

INTERESTS OF WOMEN WITH DISABILITIES ON THE PROPOSED CONSTITUTION OF ZIMBABWE AMENDMENT BILL No.2.

1. Introduction and background.

The government of Zimbabwe gazetted the Constitution of Zimbabwe Amendment Bill (No.2) (hereinafter referred to as the Bill) on 31 December 2019 and was again published on 17 January 2020 to correct the anomaly where the clerk and not speaker had initially published the bill contrary to the constitution. If this Bill is passed, there are a number of changes that are going to be made to the Constitution of Zimbabwe (Act No. 20) of 2013 (hereinafter referred to as the Constitution). Section 2(1) of the Constitution states that, “the Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency”. In terms of the protection of the rights of women with disabilities in Zimbabwe this basically means that the constitution is the safe haven for the protection of their rights. To this end any proposed change to the provisions of the constitution must protect and promote the rights of women with disabilities. The Disabled Persons Act Chapter 17:01 of 1992, defines a disabled person as;

...a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him/her from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.

All the proposed 27 Amendments under the Constitution of Zimbabwe Amendment (No.2) 2019 affect women with disabilities in Zimbabwe since they are people living in Zimbabwe.

However, there are certain provisions which affect these women collectively as a group in terms of the protection of their group rights, participation in politics and decision making positions. These are clause 6, 11, 17, 18 and 20 of the Bill. For the ICOD Zim it is trite to note that women are not a homogenous group. Therefore there is need to look at the different groups of women such as women with disabilities and promote their participation in political matters and decision making positions.

2. The extension of the Women's Parliamentary Quota.

The quota system came into effect in 2013 when the country adopted the new constitution. It was supported by Section 124(b) of the Constitution which states that, The National Assembly shall consist of;

(b) for the life of the first two Parliaments after the effective date, an additional sixty women members, six from each of the provinces into which Zimbabwe is divided, elected through a system of proportional representation based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces.

The shelf life of this provision was supposed to end in 2023. However the proposed amendment of the Constitution will increase the life span of Section 124(b) with another ten years (10). If this section is retained, this will mean that women with disabilities as a vulnerable group will have to compete with other women for the political positions. The result of this over the past years has been marginalisation and exclusion of women with disabilities from the political positions. It must be noted that Section 124 from its day of inception has not exactly promoted and empowered women to effectively participate in political processes. This then begs the question, whether or not the formula used in Section 124(b) is the correct one in promoting the participation of women with disabilities in political matters.

The formula set out in Section 124(b) and its regurgitation under Clause 11 of the Bill by the insertion of the words the “first four Parliaments” has not done justice in terms of the representation of women in politics. It fails to recognise that women are not a homogenous entity, there are a number of groups such as women with disabilities whose ideas and voices need to be heard in higher political positions. It also fails to recognise that the proportional representation of women in political matters should be covered from grassroots politics rather than specifically accommodating in the National Assembly.

There are a number of provisions which promote gender equality in the Constitution. Notably, Section 3(g) of the Constitution promotes gender equality as a constitutional value, Section 17 of the Constitution promotes gender balance particularly under Section 17 (1)(a) and (b) which states that,

The state must promote full gender balance in Zimbabwean society, and in particular,

- (a) the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men;
- (b) the State must take all measures, including legislative measure, needed to ensure that;
 - (i) both genders are equally represented in all institutions and agencies of government at every level.....

Section 80 of the Constitution also states that, ‘every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities’. In addition to this section, Section 22 of the Constitution puts an obligation on the State, all institutions and all agencies of government to recognise, protect and promote the rights of persons with disabilities. It states that;

1. The State and all institutions and agencies of government at every level must recognise the rights of persons with physical or mental disabilities, in particular their right to be treated with respect and dignity.

2. The State and all institutions and agencies of government at every level must, within the limits of the resources available to them, assist persons with physical or mental disabilities to achieve their full potential and to minimise the disadvantages suffered by them.

