



Gender Analysis of Zimbabwe's Constitutional Draft

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Introduction

This analysis of the Constitutional Draft seeks to examine the document from the perspective of what it provides in terms of protection and/or advancement of women's rights and position in Zimbabwean society. The analysis will address both the process leading up to the compilation of the Constitutional Draft as well as its contents. This analysis will generally consider the participation of women in the consultative stages of the constitutional reform process i.e. the outreach processes; while particular focus will be on the provisions of the Constitutional Draft in terms of providing and guaranteeing gender equality and the frameworks it creates for the advancement of women's rights and equal participation in Zimbabwean society.

It is critical from the onset to state that, while this analysis sets out to do the above, there have been many analyses of both the processes and content of the Constitutional Draft¹. Given the contested and fluid political context within which the Constitutional Draft has been formulated and presented to the citizens of Zimbabwe; it is only prudent that this analysis focus on the issues related to the advancement of women's rights, equal participation and gender equality, which tend to be addressed cursorily or completely overlooked in pursuit of the "larger agenda" in most national and political processes. The struggles for women's rights in Zimbabwe have typically been identified by women fighting for inclusion or recognition in national and political processes after the fact. Issues concerning women are generally considered as ancillary to the main struggles, whether the struggle is about voting and participation in national processes or accessing the means of production. Women tend to join the "main"² struggle for society to change at the expense of women-specific issues, which then tend to be left until after the main struggle has been resolved, and sometimes forgotten in the process. This has resulted in women's issues becoming appendages of the "real" issues. It is against this background that this analysis seeks to provide a platform for Zimbabwean women to





interrogate the current Draft, with a view to enhancing their opportunities for engagement with the current constitutional reform process.

The Process

The constitutional reform process that led to the production of the current Constitutional Draft (hereinafter the Draft) of July 18, 2012 was provided for in the Global Political Agreement of 2009 (GPA) in Article VI. Article VI of the GPA provided for a constitutional reform process which should produce a Constitution that “*deepens our democratic values and principles and the protection of the equality of all citizens particularly the enhancement of full citizenship and equality of women*” and lays down the procedure to be followed in the formulation of this process in Article 6(1). The procedure for participation in the constitutional-making process was to be led by the Select Committee of Parliament (hereinafter COPAC). It is noteworthy that while indeed the provisions of Article VI provided for equal participation in the process, there was a glaring omission on the part of the drafters of the GPA who assumed that the Parliamentary Committee to be constituted to spearhead the constitutional reform process would somehow be aware of the need to have men and women in equal numbers in its structure. Thus, given that the 2008 elections had resulted in the lowest number of women members of Parliament in Zimbabwe since 2000, what emerged was a COPAC that was male dominated, effectively drowning out the voices of the women Parliamentarians in the parliamentary and political parties’ processes related to the formulation of the Draft. An analysis of the members of COPAC at its inception showed that there was an average 30% representation of women MPs per political party. While numbers do not necessarily translate into active and effective participation by women in public spaces, it would not be far fetched to suggest that numbers do make a difference in terms of building confidence (hence the adage “there is safety in numbers”). Thus, given the under-representation of women





in the COPAC structure itself, it is safe to assume that the impact would also extend to the male/female ratios of persons employed in the outreach process as well as in the consolidation of data obtained in the outreach.

Article 6(1)(a) provided for COPAC to set up subcommittees to assist in the performance of its mandate and the actual public consultative process. Article 6(1)(iii) provided for the convening “*of an All Stakeholders’ Conference for COPAC to consult stakeholders on their representation in the sub-committees referred to above and such related matters as may assist the committee in its work*”. It is noteworthy that there is no specific provision for how the question of equal participation by men and women in the Stakeholders’ conference would be handled. This resulted in a male-dominated³ conference that produced male-dominated subcommittees, save for the gender thematic working group. As a result of this structure, there emerged a public consultative process which created space and voice for men and, at best, a public consultative process that was not friendly to women’s participation and, at worst, totally silenced women.

Article 6(1)(a)(ii) gave COPAC authority “*to hold such public hearings and consultations as it may deem necessary in the process of public consultation over the making of a new Constitution for Zimbabwe*”. This provision gave COPAC discretion to consult the public as it deemed fit in the gathering of people’s views on what should be in the Constitution. However, because of the already stated omission on the part of GPA, while COPAC did indeed conduct public hearings and consultations, what emerged was a male-dominated public consultation. It is proven that generally, women tend to let men speak ahead of them in public meetings⁴, and the constitutional reform process was no exception. There are anecdotal reports (from both COPAC and civil society who were following the processes) that in rural areas for example, women addressed what are perceived to be women’s issues, such as the rights of children, sexual abuse and the right to identity, as well as issues of domestic violence, religious freedom and married women’s property rights. In urban areas, on the other hand, very few women got opportunities to speak because men, especially the youth,





dominated the forums⁵. When the women did speak, they addressed those issues related to property rights in marriage, access to resources especially micro finance, religious and children's issues.

There was also a general observation that women tended to agree to suggestions proffered by men in the public meetings. Thus a pattern emerged in both urban and rural areas, where women's voices were rarely heard or, if they were heard, they were heard on issues that are perceived to be women's issues anyway⁶. The above illustrates just how limited the space and opportunities for women's participation were.

The Content

A Constitution is the basic and supreme law of a country. It is the foundation upon which all other laws are designed. Further, a Constitution generally sets out the framework for the government in a country, i.e. how power will be organised and exercised, and provides for individual rights that are to be protected under the law. Essentially, a Constitution serves to limit the powers/or exercise of power by the different arms of government in order to protect its citizens. Thus, in the context of Zimbabwe, the GPA aimed at facilitating the drafting of a Constitution that would create a new structure of government, that reflected the aspirations of the Zimbabwean people.

Given that a constitution is about protecting individual rights and limiting the exercise of power, the fundamental question for women is, what has the Constitution got to do with the rights of women? In short, a constitution should ensure provisions for comprehensive protection of women's rights. In addition, the Constitution should also create a clearly defined system of government that limits excesses in the exercise of power by the various arms of government, through clear separation of power. Finally, a constitution should also provide a clear system for the enforcement of





the rights of individuals at the highest level. If a constitution can meet the above general criteria, it will certainly be a useful legal framework for women.

A key issue to note is that in determining the comprehensive protection of women's rights, there are several international instruments that must guide the formulation of rights in a constitution. The United Nations Convention on the Elimination of Discrimination against Women (CEDAW), the African Union Protocol on the Rights of Women (African Women's Protocol) and, more recently, the SADC Protocol on the Rights of Women (SADC Women's Protocol) are instructive for any constitution that is crafted in recent times. These documents are all a result of the realisation that despite there being comprehensive documents that define human rights, these rights have not always been exercised or accessed equally by women and men. Thus, the measure for whether or not a Constitution is sensitive to the rights of women, or indeed any law purporting to address rights issues, must meet the standards set out in the international women's rights framework stated above. It is against this background that the Constitutional Draft will be assessed for compatibility or compliance for sensitivity to women's rights.

