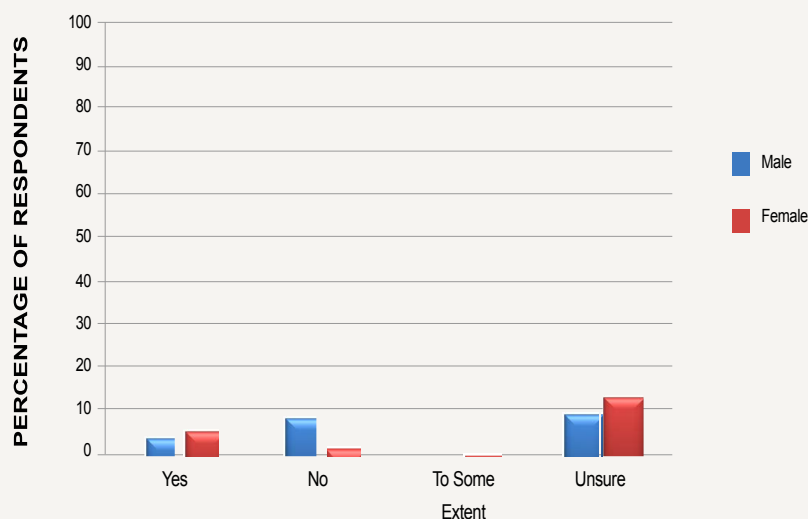
39 Combined Report of the Republic of Zimbabwe in terms of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2009.

FIGURE 4: DOES THE CURRENT CONSTITUTION PROTECT AND PROVIDE FOR WOMEN'S HUMAN RIGHTS?



Source: UN Women Zimbabwe 2012 Survey

FIGURE 5: DOES THE CURRENT CONSTITUTION PROTECT AND PROVIDE FOR WOMEN'S HUMAN RIGHTS BY SEX?



Source: UN Women Zimbabwe 2012 Survey

er to achieving gender equality and women's rights.⁴⁰ (See Figure 1, p. 7.)

The survey also showed that the respondents had little knowledge of whether gender equality and women's rights are provided for in the Lancaster House Constitution (see Figures 4 and 5, p.9.), and the

⁴⁰ For the purposes of this study, UN Women Zimbabwe conducted a small survey among 120 male and female respondents (60 men and 60 women) in four locations across the country – Harare (the capital city), Bulawayo (the second largest city, in the southern part of the country), Mutare (located in the eastern part of the country) and Binga (a remote town in the Matebeleland North Province).

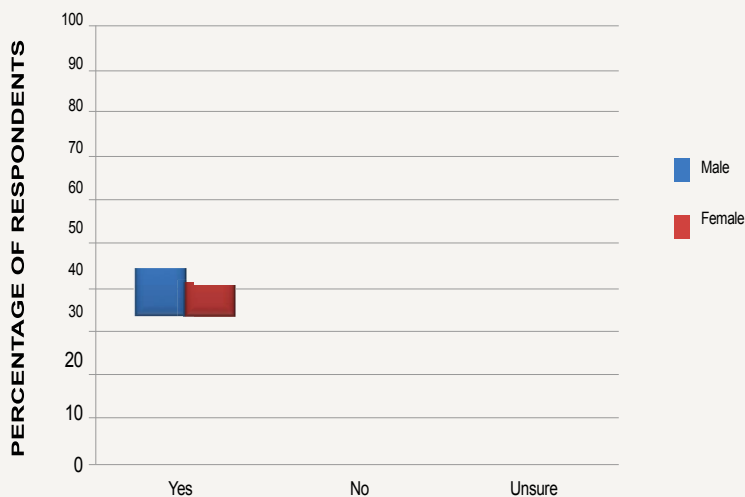
reform process.

Gender equality and women's rights in the 1999-2000 Draft Constitution

Zimbabwe's first effort at constitutionalism was initiated by the NCA, a collective of academics, civil society, trade unions, churches and political leaders, which was formed in 1997.

The NCA's aim was to engage with the public on social issues in the context of developing a new constitution in a process that was to be

FIGURE 6: ARE GENDER EQUALITY AND WOMEN'S RIGHTS CONSTITUTIONAL ISSUES BY SEX?



Source: UN Women Zimbabwe 2012 Survey

majority (73 percent) had no knowledge of CEDAW having been ratified by the government over 22 years ago (See Figures 2 and 3, p.8). There is, however, a higher knowledge of CEDAW and of the extent to which the Lancaster House Constitution does provide for women's rights among women who are active within the gender equality and women's rights sector, and who have been active within the women's movement. For example, 95 percent of the key informants⁴¹ surveyed in this study had knowledge of CEDAW and of its articles and provisions.

The majority (83 percent) of the women and men respondents interviewed by UN Women Zimbabwe in its survey do believe that gender equality and women's rights are constitutional issues (See Figure 6).

Women's first chance at transformative change through the Constitution came in 1999 when Zimbabwe started its first constitutional

participatory and people-driven. Members from civil society who participated in the NCA highlighted in interviews that the early stages of the 1999 process reached people on the shop floors, in the churches, and under trees in communities throughout the country. These dialogues and discussions focused on the importance of a new constitution for transforming the country's systems of governance, expanding and ensuring people's rights, and creating the mechanisms for the rule of law.

This process was then adopted by government and a 400-member commission was put in place to draft a new constitution ensuring wide public consultation. The transfer of the process from the NCA to the government was a highly contentious one and, largely as a result of political dynamics and civil society's mobilization against the process, the 2000 draft constitution produced by the constitutional commission was rejected by the public.

Ironically, the gender equality and women's rights provisions in the 2000 draft were a dramatic improvement on the Lancaster House Constitution and generally compliant with international

⁴¹ The key informants interviewed included women working in gender equality and women's rights civil society organizations, women academics and lawyers who have participated in Zimbabwe's constitution-making processes as former commissioners, technical advisers and members of lobbying groups, female parliamentarians, and female politicians.

human rights standards. From its basic framework, which included gender inclusive pronouns of “he or she” and “him or her”⁴² to its definition of non-discrimination, women’s subjugation was constitutionally prohibited.

The 2000 draft also committed the government to a number of constitutional goals that directly and indirectly empowered women. These included socio-economic goals including food security, the environment, work and employment, education, shelter and health.⁴³ Gender balance in all areas of leadership and in the acquisition of and access to land and resources was identified as a national objective.⁴⁴ Most significantly, the 2000 draft eliminated section 23(3) and replaced it with a robust non-discrimination provision that provided no exclusions for customary and private matters. Finally, undoubtedly influenced by developments in international law, the 2000 draft identified gender-based violence as a form of torture and degrading treatment.

Some of the equality language contained in the 2000 draft can also be attributed to the cultural and social evolution on the issue of women’s rights. However, many of the female members of the constitutional commission recall that these provisions did not come easily, and that the environment within the male-dominated commission was not inherently conducive to discussions about women’s rights. Documentation from the 1999-2000 process reveals that the legal committee struggled with basic concepts such as the distinction between sex and gender.⁴⁵

The vote against the 2000 draft was a protest vote against the then government and the constitution-making process, which was considered flawed and not transparent. Women activists interviewed agreed that it was important to mobilize against the process, but they also admit that in doing so, they did not pay particular attention to the contents of the 2000 draft. It took almost ten years before an opening presented itself for women to engage again with the process of designing a new constitution for Zimbabwe.

The Global Political Agreement

Zimbabwe’s second constitution-making process was ushered in by the country’s rocky shift from a one-party state to a multi-party government.

In September 2008, with support from SADC, the Global Political Agreement (GPA) was signed by the country’s three main political

parties – Zimbabwe African National Union – Patriotic Front (ZANU-PF), the Movement for Democratic Change – Tsvangirai (MDC-T) and the Movement for Democratic Change (MDC).⁴⁶

The GPA served as a basis for power sharing and co-operation between the political parties. As part of the agreement, the parties outlined a process for developing a constitution that would lay the foundation for a democratic and peaceful society.⁴⁷

Article 6 of the GPA required the formation of a Constitution Select Committee (COPAC) and the development of a new constitution within 20 months of the agreement. The GPA identified the importance of creating a constitution that ensured equality of all citizens and “particularly the enhancement of full citizenship and *equality for women*.”⁴⁸ COPAC was officially inaugurated in April 2009, within two months of the deadline set by the GPA.

Women’s organizations were quick to recognize this agreement as an opportunity for women’s constitutional rights, and worked with clear purpose to ensure their suggestions were adopted. In fact, women’s groups were the first of the civil society organizations to commit to engagement in the COPAC process.⁴⁹

Zimbabwe’s second process ended with a new constitution in 2013. Both the process and the content were validated in a March 16 referendum with 95 percent of those who voted casting a ‘Yes’ vote.

42 See 2000 Constitutional Reform Process Volume 2(1), p. 3 and p. 369 (making changes throughout the document to add gender neutral language).

43 2000 Draft Constitution - Founding Principles and Values.

44 Ibid.

45 2000 Constitutional Reform Process, Volume II (1), p. 345 (explaining differences between sex and gender).

46 http://www.osisa.org/sites/default/files/sup_files/SADC's%20Role%20in%20Zimbabwe.pdf

47 Global Political Agreement, Article 6 on the Constitution.

48 Ibid.

49 Interview with Netsai Mushonga, the former co-ordinator of the Women’s Coalition.

CHAPTER 2: Women's Participation in Constitution-making in Zimbabwe

Zimbabwe's constitution-making processes provided a steep learning curve for women. The journey was laden with fractures and friction, which women had to rise above in order to unite and achieve a singular focus on pushing a women's agenda during the country's second constitution-making process.

Women's engagement in both constitution-making processes took several forms: women were among the members of the constitutional commissions and committees at various levels; they participated as citizens providing their views and perspectives on issues to be included in a new constitution during the outreach processes; and they came together under the umbrella of the women's movement to lobby and push through their demands. Some women's organizations also made written submissions to give in-depth analyses of the provisions they wanted to see in a new constitution.

The dynamics of women's participation in the two constitution-making processes varied greatly due to the political environments of the

times and the different approaches women took to building alliances and coalitions. Women shifted from what Perpetua Bwanya, the first female and second co-ordinator of the NCA, coined as a "politics of boycott" during the 1999-2000 process to a "politics of engagement"¹ during the COPAC-led process (2009-2013).

Women's Representation in Constitution-making Processes

Given that both of Zimbabwe's constitution-making processes took place after 1990, the processes sought to be participatory and inclusive. The first also started four years after the 1995 United Nations World Conference on Women and Development held in Beijing. Zimbabwean women in government and civil society who attended this conference began to put the issue of women's participation and representation in governance processes on the national agenda.

"Leading up to the 1999 process, the country was on an upward swing in terms of political consciousness and women's rights and we were beginning to see the fruits of the women's movement breaking down the invisible barriers [cultural beliefs and attitudes] to gender equality and women's rights," said Zimbabwean feminist activist Everjoice Win.²

Women were represented among the commissioners in the 1999-2000 process and as members of the COPAC full committee (See Ta-

¹ Interview with Perpetua Bwanya.

² Interview with Everjoice Win.

TABLE 1: REPRESENTATION OF WOMEN ON CONSTITUTION-MAKING BODIES

1999-2000 Constitution-Making Process			
Position	Total number of members	Number of women	% Women
Commissioners	400	52	13%
Legal/Final Critiquing Committee of Draft Constitution	15	3	20%
2009-2013 COPAC-led Constitution-Making Process			
Position	Total number of members	Number of women	% of Women
COPAC Management Committee	10	1	10%
COPAC Select Committee	25	8*	32%
Committee of Seven	6	1	16%
Principal Drafters	3	1	33%
Sources: Reports of the National Commission of Inquiry into the Establishment of a New Democratic Constitution (1999-2000); COPAC national reports on the 2009-2013 Constitution-making Process			
*Initially there were eight women, but one died during the process and was not replaced.			

ble 1). Much of the documentation provided for review on the two constitution-making processes did not disaggregate participation and representation by sex.

In the 1999-2000 process, commissioners were appointed by government. Members of the COPAC committees were Members of Parliament and representatives of the three main political parties that negotiated and signed the GPA.

There was only one woman on the COPAC Management Committee, which gave policy and strategic direction to the process, as well as serving as a deadlock-breaking mechanism. The same woman, who was a government minister in the 2008-2013 Government of National Unity (GNU) and the Secretary-General of the MDC, sat on the Committee of Seven, established by the Principals to the GPA (leaders of the three main political parties) to break the deadlock on the areas in the draft constitution which had not been agreed upon during the October 2012 Second All Stakeholders Conference. This Committee consisted of three Cabinet Ministers, one from each of the parties to the GPA, the Co-chairs of the Select Committee and the Minister of Constitutional and Parliamentary Affairs as the convener and chair.

Women participated in large numbers in the outreach meetings that took place during the two constitution-making processes. Women activists within the NCA used many participatory approaches to help women understand the constitution-making process. "Rather than the more technical chapter-and-verse approach, we would ask women 'what are the things that keep you up at night?' and then link these

issues to how a new constitution would help them," said Win, who participated in the NCA.

Women's participation was considered essential also in the second constitution-making process and there was a deliberate attempt to target women and ensure that their voices and perspectives were captured.³

In the COPAC-led process, for example, some 4,943 meetings, which took 95 days to complete, were held across the country. Table 2 below shows the participation of women across the ten provinces of Zimbabwe in the meetings to gather the voices and perspectives of the population on areas they wanted to see in a new constitution.

Women from gender equality and women's rights groups also observed the outreach meetings to hear women's concerns, and the Women's Coalition of Zimbabwe (WCoZ), a membership organization of civil society organizations in the gender equality and women's rights sector, petitioned COPAC to increase the presence of women on the public outreach groups from less than 10 percent to 25 percent.⁴

Women who attended the COPAC teams' public consultations indi-

3 Interview with Dr Olivia Muchena, former Minister of Women Affairs, Gender and Community Development; constitution commissioner in the 1999-2000 constitution-making process.

4 Interview with Netsai Mushonga; Interview with the Hon. B. Nyamupinga, former chair of the Zimbabwe Women's Parliamentary Caucus and chair of the Group of 20.

