**CONSTITUTION WATCH 5/2020**

**[22nd February 2020]**

**Amending the Constitution [PART 5]**

**Introduction**

In this Constitution Watch we continue our analysis of the Constitution of Zimbabwe Amendment (No. 2) Bill, examining the provisions for non-constituency members [i.e. those elected by proportional representation from party-list] of the National Assembly and the alterations the Bill will make to provincial and metropolitan councils.

**1. Party-list Members of the National Assembly**

**Current constitutional provisions for party-list members of the National Assembly**

At present the National Assembly consists of:

* 210 constituency members, i.e. members who are elected by voters in the 210 constituencies into which Zimbabwe is currently divided, and
* Until 2023, 60 women members elected under a party-list system of proportional representation, six for each of the country’s 10 provinces.  These members are selected on the basis of the votes cast in constituency elections within each province so that if, for example, constituency candidates standing for party A in a particular province get 66 per cent of the total votes cast in the province, and party B’s constituency candidates get the remaining 33 per cent, then four of the women on party A’s list of candidates for the province and two of party B’s women candidates will be elected to the National Assembly.

This is provided for in section 124 of the Constitution and elaborated on in Part XIA of the Electoral Act.

**Proposed amendment of provisions for party-list members**

**a. Party-list women members**

As indicated above, the provision for party-list women members of the National Assembly is a temporary one:  according to section 124(1)(b) of the Constitution it will last for the life of the first two Parliaments after the Constitution came into operation, so it will expire just before the 2023 general election.  It was intended to be a special provision to redress gender imbalance in the National Assembly.  In the longer term it was hoped that the imbalance would be rectified by political parties selecting more women to stand as constituency candidates.

Clause 11 of the Constitution Amendment Bill proposes to extend the special provision so that it will last for the life of the first four Parliaments after the Constitution came into operation, i.e. until just before the general election which, if Parliament is not dissolved early, will be held in 2033.

**b. Party-list youth members**

Clause 11 will also add a new paragraph to section 124(1) of the Constitution providing for 10 youth members to be elected to the National Assembly on a party-list system, one from each province.  To qualify for election the “youths” will have to be aged from 21 to 35, and the party lists will have to list male and female candidates alternately.  This will have the effect, incidentally, of adding up to five additional women to the membership of the National Assembly.

**Comment**

**a. Party-list women members**

The need to secure gender equality has long been recognised.  In 1995 the Fourth World Conference on Women in Beijing adopted a platform for action in conjunction with the Beijing Declaration which urged State parties ‒ among them Zimbabwe ‒ to:

*“Take measures, including, where appropriate, in electoral systems that encourage political parties to integrate women in elective and non-elective public positions in the same proportion and at the same levels as men.”*

The SADC Declaration on Gender and Development (1997) committed member States to:

*“Ensuring the equal representation of women and men in the decision making of member states … and the achievement of at least thirty percent target of women in political and decision making structures by the year 2005.”*

Our own Constitution, in section 17(1)(b), enjoins the Government to ensure that women constitute at least half the membership of all governmental bodies established under the Constitution.

These are very worthy goals, but it is easier to stipulate them than to achieve them.  Gender balance, and the wider goal of complete gender equality, cannot be solved simply by reserving a fixed number of parliamentary seats for women.  Reserved seats or quotas often do not lead to real empowerment of women but rather benefit dominant political parties and reinforce patronage networks.  Reserving special seats for women takes the pressure off political parties to nominate women as candidates for election in constituencies and, more generally, to implement measures to ensure that men and women compete for political power on a level playing field.

Research from other countries in Africa and elsewhere has shown that:

* Most “quota” women are selected through patronage – and are connected to or related to senior party members and tend to follow the interests of powerful men in their parties.  They generally do not challenge patriarchal attitudes prevalent in their parties and in society at large.
* Many do not have experience in gender issues or in working for gender justice, hence they may not be effective champions of gender equality.
* Having “quotas” leads to fewer women being elected by direct vote to represent constituencies.
* Reports, in particular from other African Parliaments, indicate that often “quota” women are not treated with respect by fellow parliamentarians.
* Because “quota” women do not represent constituencies they do not become well known to the electorate and are less effective in taking women constituents’ issues to Parliament.  They do not have the same accountability to the electorate.

**Effect of the Women’s Quota System in Zimbabwe**

In 2013 the constitution-makers opted for reserving 60 seats in the National Assembly for women.  Has it brought about gender equality in Parliament?  The results are mixed:

* In 2005, after a general election held under the Lancaster House constitution, women constituted 16 per cent of the members of the House of Assembly;  in 2008 they constituted 17 per cent.  After the election in 2013, the first held under the present Constitution with its provision for the extra sixty non-constituency party-list women, the percentage jumped to 34 per cent.
* On the other hand, the number of women elected in constituencies tells a different story:  in 2005 there were 24 such women, in 2008 there were 34, while in 2013 they went down to 26.  After the 2018 election there are again 26.  Anecdotal evidence is that aspiring women candidates were told they would not be nominated for election in constituencies and instead should seek inclusion in their parties’ party lists.