The Preamble

The Preamble of any document generally sets the context for the ensuing content. The Preamble to the Draft also sets the background upon which the various provisions in the Draft are made. In particular the Draft highlights the country's history of discrimination and domination and praises the role of the liberation war and its heroes and heroines for the sacrifices they made for independence. It is noteworthy that there is equal recognition of the role played by men and women in the liberation wars, a welcome departure from the normal liberation war discourse which has seen women relegated to appendages of the exploits of liberation war heroes. Further, the Preamble also affirms the desire for democracy, good govern-





ance and transparency, which is recognition of the need for the creation of a real democratic state as provided for in the phrases “*Recognising the need to entrench democracy, good, transparent and accountable governance and rule of law, reaffirming our commitment to upholding and defending fundamental human rights and freedoms*”.

The preamble also sets aspirations of the Zimbabwean people for “*united, just and prosperous nation founded on the values of transparency, equality, freedom, fairness, honesty and the dignity of hard work*”. The various statements of intent as set out in the preamble indicate a desire and commitment on the part of the Zimbabweans for a society that is fairer to all its citizens as compared to the current situation. Further, by implication, the desire for an equal, fair and free nation suggests that the women would enjoy their human rights in a departure from the current constitutional framework where there are no guarantees for the defence of fundamental human rights from outset.

The Preamble to the Draft, in terms of setting a foundation of intent by the Zimbabwean people, provides a clear picture of a desire to create a just, equal and democratic society in which all the citizens enjoy their rights.

Chapter 1

This chapter deals with several fundamental issues, key among them being the supremacy of the Constitution, the founding values and principles; and in a departure from the current Constitution there are also specific provisions related to the promotion of public awareness of the Constitution. As stated above, the Constitution of any country is the supreme law that is above all laws. Section 2(1) of the Draft clearly states that the Constitution is above “*all laws and any law, practice, custom or conduct inconsistent with it is invalid to the extent of that inconsistency...*”. This provision is important as it ensures that there is never a situation where a law or policy can be interpreted in violation of the rights set out in the





Constitution. For women this is fundamental as customs, laws and policies are often interpreted to perpetuate discrimination or suppression of their rights, in the absence of a clear provision of this nature. Thus stating from the outset that any law inconsistent with the Constitution is invalid lays a good foundation for women's exercise and enjoyment of the rights provided for under the Draft.

While these values are a reiteration of some of the issues already addressed in the Preamble, the principles and values are critical for two reasons, viz. that they form the basis or foundation for the rights set out in the Bill of Rights, as well as show the country's definitive commitment to the values of a democratic state. This is important because in future interpretations of human rights and claims of such rights, the founding principles and values are a key reference point in defining the claimed rights, as well as the showing the spirit and intent behind the stating of those rights.

Section 3 lays down the founding values and principles. It is noteworthy that there is an underlying recognition of the need for equality in the values as stated, thus the values and principles of "*recognition of the inherent dignity and worth of each human being*", "*recognition of the equality of all human beings*" and "*gender equality*", Section 3(1)(e–g), are all stated separately, to indicate importance. These values read together show a clear commitment to equality of persons before the law and in the society envisaged in this Draft. This is consolidated by the fact that Section 3(2), addresses the principles of good governance and reinforces the notions of participation and representation by all in electoral processes.

Section 6 provides for the recognition of 14 indigenous languages, as well as English and sign language, as the official languages of Zimbabwe. This section further states that the State and its institutions and agencies *at all levels* must ensure that the languages are treated equitably, in terms of promotion of use and development. While this is a general provision aimed at addressing the rights of minority groups, this is particularly important for women's rights because in the past women have suffered discrimination





and injustice as a result of their lack of understanding of the law and their rights, which are often couched in English. Although Shona and Ndebele have been recognised as official languages along with English, more often than not, in interactions with state agencies and institutions, language has been a barrier for many women.

Section 7 deals with promotion of public awareness of the Constitution. This section places an obligation on the State to ensure that the Constitution is made available to the public and in all the official languages, including being taught in schools and made a part of the training of the security service, civil service and employees in public institutions. This is a positive development for society, as the intention is to ensure that all citizens will have access to information on the Constitution, which is the foundation of their rights. Thus the provisions of this section and those in Section 6 again indicate a desire for a democratic state in which citizens not only have rights but positive steps are taken to ensure that they have information on those rights.

Chapter 2: National Objectives

The Draft Constitution provides a new concept, that of national objectives under Chapter 2, which is a summary of the framework which government and all State institutions will use in formulation and implementation of policy. In terms of Chapter 2(1)(2), the provisions must also be considered in interpretation of this Constitution. These objectives are a reiteration of the aspirations expressed in the Preamble, the founding values and principles for a democratic, just, peaceful state that recognises the fundamental human rights and freedoms of the people. In total there are 26 national objectives dealing with a variety of issues. It must be noted that some of the national objectives are clearly gender sensitive, for example the objective on development and empowerment which seeks to ensure that in all development and empowerment initiatives, measures are taken to ensure that women, in particular, have equal access to development opportunities,





see Section 2.6(3). On the other hand, there are also those objectives that are presented in gender-blind language, which assumes that a democratic and equal society has already been achieved, such as the objectives on social welfare, shelter, legal aid etc. Thus, to the extent that these objectives are commendable for raising issues that are currently not in the Constitution and therefore may be perceived as a step in the direction of enhancing the rights of those most likely to be poor, i.e. women; there is also the issue that these objectives may also be termed gender neutral, which is not desirable in a situation where the intention is to promote the equal rights and access to those rights by men and women.

For purposes of this analysis, the key objectives to note and interrogate are the following:

- i **2.9 Culture.** The provision for the promotion and preservation of cultural values and practices needs to be understood in the context of the founding principles and the preamble. Section 2(9)(1) provides a very clear basis upon which cultural values and practices will be promoted and preserved; by stating “... promote and preserve cultural values and practices *which enhance the dignity, well being and equity of Zimbabweans*”. The intention of this section therefore, is to ensure that in the exercise of cultural values and practices, there is need to ensure human/individual dignity, well being and that, equity of all Zimbabweans is enhanced, which by inference means that the rights of individual women should not be violated in the name of culture, cultural values or practices. However, given the patriarchal nature of Zimbabwean society, it is important that in raising awareness on this Draft the issue of culture must be clarified to mean those practices and values that denote identity and human dignity, so that culture is not used to discriminate women as is the situation under the current Constitution.
- ii **2.9 Gender balance.** The gender balance objective is worth celebrating in that not only do the earlier provisions in the Draft generally imply





gender balance, this provision categorically defines gender balance to mean promotion of the “*full participation of women in all spheres of Zimbabwean society on the basis of equality with men*”. In addition, the objective proceeds to categorically state that the State must take measures, including legislation, to ensure that there is equal representation of men and women in all state institutions and agencies and at all levels. The objective also categorically states that in constitutional commissions and other bodies created by the Constitution or any act of Parliament, there must be 50% representation by women. This is a very progressive provision, which not only provides for gender balance but proceeds to stipulate how that balance is to be achieved. It is also one of the few objectives that would be easy to track for compliance, as it is very clear in what is required in order to fulfil it.