TABLE 2: PARTICIPATION IN COPAC OUTREACH MEETINGS BY PROVINCE AND SEX

Province	No. of meetings	Total No. of participants	No. of males (36+)	No. of females (36+)	No. of youth (15-35)	No. of special needs	Females as a % of total participants
Mashonaland East	567	181,756	60,158	69,733	50,400	1,465	38%
Mashonaland West	509	121,647	55,034	44,148	22,119	346	36%
Manicaland	677	152,130	57,828	67,760	24,911	1,631	45%
Matabeleland South	477	48,211	19,248	21,602	7,142	219	45%
Mashonaland Central	652	214,023	71,965	77,284	63,482	1,292	36%
Matabeleland North	614	53,077	20,905	20,605	11,246	321	39%
Masvingo	622	184,208	64,960	76,267	41,053	1,928	41%
Midlands	672	102,453	43,842	42,690	15,515	406	42%
Harare	96	49,699	17,541	17,192	14,761	215	35%
Bulawayo	57	11,556	4,791	3,957	2,611	197	34%
Total	4,943	1,118,760	416,272	441,234	253,240	8,020	39%

Source: COPAC Report to the Parliament of Zimbabwe, February 2013

cate that both women and men raised equal representation of women in decision-making positions as an issue for consideration in a new constitution. They also noted that while women had a presence, they did not necessarily have a voice. In some cases, women would raise non-constitutional issues, and women's issues were articulated by men.⁵

When women did speak, however, they consistently talked about the issues that affect their day-to-day lives. Although they did not label their concerns as women's rights, most of the issues raised pertained to their socio-economic rights and security of person. These included violence against women and girls, access to affordable healthcare and maternity health services, access to land, equal treatment within marriages, specifically polygamous marriages, the rights and protection of widows, ownership of property, harmful traditional laws and customs, and cultural practices such as wife pledging.⁶

Gender equality and women's rights activists who participated in both processes noted a shift in awareness among women and men in the general population on gender issues. "Equal opportunity for women and gender equality is more accepted now than before. There is a shift in the population which has more understanding of gender issues due to all the advocacy and education that has taken place since 2000," said Selina Mbenegwi, who served as the director of the Women's Action Group (WAG) during the first constitution-making process.⁷

Advocate Choice Damiso was contracted by the women's movement to research women's concerns expressed during the public consultations and to synthesize these into a draft position paper for the movement. Damiso categorized the women's concerns into four major areas thereby providing the overarching framework for crafting the gender equality and women's rights provisions to be included in the constitution. These were: a need for protection; a need for equality – where there is no form of discrimination based on gender, race, religion, sex or disability; a need for inclusion particularly in decision-making; and a need for protection.⁸

The participation of women in the two All Stakeholders Conferences held during 2009–2013 was hard to determine, since the participants' lists were not disaggregated by sex and delegates were not required to disclose their sex on the registration forms for the conferences.

5 Unpublished Report of the Women's Parliamentary Caucus Constitutional Engagement Workshop, 19–21 June, 2011, hosted by ZWLA, WIPSU, WCoZ and the Zimbabwe Women's Parliamentary Caucus; interview with Emilia Muchawa, former director of the Zimbabwe Women Lawyers Association.

6 Interview with the Hon. B. Nyamupinga, MP.

7 Interview with Selina Mumbengegwi, former director of the Women's Action Group.

8 Unpublished Report of the Women's Parliamentary Caucus Constitutional Engagement Workshop, 19–21 June, 2011

However, the largest numbers of delegates in the Stakeholders Conferences came from the three main political parties. Women outside of these structures found that spaces for them to attend were limited.

The first Stakeholders Conference in July 2009 was marred by violence. The second, held in October 2013, was tightly managed to prevent a repeat performance of the first. This gathering was significant, because it provided the first opportunity for review and inputs into the COPAC July 2012 first draft of the new constitution. "Political parties drove the participation of women as delegates in the Second All Stakeholders Conference. Women from civil society were classified as observers," said Naome Chimbetete, former director of the Zimbabwe Women's Resource Centre and Network.

Women civil society observers also attended the second conference "under a lot of protest".

We protested outside of the COPAC offices for a day to go in as independent delegates. We were being encouraged by officials to get our names added to the list of political parties and to go in under the political party banner, but we felt this would compromise us,

said Netsai Mushonga, former National Co-ordinator of WCoZ. Women comprised only about 300 of the more than 1,000 delegates.⁹

The Women's Movement and its Role in Constitution-making in Zimbabwe

The birth of the Women's Coalition

When the NCA was formed in 1997, women's organizations were among the civil society groups within this broad alliance pushing for constitutional reform. The NCA was not, however, a gender-friendly space.

Women recalled being unable to voice a gender agenda within this space. They consistently pushed for better representation of women within the NCA, and at the General Assembly held in June 1999 eight women out of eighteen were elected onto the NCA task force.¹⁰ When the NCA chair-elect Morgan Tsvangirai stepped down to concentrate on the formation of the Movement for Democratic Change (MDC), the female deputy chair, Thoko Matshe, was unanimously supported to head the NCA.¹¹

While a woman from within the women's movement became the leader of the NCA, women began to view the organization as aligned to the MDC and no longer as an independent forum for pushing constitutional reform. In June 1999, more than 60 women activists,

9 Interview with Netsai Mushonga; interview with Naome Chimbetete, former director of the Zimbabwe Women's Resource Centre and Network.

10 Essof, S., 2013.

11 Ibid.

researchers, academics and representatives from 30 women's organizations and other human rights groups launched the Women's Coalition.¹²

The then president of the Zimbabwe Women Lawyers Association (ZWLA), Lydia Zigomo-Nyatsanza, explained that "[w]e have formed a women's coalition group which is going to be lobbying and monitoring the constitutional reform process very carefully to ensure that women's rights issues are incorporated. If we can get our laws right, our constitution right, then it limits what judges can do in court [in reference to the *Magaya v. Magaya* decision]".¹³

But, as Zimbabwe's first constitution-making process got under way, gender equality and women's rights issues took a back seat to the emergence of a new political order. The rising opposition politics of the period and the introduction of the government-led Constitutional Commission became major tests of the women's movement's ability to accommodate a diversity of positions within its ranks.

When the Constitutional Commission was appointed, women from within the movement were appointed as commissioners and chose to engage in this space to push the agenda of gender equality and women's rights. These women were perceived as being politically aligned to the ruling ZANU-PF. Women who remained within the NCA were considered aligned to the MDC, and while the Women's Coalition sought to maintain its independence, it too became embroiled in partisan politics, because of its stance against the government-led constitution-making process.

These fractures affected women's collective participation and input into the content of the 2000 draft constitution. "The nature of women's participation in the 1999-2000 constitution-making process was fraught with tension," says feminist legal scholar Dr Amy Tsanga, who served as a commissioner during the first process.

*One of the major complaints was that the number of women appointed to the constitution commission was low in relation to their numbers in the population, but the women who became commissioners felt that we should make use of the opportunity and space even if in limited numbers. The majority of the women's organizations were of the view that participation was out of the question.*¹⁴

The strong gender equality and women's rights provisions contained in the 2000 draft constitution came primarily from the lobbying of the women commissioners. These provisions did not come easily. The women within the government-led commission, Dr Tsanga said, "un-

derestimated negotiating with patriarchy".

*Every issue met with resistance from the men. The women negotiating within this process came to understand the weaker position the liberation forces were in when negotiating the Lancaster House Constitution with the former colonial power. When you are negotiating as the weaker power, it is difficult to get those with power to give.*¹⁵

The women commissioners' tenacity paid off, leading to the inclusion of strong gender equality and women's rights provisions. Their success was an example of negotiating from within.

As gender-equality leaders later recognized, the relatively progressive gender equality and women's rights provisions in the 2000 draft constitution were unfortunately situated within a politically-charged environment, and this caused the women's movement to reject it. A feminist and political activist at the time of the first process, Priscilla Misihairambwi-Mushonga, now a former government minister and the only woman on COPAC's Joint Management Committee, recalls the difficult decision women made during the 1999-2000 process:

*Women were prepared to suffer and lose these provisions and sacrifice them on the basis of the political position we had taken.*¹⁶

Some in the women's movement later questioned this strategic compromise. Former Deputy Minister of Women Affairs, Gender and Community Development in the GNU, Jessie Majome, is one of the members of the women's movement who chose to be a member of the Constitutional Commission in 1999. Reflecting on the women's stance then, she said the women's movement got so "caught up in the process, they didn't pay attention to the content."¹⁷ She participated in the second constitution-making process as a member of the COPAC Select Committee.

Other women leaders concluded that while their rejection of the 2000 draft constitution was the necessary outcome at the time, they recognize the price they paid.

When I joined the women's movement and became National Co-ordinator of the Women's Coalition in 2003, the polarization [among women] was there. Women who were commissioners were pushed out of the women's movement... We lost the gender agenda [in the first constitution-making process] and allowed politics to divide us as women,

says Mushonga, the former National Co-ordinator of the Women's

¹² Ibid.

¹³ <http://ipsnews2.wpengine.com/1999/05/zimbabwe-courts-u-turn-on-inheritance-law-enrages-women-groups/>, May 15, 1999, IPS.

¹⁴ Interview with Dr Amy Tsanga, Southern and Eastern African Regional Centre for Women's Law, University of Zimbabwe.

¹⁵ Ibid.

¹⁶ Interview with the Hon. Priscilla Misihairambwi-Mushonga.

¹⁷ Interview with the Hon. Jessie Majome, then Deputy Minister of Women Affairs, Gender and Community Development and member of COPAC.

Box 1: LESSONS LEARNT BY THE ZIMBABWE'S WOMEN MOVEMENT FROM THEIR EXPERIENCES IN THE 1999-2000 CONSTITUTION-MAKING PROCESS

Benchmarks. Women must have benchmarks of what their minimum demands are, bearing in mind that it is impossible to get everything they demand. This should inform any decision on whether to accept the Constitution at a referendum or not.

Good negotiators. There must be good negotiators who have clarity on issues and who remain defiant in the face of opposition, noting that the negotiating spaces are based on male chauvinistic norms.

Unity of purpose. Women as a marginalized group should unify and amplify their voices. Fragmentation only serves to give ammunition to the opposition, i.e. through divide and rule. Despite whatever loyalties we may have to male mainstream organizations, parties, etc., in the end our uniting force is that, as women, we face discrimination from men, simply by virtue of being women.

Preparing technical arguments beforehand. Women must have prepared stated positions on critical issues, as well as position papers, in order to defend the policies we may wish to advance. This includes drafting special clauses on the constitution – for instance, on gender, as well as positions on contentious issues such as customary law, and the arguments for the establishment of a Gender Commission.

Crafting a consensus on women's positions. There is a need to review the Women's Charter. In particular the Charter should articulate women's demands beyond the Bill of Rights, i.e. issues that speak to women's demands in relation to other sections of the constitution, e.g. on the preferred electoral systems.

Constitutional literacy. The constitution needs to be unpacked to enable grassroots women to understand it. This will enrich the constitutional debate. Women must also be prepared to decipher the consultations as not all input is relevant to the constitution-making process.

Constituency building. Women need to build a critical mass, i.e. play the numbers game to gain legitimacy on where we derive our mandate.

Research and technical support to women in processes. There must be women who act as a resource to the Women's Parliamentary Caucus providing technical support to the women in the drafting teams.

Media and advocacy strategy. There must be an advocacy and media team to manage the process based on clear strategies.

Engaging sympathetic men. Women need to build alliances with men who support their cause and are able to influence the drafting process. In most instances, men caucus outside meetings and they lead the processes. Men listen to other men when they talk and are quick to take a point from another man, even when it has been previously made by a woman.

Human resource capacity. Constitutional review processes are very involving. There is a need to (i) have full-time programme officers manning the programme, and (ii) a national command centre that manages information deriving from public consultations, and manages processes.

Dedication. The process is taxing and can be at times emotionally draining. In the previous process some women resigned when the attacks became too personal. Women will need to withstand such pressure. Other challenges relate to feedback to and from grassroots women, and managing NGO mercenaries.

Engaging women in mainstream organizations. We need to engage with women in mainstream organizations who may not be members of any women's organizations as they can also influence debates in different fora.

Keeping the momentum. The process is taxing and there is need to maintain momentum.

Involving young women. The [Women's] Coalition needs to involve young women who have less historical baggage.

Regional exchanges. We need to learn from and share experiences with others in the region. For instance, Zambia is also reviewing its constitution, and South Africa's constitution has much that we can learn from. We must review certain specific court judgements based on an interpretation of the existing constitution, as these can inform the basis of women's demands in the new constitution-making process. What, for example, is the effect of having a justiciable Bill of Rights that includes social and economic rights?

Vigilance. Those in the drafting teams must be astute as concessions may be included but later removed without notification.

Training of trainers. There must be a strategy for training other resource persons, i.e. training of trainers.

Mapping. As a nationwide advocacy campaign, the Coalition must first map out the areas where each one of their members is working and note what they are doing. The members can carry out some of the work co-opting it to their own programmatic work.

Managing content and process. Women need to run a campaign that focuses on both the content and the process. Women must engender the whole process making reference to the AU guidelines and the 50/50 campaign [re-launched by the Women in Politics Support Unit in 2011].

Keeping constituencies informed. At all stages, leaders must communicate progress, disclose information on critical issues, and take on board the need for transparency and accountability, particularly with regard to resources as these are all potentially contentious issues.

Source: Women's Movement Lessons made available by Women and Law in Southern Africa (WLSA) Research and Education Trust, Zimbabwe

Coalition. "The Coalition was perceived of as MDC, because we had campaigned for a 'No' vote. In retrospect, we all saw this as a big mistake... we were not selfish enough for ourselves."

The Women's Coalition spent the nine years after the 2000 referendum mending fences and building bridges and alliances with women across all political parties and sectors. "We had to break the labels of the time and mould a unity among all women. When the 2009 constitution-making process came, there was no doubt that this time around, we had to work together as the women of Zimbabwe."¹⁸

Unity of Purpose – Pushing the Gender Agenda in Zimbabwe's Second Constitution-making Process

When Zimbabwe's second constitution-making process began in 2009, women knew they had to seize this opportunity or else "our children would curse us!"¹⁹ Choice Damiso, advisor to the traditional chiefs during the COPAC process, who also provided legal support to the women's movement, recalls that "the women's movement was aggressive and organized ... they had learnt a lesson from the 2000 process."²⁰ From the outset, women "had made their minds up that we will be involved and get what we want from the constitution."²¹

"The gender dynamics in 2009 [when the second process began] with the broader civil society movement were still polarized and they trivialized women's issues. We were criticized for looking only at women's issues and not the other areas [for example, executive powers, devolution of power, among others]. But we were strategic this time about how we would engage with the broader civil society coalitions on constitution-making," said Emilia Muchawa the former director of ZWLA, who headed the organization during the COPAC-led constitution process.²²

Women began to mobilize. Together and separately, the Ministry

of Women Affairs, Gender and Community Development and the women's movement played strategic roles to ensure that the country's new constitution provided a strong legal foundation for gender equality and women's rights. The Zimbabwe Women's Parliamentary Caucus of the Seventh Parliament of Zimbabwe positioned itself as a strategic link between women activists, political parties and the COPAC committees, and the caucus joined hands with women activists and women in academia to create a first-of-its-kind women's lobby group in Zimbabwe, known as the Group of 20 (G-20).