Hence reserved seats can create an easy avenue for women but may impact negatively on women’s chances of entering Parliament through normal constituency elections.  Extending the special representation of women for a further 10 years is unlikely to change matters.

**Other Ways to Achieve Gender Equality**

There are other ways of achieving the goal of gender equality:

* Withholding public funding from parties whose lists of constituency candidates show excessive gender bias might be a more effective way of improving women’s representation in Parliament.  That could be done without amending the Constitution.
* In other countries, increasing the representation of women in executive bodies such as the Cabinet and other important State Institutions has proved more effective than providing for quotas in the Legislature.  In Zimbabwe, out of 24 members of the present Cabinet, only five are women.  This falls far short of the 12 needed to achieve gender equality, or even the eight needed to meet the target set in the SADC Declaration on Gender and Development, quoted above, which mandated member States to have at least 30 per cent of women in “decision-making structures” by 2005.  And, as pointed out earlier, our own Constitution states that the Government must ensure that women are equally represented in all constitutional bodies such as the Cabinet.
* Women in executive roles in the public and private spheres have proved better role models and encourage more women to aim high than do specially elected women parliamentarians.

**b. Party Lists for Youths**

Much of what we have said above applies equally to the party-list youth members.  There is certainly a need to get younger people into governmental institutions, including Parliament, but whether special representation is the best way is debatable.

Again political parties should make more room for youths.  Zimbabwe is out of step with world trends in this regard *[In Finland the average age in several parties is in the 30s and the average age for the entire Parliament is 45].*

Finally an important point is that for a relatively small population Zimbabwe has a very large number of parliamentarians – this is very expensive and increasing the size without any real gains puts a large and unnecessary burden on the fiscus.

*.***2. Alteration of Membership of Provincial and Metropolitan Councils**

Clause 20 of the Bill proposes to alter and align the membership of provincial and metropolitan councils under Chapter 14 of the Constitution so that both types of council will consist of:

* a chairperson elected from a list put forward by the political party which gained the highest number of National Assembly seats in the province
* mayors and chairpersons of local authorities in the province, and
* ten members elected at a general election on a party-list system of proportional representation.

The changes this will make to the membership of the councils, as laid down in sections 268 and 269 of the Constitution, are:

* Senators (including senator chiefs) and members of the National Assembly will no longer be council members *ex officio*.  If they are elected to a council, they will lose their parliamentary seats.
* The two metropolitan councils will no longer be chaired by the mayors of Harare and Bulawayo, but by a chairperson elected from a party list as described above.

**Comment**

The councils will lose their parliamentary membership and become smaller.  Whether being smaller will make them more efficient is impossible to say because they have never been constituted.  In all the years since the Constitution came into force no legislation has been enacted laying down their procedures and how they exercise their powers, no provision has been made for their staff, and no places have been allocated for them to meet.  Although their members have been elected they have never met and have never been able to do anything by which their performance can be judged.  To put it mildly, this shows lack of commitment on the part of central government to the ideal of devolution and decentralisation expressed in section 3(2)(l) of the Constitution.

While a reduction in councils’ membership may make provincial councils function more smoothly, it will not do the same for the metropolitan councils which comprise the areas of greater Harare and Bulawayo.  At present those councils are chaired by the mayors of Harare and Bulawayo respectively, but under the proposed amendments they will have separate chairpersons.  This means that the metropolitan areas will be governed by two separate councils with different members and different chairpersons but overlapping functions.  It will be a recipe for confusion, buck-passing, inaction and overall incompetence.

Even for provincial councils the effect of the proposed amendments may not be wholly beneficial.  The councils may become more efficient through being smaller, but they will be less representative of the political leadership in their provinces and so less likely to counter the overwhelming influence of central government.

The amendments have not been carefully thought out, but the same could be said of the whole of Chapter 14 of the Constitution.  During the constitutional negotiations neither ZANU-PF nor the main wing of the MDC was particularly keen on devolution and the result was a vague compromise which pays lip service to the idea of devolution without making it clear precisely what powers are devolved and to whom.  Chapter 14 does not clearly demarcate the functions and responsibilities of central government, provincial councils and local authorities.  It does not even mention provincial Ministers, which raises doubts about the validity of their appointment.

What is needed is a wholesale revision of Chapter 14 rather than the minor tinkering which the Bill proposes.

*[Our analysis of the Constitution Amendment Bill will be concluded in the next Part]*

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