A definite positive factor in this provision is that there is a clear provision for women to access resources, including land, on an equal basis with men. For a country that has an agriculture and mineral-based economy, which depends heavily on the land, this provision indicates acknowledgement that the economy should be driven by both men and women. Further, given that under the current Constitution women’s rights to land are curtailed, this provision is a clear indication of the steps that Zimbabwe has taken towards achieving gender equality. In the previous Constitution women accessed rights to land as extensions of male persons or in very limited quantities.

The provision also takes a bold step in dealing with past gender discrimination and imbalances as a result of past practices and policies. This component of the objective is in line with international customary law practices, which indicate the need to take into account past discrimination and imbalance and address it when creating new gender sensitive laws, policies or frameworks. This objective is probably the best indication of the level of determination to address gender imbalance that Zimbabwe has reached.

- iii **2.10 Fair regional representation.** The provision on fair regional representation in state institutions and agencies also addresses the critical





issue of equitable access to resources. This is a critical objective as it paves way for previously marginalised groups, especially ethnic minorities, to participate in affairs of the state. This is particularly important for women, as the opening up of spaces for those previously excluded also enhances the opportunities for women from those communities to participate in matters related to them and their issues. However, there is no provision for specific advancement for women in those areas that have previously been dominated by representatives from other regions in the country.

iv **2.16 Work and labour relations.** This objective raises two critical issues for women. The first one being the right to work (in a freely chosen activity and the right to a decent living) and the second key issue is the recognition of the role that women play both in working and raising a family. The recognition of these key issues in such a concise manner must be applauded, as it is further consolidation of the intention of this Draft to create an equal society for women, where their roles as mothers do not limit their participation in public spaces. Section 2.16(2)(d) on the need to ensure that measures are taken for family care to enable mothers to work, could prove useful for enhancing the Zimbabwean workplace which is currently oblivious of the real challenges presented by lack of a comprehensive child care policy and programmes.

v **2.17 Protection of the family.** This objective provides for two critical issues, viz. social welfare and the prevention of domestic violence. The objectives should be lauded for recognising the need for national social welfare assistance for the citizens, as this is a recognition of the economic and social challenges that the country has experienced. Further, the expansion of the objective to recognise domestic violence as an issue and consciously determine to prevent it, should also be welcome, given that domestic violence has long been recognised as a major obstacle to achieving gender equality. In an environment where individuals experience domestic violence and do not have access to basic requirements for





survival, there is very little likelihood that there will be gender equality as participation in public and private spaces will be limited by these issues.

- vi **2.18 Marriage.** This objective seeks to do two things, firstly, to ensure that the country moves away from patriarchal perceptions of marriage, its dissolution and the rights of partners within marriage; and secondly, to reiterate the equality of partners in a marriage. This objective shows that the aspiration to equality stated from the outset of the Draft is a recurrent and important theme. In particular this objective takes the equality provisions further by providing categorically that men and women in marriage will have equal rights to property acquired during the marriage upon termination of such marriage.
- vii **2.19 Education.** The objective not only provides for basic compulsory education for all, but specific provisions are made for the education of the girl child. This is a critical provision as it achieves two key outcomes. The first is the enhancement of girl child education in the context of a patriarchal society, which generally does not promote this. The second outcome is that of achieving gender equality and overcoming past discrimination and difference in numbers.
- viii **2.21 Health services.** This objective covers provision of health services by the State and of mandatory medical treatment in situations of emergency. This provision is commendable in a situation where healthcare has become increasingly inaccessible for patients without financial resources and where healthcare facilities have battled to maintain sufficient equipment and consumables. However, it is disconcerting that there does not seem to be specific mention of mandatory maternal health provision in a country which still has about 900 maternal deaths for every 10 000 live births. Given that the Constitution sets the legal framework and the tone for consequent subsidiary legislation, it would have been prudent to address the protection of women's access to maternal healthcare in the light of maternal mortality challenges.





- ix **2.26** This objective states that there should be domestication of International Instruments; incorporation of international conventions, treaties and agreements. While this provision is critical in ensuring that Zimbabwe begins to comply with being a member of the international community bound by certain international common law standards, this objective reads like the former Section 111B which has made it difficult to achieve domestication of all the international treaties that Zimbabwe is party to. This is because, as much as the Constitution provides for domestication, the duty to do so is vested in Parliament and there are no regulations or sanctions for how Parliament should do this, or time frames within which a signed international treaty should be domesticated, or consequences for not domesticating. Thus, despite Zimbabwe signing or ratifying key women's rights treaties and conventions, these have not been useful for women because they are not domesticated. It would therefore have been prudent for this objective, as with the gender balance objective, to clearly state how this objective should be implemented.

Chapter 3: Citizenship

This chapter deals with citizenship and the various ways one becomes a citizen. This is one of the few chapters that are gender balanced. The eligibility to citizenship has now been made clearer by the different categorisations, which are citizenry by birth, descent or registration. Section 3.4 addresses the issue of citizenship by registration, and opens citizenship by registration to spouses of Zimbabweans or persons who have lived in Zimbabwe for more than five years. It is important to note that citizenship throughout this chapter is available on the basis of similar and equal criteria for men and women. It is also important to note that the Draft protects the citizenship of those who would have acquired citizenship through marriage even after divorce, see Section 3.6.





Of particular importance is the right of citizenship to descendants of people from the SADC region, see Cap 3:9(2). Whereas under the current Constitution, most Zimbabwean stood to lose or had lost their citizenship because of their ancestry, this provision recognises the history of Zimbabwe and the region where the creation of borders and countries actually separated communities and families, sometimes without their consent. A further positive development is the protection of the right to citizenship by ensuring that no-one who is a Zimbabwean citizen is rendered stateless, see Cap 3:5(3), even in circumstances where his/her citizenship could be revoked.