The Role of the National Gender Machinery

When, in 2008, Dr Olivia Muchena was given the ministerial portfolio for Women Affairs, Gender and Community Development, she and her team decided to provide strategic leadership in two areas which fell within the ambit of the GPA. "We knew we had only four years, so we decided to prioritize the economic empowerment of women in the areas of focus within the country's economic stabilisation programme – agriculture, mining and tourism; and we prioritized the constitution-making process in order to move the gender agenda through this process... If we [the MWAGCD] can be remembered for anything, we wanted it to be for women's economic empowerment and addressing women's rights and gender issues through the constitution."²³

The constitution became a central part of the ministry's work, and the national machinery convened the first meeting to sensitize and prepare women to participate in the COPAC process. The National Women's Conference on the Constitution held in June 2009 brought together more than 500 delegates from Zimbabwe's ten provinces. The conference's theme was The Constitution of Zimbabwe: Women Have Your Say. In her opening remarks, noting that women form more than 50 percent of the population, Dr Muchena said "... if there are no women in the process [constitution-making], then this will not be a people-driven constitution."

The delegates mooted strategies to ensure women's participation. The ministry was tasked with mobilizing women to participate in

18 Interview with Netsai Mushonga.

19 Ibid.

20 Interview with Choice Damiso, lawyer and advisor to the Traditional Chiefs during the COPAC process.

21 Ibid.

22 Interview with Emilia Muchawa.

23 Interview with the then Minister of Women Affairs, Gender and Community Development, Dr. Olivia Muchena.

the discussion, and provide them with educational materials to help them understand both process and issues. The ministry also co-ordinated several other conferences and dialogues (See Box 2). “We teamed up with Musasa [Project]²⁴ and engaged traditional leaders, because we knew they would be key. We even had an international conference where we wanted to learn from the experiences of other African countries,” said Dr Muchena.

Mobilizing men to support gender equality and women’s issues during the constitution-making outreach process was also seen as a strategic move by the ministry. So at community level, partnerships were formed with the traditional leaders and PADARE/Men’s Forum on Gender, which champions gender equality and women’s rights.

In the second constitution-making process, the ministry also built strong alliances with women’s organizations, the Zimbabwe Women’s Parliamentary Caucus, and the G-20.

The Women’s Coalition of Zimbabwe and Formation of the G-20

Shortly after COPAC was established, the Women’s Coalition called a meeting of all members to develop a list of women’s demands and a position paper on the constitution.²⁵ Among their eighteen demands, were:

- adequate representation in all areas of government including equal representation in parliament (50/50);
- equality of citizenship between men and women;
- socio-economic justiciable rights;
- a comprehensive non-discrimination provision with no exclusions to customary and personal law;
- domestication of international instruments;
- the establishment of a Gender Commission;
- equal ownership of land;
- workplace equal rights including protections from sexual harassment, and gender budgeting.²⁶

These demands were disseminated by all women’s organizations in various public awareness forums and campaigns and to COPAC.

Having developed a common position, leaders in the women’s movement recognized that they would be more effective if they developed a mechanism to bring together the relevant sectors to organize and

advocate in unison.

In June 2011, women’s groups²⁷ and the Zimbabwe Women’s Parliamentary Caucus held a workshop to discuss advocacy for gender equality in the constitution-making process.²⁸ At this workshop, women leaders discussed the need for a mechanism to consolidate advocacy efforts and ensure they were privy to relevant negotiations so that their efforts would have the right impact at the right time.²⁹

The Group of 20 women leaders was established to fulfil this role. The G-20 is unprecedented in the story of women’s advocacy and lobbying in Zimbabwe. Comprised of members from the Zimbabwe Women’s Parliamentary Caucus (10) the chair of the Zimbabwe Women’s Parliamentary Caucus, five representatives from civil society organizations (Zimbabwe Women’s Lawyers Association, Women in Law in Southern Africa Research and Education Trust, Women in Politics Support Unit, Women’s Trust and Women’s Coalition of Zimbabwe), one representative from academia (Southern and Eastern African Regional Centre for Women’s Law), two representatives from COPAC and a representative from the Ministry of Women Affairs, Gender and Community Development, its purpose was to promote gender equality in the new constitution.³⁰ The group also served as a consensus-building and information-sharing body to advocate for the inclusion of women’s constitutional rights.

The G-20 crossed many of the major divides that split women in the 1999-2000 constitution-making process, providing the united front women needed. As Fanny Chirisa, former director of the Women in Politics Support Unit (WIPSU) and now one of the new women Parliamentarians in the Eighth Parliament of Zimbabwe, recalls:

The idea [of the Group of 20] was to monitor the constitution-making process 24/7 as long as the constitution-making process was in progress... we managed to get as much information about the process as we wanted, because COPAC women would come to the G-20. The lady in the management COPAC team, the only woman, would give us information so we were informed of the processes at all levels and how things were happening so that we would then strategise on pushing the women’s agenda, and it helped quite a lot.³¹

In its early weeks, the G-20 focused on internal capacity building. Members came to the constitutional reform process with varying

24 The Musasa Project is a civil society organization in Zimbabwe working on the eradication of gender-based violence.

25 Minutes of meeting of Women’s Coalition, 11 June, 2010.

26 Summary of women’s demands, on file with author.

27 The women’s organizations included the Zimbabwe Women Lawyers Association (ZWLA), Women’s Coalition (WCoZ) and the Women in Politics Support Unit (WIPSU).

28 Women’s Parliamentary Caucus - Constitutional Engagement Workshop Report, 19-21 June, 2011.

29 Ibid.

30 Concept Note G-20.

31 Interview with Fanny Chirisa, former Director of the Women in Politics Support Unit.

BOX 2: ENGENDERING THE CONSTITUTION-MAKING PROCESS

The Ministry of Women Affairs, Gender and Community Development led several initiatives and worked with women parliamentarians and civil society activists to ensure that the 2009-2013 constitution-making process was engendered. These included:

2009 Women's Consultative Conference on the Constitution – the first conference held to make women aware of the constitution-making process and define a common agenda.

2010 High Level Dialogue – attended by eight eminent African women led by Mary Robinson, UN High Commissioner for Human Rights (1997-2002). The women shared learned experience about how women's rights can be secured through a nationally accepted constitution.

International Conference on Women's Economic and Political Empowerment and Peace-building – this meeting succeeded the High Level Dialogue organized with the Organ on National Healing, Reconciliation and Integration, the Ministry of Regional Integration and International Co-operation, and the Women's Coalition. Key issues for inclusion in a new constitution were identified as: a special measure for increasing women's representation in decision-making; increased participation of women in economic policy formulation; and the domestication of international and regional frameworks, which protect women's rights and promote women's participation in peace-building.

In **February 2013**, the ministry mobilized women from across the country at a national conference to explain the provisions on gender equality and women's rights contained in the final draft of the constitution. (This was to be put to the vote in March 2013.) The conference organizers hoped to mobilize women for a 'Yes' vote and for them to take this message back to their communities.

Source: Ministry of Women Affairs, Gender and Community Development

degrees of legal training and familiarity with constitutional concepts. The G-20 brought in experts to conduct training sessions on international standards and comparative constitutions. The group explored issues it anticipated would be important and contentious, such as women's political participation and reproductive issues. The lobby group developed fourteen common principles across the spectrum of women's rights that it agreed to advocate for – including reproductive rights, [protection from] domestic violence, marriage equality and equality in political representation.³²

The G-20 then began to produce substantive advocacy materials, including an updated version of the Women's Coalition position paper. This was then transformed into proposed constitutional language by a sub-committee in the G-20.³³ This legal text was distributed to COPAC members and used as a basis for advocacy, public education and media engagement. The G-20 lobbied government officials, political party leaders, members of COPAC, the COPAC drafters, and the general public. When a draft of the constitution was finally released in July 2012, the G-20 conducted and released a gender audit of the draft.

"The G-20 was a united force with women speaking together across the political parties. The parties had no choice but to listen, and influential women in the parties were able to pass the women's messages and concerns on to the principals [political party leaders]," noted

Emilia Muchawa. As a member of the group, ZWLA provided legal technical support to the G-20. "The G-20 was the strongest during the drafting stage [of the new constitution]. It played a major role behind the scenes, outside of the public eye."³⁴

In addition to substantive lobbying, advocacy and analysis, the G-20 members dedicated significant resources to public education to ensure that women's issues assumed a place within public discourse. and in order for women to learn about issues that would directly impact on their lives. Civil society members of the G-20 produced various education materials and conducted public awareness campaigns throughout Zimbabwe. For example, the ZWLA produced flyers – "What Women Want In The New Constitution" – outlining women's key demands in the areas of Equality and Non Discrimination, Protection of Socio-Economic Rights, 50/50 Representation, Proportional Representation, Recognition of Children's Rights, among others; and, following the release of the first Draft of the 2013 Constitution in July 2012, ZWLA and the Women's Coalition produced an information brochure, "Women's Position on the Copac Draft Constitution". These materials were disseminated and used by members of the Women's Coalition to mobilize women and men nationwide to support the inclusion of strong gender equality and women's rights constitutional provisions. Strategically, the G-20 kept a low profile so that the group could effectively lobby and achieve its goals. It was only officially launched on April 13, 2012.

³² G-20 Constitutional principles.

³³ Proposed Drafting Language: the Specific Constitutional Demands of Women (ZWLA for the G-20), on file with authors.

³⁴ Interview with Emilia Muchawa.

Women activists agreed the composition of the G-20 was one of its main strengths. The group served as a bridge between the women's movement, political parties and COPAC. G-20 members within the COPAC process provided updates on the progress of the draft constitution, and they relied on the G-20 for advocacy support and technical expertise. This allowed the group to organize themselves in a way that was responsive and timely.

Working from within – Women in COPAC

Women leaders working within the COPAC process, in government and within political parties, were equally mindful of what was at stake, and played a critical behind the scenes role.³⁵ Choice Damiso noted that another strength “was that COPAC was supported by women with political power. ... We did not have the quantity in terms of the number of women, but quality we had; women at the very top echelon of political parties playing an important role.”³⁶

As the only woman on the COPAC Management Committee and the Committee of Seven, Misihairambwi-Mushonga explains the commitment she and other women politicians and government leaders had to women's rights issues: “A lot of women whether they were MDC or ZANU-PF risked a lot of these political fights whilst trying to create a protective hand over the women's issues.”³⁷ These women employed their political skills and strategy and decided “we will have all the political fights, but the gains we have in the women's arena are such that we will fight to maintain this constitution and let it survive.”³⁸

From the GPA process, women learned that “shadow groups worked well, tabling specific provisions and not just asking for considerations.”³⁹ This strategy also allowed for outside participation such that “most of the women's provisions [in the new constitution] were done by shadow groups – some were members of the G-20, some were civil society influenced.”⁴⁰

Women's provisions were negotiated from within COPAC and on the sidelines. Once women's issues were not considered the centrally contested issues, it was “much easier to get them pushed in” because men's “eyes were on what they assumed were the bigger fights.”⁴¹ The women's issues were gotten “out of the way” so the committee could talk about the real issues.⁴²

This strategy worked on most issues with the exception of reproductive rights and women's political representation. In these areas, where

compromise was necessary, women leaders looked at their long-term goals. Misihairambwi-Mushonga explained that “with a good Bill of Rights, you live to fight another day; to advocate for implementing legislation. From that perspective, the moment some of us got a good Bill of Rights, the moment some of us got a proper clause in the Preamble, a proper clause in the National Objectives, we were almost done.”⁴³

35 Interview with Choice Damiso.

36 Ibid.

37 Interview with the Hon. Priscilla Misihairambwi-Mushonga.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid.

43 Ibid.

SECTION TWO: Gender Equality and Women's Rights

Provisions in the New Constitution

CHAPTER 3: Equality and Non-discrimination

Rights-based approaches have uniformly set the agenda for women's demands in constitution-making processes in Africa. Women's organizations and movements have sought constitutional reforms and changes around a common set of concerns: gender-equality provisions, an end to child marriages, the conferring of citizenship rights to husbands and children of women married to foreigners, an end to the practice of levirate and property-grabbing by the widows' in-laws, political representation of women, and challenges to customary and religious laws that violate women's rights and greater reproductive rights.¹

1 Tripp, A.N., 2008.

Zimbabwean women's success in lobbying for gender equality and women's rights provisions builds upon the lessons learnt from exchanges with women in other countries that have gone through constitution-making processes, and lessons from the prevailing frames used in designing constitutions in the 21st century.

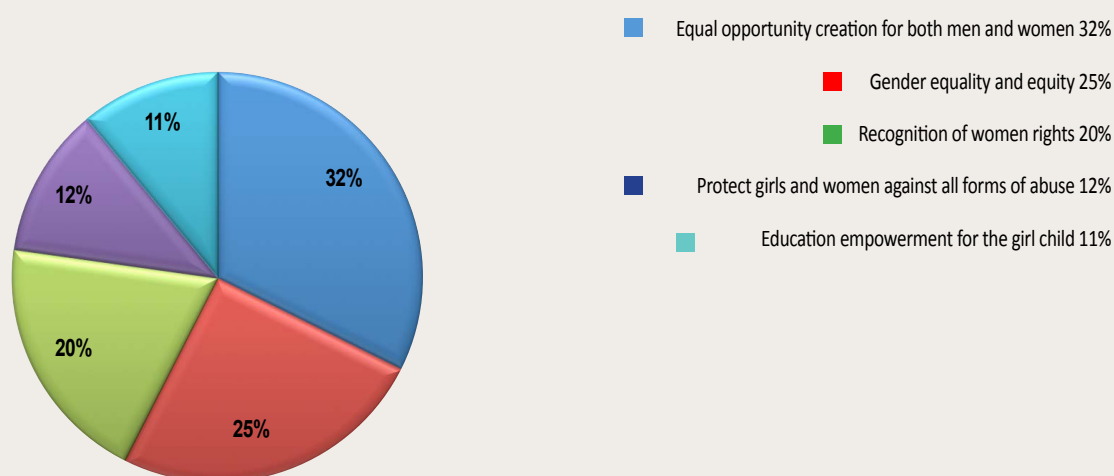
UN Women Zimbabwe's 2012 survey showed that among the 120 women and men interviewed in the general population in four areas of the country, gender equality and the recognition of women's rights were among the top three issues they wanted addressed in a new constitution. (See Figure 7)

The human rights paradigm has become so pervasive and unassailable that the entrenchment of a gender equality provision is effectively non-negotiable in designing a new constitution. International norms require it, and modern precedents support these norms. No new constitution could realistically be framed without such a provision while convincingly laying claim to gender inclusiveness.²

The *equality* and *non-discrimination* provisions within a constitution

2 Irving, H. 2010.

FIGURE 7: WHAT 5 CRITICAL ISSUES ON GENDER EQUALITY DO YOU THINK SHOULD BE INCLUDED IN THE CONSTITUTION?