3. In particular, the State and all institutions and agencies of government at every level must--

a. develop programmes for the welfare of persons with physical or mental disabilities, especially work programmes consistent with their capabilities and acceptable to them or their legal representatives;

b. consider the specific requirements of persons with all forms of disability as one of the priorities in development plans;

c. encourage the use and development of forms of communication suitable for persons with physical or mental disabilities; and

d. foster social organisations aimed at improving the quality of life of persons with all forms of disability.

4. The State must take appropriate measures to ensure that buildings and amenities to which the public has access are accessible to persons with disabilities.

The full realisation of all the objectives listed in Section 22 above can only be done if women with disabilities are appointed in government positions and also political positions. This then calls for the government in its proposed Constitutional Amendment to deliberately save seats or government positions for women with disabilities.

This position is supported by Section 56(3) of the constitution which lists disability as a ground of discrimination. In other words the state must not discriminate against any person on the ground of disability. The proposed Bill does not specifically discriminate on the ground of disability. However, as ICOD Zim we have pointed out in the earlier paragraphs, women with disabilities are a vulnerable group in our country who have been marginalised, discriminated against and excluded from decision making positions. Over the past years their voices in the political sphere have been relegated to the periphery of the political discussion. The main cause of this is the lack of political representation and the failure of government to implement policies that will allow and secure seats for the political representation of women with disabilities.

To solve this dilemma, the government must allow for affirmative action measures as outlined in Section 56(6) of the Constitution. This Section states that,

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--

- a. such measures must be taken to redress circumstances of genuine need;
- b. no such measure is to be regarded as unfair for the purposes of subsection (3)

The affirmative action measures in this case will allow the government to deliberately reserve seats in the National Assembly for women with disabilities. Although the formula set out in Section 124 of the Constitution on the proportional representation of women in politics has not

yielded any positive results, the Bill does not propose to change anything in the formula but it simply extends the term of its application. The Bill is a violation of Sections 17, 56 and 80 of the constitution, which guarantee gender parity at all levels of leadership. The Government of Zimbabwe should be taking a cue from progressive countries such as South Africa, Senegal and Rwanda where a lot of progress is being made towards gender parity. In addition, the Government has not undertaken consultations to evaluate the impact of Proportional Representation (PR) seats in genuinely empowering women and increasing their voice in leadership, policy formulation and the development of the country. This is probably a task which the Zimbabwe Gender Commission should have been allowed to undertake before the Bill was drafted.

Recommendation

It is proposed that, there should be reserved seats for women with disabilities and this must be made mandatory with a clear wording in the constitution. To show a clear picture of gender equality and representation of women with disability in parliament, one woman with disability should be elected from each province.

2.1 The introduction of the Youth Quota.

The Amendment of Section 124 of the Constitution through Clause 11 by insertion of Section 124(c)(i) and (ii) promotes the participation of youths in politics and their representation in the National Assembly. The proposed Section 124(c)(ii) requires the listing of both male and female youth members (twenty one to thirty five years of age) one from each of the provinces into which Zimbabwe is divided in an alternating manner under a party-list system of proportional representation to be elected into the National Assembly. This move separates the participation of older women who usually dominate the political positions from younger women who will be catered for under the youth positions.

Although this is a progressive move towards promoting the participation of both male and youth female members in the National Assembly, there is need to ensure that female youths with Disabilities are also considered in the 10 positions since they are a vulnerable group in society with little recognition in political matters and decision making positions in the country.

Recommendation

There is need for political parties starting from their Constitutions and internal electoral processes to reserve seats for women with disabilities. The filling of these seats will play an important role in that the voice of women with disabilities will be heard in the crucial decision making processes of the country. Out of the 10 proposed seats for the youths, there must be at least one female youth with disability who is selected/appointed into the National Assembly. The proposed Bill must have this included under Section 124 in clear terms.