There are two issues that may be of concern in this chapter. Firstly, there is the issue of circumstances under which one may lose one's citizenship where "*the person acquired the citizenship by fraud, false representation or concealment of a material fact*". While on the face of it this provision is good and should exist to take care of those seeking Zimbabwean citizenship for unscrupulous means, it could also be detrimental. For example, one of the greatest challenges Zimbabwean women have faced is their right to pass on their citizenship to foreign spouses. There is a real possibility that the Immigration Department might decide to refuse to grant citizenship or revoke citizenship of foreign spouses on the basis that material facts were concealed, even where they were not. Thus, in the absence of a clear criteria of what material facts are, it may be important to remove the provision, as it is potentially problematic. A second issue for concern is the power given to Parliament under Section 3.8(e) for "*the prohibition or permitting of dual citizenship in respect of citizens by descent or registration*". This provision could cause foreign spouses to lose their opportunities to be Zimbabwean citizens, as most will be citizens of their country of birth, should Parliament translate this provision into legislation. Further, the provision could also prejudice the children of Zimbabweans who are born out of Zimbabwe, as they become citizens by birth of their countries of birth, and lose the opportunity to claim their Zimbabwean citizenship through no fault of their own.





Chapter 4: Bill of Rights

Chapter 4 starts by stating the instances in which the Bill of Rights will apply. The chapter provides for the application of the “Bill of Rights” and proceeds to state fundamental human rights and freedoms. It is important to state that the chapter categorically states that the rights provided for under this chapter will be binding on the State, its institutions and agencies; as well as on all other persons (both individuals and entities recognised as persons), within limits and to the extent that the obligation to protect the rights of persons does not undermine the exercise of their rights too. This is important because Bills of Rights are usually binding only on the State and its institutions and agencies, to the exclusion of other persons, for example, employers that are not state agencies would now be expected to respect rights of mothers in the workplace.

It is important to note that Chapter 4 is not exhaustive as it states that it does not preclude the existence of other rights, which may not be stated in the chapter. This creates room for the interpretation of rights to include those rights that may not be provided for in this Draft, but which would be in an international instrument. This position is anticipated as Section 4.3(1)(c) which provides for taking into account “*international customary law and all treaties and conventions to which Zimbabwe is a party*” in interpreting the rights provided for in Chapter 4. This means that, for example, conventions such as CEDAW, the African Women’s Protocol and the SADC Women’s Protocol could all potentially be used to interpret the rights in the Draft and potentially give women rights that may not be spelt out in the Draft, and equally this could apply to rights protected under other conventions that do not necessarily apply to only women, such as the African Charter on Human and People’s Rights.

Chapter 4 states the fundamental human rights and freedoms already stated in the current Constitution. Of interest are the exceptions to the right to life, where the Draft suggests that the death penalty will not be imposed on women. On the face of it, this exception perpetuates gender





discrimination; however, a close analysis of the right to life suggests a deliberate attempt in the Draft to move away from the imposition of the death penalty. It would seem that the provisions on the right to life in this Draft are aimed at eliminating the death penalty as evidenced by the provisions of Section 4.2 which seeks to curtail those on whom the penalty applies, as well as provide the court with discretion to impose or not.

Section 4.8 provides for the right to human dignity, both in public and private life. This is an important extension of the right, especially as regards the application of the right in private life. Given the prevalence of domestic violence, and violence that occurs in private organisations' spaces, such as political parties, the recognition and protection of this right is critical, especially for women. This would enhance calls for greater protection from State institutions and agencies, such as the police, who have traditionally shied away from interfering in "private lives" even where violent criminal acts are being committed.

Section 4.13 is the equality and non-discrimination clause. Unlike in the current Constitution where equality and non-discrimination is not clearly stated as being between men and women, Section 4.13(2) categorically states that "*Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres*". Further, Section 4.13(3) states the grounds for discrimination as including "sex and gender". This distinction is important as it addresses both gender-based discrimination, as well as discrimination based on one's sex. The equality clause also presents a stringent test for discrimination and promotes positive discrimination (affirmative action) by stating that any discrimination will be considered "*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*". This means that where past oppression and discrimination are being addressed, the Draft recognises that addressing past injustice is not discrimination.





In addition to the fundamental rights protected under the current Constitution, the Draft Constitution proposes the following additions to rights of persons, in line with international standards.

In particular, the following rights have been introduced in the Draft:

PROPOSED RIGHT	KEY GENDER OBSERVATIONS
Section 4.7: Rights of arrested and detained persons	This is a positive development, in line with international trends, but also in line with the legal principle that a person is innocent until proven guilty. It is also important that the Draft now provides that people should be brought to court within 48 hours, even when the time expires over a weekend or holiday.
Section 4.16: Right to demonstrate and petition	The right to demonstrate and petition is provided for, with the condition that it must be exercised peacefully. This framing of the right leaves it open to interpretation and law enforcement officials may decide to violate people's rights for fear that they will not demonstrate or petition peacefully, as is the current situation with POSA. This is a positive development for communities who are often restrained in confronting service providers for fear of arrest.
Section 4.18: Freedom of expression and freedom of the media	The right to freedom of expression has been extended to include the right freedom of the media. This right provides for general freedom of exchange of information and journalistic freedom. However, the clause is also clear that freedom of expression and media does not mean that the media should fan violence, hate speech or cause malicious injury to a person's reputation. This is important to note in that in some instances, journalists have damaged the reputation of citizens in the pursuit of a story.





Section 4.19: Access to information	The right to information is stated as being for citizens, residents and media to access any information held by the State or its institutions and agencies at any level, if that information is required for public accountability or for the exercise or protection of a right. This is an important provision in that the State and its institutions can no longer hide information from the media or the public if the information has a bearing on the rights of individuals, or if it should be released for the benefit of the public good. Further, the right to information is also extended to private individuals, to the extent that the information is required for the protection or exercise of a right. Thus, for example, where women have struggled to get information on the incomes/salaries of the fathers of their children for maintenance claims, or residential addresses for service of court processes, they can now approach employers and be given that information.
Section 4.20: Language and culture	This clause provides for the protection of every person's right to the language and culture of their choice. However, since culture is problematic, as discussed above, this clause takes into account that challenge and specifically provides that the exercise of this right should not be in violation of or inconsistent with the provisions of the broader bill of rights.
Section 4.21: Freedom of profession and trade	This is a new provision, stating the right to engage in a trade or profession of one's choice.
Section 4.22: Labour rights	This provision states that every person is entitled to fair and reasonable wages for work in a fair and safe environment, something that was missing in the current Constitution. The section also enshrines the right to join a trade union as well as the right to strike/collective job actions. This clause provides a very clear gender sensitive clause on equal pay in Section 4.22(6). This is important as in most cases women have failed to receive equal pay for equal work. Similarly, there is a specific provision on the right to maternity leave for at least three months. This is a very important development as in most cases maternity leave is stated as a benefit, rather than a right, and employers make it difficult for women to take all their maternity leave.