Source: UN Women Zimbabwe 2012 Survey

TABLE 3: NON-DISCRIMINATION, EQUALITY AND AFFIRMATIVE ACTION – COMPARISON OF CLAUSES

Lancaster House Constitution	2000 Draft Constitution	2013 Constitution
<p>Section 23 – PROTECTION FROM DISCRIMINATION ON THE GROUNDS OF RACE, ETC.</p> <p>(1) Subject to the provisions of this section—</p> <p>(a) no law shall make any provision that is discriminatory either of itself or in its effect; and</p> <p>(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.</p> <p>(2) For the purposes of subsection (1), a law shall be regarded as making a provision that is discriminatory and a person shall be regarded as having been treated in a discriminatory manner if, as a result of that law or treatment, persons of a particular description by race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability are prejudiced —</p> <p>(a) by being subjected to a condition, restriction or disability to which other persons of another such description are not made subject; or</p> <p>(b) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description; and the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability of the persons concerned.</p> <p>(3) Nothing contained in any law shall be held to be in contravention of subsection (1)(a) to the extent that the law in question relates to any of the following matters —</p> <p>(a) matters of personal law;</p> <p>(b) the application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case;</p>	<p>Article 43 – FREEDOM FROM DISCRIMINATION</p> <p>Everyone has a right not to be treated in an unfairly discriminatory manner on such grounds as their race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political or other opinion, culture, sex, gender, marital status, age, disability or natural difference or condition.</p> <p>A person is treated in a discriminatory manner for the purposes of subsection (1) if he or she is prejudiced—</p> <p>(a) by being subjected to a condition, restriction or disability to which other people are not subjected; or</p> <p>(b) through other people being accorded a privilege or advantage which he or she is not accorded.</p> <p>Discrimination on one or more of the grounds listed in subsection (1) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.</p> <p>Any law which, in itself or in its effect, discriminates unfairly between people on one or more of the grounds listed in subsection (1) is void.</p> <p>To promote the achievement of equality, legislative and other measures may be taken by way of affirmative action to protect or advance people or classes of people who have been disadvantaged by unfair discrimination.</p>	<p>4.13 EQUALITY AND NON-DISCRIMINATION</p> <p>(1) Every person is equal before the law and has the right to equal protection and benefit of the law.</p> <p>(2) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.</p> <p>(3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, disability or economic or social status, or whether born in or out of wedlock.</p> <p>(4) A person is treated in a discriminatory manner for the purpose of subsection (3) if—</p> <p>(a) they are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or</p> <p>(b) other people are accorded directly or indirectly a privilege or advantage which they are not accorded.</p> <p>(5) Discrimination on any of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in an open, just and democratic society based on human dignity, equality and freedom.</p> <p>(6) The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and—</p> <p>(a) such measures must be taken to redress circumstances of genuine need;</p> <p>(b) no such measure is to be regarded as unfair for the purposes of subsection (3).</p> <p>80 Rights of Women.</p> <p>(1) Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities.</p>

Lancaster House Constitution	2000 Draft Constitution	2013 Constitution
<p>(c) [...]</p> <p>(d) [...]</p> <p>(e) [...]</p> <p>(f) [...]</p> <p>(g) the implementation of affirmative action programmes for the protection or advancement of persons or classes of persons who have been previously disadvantaged by unfair discrimination.</p> <p>[Paragraph inserted by s. 4 of Act 5 of 2005 – Amendment No. 17 – with effect from the 14th September, 2005.]</p> <p>(3)(a) Notwithstanding subsection (3)(b), in implementing any programme of land reform the Government shall treat men and women on an equal basis with respect to the allocation or distribution of land or any right or interest therein under that programme.</p>		<p>(2) Women have the same rights as men regarding the custody and guardianship of children, but an Act of Parliament may regulate how those rights are to be exercised.</p> <p>(3) All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.</p>

are generally considered to be the cornerstone of a nation's protection of women's equality. The breadth and scope of specific rights and protections are interpreted from this provision. Table 3 details the evolution of the equality and non-discrimination provisions from the Lancaster House Constitution to the new 2013 Zimbabwe Constitution. The 2013 Constitution contains a comprehensive non-discrimination clause in Section 56, Equality and Non-discrimination,³ which eradicates all laws, policies and programmes that discriminate unfairly on the basis of sex, gender, marital status, pregnancy, disability, opinion, custom and "whether [a person was] born in or out of wedlock", among others.⁴ Discriminatory treatment is defined as any direct or indirect discrimination that results in a privilege or disadvantage, including any condition, restriction or disability to which others are not subjected.⁵ All forms of discrimination that may occur unintentionally and as a collateral effect are covered by the provision.

Equal treatment between "women and men" applies to "political, economic, cultural and social spheres."⁶ Any discrimination is presumed to be unfair unless such treatment is established to be fair in a democratic society that comports with principles of "human dignity, equality and freedom."⁷

Section 56 of the 2013 Constitution is consistent with CEDAW's defi-

nition of discrimination as well as with its mandate against discrimination, which obligates states to eliminate discrimination in the "political, economic, social, cultural, civil or any other field."⁸ Article 2 of CEDAW commits "States Parties [to] condemn discrimination against women in all its forms; to agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake measures to address discrimination, including prohibition against discrimination, in their national constitutions."

The provision (Section 56) also ensures Zimbabwe's compliance with Article 4(1) in the SADC Protocol on Gender and Development, which requires all state parties "by 2015, to enshrine gender equality and equity in their Constitutions and ensure that these rights are not compromised by any provisions, laws or practices." The affirmative action provision also satisfies Article 5 of the SADC Gender Protocol which requires state parties to develop affirmative action measures to eliminate barriers to women's equality.⁹

The 2013 Constitution eliminates the Lancaster House Constitution exclusions of non-discrimination protection from customary prac-

3 The language from this provision draws upon the non-discrimination provision of the South Africa Constitution.

4 Section 56(3).

5 Section 56(4).

6 Section 56, Equality and Non-discrimination.

7 Section 56 (5).

8 CEDAW Article 1 (Meaning of Discrimination) – For the purposes of the present Convention, the term "discrimination against women" shall mean 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, irrespective of their marital status, 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.

9 SADC Gender Protocol Article 5.

tices and personal law. Section 56 provides no such exclusions and in Section 80, Rights of Women, the new Constitution declares void all “laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution.”¹⁰

This is again consistent with Article 5 of CEDAW which commits state parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹¹

Finally, Clause 56(6) provides a mandate for the State to take affirmative measures to promote equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination. Again, this is consistent with CEDAW, which in Article 4 calls for the use of temporary affirmative measures to promote equality.¹²

Though the non-discrimination clause of the 2013 Zimbabwean Constitution is arguably the central achievement of efforts to ensure women’s equality in the constitutional reform process, its inclusion was not a significant battleground. According to women activists involved in its promotion, much of the work to change cultural attitudes and understandings of the breadth of constitutional non-discrimination protections had already been done by the time the COPAC process began.

The need for affirmative measures to remedy past discrimination similarly met with little resistance in the 2009-2013 constitution-making process. Between 2000 and 2013, the non-discrimination provision made the significant transition from a permissive incarnation that measures “may be taken” to a more determinative one that the State “must take” such measures where appropriate.¹³ This signified an understanding that affirmative measures were necessary to achieve constitutional equality, and that the constitution was willing to impose an obligation on the State to do so.

This change in perspective is likely due to advocacy, international influences, other constitutional models and internal social and cultural changes. In the first constitution process (1999-2000), the issue of non-discrimination and its relationship to customary practices was clearly at the crux of disagreements about women’s equality issues.

10 COPAC draft Section 4.37(3).

11 CEDAW Article 5.

12 CEDAW Article 4 reads “Adoption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”

13 2013 Zimbabwe Constitution, Section 56.

Records from the constitutional thematic committees in the first process reflect a preoccupation with customary practices and how they interacted with women’s rights on the issue of land ownership in particular.¹⁴ For example, some of the questions developed by the committee for public discussion were as follows:

- What should be the relationship between customary law and the rights in the new Bill of Rights?
- Should all adult men and women qualify to be allocated communal land? If yes, why?
- Should the constitution permit discrimination on the grounds of gender on any issues at all?
- What should the Constitution recognize as the legal age of marriage?
- Should the new constitution require affirmative action for women and youth with regard to traditional leadership positions, customary allocation of resources such as land and adjudication by traditional authorities?¹⁵

The reports from the results of the Commission’s local outreach indicated general public agreement that discrimination should be eradicated and that women should have equal land ownership rights. In its summary of provincial input, the Fundamental Rights Committee found that, across the board, the people believed that customary law should be consistent with constitutional prohibitions against discrimination in the Bill of Rights.¹⁶

The thematic committee on Fundamental Rights proposed a set of principles in relation to equality and non-discrimination that included equality of opportunity, non-discrimination between men and women, affirmative action to redress past imbalances, special measures to address women’s biological function, and provided no exceptions for culture, tradition or family law.¹⁷ The committee concluded that the provision would contemplate affirmative action, but not require it.¹⁸

Though there seemed to be agreement on all these general issues, there was still evidently a difference of opinion on specific issues relating to women and customary practices. The Fundamental Rights Committee, for example, recommended that customary law should prevail over the Bill of Rights except with respect to areas of inheritance, right to land, consent to marriage and equality between men and women.¹⁹ This compromise position seemed to be an attempt to

14 Constitution Commission, 1999b, pp. 77-94.

15 Ibid.

16 Constitution Commission, 1999a, p. 468.

17 Ibid.

18 Ibid.

19 Op.cit. f/n 128.

maintain the independence of customary law, while ensuring regulation of areas causing discrimination against women.

In the final 2000 draft that was put to a referendum, the non-discrimination provision did not provide any exceptions to customary or personal law. The final provision significantly expanded the grounds for discrimination from the Lancaster House Constitution and contemplated the use of affirmative action where redress for past discrimination was needed.

By the start of the COPAC constitution-making process, the issue of the constitution's predominance over customary law was settled. Advocate Choice Damiso credits this acceptance to the successful advocacy of the women's movement:

I think ... things had moved beyond a point where even if the chiefs would have wanted the current constitutional provision to remain ... there was a realization that it wasn't going to happen, because things had moved beyond that and ... because the women's movement had really been aggressive. ... I think [the women's movement] ... have always been making it clear that the problem is the cultural beliefs and attitudes and how they are protected by the constitution. I think they put out that message again and again, to the point where the chiefs might have realized that they wouldn't go anywhere if they tried to resist. And it wasn't just the chiefs; the men, I think, realized that they wouldn't get anywhere if they resisted early on.²⁰

Some attributed this to the dialogue that the women's movement had pursued with the chiefs, which had created a bridge and increased traditional leaders' level of comfort with subjecting customary practices to constitutional regulation. Misihairambwi-Mushonga recalls that in the 1999-2000 process, women activists were thought of as "anti-culture, anti-custom and anti-chiefs." Subsequently, there has been a "positive, proactive engagement" with customary leaders to determine what positive role they could play in advancing women's rights. This resulted in confidence-building between chiefs and the women's rights community that ended in less divergence of opinion around the equality and non-discrimination constitutional provision.²¹

In fact, the engagement was such between the women's community and traditional leaders that chiefs pushed for a seat on the Gender Commission which is provided for in the 2013 constitution.²² Women leaders were originally concerned about the presence of a chief on the Gender Commission, but some saw this as an advantage. Choice

Damiso recalls that "[s]ome of the women didn't understand why ...; they thought this is our commission, why do we want chiefs here. I think gradually there was a realization ... if you want them to change you better take them along with you. I think it was coming from women who probably hadn't thought of it deeply, who considered that an invasion of their space by traditional leaders. ... [But the chiefs] wanted to be there. ... [The chief on the Commission] can't control much ... but he can learn much."²³

In the COPAC process, women's main focus on the non-discrimination provision was to expand the protected grounds and to mandate affirmative action rather than permit it.²⁴ Women also proposed a provision that made it clear that customary law would be subject to constitutional regulation²⁵ but it was not the focus of their advocacy. In their audit of the July 2012 draft, women found the non-discrimination provision generally compliant with their demands and proposed only to add pregnancy as grounds of discrimination.²⁶

Section 56 of the 2013 Constitution preserved the language of the 2000 draft while adding additional grounds and making the language on affirmative action mandatory. The only language absent from a women's rights perspective was the elimination of discrimination on the ground of "natural condition". Some women leaders saw this as an unfortunate loss.

COPAC member Jessie Majome says that she had proposed the addition of this clause and felt that "natural condition" was an important ground for discrimination to protect women from stereotypes and the consequences of sexual objectification.²⁷ She saw "natural condition" as a ground that would address the discriminatory hiring of women based on their appearance. The addition of "natural condition" however became controversial due to concerns that it would be used to protect gays and lesbians from discriminatory treatment. This concern predominated and the language was removed.²⁸

The 2013 Constitution further strengthened women's equality in the non-discrimination clause with a specific provision on the Rights of Women in Section 80.²⁹ This was intended to strengthen and emphasize women's right to equality and not limit the rights to those specified;³⁰ it emphasized women's right to equality of opportunity in political, economic and social life, their equal rights in guardianship

20 Interview with Choice Damiso.

21 Interview with the Hon. Priscilla Misihairambwi-Mushonga.

22 2013 Constitution, Section 245(1)(b)(ii).

23 Interview with Choice Damiso.

24 G-20 Proposed Constitutional Language.

25 Ibid.

26 ZWLA Gender Audit of July 2012 Draft, published 18 February, 2013, para. 6.2, available at <http://www.kubatana.net/html/archive/women/130218zwla.asp?orgcode=zim012>

27 Interview with the Hon. Jessie Majome.

28 Ibid.

29 Zimbabwe, 2013 Constitution, Section 80.

30 COPAC Drafting Instruments, p. 79, noting that the specific application of rights is not intended to limit women's rights to those listed.



and the prohibition of customary practices that would discriminate against them.³¹

As reflected by COPAC records, the drafters and decision-makers entered the process with a clear mandate to ensure non-discrimination in all realms of life, including that of customary practices. Freedom from discrimination and gender equality were recognized as agreed upon principles from the outset of drafting discussions.³² The committee also agreed on the duty of all persons and state actors to promote gender equality in all areas of life.³³

Similarly, there is no question the Committee intended the constitution to place a powerful mandate on the government to not only act in a non-discriminatory manner, but to take affirmative measures to remedy existing discrimination in Section 56(6). The change in language from the 2000 draft of “may be taken” to the 2013 Constitution “must take” is immensely significant. Throughout the 2013 Constitution, the Committee drew upon the 2000 draft language and principles. The government and its institutions have an obligation under Section 56(6) to remedy any historical, cultural or institutional inequality women have been subjected to. This is reflective of the commitments Zimbabwe had made internationally to engage in active programming and policymaking to ensure its citizens truly experience equality.

31 Zimbabwe 2013 Constitution, Section 80.

32 COPAC Drafting Instruments, p. 11.

33 COPAC Drafting Instruments, pp. 79, 91.

In interpreting all matters impacting women’s equality such as reproductive rights and political representation, the affirmative action mandate, as well as the 2013 anti-discrimination provision, will necessitate steps that promote women’s equality even when other considerations weigh in the balance.