2.2 Composition of the provincial and metropolitan councils.

Clause 20 of the Bill proposes to repeal Section 268 and 269 of the Constitution and introduces a new section which is Section 268. The composition of the provincial and metropolitan councils under the proposed Section 268 shall include, ten persons elected by a system of proportional representation referred to in subsection (3). Subsection 3 of Section 268 states that,

Elections to provincial and metropolitan councils must be conducted in accordance with the Electoral Law, which must ensure that the persons referred to in subsection (1)(c) are elected under a party-list system of proportional representation—

(a) which is based on the votes cast for candidates representing political parties in the province concerned in the general election for Members of the National Assembly; and

(b) in which male and female candidates are listed alternately, every list being headed by a female candidate.

Recommendation

Although the proposed Section 268(b) of the Bill promotes gender equality, it still treats women as a homogenous entity. There is need to disaggregate the women listed under this clause and promote the representation of women with disabilities who are the most vulnerable group of women in the country. The proposed amendment must also be written in clear terms that provide for the inclusion of women with disabilities in provincial and metropolitan councils.

3. Appointment of additional Ministers.

Clause 10 of the Bill proposes an increase in the number of Ministers and Deputy Ministers who can be appointed by the President in terms of Section 104 of the Constitution from five (5) to seven (7).

The appointment of more Ministers by the President is a good opportunity to increase the representation of women in higher decision making positions. In this case, the President must choose and allow the Ministerial positions to be filled by a member from a vulnerable group in the country, particularly women living with disabilities. This will ensure and promote the change in educational, economic and health reforms of the country so as to suit the needs of women with disabilities. Therefore out of the seven (7) proposed Ministerial posts at least one must be chosen from women with disabilities.

4. Appointment of Vice Presidents.

Clause 6 of the Bill proposes for the insertion of Section 2(a) under Section 94 of the Constitution which deals with the Assumption of office by the President and Vice-Presidents.

This clause proposes for the appointment of Vice Presidents by the President. It has no guarantee for gender equality in the appointment of the two Vice Presidents. In other words the two Vice Presidents can all be men and maybe women. However, following the history of political appointments, for example, in the last appointments of Vice Presidents, these positions have always been filled by men. The only exception was the appointment of Joyce Mujuru as the first female Vice President in independent Zimbabwe raising hopes of gender parity in the office of Vice President. However, those hopes were soon dashed when she was unceremoniously booted out and replaced by a man.

Therefore, before this Bill is passed, there is need to safeguard the idea of gender equality in the appointment of Vice Presidents. To this end, one of the two vice presidents should be a woman. In addition to this, if there is a woman with a disability who qualifies to be appointed as a Vice President, preference must be given to this woman. This will be in line with the affirmative action measures envisaged in the Constitution.

3. Office of the Public Protector.

Clause 17 and 18 of the Bill through the proposed insertion of Section 244 A. The Public Protector shall be responsible for investigating actions taken by any officer, person or authority referred to in subsection (2) in the exercise of the administrative functions of that officer, person or authority in any case where it is alleged that a person has suffered injustice in consequence of that action and it does not appear that there is any remedy reasonably available by way of proceeding in a court or an appeal from a court.

This clause plays a fundamental role in addressing violations of rights of women with disabilities by allowing reports to the Office of the Public Protector where there are no remedies which might be available in pursuing a court case or an appeal case.

Conclusion.

The proposed Bill will make significant changes to the Constitution of Zimbabwe. From the above survey of the clauses which affect women with disabilities it must be noted that, the proposed amendments are silent on the needs of people with disabilities in general and particularly women. Therefore there is need for the amendments to address these needs as outlined in section 22 and reinforced by Sections 3(g), 17, 56 and 80 of the Constitution of Zimbabwe Act No 20 of 2013. Section 124 of the Constitution must not be retained as it is. It must have a clear wording which will protect the interests of women with disabilities and at least one woman with disability must be elected from each province to be part of the National Assembly. The reserved seats for the youths must also have at least one female youth with disability. The appointment of Vice Presidents and additional Ministers must also include the idea of gender equality with affirmative action measures being implemented to ensure the appointment of women with disabilities into political and decision making positions.

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