Section 4.23: Freedom of movement and residence	This provision allows Zimbabwean to move freely in and out of Zimbabwe, and protects citizens from expulsion. A key clause in the provision is the right of every Zimbabwean to a passport or other travel document, Section 4.23(1)(c). Given the challenges that Zimbabweans face in accessing travel documents, the stating of this right might assist in putting pressure on the Registrar General to improve the right of Zimbabweans to get travel documents. This is particularly important for cross border traders, who tend to be women.
Section 4.24: Political rights	This clause provides that all Zimbabweans have the right to engage in political activities without interference. Given the political landscape of the country, this is an important provision, as there can no longer be any reason to restrict political activity in the country.
Section 4.25: Rights to administrative justice	This right is about ensuring that the State, its institutions and agencies, must give the public satisfactory service. Recourse for violation of the right is also provided for under this section. For members of the public, who sometimes have waited for years to get High Court or Supreme Court judgments, this clause is fundamental as it enables citizens to push for better service from public office.
Section 4.26: Right to a fair hearing	This right is linked to the right to administrative justice, as this clearly addresses the delays that courts sometimes exercise at the expense of the enforcement of rights.
Section 4.27: Rights of accused persons	Unlike the current Constitution, this Draft provides rights for accused persons to speedy trials that they understand and can participate in. This clause is aimed at giving greater rights to individuals and acknowledges that, contrary to former positions, even accused persons have rights before the law.
Section 4.29: Rights to agricultural land	This clause is an extension of the provisions under the current Constitution, Section 15, dealing with compulsory acquisition of land. It is also an extension of Section 4.28 of this draft. The clause attempts to address the issue of those who were moved from “their land” and how they will be compensated.
Section 4.30: Environmental rights	This clause provides for the right to a clean environment while extolling the need for citizens to ensure that they participate in environment-preservation programmes.





Freedom from arbitrary eviction	This clause protects people from arbitrary evictions or demolition of houses without a court order. This is an important right, especially as women often find themselves being evicted from their homes, sometimes without a court order.
Section 4.32: Right to education	The provision on the right to education is an expansion of the intentions set out in the national objectives. Under this clause, every Zimbabwean has a right to “basic state funded education, including adult basic education”. The clause does not expand on what basic education is, but provides for progressive advancement to ensure that Zimbabweans will be able in future to access tertiary education/institutions progressively at the expense of the State.
Section 4.33: Right to healthcare	The introduction of the right to healthcare is a welcome development in a country where access to healthcare is expensive. The clause not only provides for emergency healthcare at any health centre, but also for basic reproductive health services and care for the chronically ill. This clause is a positive development as all women and men will be able to access medical facilities, whether or not they are able to pay.
Section 4.34: Right to food and water	This clause protects the right to food and water and is another of the rights that have clauses for progressive fulfilment rather than immediate actioning.
Section 4.35: Marriage rights	The provision on marriage rights basically protects minors so that they do not enter into marriages by force or design. In addition to providing the specific rights, Chapter 4 also expands on specific rights in Part 3.
Section 4.37: Rights of women	This clause reiterates the equality clause in terms of provisions. Notable is the provision for equal guardianship of children, in a way regulated by Parliament. It would be interesting to see the kind of legislation that Parliament would create to ensure protection of women’s rights as co-guardians of their children.
Rights of children	This provision deals with the rights of children and provides a comprehensive framework for what constitutes the rights of children in Zimbabwe. It also provides that delinquent children should not be incarcerated, except as a last resort, and makes sure that they are safe from exploitation, violence or other harm when there is no option but to incarcerate.





Rights of the elderly	This provision addresses the rights of persons over the age of 70, which it states must be provided with healthcare assistance, some social assistance and financial assistance for survival.
Rights of persons with disabilities	This is another positive and new development that seeks to entrench the rights of persons living with disability.
Rights of liberation war veterans	This clause is noteworthy because it defines war veterans beyond their participation in the war, to include those who remained as intelligence in communities, those who assisted the war veterans during and immediately after the struggle for independence.

The chapter also provides that an affected person or any other person acting on behalf of another can seek enforcement of these rights. This is an important provision, as it capacitates those unable, for whatever reason, to seek redress for violations of rights provided in the Bill of Rights. Section 4.42 provides even for a third party to seek enforcement for those violated rights. The chapter also states that the rights provided will not be limited/ violated in the absence of exceptional circumstances. This provision is particularly useful as it capacitates third parties to act for individuals in the claim for their rights where, for example, resources and expertise are required and the affected individual is unable to proceed on their own. Further, this forces those who would otherwise violate the rights of individuals with impunity to consider possible suits from experts who are not necessarily the victims of their violations.

Chapter 5: The Executive

Chapter 5 addresses the issue of executive power. Unlike in the current Constitution where the executive power lies with the President alone, the chapter starts by stating that the executive authority is in fact derived from the people and must be exercised in accordance with the Constitution. The Draft Constitution proposes that the executive power be vested in the President and Cabinet. Chapter 5 eliminates the position of Prime Minister, which was created under the GPA. The Draft proposes that the





President be obliged to uphold the Constitution as the supreme law of the land, as well as promote peace and ensure protection of fundamental human rights.

While Chapter 5 provides for executive power, including the office of the president and two vice presidents, there is a major omission in the provisions for the elections of the president and the two vice presidents to be designated as first and second vice president respectively. The Draft misses an opportunity for gender equality in Section 5.5 as it does not clearly state that at least one of the two vice presidents must be a woman. This is a serious omission because in the absence of a clear provision, there is nothing that would stop political parties fielding three men for the position of president and two vice presidents.

Chapter 5.7(3) provides for the taking over of the presidency by the first vice president in the event that the presidency becomes vacant, a departure from the provisions of the current Constitution where the Speaker of Parliament would act as President. The chapter also provides for the removal from office of the President by the National Assembly and Senate for “*serious misconduct, failure to obey, uphold or defend the Constitution, wilful violation of the Constitution or inability to perform the functions of the office because of physical or mental incapacity*”. This is a new provision, consistent with the fact that the executive power is derived from the people.

Chapter 5.17 provides for the appointment of Ministers, Deputy Ministers and Cabinet. It further provides that up to seven ministers may be appointed outside of Parliament, for their skills and expertise. This is an important move, given that most ministers are appointed to portfolios for which they have very little or no skills. This would enhance professionalism and integrity in cabinet ministers. Further, on the basis of “skills and expertise”, women ministers could be appointed for their expertise in some government ministries, given the gender disparities in the current cabinet that is likely to continue unless deliberate steps are taken to prevent the exclusion of women. Section 5.19 introduces a code of conduct for ministers and cabinet, with a specific provision on integrity and against





trading in influence. This shows commitment to the values and founding principles alluded to earlier, wherein accountability, transparency and good governance are clearly stated.

Section 5.20(2) provides that all the vice presidents, the ministers or deputy ministers must attend Parliament to answer questions relating to their various areas of responsibility. This is important because currently ministers are undermining Parliament by refusing to attend its meetings even when they have been summoned. The introduction of a “vote of no confidence” in the government and therefore provide for its dissolution is another new provision proposed in the Draft that is designed to keep Members of Parliament accountable.