Representation of Women as Traditional Leaders

One area where there have been gaps constitutionally is the representation of women as traditional leaders. Traditional leaders in Zimbabwe are given substantial responsibilities to perform cultural and traditional functions as well as local governance functions. Traditional leaders and chiefs tend to set community norms and standards and are responsible, under the constitution, to promote development, resolve disputes, allocate land and uphold cultural and traditional values.³⁴ Today, women are only five out of an estimated more than 200 chiefs in Zimbabwe.³⁵

During the country’s 1999-2000 constitution-making process, the issue of female traditional leadership was addressed. The Fundamental Rights Committee recommended that women should be allowed to become chiefs if the customs of people in those areas recognize fe-

34 2013 Constitution, Section 282.

35 Efforts were made in Zimbabwe to promote women traditional leaders. See <http://www.africangn.net/fs-38.htm>. Currently Zimbabwe has five female chiefs out of an estimated 400 chiefs. Three of the female chiefs are from Matabeleland and two from Mashonaland.

male chieftainship. This left little protection, as it depended on the already existing traditions of the people, and did not seek to challenge or uproot the prevailing norms and traditions in most areas of the country that reinforce patriarchy.³⁶

The 2013 Constitution, however, is less responsive to the issue of women's leadership in customary and cultural bodies. Section 80(3), which requires the abolition of cultural practices that infringe on the rights of women, could be interpreted to extend to the appointment and selection of customary leaders. In other words, any practices associated with the selection of customary leaders that cause discrimination against women, such as selection processes that favour men, would be constitutionally prohibited. This, in combination with Section 17, which requires the state to take all measures to ensure gender balance in all governance bodies, places an obligation on the state to promote women's equal presence on institutions of customary leadership.³⁷

Because so few women occupy positions of leadership in customary institutions, the 2013 Constitution may have benefitted from a specific provision implementing affirmative measures to ensure gender balance in customary leadership. This could have been an indirect way of promoting women's leadership in other governance institutions. For example, chiefs are allocated seats in the Senate as well as in some commissions. These seats will be overwhelmingly occupied by men, because of the absence of women in positions of traditional leadership.

The issue of female traditional leadership clearly presented the most hesitation. Various issues considered delicate were exported to legislation such as the issue of female chiefs and the limitations they might experience (one recommendation was to allow them to preside over family cases and not criminal cases).³⁸ According to COPAC records, the results of the national consultation indicated very little support for women's appointment as chiefs and inheritance of chief positions.³⁹

Though practices may continue in the customary realm that discriminate against women, most leaders promoting women's equality see the 2013 Constitution as promoting gender equality in traditional practices. These provisions will protect women in traditional marriages, ensure women are afforded equal rights in inheritance and family disputes and promote women's leadership in traditional institutions,

ensuring these institutions take into account women's perspectives.

While the evidence in the drafting and consultation processes show some resistance towards addressing women's traditional leadership, the new constitution does provide some openings for women to pursue this issue. The 2013 Constitution must be read as a whole and not simply by the absence of protections.

Section 80(3) requires the eradication of all customary practices that discriminate against women. This necessarily includes practices that limit or prohibit women leaders in these institutions. Section 17(2), which requires the promotion of gender equality in all areas of leadership, on its own, and certainly in combination with Section 56(6), also requires affirmative measures to eradicate discrimination, and requires government efforts to promote women leaders in traditional institutions. Because customary practices play such an important role in women's day-to-day lives, there is no real path to achieving gender equality without addressing the inequalities in local institutions.

36 2000 Documents Volume 1(5), pp. 490-491.

37 2013 Constitution, Section 17 – Gender Balance.

38 COPAC Drafting Instruments, p. 60.

39 Only 1.18 percent of the population supported the principles of women to be appointed as chiefs and headmen and only .21 percent supported the idea of women inheriting chieftainship. COPAC National Statistical Report, Vsn 1, Oct 2012, p. 120.

CHAPTER 4: Sharing Power

– Zimbabwe’s First Constitutional Measure for increasing Women’s Representation in Decision-making

Zimbabwe’s implementation of its commitments to regional and international instruments that set targets for women’s representation in leadership and decision-making positions¹ has been slow.

Women represent 52 percent of the population of Zimbabwe, and at no point since independence in 1980 have they commanded representation in key governance structures in accordance with their numbers. Prior to the July 2013 general elections, women formed only 14 percent of the members of the National Assembly, 24 percent of the Senators in the country’s parliament, 19 percent of the councillors in local government, and 20 percent of the members of Cabinet.

The barriers to women’s participation in politics and governance are many. Women and men in Zimbabwe point to culture, education and

Zimbabwe’s national and political environment as the main impediments (see Figure 8). The violent nature of the country’s politics has also deterred women from entering the political arena.

As has been the case in many African countries, women’s increased representation was not linked directly to the push for democratic change in Zimbabwe. Women found that their gender equality and women’s rights issues were not widely viewed as priorities within the democracy and human rights movements, or within emerging political parties. The constitution-making processes, therefore, became the platforms for women to demand constitutional measures to break through the barriers to their increased representation.

There was little discussion in the 1999-2000 Constitutional Commission on equality of women’s political representation.² In fact, in the public consultation no questions on this issue were even asked. In the 2009-2013 COPAC process, on the other hand, women’s political representation was immediately identified by COPAC as a priority issue and, in the public consultation, 58.62 percent of the population stated that women should have equal representation in parliament.³

A number of factors influenced this increased focus on women’s political representation. Women leaders began formulating their demand for equal political representation in the 2001 Women’s Charter, where they argued that:

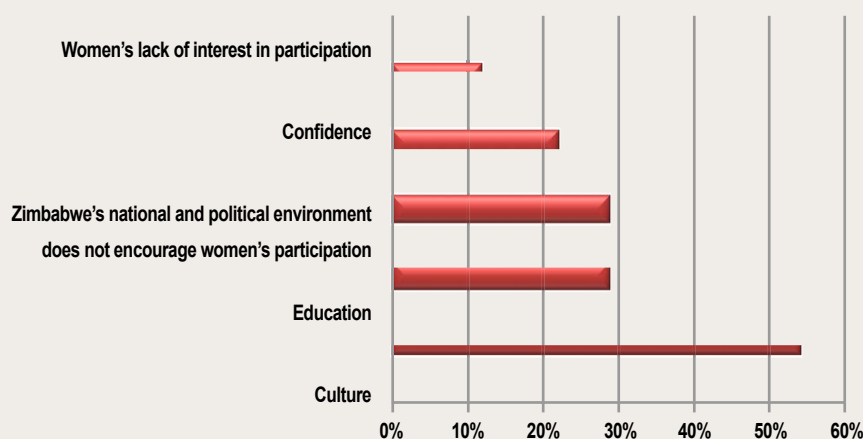
[G]overnment and all political parties must ensure that women participate equally and are represented equally in national and local decision-making bodies ... [t]hey must have a system

1 The 1995 Beijing Platform for Action and the 1997 SADC Declaration on Gender and Development set 30 percent targets; the African Union and the SADC Protocol on Gender and Development have set 50 percent targets with the SADC Gender Protocol giving a deadline of 2015 for countries to meet the targets.

2 2000 Process Records.

3 COPAC National Statistical Report, Vsn 1, Oct 2012, p. 119.

FIGURE 8: THE 5 MOST IMPORTANT BARRIERS TO WOMEN PARTICIPATING IN GOVERNANCE PROCESSES



Source: UN Women Zimbabwe Survey 2012

*so that women hold the same number of positions as men.*⁴

Civil society organizations such as the Women in Politics Support Unit (WIPSU) and the Women's Trust have advocated for increased women's representation since early 2000. In the run-up to the 2005 general elections, the Women's Trust ran a *Women Can Do It* media campaign to encourage women to become candidates for parliament and local government. In the run-up to the 2013 general elections the Trust ran another campaign, *SiMuka! Zimbabwe Kesikhulume lathi Bomama, Timbotaurawo vanaMai, Mothers having our say, Women Get Counted* to encourage women to register to vote, to vote and to vote for other women. The second campaign, therefore, focused on other ways women could use their influence as citizens within the electoral process to effect the change they want to see in terms of who governs and who addresses the issues that concern their lived realities.

In 2008, Zimbabwe ratified the Protocol to the African Charter on Human & Peoples' Rights on the Rights of Women in Africa, and in 2009 the SADC Protocol on Gender and Development. Both regional protocols prioritize women's political representation. The 2015 target set by the SADC Protocol on women's leadership focused the women's movement on equal representation in parliament.⁵ WIPSU, for example, relaunched in 2011 the 50/50 campaign.

Regional constitution-making processes also provided useful models. In May 2003, Rwanda approved a new constitution that set a 30 per cent minimum quota for women in parliament. This quota provided a basis for women to seek elected positions and, at the time of the COPAC process, women had become a majority in the Rwandan parliament.⁶ Study visits and exchanges allowed Zimbabwean women leaders to witness the impact of this constitutional provision first-hand.

Women's equal representation was also an issue that female politicians embraced. The G-20, which included female politicians, dedicated considerable effort to develop proposals and ideas for a 50/50 (equal representation) mechanism to increase women's representation. "The issue of women's representation in parliament was a big issue. The women wanted 50/50. They wanted the constitution to provide that they would be 50 percent of parliament. ... I would say that that was the biggest, most contentious issue with regard to women's equality provisions," said Choice Damiso.⁷

During the early stages of the COPAC constitution negotiations and drafting, women faced difficulty putting forward exact proposals, because the electoral system for parliamentary elections was still being

negotiated. Zimbabwe has used the first-past-the-post system since independence and the push for proportional representation was an area of contestation among the political parties.

The 2013 Constitution includes gender balance as a National Objective and commits the State to promoting full gender balance throughout society.⁸ It requires it to take all measures necessary to ensure that both genders are equally represented at every level in all government institutions and agencies; that women constitute half the membership of all elected and appointed governmental bodies; and that the State takes positive measures to remedy past gender imbalances resulting from practices and policies, and to ensure equal representation in the future.⁹

Special Measures for increasing Women's Representation

The introduction of, as well as the value of, electoral gender quotas in new or amended constitutions has been an area of research for feminist legal scholars. Some argue that gender quotas are an imperative of feminist constitutional design, because of the substantive equality for which they aim (and the accompanying democratic ideals they capture), while others identify substantive equality and deliberative democracy as joint principles underlying the need for gender quotas.¹⁰

While no general conclusions have been reached about whether quotas should be constitutionalised, statutory or merely voluntary, it is agreed that electoral gender quotas are a non-waivable item on the constitutional design agenda.¹¹ Women legal scholars also note that the constitutional design strategy cannot be isolated from the political process, and it depends upon, among other things, the strength of the women's movement, and "the good faith compliance by political parties" in the relevant country.¹²

Women's movements throughout Africa have successfully lobbied for the introduction of special measures in the form of quotas to increase women's numbers in parliaments and local government councils, but quotas are not uniformly considered a welcome strategy in Africa.¹³

In sub-Saharan Africa during the decades leading up to 1995, only six countries had adopted quotas. Twenty-three countries had adopted quotas by 2005, and by 2013, 25 out of 48 sub-Saharan African

4 Zimbabwean Women's Charter, 2000.

5 Interview with the Hon. Fanny Chirisa; Interview with the Hon. Jessie Majome.

6 Following the 2013 parliamentary elections, women overall comprise 58 percent of the bicameral parliament.

7 Interview with Choice Damiso.

8 2013 Constitution. Clause 17(a).

9 2013 Constitution, Section 17(b)(i) and b(ii).

10 Irving, H., 2010. (Irving cites the works of scholars such as Noelle Lenoir and Susan Williams.).

11 Ibid.

12 Ibid. (Irving cites the works of scholars Drude Dahlrup and Lenita Freidenvall.)

13 Tripp, A.M., et al., 2008.

countries had adopted gender quotas to increase women's chances of being elected to office.¹⁴ Despite the mixed reaction to quotas from male political leaders, this has been the most effective way of increasing women's representation. By the end of 2012, the region averaged 20.4 percent female members of parliaments and it has four of the Inter-Parliamentary Union's top ten ranked parliaments in the world.¹⁵

Women within Zimbabwe's three main political parties played a central role in negotiating the special measure, which tested the political parties' "good faith" and commitment to gender equality. The negotiation process began with a discussion paper on electoral gender quotas and the options that could be taken, written by the then Minister of Women Affairs, Gender and Community Development, Dr Olivia Muchena, a COPAC Committee Member and Political Commissar for the Women's League of the ZANU-PF political party.¹⁶

Discussions on a quota formulation were then held with all three political parties in the GNU and only one party initially raised an objection to the idea. The women leaders within this party then lobbied their male leaders to agree to a special measure. The final formulation of the measure which appeared in the July 2012 draft COPAC Constitution was arrived at in the COPAC Management Committee, following agreement from the three leaders of the country's main political parties.¹⁷

The new Constitution contains special measures to increase women's representation in both houses of parliament, and to ensure women's representation on the Provincial and Metropolitan Councils which are responsible for development and policy making at the local level. The measure is a combination of two types of quotas: constitutionally mandated *reserved seats* for women, guaranteeing from the onset that a predetermined percentage of seats would be held by women; and a *compulsory quota* which legally requires all parties to include a certain percentage of women on their candidates' lists.¹⁸

Women's representation in the country's two-chamber parliament is to be increased through a combination of measures – a proportional representation party-list system and reserved seats.

The party-list system will be used for the Senate (Upper House), which will comprise 80 members – 60 elected from the country's ten

provinces, 16 Chiefs, the President and Vice-President of the Council of Chiefs and two representing those with disabilities. The 60 members elected from the provinces are to be elected by proportional representation using a party candidate list mechanism that requires men and women to be listed alternately, with a woman heading the list.¹⁹ This mechanism, used for the first time in the July 2013 elections, increased women's representation in the Senate to 47.5 percent, 38 of the 80 members.²⁰

In the National Assembly (Lower House), the new Constitution creates a temporary measure allocating 60 reserved seats for women. The 60 reserved seats increase the size of the National Assembly from 210 to 270 members²¹, and the seats are only in place for the life of the first two parliaments (ten years) after the 2013 general elections, the first elections to take place after the adoption of the new constitution in May 2013. Women are elected to the reserved seats through a proportional representation system based on the votes cast for political party candidates in a general election for the 210 members.²²

In addition to the 60 reserved seats, women can stand as constituency candidates for the 210 seats in the National Assembly. Women won 25 constituency seats in the 2013 elections; added to the 60 reserved seats, they now number 85 of the 270 members of the National Assembly, 31.4 percent.²³

The use of the 2013 constitutional measures increased women's representation to one-third of the Eighth Parliament of Zimbabwe, moving the country to a ranking of number 28 on the IPU classification of Women in Parliaments in 188 countries. At the end of December 2012, Zimbabwe ranked number 90 among 190 countries listed on the IPU's classification.

19 2013 Constitution, Clause 120(2)(b).