The chapter also deals with the powers ascribed to the President, which are fairly limited compared to the current constitutional powers of the Executive president. The functions ascribed to the President are subject to Cabinet or Parliament’s approval in most instances. The Draft allocates “direction of the operations of government” to Cabinet and not the President. This is in line with the aspirations for a just and democratic state in which power is not concentrated in one office or persons, but rather is shared by elected representatives.

Section 5.27 proposes that the office of the Attorney General be made part of the Executive. The functions of the Attorney General are limited to the office being the chief legal advisor and representative, drafting legislation and to promote and uphold the rule of law and defend the public interest. Of note is that the Prosecutorial function is removed from the office of the Attorney General. This is a positive development as, in most instances, the Attorney General has experienced situations of conflict of interest, where the Attorney General is both the legal advisor and representative of the State, while at the same representing the State in proceedings against third parties.





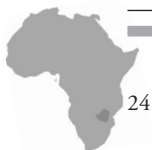
Chapter 6: The Legislature

Chapter 6 deals with the Legislative Authority, i.e. House of Assembly and Senate (collectively known as Parliament). Under the Draft Constitution, the proposal is to have a Senate composed of individuals elected entirely on proportional representation (on the “zebra system”⁷) rather than by the “first past the post” election process as is currently the situation. Section 6.5(2)(b) clearly states that the party lists should be “*headed by a female candidate*”. This is important in achieving gender equality, as the numbers of female representatives will increase to almost 50% based on the party list alone.

In terms of enhancing gender equality in the House of Assembly, the Draft further proposes the allocation of 60 “affirmative action” seats for women for the first two terms after the new Constitution is adopted. This proposal is made in awareness of the fact that the current electoral system favours men over women. Therefore, in order to encourage a culture of choosing or voting for women members of Parliament, there will be an initial imposition of women from their respective provinces who will be groomed to become candidates that contest elections in their own right and win after two terms in office.

Chapter 6 also proposes regulations on the conduct of members of Parliament including stressing that there should be sanctions for non attendance at Sittings by members to Parliament. Further the chapter reaffirms the duty or compels Ministers to attend both Parliament and the parliamentary Portfolio Committees to respond to any issues which they are responsible for. This is a development that will see Parliament exercise its oversight role over the Executive. This is important because oftentimes representatives of the people do not adequately represent their constituencies by missing sittings of Parliament.

Chapter 6.17 and 6.19 categorically state that the power to make laws is ultimately vested in the Legislature. This is an important provision





as it removes the right of discretion in passing laws, which is what currently prevails. These provisions are in line with the principles of a just and democratic society, where the representatives of the people exercise the legislative function on behalf of citizens. This means that Parliament retains the right to make laws, on representations from their constituents, which brings the citizens closer to governance and in particular women in the communities who would otherwise not participate in governance. The chapter also weakens the final assent to bills process, which is the prerogative of the president. This is because once Parliament has decided on new legislation, there have to be really compelling reasons for the President not to assent to the law, unlike the current scenario where the office of the President may delay assenting to new law or simply reject it and the procedures for how Parliament would proceed are not clear.

This chapter also provides for the composition in that situation of the Committee on Standing Rules and Orders. This committee is expected to “reflect as nearly as possible the political and gender composition of the combined Houses of Assembly”. This is a positive development as it again ensures that a gender balance is attained in the structures of Parliament, which has previously been male dominated. The chapter concludes with provisions for limiting terms of office for the Clerk of Parliament. This is interesting since the current Clerk of Parliament does not have a time-bound tenure of office.

Chapter 7: Elections

Chapter 7 provides for the Electoral Systems and further endorses the proposed proportional representation election for Senate. Section 7.3(1) provides for proportional representation of women in the House of Assembly. The section also provides that where a seat has become vacant, and the seat was occupied by a woman, that vacancy should be filled by a woman.





The chapter basically provides that the Electoral Commission shall handle all elections and its decisions on delimitation or any other matter related to elections shall be final.

This chapter seeks to affirm the independence of the Electoral Commission by ensuring that it is the sole body responsible for all electoral-related issues, and can exercise its mandate without undue interference.

Chapter 8: The Judiciary and the Courts

Chapter 8 makes provisions related to the Judiciary, highlighting that the independence of the judiciary is critical and it cannot be interfered with by anyone. Section 8.3(2)(b) further provides that the State must ensure that the judiciary remains independent. The chapter proposes a separate Constitutional Court, a function that was currently being practised under the Supreme Court. The chapter also elevates the Labour and Administrative Courts, as its judges are elevated to the status of judges of the High Court.

Section 8.4 creates guiding principles for the judiciary, which are aimed at regulating how members of the judiciary exercise their judicial functions without compromise or corruption. The chapter also states the roles and jurisdiction of the various courts, an important position as most times there is confusion even among lawyers on which court to approach and why.

Section 8.15 makes provision for judges of the High, Supreme and Constitutional Courts to develop the common or customary law taking into account the interests of justice and the Constitution. This is known as judicial activism, where the judiciary have room to make judgments that have the effect of changing the law should the situation so require. This is important for gender equality because, in some instances, there is need for the law to be interpreted widely to enable the protection of previously disadvantaged groups and women. An example was when the Supreme





Court ruled that mothers could act as guardians of their children even though the relevant act only recognised fathers as such.

The appointment of judges has also been modified under Section 8.19. Other than the Chief Justice, deputy Chief Justice and Judge President of the High Court, all other judges are employed by the Judicial Services Commission through a public interview process. Judges can only be recommended for office after the public interview process. This is critical for women, because the public interview process provides room for prospective judges to be interrogated on their attitude to women's rights⁸.

Section 8.23 provides that the appointments in the judiciary must take into account diversity and the gender composition of the country. This is disconcerting, because there is no strong provision for the appointment of female judges yet it is common knowledge that the representation of women in the judiciary has always been inadequate. Further, given the national objectives and the gender equality clause, it would seem that this chapter could have been enhanced by specific provisions of gender equality in the judiciary.

Once judges are appointed their tenure is a guaranteed in terms of Section 8.25.

Chapter 9: Principles of Public Administration and Leadership

Chapter 9 deals with the basic principles that should govern public administration and leadership. It is important to note that in the list of values and principles governing public administration there is no direct reference to delivery of service in a manner that is alive to the needs of women. These principles are made without specific reference to gender equality.

A key development under this chapter is the effort to limit terms of office for public officials to ensure regeneration of the public service. Further,





the chapter proposes important provisions, including the requirement for public officials to declare their assets as a way to enhance integrity and accountability to the public as well as the requirement for public officers to establish binding codes of conduct and standards for good corporate governance.

Chapter 10: Civil Service

Chapter 10 deals with the establishment of the Civil Service, and a Commission to oversee its functions. Essentially this is a replacement of the Public Service Commission. The chapter provides for the conduct of members of the Civil Service, including the clear statement that members should not be partisan in the exercise of their functions.

Chapter 10.7 provides for the appointment of Permanent Secretaries, who now cannot serve for more than 10 years. Under this Draft, Permanent Secretaries can only be appointed for two terms with each term not exceeding five years. This is an important development as it allows renewal of leadership in the civil service. Again however, there is no mention of addressing gender imbalance in the civil service whether among Ambassadors or Permanent Secretaries.

Chapter 11: Security Services

Chapter 11 addresses the Security Services, which are classified as the Defence Forces, the Police Services, the Intelligence Services and the Correctional Services (formerly prisons) and how they are constituted under the various commissions and how they are to conduct themselves. The chapter also deals with composition and functions ascribed to each of the Commissions in terms of their responsibility for each of the sectors in the Security Services. Of particular note is the emphasis on the fact that members of both the Civil Service and the Security Services are categorically to be apolitical and non-partisan. Again, in the composition of the





various security services commissions, a key omission is the requirement for gender equality in the appointment to those commissions. There is no room for female members of the security services to be advanced to the commissions in this Draft.

A new introduction in the Draft is the provision for the appointment of a Minister for Correctional Services.

Chapter 12: Independent Commissions Supporting Democracy

Chapter 12 proposes the following Independent Commissions to support democracy:

- Zimbabwe Electoral Commission
- Zimbabwe Human Rights Commission
- Zimbabwe Gender Commission
- Zimbabwe Media Commission
- National Peace and Reconciliation Commission

All the commissions are appointed to be independent and to operate without direction from anyone. The terms of reference for each commission are set out and their tenure is guaranteed, thus reinforcing their independence. Members of the commissions are expected to be apolitical.

Of particular importance in this chapter, and a positive development, is the provision for the Zimbabwe Gender Commission. The Gender Commission is created to monitor gender equality as provided for the Draft Constitution. The full functions are stated in Section 12.15 ranging from monitoring, to investigations of inequality, to receiving complaints and undertaking studies to inform recommendations to enhance gender



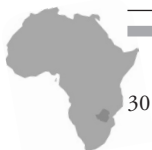


equality in Zimbabwe. Key among its functions are the function to advise public and private institutions on steps to ensure gender equality, including proposing affirmative action and *critically to recommend prosecution for criminal violation of rights relating to gender*. This provision indicates the level of commitment to gender equality.

Chapter 13: Institutions to Combat Corruption and Crime

Chapter 13 deals with institutions to combat corruption and crime, viz. the Zimbabwe Anti Corruption Commission (ZACC) and the National Prosecuting Authority (NPA). While both institutions are independent, it is important to note the ZACC is not an independent commission and is only regarded as such for certain purposes. Further, it serves at the pleasure of the President and has no guaranteed tenure. Given the scourge of corruption in Zimbabwe, it would have been prudent to have a totally independent ZACC as with the other commissions whose tenure is also guaranteed. That the ZACC operates at the pleasure of the President means that there is room for potential Executive interference with the mandate of the body, thereby rendering it compromised. Finally, in the establishment of the ZACC there is no provision for gender balance considerations, as with all the other independent commissions. It would appear that the appointments under Chapters 12 and 13 do not state the express need to consider gender balance. However, this could be as a result of the fact that the appointments hereunder would not be made in a vacuum, but in the context of this Draft's founding values, objectives and the equality cause dealt with earlier.

The NPA is established to institute and undertake criminal prosecutions on behalf of the State. The NPA is headed by the Prosecutor General whose tenure is the same as that of a judge of the High Court on the same terms for removal as those of a High Court judge. The Prosecutor General's independence is guaranteed in the Constitution, unlike the ZACC





whose independence has been removed. The Prosecutor General is obliged to publicly disclose the criteria s/he may use in deciding to prosecute or not prosecute a matter. This is important in a country fraught with perceptions of corruption, both real and imagined.

Chapter 14: Provincial and Local Government

Chapter 14 addresses the question of provincial and local governments. The chapter addresses the contentious issue of devolution of power to the provinces and local authorities. The rationale for the proposed devolution is that power should be exercised at the level closest to citizens and that citizens should feel that they are participating in their governance. The provision for devolution, though not stated in gender-specific language, is commendable as it provides for linking communities with decision-making at their level. This provision serves the cause of gender equality, because with decision making brought closer to the people there is increased room for participation from those previously excluded, including women.

The chapter in Section 14.2 provides for general principles of provincial and local government. These principles tally with the provisions of Chapter 9 regarding transparency, accountability and good governance. However, as with Chapter 9, making gender equality one of the key principles for local authorities seems to have been overlooked. However, as stated in the comments on Chapter 12, the assumption would be that in interpreting these principles the provisions of the founding values, principles and national objectives would be informative.

Chapter 14.5 provides for elections to provincial councils. As with the provisions related to the National Assembly, there are specific provisions for women to be elected to provincial councils through proportional representation in Section 14.5(3) and specifically for the zebra system to be used. This means that, as with the National Assembly, there will be a guaranteed increase in the number of women represented. This is important,





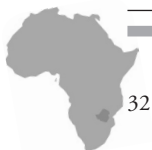
especially since the provincial councils have significant decision-making power. Chapter 14.7 states the functions of provincial and metropolitan councils, which is mainly the social and economic development of their province. Provincial Governors are also provided for, however they are presidential appointees and do not form part of the civil service.

Councillors to local authorities (rural and urban councils) are elected on the “first past the post” system unlike their provincial council counterparts. Local authorities have powers to make bylaws and levy taxes in their areas to carry out their objectives. Basically provincial and local authorities are to be given significant authority and room to plan development in their areas as well as have access to the necessary resources from the Consolidated Revenue Fund, with 5% of the budget being proposed to be set aside for this work.

Chapter 15: Traditional Leaders

Chapter 15 deals with the institution of traditional leaders. The chapter stipulates that traditional leaders are “*responsible for performing the cultural, customary and traditional functions of a Chief, headperson or village head*”. The chapter also stipulates the principles that should guide traditional leaders in their functions, and it is heartening to note that one of the principles they are obliged to observe is to “*treat all persons within their areas equally and fairly*”. This is worth noting, because many women tend to be discriminated under customary law in the traditional leaders’ jurisdiction. Thus, this principle will ensure that the gender discrimination and oppression perpetuated by chiefs in the name of customary can now be challenged under the Constitution. Another principle worth noting is the fact that traditional leaders are supposed to be non-partisan and not further the interest of any political party or cause.

Thus, although Section 15.3(1)(a) provides that one of the functions of the traditional leader is to uphold cultural values in the community and





promote sound family values, this will not be exercised in violation of the principles of equality stated in this section and throughout the Constitution. The chapter also provides for the establishment of an Integrity and Ethics Committee to regulate the conduct and relationships of the traditional leaders with their communities and in the exercise of their functions.