20 In the 2008 general elections for the Seventh Parliament of Zimbabwe, women were 24.2% of the Senators, 24 out of 99.

21 The expansion of the number of seats in Parliament to provide reserve seats for women was contested in terms of costs and effectiveness. Reserved seats and other quota formulations are used worldwide to advance women's representation, but women elected on reserved seats are perceived as tokens or proxies; they are considered to lack a constituency-based legitimacy and political authority binding them more to party power-holders and party policies; and reserved seats are often seen as the sole avenue for female legislators while the general (constituency) seats remain the monopoly of male legislators. (*Women Parliamentarians Making a Difference in Politics, Worldwide Experiences and Practices*, UNIFEM, Heinrich Boll Foundation, 2007) Many of these labels and challenges are currently faced by the new women in the Eighth Parliament of Zimbabwe, who are seeking through the Zimbabwe Women's Parliamentary Caucus to strengthen their political effectiveness as legislators.

22 2013 Constitution, Clause 6.9 and Clause 7.2(2).

23 In the 2008 general elections for the Seventh Parliament of Zimbabwe, women comprised 15% (32 out of 214) of the members of the National Assembly.

14 Tripp, A.M., 2013.

15 IPU, 2012. In Senegal, for example, in 2012 women's representation in parliament jumped 24.7 percentage points to 42.7 percent due to the enforcement of quota laws.

16 Interview with the Hon. Priscilla Misihairambwi-Mushonga, the only female member of the COPAC Management Committee.

17 Ibid.

18 http://www.osisa.org/sites/default/files/sup_files/SADC's%20Role%20in%20Zimbabwe.pdf

However, negotiating the special measures for women's representation was not easy. "We first thought we could factor the reserved seats for women in the context of the 210 seats, but one of the male leaders of a political party advised against this because men would see it as a challenge to the seats they hold," said Misihairambwi-Mushonga. She said women were emphatically told by the party leader: "As long as it doesn't challenge my present hold on a particular seat, I can freely give it to you. But at this time, if you push it initially on the table as something that dislocates where I am and my position, then you are assured that you are not going to win."²⁴

Dr. Muchena believes that the struggle women faced on the special measure was largely due to a "lack of understanding or lack of knowledge" on how quotas work. The Ministry of Women Affairs, Gender and Community Development carried out many sessions in communities and in collaboration with civil society to explain quotas and how they work. "On the ground, the people said: 'We have no problems with gender equality, but we want no special treatment for women.' Then, of course, in these discussions you would say, how do women catch up if there are no special provisions?"²⁵

The contestation around quotas for women's representation is also evident by the absence of a measure in the new Constitution to increase women's representation in the 92 urban and rural councils. The system to be used in local government elections also remains first-past-the-post. The Women in Local Government Forum (WILGF)

24 Interview with the Hon. Priscilla Misihairambwi-Mushonga.

25 Interview with Dr Olivia Muchena, Minister of Women Affairs, Gender and Community Development.

says that it unsuccessfully lobbied for the issue of equal representation in councils to be included in the new constitution.²⁶ Women politicians close to the negotiations within the parties indicated that it was clear that the political leaders were not willing to go further than the special measure agreed upon for parliament.

The new Constitution does, however, contain measures to address women's representation in the Provincial and Metropolitan Councils. Zimbabwe's provincial and local government structure under the new constitution will consist of the 92 urban and rural councils; eight of the country's ten provinces will have a Provincial Council; and the two main cities, Harare and Bulawayo, will have Metropolitan Councils. The new Provincial and Metropolitan councils are a result of political parties' compromise on the thorny issue of devolution.

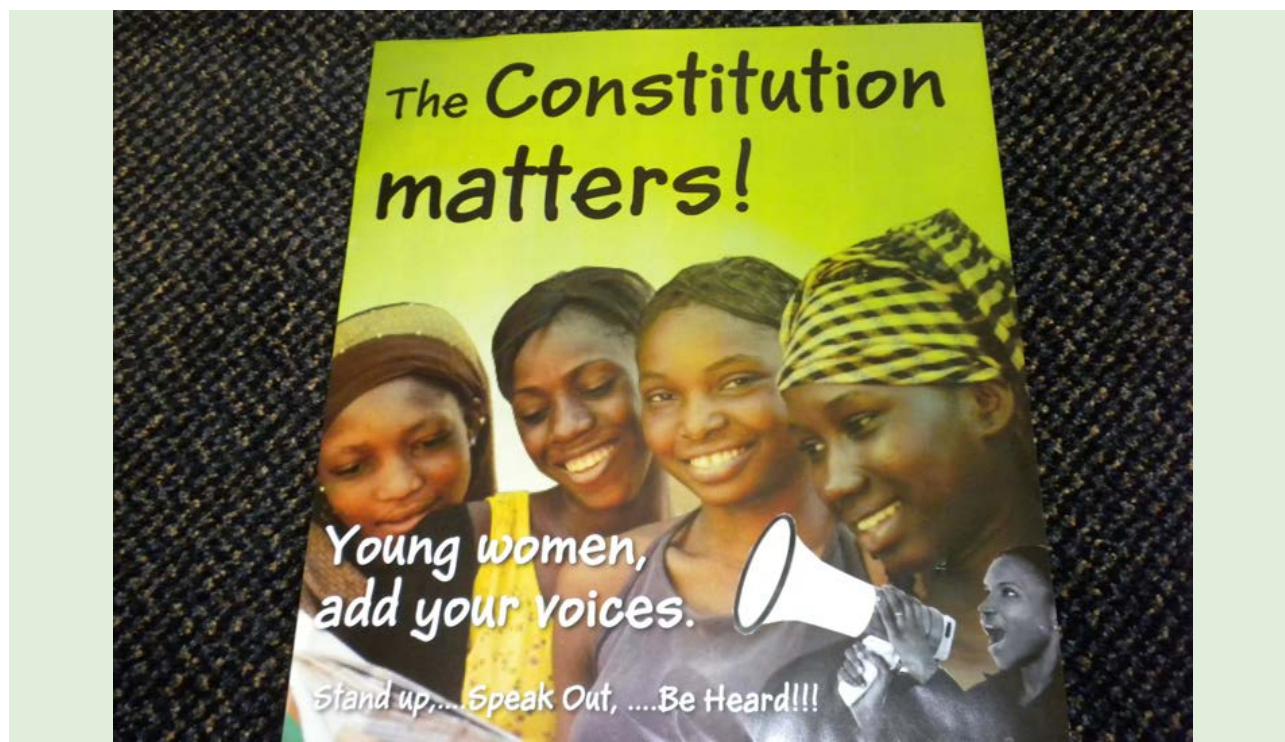
The women in the 60 reserved seats in the National Assembly from the provinces concerned will also become members of the Provincial and Metropolitan Councils.²⁷ Moreover, ten members of the Provincial Council are to be elected through a party-list system of proportional representation in which male and female candidates are listed alternately, every list being headed by a female candidate.²⁸ The ten seats are distributed based on the votes cast for candidates representing political parties in the province concerned in the general elections for members of the National Assembly.²⁹

26 "Women push for 50/50 representation in councils", Charlotte Musarurwa, *The Sunday Mail*, 5-11 May, 2013.

27 2013 Constitution Clause 268(1)(f) and 269(1)(d).

28 2013 Constitution Clause 268(1)(h) and 268(3).

29 2013 Constitution Clause 268 (3)(a).



While these provisions do provide some basic allocations for women's representation, they do not guarantee gender balance as required by Section 17(b)(i) or eliminate discrimination in the political process as required by Section 56. The special measures' compliance with international obligations will depend on whether they are implemented in the spirit of women's equality.

CEDAW Article 7 requires countries to "eliminate discrimination against women in the political and public life of the country" by ensuring women are able to:

*participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.*³⁰

Under Article 12(1) of the SADC Protocol, state parties must endeavour that:

*[B]y 2015, at least 50 percent of decision-making posts in the public and private sectors are held by women including the use of affirmative action measures.*³¹

To satisfy CEDAW and the SADC Protocol commitments, significant efforts will have to be made to ensure the constitutional special measures result in gender balance in political representation. Women candidates will have to receive significant support from political parties, and efforts must be made to mainstream women into non-allocated positions to increase the proportion of their representation. All of these measures, as well as others, are mandated under Section 56(6).

Women's Representation on Commissions

Zimbabwe's new Constitution addresses the creation and composition of a number of commissions. These include, among others, the five independent commissions to support democracy – the Zimbabwe Electoral Commission, the Zimbabwe Human Rights Commission, the Zimbabwe Gender Commission, the Zimbabwe Media Commission and the National Peace and Reconciliation Commission.³²

The absence of a gender balance requirement in sections addressing the composition of the independent commissions has also been noted as a shortcoming in the 2013 Constitution. Although Section 17(b)(ii) does require that women comprise at least half the membership of all independent commissions,³³ it is a National Objective and not a

justiciable right.

The only language on gender parity contained in the provisions relating specifically to commissions concerns the Gender Commission which must be balanced between men and women.

30 CEDAW, Article 7.

31 SADC Protocol, Article 12(1).

32 Other commissions provided for in the constitution include the Zimbabwe Anti-Corruption Commission, the Zimbabwe Land Commission, the Public Service Commission, the Judicial Service Commission, the Defence Forces Service Commission, the Police Service Commission and the Prisons and Correctional Service Commission.

33 Interview with the Hon. Jessie Majome.

CHAPTER 5: Women's Constitutional Gains in Freedom from Violence, Sexual and Reproductive Health and Socio-economic Rights

Zimbabwe's new Constitution expands women's rights in many of the areas that impact on their day-to-day lives. Throughout the public consultations during the second constitution-making process women consistently raised the issues of education, shelter, health, water and other economic issues. Social and human development indicators declined in Zimbabwe during the period 1990-2008, impacting greatly on women's abilities to exercise their socio-economic rights.

Violence against women continues to be a major area of concern as data illustrates that women's and girls' right to bodily integrity, security of person and right to life are regularly violated, especially within the private sphere where violence is used as a tool to maintain women's subordinate status.

Women have pushed for stronger constitutional provisions to protect them from violence and for their socio-economic and sexual and reproductive health rights to be protected. These rights are addressed in the new Constitution, providing women with more legal protection and security.

Freedom from Violence

Protection from all forms of gender-based violence, including domestic violence, has been an important issue for women in Zimbabwe. It is estimated that 30 percent of the women aged 15-49 have experienced physical violence, 27 percent sexual violence and 43 percent have experienced physical or sexual violence or both.¹

The main perpetrators of physical violence are a woman's current husband or partner (57 percent) or former husband or partner (20 percent) and 92 percent of women report that sexual violence was committed by their current or former husband/partner or boyfriend.²

The Lancaster House Constitution prohibited inhuman and degrading treatment generally, but contained no provisions protecting women specifically from gender-based violence or domestic violence. Moreover, since Section 23(3) excluded matters of personal and customary law from its anti-discrimination provisions, non-discrimination argu-

ments were not available to justify constitutional protection for violence against women or other forms of gender-related harassment.

In the first constitution-making process, the Constitution Commission addressed violence generally at the fact-finding stage. Questions for the public consultations included, for example, "[s]hould the constitution protect prisoners from sexual abuse?" and, more generally, "[s]hould people be protected from torture, cruel and degrading treatment?"³

Also, in the survey conducted in September 1999 to gauge public opinion on constitutional principles, the following question was asked: "[s]hould the right to be protected (from abuse) be enshrined in the Bill of Rights?"⁴ However, despite the questions posed to the public, the regional summary reports indicated no discussion of domestic violence. The focus of the reports was only on abortion and homosexuality.⁵

In the thematic committee reports, discussions focused on whether a prohibition against domestic violence was a proper constitutional issue, since the issues of battery and abuse were raised in some of the outreach discussions, specifically the "...concern that battery is not treated with sufficient seriousness by law enforcement and adjudication agencies."⁶ In discussion of the section on the Right to Freedom and Security of Person, it was noted that "[a]s discussed above under Human Dignity, the State needs to consider more effective responses to the issue of so called 'domestic violence' – arguably this is not a constitutional issue per se, but the constitution could contain directives to ensure that such issues are more closely addressed."⁷

At the drafting stage in the first constitution-making process, the Legal Committee determined that gender-based violence and domestic violence were constitutional issues, no doubt due to the presence of some prominent women's rights legal scholars.⁸ This committee first inserted the following language in the provision on Torture, Inhuman and Degrading Treatment: "gender-based violence constitutes cruel, inhuman and degrading treatment or punishment."⁹ Later the phrase was refined to read: "for the avoidance of doubt, cruel, inhuman and degrading treatment includes gender-based violence."¹⁰ The Legal Committee also inserted into the Protection of Family provision an obligation on the state to "prevent domestic violence."¹¹ With the rejection of the 2000 draft constitution in the referendum, these pro-

1 ZimStat, 2012.

2 Ibid.

3 Constitution Commission, 1999b, pp. 77-94.

4 Ibid., pp. 97-106.

5 Ibid., pp. 22-24.

6 Constitution Commission, 1999a, p. 464.

7 Ibid.

8 Amy Tsanga and Julie Stewart were both members of the Legal Committee.

9 Constitution Commission, 1999b, p. 395.

10 Ibid., p. 354.

11 Ibid., p. 394.

visions were lost.

Following the 2000 process, women continued to focus on domestic violence as a major challenge to women's equality. The Zimbabwe Women's Charter poignantly spoke to the issue of violence:

[T]here is violence against women and girl children in the family and in the community. Men beat their wives. But violence is not a private matter. Violence denies women the right to personal development, security, respect and dignity. Victims of violence must be given advice and shelter. Domestic violence must be against the law.¹²

And due to a groundswell of women's activism, a Domestic Violence Act was passed in 2006.

The discussion on how to frame domestic violence as a constitutional issue emerged again in the 2009-2012 COPAC constitution-making process. The thematic committee first identified domestic violence – spouse battering and marital rape – as a family matter, and as one of the issues not appropriate to be addressed in the constitution.¹³ Later, in discussions, domestic violence was included as a constitutional principle under the list of Fundamental Rights.¹⁴ Similarly, in the COPAC gap-filling workshop, the right to personal security was described as freedom from all non-state and state violence, making clear that gender-based violence and domestic violence were contemplated.¹⁵

Throughout the COPAC process, women activists continued to frame the “private” matter of domestic violence as a constitutional issue. The Women's Constitution Position Paper asserted that “[w]omen are vulnerable to gender-based violence and should be protected from it. The gendered nature of domestic violence demands that the right of security of persons be addressed in language which speaks directly to women's experiences in this regard.”¹⁶ The paper suggested that domestic violence be included in the right to security of person, which the final language did.¹⁷

The 2013 Constitution contains the right to be free from all forms of public and private violence in Section 52, Right to Personal Security. Section 53 includes a right to be free from torture or degrading treatment, which depending on future interpretations may apply to gender-based violence. Section 25, on the Protection of the Family, commits the government to adopt measures to prevent domestic violence.

These provisions combined comply with international obligations.

12 Zimbabwe Women's Charter, the Women's Coalition, 2001.

13 Constitution Commission, 1999a, p. 438.

14 COPAC Drafting Instruments, p. 68.

15 COPAC drafting instruments, p. 96.

16 Position paper, 1/16/2011, p. 11.

17 This provision was similar to Section 12 of the Constitution of South Africa, and was ultimately included in the 2013 constitution.