Chapter 16: Agricultural Land

Chapter 16 deals with Agricultural land issues. The chapter starts by setting out the principles guiding land policy in Zimbabwe. This chapter seeks to address colonial land access imbalances, and the guiding policy ultimately seeks to ensure equitable access by all Zimbabweans to the country's natural resources and land in particular. The guiding policy on land in Section 16.2(c) provides that “*the allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and diverse community interest*”. This guiding principle is based on the knowledge that traditionally men and women have not accessed land equally. Therefore, this principle is to ensure that in finalising the land question in Zimbabwe, women's right to land must not be overshadowed.

The provisions in this chapter seek to protect agricultural land acquired in previous times by the state. A clear intention not to compensate for land previously acquired from the former non-indigenous land owners is also present throughout the provisions, although there will be provisions for compensation for improvements on land. The chapter, however, provides for compensation for land and improvements thereon on land appropriated from indigenous Zimbabweans.

The chapter proposes a Land Commission to oversee all matters relating to agricultural land, including allocations, access to, utilisation and to investigate complaints and disputes regarding land allocations. The Land Commission is appointed through the same procedures as other commissions but is not designated an independent commission.





Chapter 17: Finance

Chapter 17 starts by stating the principles that should guide all aspects of public finance in Zimbabwe. The key principles relate to transparency and accountability and working towards national development while using funds prudently. Chapter 17.2 provides for Parliament's oversight role on revenues and expenditure of all State institutions and commissions. Chapter 17.3 sets the framework for the instances in which government will borrow or guarantee loans, giving Parliament a role to check the actions of the Minister of Finance.

The chapter also gives significant oversight to Parliament for the budget process and basically limits the power of both the Minister of Finance and the President to act arbitrarily in the allocation and expenditure of the Consolidated Revenue Fund. A key development is a specific provision for the allocation of funds directly to commissions, Auditor General, Prosecuting Authority, Council of Chiefs among others.

The chapter provides for the office of the Auditor General in Section 17. Like the Prosecutor General, the Auditor General is independent and not a member of the civil service. The functions of the Auditor General are to ensure that all government institutions and agencies have periodic auditing of accounts and financial systems. The chapter also addresses the issue of procurement by the State, and proposes the creation of an Act of Parliament to ensure that procurement is done transparently and efficiently. This provision is important in that it sets out the parameters for the proposed legislation in a bid to curb corruption and inefficiency in public procurement.

Chapter 18

Chapter 18 provides all the general issues, including terms of office, functions, membership, funding for commissions and their conditions





of service. There is also a specific provision that members of commissions must diligently adhere to the Constitution.

The role of customary international law in Zimbabwe law is clarified in Section 18.9. The section provides that “*customary international law is part of the law of Zimbabwe, unless it is inconsistent with this Constitution or an Act of Parliament*”. This provision therefore retains the need for parliamentary approval before any international treaty or convention is domesticated.

The chapter also deals with amendment of the Constitution’s provisions and various interpretations. It addresses general administrative and operational matters, including the effective date of the Constitution, and what happens to existing institutions upon approval of this Draft until its adoption and operationalisation.

Concluding observations

On the whole, this Constitutional Draft is not a gender-blind document. However, while in some cases it clearly articulates issues of gender equality, in others it comes across as not very gender sensitive. This is because, while the general founding principles, objectives and values encapsulate gender equality and some issues such as proportional representation are seen through a gender lens, the Draft is rather weak in other key areas. Thus, for example, provisions on culture and the place of international instruments remain a cause for concern as discussed earlier. On the other hand, the strengths of this Draft must not be overshadowed viz.:

- The founding principles that recognise the issue of gender parity.
- The recognition of equality in marriage and the rights of women as stated in the Bill of Rights, which indicates a deliberate effort to address gender inequality.

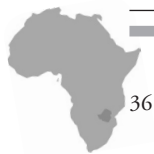




- The clear provisions for proportional representation and even affirmative action in the area of public participation.
- The parity position provided relating to the rights of foreign spouses and the rights of women to guardianship of children.
- The specific creation of a Gender Commission and other independent commissions designed to support democracy by inference are also cognisant of the challenges facing society and therefore could be deemed to be addressing the issues for women in society.

The challenge with a document such as the Constitution, in terms of being gender sensitive, is that generally documents of a directory nature leave little room to manoeuvre and therefore can be interpreted very stiffly. This means that unless rights are specifically stated, it becomes difficult to enforce them when others are so clear. Thus to assume that there will be positive interpretations of the various provisions of the Draft Constitution, which is subject to guided *discretion*, might be ambitious but even in its current state, this Draft Constitution is a document that could serve the interests of Zimbabwean women.

It may be necessary for women to consider ensuring that they have representation at the Second All Stakeholders Conference where this Draft will be discussed. While the Draft is certainly not a perfect document⁹, in many ways it addresses the challenges that women and the women's movement have grappled with, and therefore it might be prudent to support this Draft purely from a gender equality and women's rights perspective.





Endnotes

- 1 There are several analyses of the Draft in the public domain e.g. www.politicsweb.co.za; www.fingaz.co.zw; www.newzimbabwe.com for various perspective analyses.
- 2 It would seem that the main struggles tend to focus on what are perceived to be “society” issues which issues, have been proven to be mainstream and therefore tend to be oblivious to the realities of women’s lives and experiences in society hence the position that mainstream is usually about men, rather than women.
- 3 This was the conference that was characterized by violence and disruptions from the members of one political party. From archival information, the people who disrupted the meeting may have been both male and female, but it would be worth analysing how many women actually instigated the disruptions.
- 4 Simma Lieberman at <http://www.simmalieberman.com/articles/genderstrategies>
- 5 It is also critical to point out at this stage, that while the constitutional reform process was supposed to be inclusive of men and women, the youth and other interest groups, what emerged with the constitutional reform process, was a dominance of the “youth” in the processes, at the expense of the voices of other sectors. The “youth” referred to here, are political activists from across the political divide, who are vociferous in defence of their party positions, and in most cases are young men.
- 6 There is a general attitude that women are more likely to raise socio-economic rights issues because of their roles as mothers and their location in the home, versus the more public participation rights issues which tend to be civil and political.
- 7 The zebra system is whereby a party submits a list of potential Senators to Parliament, which list is made up of alternate male and female names, usually with the name of a woman topping that list. The system has been successfully used in Namibia and South Africa, resulting in an increase in the number of women MPs.
- 8 The public interview process placed the current Chief Justice of South Africa under the spotlight for his attitude to women and violence against women and girls.
- 9 From a political perspective, the draft has been analysed as not quite adequate. However even those that have analysed it, including the political parties, have not found any fundamental points of dispute on the gender equality and women’s rights provisions.