CEDAW commits state parties to prevent and protect women against gender-based violence, including domestic violence.¹⁸ Article 20 of the SADC Protocol on Gender and Development commits state parties to combating and addressing gender-based violence through legislation and government programmes.¹⁹ The new constitution contains the provisions to meet these obligations as long as these measures are sufficiently resourced and supported by political will and accountability.

Sexual and Reproductive Health Rights

Reproductive rights and access to reproductive health have consistently been of great importance to women in Zimbabwe. Several of the key sexual, reproductive and health indicators for women are improving, while others show a decline. As stated in Chapter 1, one area of concern is the rising maternal mortality rate which is 960/100,000 or ten maternal deaths for every 1,000 live births.²⁰

The issue of reproductive rights has been central to ideas surrounding gender egalitarian constitutional design.²¹ Under the Lancaster House Constitution, women enjoyed no constitutional protection of their right to make reproductive choices, even though currently an estimated 58.5 percent of women in Zimbabwe rely on some method of contraception to plan their families.²² But there has been little improvement in the contraception method mix, and public health facilities continue to be the dominant source of contraceptives. This makes them less available to women where public facilities do not exist.²³

Abortion is not legal, except in rape cases, and has remained a complex issue in Zimbabwe. In both constitution-making processes, abortion was debated within the commissions and raised in public consultations.

During the 1999-2000 process, there was little discussion of reproductive rights except as they related to abortion. Questions for the public consultations, as well as those included in a survey to assess the population's views on various issues, also were limited to abortion, with no discussion as to how this issue related to women's rights in general or reproductive rights in particular.²⁴

The results of the scientific survey as well as reports on the public consultation process indicated support for constitutional limitations on the right to an abortion. According to the results, researchers found

18 CEDAW Committee General Recommendation No. 19 (11th session, 1992), explaining that Article 1 commits state parties to prevent and address gender-based violence because it constitutes discrimination against women.

19 SADC Protocol on Gender and Development, Article. 20.

20 ZimStat, 2012.

21 2013 Constitution, Section 17(b)(i) and (b)(ii).

22 ZimStat, 2012.

23 Ibid.

24 Constitution Commission, 1999b, pp. 77-94.

TABLE 4: FREEDOM FROM VIOLENCE IN ZIMBABWE'S CONSTITUTION

Lancaster House Constitution	2000 Referendum	2013 Constitution
<p>Article 13 – Right to Personal Liberty</p> <p>(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the cases specified in subsection (2).</p> <p>(2) The cases referred to in subsection (1) are where a person is deprived of his personal liberty as may be authorized by law—[...]</p> <p>15 Protection from inhuman treatment</p> <p>(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.</p> <p>(2) No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of subsection (1) on the ground that it is degrading.</p>	<p>Right to Personal Security</p> <p>Everyone has the right to security of the person, which includes the right</p> <p>(a) to be free from all forms of violence from both public and private sources; and</p> <p>(b) not to be subjected to medical or scientific experiments without their informed consent.</p> <p>Freedom from torture and inhuman or degrading treatment</p> <p>No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p>For the sake of clarity, cruel, inhuman or degrading treatment includes gender-based violence.</p> <p>Protection of the family</p> <p>The State must protect and foster the institution of the family as the natural and basic unit of society.</p> <p>In particular, the State must endeavour, within the resources available to it, to adopt measures for— (a) the provision of care and assistance to mothers, fathers and other family members who have charge of children; and (b) the prevention of domestic violence.</p>	<p>52 Right to Personal Security</p> <p>Every person has the right to bodily and psychological integrity, which includes the right—</p> <p>(a) to freedom from all forms of violence from public or private sources;</p> <p>(b) subject to any other provision of this Constitution, to make decisions concerning reproduction;</p> <p>(c) not to be subjected to medical or scientific experiments, or to the extraction or use of their bodily tissue, without their informed consent.</p> <p>53 Freedom from torture or cruel, inhuman or degrading treatment or punishment</p> <p>No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.</p> <p>25 Protection of the family</p> <p>The State and all institutions and agencies of government at every level must protect and foster the institution of the family and in particular must endeavour, within the resources available to them, to adopt measures for—</p> <p>(a) the provision of care and assistance to mothers, fathers and other family members who have charge of children; and</p> <p>(b) the prevention of domestic violence.</p>

that 76.1 percent were against abortion, and of these, 86.7 percent thought it should only be allowed in special circumstances such as rape or incest, or if there were threats to the mother's life or health.²⁵

The thematic committee in the first constitutional process concluded from the public consultation that the right to life had been affirmed and that the majority of Zimbabweans did not support the right to abortion except when it threatened the life of the mother and that a few supported it in cases of incest and rape.²⁶ Abortion was again discussed under the right to freedom and security of person. The committee stated "it should be noted that when the right in this section and the right to privacy were considered, the issue of abortion was not treated as falling under either of them."²⁷

During drafting, the Legal Committee discussed the issue of abortion under the right to privacy cognizant of how the right had been interpreted in other countries such as the United States. A suggestion was made to indicate clearly that the right to privacy did not extend to the right to an abortion. This was rejected by the committee for fear that further clarification would infringe on the judiciary's responsibility of interpreting the constitution.²⁸ The final 2000 draft constitution presented for referendum therefore contained no references to either reproduction in general or abortion in particular.

Women began to consolidate their views on reproductive rights issues after the first constitution-making process and they extended reproductive health to include provision for affordable and effective ante-and post-natal health services and access to contraceptives. The Women's Charter asserted that women had a right to control their own bodies and sexuality; to access free contraception and family planning services; and to be treated with respect in family planning services.²⁹

The civil society shadow report to the CEDAW Committee in January of 2012 also highlighted women's sexual and reproductive health rights as areas for constitutional protection:

The reproductive role of women makes them more vulnerable to health concerns linked with their reproductive role than men, and CEDAW places an obligation on states to take steps to protect the health of women. The biggest concern is that the right to health is not provided for in the Constitution. The restrictive criteria for legal abortions and the continued criminalization of abortion pushes women into unsafe abortions and early deaths. Women still face challenges with regard to accessing ART (anti-retroviral therapy) and treatment. To

*address these challenges, the new Constitution must provide for a right to health; abortion must be decriminalized and measures must be put in place to support women living with HIV and AIDS.*³⁰

These issues became part of the women's movement constitutional demands in the COPAC-led constitution process which started in 2009. Two organizations within the women's movement, Katswe Sistahood and WAG, focused extensively on sexual and reproductive health rights. WAG submitted a position paper to the COPAC and Katswe mobilized young women to become aware of the sexual and reproductive health rights agenda and to participate in the constitution-making process.

The COPAC drafting committee referred many reproductive issues to legislation, such as access to family planning, protection from HIV and access to anti-retroviral medication. Issues left for possible constitutional treatment included abortion and free access to family planning pills.³¹

Women advocates understood that the issue of reproductive health rights had to be dealt with carefully.³² The use of the term "reproductive health rights" was a triumph in itself, because "the very mention of the term of reproductive rights itself is good enough to then use to fight for particular legislation."³³

Zimbabwe's new constitution provides for reproductive rights, but limits these rights to the extent they infringe on the constitutional right to life of the unborn child. Section 52(b) on the Right to Personal Security states that there is a constitutional right to bodily and psychological integrity, "subject to any other provision of this Constitution, and to make decisions concerning reproduction."³⁴ Section 52 also requires informed consent before anyone may be subject to extraction or use of bodily tissue.³⁵

Section 48, the Right to Life, requires parliament to pass legislation to "protect the lives of unborn children, and that Act must provide that pregnancy may be terminated only in accordance with that law."³⁶ Section 76 of the Constitution also provides a Right to Health, which includes access to basic reproductive health services.³⁷

As a signatory to CEDAW³⁸, Zimbabwe has committed to eliminating

25 Constitution Commission, 1999c.

26 Constitution Commission, 1999a, p. 444.

27 2000 Commission documents, Volume 1(5), p. 464.

28 Commission documents, Legal Committee, p. 382.

29 Women's Charter, 2008.

30 Zimbabwe Civil Society's Shadow Report to CEDAW Committee, para. 10, drafted by ZWLA (January 2012).

31 COPAC Thematic Committee, pp. 66- 68.

32 Interview with the Hon. Jesse Majome, p. 22.

33 Interview with the Hon. Priscilla Misihairambwi Mushonga.

34 Zimbabwe 2013 COPAC Constitution, 48(3).

35 Zimbabwe 2013 COPAC, 52(c).

36 Zimbabwe 2013 COPAC, 52(b).

37 Zimbabwe 2013 COPAC, 76(a).

38 Section 327 requires domestication of international treaties through approval by parliament before Zimbabwe is bound by its provisions. Zimba-

discrimination in the field of healthcare, in particular family planning.³⁹ State parties must also ensure women receive appropriate healthcare during pregnancy and the post-natal period. Under Article 16 of CEDAW, women must be equal in areas of marriage and the family, including the equal right to decide the number and spacing of their children and the means to exercise this right.⁴⁰ Under Article 26 of the SADC Protocol on Gender and Development, Zimbabwe is also bound to implement policies and programmes that address the sexual and reproductive health needs of women and men.⁴¹

The provisions of the 2013 Constitution on reproductive rights will have to be interpreted alongside those ensuring women's equality and non-discrimination in order to provide reproductive rights for women that are consistent with the equality guarantees under the

bwe has yet to domesticate CEDAW.

39 CEDAW, Article 12.

40 CEDAW Article 16.

41 SADC Protocol on Gender and Development, Article 26.

constitution, as well as to comply with international and regional commitments.

Women's Socio-economic Rights

Socio-economic rights are important to women's equality and were central in women's demands during the second constitution-making process. Women's socio-economic conditions often place them at a disproportionate disadvantage. It is well documented that when resources are scarce, women are likely to be the ones who will go without. Girls tend to be sacrificed first when limited funds are available for education. Lack of healthcare poses greater dangers for women, because of their reproductive roles.

The Lancaster House Constitution was silent on socio-economic rights. In the 2000 process, the results of the local consultations indicated a desire for socio-economic rights – such as access to water, infrastructure and healthcare – but the provisions discussed were all

TABLE 5: SEXUAL AND REPRODUCTIVE HEALTH RIGHTS IN ZIMBABWE'S CONSTITUTIONS

Lancaster House Constitution	2013 New Constitution
<p>Article 13 – Right to Personal Liberty</p> <p>(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the cases specified in subsection (2).</p> <p>(2) The cases referred to in subsection (1) are where a person is deprived of his personal liberty as may be authorized by law—...</p>	<p>52 Right to Personal Security</p> <p>Every person has the right to bodily and psychological integrity, which includes the right—</p> <ul style="list-style-type: none"> (a) to freedom from all forms of violence from public or private sources; (b) subject to any other provision of this Constitution, to make decisions concerning reproduction; (c) not to be subjected to medical or scientific experiments, or to the extraction or use of their bodily tissue, without their informed consent. <p>76 Right to health care</p> <p>(1) Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services. [...]</p> <p>48 Right to Life [...]</p> <p>(3) An Act of Parliament must protect the lives of unborn children, and that Act must provide that pregnancy may be terminated only in accordance with that law.</p>

framed as progressively achievable national objectives and not justiciable rights.⁴²

Socio-economic rights were treated as a given in the COPAC process due to the “spirit of the times” in which socio-economic rights had become central to global thinking. Zimbabwe had to give greater attention to these rights in government and shadow reports – reports written by civil society organizations – on the country’s compliance with human rights instruments; there was a growing awareness among the population, leading to a demand for these rights; and, socio-economic rights were prominent in the experiences of other countries in the region that had concluded constitution-making exercises.

Early on in the drafting process, socio-economic rights such as a fair distribution of land, access to food, a clean and safe environment, education and clean water, were included in the agreed upon issues in the Bill of Rights.⁴³ No debate on these issues followed and provisions remained consistent from the draft released to the public in July 2012 to the final 2013 constitution.

42 Volume 1 (5), pp. 43–438.

43 COPAC Drafting Instruments, p. 11.

The new constitution provides for the following socio-economic rights: labour rights (Section 65); environmental rights (Section 73); education (Section 75); healthcare (Section 76); food and water (Section 77). These rights are justiciable and enforceable rights and their progressive realization will support women’s equality. The latter is, however, limited by state resources and therefore its impact on women’s lives will depend on the interpretation of the constitutionally mandated realization of each right. Regardless, these provisions are some of the most significant provisions from a women’s rights perspective.

CEDAW commits states to eliminating discrimination in all areas of socio-economic well-being including labour, health, education, and in economic and social benefits.⁴⁴ The SADC Gender Protocol similarly requires women’s equality to be promoted in economic and social realms.⁴⁵ The International Convention on Economic and Social Rights, which Zimbabwe acceded to in 1991, requires state parties to progressively realize socio-economic rights. The 2013 Constitution addresses these various provisions, satisfying international commitments.



44 CEDAW Articles 10–14.

45 See SADC Protocol, Articles 14, 17.

TABLE 6: SOCIO-ECONOMIC RIGHTS IN ZIMBABWE'S CONSTITUTIONS

Lancaster House Constitution	2000 Draft Constitution	2013 Constitution
Food	Food security The State must— (a) encourage people to grow and store adequate food; (b) secure the establishment of adequate food reserves; and (c) encourage and promote adequate and proper nutrition through mass education and other appropriate means.	2.7 Food security The State must— (a) encourage people to grow and store adequate food; (b) secure the establishment of adequate food reserves; and (c) encourage and promote adequate and proper nutrition through mass education and other appropriate means.
Environment	Environment	
	1. The State must take appropriate measures, within the resources available to it, to provide the people of Zimbabwe with a clean, safe and healthy environment.	
	2. The State must promote ecologically sustainable development and the management of natural resources in a balanced manner for the benefit of present and future generations.	
	3. In particular, the State must take all practical measures (a) to conserve natural resources; (b) to prevent or minimise degradation and destruction of land, air and water resources arising from excessive use, pollution or other causes; (c) to promote at all levels an efficient system for the storage of water and the management of water resources; (d) to ensure that people have access to adequate supplies of clean potable water; (e) to promote and implement energy policies that will ensure that people's basic needs and the needs of environmental protection are met; and (f) to safeguard the bio-diversity of Zimbabwe.	
	4. The State must promote the creation, preservation and development of parks, nature reserves and recreation areas.	
	5. Provincial councils and local authorities, within the limits of their resources and powers, must ensure the adoption of measures to achieve the objectives set out in this section.	
Work	Work and labour relations	2.16 Work and labour relations
	1. The State must adopt reasonable policies and measures within resources available to it, to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families.	(1) The State and all institutions and agencies of government at every level must adopt reasonable policies and measures, within the resources available to them, to provide everyone with an opportunity to work in a freely chosen activity, in order to secure a decent living for themselves and their families.

TABLE 6: SOCIO-ECONOMIC RIGHTS IN ZIMBABWE'S CONSTITUTIONS

Lancaster House Constitution	2000 Draft Constitution	2013 Constitution
	<p>In particular, the State must endeavour to secure—</p> <p>(a) full employment;</p> <p>(b) just, equitable and satisfactory conditions of work, particularly with respect to— (i) adequate remuneration; (ii) equitable opportunity for promotion; (iii) safety at work; (iv) maternity leave; and (v) rest, leisure, limitation of working hours, periodic holidays with pay and remuneration for public holidays;</p> <p>(c) the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities;</p> <p>(d) vocational guidance and the development of vocational and training programmes, including those for persons with disabilities;</p> <p>(e) the implementation of measures such as family care that enable women to enjoy a real opportunity to work; and</p> <p>(f) the rights of employers and employees to engage in collective bargaining and, where necessary, to engage in appropriate collective job action to enforce their rights.</p>	<p>(2) The State and all institutions and agencies of government at every level must endeavour to secure—</p> <p>(a) full employment;</p> <p>(b) the removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities;</p> <p>(c) vocational guidance and the development of vocational and training programmes, including those for persons with disabilities; and</p> <p>(d) the implementation of measures such as family care that enable women to enjoy a real opportunity to work.</p>
Education	Education	2.19 Education
	<p>1. The State must take all practical measures to promote free and compulsory basic education for children.</p> <p>2. The State must take appropriate measures, within the resources available to it</p> <p>(a) to afford adults access to basic and continuing education; and</p> <p>(b) to afford equitable access to higher education.</p>	<p>(1) The State must take all practical measures to promote free and compulsory basic education for children.</p> <p>(2) The State must take measures to ensure that girls are afforded the same opportunities as boys to obtain education at all levels.</p>
Health	Health Services	2.21 Health Services
	<p>1. The State must take all practical measures to ensure the provision of basic, accessible and adequate health services to the population.</p> <p>2. The State must take appropriate measures to ensure that no one is refused emergency medical treatment at any health institution.</p>	<p>(1) The State must take all practical measures to ensure the provision of basic, accessible and adequate health services throughout Zimbabwe.</p> <p>(2) The State must take appropriate, fair and reasonable measures to ensure that no person is refused emergency medical treatment at any health institution.</p> <p>(3) The State must take all preventive measures within the resources available to it, including education and public awareness programmes, against the spread of disease.</p>

TABLE 6: SOCIO-ECONOMIC RIGHTS IN ZIMBABWE'S CONSTITUTIONS

Lancaster House Constitution	2000 Draft Constitution	2013 Constitution
	Social Welfare The State must take all practical measures, within the limits of the resources available to it, to provide social security and social care to those who are in need of it, in particular war veterans, as may be specified in an Act of Parliament.	2.22 Social Welfare The State must take all practical measures, within the limits of the resources available to it, to provide social security and social care to those who are in need.
Socio-economic individual rights		
		4.22 Labour rights (6) Women and men have a right to equal remuneration for similar work. (7) Women employees have a right to fully paid maternity leave for a period of at least three months.
	Right to establish and maintain educational institutions Everyone has the right to establish and maintain independent educational institutions at their own expense, but a written law may require the institutions to be registered with the State, a provincial council or a local authority and to maintain reasonable standards prescribed in or under the law.	4.32 Right to education (1) Every citizen and permanent resident of Zimbabwe has a right to— (a) a basic State-funded education, including adult basic education; and (b) further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible. (2) Every person has the right to establish and maintain, at their own expense, independent educational institutions of reasonable standards, provided they do not discriminate on any ground prohibited by this Constitution. (3) A law may provide for the registration of educational institutions referred to in subsection (2) and for the closing of any such institutions that do not meet reasonable standards prescribed for registration. (4) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right set out in subsection (1).
		4.33 Right to health care (1) Every citizen and permanent resident of Zimbabwe has the right to have access to basic healthcare services, including reproductive healthcare services. (2) Every person living with a chronic illness has the right to have access to basic healthcare services for the illness. (3) No person may be refused emergency medical treatment in any health-care institution. (4) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the rights set out in this section.

TABLE 6: SOCIO-ECONOMIC RIGHTS IN ZIMBABWE'S CONSTITUTIONS

Lancaster House Constitution	2000 Draft Constitution	2013 Constitution
		<p>4.34 Right to food and water</p> <p>Every person has the right to—</p> <ul style="list-style-type: none"> (a) safe, clean and potable water; and (b) sufficient food; <p>and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.</p>
		<p>4.30 Environmental rights</p> <p>(1) Every person has the right—</p> <ul style="list-style-type: none"> (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that— <ul style="list-style-type: none"> (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development. <p>(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the rights set out in this section.</p>

CHAPTER 6: Conclusion: Vigilance and Monitoring

Women's participation in Zimbabwe's constitution-making processes met the two primary ingredients for women's meaningful involvement: they were members of the constitution-drafting body, and they participated as an active, organized, and inclusive national women's group.¹

The roles of the G-20, Women's Coalition and the Ministry of Women Affairs, Gender and Community Development in the second constitution-making process clearly illustrated the influence of effective women's organizing and organization. These coalitions overcame religious, ethnic, economic, political and other diversities to unite women around their constitutional demands: women in the political parties and positions of influence lobbied and negotiated the special measure to increase women's representation in parliament; small groups worked on technical and legal issues; and there was a steady flow of information and communication among women and those in power.²

When the parliamentary discussions opened on the Bill to adopt the country's new constitution in May 2013, several female parliamentarians took the floor to take note of the history made by Zimbabwean women.

The female MPs drew attention to the gender electoral quota in the new constitution, which would increase women's representation; to the subjugation of harmful cultural practices – as well as culture and customary law – to the Bill of Rights; and to the strong provisions on women's rights as major milestones in the history of constitutionalism in Zimbabwe. But they also clearly emphasized that it would take political will to give life and meaning to the new constitution.

During the country's second constitution-making process, the women's movement recognized that the inclusion of their demands, and the adoption of the country's new Supreme Law, are but the first steps in their engagement with both political parties and government entities to ensure political accountability to gender equality and women's rights. "We created a platform to negotiate as the women's movement during the [constitution-making] process, but going forward we must create a mechanism to hold government accountable to the

gender equality provisions, especially the distribution of resources," said Talent Jumo, one of the co-ordinators of Katswe Sistahood, a member of the Women's Coalition, which focuses on young women.³

At the launch of the G-20 in 2012, the then chairperson stated that the lobby group must become "the eyes and ears" of all Zimbabwean women, and suggested that its work would not end with the adoption of the new constitution. "We must remain a watchdog group monitoring the implementation of the gender equality and women's rights provisions in the constitution," iterated MP Biata Nyamupinga.⁴

Some women activists and legal scholars believe women must remain vigilant, because, they argue, the strong gender equality and women's rights provisions in the constitution are due more to "the spirits of the times", than a full understanding of the centrality of gender equality and women's rights to the country's national development. Other than the gender electoral quota and sexual and reproductive health rights, most gender equality and women's rights were viewed as "safe" issues, because many of these provisions are dependent upon the legislative reform process, which can only take place *after* the constitution is in place. This process, as one female legal expert said, will take time.⁵

"Women still have a long way to go to have gender understood and integrated ... there has been less contention around women's interests in this constitution-making process ... [but] not necessarily because people embrace gender issues," said Dr Amy Tsanga, a former commissioner in the 1999-2000 constitution-making process.⁶

The only female member on the COPAC Management Committee also cautioned women to remain vigilant and put in place mechanisms to monitor the implementation of their gains. "... We must understand that the war is not over ... we should not be lulled into thinking that now every man is saying [that] it is very good for women to be equal to men ... there is a bigger struggle. When we start saying we want a woman president in this country, it [will] be a different conversation," said Misihairambwi-Mushonga. She emphasized that when it came to actual political positions, and political power and control, it would need very different strategies.⁷

Monitoring, implementation, and engagement with political parties are the main lessons women activists say that they will take forward following the adoption of the new constitution. One of the key functions of the Gender Commission, once it is established, will be to monitor the implementation of the gender equality and women's

1 Katz, E., 2009.

2 Ibid. Katz outlines these issues as key components of effective women's organization in constitution-making processes.

3 Interview with Talent Jumo, Katswe Sistahood.

4 Interview with the Hon. Biata Nyamupinga.

5 Interview with Professor Julie Stewart, Southern & Eastern African Regional Centre For Women's Law, University of Zimbabwe.

6 Interview with Dr Amy Tsanga.

7 Interview with the Hon. Priscilla Misihairambwi-Mushonga.

rights provisions. The women's movement say they too need to set up their own strategic mechanisms to complement the work of the commission and to have influence.

Engaging strategically with political parties to actively achieve greater political accountability regarding gender equality and women's rights issues is crucial if the gender electoral quota measures advocated in the new constitution are to be met. "The battle for 50/50 representation of women in governance structures has to be won at the level of the political parties. The political system [in Zimbabwe] is still not mature enough for 50/50, so women have had to accept [taking this on in] incremental steps," says Kelvin Hazangwi, director of Padare Men's Forum on Gender in Zimbabwe.⁸

Women leaders agree they must focus on being able to "read the political tea leaves"⁹ in governance processes. While the COPAC-led constitution-making process provided women with a taste of what it means to engage with political parties, they recognize that they need strong skills in political analysis, and an understanding of how political parties work, to influence intra-party democracy through gender mainstreaming within party structures and leadership.

"Women must not be politically coy. We have to get into the political parties, because they are powerful and here to stay, and they hold the reins to people's attitudes," said Jessie Majome. "Women need to become literate in politics and understand the political processes. We have to start working in the political parties."¹⁰

Engagement with political parties was reinforced to women, following political parties' interpretations of how the constitutional measure for women's representation in parliament should be used in the 2013 elections.

In her presentation to women after the 2013 elections, "Women and Elections in Zimbabwe: Lessons Learnt", the chair of the Zimbabwe Electoral Commission, Justice Rita Makarau, emphasized that political parties remain the fundamental players in women's participation as candidates in elections, and in the 2013 elections "the stakes were fairly high". The 2013 elections marked the end of the Government of National Unity, so "the three different political parties that had formed the GNU were all going for broke as they tried to oust each other from government", she continued. As a result, the parties shifted women into the 60 reserved seats and onto the zebra-listing senatorial party lists.

8 Interview with Kelvin Hazangwi of the Padare Men's Forum on Gender; Padare worked with communities of men throughout the country to build their understanding of gender equality and women's rights as constitutional issues.

9 Phrase coined by Everjoice Win, Zimbabwean feminist activist, during interview.

10 Interview with the Hon. Jessie Majome, who has participated in both constitution-making efforts as a member of the bodies leading the processes.

Netsai Mushonga, former National Co-ordinator of the Women's Coalition, said: "These elections were highly competitive. It was a dog-eat-dog election and the political parties felt that they had to field strong candidates." [And to them] "A strong candidate ... means men, so the parties put men in the seats where they could win."

"The low number of women who manage to stand as candidates and win seats in the 210 constituency seats in the National Assembly tells us that we must take off our white gloves and put on [our] boxing ones ... so that more women move through the primary elections to stand as candidates in the next elections," said Mushonga. Only 90 women managed to win their political party's primary elections to stand as candidates for the 210 National Assembly constituency seats during the July elections, compared to 603 men. Of these women, only 25 won. Five of the 90 women stood as independent candidates.

Women activists say that the political parties also showed resistance to the special measure. "Women ... faced a lot of resistance from the men to the principles of equality," Mushonga said. "Women were pushed towards the 60 seats and told to vacate the competitive seats for men. It was not unusual for women to be told, 'we gave you 60 seats, what more do you want?'"

To safeguard the provisions for gender equality and women's rights secured in the new constitution, the women's movement must:

- make use of the spaces within which civil society engages with the State;
- build on growing public consciousness around issues of women's equality;
- find ways to situate gender equality and women's rights issues within the broader human rights and democracy movements in Zimbabwe.

"The gender equality and women's rights activists must be stronger at linking the bread and butter issues to accountability at institutional levels and at linking women's issues to the broader issues," says Irene Petras. And civil society as a whole must be quick and proactive in "holding office bearers to account and test[ing] the provisions, through advocacy and even legal challenges if needs be. We must provide a higher level of scrutiny [of the implementation of the provisions] and we can learn from other countries in the region on how to do this."¹¹

11 Interview with Irene Petras, Executive Director, Zimbabwe Lawyers for Human Rights.

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Annex 1: Key Informant Interviews conducted during the Period January – August 2013

BWANYA, P., Programme Manager, Norwegian People's Aid, First National Constitutional Assembly Coordinator in 2000.

CHIGIJI, Mrs., Chief Inspector, Zimbabwe Electoral Commission, Former District Administrator in 1999-2000 process.

CHIMBETETE, C., Former Director, Zimbabwe Women's Resource Centre & Network.

CHIRAWU, S., National Co-ordinator of Women in Law in Southern Africa, Member of the G-20.

CHIRISA, F., Former Director of Women in Politics Support Unit, Member of the G-20.

DAMISO, C., UNFPA Gender Specialist, Legal Advisor to the Chiefs during COPAC Process.

GAIDZANWA, R., Senior Lecturer in Social Studies at the University of Zimbabwe, Commissioner 1999-2000, and then Head of Gender Thematic Group .

HAZANGWI, K., Director of Padare Men's Forum.

JUMO, T., Reproductive Health Co-ordinator at Katswe Sisterhood.

HON. MAJOME, J., then Deputy Minister of Women Affairs, Gender and Community Development, Member of G-20 and Former Commissioner 1999-2000 process.

MANDAZA, I., Executive Director of SAPES Trust, Commissioner in 1999-2000 process.

MASIYIWA, E., Director, Women's Action Group, Member of the G-20.

HON. MATIENGA, M., Member of Parliament, Member of Parliamentary Gender Committee, Women's Assembly of the MDC-T political party.

HON. MISIHAIRAMBWI-MUSHONGA, P. then Minister of Regional Integration and International Cooperation, only woman in COPAC Management Committee.

MUCHAWA, E., Former Director of the Zimbabwe Women Lawyers Association, Member of the G-20.

HON. MUCHENA, O., then Minister of Women Affairs, Gender and Community Development, Member of the G-20, ZANU-

PF Women's League.

MUMBENGEGWI, S., Former WAG Director 1991-2001.

MUSHONGA, N., former National Co-ordinator, Women's Coalition of Zimbabwe, Member of the G-20.

HON. NYAMUPINGA, B., Member of Parliament for Goromonzi, Chairperson of the G-20.

PETRAS, I., Executive Director: Zimbabwe Lawyers for Human Rights.

STEWART, J., Director of Southern and Eastern African Regional Centre for Women's Law, Member of the G-20.

TSANGA, A., Former Deputy Director of the Southern and Eastern African Regional Centre for Women's Law, Commissioner in 1999-2000 process.

WIN, E., Former Director of Oxfam Canada, civil society activist during 1999-2000 process.

